

CHAPTER 93

DEPARTMENT OF AGRICULTURE, TRADE AND CONSUMER PROTECTION

93.01	Definitions.	93.23	Local fairs.
93.02	Staff.	93.29	Exposition center grants.
93.03	Offices of department, hearings, investigations.	93.30	World dairy expo.
93.06	Department powers.	93.31	Livestock breeders association.
93.07	Department duties.	93.32	Agriculture in the classroom program.
93.075	Policy of cooperative marketing adopted.	93.35	Weather modification.
93.08	Access for law enforcement.	93.40	Dairy promotion.
93.09	Standards and regulations.	93.41	Stray voltage.
93.10	Inspector's certificate.	93.42	Center for international agribusiness marketing.
93.11	Licensing of inspectors.	93.44	Commodity promotion.
93.12	Laboratories, approval of.	93.46	Agricultural diversification.
93.135	License denial, nonrenewal, suspension or restriction based on failure to pay support.	93.47	Sustainable agriculture grant program.
93.14	Power to conduct hearings; secure evidence; witness fees.	93.50	Farm mediation and arbitration program.
93.15	Reports to department; inspections.	93.51	Farmer assistance.
93.16	Preliminary investigation.	93.52	Dairy farmer exit–entry program.
93.17	Immunity; perjury.	93.55	Chemical and container collection grants.
93.18	Hearings; orders; service; procedure; revocation.	93.57	Household hazardous waste.
93.20	Enforcement costs.	93.70	Conservation reserve enhancement program.
93.21	Penalties.	93.75	Payments to ethanol producers.
93.22	Enforcement provisions.	93.80	Arsenic in wood.
		93.90	Livestock facility siting and expansion.

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

(1b) “Agriculture” includes aquaculture.

(1d) “Aquaculture” means the controlled cultivation of aquatic plants and animals.

(1m) “Business” includes any business, except that of banks, savings banks, credit unions, savings and loan associations, and insurance companies. “Business” includes public utilities and telecommunications carriers to the extent that their activities, beyond registration, notice, and reporting activities, are not regulated by the public service commission and includes public utility and telecommunications carrier methods of competition or trade and advertising practices that are exempt from regulation by the public service commission under s. 196.195, 196.196, 196.202, 196.203, 196.219, or 196.499 or by other action of the commission.

(2) “Cooperative association” includes cooperatives and foreign cooperatives as defined in s. 185.01.

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

(4) “Documents” includes books, papers, accounts, records and correspondence.

(5) “Farm products” includes all products of agriculture, horticulture, dairying, livestock, poultry and bee raising.

(6) “Food products” includes all articles and commodities used for food, drink, confectionary or condiment.

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

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

(9) “Marketing”, as applied to receptacles, means using receptacles in marketing food products or farm products.

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

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

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

(12) “Possession”, when used in ss. 93.09 and 93.10, means possession after the product or receptacle is ready for marketing.

(13) “Production” includes mining, manufacturing, agriculture, horticulture, dairying and livestock, poultry and bee raising.

(14) “Products” include all articles and commodities in general use.

(15) “Secretary” means the secretary of agriculture, trade and consumer protection.

History: 1975 c. 94 s. 91 (10); 1975 c. 394, 422; 1977 c. 29 s. 1650m (2), (4); 1983 a. 189; 1987 a. 271; 1991 a. 39, 221; 1993 a. 213, 496; 1997 a. 237; 2003 a. 63.

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

History: 1977 c. 418.

93.03 Offices of department, hearings, investigations.

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

93.06 Department powers.

The department may:

(1) INFORMATION. Obtain and furnish:

(a) Information relating to prices, profits and costs involved in the production or distribution of products and to the supply, demand, sales, purchases, deliveries, receipts, offers, accept-

ances, storage and commercial movement of products and to any other factors affecting the market value of products or market conditions.

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

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

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

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

(f) Information regarding products and situations that are the subject of laws under its supervision.

(1d) FEES. Charge a fee to a person requesting information published under sub. (1), but the fee may not exceed the department's cost of publishing the requested information.

(1f) ANIMAL HEALTH INSPECTION AND TESTING. Perform animal health inspections and tests and examine animal health documentation at the state fair, the world dairy expo, the world beef expo, the midwest horse fair, and other livestock exhibitions held in this state and attended by participants from outside of this state, as specified by the department by rule. The department may charge a fee to the sponsor of the exhibition to cover the reasonable costs of the department's inspection and testing services whether or not the sponsor requests the services. This subsection does not apply to county fairs or other local livestock exhibitions.

(1g) CERTIFICATES OF VETERINARY INSPECTION. Furnish, to veterinarians in this state, forms to be used by them in issuing certificates of veterinary inspection. The department may charge a \$2 fee for each form unless the department specifies a different fee by rule.

(1h) ANIMAL HEALTH SUPPLIES. Sell, at not more than its cost, animal identification tags to persons who are required or authorized to use those identification tags.

(1m) SERVICE INSPECTIONS OF FARM PRODUCTS. Upon request or for grading or certification purposes, inspect animals, plants, farm products, food products and agricultural commodities, as defined in s. 96.01 (3). Inspection may include examination, diagnosis, sample collection and analysis, weighing and testing and the supervision of any of those activities. Facilities, equipment, vehicles and vessels used in the production, processing, storage or distribution of the animals, plants, farm products, food products or agricultural commodities may be inspected. Inspection and certification may be performed in cooperation with any federal agency. To enable any such inspection and certification service, the department may charge uniform fees and may bring an action to recover the fees, including reasonable costs of collection.

(1n) ELECTRONIC PROCESSING. (a) Accept and process by electronic means applications and payments for licenses, permits, registrations and certificates that are issued by the department.

(b) Accept and process by electronic means requests and payments for goods and services that the department is authorized to provide.

(c) Promulgate rules specifying fees to cover the department's electronic processing costs under pars. (a) and (b). The fees under this paragraph are in addition to any other fees required to be paid to the department.

(1p) SERVICE TESTING RELATED TO DEPARTMENT PROGRAMS. Provide inspection services, diagnostic services and analytical or testing services upon request if the requested service is related to an authorized department program and serves program objectives. The department may charge a fee to cover its cost to provide the requested services.

(1q) MARKETING SERVICES. Provide marketing services upon request and charge a fee for those services, but the fee may not exceed the department's cost of providing those services.

(1r) TEST, TIME OR SEAL PASTEURIZERS. Upon request of a dairy plant operator or an applicant for a dairy plant license, test, time or seal pasteurizers. The department may charge a fee to cover its cost for the testing, timing or sealing service, regardless of whether the testing, timing or sealing is required by law.

(1s) STANDARD SAMPLES. Provide standard samples representing product or commodity grades and charge a fee for the samples, but the fee may not exceed the department's cost of providing those services.

(1w) REVIEW OF DAIRY OR FOOD PROCESSING EQUIPMENT AND PLANS. Upon request, review dairy or food processing equipment before its installation at, or review plans for the construction of, a dairy plant, as defined in s. 97.20 (1) (a), a dairy farm, as defined in s. 97.22 (1) (a), a food warehouse, as defined in s. 97.27 (1) (b), a food processing plant, as defined in s. 97.29 (1) (h), a retail food establishment, as defined in s. 97.30 (1) (c), or an establishment, as defined in s. 97.42 (1) (d). The department may charge a fee to cover its cost for providing such review service, regardless of whether the review is required by law.

(1z) INTEREST ON OVERDUE SERVICE FEES. Establish an interest rate for, and charge interest on, an overdue payment for fees for any service rendered under sub. (1m), (1p), (1r) or (1w). The department may charge interest on an overdue payment beginning on the day after the payment due date that is stated on the fee invoice sent to a recipient of such service. The department shall state the interest rate charged for an overdue payment on the fee invoice, and may charge the recipient of the service not more than that rate on an overdue payment. An interest rate established under this subsection may not exceed the amount of the interest rate under s. 814.04 (4).

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

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

(4) LAW ENFORCEMENT. At the request of the attorney general or of any district attorney, assist in the enforcement of any of the following statutes relating to trade: ss. 133.03 to 133.07, 133.10, 133.12 to 133.15, 133.17, 134.01, 185.94, 784.04 and 939.31.

(5) PUBLIC MARKETS; COOPERATIVE ASSOCIATIONS. (a) Give assistance in the organization, operation or reorganization of such public markets as are authorized by law, and of cooperative associations.

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

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

(b) Investigate the management of any cooperative association doing business in this state, and make the facts relating to the management of the cooperative association available to the members of the association, when a request for a management investigation has been filed with the department, signed by all of the directors or by at least 20% of the members of associations of less than 500 members or by at least 100 members of associations of 500 or

more members. The department shall fix and collect a fee for investigations under this paragraph, which shall be the actual cost of the investigation.

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

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

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

(8) PRESCRIBE CONDITIONS OF LICENSES. Except as provided in s. 93.135, issue any permit, certificate, registration or license on a temporary or conditional basis, contingent upon pertinent circumstances or acts. If the temporary or conditional permit, certificate, registration or license is conditioned upon compliance with chs. 93 to 100, ch. 126, a rule promulgated by the department or a regulation adopted under s. 97.41 (7) within a specified period of time and the condition is not met within the specified period, the permit, certificate, registration or license shall be void.

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

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

(10m) FARMLAND PRESERVATION COLLECTIONS. Enter into contracts to collect amounts owed to the state under ch. 91 as the result of the relinquishment of, or the release of land from, a farmland preservation agreement or as the result of the rezoning of land zoned for exclusive agricultural use.

(11) INTERAGENCY COOPERATION. (a) Cooperate with, and enter into agreements with, political subdivisions of this state or any department or agency of this state, other states, or of the United States for the purpose of carrying out its functions, and securing uniformity of regulations. Agreements may authorize the agents and employees of such agencies to enforce the laws and regulations administered by this department. When so engaged, agents and employees of cooperating agencies shall have the same powers as employees of the department and shall act under the direction and control of the department.

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

(12) FEDERAL AGRICULTURAL POLICY REFORM. Provide at least \$50,000 in each fiscal year to organizations to seek the reform of federal agricultural policy for the benefit of agricultural producers in this state. This subsection does not apply after June 30, 2005.

(13) PLANT PROTECTION AGREEMENTS. Enter into cooperative agreements with corporations, associations, foundations and individuals to carry out plant protection activities under ch. 94.

