

**1999 DRAFTING REQUEST**

**Bill**

Received: **09/9/98**

Received By: **traderc**

Wanted: **As time permits**

Identical to LRB:

For: **Administration-Budget**

By/Representing: **Grinde**

This file may be shown to any legislator: **NO**

Drafter: **traderc**

May Contact: **DATCP**

Alt. Drafters:

Subject: **Agriculture - miscellaneous**

Extra Copies:

**Topic:**

DOA:.....Grinde - Plant pest detection and nurseries

**Instructions:**

See Attached

**Drafting History:**

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/1	traderc 10/14/98	gilfokm 10/15/98	lpaasch 10/16/98	_____	gretskl 10/16/98		
/2	traderc 10/22/98	gilfokm 10/22/98	jfrantze 10/23/98	_____	lrb_docadmin 10/23/98		State
/3	traderc 11/11/98	gilfokm 11/13/98	jfrantze 11/16/98	_____	gretskl 11/16/98		State
/4	traderc 01/3/99	gilfokm 01/4/99	jfrantze 01/5/99	_____	gretskl 01/5/99		State
/5	traderc 01/25/99	gilfokm 01/25/99	lpaasch 01/25/99	_____	lrb_docadmin 01/25/99		State

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/?	traderc	11-10-15 King	10-16 LP	<del>10-16-LP</del> JF			

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Extra Copies:

**Topic:**

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### 3. PLANT PEST DETECTION (DIN #5710)

#### EXPLANATION:

DATCP currently licenses nursery growers and nursery dealers under s. 94.10, Stats. DATCP collects annual license fees which it deposits to the general fund as GPR-earned. DATCP also collects a license fee surcharge which it deposits as program revenue to finance the department's gypsy moth control program.

DATCP proposes to:

- Restructure current license fees for nursery growers and nursery dealers, and deposit all license fees to a new program revenue appropriation for plant pest detection and control.
- Eliminate the current gypsy moth fee surcharge. (Program revenues from restructured license fees would be used to finance the ongoing gypsy moth control program, as well as other pest detection and control programs.)
- Require Christmas tree growers to be licensed as nursery growers.
- Reorganize and redraft the current nursery law so it will be easier to read and understand.

#### STATUTORY LANGUAGE:

SECTION \_\_\_\_ . 20.115(7)(j) of the statutes is repealed.

SECTION \_\_\_\_ . 20.115(7)(ja) of the statutes is created to read:

20.115(7)(ja) Plant protection. All moneys received under ss. 94.10(2) and (3) and 94.11 for plant protection, including nursery regulation and the detection and control of plant pests.

SECTION \_\_\_\_ . 94.10 of the statutes is repealed and recreated to read:.

#### 94.10 NURSERY STOCK; INSPECTION AND LICENSING. (1)

DEFINITIONS. In this section:

(a) "Department" means the state of Wisconsin department of agriculture, trade and consumer protection.

(b) "Nonprofit organization" means an organization described in section 501(c) of the United States internal revenue code.

(c) "Nursery" means premises in this state on which a person propagates or grows nursery stock for sale. "Nursery" does not include heeling-in grounds or other premises where a person holds nursery stock for purposes other than propagation or growth.

(d) "Nursery dealer" means a person, other than a nursery grower, who sells or distributes nursery stock.

(e) "Nursery grower" means a person who owns or operates a nursery.

(f) "Nursery stock" means plants and plant parts that can be propagated or grown. "Nursery stock" includes rooted Christmas trees, but does not include field, vegetable or flower seeds, sod, cranberry cuttings or annuals.

(g) "Officially inspected source" means any of the following:

1. A nursery dealer licensed under sub. (2).
2. A nursery grower licensed under sub. (3).
3. A source outside this state which the department recognizes as an officially inspected source.

(h) "Person" means an individual, corporation, partnership, cooperative association, limited liability company, trust, or other organization or entity.

(i) "Rooted Christmas tree" means an evergreen tree which is rooted in the soil, periodically sheared or cultured for eventual harvest and sale as a Christmas tree, subjected to weed and brush control, and subjected to one or more of the following:

1. Basal pruning.
2. Fertilization.
3. Insect and disease control.
4. Stump culture.
5. Cultivation and irrigation.

(j) "Sell" means to transfer ownership, for consideration. "Sell" includes offering for sale, or soliciting orders for sale.

(2) NURSERY DEALER; ANNUAL LICENSE. (a) License required. Except as provided in par. (f), no person may operate as a nursery dealer without an annual license from the department. A license expires on February 20 of each year. A license may not be transferred to another person.

(b) Applying for a license. A person applying for an annual nursery dealer license under par. (a) shall apply on a form provided by the department. The application shall include all of the following:

1. The applicant's legal name and address, and any other name under which the applicant does business.
2. Each location at which the applicant proposes to hold nursery stock for sale. A license holder shall notify the department in writing before adding any new location during the license year. Notice shall include the address of the new location.
3. The license fee required under par. (c).
4. The surcharge required under par. (d), if any.
5. Other information reasonably required by the department for licensing purposes.

(c) License fee. A nursery dealer shall pay the following annual license fee, based on annual purchases calculated according to par. (e):

1. \$55 if the dealer buys no more than \$5,000 worth of nursery stock for resale to persons in this state.

2. \$75 if the dealer buys more than \$5,000 but not more than \$20,000 worth of nursery stock for resale to persons in this state.
3. \$100 if the dealer buys more than \$20,000 but not more than \$100,000 worth of nursery stock for resale to persons in this state.
4. \$200 if the dealer buys more than \$100,000 but not more than \$200,000 worth of nursery stock for resale to persons in this state.
5. \$300 if the dealer buys more than \$200,000 but not more than \$500,000 worth of nursery stock for resale to persons in this state.
6. \$400 if the dealer buys more than \$500,000 but not more than \$2,000,000 worth of nursery stock for resale to persons in this state.
7. \$500 if the dealer buys more than \$2,000,000 worth of nursery stock for resale to persons in this state.

(d) Surcharge for operating without a license. An applicant for a nursery dealer license shall pay, in addition to the fee required under par. (c), a surcharge equal to the amount of that fee if the department determines that, within 365 days prior to submitting that application, the applicant operated as a nursery dealer without a license in violation of par. (a). Payment of the surcharge does not relieve the applicant of any other penalty or liability that may result from the violation, but does not constitute evidence of a violation.

(e) Calculating annual purchases. The amount of a nursery dealer's license fee under par. (c) shall be based on the dealer's purchases of nursery stock during the license year preceding the license year for which the dealer is applying. If the nursery dealer made no purchases during the preceding license year, the fee shall be based on the dealer's good faith estimate of purchases during the license year for which the dealer is applying.

(f) Exemptions. Paragraph (a) does not apply to any of the following:

1. A person whose only sales of nursery stock are retail sales totaling less than \$250 annually.
2. A person selling nursery stock pursuant to a valid permit under par. (g).

(g) Temporary permit; sales benefiting nonprofit organization. The department may issue a temporary permit authorizing the permit holder to sell nursery stock, for the benefit of a nonprofit organization, for a period of not more than 7 consecutive days. An applicant for a temporary permit shall apply on a form provided by the department, and shall pay a fee of \$5. The department may impose written conditions on the temporary permit, and may summarily suspend or revoke the permit if the permit holder violates those conditions.

(3) NURSERY GROWER; ANNUAL LICENSE. (a) License required. Except as provided in par. (f), no person may operate as a nursery grower without an annual license from the department. A license expires on February 20 of each year. A license may not be transferred to another person.

(b) Applying for a license. A person applying for an annual nursery grower license under par. (a) shall apply on a form provided by the department. The application shall include all of the following:

1. The applicant's legal name and address, and any other name under which the applicant does business.

2. Each location in this state at which the applicant operates a nursery or holds nursery stock for sale. A license holder shall notify the department in writing before adding any new location during the license year.

3. The license fee required under par. (c).

4. The surcharge required under (d), if any.

5. Other information reasonably required by the department for licensing purposes.

(c) License fee. A nursery grower shall pay the following annual license fee, based on annual sales calculated according to par. (e):

1. \$55 if the grower annually sells less than \$5,000 worth of nursery stock to persons in this state, except that no fee is required of a Christmas tree grower who annually sells less than \$5,000 worth of Christmas trees to persons in this state.

2. \$100 if the grower annually sells more than \$5,000 but not more than \$20,000 worth of nursery stock to persons in this state.

3. \$200 if the grower annually sells more than \$20,000 but not more than \$100,000 worth of nursery stock to persons in this state.

4. \$400 if the grower annually sells more than \$100,000 but less than \$200,000 worth of nursery stock to persons in this state.

5. \$600 if the grower annually sells more than \$200,000 but less \$500,000 worth of nursery stock to persons in this state.

6. \$1200 if the grower annually sells more than \$500,000 but less than \$2,000,000 worth of nursery stock to persons in this state.

7. \$2400 if the grower annually sells more than \$2,000,000 worth of nursery stock to persons in this state.

(d) Surcharge for operating without a license. An applicant for a nursery grower license shall pay, in addition to the fee required under par. (c), a surcharge equal to the amount of that fee if the department determines that, within 365 days prior to submitting that application, the applicant operated as a nursery grower without a license in violation of par. (a). Payment of the surcharge does not relieve the applicant of any other penalty or liability that may result from the violation, but does not constitute evidence of a violation.

(e) Calculating annual sales. The amount of a nursery grower's license fee under par. (c) shall be based on the grower's sales of nursery stock during the license year preceding the license year for which the grower is applying. If the nursery grower made no sales during the preceding license year, the fee shall be based on the grower's good faith estimate of sales during the license year for which the grower is applying.

(f) Exemptions. Paragraph (a) does not apply to any of the following:

1. A nursery grower whose only sales of nursery stock are retail sales totaling less than \$250 annually.

2. A person growing nursery stock for sale pursuant to a valid temporary permit under par. (g).

(g) Temporary permit; sales benefiting nonprofit organization. The department may issue a temporary permit authorizing the permit holder to sell nursery stock, for the

benefit of a nonprofit organization, for a period of not more than 7 consecutive days. An applicant for a temporary permit shall apply on a form provided by the department, and shall pay a fee of \$5. The department may impose written conditions on the temporary permit, and may summarily suspend or revoke the permit if the permit holder violates those conditions.

(4) **NURSERY GROWERS AND DEALERS; RECORDS.** (a) Nursery dealers; records of nursery stock received. A nursery dealer shall keep a record of every shipment of nursery stock received by the dealer. The record shall include:

1. The types of nursery stock, and the quantity of nursery stock of each type, included in the shipment.
2. The name and address of the source from which the dealer received the shipment.

(b) Nursery growers and dealers; records of shipments to other nursery growers and dealers. Every nursery grower and nursery dealer shall record every shipment of nursery stock which the grower or dealer sells or distributes to a nursery grower or nursery dealer. The record shall include all of the following:

1. The types of nursery stock, and the quantity of nursery stock of each type, included in the shipment.
2. The name and address of the nursery grower or nursery dealer receiving the shipment.

(c) Records retained and made available. A nursery grower or nursery dealer who is required to keep records under par. (a) or (b) shall retain those records for at least 3 years, and shall make those records available to the department for inspection and copying upon request.

(5) **LABELING NURSERY STOCK.** (a) Nursery stock shipped to dealer. No person may sell or distribute any shipment of nursery stock to a nursery dealer, and no nursery dealer may accept a shipment of nursery stock, unless that shipment is labeled with all of the following:

1. The name and address of the person selling or distributing the shipment to the nursery dealer.
2. A certification, by the person under par. (a), that all of the nursery stock included in the shipment is from officially inspected sources.

(b) Growers and dealers to report unlabeled shipments. Whenever any person tenders to a nursery grower or nursery dealer any shipment of nursery stock that is not fully labeled according to par. (a), the nursery grower or nursery dealer shall promptly report that unlabeled shipment to the department.

(c) Nursery stock sold at retail. Nursery stock sold at retail shall be labeled with the common or botanical name of the nursery stock.

(6) **CARE OF NURSERY STOCK.** (a) Adequate facilities. Every nursery grower and nursery dealer shall maintain facilities that are reasonably adequate for the care and keeping of nursery stock held for sale, so that the grower or dealer can keep the nursery stock in healthy condition pending sale.

