

CHAPTER 97

FOOD REGULATION

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Cross-reference: See definitions in s. 93.01.

97.01 Definitions. In this chapter, unless inconsistent with context:

(1) “Butter” means the clean, nonrancid product made by gathering in any manner the fat of fresh or ripened milk or cream into a mass, which also contains a small portion of the other milk constituents, with or without salt or added coloring matter, and contains not less than 80% of milk fat. Renovated or process butter is the product made by melting butter and reworking, without the addition or use of chemicals or any substances except milk, cream or salt, and contains not more than 16% of water and at least 80% of milk fat.

(2) “Color additive” includes as colors black, white and intermediate grays and means a material which is a dye, pigment, or other substance made by a process of synthesis or similar artifice, or extracted, isolated or otherwise derived, with or without intermediate or final change of identity from a vegetable, animal, mineral or other source and which, when added or applied to a food or any part thereof, is capable, alone or through reaction with other substance, of imparting color thereto; except that such term does not include any material which has been or hereafter is exempted under the federal act.

(3) “Contaminated with filth” applies to any food not securely protected from dust, dirt and, as far as may be necessary by all reasonable means, from all foreign or injurious contaminations.

(4) “Department” means the department of agriculture, trade and consumer protection.

(4m) “Distressed food” means food, or packages or containers of food, that may have been damaged, or rendered unsafe or unsuitable for sale or use as food while being transported, stored, handled or sold or the food the label of which has been lost, defaced or obliterated.

(5) “Federal act” means the federal food, drug and cosmetic act, as amended (Title 21 USC 301 et seq.) or the federal wholesome meat act, as amended (Title 21 USC 71 et seq.), or the federal poultry products inspection act, as amended (Title 21 USC 451 et seq.), or the federal fair packaging and labeling act (Title 15 USC 1451 et seq.) which may be applicable.

(6) “Food” means:

- (a) Articles used for food or drink by persons.
- (b) Chewing gum.

(c) Articles used for components of matters specified in pars. (a) and (b).

(7) “Food additive” means any substance, the intended use of which results or may be reasonably expected to result, directly or indirectly, in its becoming a component or otherwise affecting the characteristics of any food, (including any substance intended for use in producing, manufacturing, packing, processing, preparing, treating, packaging, transporting or holding food; and including any source of radiation intended for any such use), if such substance is not generally recognized, among experts qualified by scientific training and experience to evaluate its safety, as having been adequately shown through scientific procedures (or, in the case of a substance used in a food prior to January 1, 1958, through either scientific procedures or experience based on common use in food) to be safe under the conditions of its intended use; except that such term does not include a pesticide chemical in or on a raw agricultural commodity, or a pesticide chemical to the extent that it is intended for use or is used in the production, storage, or transportation of any raw agricultural commodity, or a color additive, or any substance used in accordance with a sanction or approval granted prior to the enactment of the food additives amendment of 1958, pursuant to the federal act.

(8) “Label” means a display of written, printed or graphic matter upon the immediate container of any article. A requirement made under this chapter that any word, statement, or other information appear on the label shall not be considered to be complied with unless such word, statement or other information also appears on the outside container or wrapper if any, of the retail package of such article, or is easily legible through the outside container or wrapper. “Immediate container” does not include package liners.

(9) “Labeling” means all labels and other written, printed or graphic matter upon an article or any of its containers or wrappers or accompanying the article.

(10) (a) “Milk” means the whole, fresh, clean, lacteal secretion obtained by the complete milking of one or more healthy cows. Milk shall contain not less than 3% of milk fat, and not less than 8.25% of milk solids not fat. Milk may be standardized by the addition or removal of cream or by the addition of skim milk. When so standardized milk sold in final package form shall contain not less than 3.25% of milk fat, and not less than 8.25% [8.7%] of milk solids not fat.

(b) “Lowfat milk” means milk from which sufficient milk fat has been removed to produce a food having a milk fat content of either 0.5%, 1%, 1.5% or 2% and a milk solids not fat content of not less than 10%.

(c) “Skim milk” means milk from which sufficient milk fat has been removed to reduce its milk fat content to less than 0.5% and which has a milk solids not fat content of not less than 9%.

NOTE: Sub. (10), as renumbered, is shown as affected by 1983 Wis. Act 536. Act 536 amends (a) by deleting “8.25%” and inserting “8.7%”, here shown in brackets. Act 536 also creates (b) and (c). The effective date of Act 536 is shown in Section 4 as follows:

Section 4. Effective date. This act takes effect on the first day of the 3rd month commencing after the governor certifies, by executive order directed to the secretary of agriculture, trade and consumer protection and published in the official state newspaper, that all states contiguous to the borders of this state have in effect milk content requirements identical to those requirements created by this act.

(11) “Nonfat dry milk” means the product resulting from the removal of fat and water from milk, and contains the lactose, milk proteins and milk minerals in the same relative proportions as in the fresh milk from which made. It contains not over 5% by weight of moisture. The fat content is not over 1 1/2% by weight unless otherwise indicated.

(12) “Package” means any container or wrapper in which any food is enclosed for use in the delivery or display of that food to retail purchasers, but does not include:

(a) Shipping containers or wrappings used solely for the transportation of any food in bulk or in quantity to manufacturers, packers or processors, or to wholesale or retail distributors.

(b) Shipping containers or outer wrappings used by retailers to ship or deliver any food to retail customers if such containers and wrappings bear no printed matter pertaining to any particular commodity.

(13) “Pesticide chemical” means any substance which, alone, in chemical combination, or in formulation with one or more other substances is a “pesticide” within the meaning of s. 94.67 (25) and which is used in the production, storage or transportation of raw agricultural commodities.

(14) “Raw agricultural commodity” means any food in its raw or natural state, including all fruits that are washed, colored or otherwise treated in their unpeeled natural form prior to marketing.

(14m) “Salvaging distressed food” means reconditioning or preparing distressed food for sale or use as food, including cleaning, culling, sorting, scouring, labeling, packaging, processing or treating the food.

(15) “Sell”, “sale” or “sold” includes delivering, shipping, consigning, exchanging, offering or exposing for sale, or having in possession with intent to sell.

(16) “Whey cream” means that portion of whey rich in milk fat which is separated from whey by centrifugal force, is fresh and clean and contains not less than 30% of milk fat.

History: 1975 c. 94 s. 91 (10); 1975 c. 308; 1977 c. 29 s. 1650m (4); 1977 c. 106 s. 15; 1983 a. 189, 261, 536; 1987 a. 276; 1995 a. 225.

97.02 Standards; adulterated food. A food is adulterated:

(1) If it bears or contains any poisonous or deleterious substance which may render it injurious to health; but in case the substance is not an added substance such food shall not be considered adulterated under this paragraph if the quantity of such substance in such food does not ordinarily render it injurious to health.

(2) If it bears or contains any added poisonous or added deleterious substance, other than one which is a pesticide chemical in or on a raw agricultural commodity, a food additive or a color additive, which is unsafe within the meaning of the federal act or any deleterious substance not a necessary ingredient in its manufacture.

(3) If it is a raw agricultural commodity and it bears or contains a pesticide chemical which is unsafe within the meaning of the federal act.

(4) If it is or it bears or contains any food additive which is unsafe within the meaning of the federal act, but where a pesticide chemical has been used in or on a raw agricultural commodity in conformity with an exemption granted or tolerance prescribed under the federal act and the raw agricultural commodity has been subjected to processing such as canning, cooking, freezing, dehydrating or milling, the residue of the pesticide chemical remaining in or on the processed food shall, notwithstanding other provisions in this section, not be deemed unsafe if the residue in the processed food when ready-to-eat is not greater than the tolerance prescribed for the raw agricultural commodity.

(5) If it is or bears or contains any color additive which is unsafe within the meaning of the federal act or other provisions in this section.

(6) If it consists in whole or in part of a diseased, contaminated, filthy, putrid or decomposed substance, or if it is otherwise unfit for food.

(7) If it has been produced, prepared, packed or held under insanitary conditions whereby it may have become contaminated with filth, or whereby it may have been rendered diseased, unwholesome or injurious to health.

(8) If it is the product of a diseased animal or an animal which has died otherwise than by slaughter, or that has been fed upon the uncooked offal from a slaughterhouse.

(9) If its container is composed, in whole or in part, of any poisonous or deleterious substance which may render the contents injurious to health.

(10) If any valuable constituent has been in whole or in part omitted or abstracted therefrom.

(11) If any substance has been substituted wholly or in part therefor.

(12) If damage or inferiority has been concealed in any manner.

(13) If any substance has been added thereto or mixed or packed therewith so as to increase its bulk or weight, or reduce its quality or strength or make it appear better or of greater value than it is.

(14) If it is confectionary, and

(a) Has partially or completely imbedded therein any nonnutritive object; provided, that this clause shall not apply in the case of any nonnutritive object if, in the judgment of the department as provided by regulations, such object is of practical functional value to the confectionary product and would not render the product injurious or hazardous to health;

(b) Bears or contains any alcohol in excess of one-half of one per cent by volume derived solely from the use of flavoring extracts; or

(c) Bears or contains any nonnutritive substance; but this clause shall not apply to a safe nonnutritive substance which is in or on confectionary by reason of its use for some practical functional purpose in the manufacture, packaging, or storing of the confectionary if the use of the substance does not promote deception of the consumer or otherwise result in adulteration or misbranding in violation of this chapter. The department may, for the purpose of avoiding or resolving uncertainty as to the application of this clause, promulgate rules allowing or prohibiting the use of particular nonnutritive substances.

History: 1971 c. 156; 1979 c. 89.

97.03 Standards; misbranding. (1) A food is misbranded:

(a) If its labeling is false or misleading in any particular.

(b) If it is offered for sale under the name of another food.

(c) If its container is so made, formed or filled as to be misleading.

(d) If in package form, unless it bears a label containing all of the following:

1. The name and place of business of the manufacturer, packer or distributor.

2. An accurate statement of the quantity of the contents in terms of weight, measure or numerical count.

(e) If any word, statement or other information required to appear on the label or labeling is not prominently placed thereon with such conspicuousness and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use.

(f) If it is represented as a food for which a definition and standard of identity has been prescribed under s. 97.09 unless it conforms to such definition and standard and its label, except when its label complies with the federal act, bears the name of the food specified in the definition and standard and the common names of ingredients present in such food.

(g) If it is represented as:

1. A food for which a standard of quality has been prescribed under s. 97.09 and its quality falls below such standard unless its label bears, in the manner and form as such regulations specify, a statement that it falls below such standard.

2. A food for which a standard or standards of fill of container have been prescribed under s. 97.09 and it falls below the standard of fill of container applicable thereto, unless its label bears, in the manner and form as such regulations specify, a statement that it falls below such standard.

(h) If it is a food for which no definition or standard of identity has been prescribed unless it bears a label clearly giving the common or usual name of the food if any, and in case it is fabricated from 2 or more ingredients, the common or usual name of each such ingredient; provided that to the extent that compliance with this subdivision is impractical or results in deception or unfair competition, exemptions shall be established by departmental rule.

(i) If it purports to be or is represented for special dietary uses, unless its label bears such information concerning its vitamin, mineral and other dietary properties as the department determines to be, and prescribes as, necessary in order to fully inform purchasers as to its value for such uses.

(k) If it bears or contains any artificial flavoring, artificial coloring or chemical preservative, unless it bears a label stating that fact.

(m) If it is a product intended as an ingredient of another food and when used according to the directions of the purveyor will result in the final food product being adulterated or misbranded.

(n) If it is a color additive unless its packaging and labeling are in conformity with such packaging and labeling requirements applicable to such color additive prescribed under the federal act.

(2) (a) Packages of fresh fruits and vegetables, the contents of which are plainly visible to the purchaser shall be exempt from a declaration of numerical count and identity under this section if the package contains 6 units or less, except that when the quantity of the food is customarily expressed in terms of weight or measure, as distinguished from numerical count, the food shall bear a label declaring the quantity.

(b) A food is exempt from labeling requirements under this section if the food, having been received in bulk containers by a retailer, is packaged by the retailer and displayed to the purchaser with a counter card, sign or other appropriate device bearing prominently and conspicuously the label information required by this section.

(c) Sausage enclosed in a casing is exempt from labeling requirements under this section if it is displayed to the purchaser with a counter card, sign or other appropriate device bearing prominently and conspicuously the label information required by this section; but if the sausage is weighed at the time of sale a statement of weight is not required. If encased sausage is placed in another package, labeling requirements of this section apply.

(d) Bakery products enclosed in transparent containers or enclosed in containers which provide a transparent opening to afford a clear view of the product are exempt from labeling requirements under this section when such products are sold at retail by the bakery operator or the bakery operator's employe direct to the consumer at the baker's own retail bakery service counter operated by the baker who has produced these products, and when displayed to the purchaser with a counter card, sign or other appropriate device bearing conspicuously the label information required under this section.

(e) A food shall be exempt from the labeling requirements under this chapter if the food, in accordance with the practice of the trade, is to be processed, labeled or repacked in substantial quantities by the buyer, on condition that such food is not adulterated or misbranded under this chapter upon completion of such processing, labeling or repacking by the buyer.

(3) (a) Except as provided in par. (b), no person may use the term "butter" in the name or in connection with the name, designation, advertising or description of any article of food prepared and offered for sale or served with any meal for which a charge is made unless all of the fat contained in such article of food is butterfat. This paragraph does not prohibit any representation that a food is flavored with butter if at least 12% of the fat in such food is butterfat or if the food contains the concentrated flavor elements derived from natural butterfat in sufficient quantities to impart a characteristic butter flavor.

(b) A person may use the term "light butter" or "lite butter" in the name or in connection with the name, designation, advertising or description of an article of food prepared and offered for sale or served with any meal if the product is produced to resemble butter, contains 52% butterfat within tolerances that are acceptable to the department, has at least one-third fewer calories than butter, is made from pasteurized milk or cream or both and contains 15,000 international units of vitamin A per pound within tolerances of good manufacturing practices. The product may contain only the following additional ingredients:

1. Partially skimmed or skim milk.
2. Buttermilk.
3. Whey and whey-derived ingredients.
4. Water.
5. Salt or salt substitutes.
6. Bacterial cultures.
7. Nutritive sweeteners.
8. Emulsifiers and stabilizers.
9. Safe and suitable color additives.
10. Natural flavors.

11. Safe and suitable ingredients that improve texture, prevent syneresis or extend the shelf life of the product.

History: 1971 c. 156 ss. 2, 3, 5; 1977 c. 216; 1991 a. 111; 1993 a. 492; 1995 a. 225.

97.07 Interpretation. If an article is alleged to be misbranded because the labeling is misleading, then in determining whether the labeling is misleading, there shall be taken into account not only representations made or suggested by statement, word, design, device, sound, or any combination thereof, but also the extent to which the labeling fails to reveal facts material in the light of such representations or material with respect to consequences which may result from the use of the article to which the labeling relates under the conditions of use prescribed in the labeling or under such conditions of use as are customary or usual.

97.09 Rules. (1) Definitions and standards of identity, composition, quality and fill of container for foods, and amendments thereto, now or hereafter adopted under the federal act or this chapter are definitions and standards of identity, composition, quality and fill of container under s. 97.03. However, when such action will promote honesty and fair dealing in the interest of con-

sumers, the department may amend, stay or reject such federal regulations or make rules establishing definitions and standards of identity, composition, quality and fill of container for foods where no federal regulations exist, or which differ from federal regulations.