History: 1973 c. 206; 1975 c. 39; 1975 c. 94 s. 3; 1975 c. 414 s. 28; 1977 c. 181; 1979 c. 32 s. 92 (6), (12); 1979 c. 209; 1983 a. 203; 1985 a. 30 s. 42; 1989 a. 31, 174, 282; 1991 a. 39; 1993 a. 16; 1995 a. 400; 1997 a. 27, 191, 253; 1999 a. 9, 186; 2001 a. 16, 56, 103.

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

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

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

(3) PROMOTION OF AGRICULTURE. To promote the interests of agriculture, dairying, horticulture, manufacturing, commercial fishing and the domestic arts and to advertise Wisconsin and its dairy, food and agricultural products by conducting campaigns of education throughout the United States and in foreign markets. Such campaigns shall include the distribution of educational and advertising material concerning Wisconsin and its plant, animal, food and dairy products. The department shall coordinate efforts by the state to advertise and promote agricultural products of this state, with the department of commerce where appropriate. The department shall submit its request and plan for market development program expenditures for each biennium with its biennial budget request. The plan shall include the identification and priority of expenditures for each market development program activity.

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

(5) ADVICE TO UNIVERSITY OF WISCONSIN SYSTEM. To give advice to the state superintendent of public instruction as to the courses in agricultural economics to be given in the University of Wisconsin System.

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

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

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

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

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

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

(9) GROUNDWATER PROTECTION. To comply with the requirements of ch. 160 in the administration of any program, responsibility or activity assigned or delegated to it by law.

(10) ANIMAL HEALTH; QUARANTINE. To protect the health of animals located in this state and of humans residing in this state and to determine and employ the most efficient and practical means for the prevention, suppression, control, and eradication of communicable diseases among animals. For these purposes, the department may establish, maintain, enforce, and regulate such quarantine and such other measures relating to the importation, movement, and care of animals and their products, the disinfection of suspected localities and articles, and the disposition of animals, as the department determines are necessary. The definition of “communicable disease” in s. 990.01 (5g) does not apply to this subsection.

(10m) RULES FOR DOMESTIC ANIMALS. To promulgate rules specifying which animals are domestic animals for purposes of s. 169.01 (7). The rules shall specify that fur-bearing animals to which s. 29.627 applies are domestic animals.

(11) HUMANE ACTIVITIES. To cooperate with humane societies and assist duly appointed humane officers in the enforcement of the laws relating to humane education and the prevention of cruelty to animals.

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

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

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

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

(16m) LABORATORY FEES, OUT-OF-STATE USERS. To charge each out-of-state person receiving a service from any department laboratory a service fee, the amount of which equals at least 100% of the amount of the department’s costs to provide the laboratory service, including administrative and facility costs.

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

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

(c) To center the efforts of the department in the performance of its duties under this subsection upon the development of a centralized system of the cooperative marketing of dairy products

of Wisconsin. The department may at any time, however, with the approval of the governor, extend its operations to other farm products, for the purpose of developing similar centralized systems for the cooperative marketing of such Wisconsin farm products.

(d) To encourage the consumption of Wisconsin cheese by designing an official logotype to serve as a recognizable identification mark appropriate for affixation to and display in connection with cheese produced in this state as provided in s. 100.057.

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

(21) STATISTICS. To compile at least once in 2 years statistics relating to the dairy industry in this state, and for that purpose may forward to the owner or manager of any creamery, cheese factory, or condensary, or to any other person dealing in or manufacturing dairy products, forms calling for specific information relating to the dairy industry. In the case of cheese factories, the information called for shall include the number of pounds each of American, Swiss, limburger and brick cheese made in each factory. A person subject to this subsection shall, within 60 days from the receipt of the forms from the department, complete and return the forms to the department. All questions propounded and all information required by the forms shall be answered and furnished, so far as it is within the power of the person completing the form to answer the questions or furnish the information. The department may take other necessary steps to secure full and complete information and statistics relating to the dairy industry, and to promote the welfare of the dairy industry.

(24) ENFORCEMENT OF LAWS. To enforce chs. 88 and 93 to 100 and all other laws entrusted to its administration, and especially:

(a) To enforce the laws regarding the production, manufacture and sale, offering or exposing for sale or having in possession with intent to sell, of any dairy, food or drug product.

(b) To enforce the laws regarding the adulteration or misbranding of any articles of food, drink, condiment or drug.

(c) To inspect any milk, butter, cheese, lard, syrup, coffee, tea or other article of food, drink, condiment or drug made or offered for sale within this state which it may suspect or have reason to believe to be impure, unhealthful, misbranded, adulterated or counterfeit, or in any way unlawful.

(d) To prosecute or cause to be prosecuted any person engaged in the manufacture or sale, offering or exposing for sale or having in possession with intent to sell, of any adulterated dairy product or of any adulterated, misbranded, counterfeit, or otherwise unlawful article or articles of food, drink, condiment or drug.

(25) WORLD DAIRY CENTER AUTHORITY. To cooperate with the World Dairy Center Authority under ch. 235.

History: 1971 c. 125; 1975 c. 189, 323, 394; 1979 c. 34, 129, 221, 361; 1981 c. 20, 291; 1981 c. 391 s. 210; 1983 a. 410; 1985 a. 29; 1987 a. 27, 186; 1987 a. 399 ss. 307p, 443yx; 1987 a. 403; 1989 a. 56; 1991 a. 39, 269, 309; 1993 a. 216; 1995 a. 27 ss. 3554 to 3556, 9116 (5), 9145 (1); 1995 a. 79, 450; 1997 a. 27, 192; 1999 a. 107; 2001 a. 56, 107, 109.

Cross Reference: See also ATCP, Wis. adm. code.

93.075 Policy of cooperative marketing adopted. The history of the farm marketing problem in the state and nation, as well as throughout the world, points to a solution chiefly through cooperative marketing efforts of producers. It is, hence, declared to be the policy of this state, in advancing the general good and public welfare, to assist in the organization and development of cooperative associations for production and marketing purposes along lines of dairy and other farm products.

History: 1975 c. 394 s. 10; Stats. 1975 s. 93.075.

93.08 Access for law enforcement. In performing their duties or in enforcing the laws entrusted to their administration, the department and its authorized agents may do all of the following:

(1) Enter, within reasonable hours, any field, orchard, garden, packing ground, building, freight or express office, warehouse,

car, vessel, vehicle, room, cellar, storehouse, cold storage plant, packing house, stockyard, railroad yard or any other place of business, which it may be necessary or desirable for them to enter.

(2) Open any box, carton, parcel, package or other receptacle, inspect the contents thereof, and, upon payment or tender of the market value, take samples of any product or material contained therein.

(3) Inspect products and materials and collect and test samples of them.

History: 1989 a. 282.

Cross Reference: See also s. ATCP 21.02, Wis. adm. code.

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 Wis. 2d 255, 525 N.W.2d 758 (Ct. App. 1994).

This section authorizes the stop and search of vehicles transporting livestock in Wisconsin so long as certain constitutional safeguards are met. 77 Atty. Gen. 172.

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

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

(3) No standard shall apply to products or receptacles coming from outside the state but such products or receptacles may be required to be marked or tagged to indicate that they came from outside the state and to show any other fact regarding which marking or tagging may be required under this section; provided, that such products or receptacles, at the time when marking or tagging is required, have ceased to be in interstate commerce.

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

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

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

protection and any other state department, commission or official under this section.

(8) Whenever any standard or regulation under this section has become effective, no person marketing or having in his or her possession for commercial purposes any product or receptacle to which the standard is applicable shall represent such product or receptacle, unless in a manner authorized by the department, as being of any grade other than a grade contained in such standard, except as to products or receptacles included in subs. (2) and (3); and no person marketing or having in his or her possession for commercial purposes any product or receptacle to which the standard is applicable shall represent such product or receptacle as being of a grade contained in the standard, when as a matter of fact such product or receptacle is below the requirements of such grade and no person shall market or have in his or her possession for commercial purposes any product or receptacle unless the marking or tagging thereon conforms to the regulation prescribed under this section; and no person shall market or have in his or her possession for commercial purposes any product or receptacle, to which any such marking or tagging regulation is applicable, if such marking or tagging thereon is false or misleading; provided, that representing a product or receptacle as being of a grade contained in the standard, when as a matter of fact such product or receptacle is below the requirements of such grade, shall not be a violation of this section, if the product or receptacle bears the official certificate of an inspector licensed under s. 93.11; provided, further, that possession, under this section, shall not include possession by a carrier or other bailee.

(9) (a) Whenever the department finds that any person marketing or having in his or her possession any product or receptacle to which the standard is applicable has intentionally violated sub. (8), the department, after opportunity for hearing has been given to that person, may, by special order, do any of the following:

1. Revoke the person's right to represent any product or receptacle to which the standard is applicable as being of any grade contained in the standard.

2. Require the person to mark or tag the product or receptacle as provided in sub. (4).

(b) The department may, without hearing, suspend the right described in par. (a) 1. for a period not exceeding 10 days, pending investigation.

(c) The department may restore the right to any person from whom it has been revoked if the person gives satisfactory evidence warranting restoration.

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

History: 1977 c. 29 s. 1650m (4); 1993 a. 492; 1997 a. 253.

Cross Reference: See also ATCP, Wis. adm. code.

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

(2) Whenever the department has required any product or receptacle to bear the official certificate of an inspector licensed under s. 93.11, no person marketing or having in his or her possession for commercial purposes any such product or receptacle shall remove, mutilate or alter the official certificate thereon or represent such product or receptacle, unless in a manner authorized by the department, as being of any grade other than the grade designated by the official certificate thereon, except as to products or receptacles included in s. 93.09 (2) and (3); and no person shall market or have in his or her possession for commercial purposes any such product or receptacle unless such product or receptacle

bears the official certificate of an inspector licensed under s. 93.11, except as to products or receptacles included in s. 93.09 (2), (3) and (4); provided, that such a product or receptacle may be marketed or had in possession without an official certificate issued at the point of shipment if such product or receptacle is destined for shipment to a point within the state, where the shipper has arranged for the issuance of an official certificate; provided, further, that possession under this section, shall not include possession by a carrier or other bailee.

History: 1993 a. 492.