(b) Nursery growers and nursery dealers shall make reasonable examinations of nursery stock held for sale, to determine whether that nursery stock is capable of reasonable growth, is infested with injurious pests, or is infected with disease.

(7) PROHIBITIONS. (a) Nursery dealers. No nursery dealer may do any of the following:

1. Obtain, hold, sell or distribute nursery stock from any source other than an officially inspected source.

2. Misrepresent that the nursery dealer is a nursery grower.

(b) Nursery growers and dealers. No nursery grower or nursery dealer may do any of the following:

1. Sell or distribute any nursery stock which the grower or dealer knows, or has reason to know, is infested with plant pests or infected with plant diseases that may be spread by the sale or distribution of that nursery stock.

2. Sell or distribute any nursery stock which the grower or dealer knows, or has reason to know, will not survive or grow.

3. Misrepresent the name, origin, grade, variety, quality or hardiness of any nursery stock offered for sale, or make any other false or misleading representation in the advertising or sale of nursery stock.

4. Conceal nursery stock to avoid inspection, falsify any record, or make any false or misleading statement to the department.

(8) DEPARTMENT INSPECTION. The department may inspect nurseries and premises at which nursery stock is held for sale or distribution.

(9) DEPARTMENT ORDERS. (a) Holding orders and remedial orders. An authorized employee or agent of the department may, by written notice, order a nursery grower or nursery dealer to do any of the following:

1. Temporarily hold nursery stock pending inspection by the department.

2. Remedy violations of this section.

3. Refrain from importing weeds or pests that threaten agricultural production or the environment in this state.

4. Permanently withhold nursery stock from sale or distribution, if the sale or distribution would violate this section or an order issued under this section, and the violation cannot be adequately remedied.

5. Destroy or return, without compensation from the department, nursery stock that is sold or distributed in violation of this section, or an order issued under this section, if the violation cannot be adequately remedied.

(b) Hearing. If the recipient of an order under par. (a) requests a hearing on that order, the department shall hold an informal hearing within 10 days unless the order recipient consents to a later date for an informal hearing. If a contested matter is not resolved at the informal hearing, the order recipient is entitled to a class 2 contested case hearing under ch. 227, Stats. The department is not required to stay an order under par.

(a) pending the outcome of any hearing under this paragraph.

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(10) RECIPROCAL AGREEMENTS WITH OTHER STATES. (a) General. The department may enter into reciprocal agreements with other states to facilitate interstate shipments of nursery stock.

(b) Officially inspected sources. As part of an agreement under par. (a), the department may recognize officially inspected sources in another state.

(c) Inspection and certification standards. An agreement under par. (a) may specify standards and procedures for all of the following:

1. Inspecting officially inspected sources of nursery stock.
2. Inspecting and certifying interstate shipments of nursery stock.



1999

Date (time) needed \_\_\_\_\_

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**DOA BUDGET DRAFT**

Use the appropriate components and routines developed for bills.

>>FOR 1999-01 BUDGET — NOT READY FOR INTRODUCTION<<

AN ACT . . . [DO NOT generate catalog]; relating to: the budget. . . . .

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*Analysis by the Legislative Reference Bureau*

For the 3 titles used in an analysis, in the component bar:

- For the main heading [old =M], execute: . . . . . create → anal: → title: → head
- For the subheading [old =S], execute: . . . . . create → anal: → title: → sub
- For the sub-subheading [old =P], execute: . . . . . create → anal: → title: → sub-sub

*This is a preliminary draft.*

**The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:**

SECTION #.

↓

3. PLANT PEST DETECTION (DIN #5710)

EXPLANATION:

DATCP currently licenses nursery growers and nursery dealers under s. 94.10, Stats. DATCP collects annual license fees which it deposits to the general fund as GPR-earned. DATCP also collects a license fee surcharge which it deposits as program revenue to finance the department's gypsy moth control program.

DATCP proposes to:

- Restructure current license fees for nursery growers and nursery dealers, and deposit all license fees to a new program revenue appropriation for plant pest detection and control.
- Eliminate the current gypsy moth fee surcharge. (Program revenues from restructured license fees would be used to finance the ongoing gypsy moth control program, as well as other pest detection and control programs.)
- Require Christmas tree growers to be licensed as nursery growers.
- Reorganize and redraft the current nursery law so it will be easier to read and understand.

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SECTION \_\_. 20.115(7)(ja) of the statutes is created to read:

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SECTION \_\_. 94.10 of the statutes is repealed and recreated to read:.

94.10 NURSERY STOCK; INSPECTION AND LICENSING. (1)

DEFINITIONS. In this section:

(a) "~~Department~~" means the state of Wisconsin department of agriculture, trade and consumer protection.

(b) "Nonprofit organization" means an organization described in section 501(c) of the United States internal revenue code *that is exempt from federal income tax under*

(c) "Nursery" means premises in this state on which a person propagates or grows nursery stock for sale. "Nursery" does not include heeling-in grounds or other premises where a person holds nursery stock for purposes other than propagation or growth.

*section 501(a) of the internal revenue code*

(d) "Nursery dealer" means a person, other than a nursery grower, who sells or distributes nursery stock.

(e) "Nursery grower" means a person who owns or operates a nursery.

(f) "Nursery stock" means plants and plant parts that can be propagated or grown. "Nursery stock" includes rooted Christmas trees, but does not include field, vegetable or flower seeds, sod, cranberry cuttings or annuals.

(g) "Officially inspected source" means any of the following:

1. A nursery dealer licensed under sub. (2).
2. A nursery grower licensed under sub. (3).
3. A source outside this state which the department recognizes <sup>under sub. (10)</sup> as an officially inspected source.

~~(h) "Person" means an individual, corporation, partnership, cooperative association, limited liability company, trust, or other organization or entity.~~ <sup>that</sup>

(i) "Rooted Christmas tree" means an evergreen tree which is rooted in the soil, periodically sheared or cultured for eventual harvest and sale as a Christmas tree, subjected to weed and brush control, and subjected to one or more of the following:

1. Basal pruning.
2. Fertilization.
3. Insect and disease control.
4. Stump culture.
5. Cultivation and irrigation.

(j) "Sell" means to transfer ownership, for consideration. "Sell" includes offering for sale, or soliciting orders for sale.

<sup>CS</sup> (2) **NURSERY DEALER; ANNUAL LICENSE.** (a) <sup>F</sup> License required. Except as provided in par. (f), no person may operate as a nursery dealer without an annual license from the department. <sup>nursery dealer</sup> A license expires on February 20 of each year. A license <sup>nursery dealer</sup> may not be transferred to another person.

<sup>provide</sup> (b) Applying for a license. A person applying for a ~~license~~ <sup>license</sup> nursery dealer license under par. (a) shall apply on a form provided by the department. <sup>An applicant</sup> The application shall include all of the following: <sup>to the department</sup>

1. The applicant's legal name and address, and any other name under which the applicant does business.
2. <sup>The address of</sup> Each location at which the applicant proposes to hold nursery stock for sale. ~~AA~~ license holder shall notify the department in writing before adding any new location during the license year. Notice shall include the address of the new location.
3. The license fee required under par. (c).
4. The surcharge required under par. (d), if any.
5. Other information reasonably required by the department for licensing purposes. <sup>D</sup>

(c) License fee. A nursery dealer shall pay the following annual license fee, based on annual purchases calculated according to par. (e):

1. ~~\$20~~ <sup>nursery</sup> If the dealer buys no more than \$5,000 worth of nursery stock for resale to persons in this state. <sup>\$55</sup>

nursery

- 2. ~~\$75~~ If the dealer buys more than \$5,000 but not more than \$20,000 worth of nursery stock for resale to persons in this state. *\$75*
- 3. ~~\$100~~ If the dealer buys more than \$20,000 but not more than \$100,000 worth of nursery stock for resale to persons in this state. *\$100*
- 4. ~~\$200~~ If the dealer buys more than \$100,000 but not more than \$200,000 worth of nursery stock for resale to persons in this state. *\$200*
- 5. ~~\$300~~ If the dealer buys more than \$200,000 but not more than \$500,000 worth of nursery stock for resale to persons in this state. *\$300*
- 6. ~~\$400~~ If the dealer buys more than \$500,000 but not more than \$2,000,000 worth of nursery stock for resale to persons in this state. *\$400*
- 7. ~~\$500~~ If the dealer buys more than \$2,000,000 worth of nursery stock for resale to persons in this state. *\$500*

(d) Surcharge for operating without a license. An applicant for a nursery dealer license shall pay, ~~in addition to the fee required under par. (c),~~ a surcharge equal to the amount of that fee if the department determines that, within 365 days prior to submitting ~~the~~ application, the applicant operated as a nursery dealer without a license in violation of par. (a). Payment of the surcharge does not relieve the applicant of any other penalty or liability that may result from the violation, but does not constitute evidence of a violation. *of par. (a)*

(e) Calculating annual purchases. The amount of ~~an applicant's~~ *applicant's* nursery dealer's license fee under par. (c) shall be based on the ~~dealer's~~ *applicant's* purchases of nursery stock during the license year ~~preceding the license year for which the dealer is applying.~~ *preceding* If the nursery dealer made no purchases during the preceding license year, the fee shall be based on the ~~dealer's~~ *applicant's* good faith estimate of purchases during the license year for which the ~~dealer is~~ *applicant* applying. *prediction*

of nursery stock

(f) Exemptions. Paragraph (a) does not apply to any of the following:

- 1. A person whose only sales of nursery stock are retail sales totaling less than \$250 annually.
- 2. A person selling nursery stock pursuant to a valid permit under par. (g).

(g) Temporary permit; sales benefiting nonprofit organization. The department may issue a temporary permit authorizing the permit holder to sell nursery stock, for the benefit of a nonprofit organization, for a period of not more than 7 consecutive days. An applicant for a temporary permit shall apply on a form provided by the department, and shall pay a fee of \$5. The department may impose written conditions on the temporary permit, and may summarily suspend or revoke the permit if the permit holder violates those conditions.

(3) NURSERY GROWER; ANNUAL LICENSE. (a) License required. Except as provided in par. (f), no person may operate as a nursery grower without an annual license from the department. A license expires on February 20 of each year. A license may not be transferred to another person. *nursery grower*

(b) Applying for a license. A person applying for an annual nursery grower license under par. (a) shall apply on a form provided by the department. The application shall include all of the following *to the department*

provide

An applicant

1. The applicant's legal name and address, and any other name under which the applicant does business.

*The address of*

2. Each location in this state at which the applicant operates a nursery or holds nursery stock for sale. A license holder shall notify the department in writing before adding any new location during the license year.

3. The license fee required under par. (c).

4. The surcharge required under (d), if any.

5. Other information reasonably required by the department for licensing purposes.

(c) License fee. A nursery grower shall pay the following annual license fee, based on annual sales calculated according to par. (e):

*nursery*

1. ~~\$55~~ If the grower annually sells less than \$5,000 worth of nursery stock to persons in this state, except that no fee is required of a Christmas tree grower who annually sells less than \$5,000 worth of Christmas trees to persons in this state. *\$55*

2. ~~\$100~~ If the grower annually sells more than \$5,000 but not more than \$20,000 worth of nursery stock to persons in this state. *\$100*

3. ~~\$200~~ If the grower annually sells more than \$20,000 but not more than \$100,000 worth of nursery stock to persons in this state. *\$200*

4. ~~\$400~~ If the grower annually sells more than \$100,000 but less than \$200,000 worth of nursery stock to persons in this state. *\$400*

5. ~~\$600~~ If the grower annually sells more than \$200,000 but less than \$500,000 worth of nursery stock to persons in this state. *\$600*

6. ~~\$1200~~ If the grower annually sells more than \$500,000 but less than \$2,000,000 worth of nursery stock to persons in this state. *\$1200*

7. ~~\$2400~~ If the grower annually sells more than \$2,000,000 worth of nursery stock to persons in this state. *\$2400*

(d) Surcharge for operating without a license. An applicant for a nursery grower license shall pay, (in addition to the fee required under par. (c)) a surcharge equal to the amount of that fee if the department determines that, within 365 days prior to submitting that application, the applicant operated as a nursery grower without a license in violation of par. (a). Payment of the surcharge does not relieve the applicant of any other penalty or liability that may result from the violation, but does not constitute evidence of a violation.