NOTE: Sub. (1) is shown as affected by 1983 Wis. Act 536, which adds “or this chapter”. The effective date of Act 536, is shown in Section 4 as follows:

Section 4. Effective date. This act takes effect on the first day of the 3rd month commencing after the governor certifies, by executive order directed to the secretary of agriculture, trade and consumer protection and published in the official state newspaper, that all states contiguous to the borders of this state have in effect milk content requirements identical to those requirements created by this act.

(2) Temporary permits granted under the federal act for interstate shipment of experimental packs of food varying from the requirements of federal definitions and standards of identity are automatically effective in this state under conditions set forth in such permits.

(3) The department may also issue temporary marketing permits upon a convincing showing of need to continue a market study where the interests of consumers are safeguarded. Such permits are subject to terms and conditions prescribed by departmental rules but may not be issued for a period exceeding 6 months plus one renewal period of 6 months after departmental review.

(4) The department may, by rule, establish and enforce standards governing the production, processing, packaging, labeling, transportation, storage, handling, display, sale, including retail sale, and distribution of foods that are needed to protect the public from the sale of adulterated or misbranded foods.

(5) The department shall promulgate rules establishing standards and procedures for the labeling of organic food. The rules may establish a process whereby organizations, businesses and firms certify that foods represented as organic foods comply with established standards. In this subsection, “organic food” means any food that is marketed using “organic” or any derivative of “organic” in its labeling or advertising.

History: 1971 c. 156; 1983 a. 261, 536; 1987 a. 278.

97.10 Prohibited acts. (1) The sale of any food that is adulterated or misbranded is prohibited.

(2) It is unlawful to manufacture, prepare for sale, store, or sell food unless the food is protected from filth, flies, dust or other contamination or unclean, unhealthful or insanitary conditions.

(3) No person shall be subject to the penalties of s. 97.72 for having violated sub. (1), if he or she establishes a guaranty or undertaking signed by, and containing the name and address of the person residing in this state from whom the article was received in good faith, to the effect that such article is not adulterated or misbranded within the meaning of ss. 97.02 and 97.03.

History: 1971 c. 156; 1983 a. 261.

97.12 Enforcement. (1) For the purpose of enforcing this chapter, the department and its agents may, at reasonable hours, enter and inspect any farm, factory, warehouse, building, room, establishment or place at or in which foods are manufactured, processed, packed, packaged, stored or held for sale, and may enter any vehicle used to transport or hold foods in commerce. The department and its agents may also secure samples or specimens of food and any product or substance that may affect food, examine and copy relevant documents and records and obtain photographic and other evidence needed to enforce this chapter. The department shall examine any samples secured and shall conduct other inspections and examinations needed to determine whether there is a violation of this chapter. The department shall pay or offer to pay the market value of samples taken.

(2) (a) Whenever any duly authorized inspector of the department has reasonable cause to believe that any food examined by him or her is adulterated or misbranded and is dangerous to health or misleading to the injury or damage of the purchaser or consumer, the inspector shall issue and deliver to the owner or custodian of the food a holding order prohibiting the sale or movement of the food for any purpose until the analysis or examination of the

sample obtained has been completed. A holding order may be effective for a period of not longer than 14 days from the time of its delivery, but it may be reissued for one additional 14-day period if necessary to complete the analysis or examination of the food.

(b) No food described in any such holding order so issued and delivered shall be sold or moved for any purpose without the approval of the department until such analysis or examination has been completed within the time specified in par. (a). If the department upon completed analysis or examination determines that the food described in such holding order is not adulterated or misbranded, then the owner or custodian thereof shall be promptly so notified in writing, and such holding order shall terminate upon such notification.

(c) Where the analysis or examination shows that the food is adulterated or misbranded and is dangerous to health or misleading to the injury or damage of the purchaser or consumer, the owner or custodian of the food shall be so notified in writing within the effective time of the holding order. Such notice has the effect of a special order issued under s. 93.18. Upon receipt of a notice the food subject to the holding order may not be sold, moved, disposed of or brought into compliance with applicable standards without the approval of the department. If such food is not brought into compliance, sold, moved or disposed of within 30 days, or other agreed upon period of time, from the date the owner or custodian received notice that the food was adulterated or misbranded, the department may issue an order directing the disposition of the food. Such an order has the effect of a special order issued under s. 93.18.

(d) 1. Any person violating an order issued under this section may be fined not more than the maximum amount under subd. 2. or imprisoned not more than one year in the county jail or both.

2. The maximum fine under this paragraph equals \$10,000 plus the retail value of the product moved, sold or disposed of in violation of the order issued under this section.

(3) (a) The department may issue a special order as provided under s. 93.18 to any person engaged in the production, processing, sale or distribution of food if the department finds a violation of this chapter or the rules promulgated under this chapter. An order shall state the violations found and shall specify a fixed period of time for correction. If the department finds that a piece of equipment, a facility or a practice used is a danger to public health, it may order that the situation be abated or eliminated immediately and that the equipment, facility or practice not be used until the violation is corrected and the correction is confirmed by the department. The department may, instead of issuing an order, accept written agreements of voluntary compliance which have the effect of an order.

(b) The department may, by summary order and without prior notice or hearing, suspend a license or permit issued under this chapter if the department finds that there has been a substantial failure to comply with the applicable requirements of this chapter and the rules promulgated under this chapter and that the continuation of the violations constitutes a serious danger to public health. 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. Hearings, if requested, shall be conducted within 10 days after receipt of a request for a hearing. Enforcement of the order shall not be stayed pending action on the hearing.

(4) Any person who does either of the following may be fined not more than \$5,000 or imprisoned not more than one year in the county jail or both:

(a) Assaults, restrains, threatens, intimidates, impedes, interferes with, or otherwise obstructs a department inspector, employe or agent in the performance of his or her duties.

(b) Gives false information to a department inspector, employe or agent with the intent to mislead the inspector, employe or agent in the performance of his or her duties.

History: 1971 c. 156; 1983 a. 261.

A warrantless inspection of a dairy farm under authority of ss. 93.08, 93.15 (2), 97.12 (1) and related administrative rules made without prior notice and without the owner being present was not unconstitutional. Because the administrative rules govern operations, equipment and processes not typically conducted in residential areas, the rules and statutes sufficiently preclude making warrantless searches of residences. *Lundeen v. Dept. of Agriculture*, 189 W (2d) 255, 525 NW (2d) 758 (Ct. App. 1994).

97.13 Sale of fish flour regulated. No person shall sell any food product for human consumption within this state containing whole fish flour, except fish flour made from the normally edible portions of fish or fish protein concentrate. No package containing fish flour or fish protein concentrate shall be sold by any person unless it bears a statement declaring that the contents thereof are made only from the edible portions of fish.

97.17 Buttermaker and cheesemaker license. (1) In this section the terms “buttermaker” and “cheesemaker” mean a person employed or who may be employed in a butter or a cheese factory who has charge of and supervision over the actual process of manufacturing butter or cheese, and shall not include a person employed in a butter or cheese factory for the purpose of assisting in the manufacture of such product. This section shall not affect a person making up a product produced on the person’s farm, nor shall it be unlawful for a licensed cheesemaker employed in a licensed cheese factory to make butter or whey cream butter for the use or consumption only of the patrons thereof.

(2) No person shall engage as a buttermaker or cheesemaker unless the person has a license from the department. The license shall be issued by the department under regulations that the department shall prescribe relating to the qualifications of applicants for licenses. The qualifications shall include the applicant’s record in operating and keeping in sanitary condition the butter or cheese factory in which the applicant has been employed.

(3) Application for a buttermaker’s or cheesemaker’s license shall be made upon a form furnished by the department. Upon receipt of the application the department shall issue a permit to the applicant to carry on the work of a buttermaker or cheesemaker. The permit shall have the force and effect of a license to a buttermaker or cheesemaker until a license shall have been issued to the applicant or until the applicant shall have been notified of the denial of the application. At the time that the permit is issued, the department shall furnish the applicant with the regulations incident to securing a license and also suggestions relating to the proper method of operating butter or cheese factories.

(4) Each application for a license shall be accompanied by a fee that is \$50 unless otherwise established by department rule.

(6) The license shall expire on the first day of January of the 2nd year commencing after the date of issuance or renewal. Renewal applications shall be submitted on department forms and be accompanied by the biennial license fee under sub. (4).

History: 1977 c. 216; 1979 c. 342; 1987 a. 27; 1989 a. 174; 1991 a. 39; 1993 a. 492; 1995 a. 225.

97.175 Butter and cheese grader license requirements. (1) In this section and ss. 97.176 and 97.177, “butter grader” or “cheese grader” means a person who grades butter or cheese.

(2) No person may act as a butter grader or a cheese grader without a license granted by the department. A person desiring a license shall apply on a form furnished by the department and shall pay to the department a fee that is \$50 unless otherwise established by department rule. Before issuing a license, the department shall require the applicant to demonstrate his or her competence to act as a butter grader or a cheese grader in a manner determined by the department. A license expires on September 30 of the 2nd year commencing after the date of issuance.

(3) Butter graders and cheese graders must act in accordance with the standards and requirements established under ss. 93.07, 97.176 and 97.177.

(4) The department may deny, suspend or revoke a license under this section by an order if the department finds that the applicant or licensee is not qualified to act as a butter grader or cheese grader or that the applicant or licensee has applied inaccurate grades or has obtained the license by fraud, perjury or through error. The department shall notify the applicant or licensee of the order and shall follow the procedures for issuing a special order under s. 93.18.

History: 1983 a. 131; 1987 a. 27; 1991 a. 39.

97.176 Butter; grading; label. (1) It is unlawful to sell, offer or expose for sale, or have in possession with intent to sell, any butter at retail unless it has been graded. Butter shall be graded as follows:

- (a) Grade, Wisconsin, AA—93 score;
- (b) Grade, Wisconsin, A—92 score;
- (c) Grade, Wisconsin, B—91–90 score;
- (d) Grade, Wisconsin, undergrade—all butter below Wisconsin B.

(2) United States AA, A, and B grades shall be accepted in lieu of the corresponding Wisconsin AA, A, and B grades, but all United States grades below B shall, for the purpose of this section, correspond to Wisconsin undergrade.

(3) As used in this section, score or grade means the grading of butter by its examination for flavor and aroma, body and texture, color, salt, package and by the use of other tests or procedures approved by the department for ascertaining the quality of butter in whole or in part.

(4) Details for methods and procedures to be used for ascertaining quality, for labeling, and for arbitrating disputes with respect to grades, shall be developed by the department as a result of public hearings to be held at a convenient location in the state.

(5) Butter from outside of the state sold within the state shall be provided with a label which indicates that it complies with the state grade standards as provided in this section and which indicates the grade in a manner equivalent to the requirements for butter manufactured and sold within the state.

(6) Butter that carries the state grade labels shall be graded by butter graders licensed under s. 97.175.

(7) No person, for himself or herself, or as an agent, shall advertise the sale of any butter at a stated price, unless the grade of the butter is set forth in such advertisement in not less than 10–point type.

History: 1977 c. 29 s. 1650m (4); 1983 a. 131 s. 2; Stats. 1983 s. 97.176; 1991 a. 39; 1993 a. 492.

97.177 Cheese; grading; labeling. (1) The department shall by rule adopt standards for grades of cheese manufactured in Wisconsin.

(2) Cheese which carries a state grade must be graded by a cheese grader licensed under s. 97.175 and must conform to the standards for the grade. Graded cheese must be plainly labeled to indicate the grade of the cheese and the license number of the cheese grader.

(3) Cheese manufactured in Wisconsin must be labeled on either the cheese itself or the container at the factory where it is manufactured. The label must remain on the cheese until the cheese is used in a different food manufacturing process or relabeled by the buyer for later sale. The label must contain all of the following:

- (a) The type or variety of cheese.
- (b) The word Wisconsin or the code number 55.
- (c) The factory number designated by the department.
- (d) The date of manufacture.

(e) The number of the vat in which the cheese was manufactured if more than one vat of cheese was manufactured in the factory on the same day.

(4) The department may adopt rules for the administration of this section.

History: 1983 a. 131.

97.18 Oleomargarine regulations. (1) (a) For the purposes of this section “oleomargarine” or “margarine” includes oleomargarine, margarine, butterine and other similar substances, fats and fat compounds sufficiently adaptable to the ordinary uses of butter, to lead readily to use as an alternative to butter, but this section shall not apply to lard, cream cheese, cheese food compounds, nor to any other dairy product made exclusively of milk or milk solids with or without added vitamins, if such product is sold or distributed in such manner and form as will clearly distinguish it from butter. Nor shall this section apply to shortenings not churned or emulsified in milk or cream or having a melting point of 112 degrees Fahrenheit or more as determined by the capillary tube method unless there is sold or given away with such shortening any compound which, when mixed with such shortening, makes oleomargarine, butterine or similar substances. Colored oleomargarine or margarine shall be made of domestic fats or oils and shall not be made of imported oils which include, without restriction because of enumeration, whale oil, coconut oil and palm oil.

(b) “Colored oleomargarine” or “colored margarine” is oleomargarine or margarine having a tint or shade containing more than 1–6/10 degrees of yellow or of yellow and red collectively but with an excess of yellow over red, as measured in terms of Lovibond tintometer scales or its equivalent.

(3) No person shall sell, offer or expose for sale at retail any oleomargarine or margarine unless:

(a) Such oleomargarine or margarine is packaged;

(b) The net weight of the contents of any package sold in a retail establishment is one pound;

(c) There appears on the label of the package the word “oleomargarine” or “margarine” in type or lettering at least as large as any other type or lettering on the label in a color of print which clearly contrasts with its background, and a full accurate statement of the ingredients contained in the oleomargarine or margarine; and

(d) Each part of the contents of the package is contained in a wrapper or separate container which bears the word “oleomargarine” or “margarine” in type or lettering not smaller than 20–point type.

(4) The serving of colored oleomargarine or margarine at a public eating place as a substitute for table butter is prohibited unless it is ordered by the customer.

(5) The serving of oleomargarine or margarine to students, patients or inmates of any state institutions as a substitute for table butter is prohibited, except that such substitution may be ordered by the institution superintendent when necessary for the health of a specific patient or inmate, if directed by the physician in charge of the patient or inmate.

(5m) The department of health and family services shall assist the department in the enforcement of this section and, in connection with inspections of food service operations at institutions and establishments under its inspectional jurisdiction, conduct compliance inspections and surveys, and report violations directly to the department.

(6) Any person who violates any provision of this section may be fined not less than \$100 nor more than \$500 or imprisoned not more than 3 months or both; and for each subsequent offense may be fined not less than \$500 nor more than \$1,000 or imprisoned in the county jail not less than 6 months nor more than one year.

History: 1971 c. 125; 1973 c. 90; 1975 c. 41; 1977 c. 289 ss. 3m, 11; Stats. 1977 s. 97.18; 1995 a. 27 s. 9126 (19); 1995 a. 225.

97.20 Dairy plants. (1) DEFINITIONS. In this section:

(a) “Dairy plant” means any place where a dairy product is manufactured or processed for sale or distribution, and includes a receiving station or transfer station.

(b) “Dairy product” means milk or any product or by-product of milk, or any commodity in which milk or any milk product or by-product is a principal ingredient.

(c) “Fluid milk product” has the meaning given under s. 97.24 (1) (ar).

(d) “Grade A dairy plant” means a dairy plant required to hold a permit under sub. (3).

(e) “Grade A milk” has the meaning given under s. 97.24 (1) (b).

(f) “Grade A milk product” has the meaning given under s. 97.24 (1) (c).

(g) “Milk” has the meaning given under s. 97.22 (1) (e).

(gm) “Milk producer” has the meaning given in s. 97.22 (1) (f).

(h) “Processing plant” means a dairy plant engaged in pasteurizing, processing or manufacturing milk or dairy products.