93.11 Licensing of inspectors. (1) Except as provided in s. 93.135, the department, upon presentation of satisfactory evidence that the applicant is competent, may issue a license to any person to certify the grade of food products or farm products or of receptacles therefor, for which standards have become effective under s. 93.09. The purpose of such certification may be either to enforce the standard or merely to furnish to an interested party an official statement of the grade. A certificate issued under this section, unless superseded by a finding as provided in sub. (4), shall be accepted in any court of this state as prima facie evidence of the facts to which the certificate relates.

(2) Applications for a license, or any renewal of a license, shall be submitted on forms prescribed by the department and be accompanied by a fee of \$25. All licenses, unless sooner rescinded or revoked, shall expire on September 30 of the 2nd year commencing after the date of issuance or renewal. As a condition to the issuance or renewal of a license, applicants shall demonstrate to the satisfaction of the department their competency to act as an inspector by education, training, experience or examination as the department requires.

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

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

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

(6) (a) The department, after opportunity for hearing has been given the licensee, may, by special order, revoke any license issued under this section, whenever the department finds any of the following:

1. That the licensee is incompetent.
2. That the licensee has made material false statements in order to obtain a license.
3. That the licensee has knowingly or carelessly issued any false or improper certificate of grade.
4. That the licensee has accepted money or other consideration, directly or indirectly, as compensation for any neglect or improper performance of duty.
5. That the licensee has violated chs. 93 to 100 or any regulation made under chs. 93 to 100.

(b) The department may, without hearing, suspend a licensee's right to act under this section for a period not exceeding 10 days, pending investigation.

(c) The department may restore the license of any person whose license has been revoked under this subsection if the person gives satisfactory evidence warranting restoration.

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

(8) Chapter 230 shall not apply to inspectors licensed under this section who receive no salary or are handled merely upon a fee basis.

History: 1975 c. 39; 1977 c. 196 s. 131; 1979 c. 129; 1993 a. 492; 1997 a. 191, 253; 1999 a. 83.

93.12 Laboratories, approval of. (1) It is the purpose of this section to assure the reliability and quality of manual and automated laboratory examinations made for the protection of the health of the public.

(2) Any laboratory that is established and operated to perform bacteriological or microscopic examinations of milk, water and food products for the purpose of protecting the health of the public shall apply to the department for an evaluation of the examinations and appropriate certification.

(3) The department shall designate which laboratory examinations it deems necessary for the protection of the health of the public. Substantial failure of any laboratory to show evidence of quality control procedures, sufficient to comply with current standards and practice as prescribed by the department, shall result in denial or revocation of the certificate of approval. The department shall provide for consultation on laboratory methods and procedures.

(4) The department, after conducting an evaluation for each specialty area and after receiving a fee for each specialty area from the laboratory, shall issue a certificate of approval to the laboratory covering those examinations which have met the minimum standards established by the department. The department shall issue an interim certificate of approval for an approved laboratory that applies for initial certification, which shall be valid for the remainder of the calendar year for which it is issued. Certification renewals shall be issued on a calendar-year basis. Specialty fees for certification of an initially certified laboratory and a certified laboratory that applies to expand its current certification with newly established specialties shall be prorated at one-twelfth of the annual fee for each month remaining in the calendar year for which the certificate of approval is issued. A certificate of approval shall be revoked by the department if the minimum standards established by the department for certification are not met within 2 successive evaluations. Fees collected under this subsection shall be credited to the appropriation under s. 20.115 (1) (gb).

(5) The department shall establish uniform minimum standards to be used in the evaluation and certification of laboratory examinations. The department shall submit any rules proposed under this subsection which affect the laboratory certification program under s. 299.11 to the department of natural resources and to the state laboratory of hygiene for review and comment. These rules may not take effect unless they are approved by the department of natural resources within 6 months after submission.

(6) Laboratories required to apply to the department under sub. (2) shall not operate without a certificate of approval. Any lab which operates without a certificate of approval shall be fined not less than \$100 nor more than \$1,000. Each day such violation continues shall constitute a separate offense.

(7) The department shall promulgate rules establishing a fee schedule to offset the cost of the certification of laboratories and the collection of fees under sub. (4).

(8) The department shall enter into a memorandum of understanding with the department of natural resources setting forth the responsibilities of each department in administering the labora-

tory certification programs under sub. (5) and s. 299.11. The memorandum of understanding shall include measures to be taken by each department to avoid duplication of application and compliance procedures for laboratory certification.

(9) The department shall recognize the certification or registration of a laboratory by the department of natural resources under s. 299.11 and shall accept the results of any test conducted by a laboratory certified or registered to conduct that category of test under that section.

History: 1975 c. 39, 198, 224; 1977 c. 29; 1979 c. 34; 1981 c. 291; 1983 a. 410; 1991 a. 178; 1993 a. 16; 1993 a. 27 s. 303; Stats. 1993 s. 252.22; 1995 a. 27 ss. 6324g to 6324k; Stats. 1995 s. 93.12; 1995 a. 227.

Cross Reference: See also ch. ATCP 77, Wis. adm. code.

93.135 License denial, nonrenewal, suspension or restriction based on failure to pay support. (1) Except as provided in sub. (1m), the department shall require each applicant who is an individual to provide the department with the applicant's social security number as a condition of issuing or renewing any of the following:

- (a) A license under s. 93.11.
- (am) A license under s. 93.35 (4).
- (b) A license under s. 94.10 (2), (3) or (3g).
- (bm) A license under s. 94.43.
- (c) A registration under s. 94.50 (2).
- (cm) A license under s. 94.64 (3).
- (d) A license under s. 94.65 (2).
- (dm) A license under s. 94.66 (2).
- (e) A license under s. 94.68 (1).
- (em) A license under s. 94.685.
- (f) A license under s. 94.703.
- (fm) A license under s. 94.704.
- (g) A certification under s. 94.705.
- (gm) A license under s. 94.72 (5).
- (gs) A registration under s. 95.60.
- (h) A license under s. 95.68 (2).
- (hm) A license under s. 95.69 (2).
- (i) A license under s. 95.71 (2).
- (im) A license under s. 95.72 (2).
- (j) A license under s. 97.17 (2).
- (jm) A license under s. 97.175 (2).
- (k) A license under s. 97.20 (2).
- (km) A license under s. 97.21 (2) or (3).
- (L) A license under s. 97.22 (2).
- (m) A license under s. 97.27 (2).
- (mm) A license under s. 97.29 (2).
- (n) A license under s. 97.30 (2).
- (nm) A license or registration certificate under s. 97.42 (2).
- (p) A license under s. 98.145.
- (pm) A license under s. 98.146.
- (q) A license under s. 98.16 (2).
- (qm) A license under s. 98.18 (1) (a).
- (r) A license under s. 99.02 (1).
- (rm) A license under s. 126.56.
- (s) A license under s. 126.26.
- (sm) A license under s. 126.11.

(1m) (a) If an individual who applies for the issuance or renewal of a license, registration, registration certificate or certification specified in sub. (1) does not have a social security number, the department shall require the applicant, as a condition of issuing or renewing the license, registration, registration certificate or certification, to submit a statement made or subscribed under oath or affirmation that the applicant does not have a social security number. The statement shall be in the form prescribed by the department of workforce development.

(b) A license, registration, registration certificate or certification specified in sub. (1) that is issued in reliance on a statement submitted under par. (a) is invalid if the statement is false.

(2) The department of agriculture, trade and consumer protection may not disclose any information received under sub. (1) to any person except to the department of workforce development in accordance with a memorandum of understanding under s. 49.857.

(3) The department shall deny an application for the issuance or renewal of a license, registration, registration certificate or certification specified in sub. (1) or shall suspend or restrict a license, registration, registration certificate or certification specified in sub. (1) for failure to make court-ordered payments of child or family support, maintenance, birth expenses, medical expenses or other expenses related to the support of a child or a former spouse or failure to comply, after appropriate notice, with a subpoena or warrant issued by the department of workforce development or a county child support agency under s. 59.53 (5) and relating to paternity or child support proceedings, as required in a memorandum of understanding under s. 49.857.

History: 1997 a. 191; 1999 a. 9; 2001 a. 16.

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

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

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

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

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

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

(3) No person shall refuse or fail to render any report or answer required under this section at such time and in such manner as the department may prescribe. No person shall refuse, neglect or fail to submit, for the purpose of inspection or copying, any document demanded under this section. No person shall willfully make any false entry or statement in any report or answer required or document demanded under this section. No person shall willfully fail to make full and true entries and statements in any report or answer required or document demanded under this section. No person shall, for the purpose of embarrassing the department in the conduct of any investigation, hearing or proceeding, remove out of the state or mutilate or alter any document. No person shall, except through judicial process, resist or obstruct any official or subordinate of the department in the exercise of the official's or subordinate's lawful authority.

History: 1993 a. 492.

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 resi-

dences. *Lundeen v. Dept. of Agriculture*, 189 Wis. 2d 255, 525 N.W.2d 758 (Ct. App. 1994).

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

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

93.17 Immunity; perjury. (1) Except as to a hearing or proceeding under s. 93.06 (3) or as to an investigation preliminary thereto, no person may be excused from testifying or rendering a report or answer or producing or submitting a document, in response to a demand made under s. 93.14 or 93.15, upon the ground or for the reason that the testimony or report or answer or document required of him or her may tend to incriminate him or her or subject him or her to a penalty or forfeiture; but no natural person may be prosecuted or subjected to any penalty or forfeiture for or on account of testifying or rendering a report or answer or producing or submitting a document, in response to a demand made under s. 93.14 or 93.15, and no testimony so given or report or answer so rendered or document so produced or submitted may be received against him or her in any criminal action, investigation or proceeding; provided, that no natural person so testifying may be exempt from prosecution and punishment for perjury committed by him or her in so testifying or for misrepresentation or concealment committed by him or her in so rendering a report or answer or so producing or submitting a document.

(2) The immunity provided under sub. (1) is subject to the restrictions under s. 972.085.

History: 1989 a. 122.

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

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

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

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

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

(6) The testimony presented and the proceedings at hearings shall be taken by a stenographic reporter or otherwise recorded and when necessary shall be transcribed. The secretary shall make

his or her findings and determination thereon. The department shall make rules of procedure and practice not inconsistent with any law governing such procedure or practice.

History: 1975 c. 117; 1993 a. 492.