*for a license year*

(e) Calculating annual sales. The amount of <sup>applicant's</sup> a nursery grower's license fee under par. (c) shall be based on the grower's sales of nursery stock during the <sup>an applicant's</sup> license year <sup>preceding</sup> preceding the license year for which the grower is applying. If the nursery grower made no sales during the preceding license year, the fee shall be based on the grower's <sup>applicant</sup> good <sup>applicant's</sup> faith estimate of sales during the license year for which the grower is applying. <sup>applicant</sup>

*prediction*

(f) Exemptions. Paragraph (a) does not apply to any of the following:

1. A nursery grower whose only sales of nursery stock are retail sales totaling less than \$250 annually.

2. A person growing nursery stock for sale pursuant to a valid temporary permit under par. (g).

(g) Temporary permit; sales benefiting nonprofit organization. The department may issue a temporary permit authorizing the permit holder to sell nursery stock, for the

benefit of a nonprofit organization, for a period of not more than 7 consecutive days. An applicant for a temporary permit shall apply on a form provided by the department and shall pay a fee of \$5. The department may impose written conditions on the temporary permit and may summarily suspend or revoke the permit if the permit holder violates those conditions.

Insert  
A

(4) NURSERY GROWERS AND DEALERS; RECORDS. (a) Nursery dealers; records of nursery stock received. A nursery dealer shall keep a record of every shipment of nursery stock received by the <sup>nursery</sup>dealer. The <sup>nursery dealer</sup>record shall include <sup>all of the following in the record</sup>

Description  
of

1. The types of nursery stock, and the quantity of nursery stock of each type, included in the shipment.
2. The name and address of the source from which the <sup>nursery</sup>dealer received the shipment.

Nursery grower  
or nursery dealer

(b) Nursery growers and dealers; records of shipments to other nursery growers and dealers. Every nursery grower and nursery dealer shall record every shipment of nursery stock which the grower or dealer sells or distributes to a nursery grower or nursery dealer. The record shall include all of the following: <sup>another</sup> <sup>in the notice</sup>

Description of

1. The types of nursery stock, and the quantity of nursery stock of each type, included in the shipment.
2. The name and address of the nursery grower or nursery dealer receiving the shipment.

(c) Records retained and made available. A nursery grower or nursery dealer who is required to keep records under par. (a) or (b) shall retain those records for at least 3 years, and shall make those records available to the department for inspection and copying upon request.

(5) LABELING NURSERY STOCK. (a) Nursery stock shipped to dealer. No person may sell or distribute any shipment of nursery stock to a nursery dealer, and no nursery dealer may accept a shipment of nursery stock, unless that shipment is labeled with all of the following:

1. The name and address of the person selling or distributing the shipment to the nursery dealer.
2. A certification, by the person under <sup>subd. 1</sup>par. (a), that all of the nursery stock included in the shipment is from officially inspected sources.

(b) Growers and dealers to report unlabeled shipments. Whenever any person tenders to a nursery grower or nursery dealer any shipment of nursery stock that is not fully labeled according to par. (a), the nursery grower or nursery dealer shall promptly report that unlabeled shipment to the department.

(c) Nursery stock sold at retail. Nursery stock sold at retail shall be labeled with the common or botanical name of the nursery stock.

(6) CARE OF NURSERY STOCK. (a) Adequate facilities. Every nursery grower and nursery dealer shall maintain facilities that are reasonably adequate for the care and keeping of nursery stock held for sale, so that the grower or dealer can keep the nursery stock in healthy condition pending sale.

(b) Nursery growers and nursery dealers shall make reasonable examinations of nursery stock held for sale, to determine whether that nursery stock is capable of reasonable growth, is infested with injurious pests, or is infected with disease.

(7) PROHIBITIONS. (a) Nursery dealers. No nursery dealer may do any of the following:

1. Obtain, hold, sell or distribute nursery stock from any source other than an officially inspected source.

2. Misrepresent that the nursery dealer is a nursery grower.

(b) Nursery growers and dealers. No nursery grower or nursery dealer may do any of the following:

1. Sell or distribute any nursery stock <sup>that</sup> ~~which~~ <sup>nursery</sup> the grower or dealer knows, or has reason to know, is infested with plant pests or infected with plant diseases that may be spread by the sale or distribution of that nursery stock.

2. Sell or distribute any nursery stock <sup>that</sup> ~~which~~ the grower or dealer knows, or has reason to know, will not survive or grow.

3. Misrepresent the name, origin, grade, variety, quality or hardiness of any nursery stock offered for sale, or make any other false or misleading representation in the advertising or sale of nursery stock.

4. Conceal nursery stock to avoid inspection, falsify any record, or make any false or misleading statement to the department.

(8) DEPARTMENT INSPECTION. The department may inspect nurseries and premises at which nursery stock is held for sale or distribution.

(9) DEPARTMENT ORDERS. (a) Holding orders and remedial orders. An authorized employee or agent of the department may, by written notice, order a nursery grower or nursery dealer to do any of the following:

1. Temporarily hold nursery stock pending inspection by the department.

2. Remedy violations of this section.

3. Refrain from importing weeds or pests that threaten agricultural production or the environment in this state.

4. Permanently withhold nursery stock from sale or distribution, if the sale or distribution would violate this section or an order issued under this section, and the violation cannot be adequately remedied.

5. Destroy or return, without compensation from the department, nursery stock that is sold or distributed in violation of this section, or an order issued under this section, if the violation cannot be adequately remedied.

(b) Hearing. If the recipient of an order under par. (a) requests a hearing on that order, the department shall hold an informal hearing within 10 days unless the order recipient consents to a later date for an informal hearing. If a contested matter is not resolved at the informal hearing, the order recipient is entitled to a class 2 contested case hearing under ch. 227, ~~§ 227~~. The department is not required to stay an order under par.

(a) pending the outcome of any hearing under this paragraph.

(C5)

(10) RECIPROCAL AGREEMENTS WITH OTHER STATES. (a) General.

The department may enter into reciprocal agreements with other states to facilitate interstate shipments of nursery stock.

(b) Officially inspected sources. As part of an agreement under par. (a), the department may recognize officially inspected sources in another state.

(c) Inspection and certification standards. An agreement under par. (a) may specify standards and procedures for all of the following:

1. Inspecting officially inspected sources of nursery stock.
2. Inspecting and certifying interstate shipments of nursery stock.

(End)



Insert A

(3m) (c5) Notice of new locations. (a) ~~The~~ The holder of a nursery dealer license shall notify the department in writing before adding <sup>during a license year,</sup> any new location ~~at which~~ at which the <sup>license</sup> holder will hold nursery stock for sale. The license holder shall ~~include~~ <sup>specify</sup> the address of the new location in the notice.

(b) The holder of a nursery grower license shall notify the department in writing before adding, during the license year, any new location at which the license holder will operate a nursery or hold nursery stock for sale. The license holder shall specify the address of the new location in the notice.

**DRAFTER'S NOTE**  
**FROM THE**  
**LEGISLATIVE REFERENCE BUREAU**

LRB-0091/1dn

RCJ...ijs  
KMG

This is the first draft of the plant pest detection and nurseries request. I have a number of questions and comments:

1. The repeal of s. 20.115 (7) (j) will cause any balance in that account to lapse to the general fund. Is that OK?

2. This draft does not include definitions of "department" and "person" because of ss. 93.01 (3) and 990.01 (26).

3. The proposed definition of "nonprofit organization" is broader than some of the other definitions in the statutes (which are limited to IRC section 501 (c) 3 and sometimes 4). It includes more than what are commonly thought of as charitable organizations. Is that intended?

4. We try to avoid language in a definition that specifies that something is excluded from the definition which is not included in the definition in the first place. I realize that there is something much like the second sentence of the proposed definition of "nursery" in current law, but I wonder whether it really is needed. Would these "heeling-in grounds" and other premises fit within the definition of nursery?

5. Again, I know that the current definition of "nursery stock" excludes field seeds, but I wonder whether we can use a term that is more commonly understood. Are "field seeds" "agricultural crop seeds"? What kinds of seeds are *included* in the definition of "nursery stock"?  
*Should the definition exclude "fruit seeds"?*

6. The definition of "rooted Christmas tree" requires that the tree be "periodically sheared or cultured". What does cultured mean? Does "periodically" modify cultured as well as sheared? *Also, "stump culture" is not a concept that most people ~~would~~ understand.* *will*

7. It does not work to include the concept of "offering to sell" in the definition of "sell" because some of the uses of "sell" in the draft do not appropriately include the concept of offer. For example, the fees for nursery growers are based on how much the person sells. I have placed language adding the concept of "offering to sell" in the definition of nursery dealer and in proposed s. 94.10 (2) (f) 2. and (7) (a) 1. and (b) 1. and 2. Please consider whether there are other places where the concept needs to be added. ✓

8. I find the inclusion of the clause "to persons" in the nursery dealer license fee provisions (proposed s. 94.10 (2) (c) 1. to 7.) confusing. Could that clause be eliminated? If not, how is the meaning of those provisions intended to be different than if that clause were eliminated?

*and (3) (c) 1. to 7.*

*Can we explain this more clearly?*

9. The license fees are to be based on purchases or sales in the preceding license year, but I think that the preceding license year will not be over by the time that the fees must be calculated. Does this cause a problem?

10. I moved the requirement to provide the department with notice of new locations during a license year to proposed s. 94.10 (3m).

11. Concerning proposed s. 94.10 (5) (a), is it clear that a nursery dealer can always refuse to accept a shipment that is not labeled? Might a shipment arrive by mail, for example, and, if so, would a nursery dealer be able to refuse it?

12. Please review proposed s. 94.10 (7) (b) 4. I narrowed the language some so that the prohibitions relate more closely to the nursery stock growing and selling business. Should it be narrowed further so that the false or misleading statement would relate to the business?

13. Should proposed s. 94.10(7)(a) 5. authorize the department to require growers and dealers to recall nursery stock? ~~From proposed to what the~~

Rebecca C. Tradewell  
Assistant Chief Counsel  
266-7290



State of Wisconsin  
1999 - 2000 LEGISLATURE

LRB-0091/1

RCT: :ijs

kmg

SO ON

DOA:.....Grinde - Plant pest detection and nurseries

FOR 1999-01 BUDGET - NOT READY FOR INTRODUCTION

DNote

head Agriculture  
~~sub~~

1 AN ACT <sup>Don't  
then Cat</sup> relating to: the budget.

**Analysis by the Legislative Reference Bureau**

\* Under current law, a person may not operate a nursery (a place where plants are grown for sale) in this state without a license from the department of agriculture, trade and consumer protection (DATCP). The license fee is based primarily on total nursery acreage. A nursery operator must ~~also~~ pay a surcharge, also primarily based on acreage, which is used for gypsy moth eradication. A person other than the operator of a nursery may not sell nursery stock without a nursery dealer license from DATCP. The nursery dealer license fee is \$25 for each place of business. A nursery dealer must also pay a \$30 surcharge which is used for gypsy moth eradication.

This bill restructures and makes various changes in the law related to nursery operators and nursery dealers. Under the bill, the license fee for a nursery operator (called a nursery grower) is based on annual sales of nursery stock. Under the bill, the nursery dealer license fee is based on annual purchases of nursery stock. The bill eliminates the gypsy moth surcharge and provides that all of the license fees are used for plant protection, including nursery regulation and control of plant pests. The bill requires that Christmas tree growers be licensed as nursery growers. The bill also authorizes DATCP to issue temporary permits to allow the growing and sale of nursery stock for the benefit of nonprofit organizations without a license.

grower  
nursery grower and  
nursery dealer

For further information see the *state* fiscal estimate, which will be printed as an appendix to this bill.

*The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:*

1 SECTION 1. 20.115 (7) (j) of the statutes is repealed.

Note: Bud ←

2 SECTION 2. 20.115 (7) (ja) of the statutes is created to read:

3 20.115 (7) (ja) *Plant protection*. All moneys received under ss. 94.10 (2) and (3)  
4 and 94.11 for plant protection, including nursery regulation and the detection and  
5 control of plant pests.

Note: Bud ←

6 SECTION 3. 93.135 (1) (b) of the statutes is amended to read:

7 93.135 (1) (b) A license under s. 94.10 (2) or (3) ~~or (4)~~.