(i) “Receiving station” means a facility which is designed for the receipt and bulk storage of milk, and which is used to receive or store milk in bulk. “Receiving station” does not include a processing plant or a facility used to distribute pasteurized milk in bottled or packaged form to consumers.

(j) “Transfer station” means a facility which is designed and used solely to transfer milk from one bulk transport vehicle to another without intervening storage.

(2) **DAIRY PLANT LICENSE.** (a) *License requirement.* Except as provided in par. (e), no person, including this state, may operate a dairy plant without a valid license issued by the department for that dairy plant. A dairy plant license expires on April 30 annually and is not transferable between persons or locations.

(b) *License application.* An application for a dairy plant license shall be made on a form provided by the department and shall be accompanied by each applicable fee required under subs. (2c) and (2n) to (2w). The application shall include all information reasonably required by the department for purposes of licensing. The application shall state whether the dairy plant is a processing plant, receiving station or transfer station, and shall describe the nature of any processing operations conducted at the dairy plant.

(d) *Issuance or renewal of license.* The department may not issue or renew a dairy plant license unless all of the following conditions are met prior to licensing:

1. The license applicant pays all fees that are due and payable by the applicant under subs. (2c) to (2w), as set forth in a statement from the department. The department shall refund a fee paid under protest if the department determines that the fee was not due and payable as a condition of licensing under this subsection.

2. The license applicant has filed all financial information and any security required under s. 100.06. If an applicant has not filed all financial information and any security required under s. 100.06, the department may issue a conditional dairy plant license under s. 93.06 (8) which prohibits the licensed operator from purchasing milk or fluid milk products from milk producers or their agents, but allows the operator to purchase milk or fluid milk products from other sources.

3. If the dairy plant is a new dairy plant, the department has inspected the dairy plant for compliance with this chapter and rules promulgated under this chapter.

(e) *License exemptions.* A dairy plant license under this section is not required for:

1. A farm manufacturing or processing dairy products solely for consumption by the owner or operator of the farm, or members of the household or nonpaying guests or employees.

2. The retail preparation and processing of meals for sale directly to consumers or through vending machines, if the preparation and processing is covered under a restaurant permit or other permit issued under s. 254.64.

3. A retail food establishment licensed under s. 97.30 if the establishment processes dairy products solely for retail sale at the establishment.

4. A dairy plant that is exempted from licensing by department rule.

(f) *Added operations.* No dairy plant may add a new category of dairy plant operations during the time period for which a dairy plant license was issued unless the dairy plant first notifies the department and obtains written authorization for the new category of operations. In this paragraph, “new category of operations” includes the manufacture or processing of any of the following which was not identified on the dairy plant’s most recent license application:

1. Fluid milk products.
2. Cheese and related cheese products.
3. Frozen dessert dairy products.

(2c) **DAIRY PLANT LICENSE FEE.** (a) *Annual license fee.* An applicant for a dairy plant license shall pay an annual license fee specified under par. (b) as follows:

1. An applicant for a license to operate a dairy plant that operated during the previous calendar year shall pay the basic annual license fee plus the supplementary dairy plant license fee based on the amount of milk that was delivered to the dairy plant from milk producers in the previous calendar year, whether or not that particular applicant operated the dairy plant during the previous calendar year.

2. An applicant for a license to operate a dairy plant that has not been operated in the previous calendar year shall pay the basic annual license fee plus the supplementary dairy plant license fee that is established by department rule.

(b) *License fee amounts.* Unless otherwise established by department rule, the annual license fees required under par. (a) are a basic annual license fee of \$80 for each dairy plant plus:

1. For a grade A processing plant, a supplementary annual license fee of \$650 if the plant received more than 2,000,000 pounds of milk from milk producers or of \$500 if the plant received 2,000,000 pounds or less of milk from milk producers.

2. For a processing plant that is not a grade A processing plant and that annually manufactures or processes more than 1,000,000 pounds of dairy products or more than 200,000 gallons of frozen dairy products, a supplementary annual license fee of \$270.

3. For a grade A receiving station, a supplementary annual license fee of \$250.

(c) *Surcharge for operating without license.* An applicant for a dairy plant license shall pay a license fee surcharge if the department determines that within one year before submitting the license application, the applicant operated the dairy plant without a license in violation of sub. (2). The amount of the surcharge is \$100, or \$500 if the dairy plant operator procures milk or fluid milk products from milk producers or their agents. Payment of this license fee surcharge does not relieve the applicant of any other civil or criminal liability that results from the unlicensed operation of the dairy plant, but does not constitute evidence of any violation of law.

(2g) **MILK PROCUREMENT FEE.** (a) *Monthly procurement fee.* A dairy plant operator shall pay a milk procurement fee on or before the 18th day of each month in the amount specified under par. (b) as follows:

1. The operator of a dairy plant that operated during the month preceding the month when the payment is due shall pay a milk procurement fee based on the amount of milk that was delivered to the dairy plant from milk producers in the month preceding the month when the payment is due, whether or not that particular dairy plant operator operated the dairy plant during the month preceding the month when the payment is due.

2. The operator of a dairy plant that has not been operated in the month preceding the month when the payment is due shall pay

a milk procurement fee in the month when the payment is due that is established by department rule.

(b) *Milk procurement fee amounts.* Unless otherwise established by department rule, milk procurement fees required under par. (a) are:

1. For each 100 pounds of grade A milk received from milk producers, 0.4 cent.

2. For each 100 pounds of all milk received from milk producers that is not grade A milk, 0.2 cent.

(c) *Out-of-state milk shipments.* A milk producer who ships milk to an out-of-state dairy plant shall pay a milk procurement fee, specified under par. (b), on that milk, unless the out-of-state dairy plant voluntarily pays that fee for the milk producer.

(2n) **DAIRY PLANT REINSPECTION FEE.** (a) *Reinspection fees.* If the department reinspects a dairy plant because the department has found a violation of this chapter or rules promulgated under this chapter, the department shall charge the dairy plant operator the reinspection fee specified under par. (b). A reinspection fee is payable when the reinspection is completed, and is due upon written demand from the department. The department may issue a demand for payment when it issues a license renewal application form to the dairy plant operator.

(b) *Reinspection fee amounts.* Unless otherwise established by department rule, the fees for reinspection required under par. (a) are a basic fee of \$40 for each dairy plant reinspection, plus:

1. For a grade A processing plant, a supplementary reinspection fee of \$160 if the plant received more than 2,000,000 pounds of milk from milk producers or of \$125 if the plant received 2,000,000 pounds or less of milk from milk producers.

2. For a processing plant that is not a grade A processing plant, a supplementary reinspection fee of \$140.

3. For a grade A receiving station, a supplementary reinspection fee of \$60.

(2r) **MILK PRODUCER FEES.** A dairy plant operator shall pay milk producer license and reinspection fees on behalf of milk producers, subject to s. 97.22 (2) (c) and (4) (b). A milk producer reinspection fee is payable by a dairy plant operator when a dairy farm reinspection is completed, and is due upon written demand from the department. The department may issue a demand for payment when it issues a license renewal application to the dairy plant operator.

(2w) **DAIRY PRODUCT GRADING FEE.** An applicant for a license for a dairy plant that has been operated in the previous calendar year, that is not a grade A dairy plant and that produces butter or cheese shall pay a grading fee that, unless otherwise established by department rule, is 1.09 cents for each 100 pounds of butter or cheese that is gradable and produced by the dairy plant during the previous calendar year. An applicant for a license for a dairy plant that has not been operated in the previous calendar year, that is not a grade A dairy plant and that produces butter or cheese shall pay a grading fee that is established by the department by rule.

(3) **GRADE A DAIRY PLANT; PERMIT.** (a) *Permit requirement.* No person operating a dairy plant at which milk or fluid milk products are received, transferred, manufactured or processed may sell or distribute that milk or those fluid milk products as grade A milk or grade A milk products unless the person holds a valid grade A dairy plant permit issued by the department for that dairy plant. A grade A dairy plant permit expires on April 30 annually and is not transferable between persons or locations. A grade A dairy plant permit may be issued in the form of an endorsement on a dairy plant license under sub. (2). An application for a grade A dairy plant permit shall be made on a form provided by the department and shall be accompanied by each grade A dairy plant supplementary license fee required under sub. (2c).

(b) *Grade A standards.* A grade A dairy plant shall comply with standards applicable to the receipt, transfer, manufacture, processing and distribution of grade A milk and grade A milk products under this chapter or rules of the department. A grade A

dairy plant may not receive, transfer or process milk that is not grade A milk unless the department provides written authorization. Except as provided by the department by rule, the department may not grant that authorization unless the grade A dairy plant maintains separate facilities for the receipt, transfer and processing of milk that is not grade A milk.

(d) *Surcharge for operating without a permit.* An applicant for a grade A dairy plant permit shall pay a grade A dairy plant permit surcharge of \$100 if the department determines that, within one year prior to submitting the permit application, the applicant operated the dairy plant as a grade A dairy plant without a grade A permit, in violation of par. (a). Payment of this surcharge does not relieve the applicant of any other civil or criminal liability which results from a violation of par. (a), but does not constitute evidence of a violation of any law.

(e) *Permit contingent on payment of fees.* The department may not issue or renew a grade A dairy plant permit until the permit applicant pays all applicable fees under this subsection or subs. (2c) to (2w). The department shall refund a fee paid under protest if the department determines that the fee was not required as a condition of the issuance of a grade A dairy plant permit under this subsection.

(3g) CRISIS HOTLINE INFORMATION. The department shall develop, and furnish to a dairy plant on request, a standard form containing information about the crisis hotline.

(3m) CONFIDENTIALITY. Any information kept by the department under this section or s. 97.24 that identifies individual milk producers who deliver milk to a dairy plant licensed under this section and that is a composite list for that dairy plant is not subject to inspection under s. 19.35 unless inspection is required under s. 100.06 (4) or unless the department determines that inspection is necessary to protect the public health, safety or welfare.

(4) RULE MAKING. The department may promulgate rules to establish amounts of fees required under subs. (2c) to (2w) or to govern the operation of dairy plants. The rules may include standards for the safety, wholesomeness and quality of dairy products; the construction, maintenance and sanitary operation of dairy plants; the design, installation, cleaning and maintenance of equipment and utensils; personnel sanitation; storage and handling of milk and fluid milk products; pasteurization and processing procedures; sampling and testing; and reports and record keeping. The rules may also set forth the duties of dairy plants to inspect dairy farms, collect and test producer milk samples and make reports to the department.

History: 1971 c. 125, 156, 211; 1975 c. 39, 199; 1977 c. 203 s. 106; 1979 c. 257; 1983 a. 189, 203; 1987 a. 27, 399; 1989 a. 31, 174; 1991 a. 39, 269; 1993 a. 27.

97.21 Milk haulers and milk distributors. (1) DEFINITIONS. In this section:

(a) “Bulk milk tanker” means a mobile bulk container used to transport milk, fluid milk products, whey or whey cream in bulk from a dairy farm, or to or from a dairy plant in this state. “Bulk milk tanker” includes a mobile bulk container which is permanently mounted on a motor vehicle or which is designed to be towed by a motor vehicle. “Bulk milk tanker” does not include a mobile bulk container which is used by a milk producer solely to transport that producer’s own milk.

(am) “Dairy plant” has the meaning given under s. 97.20 (1) (a).

(b) “Fluid milk product” has the meaning given under s. 97.24 (1) (ar).

(c) “Grade A milk” has the meaning given under s. 97.24 (1) (b).

(d) “Milk” has the meaning given under s. 97.22 (1) (e).

(e) “Milk distributor” means a person who distributes milk or fluid milk products. “Milk distributor” does not include a dairy plant, a milk hauler, a milk producer, as defined in s. 97.22 (1) (f), or a retail food establishment, as defined in s. 97.30 (1) (c).

(2) BULK MILK TANKER; LICENSE; GRADE A PERMIT. (a) *License.* 1. Except as provided in subd. 2., no person may operate a bulk milk tanker in this state without a valid license issued by the department for that bulk milk tanker. That license expires on April 30 annually and is not transferable between persons or bulk milk tankers. An application for a license shall be made on a form provided by the department and shall be accompanied by applicable fees under sub. (4). The application shall include the applicant’s name and address; a description of the bulk milk tanker including make, serial number and capacity; the city, village or town in which the bulk milk tanker is customarily kept; and any other information which the department may reasonably require for proper identification of the bulk milk tanker.

2. This paragraph does not apply to a person who operates a bulk milk tanker solely as an employee of a person who holds a license under this paragraph for that bulk milk tanker.

(b) *Grade A bulk milk tanker; permit.* No person may operate a bulk milk tanker to transport milk or fluid milk products in bulk for sale or distribution without a valid grade A bulk milk permit issued annually by the department for that bulk milk tanker. A grade A bulk milk tanker permit is not transferable between persons or bulk milk tankers. A permit may be issued in the form of an endorsement on a bulk milk tanker license under par. (a). An application for a permit shall be made on a form provided by the department, and may be included with a license application under par. (a). The department may not charge a fee for a grade A bulk milk tanker permit issued under this paragraph.

(3) MILK DISTRIBUTORS; LICENSE. No person may operate as a milk distributor without a valid license issued by the department. A milk distributor license expires on April 30 annually. An application for a license shall be made on a form provided by the department and shall be accompanied by applicable fees under sub. (4). The application shall include all information reasonably required by the department for purposes of issuing the license.

(4) FEES. (a) *License fee.* An applicant for a bulk milk tanker or milk distributor license shall pay the license fee specified under sub. (4m).

(b) *Reinspection fee.* If the department reinspects a bulk milk tanker or the vehicle or facilities of a milk distributor because the department finds a violation of this chapter or rules promulgated under this chapter, the department shall charge the bulk milk tanker operator or milk distributor the reinspection fee specified under sub. (4m). The reinspection fee is payable when the reinspection is completed, and is due upon written demand from the department. The department may issue a demand for payment when it issues a license renewal application to the bulk milk tanker operator or milk distributor.

(c) *Surcharge for operating without a license.* An applicant for a bulk milk tanker operator or milk distributor license shall pay a license fee surcharge of \$100 or twice the amount of the annual license fee specified under sub. (4m), whichever is less if the department determines that, within one year prior to submitting the license application, the applicant operated without a license or grade A permit in violation of this section. Payment of this license fee surcharge does not relieve the applicant of any other civil or criminal liability which results from a violation of sub. (2) or (3), but does not constitute evidence of any violation of law.

(4m) FEE AMOUNTS. Unless otherwise established by department rule, the fees required under sub. (4) (a) and (b) are:

(a) For a bulk milk tanker under sub. (2), an annual license fee of \$30 and a reinspection fee of \$30.

(b) For a milk distributor under sub. (3), an annual license fee of \$50 and a reinspection fee of \$20 for each storage facility operated by the milk distributor.

(5) LICENSING CONTINGENT ON PAYMENT OF FEES. The department may not issue or renew a bulk milk tanker or milk distributor license unless the license applicant pays all fees which are due and payable by the applicant under sub. (4), as set forth in a statement

from the department. The department shall refund a fee paid under protest if the department determines that the fee was not due and payable as a condition of licensing under this section.

(6) RULE MAKING. The department may promulgate rules to establish amounts of fees required under sub. (4) or to regulate bulk milk tanker operators and milk distributors. The rules may include standards for the construction, maintenance and sanitary operation of bulk milk tankers, milk distribution vehicles and milk distribution facilities; the design, installation, cleaning and maintenance of equipment and utensils; personnel sanitation; storage and handling of milk and fluid milk products; identification of bulk milk tankers and milk distribution vehicles; and record keeping.

History: 1987 a. 399; 1989 a. 174; 1991 a. 39; 1995 a. 27.