93.20 Enforcement costs. (1) DEFINITION. In this section, "action" means an action that is commenced in court by, or on behalf of, the department of agriculture, trade and consumer protection to enforce chs. 88, 91 to 100 or 126.

(2) ENFORCEMENT COSTS ORDER. If a court imposes costs under s. 814.04 or 973.06 against a defendant in an action, the court may order that defendant to pay to the department any of the enforcement costs specified under sub. (3) that the department has incurred. The prosecutor shall present evidence of the enforcement costs and the defendant shall be given an opportunity to refute that evidence. If any cost that a court orders a defendant to pay under this section may also be recovered by the department under s. 814.04 or 973.06, the department may recover that cost only under this section, but that cost is not limited to the amounts specified in s. 814.04 or 973.06.

(3) ENFORCEMENT COSTS AVAILABLE. The court may include as an enforcement cost in an order under sub. (2), the department's reasonable cost of any of the following:

- (a) Expert witnesses who are not employees of the department.
- (b) Depositions, transcripts or photocopying.

(c) Any investigation, study, analysis, engineering report, test or project that the court finds necessary for the preparation of the action, including the reasonable cost of compensation of laboratory personnel who are employed by the department, but excluding the cost of any other department personnel compensation.

(4) RESTRICTION ON USE OF ENFORCEMENT COSTS. The department shall use the amounts received for enforcement costs in the appropriation under s. 20.115 (8) (gm) that consist of laboratory personnel compensation to purchase laboratory equipment, supplies or service.

History: 1991 a. 39; 1993 a. 213; 1995 a. 216; 2001 a. 16.

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

(2) OBSTRUCTING OFFICERS. Any person who obstructs or interferes with an officer or employee of the department in the performance of his or her duty or who refuses to permit access or sampling under s. 93.08:

(a) May be fined not more than \$1,000 or imprisoned for not more than 6 months or both.

(b) In lieu of the penalty under par. (a), may be required to forfeit not more than \$2,000.

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

(4) FAILURE TO OBEY ORDERS. Any person who willfully violates s. 93.14 (3) or 93.15 (3), or who willfully violates or refuses, neglects or fails to obey any order issued under s. 93.06 (3), shall, for each offense, be fined not more than \$5,000 or imprisoned for not more than one year in the county jail or both.

(5) LATE FILING FEE. (a) In this subsection, "license" means a permit, certificate, registration or license issued by the department under chs. 91 to 100 or ch. 126.

(b) A person who files an application for the renewal or reissuance of a license after the license has expired shall pay, in addition to the fee for the license, an additional fee equal to 20% of the license fee or \$5, whichever is greater. For purposes of this section, an application for a license shall not be considered an

application for the renewal or reissuance of the license if the application is filed more than one year after the date of expiration of the original license.

(6) FRAUDULENT USE OF OFFICIAL SEALS. Any person who falsifies, alters, forges, counterfeits or fraudulently issues or uses any official certificate, seal, stamp or mark of the department or any official sealing, stamping or marking device of the department:

(a) May be fined not more than \$10,000 or imprisoned for not more than one year in the county jail or both.

(b) In lieu of the penalty under par. (a), may be required to forfeit not more than \$10,000.

History: 1989 a. 282; 1993 a. 16; 1997 a. 253; 2001 a. 16.

93.22 Enforcement provisions. (1) In cases arising under chs. 88 and 93 to 100, the department may be represented by its attorney.

(2) The department may, with the approval of the governor, appoint special counsel to prosecute or assist in the prosecution of any case arising under chs. 88 and 93 to 100. The cost of such special counsel shall be charged to the appropriation for the department.

(3) In any criminal or civil action under chs. 88 and 93 to 100, any exception, exemption, proviso, excuse or qualification contained in any of said chapters, or in any order, standard or regulation thereunder, may be proved by the defendant, but need not be specified or negated in the information or complaint, and, if so specified or negated, no proof in relation to the matters so specified or negated, shall be required of the plaintiff.

History: 1977 c. 29 s. 1650m (4); 1991 a. 309; 1993 a. 213.

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

(a) 1. To each county, and any organized agricultural society, association, or board in the state that complies with the requirements of this section, 50% of the amount actually paid in net premiums in the junior division at its annual fair upon livestock, articles of production, educational exhibits, agricultural implements and tools, domestic manufactures, mechanical implements, and productions, but not more than \$10,000 per fair, subject to all of the following:

a. No single premium paid shall exceed the sum of \$35 to a single person, or \$75 for any town or other group premium.

b. No fair, association, or board shall receive state aid unless its premium list, entry fees, and charges conform to uniform premium lists and other rules established under subd. 2., both as to premiums offered, amounts to be paid, entry fees to be charged, and all other charges for exhibiting.

2. In order to have a more equitable distribution of state aid among fairs and to effect wider participation and interest by the public in exhibits, the department may prescribe uniform premium lists setting forth classes of exhibits which will be approved for the purposes of state aid, premium awards in such classes and entry qualifications, fees and charges for exhibitors. All fairs shall receive aid in the same manner and there may be no restrictions on the number of fairs at which an exhibitor may participate and be eligible to receive state-aided premium awards.

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

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

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

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

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

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

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

(j) 1. Subject to subs. 2. to 5., to each county, and any organized agricultural society, association, or board in the state that complies with the requirements of this section, for the purpose of

encouraging and fostering the breeding, development, and improvement of standard bred horses in this state, 50% of each purse of \$400 and 50% of each purse of \$500 paid by it to the owners of the successful contestants in a 2-year-old trot, 2-year-old pace, 3-year-old trot and 3-year-old pace.

2. Any organization described in subd. 1. may stage any of the events described in subd. 1. but shall not receive state aid for more than one each of the events described in subd. 1. in any calendar year.

3. No colt shall be eligible to enter or start in any event described in subd. 1. unless the colt is owned by one or more qualified electors of this state or the colt has trained continuously within the state for not less than 60 days prior to June 15 of the year in which the event is contested. No 2-year-old or 3-year-old colt shall be eligible to enter or start in any event described in subd. 1., unless the colt is owned, raised, and trained by one or more qualified electors of this state, and unless it is the foal of a mare owned at the time of foaling by one or more qualified electors of this state.

4. The required number of entries and starters in any event described in subd. 1. shall be 6 to enter and 4 to start. An owner may enter any number of colts but shall not be allowed to start more than 2 colts in the same event. Entry fees for each colt shall not exceed 2% of the purse and shall be payable on or before a closing date to be fixed by the organization staging the event. The organization may, at its option, increase the purse and may also add the entrance money to the purse and divide the added sums among the starters as it sees fit. Money divisions and conditions other than those prescribed in this paragraph shall be uniform throughout the state and shall be fixed annually for the next succeeding year by a joint resolution adopted by the boards of directors of the Wisconsin Breeders and Harness Horse Association and Wisconsin Association of Fairs, and certified to the department on or before December 31 in each year. If the boards of directors of the Wisconsin Breeders and Harness Horse Association and Wisconsin Association of Fairs fail in any year to adopt and certify the resolution required under this subdivision, the money divisions and conditions for the next succeeding year shall be fixed by the department.

5. On or before December 31 in each year, the county clerk, or the person appointed to file the statement under this subdivision by the society, association, or board claiming state aid, shall file with the department, on forms provided by the department, a statement, verified on oath, showing a true and correct summary of the results of each colt event, the name and address of, and the amount paid to, the owner of each colt, and that the event was conducted as provided in this paragraph. Thereupon, state aid shall be certified and paid as provided by par. (f).

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

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

(4) POLICE POWER. The department and the principal officers of the Northern Wisconsin state fair and of any county agricultural or industrial society have full jurisdiction and control of the grounds on which the department or society may exhibit, and all the streets and alleys and other grounds adjacent to the grounds during exhibitions, so far as may be necessary to exclude from there all other exhibitions, booths, stands or other temporary places for the retail or sale of any kind of alcohol beverages or other articles that they deem objectionable. The department, the president of any such society, or, in the president's absence, any vice president, may appoint necessary police officers to assist in preserving the peace and enforcing the regulations upon the ground and adjacent streets, who, for this purpose, shall have all the powers of a constable and be entitled to similar fees.

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

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

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

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

(8) PENALTIES. Any person violating this section may be fined not more than \$200 or imprisoned not more than 6 months or both. **History:** 1971 c. 125 s. 215; 1971 c. 211 s. 126; 1975 c. 308, 421; 1981 c. 79 s. 17; 1985 a. 10, 135; 1987 a. 283; 1989 a. 56; 1991 a. 39; 1993 a. 492; 2001 a. 16, 104, 107; 2003 a. 33.

Cross Reference: See also s. ATCP 160.93, Wis. adm. code.

93.29 Exposition center grants. (1) Beginning in fiscal year 1994-95, the department may grant \$240,000 in each fiscal year to Dane County to assist Dane County in paying for the expansion of and ongoing costs of operating an exposition center and for the costs of hosting the world dairy expo at the exposition center if all of the following conditions are met:

(a) Dane County completes the expansion of the exposition center before June 1, 1995.

(b) Dane County enters into a written agreement with the department, before receiving the grant proceeds in each fiscal year, that specifies the conditions for the use of the grant proceeds, including reporting and auditing requirements.

(c) Dane County agrees to submit an itemized accounting, verified on oath, to the department within 30 days after the last day of the fiscal year in which Dane County receives a grant, that states how the grant proceeds were used.

(2) The department shall make the grants under sub. (1) from the appropriation under s. 20.115 (4) (f).

History: 1993 a. 16.

93.30 World dairy expo. (1) The secretary shall approve any plans for the expenditure of appropriations under s. 20.115 (4) (e) to the World Dairy Expo, Inc., for activities that expand business opportunities for the persons of the dairy industry that are located in this state. Of the amounts appropriated under s. 20.115 (4) (e), \$33,250 in each fiscal year may be expended only to the extent that a county, city, village, or town pays to World Dairy Expo, Inc., an amount that is not less than 50% of the department's payment.

(2) Any moneys received by World Dairy Expo, Inc., under this section shall be used only for the purposes described in sub. (1).