8 SECTION 4. 94.10 of the statutes is repealed and recreated to read:

9 **94.10 Nursery stock; inspection and licensing. (1) DEFINITIONS.** In this  
10 section:

11 (b) "Nonprofit organization" means an organization described in section 501 (c)  
12 of the Internal Revenue Code that is exempt from federal income tax under section 501  
13 (a) of the Internal Revenue Code.

14 (c) "Nursery" means premises in this state on which a person propagates or  
15 grows nursery stock for sale. "Nursery" does not include heeling-in grounds or other  
16 premises where a person holds nursery stock for purposes other than propagation or  
17 growth.

18 (d) "Nursery dealer" means a person, other than a nursery grower, who sells,  
19 offers for sale or distributes nursery stock.

20 (e) "Nursery grower" means a person who owns or operates a nursery.

1 (f) "Nursery stock" means plants and plant parts that can be propagated or  
2 grown, including rooted Christmas trees, but excluding field, vegetable and flower  
3 seeds, sod, cranberry cuttings and annuals.

4 (g) "Officially inspected source" means any of the following:

5 1. A nursery dealer licensed under sub. (2).

6 2. A nursery grower licensed under sub. (3).

7 3. A source outside this state that the department recognizes under sub. (10)  
8 as an officially inspected source.

9 (i) "Rooted Christmas tree" means an evergreen tree that is rooted in the soil,  
10 periodically sheared or cultured for eventual harvest and sale as a Christmas tree,  
11 subjected to weed and bush control and subjected to one or more of the following:

12 1. Basal pruning.

13 2. Fertilization.

14 3. Insect and disease control.

15 4. Stump culture.

16 5. Cultivation and irrigation.

17 (j) "Sell" means to transfer ownership, for consideration.

18 (2) NURSERY DEALER; ANNUAL LICENSE. (a) *License required.* Except as provided  
19 in par. (f), no person may operate as a nursery dealer without an annual license from  
20 the department. A nursery dealer license expires on February 20 of each year. A  
21 nursery dealer license may not be transferred to another person.

22 (b) *Applying for a license.* A person applying for a nursery dealer license under  
23 par. (a) shall apply on a form provided by the department. An applicant shall provide  
24 all of the following to the department:

1           1. The applicant's legal name and address and any other name under which the  
2 applicant does business.

3           2. The address of each location at which the applicant proposes to hold nursery  
4 stock for sale.

5           3. The license fee required under par. (c).

6           4. The surcharge required under par. (d), if any.

7           5. Other information reasonably required by the department for licensing  
8 purposes.

9           (c) *License fee.* A nursery dealer shall pay the following annual license fee,  
10 based on annual purchases calculated according to par. (e):

11           1. If the nursery dealer buys no more than \$5,000 worth of nursery stock for  
12 resale to persons in this state, \$55.

13           2. If the nursery dealer buys more than \$5,000 but not more than \$20,000 worth  
14 of nursery stock for resale to persons in this state, \$75.

15           3. If the nursery dealer buys more than \$20,000 but not more than \$100,000  
16 worth of nursery stock for resale to persons in this state, \$100.

17           4. If the nursery dealer buys more than \$100,000 but not more than \$200,000  
18 worth of nursery stock for resale to persons in this state, \$200.

19           5. If the nursery dealer buys more than \$200,000 but not more than \$500,000  
20 worth of nursery stock for resale to persons in this state, \$300.

21           6. If the nursery dealer buys more than \$500,000 but not more than \$2,000,000  
22 worth of nursery stock for resale to persons in this state, \$400.

23           7. If the nursery dealer buys more than \$2,000,000 worth of nursery stock for  
24 resale to persons in this state, \$500.

1 (d) *Surcharge for operating without a license.* In addition to the fee required  
2 under par. (c), an applicant for a nursery dealer license shall pay a surcharge equal  
3 to the amount of that fee if the department determines that, within 365 days ~~before~~  
4 ~~submitting~~ <sup>before</sup> the application, the applicant operated as a nursery dealer without a  
5 license in violation of par. (a). Payment of the surcharge does not relieve the  
6 applicant of any other penalty or liability that may result from the violation, but does  
7 not constitute evidence of a violation of par. (a).

8 (e) *Calculating annual purchases.* The amount of an applicant's license fee  
9 under par. (c) for a license year shall be based on the applicant's purchases of nursery  
10 stock during the preceding license year, except that if the applicant made no  
11 purchases of nursery stock during the preceding license year <sup>✓</sup> the fee shall be based  
12 on the applicant's good faith prediction of purchases during the license year for which  
13 the applicant is applying.

14 (f) *Exemptions.* Paragraph (a) does not apply to any of the following:

15 1. A person whose only sales of nursery stock are retail sales totalling <sup>fe</sup> less than  
16 \$250 annually.

17 2. A person selling or offering to sell nursery stock pursuant to a valid permit  
18 under par. (g).

19 (g) *Temporary permit; sales benefiting nonprofit organization.* The department  
20 may issue a temporary permit authorizing the permit holder to sell nursery stock,  
21 for the benefit of a nonprofit organization, for a period of not more than 7 consecutive  
22 days. An applicant for a temporary permit shall apply on a form provided by the  
23 department ~~and~~ and shall pay a fee of \$5. The department may impose written  
24 conditions on the temporary permit ~~and~~ and may summarily suspend or revoke the  
25 permit if the permit holder violates those conditions.



(3)

1 (3) NURSERY GROWER; ANNUAL LICENSE. (a) License required. Except as provided  
2 in par. (f), no person may operate as a nursery grower without an annual license from  
3 the department. A nursery grower license expires on February 20~~th~~ ~~of each year~~. A  
4 nursery grower license may not be transferred to another person.

5 (b) Applying for a license. A person applying for a nursery grower license under  
6 par. (a) shall apply on a form provided by the department. An applicant shall provide  
7 all of the following to the department:

- 8 1. The applicant's legal name and address and any other name under which the
- 9 applicant does business.
- 10 2. The address of each location in this state at which the applicant operates a
- 11 nursery or holds nursery stock for sale.
- 12 3. The license fee required under par. (c).
- 13 4. The surcharge required under (d), if any.
- 14 5. Other information reasonably required by the department for licensing
- 15 purposes.

16 (c) License fee. A nursery grower shall pay the following annual license fee,  
17 based on annual sales calculated according to par. (e):

no more

18 1. If the nursery grower annually sells ~~less~~ than \$5,000 worth of nursery stock  
19 to persons in this state, \$55, except that no fee is required of a Christmas tree grower  
20 who annually sells ~~less~~ <sup>no more</sup> than \$5,000 worth of Christmas trees to persons in this state.

21 2. If the nursery grower annually sells more than \$5,000 but not more than  
22 \$20,000 worth of nursery stock to person<sup>s</sup> in this state, \$100.

23 3. If the nursery grower annually sells more than \$20,000 but not more than  
24 \$100,000 worth of nursery stock to person<sup>s</sup> in this state, \$200.

1 4. If the nursery grower annually sells more than \$100,000 but not more than  
2 \$200,000 worth of nursery stock to person<sup>s</sup> in this state, \$400.

3 5. If the nursery grower annually sells more than \$200,000 but not more than  
4 \$500,000 worth of nursery stock to person<sup>s</sup> in this state, \$600.

5 6. If the nursery grower annually sells more than \$500,000 but not more than  
6 \$2,000,000 worth of nursery stock to person<sup>s</sup> in this state, \$1,200.

7 7. If the nursery grower annually sells more than \$2,000,000 worth of nursery  
8 stock to person<sup>s</sup> in this state, \$2,400.

9 (d) *Surcharge for operating without a license.* In addition to the fee required  
10 under par. (c), an applicant for a nursery grower license shall pay a surcharge equal  
11 to the amount of that fee if the department determines that, within 365 days ~~prior~~  
12 ~~to~~ <sup>before</sup> submitting that application, the applicant operated as a nursery grower without  
13 a license in violation of par. (a). Payment of the surcharge does not relieve the  
14 applicant of any other penalty or liability that may result from the violation, but does  
15 not constitute evidence of a violation of par. (a).

16 (e) *Calculating annual sales.* The amount of an applicant's license fee under  
17 par. (c) for a license year shall be based on the applicant's sales of nursery stock  
18 during the preceding license year, except that <sup>✓</sup> if the applicant made no sales during  
19 the preceding license year <sup>✓</sup> the fee shall be based on the applicant's good faith  
20 prediction of sales during the license year for which the applicant is applying.

21 (f) *Exemptions.* Paragraph (a) does not apply to any of the following:

22 1. A nursery grower whose only sales of nursery stock are retail sales totaling  
23 less than \$250 annually.

24 2. A person growing nursery stock for sale pursuant to a valid temporary permit  
25 under par. (g).

1 (g) *Temporary permit; sales benefiting nonprofit organization.* The department  
2 may issue a temporary permit authorizing the permit holder to sell nursery stock,  
3 for the benefit of a nonprofit organization, for a period of not more than 7 consecutive  
4 days. An applicant for a temporary permit shall apply on a form provided by the  
5 department and shall pay a fee of \$5. The department may impose written conditions  
6 on the temporary permit and may summarily suspend or revoke the permit if the  
7 permit holder violates those conditions.

8 (3m) <sup>B</sup> NOTICE OF NEW LOCATIONS. (a) The holder of a nursery dealer license shall  
9 notify the department in writing before adding, during a license year, any new  
10 location at which the license holder will hold nursery stock for sale. The license  
11 holder shall specify the address of the new location in the notice.

12 (b) The holder of a nursery grower license shall notify the department in  
13 writing before adding, during the license year, any new location at which the license  
14 holder will operate a nursery or hold nursery stock for sale. The license holder shall  
15 specify the address of the new location in the notice.

16 (4) <sup>B</sup> NURSERY GROWERS AND DEALERS; RECORDS. (a) *Nursery dealers; records of*  
17 *nursery stock received.* A nursery dealer shall keep a record of every shipment of  
18 nursery stock received by the nursery dealer. The nursery dealer shall include all  
19 of the following in the record:

20 1. A description of the types of nursery stock, and the quantity of nursery stock  
21 of each type, included in the shipment.

22 2. The name and address of the source from which the nursery dealer received  
23 the shipment.

24 (b) *Nursery growers and dealers; records of shipments to other nursery growers*  
25 *and dealers.* Each nursery grower and nursery dealer shall record every shipment

1 of nursery stock that the nursery grower or nursery dealer sells or distributes to  
2 another nursery grower or nursery dealer. The nursery grower or nursery dealer  
3 shall include all of the following in the record:

4 1. A description of the types of nursery stock, and the quantity of nursery stock  
5 of each type, included in the shipment.

6 2. The name and address of the nursery grower or nursery dealer receiving the  
7 shipment.

8 (c) *Records retained and made available.* A nursery grower or nursery dealer  
9 who is required to keep records under par. (a) or (b) shall retain those records for at  
10 least 3 years and shall make those records available to the department for inspection  
11 and copying upon request.

12 (5) LABELING NURSERY STOCK. (a) *Nursery stock shipped to dealer.* No person  
13 may sell or distribute any shipment of nursery stock to a nursery dealer, and no  
14 nursery dealer may accept a shipment of nursery stock, unless that shipment is  
15 labeled with all of the following:

16 1. The name and address of the person selling or distributing the shipment to  
17 the nursery dealer.

18 2. A certification, by the person under subd. 1., that all of the nursery stock  
19 included in the shipment is from officially inspected sources.

20 (b) *Growers and dealers to report unlabeled shipments.* Whenever any person  
21 tenders to a nursery grower or nursery dealer any shipment of nursery stock that is  
22 not fully labeled according to par. (a), the nursery grower or nursery dealer shall  
23 promptly report that unlabeled shipment to the department.

1 (c) *Nursery stock sold at retail.* A person selling nursery stock at retail shall  
2 ensure that the nursery stock is labeled with the common or botanical name of the  
3 nursery stock.

4 (6)<sup>b</sup> CARE OF NURSERY STOCK. (a) *Adequate facilities.* A nursery grower or nursery  
5 dealer shall maintain facilities that are reasonably adequate for the care and  
6 keeping of nursery stock held for sale, so that the nursery grower or nursery dealer  
7 can keep the nursery stock in healthy condition pending sale.

8 (8) (b) <sup>1</sup> *Reasonable examinations.* Nursery growers and nursery dealers shall make reasonable examinations  
9 of nursery stock held for sale to determine whether that nursery stock is capable of  
10 reasonable growth, is infested with injurious pests or is infected with disease.