97.22 Milk producers. (1) DEFINITIONS. In this section:

(a) “Dairy farm” means any place where one or more cows, sheep or goats are kept for the production of milk.

(b) “Dairy plant” has the meaning given under s. 97.20 (1) (a).

(c) “Fluid milk product” has the meaning given under s. 97.24 (1) (ar).

(d) “Grade A milk” has the meaning given under s. 97.24 (1) (b).

(e) “Milk” means the lacteal secretion of cows, sheep or goats, and includes skim milk and cream.

(f) “Milk producer” means any person who owns or operates a dairy farm, and sells or distributes milk produced on that farm.

(2) LICENSE. (a) *License required.* No person may operate a dairy farm as a milk producer without a valid license issued by the department for that dairy farm. A license expires on April 30 annually and is not transferable between persons or dairy farms. Every milk producer shall comply with standards applicable to the production of milk and fluid milk products under this chapter and rules promulgated under this chapter.

(b) *License fee.* Unless otherwise established by department rule, the fee for a milk producer license under par. (a) is \$20. The department also may establish by rule a reduced license fee for a producer who is properly inspected at least once annually by a special dairy farm inspector certified under sub. (7).

(c) *Dairy plant to pay license fee for milk producer.* The operator of a dairy plant licensed under s. 97.20 shall pay the milk producer license fee under this subsection for every dairy farm from which the dairy plant receives milk at the time the fee payment is due. An applicant for a dairy plant license shall submit that fee with the applicant’s dairy plant license application under s. 97.20. A dairy plant operator who pays a milk producer license fee may charge that fee back to the milk producer if the dairy plant operator notifies the milk producer in writing of the dairy plant operator’s intent to charge the fee to the milk producer. A dairy plant operator may not discriminate between milk producers with respect to fee charges under this paragraph, but may charge back license fees to all milk producers who cease shipping milk to the dairy plant during the license year. A dairy plant operator who pays a milk producer license fee may not deduct the amount of the fee from any payment to the milk producer for milk that the dairy plant operator purchases from the milk producer.

(3) GRADE A DAIRY FARM PERMIT. (a) *Permit required.* No milk producer may sell or distribute milk from his or her dairy farm as grade A milk without a valid grade A dairy farm permit issued by the department for that dairy farm. A grade A dairy farm permit expires on April 30 annually and is not transferable between persons or dairy farms. A grade A dairy farm permit may be issued in the form of an endorsement on a milk producer license under sub. (2). Every milk producer holding a grade A dairy farm permit shall comply with standards applicable to the production of grade A milk under this chapter or rules promulgated under this chapter.

(4) REINSPECTION AND REINSTATEMENT FEES. (a) *Fee required.* 1. If the department or a special dairy inspector has found a viola-

tion of this chapter or rules promulgated under this chapter, and if the department has not lowered the grade of the milk that may be sold or distributed from the dairy farm because of the violation, the department shall charge the reinspection fee specified under par. (am) to reinspect the dairy farm.

2. If the department or a special dairy inspector has found a violation of this chapter or rules promulgated under this chapter, and if the department has lowered the grade of the milk that may be sold or distributed from the dairy farm because of the violation, the department shall charge the reinstatement fee specified under par. (am) to reinspect the dairy farm.

3. A reinspection or reinstatement fee is payable when the reinspection is completed, and is due upon written demand from the department.

(am) *Fee amounts.* The reinspection fee under par. (a) 1., unless otherwise established by department rule, is \$20. The reinstatement fee under par. (a) 2., unless otherwise established by department rule, is \$40.

(b) *Dairy plant to pay reinspection or reinstatement fee for milk producer.* The operator of a dairy plant licensed under s. 97.20 shall pay the dairy farm reinspection or reinstatement fee under this subsection for every milk producer who was shipping milk from the reinspected dairy farm to that dairy plant at the time the dairy farm was reinspected. The department may issue an annual statement of reinspection or reinstatement fees payable by the dairy plant, and may demand payment from the dairy plant on an annual basis, when it issues an application form for the renewal of the dairy plant’s license under s. 97.20. A dairy plant operator who pays a dairy farm reinspection or reinstatement fee shall charge that fee back to the milk producer.

(5) FEES PAYABLE BY MILK PRODUCER IF NOT PAID BY DAIRY PLANT. If a milk producer ships milk to a dairy plant which is not subject to licensure under s. 97.20, the unlicensed dairy plant may voluntarily pay the fees required under this section on behalf of the milk producer if the dairy plant is authorized by the milk producer to pay the fees. If no dairy plant pays the fees required under this section on behalf of a milk producer, the milk producer shall pay the fees.

(6) DAIRY FARM INSPECTION; FREQUENCY. The department shall inspect every dairy farm other than a grade A dairy farm at least once every 2 years, and shall inspect every grade A dairy farm at the frequency required by the department by rule under s. 97.24.

(7) SPECIAL DAIRY FARM INSPECTORS. The department may certify a dairy plant employe or agent to inspect dairy farms on behalf of the department as a special dairy farm inspector. A special dairy farm inspector shall inspect dairy farms and make written reports to the department according to procedures prescribed by the department. The department may promulgate rules governing the certification of special dairy farm inspectors; defining the authority and responsibilities of those inspectors; establishing inspection and reporting requirements; and establishing procedures by which the department will review inspector performance.

(8) RULE MAKING. The department may promulgate rules to establish the fees required under sub. (2) (b) or (4) (a) or to govern the operation of dairy farms by milk producers. The rules may include standards for any of the following:

(a) The safety, wholesomeness and quality of milk.

(b) The sanitary construction and maintenance of dairy farm facilities used in milk production.

(c) The availability of safe and adequate water supplies for milk production.

(d) The sanitary construction, maintenance and cleaning of equipment and utensils used in milk production.

(e) Personnel sanitation related to milk production.

(f) Sanitary procedures for the production of milk, including but not limited to the handling, transfer and storage of milk on a dairy farm.

(10) CONFIDENTIALITY. Any information obtained and kept by the department under this section, under s. 97.24 or 97.52, or under rules promulgated under those sections, that pertains to individual milk producer production, milk fat and other component tests and quality records is not subject to inspection under s. 19.35 except as required under s. 100.06 (4) or except as the department determines is necessary to protect the public health, safety or welfare.

History: 1975 c. 39; 1987 a. 27, 399; 1989 a. 31; 1991 a. 39; 1993 a. 114.

97.23 Drug residues in milk. (1) In this section:

- (a) “Dairy plant” has the meaning given in s. 97.20 (1) (a).
- (b) “Milk” has the meaning given in s. 97.22 (1) (e).
- (c) “Milk producer” has the meaning given in s. 97.22 (1) (f).

(2) (a) If, in accordance with a rule promulgated by the department under s. 93.07 (1), 97.09 (4), 97.20 (4), 97.22 (8), 97.24 (3) or 97.52, a dairy plant operator rejects a bulk milk shipment because it is adulterated with a drug residue and if the dairy plant operator incurs a monetary loss as a result of the rejection of the bulk milk shipment, the dairy plant operator may recover the amount of the monetary loss from the milk producer who caused the bulk shipment to be adulterated with the drug residue. A dairy plant operator may deduct the amounts recoverable by him or her under this paragraph from the proceeds of milk sold to or through the dairy plant operator by the milk producer who caused the adulteration.

(b) 1. Except as provided in subd. 2., the department may, by rule, require a dairy plant operator who rejects a bulk milk shipment because it is adulterated with a drug residue and who suffers a monetary loss as a result of the rejection of the bulk milk shipment to recover all or part of the monetary loss from the milk producer who caused the adulteration by deducting from the proceeds of milk sold by the milk producer an amount that is specified by the department by rule.

2. The department may not require a dairy plant operator who rejects a bulk milk shipment because it is adulterated with a drug residue to recover an amount that exceeds the dairy plant operator’s actual monetary loss.

History: 1991 a. 231.

97.24 Milk and milk products. (1) DEFINITIONS. In this section:

(a) “Dairy farm” means any place where one or more cows, sheep or goats are kept for the production of milk.

(am) “Dairy plant” has the meaning given in s. 97.20 (1) (a).

(ar) “Fluid milk product” means cream, sour cream, half and half, whipped cream, concentrated milk, concentrated milk products, skim milk, flavored milk, buttermilk, cultured buttermilk, cultured milk, vitamin and mineral fortified milk or milk products, and any other product made by adding any substance to milk or any of these products.

(b) “Grade A milk” means milk which is produced, processed and distributed in compliance with grade A standards established by the department by rule under this chapter.

(c) “Grade A milk product” means a fluid milk product which is produced, processed and distributed in compliance with grade A standards established by the department by rule under this chapter.

(cm) “Milk” means the lacteal secretion of cows, sheep or goats, and includes skim milk and cream.

(d) “Milk distributor” has the meaning given under s. 97.21 (1) (e).

(e) “Milk hauler” means any person, other than a milk producer hauling his or her own milk only, who transports milk or fluid milk products to or from a dairy plant or a collecting point.

(f) “Milk producer” means any person who owns or operates a dairy farm, and sells or distributes milk produced on that dairy farm.

(2) REQUIREMENTS FOR MILK AND FLUID MILK PRODUCTS; GRADE A REQUIREMENT. (a) No person may sell or distribute any milk unless that milk is produced, processed and distributed in compliance with standards established by the department by rule under this chapter.

(b) No person may sell or distribute any milk or fluid milk products which are not grade A milk or grade A milk products to consumers, or to any restaurant, institution or retailer for consumption or resale to consumers. Grade A milk and grade A milk products shall be effectively pasteurized, and shall be produced, processed and distributed in compliance with standards established by the department by rule under this chapter.

(c) No person may sell or distribute milk or fluid milk products which are labeled or otherwise represented as grade A milk or grade A milk products unless the milk and fluid milk products comply with this chapter and with standards established by the department by rule under this chapter.

(d) This section does not prohibit:

1. The sale of milk or fluid milk products which are heat sterilized in hermetically sealed containers.
2. Incidental sales of milk directly to consumers at the dairy farm where the milk is produced.
3. Incidental sales of pasteurized milk at a dairy plant licensed under s. 97.20.
4. The sale of grade A milk or grade A milk products which are produced and processed under equivalent laws or rules of another state or a local governmental unit, as provided under sub. (4) (b).

(3) RULES. The department, in consultation with the department of health and family services, shall issue rules governing the production, transportation, processing, pasteurization, handling, identity, sampling, examination, labeling and sale of milk and fluid milk products; the inspection of dairy herds, dairy farms and dairy plants; the issuing and revocation of permits to milk producers and milk haulers, and of licenses to dairy plants and milk distributors. Insofar as permitted by the laws of this state, such rules shall be in reasonable accord with the minimum standards and requirements for milk and fluid milk products currently recommended and published by the U.S. public health service as a milk ordinance and code, except that the requirements for bottling and sterilization of bottles in such standards shall not apply to milk sold by a producer, selling only milk produced by the producer on the producer’s dairy farm under the producer’s own supervision, and selling such milk only in the producer’s own milk house, which milk meets the requirements of grade A standards as set forth by the department of agriculture, trade and consumer protection, to a purchaser who has provided his or her own container, which has been sanitized in a manner comparable to the sanitizing of the utensils used in the production of milk by the producer, if the purchaser is purchasing milk for his or her own consumption.

(4) LEGISLATIVE PURPOSE; UNIFORMITY; RECIPROCITY. (a) Regulation of the production, processing and distribution of milk and fluid milk products under minimum sanitary requirements which are uniform throughout this state and the United States is essential for the protection of consumers and the economic well-being of the dairy industry, and is therefore a matter of statewide concern; however, nothing in this section shall impair or abridge the power of any municipality or county to regulate milk or fluid milk products under sanitary requirements and standards which are in reasonable accord with those established under this section or the power to impose reasonable license permit and inspection fees which combined shall not exceed the cost of necessary inspection. A municipality or county may not impose any fee for its inspection of milk producers, dairy plant facilities or dairy products which are under the inspection supervision of another governmental unit within or without the state with a valid certification rating made or approved by the department of health and family services. No governmental unit may impose or collect a fee directly from the producer. A license or permit fee not to exceed \$25 annually may

be imposed on milk distributors licensed under s. 97.22 and on dairy plants under the inspection supervision of another governmental unit which are engaged in the distribution of milk within a municipality or county.

(b) No sanitary requirement or standard established under this section or contained in any ordinance may prohibit the sale of milk or fluid milk products which are produced and processed under laws or rules of any governmental unit, within or without this state, which are substantially equivalent to the requirements of the rules promulgated under this section, and which are enforced with equal effectiveness, as determined by a milk sanitation rating made or approved by the department of health and family services, under rules promulgated under this section.

History: 1971 c. 125, 156, 228; 1973 c. 333; 1975 c. 39, 199; 1977 c. 29; 1979 c. 221; 1981 c. 390 s. 252; 1983 a. 189 ss. 128, 329 (20); 1987 a. 27, 399; 1989 a. 56 s. 259; 1993 a. 114; 1995 a. 27 s. 9126 (19).

97.25 Use of synthetic bovine growth hormone; labeling of dairy products. (1) DEFINITIONS. In this section:

- (a) “Dairy plant” has the meaning given in s. 97.20 (1) (a).
- (b) “Dairy product” has the meaning given in s. 97.20 (1) (b).
- (c) “Milk producer” has the meaning given in s. 97.22 (1) (f).

(2) PROHIBITION. No person may place upon the label of a dairy product a statement indicating that the dairy product is not produced from herds being administered synthetic bovine growth hormone except as provided in sub. (3).

(3) RULES. The department shall promulgate rules authorizing the operator of a dairy plant licensed under s. 97.20, a retail food establishment licensed under s. 97.30 or a restaurant with a permit under s. 254.64 who complies with the rules to place upon the label of a dairy product the statement “Farmer–certified rBGH free.” or an equivalent statement that is not false or misleading. The statement shall be based upon affidavits from milk producers stating that the milk producers do not use synthetic bovine growth hormone for the production of milk.

(4) RECIPROCITY. A person may sell a dairy product that is labeled for retail sale in another state the label of which indicates that the dairy product is not produced from herds being administered synthetic bovine growth hormone only if the dairy product is from a state identified by the department as having laws comparable to this state’s laws on labeling dairy products not produced with synthetic bovine growth hormone and is labeled in compliance with the laws of that state.

History: 1993 a. 476; 1995 a. 225.

97.27 Food warehouses. (1) DEFINITIONS. In this section:

(a) “Cold storage warehouse” means a warehouse in which food is to be stored at temperatures between zero and 50 degrees Fahrenheit.

(b) “Food warehouse” means a warehouse used for the storage of food, and includes a cold storage warehouse, frozen food warehouse and frozen food locker plant. “Food warehouse” does not include:

2. A warehouse used solely for the storage of grain or other raw agricultural commodities.

3. A retail food establishment, restaurant or other retail facility at which food is stored on a temporary basis incidental to retail preparation or sale.

4. A warehouse located in a dairy plant licensed under s. 97.20, a food processing plant licensed under s. 97.29, or a meat establishment licensed under s. 97.42, and used primarily for the storage of food ingredients or food products manufactured or processed at the licensed establishment.

5. A warehouse operated by a milk distributor licensed under s. 97.21 (3), and used primarily for the storage and distribution of milk and fluid milk products, as defined in s. 97.20 (1) (c) and (g).

6. A facility owned or operated by a consumer and used by that consumer to store food for the consumer’s use.

(c) “Frozen food locker plant” means a warehouse in which individual locked compartments not exceeding 20 cubic feet in capacity are rented to consumers for the storage of food at temperatures at or below 5 degrees Fahrenheit.