(3) Not later than 30 days after the close of the exposition each year World Dairy Expo, Inc., shall file with the department, on forms provided by it, an itemized account verified on oath, showing amounts actually paid or to be paid. The verified account shall correspond with the plans approved by the secretary under sub. (1). On or before December 31 of the year in which the exposition is held, World Dairy Expo, Inc., shall furnish the department with a statement of receipts and disbursements, attendance, and such other information relating to the exposition as the department may require. Upon receipt of such statement the department shall pay World Dairy Expo, Inc., the aid due for the preceding year.

History: 1973 c. 333; 1975 c. 394 s. 8; Stats. 1975 s. 93.30; 1989 a. 31; 2001 a. 103.

93.31 Livestock breeders association. The secretary of the Wisconsin livestock breeders association shall on and after July 1 of each year make a report to the department, signed by the president, treasurer, and secretary of the association, setting forth in detail the receipts and disbursements of the association for the preceding fiscal year in such form and detail together with such other information as the department may require. On receipt of such reports, if the department is satisfied that the business of the association has been efficiently conducted during the preceding fiscal year and in the interest of and for the promotion of the special agricultural interests of the state and for the purpose for which the association was organized and if the final statement shows that all the receipts together with the state aid have been accounted for and disbursed for the proper and necessary purposes of the association, and in accordance with the laws of the state, then the department shall file a certificate with the secretary of administration and he or she shall pay to the treasurer of the association the amount of the appropriations made available for the association by s. 20.115 (4) (a) for the conduct of junior livestock shows and other livestock educational programs. The association may upon application to the state purchasing agent, upon such terms as he or she may require, obtain printing for the association under the state contract.

History: 1971 c. 125; 1975 c. 394 s. 25; Stats. 1975 s. 93.31; 1977 c. 29 s. 1650m (4); 1977 c. 273; 1991 a. 39; 1993 a. 213; 1999 a. 5; 2003 a. 33.

93.32 Agriculture in the classroom program. From the appropriation account under s. 20.115 (4) (q), the department shall provide grants to the organization that conducts an agriculture in the classroom program in cooperation with the federal department of agriculture to help teachers educate students about agriculture.

History: 2001 a. 16.

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

(b) "Operation" means the performance of any weather modification activity undertaken for the purpose of producing or attempting to produce any form of modifying effect upon the

weather within a specified geographical area over a specified time interval.

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

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

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

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

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

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

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

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

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

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

(a) Incompetency.

(b) Dishonest practice.

(c) False or fraudulent representation in obtaining a permit.

(d) Failure to comply with any of the provisions of this section or any rules promulgated under this section.

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

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

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

1. Applicant's name and address.

2. Name and address of the person on whose behalf the operation is to be conducted.

3. Indication that the applicant holds, or if the applicant is an organization rather than an individual, demonstration that the individual in control of the project holds a valid license issued under sub. (4).

4. Proof of financial responsibility under sub. (7).

5. A complete operational plan for the project including a specific statement of the nature and object of the plan, a map of the proposed operating area which specifies the primary target area and the area reasonably expected to be affected, a statement of the approximate time of the operation, a list of materials and methods to be used in conducting the operation, an emergency shutdown procedure which states conditions under which operations must be suspended because of possible danger to the public health, safety and welfare or to the environment.

6. Any other detailed information required by the department.

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

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

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

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

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

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

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

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

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

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

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

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

(h) A separate permit is required for each operation. When an operation is conducted under contract, a permit is required for each separate contract. Each permit or renewal permit shall expire one year from the date of its issuance. The department may conditionally approve a project for a continuous time period in excess of one year's duration. Permits for the operations must be renewed annually. In approving the renewal of a permit for a continuous program, the department shall review and approve the permittee's operational record, and then may issue a renewal of the permit for the operation to continue.

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

(7) PROOF OF FINANCIAL RESPONSIBILITY. Proof of financial responsibility is made by showing to the satisfaction of the department that the permittee has the ability to respond in damages to

liability which might reasonably result from the operation for which the permit is sought. Proof of financial responsibility may, but shall not be required to, be shown by:

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

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

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

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

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

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

(c) It shall be the responsibility of the permittee to notify the department of any emergency which can reasonably be foreseen, or of any existing emergency situations which might be caused or affected by the operation. Failure by the permittee to so notify the department of any existing emergency, or any impending emergency which should have been foreseen, may be grounds, at the discretion of the department, for revocation of the permit and of the license of the person controlling the operation.

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

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

(10) RESTORATION OF LICENSE OR PERMIT. (a) At any time after the suspension or revocation of a license or permit under sub. (9) (a) the department may restore it to the licensee or permittee upon a finding that the requirements for issuance of an original license or permit have been met by the licensee or permittee.

(b) At any time after the refusal to renew a license or permit under sub. (9) (b) the department may renew it upon a finding that the requirements for issuance of an original license or permit have been met by the licensee or permittee.

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

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

(b) Record and report forms may be developed by the department showing the method of weather modification employed in the operation, the type of equipment used, the kind and amount of each material used, the times and places the equipment was oper-

ated, the times when there was modifiable weather but the permittee did not operate and the reasons for not operating, the name and address of each individual, other than the licensee, who participates or assists in the operation, the manner in which operations do not conform to the conditions and limits of the permit as established under sub. (6) or as modified under sub. (8), weather observations and records specified by the department and any other necessary data the department may, by rule, require.

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

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

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

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

(c) Except as provided in pars. (a) and (b) and in sub. (13) nothing in this section shall prevent any person adversely affected by a weather modification operation from recovering damages resulting from intentional harmful actions or negligent conduct by a permittee.

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

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

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

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

History: 1977 c. 87; 1981 c. 237; 1997 a. 191.

Cross Reference: See also s. ATCP 54.06, Wis. adm. code.

93.40 Dairy promotion. (1) DUTIES. The department shall:

(a) Promote the sale of Wisconsin dairy products.

(b) Stimulate, promote, advertise and publicize the dairy industry in this state.

(c) Create an accurate national and international image of the state dairy industry.

(d) Encourage all farmers and dairy businesses to participate in available education programs.

(e) Encourage and cooperate with communities, groups and individuals in the state in pursuing the dairy promotion objectives of the department.

(f) Coordinate and stimulate the orderly and ecologically sound development of the dairy industry throughout the state.

(g) Promote the growth of the dairy industry through research, planning and assistance.

(2) SALES. The department shall annually formulate a plan to encourage the marketing of dairy products and the promotion of the dairy industry of the state for the ensuing year, and shall implement the plan. The department shall cooperate with farmers, dairy

businesses and organizations to assure coordination with private plans and programs.

(3) SERVICES. The department may:

(a) Collect and disseminate information as to the availability and the economic and nutritional advantages of dairy products.

(b) Establish, manage and operate permanent or temporary dairy promotion centers to be operated by the department in cooperation with the department of tourism tourist information centers along major highways into the state.

(c) Provide advice and service to persons or groups engaged in the dairy industry.

(d) Conduct research into the status and needs of the dairy industry.

(4) ADVERTISING. The department shall plan and conduct a program of advertising designed to promote the dairy industry. Any contracts engaging a private agency to conduct an advertising or promotion program under this subsection shall reserve to the department the right to terminate the contract if the service is unsatisfactory to the department. The department shall encourage and coordinate the efforts of public and private organizations to publicize the dairy industry. Any public or private organization not organized or incorporated for profit may apply to the department for advertising funds under this section. Prior to applying for these funds, each prospective applicant shall submit a plan and budget specifying the media to be used, the market to be approached, the dairy product or component of the dairy industry to be promoted and the applicant's estimated expenditures and receipts for the various projects within the plan. The department may promulgate rules imposing additional requirements to ensure that public funds are efficiently used to promote dairy products and the dairy industry of this state.

History: 1981 c. 357; 1987 a. 186; 1991 a. 39; 1995 a. 27.

Cross Reference: See also s. ATCP 161.20, Wis. adm. code.

93.41 Stray voltage. (1) The department shall participate in the stray voltage program established under s. 196.857.

(2) The department shall develop informational and educational materials on stray voltage and provide those materials to the public in cooperation with the University of Wisconsin–Extension and the technical college system board and shall study the need for any other state action not in effect under this section or s. 196.857 necessary to protect the public health and welfare from the harmful effects of stray voltage.

(3) The department shall impose annual fees upon rural electric cooperatives organized under ch. 185. The amount of the fees shall total the amount appropriated under s. 20.115 (3) (jm). The fees received under this subsection shall be credited to the appropriation account under s. 20.115 (3) (jm).

History: 1987 a. 27, 399; 1991 a. 39; 1993 a. 16, 399; 1995 a. 27; 1997 a. 27; 2001 a. 103.

93.42 Center for international agribusiness marketing. (1) The department shall establish and operate a center for international agribusiness marketing. The center shall promote the export of this state's agricultural and agribusiness products in foreign markets by:

(a) Assisting in the performance of market research and planning to identify international marketing opportunities for the state's products and firms and providing technical assistance on international marketing to individual businesses.

(b) Organizing and participating in trade shows and trade missions to foreign markets.

(c) Coordinating federal, regional, state and local marketing information which may lead to export opportunities for the state's products.

(d) Assisting persons considering direct investments, joint ventures, licensing or other business arrangements for the production of agribusiness products in this state.

(e) Cooperating with the department of commerce in promoting the state's products through the state's foreign trade offices.

(3) No later than the first day of the 7th month beginning after July 29, 1995, the department and the department of commerce shall enter into a memorandum of understanding that includes a strategic plan for international agribusiness marketing and development and that specifies how the departments will coordinate their promotional efforts relating to agricultural and agribusiness products.

History: 1985 a. 58; 1995 a. 27 ss. 3566, 3566e, 9116 (5).

93.44 Commodity promotion. (1) The department shall initiate projects to promote commodities produced in this state.

(2) The department shall allow all products and commodities produced or manufactured in this state that meet the standards established by the department to be included in the department's promotional campaign that uses the phrase "Something Special from Wisconsin", which phrase is a certified mark that is registered under federal law. The department may establish standards to be used to prohibit or limit the use of the certified mark to preserve its marketing value and significance. The standards may prohibit or limit the use of the certified mark based upon the grade or quality of a product or commodity and the standards may prohibit the use of the certified mark by a product or commodity which imitates a product or commodity for which there is a standard of identity established under state or federal law.

(3) The department shall develop at least one slogan or logo, or both, for the promotion of Wisconsin agricultural products for display on signs placed by the department of transportation under s. 86.19 (1m).