11 (7)<sup>b</sup> PROHIBITIONS. (a) *Nursery dealers.* No nursery dealer may do any of the  
12 following:

13 1. Obtain, hold, sell, offer to sell or distribute nursery stock from any source  
14 other than an officially inspected source.

15 2. Misrepresent that the nursery dealer is a nursery grower.

16 (b) *Nursery growers and dealers.* No nursery grower or nursery dealer may do  
17 any of the following:

18 1. Sell, offer to sell or distribute any nursery stock that the nursery grower or  
19 nursery dealer knows, or has reason to know, is infested with plant pests or infected  
20 with plant diseases that may be spread by the sale or distribution of that nursery  
21 stock.

22 2. Sell, offer to sell or distribute any nursery stock that the <sup>nursery</sup> grower or dealer  
23 knows, or has reason to know, will not survive or grow.

1           3. Misrepresent the name, origin, grade, variety, quality or hardiness of any  
2 nursery stock offered for sale or make any other false or misleading representation  
3 in the advertising or sale of nursery stock.

4           4. Conceal nursery stock to avoid inspection by the department, falsify any  
5 record required under this section or make any false or misleading statement to the  
6 department.

7           (8)<sup>B</sup> DEPARTMENT INSPECTION. The department may inspect nurseries and  
8 premises at which nursery stock is held for sale or distribution.

9           (9)<sup>B</sup> DEPARTMENT ORDERS. (a) *Holding orders and remedial orders.* An  
10 authorized employee<sup>p</sup> or agent of the department may, by written notice, order a  
11 nursery grower or nursery dealer to do any of the following:

12           1. Temporarily hold nursery stock pending inspection by the department.

13           2. Remedy violations of this section.

14           3. Refrain from importing weeds or pests that threaten agricultural production  
15 or the environment in this state.

16           4. Permanently withhold nursery stock from sale or distribution, if the sale or  
17 distribution would violate this section or an order issued under this section and the  
18 violation cannot be adequately remedied in another manner.

19           5. Destroy or return, without compensation from the department, nursery  
20 stock that is sold or distributed in violation of this section, or an order issued under  
21 this section, if the violation cannot be adequately remedied in another manner.

22           (b) *Hearing.* If the recipient of an order under par. (a) requests a hearing on  
23 that order, the department shall hold an informal hearing within 10 days unless the  
24 recipient of the order consents to a later date for an informal hearing. If a contested  
25 matter is not resolved at the informal hearing, the recipient of the order is entitled

The request for a hearing is not  
a request under 5.227.42(2).

1 to a class 2 contested case hearing under ch. 227. The department is not required  
2 to stay an order under par. (a) pending the outcome of any hearing under this  
3 paragraph.

4 <sup>B</sup>(10) RECIPROCAL AGREEMENTS WITH OTHER STATES. (a) *General*. The department  
5 may enter into reciprocal agreements with other states to facilitate interstate  
6 shipments of nursery stock.

7 (b) *Officially inspected sources*. As part of an agreement under par. (a), the  
8 department may recognize ~~officially inspected~~ <sup>of nursery stock</sup> sources in another state <sup>as officially inspected</sup> ~~sources~~

9 (c) *Inspection and certification standards*. An agreement under par. (a) may  
10 specify standards and procedures for all of the following:

- 11 1. Inspecting officially inspected sources of nursery stock.
- 12 2. Inspecting and certifying interstate shipments of nursery stock.

History: 1997 a. 191.

13

(END)

*DNote*

**DRAFTER'S NOTE**  
**FROM THE**  
**LEGISLATIVE REFERENCE BUREAU**

LRB-0091/1dn  
RCT:kmg:lp

October 16, 1998

This is the first draft of the plant pest detection and nurseries request. I have a number of questions and comments:

1. The repeal of s. 20.115 (7) (j) will cause any balance in that account to lapse to the general fund. Is that OK?

2. This draft does not include definitions of "department" and "person" because of ss. 93.01 (3) and 990.01 (26).

3. The proposed definition of "nonprofit organization" is broader than some of the other definitions in the statutes (which are limited to IRC section 501 (c) 3 and sometimes 4). It includes more than what are commonly thought of as charitable organizations. Is that intended?

4. We try to avoid language in a definition that specifies that something is excluded from the definition which is not included in the definition in the first place. I realize that there is something much like the second sentence of the proposed definition of "nursery" in current law, but I wonder whether it really is needed. Would these "healing-in grounds" and other premises fit within the definition of nursery?

5. Again, I know that the current definition of "nursery stock" excludes field seeds, but I wonder whether we can use a term that is more commonly understood. Are "field seeds" "agricultural crop seeds"? Should the definition exclude "fruit seeds"? What kinds of seeds are *included* in the definition of "nursery stock"?

6. The definition of "rooted Christmas tree" requires that the tree be "periodically sheared or cultured". What does cultured mean? Does "periodically" modify cultured as well as sheared? Also, "stump culture" is not a concept that most people will understand. Can we explain this more clearly?

7. It does not work to include the concept of "offering to sell" in the definition of "sell" because some of the uses of "sell" in the draft do not appropriately include the concept of offer. For example, the fees for nursery growers are based on how much the person sells. I have placed language adding the concept of "offering to sell" in the definition of nursery dealer and in proposed s. 94.10 (2) (f) 2. and (7) (a) 1. and (b) 1. and 2. Please consider whether there are other places where the concept needs to be added.

8. I find the inclusion of the clause "to persons" in the license fee provisions (proposed s. 94.10 (2) (c) 1. to 7. and (3) (c) 1. to 7.) confusing. Could that clause be eliminated?



If not, how is the meaning of those provisions intended to be different than if that clause were eliminated?

9. The license fees are to be based on purchases or sales in the preceding license year, but I think that the preceding license year will not be over by the time that the fees must be calculated. Does this cause a problem?

10. I moved the requirement to provide the department with notice of new locations during a license year to proposed s. 94.10 (3m).

11. Concerning proposed s. 94.10 (5) (a), is it clear that a nursery dealer can always refuse to accept a shipment that is not labeled? Might a shipment arrive by mail, for example, and, if so, would a nursery dealer be able to refuse it?

12. Please review proposed s. 94.10 (7) (b) 4. I narrowed the language some so that the prohibitions relate more closely to the nursery stock growing and selling business. Should it be narrowed further so that the false or misleading statement would relate to the business?

13. Should proposed s. 94.10 (9) (a) 5. authorize the department to require growers and dealers to recall nursery stock?

Rebecca C. Tradewell  
Assistant Chief Counsel  
266-7290

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## **Tradewell, Becky**

**From:** KNAPPBH@wheel.datcp.state.wi.us  
**Sent:** Tuesday, October 20, 1998 5:58 PM  
**To:** Tradewell, Becky  
**Cc:** grindk@mail.state.wi.us; matsojk@wheel.datcp.state.wi.us;  
MOLLKA@wheel.datcp.state.wi.us; BUROKSJ@wheel.datcp.state.wi.us;  
kohlej@wheel.datcp.state.wi.us; CHAPMEJ@wheel.datcp.state.wi.us  
**Subject:** 99-01 Stat Language - Plant Pest  
**Sensitivity:** Confidential



ATT48091.ATT

Becky,

I'm attaching a revision to the request on Plant Pest Detection - DI# 5710. This sets up a separate fee structure for Christmas tree growers, apart from the nursery growers. This also reflects what was in the issue paper. Please let me know if there's any problem with making this change, or if you need me to send you a hard copy.

Thank you,  
Barb Knapp

### 3. PLANT PEST DETECTION (DIN #5710)

#### EXPLANATION:

DATCP currently licenses nursery growers and nursery dealers under s. 94.10, Stats. DATCP collects annual license fees which it deposits to the general fund as GPR-earned. DATCP also collects a license fee surcharge which it deposits as program revenue to finance the department's gypsy moth control program.

DATCP proposes to:

- Restructure current license fees for nursery growers and nursery dealers, and deposit all license fees to a new program revenue appropriation for plant pest detection and control.
- Eliminate the current gypsy moth fee surcharge. (Program revenues from restructured license fees would be used to finance the ongoing gypsy moth control program, as well as other pest detection and control programs.)
- Require Christmas tree growers to be licensed as nursery growers. (Christmas tree growers will pay lower license fees than other growers.)
- Reorganize and redraft the current nursery law so it will be easier to read and understand.

#### STATUTORY LANGUAGE:

SECTION \_\_\_\_. 20.115(7)(j) of the statutes is repealed.

SECTION \_\_\_\_. 20.115(7)(ja) of the statutes is created to read:

20.115(7)(ja) Plant protection. All moneys received under ss. 94.10(2) and (3) and 94.11 for plant protection, including nursery regulation and the detection and control of plant pests.

SECTION \_\_\_\_. 94.10 of the statutes is repealed and recreated to read:

#### 94.10 NURSERY STOCK; INSPECTION AND LICENSING. (1)

DEFINITIONS. In this section:

(a) "Department" means the state of Wisconsin department of agriculture, trade and consumer protection.

(b) "Nonprofit organization" means an organization described in section 501(c) of the United States internal revenue code.

(c) "Nursery" means premises in this state on which a person propagates or grows nursery stock for sale. "Nursery" does not include heeling-in grounds or other premises where a person holds nursery stock for purposes other than propagation or growth.

(d) "Nursery dealer" means a person, other than a nursery grower, who sells or distributes nursery stock.

(e) "Nursery grower" means a person who owns or operates a nursery.

(f) "Nursery stock" means plants and plant parts that can be propagated or grown. "Nursery stock" includes rooted Christmas trees, but does not include field, vegetable or flower seeds, sod, cranberry cuttings or annuals.

(g) "Officially inspected source" means any of the following:

1. A nursery dealer licensed under sub. (2).
2. A nursery grower licensed under sub. (3).
3. A source outside this state which the department recognizes as an officially inspected source.

(h) "Person" means an individual, corporation, partnership, cooperative association, limited liability company, trust, or other organization or entity.

(i) "Rooted Christmas tree" means an evergreen tree which is rooted in the soil, periodically sheared or cultured for eventual harvest and sale as a Christmas tree, subjected to weed and brush control, and subjected to one or more of the following:

1. Basal pruning.
2. Fertilization.
3. Insect and disease control.
4. Stump culture.
5. Cultivation and irrigation.

(j) "Sell" means to transfer ownership, for consideration. "Sell" includes offering for sale, or soliciting orders for sale.

(2) NURSERY DEALER; ANNUAL LICENSE. (a) License required. Except as provided in par. (f), no person may operate as a nursery dealer without an annual license from the department. A license expires on February 20 of each year. A license may not be transferred to another person.

(b) Applying for a license. A person applying for an annual nursery dealer license under par. (a) shall apply on a form provided by the department. The application shall include all of the following:

1. The applicant's legal name and address, and any other name under which the applicant does business.
2. Each location at which the applicant proposes to hold nursery stock for sale. A license holder shall notify the department in writing before adding any new location during the license year. Notice shall include the address of the new location.
3. The license fee required under par. (c).
4. The surcharge required under par. (d), if any.
5. Other information reasonably required by the department for licensing purposes.

(c) License fee. A nursery dealer shall pay the following annual license fee, based on annual purchases calculated according to par. (e):

1. \$55 if the dealer buys no more than \$5,000 worth of nursery stock for resale to persons in this state.

2. \$75 if the dealer buys more than \$5,000 but not more than \$20,000 worth of nursery stock for resale to persons in this state.

3. \$100 if the dealer buys more than \$20,000 but not more than \$100,000 worth of nursery stock for resale to persons in this state.

4. \$200 if the dealer buys more than \$100,000 but not more than \$200,000 worth of nursery stock for resale to persons in this state.

5. \$300 if the dealer buys more than \$200,000 but not more than \$500,000 worth of nursery stock for resale to persons in this state.

6. \$400 if the dealer buys more than \$500,000 but not more than \$2,000,000 worth of nursery stock for resale to persons in this state.

7. \$500 if the dealer buys more than \$2,000,000 worth of nursery stock for resale to persons in this state.

(d) Surcharge for operating without a license. An applicant for a nursery dealer license shall pay, in addition to the fee required under par. (c), a surcharge equal to the amount of that fee if the department determines that, within 365 days prior to submitting that application, the applicant operated as a nursery dealer without a license in violation of par. (a). Payment of the surcharge does not relieve the applicant of any other penalty or liability that may result from the violation, but does not constitute evidence of a violation.