(d) “Frozen food warehouse” means a warehouse at which food is to be stored at temperatures at or below 5 degrees Fahrenheit.

(dm) “Potentially hazardous food” means any food that can support rapid and progressive growth of infectious or toxicogenic microorganisms.

(e) “Retail food establishment” has the meaning given under s. 97.30 (1) (c).

(f) “Warehouse” means any building, room, structure or facility used for the storage of property.

(2) LICENSE REQUIRED. No person may operate a food warehouse without a valid license issued by the department for the food warehouse. A food warehouse license expires on June 30 annually. Every food warehouse shall have a separate license. A license is not transferable between persons or food warehouse locations. Application for a license shall be made on a form provided by the department and shall be accompanied by applicable fees required under sub. (3). An application shall include information reasonably required by the department for licensing purposes.

(3) FEES. (a) *License fee.* An applicant for a food warehouse license shall pay the license fee specified under sub. (3m).

(b) *Reinspection fee.* If the department reinspects a food warehouse because the department finds a violation of this chapter or rules promulgated under this chapter on a regularly scheduled inspection, the department shall charge the food warehouse operator the reinspection fee specified under sub. (3m). A reinspection fee is payable by the food warehouse operator when the reinspection is completed, and is due upon written demand from the department. The department may issue a demand for payment when it issues a license renewal application form to the food warehouse operator.

(c) *Surcharge for operating without a license.* An applicant for a food warehouse license shall pay a license fee surcharge of \$100 if the department determines that, within one year prior to submitting the license application, the applicant operated a food warehouse without a license in violation of this subsection. Payment of this license fee surcharge does not relieve the applicant of any other civil or criminal liability which results from the unlicensed operation of the food warehouse, but does not constitute evidence of a violation of law.

(3m) FEE AMOUNTS. Unless otherwise established by department rule, the fees required under sub. (3) are:

(a) For a food warehouse that stores potentially hazardous food, and that has fewer than 50,000 square feet of storage area, an annual license fee of \$50 and a reinspection fee of \$50.

(am) For a food warehouse that stores potentially hazardous food, and that has 50,000 or more square feet of storage area, an annual license fee of \$100 and a reinspection fee of \$100.

(b) For a food warehouse that does not store potentially hazardous food, and that has fewer than 50,000 square feet of storage area, an annual license fee of \$25 and a reinspection fee of \$50.

(c) For a food warehouse that does not store potentially hazardous food, and that has 50,000 or more square feet of storage area, an annual license fee of \$50 and a reinspection fee of \$100.

(4) LICENSING CONTINGENT ON PAYMENT OF FEES. The department may not issue or renew a food warehouse license unless the license applicant pays all fees which are due and payable under sub. (3), as set forth in a statement from the department. The department shall refund a fee paid under protest if the department determines that the fee was not due and payable as a condition of licensing under this section.

(5) **RULE MAKING.** The department may promulgate rules to establish the fees required under sub. (3) or to govern the sanitary operation of food warehouses. Rules may include standards for the construction and maintenance of food storage facilities; standards for the storage, identification and handling of food; record-keeping requirements to show the length of time that food is kept in storage; and freezing and temperature requirements applicable to frozen food warehouses, frozen food locker plants and cold storage warehouses.

History: 1987 a. 399; 1989 a. 174; 1991 a. 39, 210.

97.29 Food processing plants. (1) DEFINITIONS. In this section:

(a) “Alcohol beverage” has the meaning given under s. 125.02 (1).

(b) “Bakery” means any place where bread, crackers, pasta or pies, or any other food product for which flour or meal is the principal ingredient, are baked, cooked or dried, or prepared or mixed for baking, cooking or drying, for sale as food.

(c) “Bottling establishment” means any place where drinking water, soda water beverage or alcohol beverage is manufactured or bottled for sale. “Bottling establishment” does not include a retail establishment engaged in the preparation and sale of beverages under a license issued under s. 125.26 or 125.51 or a restaurant permit or other permit issued under s. 254.64.

(d) “Canning” means the preservation and packaging in hermetically sealed containers of low-acid or acidified foods.

(e) “Confectionary” means any place where candy, fruit, nutmeats or any other food product is manufactured, coated or filled with saccharine substances for sale as food.

(f) “Drinking water” means water used or intended for use for human consumption. “Drinking water” includes distilled water, artesian water, spring water and mineral water, whether carbonated or uncarbonated, if consumed by humans or intended for human consumption.

(g) “Food processing” means the manufacture or preparation of food for sale through the process of canning, extracting, fermenting, distilling, pickling, freezing, baking, drying, smoking, grinding, cutting, mixing, coating, stuffing, packing, bottling or packaging, or through any other treatment or preservation process. “Food processing” includes the activities of a bakery, confectionary or bottling establishment, and also includes the receipt and salvaging of distressed food for sale or use as food. “Food processing” does not include any of the following:

1. Activities covered under a dairy plant license issued under s. 97.20.

2. Activities covered under a meat or poultry establishment license issued under s. 97.42.

3. The retail preparation and processing of meals for sale directly to consumers or through vending machines if the preparation and processing is covered under a restaurant permit or other permit issued under s. 254.64.

4. Activities inspected by the federal department of agriculture under 21 USC 451 to 695 and 21 USC 1031 to 1056.

5. The extraction of honey from the comb, or the production and sale of raw honey or raw bee products by a beekeeper.

6. The washing and packaging of fresh fruits and vegetables if the fruits and vegetables are not otherwise processed at the packaging establishment.

7. The receipt and salvaging of distressed food for sale or use as food if the food is received, salvaged and used solely by a charitable organization and if contributions to the charitable organization are deductible by corporations in computing net income under s. 71.26 (2) (a).

8. Any other activity exempted by the department by rule.

(h) “Food processing plant” means any place where food processing is conducted. “Food processing plant” does not include any establishment subject to the requirements of s. 97.30 or any

restaurant or other establishment holding a permit under s. 254.64, to the extent that the activities of that establishment are covered by s. 97.30 or the permit under s. 254.64.

(hm) “Potentially hazardous food” has the meaning given in s. 97.27 (1) (dm).

(i) “Soda water beverage” means all beverages commonly known as soft drinks or soda water, whether carbonated, uncarbonated, sweetened or flavored.

(2) **LICENSE.** (a) *Requirement.* Except as provided under par. (b), no person may operate a food processing plant without a valid license issued by the department for that food processing plant. A license expires on March 31 annually. Each food processing plant shall have a separate license. A license is not transferable between persons or locations. Application for a license shall be made on a form provided by the department and be accompanied by the applicable fees required under sub. (3). An applicant shall identify the categories of food processing activities which the applicant proposes to conduct at the food processing plant. An application shall include additional information which may reasonably be required by the department for licensing purposes.

(b) *Exemptions.* If a dairy plant licensed under s. 97.20 or a meat establishment licensed under s. 97.42 is incidentally engaged in the operation of a food processing plant at the same location, the department may exempt by rule the dairy plant or meat establishment from licensing under this section.

(c) *Added operations.* No food processing plant may add a new category of food processing operations during the time period for which a food processing plant license was issued unless the operator of the food processing plant first notifies the department and obtains written authorization for the new category of operations. “New category of food processing operations” may include any of the following operations which were not identified on the most recent license application for the food processing plant:

1. Bakery operations.

2. Confectionary operations.

3. Bottling establishment operations.

4. Canning operations.

5. Freezing, smoking or other food preservation operations which constitute a significant departure from the operations described in the most recent license application.

6. Any other category of food processing operations which constitutes a significant departure from the operations described in the most recent license application.

(3) **FEES.** (a) *Annual license fee; all food processing plants.* An applicant for a food processing plant license shall pay the license fee specified under par. (am), based on the dollar volume of production by the food processing plant during the previous license year. The annual dollar volume of production shall be determined by gross sales of the product processed during the license year, plus the inventory value of any portion of the product not sold. If the food processing plant was not licensed during the previous license year, the license applicant shall pay an estimated license fee based on projected annual production in the license year for which application is made. At the end of the license year for which an estimated fee has been paid, the licensee shall report to the department the actual production during the license year, and the license fee for that year shall be recomputed based on the actual production. If the license fee based on actual production differs from the estimated license fee, the licensee shall pay the balance due or receive a credit from the department on the next year’s license fee.

(am) *Fee amounts.* Unless otherwise required by department rule, the annual fees required under par. (a) are:

1. For a food processing plant that has an annual production of \$25,000 or more but less than \$250,000 and that is engaged in processing potentially hazardous food or in canning, an annual license fee of \$120.

2. For a food processing plant that has an annual production of \$250,000 or more and that is engaged in processing potentially hazardous food or in canning, an annual license fee of \$270.

3. For a food processing plant that has an annual production of \$25,000 or more but less than \$250,000 and that is not engaged in processing potentially hazardous food or in canning, an annual license fee of \$50.

4. For a food processing plant that has an annual production of \$250,000 or more and that is not engaged in processing potentially hazardous food or in canning, an annual license fee of \$110.

5. For a food processing plant that has an annual production of less than \$25,000, an annual license fee of \$40.

(b) *Canning operations; license fee surcharge.* If a food processing plant is engaged in canning operations, a license applicant shall pay a license fee surcharge of \$195, beginning with the license year which ends on March 31, 1989, which shall be added to the license fee under par. (a).

(c) *Reinspection fee.* If the department reinspects a food processing plant because the department finds a violation of this chapter or rules promulgated under this chapter, the department shall charge the food processing plant operator the reinspection fee specified under par. (cm). The reinspection fee shall be based on the dollar volume of production by the food processing plant during the previous license year, and may include a reinspection fee surcharge for a food processing plant engaged in canning operations. The reinspection fee is payable when the reinspection is completed, and is due upon written demand from the department. The department may issue a demand for payment when it issues a license renewal application form to the food processing plant operator.

(cm) *Fee amounts.* Unless otherwise required by department rule, the reinspection fee required under par. (c) is:

1. For a food processing plant that has an annual production of less than \$250,000 and that is engaged in processing potentially hazardous food or in canning, the reinspection fee is \$80.

2. For a food processing plant that has an annual production of \$250,000 or more and that is engaged in processing potentially hazardous food or in canning, the reinspection fee is \$180.

3. For a food processing plant that has an annual production of less than \$250,000 and that is not engaged in processing potentially hazardous food or in canning, the reinspection fee is \$50.

4. For a food processing plant that has an annual production of \$250,000 or more and that is not engaged in processing potentially hazardous food or in canning, the reinspection fee is \$110.

(d) *Surcharge for operating without a license.* An applicant for a food processing plant license shall pay a license fee surcharge if the department determines that, within one year prior to submitting a license application, the applicant operated the food processing plant without a license in violation of this subsection. The amount of the surcharge is \$100. Payment of this license fee surcharge does not relieve the applicant of any other civil or criminal liability which results from the unlicensed operation of the food processing plant, but does not constitute evidence of a violation of any law.

(e) *Licensing contingent on payment of fees.* The department may not issue or renew a food processing plant license unless the license applicant pays all fees which are due and payable under this subsection, as set forth in a statement from the department. The department shall refund a fee paid under protest if the department determines that the fee was not due and payable as a condition of licensing under this subsection.

(4) FOOD PROCESSING PLANTS BUYING VEGETABLES FROM PRODUCERS. The department may not issue or renew a license to operate a food processing plant to any applicant who is a contractor, as defined in s. 100.03 (1) (f), unless the applicant has filed all financial information and any security that is required under s. 100.03. If an applicant has not filed all financial information and any security that is required under s. 100.03, the department may issue a conditional license under s. 93.06 (8) that prohibits the

licensed operator from procuring vegetables from a producer or a producer's agent, but allows the operator to procure vegetables from other sources.

(5) RULE MAKING. The department may promulgate rules to establish the fees required under sub. (3) (a) or (c) or to govern the operation of food processing plants. Rules may include standards for the construction and maintenance of facilities; the design, installation, cleaning and maintenance of equipment and utensils; personnel sanitation; food handling and storage; sanitary production and processing; and food sources and food labeling.

History: 1987 a. 399; 1989 a. 31; 1989 a. 56 s. 259; 1991 a. 39; 1993 a. 27, 264; 1995 a. 460.

97.30 Retail food establishments. (1) DEFINITIONS. In this section:

(a) "Agent city or county" means a city or county granted agent status by the department under s. 97.41.

(b) "Food processing" has the meaning given under s. 97.29 (1) (g).

(bm) "Potentially hazardous food" means any food that is capable of supporting rapid and progressive growth of infectious or toxicogenic microorganisms.

(c) "Retail food establishment" means a permanent or mobile food processing facility where food processing is conducted primarily for direct retail sale to consumers at the facility, a mobile facility from which potentially hazardous food is sold to consumers at retail or a permanent facility from which food is sold to consumers at retail, whether or not that facility sells potentially hazardous food or is engaged in food processing. "Retail food establishment" does not include a restaurant or other establishment holding a permit under s. 254.64, to the extent that the activities of the establishment are covered by that permit.

(2) LICENSE. (a) *Requirement.* Except as provided under par. (b), no person may operate a retail food establishment without a valid license issued by the department or an agent city or county. Licenses expire on June 30 annually. Each retail food establishment shall have a separate license. A license is not transferable between persons or establishments. Application for a license shall be made on a form provided by the department, or by the agent city or county, and be accompanied by the applicable fees required under sub. (3) or s. 97.41. An application shall indicate whether food processing is conducted at the establishment and shall specify the nature of any food processing activities. An application shall include other information reasonably required by the department, or by the agent city or county, for licensing purposes.

(b) *Exemptions.* 1. A license is not required under this section for any of the following:

a. A retail food establishment that sells only packaged foods or fresh fruits and vegetables, if the establishment does not sell potentially hazardous food and does not engage in food processing.

b. A retail food establishment which is primarily engaged in selling fresh fruits and vegetables, honey, cider or maple syrup produced by the operator of the retail food establishment, if that retail food establishment is not engaged in other food processing activities.

c. A retail food establishment which is exempted from licensing by the department by rule. If a restaurant or other establishment for which a permit has been issued under s. 254.64 is incidentally engaged in operating a retail food establishment at the same location, the department may exempt by rule the restaurant or establishment from licensing under this section. Rules under this subd. 1. c. shall conform to a memorandum of understanding between the department and the department of health and family services, under which the department of health and family services agrees to inspect the retail food establishment operations on behalf of the department.

d. A retail food establishment where popcorn is popped, if the retail food establishment is not required to obtain a license under this section to sell or process any other food.

2. If a dairy plant licensed under s. 97.20, a food processing plant licensed under s. 97.29 or a meat establishment licensed under s. 97.42 is incidentally engaged in the operation of any retail food establishment at the same location, the department may exempt by rule that establishment from licensing under this section.

(3) FEES; RETAIL FOOD ESTABLISHMENTS LICENSED BY DEPARTMENT. (a) *License fee.* An applicant for a retail food establishment license shall pay the license fee specified under sub. (3m), based on gross receipts from food sales at the retail food establishment during the previous license year. If a retail food establishment was not licensed during the previous license year, a license applicant shall pay an estimated license fee based on projected gross receipts from food sales in the license year for which application is made. At the end of the license year for which an estimated fee has been paid, the licensee shall submit a report to the department stating the actual gross receipts from food sales during the license year. The license fee for that year shall be recomputed based on actual gross receipts. If the license fee based on actual gross receipts differs from the estimated license fee which was paid, the licensee shall pay the balance due or receive a credit from the department on the next year's license fee.