(4) The department by rule may establish a fee for the use of the mark and any slogan or logo under this section. The fees shall be credited to the appropriation under s. 20.115 (3) (L).

History: 1981 c. 357; 1983 a. 92; 1991 a. 39.

93.46 Agricultural diversification. (1) The department shall establish an agricultural diversification program and shall do all of the following:

(a) Conduct market research and develop long-range plans to determine potential for the production and marketing of agricultural crops and livestock.

(am) Jointly with the department of commerce, conduct research and develop long-range plans to promote and establish deer farms.

(b) Provide assistance to individuals and organizations on marketing strategies, agricultural product processing and other matters related to agricultural diversification.

(c) Coordinate the agricultural diversification program with technical assistance programs of other agencies.

(d) Promote and assist the development and use of industrial and commercial products from agricultural commodities and forestry products, including alternative fuels produced from agricultural source stocks.

(1m) (a) The department shall promote the development and growth of commercial aquaculture in this state by doing all of the following:

1. Providing advice, service and training to persons who are interested in the commercial aquaculture industry.

2. Coordinating the aquaculture activities of the department with the aquaculture activities of the department of natural resources and the University of Wisconsin System.

3. Conducting meetings on a quarterly basis between representatives of the department, the department of natural resources and the University of Wisconsin System to exchange information regarding the progress of their efforts to promote commercial aquaculture in this state.

(b) The department of natural resources shall assist persons in obtaining any license or approval required by any state or federal agency to conduct a commercial aquaculture operation.

(c) The University of Wisconsin System shall, in cooperation with the commercial aquaculture industry, conduct applied and

on-site research, outreach activities and on-site demonstrations relating to commercial aquaculture in this state.

(2) (a) The department shall make agricultural research and development grants. The department may provide grants to fund demonstration projects, feasibility analyses and applied research directed toward new or alternative technologies and practices that will stimulate agricultural development and economic activity.

(b) The department may not award a grant under this subsection unless the grant is for a project conducted in this state that has at least one of the following purposes:

1. Creation of jobs in the agricultural industry.

2. New capital investment and expansion in the agricultural industry.

3. Agricultural product market development and expansion.

4. Diversification and expansion of the production, processing and distribution of agricultural products.

5. Commercial application of new technologies or practices related to agricultural products.

6. Increased use of surplus agricultural products.

7. Improvement of the competitive position of this state's agricultural industry.

8. Efficient use of farmland and other agricultural resources.

(c) The department may not fund any project under this subsection if the proposed length of the project exceeds 3 years. The total funding to a single project under this subsection may not exceed \$50,000.

(d) During the 1993–95 fiscal biennium, the department shall award grants from the appropriation under s. 20.115 (4) (c) to support applied research and development projects related to commercial aquaculture development. The moneys provided under this paragraph may be granted to any collaborative public or private sector project. A grant under this paragraph may not exceed 50% of the cost of the project.

History: 1989 a. 31; 1991 a. 39; 1993 a. 403, 414; 1995 a. 27 s. 9116 (5).

Cross Reference: See also s. ATCP 161.01, Wis. adm. code.

93.47 Sustainable agriculture grant program. (1) In this section, "sustainable agriculture" means an agricultural method, practice or system that attempts to use and maintain renewable local physical, biological, social and other resources and minimize the need for energy inputs and other purchased, nonrenewable inputs.

(2) The department may award grants from the appropriation accounts under s. 20.115 (4) (c) and (8) (g) to individuals or organizations to fund demonstration projects designed to encourage the use of sustainable agriculture. The department shall promulgate rules to govern the sustainable agriculture grant program under this section.

History: 1993 a. 16; 1995 a. 27; 1997 a. 27; 2001 a. 16.

Cross Reference: See also s. ATCP 161.01, Wis. adm. code.

93.50 Farm mediation and arbitration program.

(1) DEFINITIONS. In this section:

(a) "Action" means a court action involving a dispute described in sub. (3) (am) 2. to 6. in which at least one party is a farmer or a court action by a creditor against a farmer for payment of a debt; to enforce or foreclose a security interest, lien or mortgage; or to repossess or declare a creditor's interest in real property. "Action" includes garnishment, replevin, execution of judgment, involuntary receivership and supplementary creditor's proceedings.

(am) "Agricultural property" means real property that is used principally for farming, real property that is a farmer's principal residence and any land contiguous to the residence, personal property that is used as security to finance farming or personal property that is used for farming.

(c) "Creditor" means any person who has a claim against agricultural property or against a farmer affecting the farmer's agricultural property, whether the claim is matured or unmatured, liquidated or unliquidated, secured or unsecured, fixed or

contingent. “Creditor” includes the county treasurer of a county in which agricultural property is located if property taxes, special assessments that have been settled in full by the county under s. 74.29, special charges or special taxes levied or assessed against the agricultural property are subject to a tax certificate issued under s. 74.57.

(d) “Farmer” means a farmer, as defined in s. 102.04 (3), who owns or leases land that is agricultural property and whose gross sales of farm products for the preceding year equaled or exceeded the product of 2,088 multiplied by the federal minimum hourly wage under 29 USC 206 (a) 1., except that the department may waive the gross sales requirement if the department determines that extraordinary personal circumstances warrant waiver.

(e) “Farming” has the meaning given under s. 102.04 (3).

(f) “Livestock feeding contract” means an agreement between a farmer and another person under which one party cares for and feeds livestock owned by the other party.

(g) “Procurement contract” has the meaning given for “vegetable procurement contract” in s. 126.55 (15).

(2) MEDIATORS AND ARBITRATORS. (a) *Selection of mediators.* The department shall select as mediators persons who have the character and ability to serve as mediators and who have knowledge of financial or agricultural matters or of mediation processes. The department shall ensure that each mediator receives sufficient training in mediation processes, resolving conflicts, farm credit and other subjects to develop or maintain the skills necessary to perform his or her functions under this section.

(am) *Selection of arbitrators.* The department shall select as arbitrators persons who have the character and ability to serve as arbitrators and who have knowledge of arbitration or other conflict resolution processes. The department may provide training in arbitration processes, resolving conflicts or agricultural issues as part of process of selecting arbitrators or to arbitrators selected by the department to enable arbitrators to maintain the skills necessary to perform their functions under this section.

(b) *Compensation of mediators and arbitrators.* Mediators and arbitrators shall be compensated for travel and other necessary expenses in amounts approved by the department.

(c) *Immunity of mediators and arbitrators.* Mediators and arbitrators are immune from civil liability for any act or omission within the scope of their performance of their powers and duties under this section.

(d) *Forms and publicity.* The department shall prepare all forms necessary for the administration of this section and shall ensure that forms are disseminated and that the availability of mediation and arbitration under this section is publicized.

(e) *Exclusion from open records law.* All mediators and arbitrators shall keep confidential all information and records obtained in conducting mediation and arbitration. The department shall keep confidential all information and records that may serve to identify any party to mediation and arbitration under this section. Any information required to be kept confidential under this paragraph may be disclosed if the department and the parties agree to disclosure.

(f) *Rule making.* The department may promulgate rules necessary to implement this section. The department may promulgate rules defining owners and creditors of agriculturally related businesses and permitting owners and creditors of such businesses to participate in mediation and arbitration subject to the same terms and conditions applicable to farmers and creditors under this section.

(2m) SUSPENSION OF COURT ACTION TO ALLOW FOR VOLUNTARY MEDIATION OR ARBITRATION. (a) During the pendency of any action, the court may, upon the written stipulation of all parties to the action that they wish to engage in mediation or arbitration under this section, enter an order suspending the action.

(b) A suspension order under par. (a) suspends all orders and proceedings for the time period specified in the suspension order.

In specifying the time period, the court shall exercise its discretion for the purpose of permitting the parties to engage in mediation or arbitration without prejudice to the rights of any person. The suspension order may include such other terms and conditions as the court may deem appropriate. The suspension order may be revoked upon motion of any person or upon motion of the court.

(c) If all parties to the action agree, by written stipulation, that all issues before the court are resolved by mediation or arbitration under this section, the court shall dismiss the action.

(d) If the parties do not agree under par. (c) or if the court revokes the suspension order under par. (b), the action shall proceed as if no mediation or arbitration had been attempted.

(3) MEDIATION PROCESS. (a) *Participation in mediation.* A farmer or a person having a dispute with a farmer who wishes to resolve a dispute between them, either before an action has been initiated to which they are parties or after entry of a suspension order in an action to which they are parties under sub. (2m), may participate in mediation under this section in accordance with this subsection if the dispute is of a kind specified in par. (am).

(am) *Disputes that may be mediated.* The following kinds of disputes may be mediated under this section:

1. A dispute between a farmer and a creditor involving the farmer’s agricultural property and the creditor’s claim affecting the agricultural property.

2. A dispute over a procurement contract.

3. A dispute over a livestock feeding contract.

4. A dispute in which one party alleges that an action by, or condition of the property of, the other party is a nuisance.

5. A dispute involving air, water or soil contamination or other environmental issues.

6. A kind of dispute specified as eligible for mediation by the department by rule.

7. A dispute that is not specified under subs. 1. to 6. if all of the parties to the dispute request mediation of the dispute.

(b) *Request for mediation; agreement to mediate.* To participate in mediation, the farmer or other party to a dispute described in par. (am) shall submit a request for mediation to the department on forms prepared by the department. The department may not proceed under this section until the farmer and the other party have submitted an agreement to mediate.

(c) *Selection of mediator.* If the department has obtained the agreement under par. (b), the farmer and the other party may request the department to provide the names, mailing addresses and qualifications of up to 3 mediators located in the geographical area in which the agricultural property or farmer is located. The parties shall select a mediator or, upon request of the parties, the department shall designate a mediator for the parties.

(f) *Mediation.* The function of the mediator is to encourage a voluntary settlement among the parties. The mediator may not compel a settlement. The mediator shall schedule meetings of the parties, direct the parties to prepare for the meetings, attempt to achieve a mediated resolution to the issues among the parties and, if the parties request, assist the parties in preparing a written agreement. All mediation meetings shall be held in this state and be conducted under the laws of this state.