(e) Calculating annual purchases. The amount of a nursery dealer's license fee under par. (c) shall be based on the dealer's purchases of nursery stock during the license year preceding the license year for which the dealer is applying. If the nursery dealer made no purchases during the preceding license year, the fee shall be based on the dealer's good faith estimate of purchases during the license year for which the dealer is applying.

(f) Exemptions. Paragraph (a) does not apply to any of the following:

1. A person whose only sales of nursery stock are retail sales totaling less than \$250 annually.

2. A person selling nursery stock pursuant to a valid permit under par. (g).

(g) Temporary permit; sales benefiting nonprofit organization. The department may issue a temporary permit authorizing the permit holder to sell nursery stock, for the benefit of a nonprofit organization, for a period of not more than 7 consecutive days. An applicant for a temporary permit shall apply on a form provided by the department, and shall pay a fee of \$5. The department may impose written conditions on the temporary permit, and may summarily suspend or revoke the permit if the permit holder violates those conditions.

(3) NURSERY GROWER; ANNUAL LICENSE. (a) License required. Except as provided in par. (f), no person may operate as a nursery grower without an annual license from the department. A license expires on February 20 of each year. A license may not be transferred to another person.

(b) Applying for a license. A person applying for an annual nursery grower license under par. (a) shall apply on a form provided by the department. The application shall include all of the following:

1. The applicant's legal name and address, and any other name under which the applicant does business.
2. Each location in this state at which the applicant operates a nursery or holds nursery stock for sale. A license holder shall notify the department in writing before adding any new location during the license year.
3. The license fee required under par. (c) or (cm).
4. The surcharge required under (d), if any.
5. Other information reasonably required by the department for licensing purposes.

(c) License fee: general. Except as provided in par. (cm), a nursery grower shall pay the following annual license fee, based on annual sales calculated according to par. (e):

1. \$55 if the grower annually sells less than \$5,000 worth of nursery stock to persons in this state.
2. \$100 if the grower annually sells more than \$5,000 but not more than \$20,000 worth of nursery stock to persons in this state, except that a c.
3. \$200 if the grower annually sells more than \$20,000 but not more than \$100,000 worth of nursery stock to persons in this state.
4. \$400 if the grower annually sells more than \$100,000 but less than \$200,000 worth of nursery stock to persons in this state.
5. \$600 if the grower annually sells more than \$200,000 but less \$500,000 worth of nursery stock to persons in this state.
6. \$1200 if the grower annually sells more than \$500,000 but less than \$2,000,000 worth of nursery stock to persons in this state.
7. \$2400 if the grower annually sells more than \$2,000,000 worth of nursery stock to persons in this state.

(cm) License fee: Christmas tree growers. A Christmas tree grower shall pay the following annual license fee, based on annual sales calculated according to par. (e):

1. No fee if the Christmas tree grower annually sells less than \$5,000 worth of Christmas trees to persons in this state
2. \$75 if the Christmas tree grower annually sells more than \$5,000 but not more than \$20,000 worth of Christmas trees to persons in this state.
3. \$150 if the Christmas tree grower annually sells more than \$20,000 but not more than \$100,000 worth of Christmas trees to persons in this state.
4. \$300 if the Christmas tree grower annually sells more than \$100,000 but less than \$200,000 worth of Christmas trees to persons in this state.
5. \$450 if the Christmas tree grower annually sells more than \$200,000 but less \$500,000 worth of Christmas trees to persons in this state.
6. \$900 if the Christmas tree grower annually sells more than \$500,000 but less than \$2,000,000 worth of Christmas trees to persons in this state.
7. \$1,800 if the Christmas tree grower annually sells more than \$2,000,000 worth of Christmas trees to persons in this state.

(d) Surcharge for operating without a license. An applicant for a nursery grower license shall pay, in addition to the fee required under par. (c) or (cm), a surcharge equal to the amount of that fee if the department determines that, within 365 days prior to submitting that application, the applicant operated as a nursery grower without a license in violation of par. (a). Payment of the surcharge does not relieve the applicant of any other penalty or liability that may result from the violation, but does not constitute evidence of a violation.

(e) Calculating annual sales. The amount of a nursery grower's license fee under par. (c) or (cm) shall be based on the grower's sales of nursery stock during the license year preceding the license year for which the grower is applying. If the nursery grower made no sales during the preceding license year, the fee shall be based on the grower's good faith estimate of sales during the license year for which the grower is applying.

(f) Exemptions. Paragraph (a) does not apply to any of the following:

1. A nursery grower whose only sales of nursery stock are retail sales totaling less than \$250 annually.
2. A person growing nursery stock for sale pursuant to a valid temporary permit under par. (g).

(g) Temporary permit; sales benefiting nonprofit organization. The department may issue a temporary permit authorizing the permit holder to sell nursery stock, for the benefit of a nonprofit organization, for a period of not more than 7 consecutive days. An applicant for a temporary permit shall apply on a form provided by the department, and shall pay a fee of \$5. The department may impose written conditions on the temporary permit, and may summarily suspend or revoke the permit if the permit holder violates those conditions.

(4) NURSERY GROWERS AND DEALERS; RECORDS. (a) Nursery dealers; records of nursery stock received. A nursery dealer shall keep a record of every shipment of nursery stock received by the dealer. The record shall include:

1. The types of nursery stock, and the quantity of nursery stock of each type, included in the shipment.
2. The name and address of the source from which the dealer received the shipment.

(b) Nursery growers and dealers; records of shipments to other nursery growers and dealers. Every nursery grower and nursery dealer shall record every shipment of nursery stock which the grower or dealer sells or distributes to a nursery grower or nursery dealer. The record shall include all of the following:

1. The types of nursery stock, and the quantity of nursery stock of each type, included in the shipment.
2. The name and address of the nursery grower or nursery dealer receiving the shipment.

(c) Records retained and made available. A nursery grower or nursery dealer who is required to keep records under par. (a) or (b) shall retain those records for at least 3 years, and shall make those records available to the department for inspection and copying upon request.

(5) LABELING NURSERY STOCK. (a) Nursery stock shipped to dealer. No person may sell or distribute any shipment of nursery stock to a nursery dealer, and no nursery dealer may accept a shipment of nursery stock, unless that shipment is labeled with all of the following:

1. The name and address of the person selling or distributing the shipment to the nursery dealer.

2. A certification, by the person under par. (a), that all of the nursery stock included in the shipment is from officially inspected sources.

(b) Growers and dealers to report unlabeled shipments. Whenever any person tenders to a nursery grower or nursery dealer any shipment of nursery stock that is not fully labeled according to par. (a), the nursery grower or nursery dealer shall promptly report that unlabeled shipment to the department.

(c) Nursery stock sold at retail. Nursery stock sold at retail shall be labeled with the common or botanical name of the nursery stock.

(6) CARE OF NURSERY STOCK. (a) Adequate facilities. Every nursery grower and nursery dealer shall maintain facilities that are reasonably adequate for the care and keeping of nursery stock held for sale, so that the grower or dealer can keep the nursery stock in healthy condition pending sale.

(b) Nursery growers and nursery dealers shall make reasonable examinations of nursery stock held for sale, to determine whether that nursery stock is capable of reasonable growth, is infested with injurious pests, or is infected with disease.

(7) PROHIBITIONS. (a) Nursery dealers. No nursery dealer may do any of the following:

1. Obtain, hold, sell or distribute nursery stock from any source other than an officially inspected source.

2. Misrepresent that the nursery dealer is a nursery grower.

(b) Nursery growers and dealers. No nursery grower or nursery dealer may do any of the following:

1. Sell or distribute any nursery stock which the grower or dealer knows, or has reason to know, is infested with plant pests or infected with plant diseases that may be spread by the sale or distribution of that nursery stock.

2. Sell or distribute any nursery stock which the grower or dealer knows, or has reason to know, will not survive or grow.

3. Misrepresent the name, origin, grade, variety, quality or hardiness of any nursery stock offered for sale, or make any other false or misleading representation in the advertising or sale of nursery stock.

4. Conceal nursery stock to avoid inspection, falsify any record, or make any false or misleading statement to the department.

(8) DEPARTMENT INSPECTION. The department may inspect nurseries and premises at which nursery stock is held for sale or distribution.



(9) DEPARTMENT ORDERS. (a) Holding orders and remedial orders. An authorized employee or agent of the department may, by written notice, order a nursery grower or nursery dealer to do any of the following:

1. Temporarily hold nursery stock pending inspection by the department.
2. Remedy violations of this section.
3. Refrain from importing weeds or pests that threaten agricultural production or the environment in this state.
4. Permanently withhold nursery stock from sale or distribution, if the sale or distribution would violate this section or an order issued under this section, and the violation cannot be adequately remedied.
5. Destroy or return, without compensation from the department, nursery stock that is sold or distributed in violation of this section, or an order issued under this section, if the violation cannot be adequately remedied.

(b) Hearing. If the recipient of an order under par. (a) requests a hearing on that order, the department shall hold an informal hearing within 10 days unless the order recipient consents to a later date for an informal hearing. If a contested matter is not resolved at the informal hearing, the order recipient is entitled to a class 2 contested case hearing under ch. 227, Stats. The department is not required to stay an order under par. (a) pending the outcome of any hearing under this paragraph.

(10) RECIPROCAL AGREEMENTS WITH OTHER STATES. (a) General. The department may enter into reciprocal agreements with other states to facilitate interstate shipments of nursery stock.

(b) Officially inspected sources. As part of an agreement under par. (a), the department may recognize officially inspected sources in another state.

(c) Inspection and certification standards. An agreement under par. (a) may specify standards and procedures for all of the following:

1. Inspecting officially inspected sources of nursery stock.
2. Inspecting and certifying interstate shipments of nursery stock.



State of Wisconsin  
1999 - 2000 LEGISLATURE

5000

LRB-0091/2

RCT:kmg:lp

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DOA:.....Grinde - Plant pest detection and nurseries

FOR 1999-01 BUDGET -- NOT READY FOR INTRODUCTION

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*Don't  
Sen Cat.*  
AN ACT relating to: the budget.

*Analysis by the Legislative Reference Bureau*

**AGRICULTURE**

Under current law, a person may not operate a nursery (a place where plants are grown for sale) in this state without a license from the department of agriculture, trade and consumer protection (DATCP). The license fee is based primarily on total nursery acreage. A nursery operator must pay a surcharge, also primarily based on acreage, which is used for gypsy moth eradication. A person other than the operator of a nursery may not sell nursery stock without a nursery dealer license from DATCP. The nursery dealer license fee is \$25 for each place of business. A nursery dealer must also pay a \$30 surcharge which is used for gypsy moth eradication.

This bill restructures and makes various changes in the law related to nursery operators and nursery dealers. Under the bill, the license fee for a nursery operator (called a nursery grower) is based on annual sales of nursery stock. Under the bill, the nursery dealer license fee is based on annual purchases of nursery stock. The bill eliminates the gypsy moth surcharge and provides that all of the nurser grower and nursery dealer license fees are used for plant protection, including nursery regulation and control of plant pests. The bill requires that Christmas tree growers be licensed as nursery growers. The bill also authorizes DATCP to issue temporary permits to allow the growing and sale of nursery stock for the benefit of nonprofit organizations without a license.

For further information see the *state* fiscal estimate, which will be printed as an appendix to this bill.

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***The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:***

1       **SECTION 1.** 20.115 (7) (j) of the statutes is repealed.

      \*\*\*\*NOTE: This SECTION involves a change in an appropriation that must be reflected in the revised schedule in s. 20.005, stats.

2       **SECTION 2.** 20.115 (7) (ja) of the statutes is created to read:

3       20.115 (7) (ja) *Plant protection.* All moneys received under ss. 94.10 (2) and (3)  
4 and 94.11 for plant protection, including nursery regulation and the detection and  
5 control of plant pests.

      \*\*\*\*NOTE: This SECTION involves a change in an appropriation that must be reflected in the revised schedule in s. 20.005, stats.

6       **SECTION 3.** 93.135 (1) (b) of the statutes is amended to read:

7       93.135 (1) (b) A license under s. 94.10 (2) or (3) ~~or (4)~~.