(am) *Weights and measures inspection fee.* An applicant for a retail food establishment license shall pay the weights and measures inspection fee specified under sub. (3m), based on gross receipts from food sales at the retail food establishment during the previous license year. If a retail food establishment was not licensed during the previous license year, a license applicant shall pay an estimated weights and measures inspection fee based on projected gross receipts from food sales in the license year for which application is made. At the end of the license year for which an estimated fee has been paid, the licensee shall submit a report to the department stating the actual gross receipts from food sales during the license year. The weights and measures inspection fee for that year shall be recomputed based on actual gross receipts. If the weights and measures inspection fee based on actual gross receipts differs from the estimated weights and measures inspection fee which was paid, the licensee shall pay the balance due or receive a credit from the department on the next year's weights and measures inspection fee.

(b) *Reinspection fee.* If the department reinspects a retail food establishment because the department finds a violation of this chapter or rules promulgated under this chapter, the department shall charge the retail food establishment operator the reinspection fee specified under sub. (3m). A reinspection fee is payable when the reinspection is completed, and is due upon written demand from the department. The department may issue a demand for payment when it issues a license renewal application form to the retail food establishment operator.

(c) *Surcharge for operating without a license.* An applicant for a retail food establishment license shall pay a license fee surcharge of \$100 or twice the amount of the annual license fee specified under sub. (3m) whichever is less, if the department determines that, within one year prior to submitting a license application, the applicant operated the retail food establishment without a license in violation of this subsection. Payment of this license fee surcharge does not relieve the applicant of any other civil or criminal liability which results from the unlicensed operation of the retail food establishment, but does not constitute evidence of a violation of any law.

(d) *Licensing contingent on payment of fees.* The department may not issue or renew a retail food establishment license unless the license applicant pays all fees which are due and payable under this subsection and sub. (3m), as set forth in a statement from the department. The department shall refund a fee paid under protest if the department determines that the fee was not due and payable as a condition of licensing under this subsection.

(3m) FEE AMOUNTS. Unless otherwise required by department rule, the fees required under sub. (3) are:

(a) For a retail food establishment that has annual food sales of \$25,000 or more but less than \$1,000,000 and that processes potentially hazardous food, the following amounts:

1. An annual license fee of \$90.
2. A reinspection fee of \$60.

3. Beginning with the license year that ends on June 30, 1995, an annual weights and measures inspection fee of \$45, except that this fee does not apply to a retail food establishment that is located in a municipality that has established a municipal department of weights and measures under s. 98.04 (1) for the purpose of enforcement of the provisions of ch. 98.

(b) For a retail food establishment that has annual food sales of \$1,000,000 or more and that processes potentially hazardous food, the following amounts:

1. An annual license fee of \$210.
2. A reinspection fee of \$140.

3. Beginning with the license year that ends on June 30, 1995, an annual weights and measures inspection fee of \$100, except that this fee does not apply to a retail food establishment that is located in a municipality that has established a municipal department of weights and measures under s. 98.04 (1) for the purpose of enforcement of the provisions of ch. 98.

(c) For a retail food establishment that has annual food sales of \$25,000 or more and that is engaged in food processing, but that does not process potentially hazardous food, the following amounts:

1. An annual license fee of \$80.
2. A reinspection fee of \$80.

3. Beginning with the license year that ends on June 30, 1995, an annual weights and measures inspection fee of \$25, except that this fee does not apply to a retail food establishment that is located in a municipality that has established a municipal department of weights and measures under s. 98.04 (1) for the purpose of enforcement of the provisions of ch. 98.

(cm) For a retail food establishment that has annual food sales of less than \$25,000 and that is engaged in food processing, an annual license fee of \$40 and a reinspection fee of \$40.

(d) For a retail food establishment that is not engaged in food processing, an annual license fee of \$20 and a reinspection fee of \$50.

(4) FEES; RETAIL FOOD ESTABLISHMENT LICENSED BY AGENT CITY OR COUNTY. Subsection (3) does not apply to any retail food establishment licensed by an agent city or county under s. 97.41. An applicant for a retail food establishment license issued by an agent city or county shall pay fees established by the agent city or county under s. 97.41.

(5) RULE MAKING. The department may promulgate rules to establish the fees required under sub. (3) or to govern the operation of retail food establishments. Rules may include standards for the construction and maintenance of facilities; the design, installation, cleaning and maintenance of equipment and utensils; personnel sanitation; food handling, display and storage; and food sources and food labeling.

History: 1987 a. 399; 1989 a. 174; 1991 a. 39, 210; 1993 a. 16, 27, 264, 491; 1995 a. 27 ss. 3599, 9126 (19).

97.32 Special dairy and food inspectors. (1) Special dairy and food inspectors may be appointed by the department for any factory, plant, receiving station, or group thereof, which buys or receives milk or cream for the purpose of manufacturing, processing or any other purpose whatsoever, upon petition therefor signed by more than two-thirds of the regular patrons of such factory, plant, receiving station, or group thereof, or by the officers of such factory, plant, receiving station or group thereof, or of the officers of any association organized under ch. 185 representing patrons of such factory, plant, receiving station or group thereof, and upon receiving satisfactory proof that such special dairy and food inspectors will be compensated in full for all services ren-

dered and traveling expenses incurred upon and pursuant to such appointment as provided in this section. If the inspector is appointed pursuant to petition signed by the officers of an organization, such compensation and expenses shall be paid by such organization; and any factory, plant, receiving station or group thereof shall pay to the association the checkoff as contracted for between the member and the association. If appointed pursuant to petition signed by patrons, each patron of the factory, plant, receiving station or group thereof shall pay such proportion of the total amount of such compensation and expenses as the amount of milk or cream delivered thereto by the patron bears to the total amount delivered thereto by all patrons. The state shall not be liable for any such compensation or expenses.

(3) Each such special dairy and food inspector shall have all powers conferred by law upon dairy and food inspectors, shall at all times be under the supervision of the department and shall make such reports to the department as the department may require. The special dairy and food inspector shall supervise and inspect the weighing and testing of and shall inspect all milk, cream, butter or cheese delivered to such factory, plant, receiving station or group thereof, except that if the special dairy and food inspector be appointed upon petition by an association organized under ch. 185, the special dairy and food inspector shall perform duties only for its members, and for such purpose the special dairy and food inspector may use any or all weighing or testing apparatus in such factory, plant, receiving station or group thereof. In addition to the duties herein specifically prescribed, the special dairy and food inspector shall perform such duties as the patrons or organization compensating the special dairy and food inspector or the department may direct.

(4) An appointment of a special dairy and food inspector may be denied, suspended or revoked by the department as provided in s. 93.06 (7). Rehearing and judicial review shall be as provided in ch. 227.

History: 1975 c. 308; 1975 c. 414 s. 28; 1993 a. 492.

97.34 Bottled drinking water and soda water beverage; standards; sampling and analysis. (1) In this section:

(a) “Bottled drinking water” means all water packaged in bottles or similar containers and sold or distributed for drinking purposes. This term includes distilled water, artesian water, spring water and mineral water, whether carbonated or uncarbonated.

(b) “Soda water beverage” means and includes all beverages commonly known as soft drinks or soda water, whether carbonated, uncarbonated, sweetened or flavored. This term does not include alcohol beverages.

(2) (a) The department shall promulgate by rule standards of purity for all ingredients used in the manufacture or bottling of soda water beverages or bottled drinking water which ensure a pure and unadulterated product.

(b) No person may manufacture or bottle bottled drinking water for sale or distribution in this state unless the bottled drinking water complies with state drinking water standards adopted by the department of natural resources under s. 280.11, 281.15 or 281.17 (8) and with health-related enforcement standards adopted by the department of natural resources under ch. 160.

(c) The department may require testing of bottled drinking water for substances subject to any standard under par. (b) and for any other substance if the department determines that the water system used as the source of the bottled drinking water has a potential of being contaminated, based on contamination of other water systems or groundwater in the vicinity. The department shall adopt by rule requirements for periodic sampling and analysis for the purposes of this subsection. The department shall require all analyses to be conducted by a laboratory certified under s. 299.11.

NOTE: Par. (c) is shown as affected by two acts of the 1995 legislature and as merged by the revisor under s. 13.93 (2) (c).

(d) No person may manufacture or bottle bottled drinking water for sale or distribution in this state unless the water system used by the manufacturer or bottler complies with ch. 162 [ch. 280] and rules promulgated by the department of natural resources under that chapter [280.13].

NOTE: Par. (d) is shown as affected by two acts of the 1995 legislature and as merged by the revisor under s. 13.93 (2) (c). The bracketed language reflects the renumbering of ch. 162 to ch. 280 by 1995 Wis. Act 227. Corrective legislation is pending.

(e) The department shall publish an annual report summarizing the results of bottled drinking water sampling and analysis.

History: 1973 c. 126; 1981 c. 79 s. 17; 1983 a. 410; 1987 a. 27, 399; 1995 a. 227, 378; s. 13.93 (2) (c).

97.41 Retail food: agent status for local health departments. (1) In this section:

(a) “Local board of health” has the meaning given in s. 250.01 (3).

(b) “Local health department” has the meaning given in s. 250.01 (4).

(1m) In the administration of this chapter, the department may enter into a written agreement with a local health department, if the jurisdictional area of the local health department has a population greater than 5,000, which designates the local health department as the agent of the department of agriculture, trade and consumer protection for issuing licenses to and making investigations or inspections of retail food establishments, as defined in s. 97.30 (1) (c). When the designation is made, no license other than the license issued by the local health department under this section may be required by the department of agriculture, trade and consumer protection or the local health department for the same operations. The department of agriculture, trade and consumer protection shall coordinate the designation of agents under this section with the department of health and family services to ensure that, to the extent feasible, the same local health department is granted agent status under this section and under s. 254.69 (2). Except as otherwise provided by the department of agriculture, trade and consumer protection, a local health department granted agent status shall regulate all types of establishments for which this subsection permits the department of agriculture, trade and consumer protection to delegate regulatory authority.

(2) A local health department granted agent status under this section shall meet standards adopted, by rule, by the department. The department shall annually evaluate the licensing, investigation and inspection program of each local health department granted agent status. If, at any time, a local health department granted agent status fails to meet the standards, the department may revoke its agent status.

(3) The department shall provide education and training to agents designated under this section to ensure uniformity in the enforcement of this chapter and rules adopted under this chapter.

(4) (a) Except as provided in par. (b), a local health department granted agent status under this section shall establish and collect the license fee for retail food establishments, as defined in s. 97.30 (1) (c). The local health department may establish separate fees for preinspections of new establishments, for preinspections of existing establishments for which a person intends to be the new operator or for the issuance of duplicate licenses. No fee may exceed the local health department’s reasonable costs of issuing licenses to, making investigations and inspections of, and providing education, training and technical assistance to the establishments, plus the state fee established under sub. (5). A local health department which is granted agent status under this section or under s. 254.69, may issue a single license and establish and collect a single fee which authorizes the operation on the same premises of more than one type of establishment with respect to which it is granted agent status under this section or under s. 254.69 (2).

(b) A local health department granted agent status under this section may contract with the department for the department to collect fees and issue licenses. The department shall collect from

the local health department the actual and reasonable cost of providing the services.

(5) The department shall establish state fees for its costs related to setting standards for retail food establishments, as defined in s. 97.30 (1) (c), setting standards for agents under this section and monitoring and evaluating the activities of, and providing education and training to, agent local health departments. Agent local health departments shall include the state fees in the license fees established under sub. (4) (a), collect the state fees and reimburse the department for the state fees collected. The state fee may not exceed 20% of the license fee charged under s. 97.30 (3) for a license issued by the department.

(6) If, under this section, a local health department becomes an agent or its agent status is discontinued during a licensee's license year, the department and the local health department shall divide any license fee paid for that license year according to the proportions of the license year occurring before and after the local health department's agent status is granted or discontinued. No additional fee may be required during the license year due to the change in agent status.

(7) A local board of health may adopt and impose regulations on licensees and premises for which the local health department is the designated agent under this section, which are stricter than this chapter or rules promulgated by the department under this chapter. No such regulation may conflict with this chapter or rules promulgated by the department.

(8) This section does not limit the authority of the department to inspect establishments in jurisdictional areas of local health departments where agent status is granted if it inspects in response to an emergency, for the purpose of monitoring and evaluating the local health department's licensing, inspection and enforcement program or at the request of the local health department.

(9) The department shall hold a hearing under ch. 227 if any interested person, in lieu of proceeding under ch. 68, appeals to the department alleging any of the following:

(a) A permit fee established by a local health department granted agent status exceeds the reasonable costs described under sub. (4) (a).

(b) The person issuing, refusing to issue, suspending or revoking a permit or making an investigation or inspection of the appellant has a financial interest in a regulated establishment which may interfere with his or her ability to properly take that action.

(c) That a license fee for a retail food establishment license issued by an agent local health department under this section exceeds the reasonable costs of that agent local health department for issuing the license, investigating and inspecting the establishment, and providing education, training and technical assistance to the establishment.

History: 1983 a. 203; 1985 a. 29 ss. 1643y to 1645, 3202 (3); 1987 a. 27 ss. 1693hL, 3200 (4); 1987 a. 399, 403; 1989 a. 56; 1993 a. 27; 1995 a. 27 s. 9126 (19).

97.42 Compulsory inspection of animals, poultry and carcasses. (1) DEFINITIONS. In this section:

(a) "Animal" means cattle, sheep, swine, goats, farm-raised deer, horses, mules, and other equines.

(b) "Capable of use as human food" applies to any carcass or part of a carcass of any animal or poultry or animal or poultry product unless it is denatured or otherwise identified as required by department rules, or is naturally inedible by humans.

(c) "Carcass" means all parts, including the viscera, of slaughtered animals and poultry that are capable of being used for human food.

(d) "Establishment" means a plant or premises, including retail premises, where animals or poultry are slaughtered for human consumption, or a plant or premises, including retail premises, where meat or poultry products or meat food products are processed, but shall not include:

1. Establishments subject to 21 USC 451 to 695.

2. Establishments subject to county or municipal meat and poultry inspection if such inspection is conducted pursuant to this section and which are enforced with equal effectiveness, and the inspection service is specifically approved by the department; however, sub. (2) shall apply to establishments subject to county or municipal meat and poultry inspection.

3. Premises of a person who is the owner of the animals to be slaughtered or of carcasses to be processed, and the resulting product is for exclusive use by him or her and members of his or her household and his or her nonpaying guests and employees.

(dm) "Farm-raised deer" has the meaning given in s. 95.001 (1) (a).

(e) "Inspector" means any person employed by the department or any cooperating agency who is authorized by the department to do any work or perform any duty in connection with the department's meat and poultry inspection program.

(f) "Meat broker" means any person engaged in the business of buying or selling meat and poultry products, or meat and poultry food products on commission, or otherwise negotiating purchases or sales of such articles other than for the person's own account or as an employee of another person.

(fm) "Meat distributor" means a person who is engaged in the business of distributing in this state meat and poultry products at wholesale.

(g) "Meat food products" means any article capable of use as human food which is derived or prepared in whole or in substantial and definite part from meat products or poultry products.

(h) "Meat products" and "poultry products" means the carcasses or any parts of carcasses of animals and poultry capable of use as human food.

(i) "Mobile processor" means a person who provides a meat processing service to the general public for compensation other than the trading of services on an exchange basis, and conducts the meat processing at the premises of the owner of the carcasses being processed.

(j) "Mobile slaughterer" means a person who provides a slaughtering service to the general public for compensation other than the trading of services on an exchange basis, and conducts such slaughtering at the premises of the owners of the animals being slaughtered.

(k) "Official inspection mark" means the symbol formulated under the rules of the department to state that the meat, poultry or product was inspected pursuant to such rules.

(L) "Poultry" means any domesticated fowl, including but not limited to chickens, turkeys, geese, ducks or guineas, but shall not include commercially produced game birds.