(g) *Effect of mediation.* The parties may at any time withdraw from mediation. The parties have full responsibility for reaching and enforcing any agreement among them. A mediation agreement may include an agreement for the payment of property taxes, special assessments that have been settled in full by the county under s. 74.29, special charges or special taxes assessed against agricultural property that are subject to a tax certificate issued under s. 74.57 in installments, as long as the agreement is not inconsistent with county board policy. After the expiration of the time period specified in the suspension order under sub. (2m), the parties may no longer participate in the mediation process regard-

ing the same subject matter under this section unless the parties and the mediator agree to continue the mediation.

(4) ARBITRATION PROCESS. (a) *Disputes for arbitration.* A party to a procurement contract that contains an agreement to submit contract disputes to arbitration wishing to resolve a dispute over the procurement contract or a farmer or creditor wishing to resolve a dispute between them involving the farmer's agricultural property and the creditor's interest in a mortgage, land contract, lien, security interest or judgment affecting the agricultural property, either before an action has been initiated to which they are parties or after entry of a suspension order in an action to which they are parties under sub. (2m), may participate in arbitration under this section in accordance with this subsection and subject to ch. 788.

(b) *Request for arbitration; agreement to arbitrate.* To participate in arbitration, the farmer and other party under par. (a) shall submit a request for arbitration to the department on a form prepared by the department. After receipt of the request, if the parties wish to proceed to arbitration under this subsection, the department shall require the parties to enter into an agreement to binding arbitration on a form prepared by the department.

(c) *Selection of arbitrator.* After the department has obtained the agreement under par. (b), the farmer and the other party may request the department to provide the names, mailing addresses and qualifications of up to 3 arbitrators located in the geographical area in which the agricultural property or farmer is located. The parties shall select an arbitrator or, upon request of the parties, the department shall designate an arbitrator for the parties.

(5) OTHER CREDITORS; NO DELAY. With respect to mediation or arbitration between parties before an action has been initiated to which they are parties, no agreement to mediate or to arbitrate, or the fact that mediation or arbitration is currently occurring, may have the effect of delaying, postponing or extending any time limits in any legal proceeding commenced to enforce a mortgage, land contract, lien, security interest or judgment commenced by a creditor other than the creditor or creditors participating in the mediation or arbitration.

History: 1989 a. 31; 1991 a. 39; 1993 a. 249, 250; 1997 a. 27, 252, 264; 2001 a. 16.

Cross Reference: See also s. ATCP 162.01, Wis. adm. code.

93.51 Farmer assistance. **(1) DEFINITIONS.** In this section:

(a) "Farmer" has the meaning given in s. 93.50 (1) (d).

(b) "Farming" has the meaning given in s. 102.04 (3).

(2) ASSISTANCE PROGRAM. (a) The department may provide consultation and assistance to distressed farmers, which may include but is not limited to providing employment and retraining counseling for farmers needing employment other than farming, operating a program in which volunteers advise or counsel farmers about financial matters and other concerns and operating a crisis hotline for farmers.

(b) The department may make grants to low-income farmers for the purpose of paying all or part of the tuition for a farmer who enrolls in a course on farm and business management techniques offered by a technical college.

(c) The department may promulgate rules necessary to implement this section.

(3) ADVISORS. (a) The department may select volunteers to provide advice and counseling services to distressed farmers. Advisors shall have expertise and experience in relevant areas of knowledge.

(b) The department shall provide any necessary training to advisors.

(c) Advisors shall be compensated for travel and other necessary expenses in amounts approved by the department.

(d) Advisors and the department shall keep confidential all information obtained in the process of providing advice or counseling. Any such information contained in a record is not subject to the right of public inspection and copying under s. 19.35 (1).

This paragraph does not apply to information relating to possible criminal misconduct.

History: 1989 a. 31; 1991 a. 39; 1993 a. 399; 1997 a. 264.

93.52 Dairy farmer exit-entry program. The department shall administer a program to assist in the transfer of farm operations from persons exiting the dairy industry to persons wishing to enter the industry, including assistance in negotiating the financial and legal aspects of farm transfers. The department shall keep confidential information obtained under the program. Any such information contained in a record is not subject to the right of public inspection and copying under s. 19.35 (1).

History: 1997 a. 264.

93.55 Chemical and container collection grants.

(1) DEFINITIONS. In this section:

(a) "Chemical" means a chemical, including a pesticide, that is used for agricultural purposes.

(b) "Pesticide" has the meaning given in s. 94.67 (25).

(2) COLLECTION GRANTS. The department may award a grant to a county for a chemical and container collection program. A grant under this subsection shall fund all or a part of the cost of a program. Costs eligible for funding include the cost of establishing a collection site for chemicals and chemical containers, the cost of transporting chemical containers to a dealer or distributor for refill and reuse or to a hazardous waste facility, as defined in s. 291.01 (8), and costs associated with the proper use and handling and disposal or recycling of chemicals and chemical containers. Grants shall be paid from the appropriation under s. 20.115 (7) (va).

(2m) FARMER LIABILITY. To the extent permitted under federal regulations, a county establishing a chemical and container collection program under sub. (2), in cooperation with the department, shall ensure that a farmer, as defined in s. 102.04 (3), who participates in the program is not liable for chemicals or chemical containers collected under the program after the farmer relinquishes control over the chemicals or chemical containers.

History: 1989 a. 335; 1991 a. 39; 1995 a. 227; 2003 a. 33.

Cross Reference: See also s. ATCP 34.01, Wis. adm. code.

93.57 Household hazardous waste. The department shall administer a grant program to assist municipalities and regional planning commissions in creating and operating local programs for the collection and disposal of household hazardous waste.

History: 1985 a. 29; 1995 a. 227 s. 699; Stats. 1995 s. 299.41; 2001 a. 109; 2003 a. 33 s. 248.1s; Stats. 2003 s. 93.57.

Cross Reference: See also ch. NR 187, Wis. adm. code.

93.70 Conservation reserve enhancement program.

(1) The department may expend funds from the appropriation account under s. 20.866 (2) (wf) to improve water quality, erosion control and wildlife habitat through participation by this state in the conservation reserve enhancement program as approved by the secretary of the federal department of agriculture under 16 USC 3834 (f) (4).

(2) The department may not make a payment under sub. (1) to a person whose name appears on the statewide support lien docket under s. 49.854 (2) (b), unless the person provides to the department a payment agreement that has been approved by the county child support agency under s. 59.53 (5) and that is consistent with rules promulgated under s. 49.858 (2) (a).

History: 1999 a. 9; 2003 a. 33.

93.75 Payments to ethanol producers. **(1) ELIGIBILITY.**

Beginning on July 1, 2001, the department shall administer a program under which the department makes payments to a person who produces ethanol and who satisfies all of the following criteria:

(a) The person produces in this state, within 12 months, over 10,000,000 gallons of ethanol or, during the first 12 months that the person produces ethanol in this state, a lesser amount of ethanol that is established by the department by rule.

(b) The person has been producing ethanol in this state for fewer than 60 months.

(c) The person purchases the substances from which the person produces ethanol from a local source, as defined by the department by rule.

(2) PAYMENTS. The department shall pay a person who is eligible under sub. (1) at the rate of 20 cents per gallon for not more than 15,000,000 gallons of ethanol produced in this state within 12 months, except that if there are insufficient funds to make payments at this rate to all eligible persons the department shall prorate the payments.

(3) RULES. The department shall promulgate rules for the program under this section. The department shall include all of the following in the rules:

(a) The amount of ethanol that a person must produce within the first 12 months that the person produces ethanol in this state to be eligible for payments under this section.

(b) A definition of “local source” for the purposes of sub. (1) (c).

(c) A method for prorating payments under sub. (2).

(3m) MONITORING. (a) The department of transportation shall monitor the impact of ethanol sales in this state on the amount of federal moneys received by this state for highways and other surface transportation purposes, excluding federal moneys received for railroads.

(b) If the department of transportation determines, on or before December 31, 2003, that the amount of federal moneys received by this state for highways and other surface transportation purposes, excluding federal moneys received for railroads, is decreased due to ethanol sales in this state, the department of transportation shall notify the department of agriculture, trade and consumer protection of that determination not sooner than October 1, 2003, and not later than December 31, 2003.

(c) If the department of transportation determines, after December 31, 2003, and before January 1, 2005, that the amount of federal moneys received by this state for highways and other surface transportation purposes, excluding federal moneys received for railroads, is decreased due to ethanol sales in this state, the department of transportation shall notify the department of agriculture, trade and consumer protection of that determination not sooner than October 1, 2004, and not later than December 31, 2004.

(d) If the department of transportation determines, after December 31, 2004, and before January 1, 2006, that the amount of federal moneys received by this state for highways and other surface transportation purposes, excluding federal moneys received for railroads, is decreased due to ethanol sales in this state, the department of transportation shall notify the department of agriculture, trade and consumer protection of that determination not sooner than October 1, 2005, and not later than December 31, 2005.

(4) SUNSET. The department may not make a payment under this section after June 30, 2006, or the first day of the 6th month beginning after the department receives a notice under sub. (3m), whichever is sooner.

History: 1999 a. 55.

93.80 Arsenic in wood. The department, jointly with the department of commerce, shall review scientific evidence to determine whether there is a substantial likelihood that wood treated with copper, chromium, and arsenic is harmful to the environment or to human health.

History: 2001 a. 16.

93.90 Livestock facility siting and expansion. (1) This section is an enactment of statewide concern for the purpose of providing uniform regulation of livestock facilities.

(1m) DEFINITIONS. In this section:

(a) “Animal unit” has the meaning given in s. NR 243.03 (3), Wis. Adm. Code.

(b) “Application for approval” means an application for approval of a livestock facility siting or expansion.

(c) “Board” means the livestock facility siting review board.

(d) “Expansion” means an increase in the number of animals fed, confined, maintained, or stabled.

(e) “Livestock facility” means a feedlot or facility, other than a pasture, where animals used in the production of food, fiber, or other animal products are or will be fed, confined, maintained, or stabled for a total of 45 days or more in any 12–month period. “Livestock facility” does not include an aquaculture facility.

(f) “Political subdivision” means a city, village, town, or county.

(2) DEPARTMENT DUTIES. (a) For the purposes of this section, the department shall promulgate rules specifying standards for siting and expanding livestock facilities. In promulgating the rules, the department may incorporate by cross–reference provisions contained in rules promulgated under ss. 92.05 (3) (c) and (k), 92.14 (8), 92.16, and 281.16 (3) and ch. 283. The department may not promulgate rules under this paragraph that conflict with rules promulgated under s. 92.05 (3) (c) or (k), 92.14 (8), 92.16, or 281.16 (3) or ch. 283.