8       **SECTION 4.** 94.10 of the statutes is repealed and recreated to read:

9       **94.10 Nursery stock; inspection and licensing. (1) DEFINITIONS.** In this  
10 section:

11       (b) "Nonprofit organization" means an organization described in section 501 (c)  
12 of the Internal Revenue Code that is exempt from federal income tax under section  
13 501 (a) of the Internal Revenue Code.

14       (c) "Nursery" means premises in this state on which a person propagates or  
15 grows nursery stock for sale. "Nursery" does not include heeling-in grounds or other  
16 premises where a person holds nursery stock for purposes other than propagation or  
17 growth.

18       (d) "Nursery dealer" means a person, other than a nursery grower, who sells,  
19 offers for sale or distributes nursery stock.

1 (e) “Nursery grower” means a person who owns or operates a nursery.

2 (f) “Nursery stock” means plants and plant parts that can be propagated or  
3 grown, including rooted Christmas trees, but excluding field, vegetable and flower  
4 seeds, sod, cranberry cuttings and annuals.

5 (g) “Officially inspected source” means any of the following:

6 1. A nursery dealer licensed under sub. (2).

7 2. A nursery grower licensed under sub. (3).

8 3. A source outside this state that the department recognizes under sub. (10)  
9 as an officially inspected source.

10 (i) “Rooted Christmas tree” means an evergreen tree that is rooted in the soil,  
11 periodically sheared or cultured for eventual harvest and sale as a Christmas tree,  
12 subjected to weed and bush control and subjected to one or more of the following:

13 1. Basal pruning.

14 2. Fertilization.

15 3. Insect and disease control.

16 4. Stump culture.

17 5. Cultivation and irrigation.

18 (j) “Sell” means to transfer ownership, for consideration.

19 (2) NURSERY DEALER; ANNUAL LICENSE. (a) *License required.* Except as provided  
20 in par. (f), no person may operate as a nursery dealer without an annual license from  
21 the department. A nursery dealer license expires on February 20. A nursery dealer  
22 license may not be transferred to another person.

23 (b) *Applying for a license.* A person applying for a nursery dealer license under  
24 par. (a) shall apply on a form provided by the department. An applicant shall provide  
25 all of the following to the department:

1           1. The applicant's legal name and address and any other name under which the  
2 applicant does business.

3           2. The address of each location at which the applicant proposes to hold nursery  
4 stock for sale.

5           3. The license fee required under par. (c).

6           4. The surcharge required under par. (d), if any.

7           5. Other information reasonably required by the department for licensing  
8 purposes.

9           (c) *License fee.* A nursery dealer shall pay the following annual license fee,  
10 based on annual purchases calculated according to par. (e):

11           1. If the nursery dealer buys no more than \$5,000 worth of nursery stock for  
12 resale to persons in this state, \$55.

13           2. If the nursery dealer buys more than \$5,000 but not more than \$20,000 worth  
14 of nursery stock for resale to persons in this state, \$75.

15           3. If the nursery dealer buys more than \$20,000 but not more than \$100,000  
16 worth of nursery stock for resale to persons in this state, \$100.

17           4. If the nursery dealer buys more than \$100,000 but not more than \$200,000  
18 worth of nursery stock for resale to persons in this state, \$200.

19           5. If the nursery dealer buys more than \$200,000 but not more than \$500,000  
20 worth of nursery stock for resale to persons in this state, \$300.

21           6. If the nursery dealer buys more than \$500,000 but not more than \$2,000,000  
22 worth of nursery stock for resale to persons in this state, \$400.

23           7. If the nursery dealer buys more than \$2,000,000 worth of nursery stock for  
24 resale to persons in this state, \$500.

1           (d) *Surcharge for operating without a license.* In addition to the fee required  
2 under par. (c), an applicant for a nursery dealer license shall pay a surcharge equal  
3 to the amount of that fee if the department determines that, within 365 days before  
4 submitting the application, the applicant operated as a nursery dealer without a  
5 license in violation of par. (a). Payment of the surcharge does not relieve the  
6 applicant of any other penalty or liability that may result from the violation, but does  
7 not constitute evidence of a violation of par. (a).

8           (e) *Calculating annual purchases.* The amount of an applicant's license fee  
9 under par. (c) for a license year shall be based on the applicant's purchases of nursery  
10 stock during the preceding license year, except that if the applicant made no  
11 purchases of nursery stock during the preceding license year the fee shall be based  
12 on the applicant's good faith prediction of purchases during the license year for which  
13 the applicant is applying.

14           (f) *Exemptions.* Paragraph (a) does not apply to any of the following:

15           1. A person whose only sales of nursery stock are retail sales totaling less than  
16 \$250 annually.

17           2. A person selling or offering to sell nursery stock pursuant to a valid permit  
18 under par. (g).

19           (g) *Temporary permit; sales benefiting nonprofit organization.* The department  
20 may issue a temporary permit authorizing the permit holder to sell nursery stock,  
21 for the benefit of a nonprofit organization, for a period of not more than 7 consecutive  
22 days. An applicant for a temporary permit shall apply on a form provided by the  
23 department and shall pay a fee of \$5. The department may impose written conditions  
24 on the temporary permit and may summarily suspend or revoke the permit if the  
25 permit holder violates those conditions.

1           **(3) NURSERY GROWER; ANNUAL LICENSE.** (a) *License required.* Except as provided  
2 in par. (f), no person may operate as a nursery grower without an annual license from  
3 the department. A nursery grower license expires on February 20. A nursery grower  
4 license may not be transferred to another person.

5           (b) *Applying for a license.* A person applying for a nursery grower license under  
6 par. (a) shall apply on a form provided by the department. An applicant shall provide  
7 all of the following to the department:

8           1. The applicant's legal name and address and any other name under which the  
9 applicant does business.

10           2. The address of each location in this state at which the applicant operates a  
11 nursery or holds nursery stock for sale.

12           3. The license fee required under par. (c). <sup>or (cm)</sup> ✓

13           4. The surcharge required under (d), if any.

14           5. Other information reasonably required by the department for licensing  
15 purposes. ; general

16           (c) *License fee* <sup>general</sup> ~~Except as provided in par. (cm), a~~ nursery grower shall pay the following annual license fee,  
17 based on annual sales calculated according to par. (e):

18           1. If the nursery grower annually sells no more than \$5,000 worth of nursery  
19 stock to persons in this state, \$55, ~~except that no fee is required of a Christmas tree~~  
20 ~~grower who annually sells no more than \$5,000 worth of Christmas trees to persons~~  
21 ~~in this state.~~

22           2. If the nursery grower annually sells more than \$5,000 but not more than  
23 \$20,000 worth of nursery stock to persons in this state, \$100.

24           3. If the nursery grower annually sells more than \$20,000 but not more than  
25 \$100,000 worth of nursery stock to persons in this state, \$200.

1           4. If the nursery grower annually sells more than \$100,000 but not more than  
2 \$200,000 worth of nursery stock to persons in this state, \$400.

3           5. If the nursery grower annually sells more than \$200,000 but not more than  
4 \$500,000 worth of nursery stock to persons in this state, \$600.

5           6. If the nursery grower annually sells more than \$500,000 but not more than  
6 \$2,000,000 worth of nursery stock to persons in this state, \$1,200.

7           7. If the nursery grower annually sells more than \$2,000,000 worth of nursery  
8 stock to persons in this state, \$2,400.

✓  
Insert  
7-8 (10)

9           (d) *Surcharge for operating without a license.* In addition to the fee required  
10 under par. (c) <sup>or (cm)</sup> an applicant for a nursery grower license shall pay a surcharge equal  
11 to the amount of that fee if the department determines that, within 365 days before  
12 submitting that application, the applicant operated as a nursery grower without a  
13 license in violation of par. (a). Payment of the surcharge does not relieve the  
14 applicant of any other penalty or liability that may result from the violation, but does  
15 not constitute evidence of a violation of par. (a).

16           (e) *Calculating annual sales.* The amount of an applicant's license fee under  
17 par. (c) <sup>or (cm)</sup> for a license year shall be based on the applicant's sales of nursery stock  
18 during the preceding license year, except that if the applicant made no sales during  
19 the preceding license year the fee shall be based on the applicant's good faith  
20 prediction of sales during the license year for which the applicant is applying.

21           (f) *Exemptions.* Paragraph (a) does not apply to any of the following:

22           1. A nursery grower whose only sales of nursery stock are retail sales totaling  
23 less than \$250 annually.

24           2. A person growing nursery stock for sale pursuant to a valid temporary permit  
25 under par. (g).



1           (g) *Temporary permit; sales benefiting nonprofit organization.* The department  
2 may issue a temporary permit authorizing the permit holder to sell nursery stock,  
3 for the benefit of a nonprofit organization, for a period of not more than 7 consecutive  
4 days. An applicant for a temporary permit shall apply on a form provided by the  
5 department and shall pay a fee of \$5. The department may impose written conditions  
6 on the temporary permit and may summarily suspend or revoke the permit if the  
7 permit holder violates those conditions.

8           **(3m) NOTICE OF NEW LOCATIONS.** (a) The holder of a nursery dealer license shall  
9 notify the department in writing before adding, during a license year, any new  
10 location at which the license holder will hold nursery stock for sale. The license  
11 holder shall specify the address of the new location in the notice.

12           (b) The holder of a nursery grower license shall notify the department in  
13 writing before adding, during the license year, any new location at which the license  
14 holder will operate a nursery or hold nursery stock for sale. The license holder shall  
15 specify the address of the new location in the notice.

16           **(4) NURSERY GROWERS AND DEALERS; RECORDS.** (a) *Nursery dealers; records of*  
17 *nursery stock received.* A nursery dealer shall keep a record of every shipment of  
18 nursery stock received by the nursery dealer. The nursery dealer shall include all  
19 of the following in the record:

20           1. A description of the types of nursery stock, and the quantity of nursery stock  
21 of each type, included in the shipment.

22           2. The name and address of the source from which the nursery dealer received  
23 the shipment.

24           (b) *Nursery growers and dealers; records of shipments to other nursery growers*  
25 *and dealers.* Each nursery grower and nursery dealer shall record every shipment

1 of nursery stock that the nursery grower or nursery dealer sells or distributes to  
2 another nursery grower or nursery dealer. The nursery grower or nursery dealer  
3 shall include all of the following in the record:

4 1. A description of the types of nursery stock, and the quantity of nursery stock  
5 of each type, included in the shipment.

6 2. The name and address of the nursery grower or nursery dealer receiving the  
7 shipment.

8 (c) *Records retained and made available.* A nursery grower or nursery dealer  
9 who is required to keep records under par. (a) or (b) shall retain those records for at  
10 least 3 years and shall make those records available to the department for inspection  
11 and copying upon request.

12 (5) LABELING NURSERY STOCK. (a) *Nursery stock shipped to dealer.* No person  
13 may sell or distribute any shipment of nursery stock to a nursery dealer, and no  
14 nursery dealer may accept a shipment of nursery stock, unless that shipment is  
15 labeled with all of the following:

16 1. The name and address of the person selling or distributing the shipment to  
17 the nursery dealer.

18 2. A certification, by the person under subd. 1., that all of the nursery stock  
19 included in the shipment is from officially inspected sources.

20 (b) *Growers and dealers to report unlabeled shipments.* Whenever any person  
21 tenders to a nursery grower or nursery dealer any shipment of nursery stock that is  
22 not fully labeled according to par. (a), the nursery grower or nursery dealer shall  
23 promptly report that unlabeled shipment to the department.

1           (c) *Nursery stock sold at retail.* A person selling nursery stock at retail shall  
2 ensure that the nursery stock is labeled with the common or botanical name of the  
3 nursery stock.

4           **(6) CARE OF NURSERY STOCK.** (a) *Adequate facilities.* A nursery grower or  
5 nursery dealer shall maintain facilities that are reasonably adequate for the care and  
6 keeping of nursery stock held for sale, so that the nursery grower or nursery dealer  
7 can keep the nursery stock in healthy condition pending sale.

8           (b) *Reasonable examinations.* Nursery growers and nursery dealers shall make  
9 reasonable examinations of nursery stock held for sale to determine whether that  
10 nursery stock is capable of reasonable growth, is infested with injurious pests or is  
11 infected with disease.

12           **(7) PROHIBITIONS.** (a) *Nursery dealers.* No nursery dealer may do any of the  
13 following:

14           1. Obtain, hold, sell, offer to sell or distribute nursery stock from any source  
15 other than an officially inspected source.