(m) "Unwholesome" means:

1. Unsound, injurious to health or otherwise rendered unfit for human food.

2. Consisting in whole or in part of any filthy, putrid or decomposed substance.

3. Processed, prepared, packed or held under unsanitary conditions whereby a carcass or parts thereof, or any meat or poultry product, may have become contaminated with filth or become injurious to human health.

4. Produced in whole or in part from diseased animals or poultry, except when such disease does not ordinarily render the carcasses of such animals or poultry unfit for human consumption, or from animals or poultry which have died otherwise than by slaughter.

(n) "Veterinarian" means a graduate veterinarian of an accredited school of veterinary medicine who is qualified on the basis of training and experience, as determined by the department.

(o) "Wholesome" means sound, healthful, clean and otherwise fit for human food.

(2) LICENSE; CERTIFICATE OF REGISTRATION. (a) No person may operate an establishment as defined in sub. (1) (d) without a valid license issued by the department for each such establishment. That license expires on June 30 annually. No license may be issued unless the applicant has complied with the requirements of this section. The annual license fee is \$200, except the annual license fee shall be \$80 for those establishments engaged only in slaughtering uninspected animals or poultry or processing uninspected meat as a custom service, and not in other operations subject to a license under this section. No person may be required to obtain a license under s. 97.29 or 97.30 for activities licensed under this section or which is inspected under 21 USC 451 to 695.

(b) Paragraph (a) does not apply to any person operating an establishment that only processes meat or poultry products, or meat or poultry food products, for sale directly to consumers at retail on the premises where the products were processed if only inspected meat is permitted on the premises and sales to restaurants and institutions are restricted to 25% of the volume of meat sales or \$28,800 annually, whichever is less. No person exempt from licensure under this paragraph may sell any cured, smoked, seasoned, canned or cooked meat food products produced by that person to restaurants or institutions.

(c) No person may operate as a mobile slaughterer or as a mobile processor without an annual registration certificate issued by the department, except that no registration certificate is required for a mobile slaughterer or a mobile processor who holds a license issued under par. (a). A registration certificate expires on June 30, annually. An application for an annual registration certificate shall be submitted on a form provided by the department and shall include information reasonably required by the department for registration purposes. The department shall promulgate rules regulating mobile slaughterers and mobile processors, including rules related to facilities, sanitation, identification of carcasses and record keeping.

(d) No person may operate as a meat broker or meat distributor without an annual registration certificate issued by the department, except that no registration certificate is required for a meat broker or a meat distributor who holds a license issued under par. (a). A registration certificate expires on June 30, annually. An application for an annual registration certificate shall be made on a form provided by the department and shall include information reasonably required by the department for registration purposes.

(3) STATE INSPECTION. (a) *Examination before slaughter.* For the purpose of preventing the sale and use in this state of meat products and poultry products which are unwholesome or otherwise unfit for human food, the department shall cause to be made, by inspectors who may be veterinarians on either a full-time or part-time basis under supervision of the department, examination and inspection of all animals and poultry before they are slaughtered in any establishment, except as provided in pars. (d) and (em). All animals and poultry found on such inspection to show symptoms of disease shall be condemned or set apart and slaughtered separately from all other animals and poultry, and when so slaughtered the carcasses thereof shall be subject to careful examination, inspection and disposition, in accordance with rules issued by the department.

(b) *Examination after slaughter.* For the purpose stated in par. (a), the department shall cause to be made, by inspectors under supervision of the department, who may be veterinarians on either a full-time or part-time basis, an examination and inspection of the carcasses and parts thereof of all animals and poultry slaughtered at any establishment, except as provided in pars. (d) and (em). The carcasses and parts thereof of all animals and poultry found to be wholesome and fit for human food shall be marked, stamped, tagged or labeled by inspectors as “Wis. inspected and passed”. Inspectors shall mark, stamp, tag or label as “Wis. inspected and condemned” all carcasses and parts thereof of animals and poultry found to be unwholesome or otherwise unfit for human food, and all carcasses and parts thereof so inspected and condemned shall be destroyed, in accordance with rules issued by

the department. Inspection marks, stamps, tags and labels shall be prescribed by the department and shall include thereon the identification number of the establishment assigned by the department.

(c) *Reexaminations.* Inspectors shall, when deemed advisable, reinspect carcasses, parts thereof or meat food products to determine whether the same have become unwholesome or in any other way unfit for human food. If any carcasses, parts thereof or meat food products, upon a reexamination, are found to be unwholesome or otherwise unfit for human food, they shall be destroyed, in accordance with rules issued by the department.

(d) *Custom service slaughtering.* This subsection shall not apply to animals and poultry slaughtered as a custom service for the owner exclusively for use by the owner and members of the owner’s household and the owner’s nonpaying guests and employes, unless department inspection is specifically requested and performed at establishments where examinations before and after slaughter are required. The rules of the department shall make provision for the furnishing of such inspection service, subject to availability of inspector personnel, and for the identification of all animals and poultry custom slaughtered for the owners thereof without department inspection.

(e) *Periodic inspections.* The department shall make periodic inspections of construction, operation, facilities, equipment, labeling, sanitation and wholesomeness of meat and poultry products, and meat food products at establishments or any other premises, including vehicles engaged in transportation of such products. Inspection of products and plant operations shall cover such operations as cutting and boning, curing and smoking, grinding and fabrication, manufacturing, packaging, labeling, storage and transportation. Periodic inspections of processing operations shall be conducted as uniformly as possible among establishments subject to overtime inspection under sub. (4) (f) to avoid the imposition of undue inspection fees against any establishment. Inspections at overtime rates shall only be held where necessary to assure wholesomeness and safety of products and compliance with the requirements of this section and rules of the department.

(em) *Slaughter of farm-raised deer.* The requirements of pars. (a) and (b) do not apply to the slaughter of a farm-raised deer if its meat food products are not sold by a person holding a restaurant permit under s. 254.64 or by an operator of a retail food establishment, as defined under s. 97.30 (1) (c). The operator of an establishment in which farm-raised deer, their carcasses or their meat food products are examined and inspected under this subsection shall pay the department for the cost of the department’s examination and inspection.

(f) *Label requirements.* In addition to label requirements otherwise provided by law, meat food products shall bear a label, stamp, mark or tag including thereon the official inspection mark and identification number of the establishment where processed. Meat and poultry products processed and sold at retail to household consumers on the premises shall not require official inspection marks and identification numbers.

(4) RULES. The department shall issue reasonable rules requiring or prescribing:

(a) The inspection before and after slaughter of all animals and poultry killed or dressed for human consumption at any establishment.

(b) The inspection and marking of carcasses or parts thereof intended for human consumption, and prohibiting the unauthorized use of any official inspection mark or simulation or counterfeit thereof.

(c) The use of the official inspection mark by county and municipal inspection services approved by the department.

(d) The seizure, retention and destruction for human consumption of any animal or poultry, carcasses, parts thereof, or meat food products which have not been inspected or passed or are unwholesome or adulterated or misbranded.

(e) The hours and days in each week when slaughtering or processing may be conducted in any establishment subject to a

license under sub. (2). The schedules so fixed shall be as nearly as possible in accord with existing industry standards of establishments subject to inspection. However, in order to avoid excessive costs for inspection and stay within the limit of appropriations, the schedules may require that:

1. Slaughtering or processing be conducted continuously during successive days and hours of the regular workweek for state employes;

2. The rate of slaughter for the different classes of animals and poultry conform to reasonable minimums per hour;

3. Inspection of animals and poultry slaughtered as a custom service be restricted to the time of the regular slaughter schedule fixed for the establishment. When inspection is provided for custom slaughtering and custom processing the inspection shall be conducted in accordance with sub. (3) (a) to (c) and rules prescribed under this subsection; and

4. The department be notified a reasonable time in advance of any deviation from existing schedules or when slaughtering or processing is to be conducted at times other than those specified under regularly established schedules.

(em) The rate at which an operator of an establishment that slaughters farm-raised deer or processes the meat products of farm-raised deer shall pay the costs of examination and inspection under sub. (3) (em) and the manner in which the department shall collect those amounts.

(f) Overtime agreements with the department whereby the operator of any establishment subject to a license under sub. (2), agrees to pay the cost for salaries, at overtime rates, and other expenses of department inspectors whenever slaughtering, carcass preparation, or the processing of meat or poultry products or meat food products is conducted beyond hours or days limited under par. (e), or on Saturdays, Sundays or holidays for state employes under s. 230.35 (4), or before 6 a.m. or after 6 p.m., or in excess of 40 hours in any week. Overtime charges for periodic inspections under sub. (3) (e) shall, insofar as possible, be limited to the minimum number of hours reasonably required for the conduct of such inspections. The department may assess overtime charges under this paragraph even though the department provides compensatory time in lieu of overtime compensation under s. 103.025.

(g) Specifications and standards for location, construction, operation, facilities, equipment and sanitation for any premises, establishment or mobile facility where slaughter or processing is carried on, including custom slaughtering of animals or poultry and custom or retail processing of meat and poultry products.

(h) Conditions of sanitation under which carcasses, parts of carcasses, poultry and meat and poultry products shall be stored, transported or otherwise handled by any person engaged in the business of buying, selling, freezing, storing, transporting or processing such products.

(i) Record-keeping requirements for persons engaged in slaughtering or processing operations, or in the storage or transportation of meat, poultry, or meat food products, including record-keeping requirements for meat brokers and the registration of meat brokers with the department.

(j) Any other rules reasonably necessary to the administration and enforcement of this section.

(5) COUNTY AND MUNICIPAL INSPECTIONS. (a) The department may enter into cooperative agreements with counties and municipalities for inspection and enforcement services required by this section and by approved meat and poultry inspection ordinances and regulations. Employes of counties and municipalities while performing such inspection and enforcement work shall have the same enforcement authority, within such counties or municipalities, as that granted to the department and its authorized agents.

(b) No county or municipality may collect any fees or charges for meat or poultry inspection or enforcement from any licensee under this section, except for overtime inspection work and the inspection of farm-raised deer. Charges for overtime or for the

inspection of farm-raised deer shall be on the same basis as and shall not exceed charges for overtime work or for the inspection of farm-raised deer prescribed by this section or by the rules of the department.

(6) PROHIBITIONS. (a) No person shall slaughter any animals or poultry for the purpose of selling the meat products or poultry products thereof for human food, or sell, offer for sale or have in his or her possession with intent to sell such meat products or poultry products for human food, unless such animals and poultry and the carcasses thereof have been first inspected and approved as provided by any of the following:

1. This section and the rules issued thereunder.

2. The federal meat inspection act.

3. The federal poultry products inspection act.

4. County or municipal ordinances or regulations which are substantially equivalent to this section and which are enforced with equal effectiveness, if the inspection service is specifically approved by the department.

(b) No person shall sell, offer for sale or have in possession with intent to sell any meat or poultry products, or meat food products unless they have been processed in accordance with this section, the federal meat inspection act, or county or municipal ordinances approved by the department.

(c) No person shall slaughter horses, mules or other equines or process equine carcasses or meat at establishments where other animals or poultry are slaughtered or where other meat or poultry products are processed.

(d) No county or municipality shall prohibit the sale of any meat products or poultry products if such meat products or poultry products are inspected and passed by the department, or by the U.S. department of agriculture, or by a county or municipal inspection service approved by the department, provided such meat products and poultry products are wholesome and not misbranded at the time of sale.

(7) RIGHT OF ACCESS. No person shall prevent or attempt to prevent an inspector or other officer or agent of the department from entering, at any time, any establishment or any other place where meat products or poultry products, or foods derived therefrom, are processed, sold or held for sale, for the purpose of any examination, inquiry or inspection in connection with the administration and enforcement of this section. The examination, inquiry or inspection may include taking samples, pictures and documentary and physical evidence pertinent to enforcement of this section.

(8) INTERFERENCE WITH INSPECTION. Any person who forcibly assaults, threatens, obstructs, impedes, intimidates or interferes with any person while engaged in the performance of his or her official duties under this section shall be fined not more than \$5,000 or imprisoned in the county jail not to exceed one year or both.

(9) TAGGING OF FACILITIES, EQUIPMENT AND PRODUCT. (a) When in the opinion of the department, the use of any equipment, compartment, room or facilities which is unclean or unsanitary or improperly constructed could lead to contamination of the product, the department may attach a "Rejected" tag to it. No equipment, utensil, container, compartment, room or facility so tagged may be used until made acceptable and released by a department representative, or until such equipment is replaced with acceptable equipment.

(b) 1. When in the opinion of the department any carcass, meat or poultry product, meat food product, or supplies or ingredients used in the processing thereof may be unwholesome, adulterated or misbranded, or otherwise fail to meet standards or requirements of this section or rules adopted under this section, the department may tag them with a "Retained" tag to hold them for further inspection, analysis or examination. No carcass, meat or poultry product, meat food product, or supplies or ingredients so tagged may be used, removed from the premises or otherwise disposed of unless released by a department representative. Such products

may not be retained for more than 30 days without prior notice to the owner or custodian and the right to an immediate hearing.

2. When in the opinion of the department any carcass, meat or poultry product, or supplies or ingredients used in the processing thereof is unwholesome, adulterated or misbranded, or otherwise fail to meet standards or requirements of this section or rules adopted under this section, the department may tag them with a “Detained” tag to hold them for destruction or other disposition. No carcass, meat or poultry product, meat food product, or supplies or ingredients so tagged may be used, removed from the premises or otherwise disposed of unless released by a department representative. Such products may not be destroyed or detained for more than 30 days without prior notice to the owner or custodian and the right to an immediate hearing.

(c) No person may alter, deface or remove any tag from facilities, equipment, products or supplies to which it has been attached by a department inspector without the express consent or approval of the inspector or other department representative.

(10) SUSPENSION. The department may, upon written notice, summarily suspend the operations in whole or in part at any establishment for substantial violations of this section or rules issued hereunder when, in the opinion of the department, a continuation of the operation would constitute an imminent danger to public health. The department may summarily suspend inspection at any establishment for acts punishable under sub. (8) where such acts substantially impair an inspector’s ability to conduct an orderly inspection. Upon suspension of operations or inspection, the operator of the establishment may demand a hearing to determine whether the suspension should be vacated. The department shall, within 5 days after receipt of such demand, hold a hearing and adjudicate the issues as provided in ch. 227. A demand for hearing shall not, however, operate to stay the suspension pending the hearing.

(11) EXEMPTION. This section shall not apply to owners of poultry with respect to poultry produced on the owner’s farm, provided his or her sales do not exceed 1,000 fowl annually, and the birds are labeled and tagged to identify the name and address of the producer and are marked “NOT INSPECTED”. Persons processing more than 1,000 fowl but less than 20,000 fowl shall be fully subject to the provisions of this section relating to licensing, sanitation, facilities and wholesomeness of product. If the department determines that the protection of consumers from unwholesome poultry products will not be impaired, it may exempt such persons from sub. (3) (a) and (b) provided the birds are labeled or tagged to identify the name and address of the producer and are marked “NOT INSPECTED”.

(12) The department may deny, revoke or suspend the license of any person for substantial or repeated violations of this section.

History: 1971 c. 270 s. 104; 1973 c. 206; 1975 c. 308, 421; 1977 c. 196 s. 131; 1977 c. 216, 365; 1979 c. 110, 154; 1981 c. 314; 1983 a. 189, 261; 1983 a. 500 s. 44; 1985 a. 29; 1987 a. 399; 1989 a. 174; 1991 a. 39, 175, 269; 1993 a. 16, 27, 144, 492; 1995 a. 79, 225.