(b) In promulgating rules under par. (a), the department shall consider whether the proposed standards, other than those incorporated by cross–reference, are all of the following:

1. Protective of public health or safety.

1m. Practical and workable.

2. Cost–effective.

3. Objective.

4. Based on available scientific information that has been subjected to peer review.

5. Designed to promote the growth and viability of animal agriculture in this state.

6. Designed to balance the economic viability of farm operations with protecting natural resources and other community interests.

7. Usable by officials of political subdivisions.

(c) The department shall review rules promulgated under par. (a) at least once every 4 years.

(d) The secretary shall appoint a committee of experts to advise the department on the promulgation of the rules under par. (a) and on the review of rules under par. (c).

(e) In addition to the rules under par. (a), the department shall promulgate rules that do all of the following:

1. Specify the information and documentation that must be provided in an application for approval in order to demonstrate that a livestock facility siting or expansion complies with applicable state standards under sub. (2) (a).

2. Specify the information and documentation that must be included in a record of decision making under sub. (4) (b).

(3) POLITICAL SUBDIVISION AUTHORITY. (a) Notwithstanding ss. 33.455, 59.03 (2) (a), 59.69, 60.10 (2) (i), 60.61, 60.62, 61.34 (1), 61.35, 62.11 (5), 62.23, 66.0415, 92.07 (2), 92.11, and 92.15 (3) (a), a political subdivision may not disapprove or prohibit a livestock facility siting or expansion unless at least one of the following applies:

1. The site is located in a zoning district that is not an agricultural zoning district.

2. The site is located in an agricultural zoning district in which the proposed new or expanded livestock facility is prohibited, subject to pars. (b) and (c).

3. The proposed new or expanded livestock facility violates an ordinance adopted under s. 59.692, 59.693, 60.627, 61.351, 61.354, 62.231, 62.234, or 87.30.

4. The proposed new or expanded livestock facility violates a building, electrical, or plumbing code that is consistent with the state building, electrical, or plumbing code for that type of facility.

5. The proposed new or expanded livestock facility will have 500 or more animal units and violates a state standard under sub. (2) (a).

6. The proposed new or expanded livestock facility will have 500 or more animal units and violates a requirement that is more stringent than the state standards under sub. (2) (a) if the political subdivision does all of the following:

a. Adopts the requirement by ordinance before the applicant files the application for approval.

b. Bases the requirement on reasonable and scientifically defensible findings of fact, adopted by the political subdivision, that clearly show that the requirement is necessary to protect public health or safety.

8. The proposed new or expanded livestock facility will have fewer than 500 animal units but will exceed a size threshold for requiring a special exception or conditional use permit that was incorporated into the political subdivision's ordinances before July 19, 2003, and the proposed new or expanded livestock facility violates a state standard under sub. (2) (a).

9. The proposed new or expanded livestock facility will have fewer than 500 animal units but will exceed a size threshold for requiring a special exception or conditional use permit that was incorporated into the political subdivision's ordinances before July 19, 2003, and the proposed new or expanded livestock facility violates a requirement that is more stringent than the state standards under sub. (2) (a) if the political subdivision does all of the following:

a. Adopts the requirement by ordinance before the applicant files the application for approval.

b. Bases the requirement on reasonable and scientifically defensible findings of fact, adopted by the political subdivision, that clearly show that the requirement is necessary to protect public health or safety.

(ae) A political subdivision that requires a special exception or conditional use permit for the siting or expansion of any of the following livestock facilities shall require compliance with the applicable state standards under sub. (2) (a) as a condition of issuing the special exception or conditional use permit:

1. A new or expanded livestock facility that will have 500 or more animal units.

2. A new or expanded livestock facility that will have fewer than 500 animal units but that will exceed a size threshold for requiring a special exception or conditional use permit that was incorporated into the political subdivision's ordinances before July 19, 2003.

(am) Notwithstanding par. (ae), a political subdivision may apply to a new or expanded livestock facility described in par. (ae) 1. or 2., as a condition of issuing a special exception or conditional use permit, a setback requirement that is less stringent than a setback requirement under sub. (2) (a) if the setback requirement is incorporated in the political subdivision's ordinances as a numerical standard.

(ar) Notwithstanding par. (ae) a political subdivision may apply to a new or expanded livestock facility described in par. (ae) 1. or 2., as a condition of issuing a special exception or conditional use permit, a requirement that is more stringent than the state standards under sub. (2) (a) if the political subdivision does all of the following:

1. Adopts the requirement by ordinance before the applicant files the application for approval.

2. Bases the requirement on reasonable and scientifically defensible findings of fact, adopted by the political subdivision, that clearly show that the requirement is necessary to protect public health or safety.

(b) Notwithstanding ss. 59.69, 60.61, 60.62, 61.35, and 62.23, a political subdivision may not prohibit a type of livestock facility in an agricultural zoning district based on number of animal units if livestock facilities of that type with fewer animal units are allowed in that zoning district, unless the political subdivision also has an agricultural zoning district in which livestock facilities of that type are permitted or conditional uses without respect to number of animal units.

(c) Notwithstanding ss. 59.69, 60.61, 60.62, 61.35, and 62.23, a political subdivision may not enact or enforce a zoning ordinance with a category of agricultural district in which livestock facilities are prohibited unless the political subdivision bases that prohibition on reasonable and scientifically defensible findings of fact, adopted by the political subdivision, that clearly show that the prohibition is necessary to protect public health or safety.

(d) Notwithstanding ss. 92.15 (4) and 281.16 (3) (e), a political subdivision that requires compliance with state standards under sub. (2) (a) as a condition of issuing a special exception or conditional use permit for an expanded livestock facility is not required to determine that cost-sharing is available to the operator of the livestock facility for facilities or practices needed to comply with those standards if the livestock facility will have 500 or more animal units.

(e) Notwithstanding ss. 59.69, 60.61, 60.62, 61.35, and 62.23, a political subdivision may not enact a requirement that a person obtain a special exception or conditional use permit for the expansion of a livestock facility that exists when the requirement takes effect, except that a political subdivision may enact a requirement that a person obtain a special exception or conditional use permit for the expansion of a livestock facility that exists when the requirement takes effect if the requirement applies only when the number of animal units that the livestock facility will have after expansion will exceed by more than 20 percent the largest number of animal units that were at the livestock facility for at least 90 days in the 12-month period before the requirement takes effect.

(f) For the purposes of this subsection, the number of animal units that a livestock facility will have is the largest number of animal units that will be fed, confined, maintained, or stabled at the livestock facility on at least 90 days in any 12-month period.

(4) POLITICAL SUBDIVISION PROCEDURE. (a) No later than 45 days after a political subdivision receives an application for approval, the political subdivision shall notify the applicant whether the application for approval is complete and, if it is not complete, what information is needed to complete the application for approval. As soon as the applicant has provided all of the required information, the political subdivision shall notify the applicant that the application for approval is complete.

(b) A political subdivision shall make a record of its decision making on an application for approval, including a recording of any public hearing, copies of documents submitted at any public hearing, and copies of any other documents provided to the political subdivision in connection with the application for approval.

(c) A political subdivision shall base its decision on an application for approval on written findings of fact that are supported by the evidence in the record under par. (b).

(d) Except as provided in par. (e), a political subdivision shall approve or disapprove an application for approval no more than 90 days after the day on which it notifies the applicant that the application for approval is complete. If an applicant complies with the rules promulgated under sub. (2) (e) 1. and the information and documentation provided by the applicant is sufficient to establish, without considering any other information or documentation, that the application complies with applicable requirements for approval, the political subdivision shall approve the application unless the political subdivision finds, based on other clear and convincing information or documentation in the record, that the application does not comply with applicable requirements.

(e) A political subdivision may extend the time limit in par. (d) if the political subdivision needs additional information to determine whether to approve or deny the application for approval, if the applicant makes a material modification to the application for approval, or for other good cause specified in writing by the political subdivision.

(5) REVIEW OF SITING DECISIONS. (a) In this subsection “aggrieved person” means a person who applied to a political subdivision for approval of a livestock facility siting or expansion, a person who lives within 2 miles of a livestock facility that is proposed to be sited or expanded, or a person who owns land within 2 miles of a livestock facility that is proposed to be sited or expanded.

(b) An aggrieved person may challenge the decision of a political subdivision on an application for approval on the grounds that the political subdivision incorrectly applied the state standards under sub. (2) (a) that are applicable to the livestock facility siting or expansion or violated sub. (3), by requesting the board to review the decision. An aggrieved person is not required to exhaust the political subdivision’s administrative remedies before requesting review by the board. An aggrieved person shall request a review under this paragraph within 30 days after the political subdivision approves or disapproves the application for approval or, if the aggrieved person chooses to exhaust the political subdivision’s administrative remedies, within 30 days after the final decision in the political subdivision’s administrative review process.

(bm) Upon receiving a request under par. (b), the board shall notify the political subdivision of the request. The political subdivi-

vision shall provide a certified copy of the record under sub. (4) to the board within 30 days after the day on which it receives the notice.

(c) Upon receiving the certified copy of the record under par. (bm), the board shall determine whether the challenge is valid. The board shall make its decision without deference to the decision of the political subdivision and shall base its decision only on the evidence in the record under sub. (4) (b). In a case that involves the application of requirements related to water quality, the board shall consult with the department of agriculture, trade and consumer protection or with the department of natural resources concerning the application of the requirements related to water quality. The board shall make its decision within 60 days after the day on which it receives the certified copy of the record under par. (bm), except that the board may extend this time limit for good cause specified in writing by the board.

(d) If the board determines that a challenge is valid, the board shall reverse the decision of the political subdivision. The decision of the board is binding on the political subdivision, subject to par. (e). If a political subdivision fails to comply with a decision of the board that has not been appealed under par. (e), an aggrieved person may bring an action to enforce the decision.

(e) An aggrieved person or the political subdivision may appeal the decision of the board to circuit court. The filing of an appeal does not in itself stay the effect of a decision of the board.

(f) A circuit court to which a decision of the board is appealed under par. (e) shall review the decision of the board based on the evidence in the record under sub. (4) (b).

NOTE: This section is created eff. 10–1–05 by 2003 Wis. Act 235.
History: 2003 a. 235.