97.43 Meat from dead or diseased animals. (1) No meat from any diseased animal, or any dead animal as defined under s. 95.72 (1) (c), may be sold or used for human consumption, or dismembered or stored at premises where other food is sold or prepared for sale.

(2) No carcass meat or other part of any animal shall be fed to food-producing animals or to animals used for human consumption unless it has been thoroughly rendered or cooked.

(3) Subsection (1) shall not apply to meat from animals affected by any disease which does not ordinarily render such meat unfit for human consumption, provided the animals so affected have been slaughtered in establishments where meat inspection is maintained under s. 97.42 or the federal meat inspection act.

(4) Whoever violates this section may be fined not less than \$500 nor more than \$5,000 or imprisoned for not more than 5 years or both.

History: 1971 c. 40 s. 93; 1979 c. 129 s. 6; Stats. 1979 s. 97.43; 1981 c. 66; 1985 a. 229.

This section is not unconstitutionally vague. *State v. Ehlenfeldt*, 94 W (2d) 347, 288 NW (2d) 786 (1980).

97.44 Identification of meat for animal feed; registration and records of buyers. (1) No person shall buy, sell or transport any carcasses, parts thereof or meat or meat food products of any animals which are not intended for use as human food, unless they are denatured or otherwise identified as required by rules of the department or are naturally inedible by humans.

(2) Animal feed manufacturers and operators of fur farms, exempt from s. 95.72, shall register their names and business locations with the department if they engage in slaughtering animals or in buying dead animals or parts of the carcasses of such animals. The department, by rule, may require that they keep records of their purchase and disposition of such animals and carcass parts.

(3) As used in this section “animals” means cattle, sheep, goats, swine, equines, farm-raised deer, as defined in s. 95.001 (1) (a), and poultry, except in the phrase “animal feed manufacturers”.

History: 1975 c. 308; 1995 a. 79.

97.45 Labeling of horsemeat. (1) No person shall sell any horsemeat, unless it is conspicuously labeled, marked, branded or tagged “horsemeat” or, in case horsemeat is used as an ingredient in any animal or human food, unless such food is conspicuously labeled to show the presence of horsemeat.

(2) Whoever violates this section may be fined not less than \$500 nor more than \$5,000 or imprisoned for not more than 5 years, or both.

History: 1977 c. 216 s. 4; Stats. 1977 s. 97.45; 1985 a. 229.

97.46 Sale of certain foods regulated and restricted.

(1) No person may, by himself or herself, or by his or her agents or servants, manufacture, sell, ship, consign, offer for sale, expose for sale or have in his or her possession with intent to sell for use or consumption within this state, any article of food within the meaning of s. 97.01, which contains formaldehyde, sulfuric acid or sulfites, boric acid or borates, salicylic acid or salicylates, saccharin, dulcin, glucin, beta naphthol, abradol, asaprol, fluorides, fluoborates, fluosilicates or other fluorine compounds, or any other preservatives injurious to health. Nothing contained in this section prohibits the use of common salt, saltpeter, wood smoke, sugar, vinegar and condimental preservatives, such as turmeric, mustard, pepper and other spices. No person by himself or herself, or by agents or servants, may manufacture, sell, ship, consign, offer for sale, expose for sale or have in his or her possession with intent to sell for use or consumption within this state, any article of food within the meaning of s. 97.01, containing any added substance, article or ingredient possessing a preservative character or action other than the common salt, saltpeter, wood smoke, sugar, vinegar and condimental preservatives such as turmeric, mustard, pepper and other spices, unless the presence, name and proportionate amount of the added substance, article or ingredient is plainly disclosed to the purchaser.

(2) This section shall not be construed to prohibit the sale of dietary foods containing saccharin in containers labeled in accordance with s. 97.03, nor the use of sulfur dioxide or sulfites as anti-oxidants in the processing of potatoes, frozen apples, grape juice, reconstituted lemon juice or reconstituted lime juice provided such foods contain not more than 350 parts per million SO₂; nor the use of sulfur dioxide in molasses or in the processing of dried fruits, dried vegetables, pickled vegetables or fruit pectin in amounts no more than may be necessary in good manufacturing

practice. Any person who refreezes or offers for sale any refrozen fruit containing sulfur dioxide or sulfites as anti-oxidants in not more than 350 parts per million, may be fined not less than \$100 nor more than \$500 or imprisoned not more than 3 months or both, and for each subsequent offense may be fined not less than \$500 nor more than \$1,000 or imprisoned in the county jail not less than 6 months nor more than one year. The department may promulgate rules limiting the quantity therein for any such dried fruit, dried vegetables, pickled vegetables, fruit pectin or molasses.

History: 1971 c. 156, 286, 307; 1979 c. 89.

97.47 Benzoic acid in foods. No person shall sell, offer or expose for sale or have in possession with intent to sell for use or consumption in this state, any meat products or dairy products, which contain added benzoic acid or benzoates; or any other article of food as defined in s. 97.01 which contains added benzoic acid or benzoates in excess of one-tenth of one per cent. The presence shall be stated on the label. When in the preparation of food products for shipment they are preserved by any external application of benzoic acid or benzoates in such a manner that the preservative is necessarily removed mechanically, or by maceration in water, or otherwise, and directions for the removal of said preservative shall be printed on the covering or the package, this section shall be construed as applying only when said products are ready for consumption.

History: 1971 c. 156, 286, 307.

97.48 Dairy products, adding foreign fats; oleomargarine permitted. (1) (a) In this subsection “dairy product” means all of the following:

1. A product, except mellorine, described in 21 CFR 131 to 135.
2. “Butter” as described in s. 97.01 (1).
- 2m. “Light butter” as described in s. 97.03 (3) (b).
3. “Yogurt”, “lowfat yogurt” and “skim milk yogurt” or “non-fat yogurt” as described by rule by the department.

(b) No person may sell any food product that is made to resemble a dairy product unless:

1. The food product bears a statement on the main display panel of the package or container stating that the food is an artificial product in letters not less than one-half the size of the product name, but in no case may the letters be smaller than 18 point type size; and
2. The label on the food product clearly states the major differences in ingredients and nutritional value between the artificial product and the dairy product it is made to resemble.

(c) A food product is made to resemble a dairy product if any of the following occurs:

1. The food physically resembles a dairy product.
2. The packaging used resembles the packaging used for a dairy product.
3. The food is displayed in a retail establishment in the same manner as a dairy product.
4. Verbal or pictorial expressions are used on the food’s labeling or in advertisements or other similar devices used to promote the food that state or imply that the food is a dairy product.

(d) The department may adopt rules that are needed to implement and administer this subsection.

(2) This section does not prohibit the manufacture or sale of proprietary foods containing milk or skim milk to which have been added any fat or oil other than milk fat when such foods are clearly labeled to show their composition and the fact that they are to be sold exclusively for use as directed by physicians.

(3) This section does not prohibit the manufacture or sale of oleomargarine or margarine.

(4) The sale or serving of any product for use as a coffee cream or whitener in any restaurant or public eating establishment, other than cream, half and half or lighter varieties of cream, is prohibited. This subsection shall not apply to coffee whitener sold or dis-

pensed by a vending machine provided such machine bears a prominently affixed label or legend stating that the coffee whitener sold or dispensed is not a dairy product or is an imitation dairy product.

History: 1971 c. 212; 1977 c. 83; 1981 c. 345; 1983 a. 189 s. 329 (20); 1991 a. 111.

Although (4) achieves the legitimate state interest of preventing fraudulent substitution of nondairy whiteners for cream without the knowledge or assent of the restaurant consumer, the statute imposes a clearly excessive burden upon interstate commerce because: (1) The total dollar volume of sales eliminated by the statute is substantial and (2) labeling constitutes a reasonable and effective alternative means of preventing the deception with which the legislature is rightfully concerned. *Coffee-Rich, Inc. v. Dept. of Agriculture*, 70 W (2d) 265, 234 NW (2d) 270.

97.50 Adulterated, insanitary milk. (1) **INSANITARY MILK.** Milk which is drawn from cows kept in a filthy or unclean condition; or milk drawn from any sick cow or cow having running sores; or milk drawn from cows fed unwholesome food or on refuse or slops from distilleries or vinegar factories, unless such refuse or slop is mixed with other dry sanitary grain or feed to a consistency of thick mash; or milk drawn from cows within 15 days before or 5 days after calving; or milk which is drawn from cows that are kept in barns or stables which are not reasonably well lighted and ventilated, or that are kept in barns or stables that are filthy from an accumulation of animal feces and excreta or from any other cause; or milk to which has been added or into which has been introduced any coloring matter or chemical or preservative or deleterious or filthy substance; or milk kept or transported in dirty, rusty or open-seamed cans or other utensils; or milk that is stale, putrescent or putrid; or milk to which has been added any unclean or unwholesome substance; or milk contaminated by being kept in stables or barns occupied by animals, or kept exposed in dirty, foul or unclean places or conditions, is declared to be insanitary milk.

(2) **INSANITARY CREAM.** Cream produced from insanitary milk; or cream produced by the use of a cream separator, which had not been thoroughly cleansed and scalded after last previous use; or cream produced by the use of a cream separator placed or stationed in any unclean or filthy place or in any building containing a stable wherein animals are kept, unless such separator is so shielded by partition from the stable portion of such building as to be free from all foul or noxious air or gases which issue or may issue from such place or stable; or cream that is stale, putrescent or putrid; or cream that is kept or transported in dirty, rusty or open-seamed cans or other utensils; or cream that has been kept exposed to foul or noxious air or gases in barns occupied by animals, or in foul or unclean places or conditions, is hereby declared to be insanitary cream.

(3) **ADULTERATED MILK.** Any insanitary milk or any milk containing less than 3% of milk fat; or milk containing less than 8.25% of milk solids not fat; or milk which contains or to which has been added or into which has been introduced any foreign substance is adulterated milk.

(4) **ADULTERATED CREAM.** Any insanitary cream or any cream containing less than 18% of milk fat; or any cream produced from adulterated milk; or any cream which contains or to which has been added or into which has been introduced any foreign substance is adulterated cream.

(5) **SALE OF CERTAIN PASTEURIZED MILK OR CREAM NOT PROHIBITED.** This section does not prohibit the sale of pasteurized milk or cream to which viscogen or sucrate of lime has been added solely for the purpose of restoring the viscosity, if the same be distinctly labeled in such manner as to advise the purchaser of its true character.

(6) **SALE OF CERTAIN SKIM MILK NOT PROHIBITED.** This section does not prohibit the sale of skim milk when the same is sold as and for “skim milk”.

97.52 Insanitary or adulterated milk and cream; sale; delivery prohibited. It is unlawful to sell or offer for sale, furnish or deliver, or have in possession or under control with intent to sell or offer for sale, or furnish, or deliver as food for persons, or to any dairy plant any adulterated or insanitary milk or cream.

The department shall establish sanitary standards for the production, handling and transportation of milk, and prescribe rules whereby the intake of each producer of milk shall be inspected, sampled and tested by the sediment, methylene blue, or other tests, and insanitary milk or cream shall be rejected as food for persons or to be processed or manufactured for food for persons, and shall be identified, in a manner that will not prevent its use as food for animals, and rules for the keeping of the test records, the prevention of further delivery of insanitary milk or cream by such producer, and the correction of the insanitary condition.

History: 1975 c. 94 s. 91 (10).

97.53 Adulteration of meats. No person shall offer or expose for sale, take offers for, or sell, or have in his or her possession with intent to sell for consumption within the state any sausage or chopped meat compound containing any artificial coloring, or chemical preservative or antiseptic, except common salt, sodium or potassium nitrate, sodium or potassium nitrite, sodium ascorbate, ascorbic acid, spices or wood smoke. Ascorbic acid and sodium ascorbate shall be limited to use in cooked cured comminuted meat food products in the amount of three-fourths of an ounce of ascorbic acid or seven-eighths of an ounce of sodium ascorbate for each 100 pounds of fresh uncured comminuted meat or meat by-products and, when used, they shall be included in the statement of ingredients either as “ascorbic acid” or “sodium ascorbate” as the case may be.

History: 1993 a. 492.

97.56 Kosher meat. (1) Under this section “kosher” means prepared in accordance with the Jewish ritual and sanctioned by Hebrew orthodox religious requirements.

(2) No person shall, with intent to defraud, sell or expose for sale any meat or meat preparation, whether the same be raw or prepared for human consumption, and falsely represent the same to be kosher, and as having been prepared under and of a product or products sanctioned by the orthodox Hebrew religious requirements; nor shall any person falsely represent any food product or the contents of any package or container to be so constituted and prepared, by having or permitting to be inscribed thereon the word “kosher” in any language; nor shall any person sell or expose for sale in the same place of business both kosher and nonkosher meat or meat preparations, either raw or prepared for human consumption, unless all of that person’s window signs and display advertising indicate, in block letters at least four inches in height, “Kosher and Nonkosher Meat Sold Here;” nor shall any person expose for sale in any show window or place of business both kosher and nonkosher meat or meat preparations, either raw or prepared for human consumption, unless the person displays over each kind of meat or meat preparation so exposed a sign in block letters at least four inches in height reading “Kosher Meat,” or “Nonkosher Meat,” as the case may be.

(3) No person, with intent to defraud, shall sell or expose for sale in any restaurant or other place where food products are sold

for consumption on the premises, any article of food or food preparations and falsely represent the same to be kosher and as having been prepared in accordance with the orthodox Hebrew religious requirements; nor shall any person sell or expose for sale in any such restaurant or other place both kosher and nonkosher food or food preparations for consumption on the premises when not prepared in accordance with the Jewish ritual and not sanctioned by the Hebrew orthodox religious requirements, unless the person’s window signs and display advertising state, in block letters at least 4 inches in height, “Kosher and Nonkosher Food Served Here”.

History: 1993 a. 492.

97.57 Planted or cultivated rice. (1) In this section:

(a) “Paddy-grown rice” means rice which is mechanically planted, mechanically harvested or cultivated with the use of chemical fertilizers or herbicides.

(b) “Wild rice” means rice which is not mechanically harvested and which is cultivated without the use of any chemical fertilizer or herbicide.

(2) Any wholesaler or supplier who sells or offers for sale any paddy-grown rice which is not blended with any other rice may not label that paddy-grown rice “wild rice” unless he or she includes on the label, immediately before, after or above the largest words “wild rice”, the word “paddy-grown” in legible, bold-face print or type which is in distinct contrast to all other printed or graphic material on the label and in a type or print size which is not less than one-half the size of the largest type or print used in the words “wild rice” with which the word “paddy-grown” appears.

(3) No wholesaler or supplier may sell or offer for sale any rice labeled “100% natural wild rice” unless that rice is wild rice which is not blended with any other rice.

History: 1987 a. 375.

97.72 Penalties. (1) Any person who violates any of the provisions of this chapter for which a specific penalty is not prescribed shall be fined not less than \$100 nor more than \$1,000 or imprisoned for not more than 6 months, for the first offense; and for each subsequent offense, fined not less than \$500 nor more than \$5,000, or imprisoned for not less than 30 days nor more than one year in the county jail or both.

(2) In lieu of any criminal penalty provided under this chapter, a person who violates this chapter may be required to forfeit not more than \$1,000 for each violation. If the prosecutor seeks to impose a forfeiture, he or she shall proceed under ch. 778.

History: 1977 c. 216; 1979 c. 129; 1983 a. 261; 1985 a. 229; 1987 a. 398.

97.73 Injunction. In addition to penalties applicable to this chapter, the department may apply to any court of competent jurisdiction for a temporary or permanent injunction restraining any person from violating provisions of this chapter and rules or orders issued under this chapter.

History: 1971 c. 156 s. 10; Stats. 1971 s. 97.73; 1983 a. 261.