16           2. Misrepresent that the nursery dealer is a nursery grower.

17           (b) *Nursery growers and dealers.* No nursery grower or nursery dealer may do  
18 any of the following:

19           1. Sell, offer to sell or distribute any nursery stock that the nursery grower or  
20 nursery dealer knows, or has reason to know, is infested with plant pests or infected  
21 with plant diseases that may be spread by the sale or distribution of that nursery  
22 stock.

23           2. Sell, offer to sell or distribute any nursery stock that the nursery grower or  
24 nursery dealer knows, or has reason to know, will not survive or grow.

1           3. Misrepresent the name, origin, grade, variety, quality or hardiness of any  
2 nursery stock offered for sale or make any other false or misleading representation  
3 in the advertising or sale of nursery stock.

4           4. Conceal nursery stock to avoid inspection by the department, falsify any  
5 record required under this section or make any false or misleading statement to the  
6 department.

7           (8) DEPARTMENT INSPECTION. The department may inspect nurseries and  
8 premises at which nursery stock is held for sale or distribution.

9           (9) DEPARTMENT ORDERS. (a) *Holding orders and remedial orders.* An  
10 authorized employe or agent of the department may, by written notice, order a  
11 nursery grower or nursery dealer to do any of the following:

12           1. Temporarily hold nursery stock pending inspection by the department.

13           2. Remedy violations of this section.

14           3. Refrain from importing weeds or pests that threaten agricultural production  
15 or the environment in this state.

16           4. Permanently withhold nursery stock from sale or distribution, if the sale or  
17 distribution would violate this section or an order issued under this section and the  
18 violation cannot be adequately remedied in another manner.

19           5. Destroy or return, without compensation from the department, nursery  
20 stock that is sold or distributed in violation of this section, or an order issued under  
21 this section, if the violation cannot be adequately remedied in another manner.

22           (b) *Hearing.* If the recipient of an order under par. (a) requests a hearing on  
23 that order, the department shall hold an informal hearing within 10 days unless the  
24 recipient of the order consents to a later date for an informal hearing. The request  
25 for a hearing is not a request under s. 227.42 (2). If a contested matter is not resolved

1 at the informal hearing, the recipient of the order is entitled to a class 2 contested  
2 case hearing under ch. 227. The department is not required to stay an order under  
3 par. (a) pending the outcome of any hearing under this paragraph.

4 **(10) RECIPROCAL AGREEMENTS WITH OTHER STATES.** (a) *General.* The department  
5 may enter into reciprocal agreements with other states to facilitate interstate  
6 shipments of nursery stock.

7 (b) *Officially inspected sources.* As part of an agreement under par. (a), the  
8 department may recognize sources of nursery stock in another state as officially  
9 inspected sources.

10 (c) *Inspection and certification standards.* An agreement under par. (a) may  
11 specify standards and procedures for all of the following:

- 12 1. Inspecting officially inspected sources of nursery stock.
- 13 2. Inspecting and certifying interstate shipments of nursery stock.

14 (END)

*ONote*

Insert 7-8 ✓

(b) Applying for a license. A person applying for an annual nursery grower license under par. (a) shall apply on a form provided by the department. The application shall include all of the following:

1. The applicant's legal name and address, and any other name under which the applicant does business.
2. Each location in this state at which the applicant operates a nursery or holds nursery stock for sale. A license holder shall notify the department in writing before adding any new location during the license year.
3. The license fee required under par. (c) or (cm).
4. The surcharge required under (d), if any.
5. Other information reasonably required by the department for licensing purposes.

(c) License fee; general. Except as provided in par. (cm), a nursery grower shall pay the following annual license fee, based on annual sales calculated according to par. (e):

1. \$55 if the grower annually sells less than \$5,000 worth of nursery stock to persons in this state.
2. \$100 if the grower annually sells more than \$5,000 but not more than \$20,000 worth of nursery stock to persons in this state, except that a c.
3. \$200 if the grower annually sells more than \$20,000 but not more than \$100,000 worth of nursery stock to persons in this state.
4. \$400 if the grower annually sells more than \$100,000 but less than \$200,000 worth of nursery stock to persons in this state.
5. \$600 if the grower annually sells more than \$200,000 but less \$500,000 worth of nursery stock to persons in this state.
6. \$1200 if the grower annually sells more than \$500,000 but less than \$2,000,000 worth of nursery stock to persons in this state.
7. \$2400 if the grower annually sells more than \$2,000,000 worth of nursery stock to persons in this state.

(cm) License fee; Christmas tree growers. A Christmas tree grower shall pay the following annual license fee, based on annual sales calculated according to par. (e):

1. No fee if the Christmas tree grower annually sells less than \$5,000 worth of Christmas trees to persons in this state.
2. ~~\$75~~ If the Christmas tree grower annually sells more than \$5,000 but not more than \$20,000 worth of Christmas trees to persons in this state, ~~no more~~ \$75
3. ~~\$150~~ If the Christmas tree grower annually sells more than \$20,000 but not more than \$100,000 worth of Christmas trees to persons in this state, \$150
4. ~~\$300~~ If the Christmas tree grower annually sells more than \$100,000 but ~~not~~ not more than \$200,000 worth of Christmas trees to persons in this state, \$300
5. ~~\$450~~ If the Christmas tree grower annually sells more than \$200,000 but ~~not~~ not more than \$500,000 worth of Christmas trees to persons in this state, \$450
6. ~~\$900~~ If the Christmas tree grower annually sells more than \$500,000 but ~~not~~ not more than \$2,000,000 worth of Christmas trees to persons in this state, \$900
7. ~~\$1,800~~ If the Christmas tree grower annually sells more than \$2,000,000 worth of Christmas trees to persons in this state, \$1,800

end of insert

**DRAFTER'S NOTE**  
**FROM THE**  
**LEGISLATIVE REFERENCE BUREAU**

2  
LRB-0091/11n  
RCT:kmg:lp

October 16, 1998

*draft is like*

*except that it provides  
lower fees for Christmas  
tree growers*

This is the first draft of the plant pest detection and nurseries request. I have a number of questions and comments:

1. The repeal of s. 20.115 (7) (j) will cause any balance in that account to lapse to the general fund. Is that OK?

2. This draft does not include definitions of "department" and "person" because of ss. 93.01 (3) and 990.01 (26).

3. The proposed definition of "nonprofit organization" is broader than some of the other definitions in the statutes (which are limited to IRC section 501 (c) 3 and sometimes 4). It includes more than what are commonly thought of as charitable organizations. Is that intended?

4. We try to avoid language in a definition that specifies that something is excluded from the definition which is not included in the definition in the first place. I realize that there is something much like the second sentence of the proposed definition of "nursery" in current law, but I wonder whether it really is needed. Would these "healing-in grounds" and other premises fit within the definition of nursery?

5. Again, I know that the current definition of "nursery stock" excludes field seeds, but I wonder whether we can use a term that is more commonly understood. Are "field seeds" "agricultural crop seeds"? Should the definition exclude "fruit seeds"? What kinds of seeds are *included* in the definition of "nursery stock"?

6. The definition of "rooted Christmas tree" requires that the tree be "periodically sheared or cultured". What does cultured mean? Does "periodically" modify cultured as well as sheared? Also, "stump culture" is not a concept that most people will understand. Can we explain this more clearly?

7. It does not work to include the concept of "offering to sell" in the definition of "sell" because some of the uses of "sell" in the draft do not appropriately include the concept of offer. For example, the fees for nursery growers are based on how much the person sells. I have placed language adding the concept of "offering to sell" in the definition of nursery dealer and in proposed s. 94.10 (2) (f) 2. and (7) (a) 1. and (b) 1. and 2. Please consider whether there are other places where the concept needs to be added.

8. I find the inclusion of the clause "to persons" in the license fee provisions (proposed s. 94.10 (2) (c) 1. to 7. and (3) (c) 1. to 7.) confusing. Could that clause be eliminated?

If not, how is the meaning of those provisions intended to be different than if that clause were eliminated?

9. The license fees are to be based on purchases or sales in the preceding license year, but I think that the preceding license year will not be over by the time that the fees must be calculated. Does this cause a problem?

10. I moved the requirement to provide the department with notice of new locations during a license year to proposed s. 94.10 (3m).

11. Concerning proposed s. 94.10 (5) (a), is it clear that a nursery dealer can always refuse to accept a shipment that is not labeled? Might a shipment arrive by mail, for example, and, if so, would a nursery dealer be able to refuse it?

12. Please review proposed s. 94.10 (7) (b) 4. I narrowed the language some so that the prohibitions relate more closely to the nursery stock growing and selling business. Should it be narrowed further so that the false or misleading statement would relate to the business?

13. Should proposed s. 94.10 (9) (a) 5. authorize the department to require growers and dealers to recall nursery stock?

Rebecca C. Tradewell  
Assistant Chief Counsel  
266-7290



**DRAFTER'S NOTE**  
**FROM THE**  
**LEGISLATIVE REFERENCE BUREAU**

LRB-0091/2dn  
RCT:kmg:jf

October 23, 1998

This draft is like the first draft of the plant pest detection and nurseries request except that it provides lower fees for Christmas tree growers. I have a number of questions and comments:

1. The repeal of s. 20.115 (7) (j) will cause any balance in that account to lapse to the general fund. Is that OK?

2. This draft does not include definitions of "department" and "person" because of ss. 93.01 (3) and 990.01 (26).

3. The proposed definition of "nonprofit organization" is broader than some of the other definitions in the statutes (which are limited to IRC section 501 (c) 3 and sometimes 4). It includes more than what are commonly thought of as charitable organizations. Is that intended?

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5. Again, I know that the current definition of "nursery stock" excludes field seeds, but I wonder whether we can use a term that is more commonly understood. Are "field seeds" "agricultural crop seeds"? Should the definition exclude "fruit seeds"? What kinds of seeds are *included* in the definition of "nursery stock"?

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8. I find the inclusion of the clause "to persons" in the license fee provisions (proposed s. 94.10 (2) (c) 1. to 7. and (3) (c) 1. to 7.) confusing. Could that clause be eliminated? If not, how is the meaning of those provisions intended to be different than if that clause were eliminated?

9. The license fees are to be based on purchases or sales in the preceding license year, but I think that the preceding license year will not be over by the time that the fees must be calculated. Does this cause a problem?

10. I moved the requirement to provide the department with notice of new locations during a license year to proposed s. 94.10 (3m).

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12. Please review proposed s. 94.10 (7) (b) 4. I narrowed the language some so that the prohibitions relate more closely to the nursery stock growing and selling business. Should it be narrowed further so that the false or misleading statement would relate to the business?

13. Should proposed s. 94.10 (9) (a) 5. authorize the department to require growers and dealers to recall nursery stock?

Rebecca C. Tradewell  
Assistant Chief Counsel  
266-7290

Correspondence/Memorandum \_\_\_\_\_ State of Wisconsin  
Department of Agriculture, Trade and Consumer Protection

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**DATE:** November 5, 1998

**TO:** Rebecca C. Tradewell  
Assistant Chief Counsel  
Legislative Reference Bureau

**FROM:** Esther Chapman, Director, Bureau of Plant Industry *E. Chapman*  
Jim Matson, Chief Legal Counsel *J. Matson*  
Barb Knapp, Director, Bureau of Budget and Accounting *Barb*

**SUBJECT:** Response to Drafter's Note, October 23, 1998, LRB-0091/2dn  
Revised Plant Pest Protection and Nursery Law

Following are the questions from your Drafter's Note (in abbreviated version) with our responses. We appreciate your careful review of our draft language and the changes you made.

✓ **1. Repeal of s. 20.115(7)(j) and lapse of balances to the general fund**

Our intent is to transfer any cash balance to the new appropriation (7)(ja) because the repeal of (7)(j) is not a repeal of the program, but represents a restructuring of fees.

We drafted nonstatutory language for your review as follows:

**Section \_\_\_\_ . Appropriation changes; agriculture, trade and consumer protection.**

PLANT PEST DETECTION. Notwithstanding section 20.002(3m) of the statutes, the balance in the appropriation account under section 20.115(7)(j) of the statutes does not lapse to the general fund upon its repeal but, on the effective date of this act is transferred to the appropriation account under section 20.115(7)(ja) of the statutes.

**2. Exclude definitions of "department" and "person."**

Yes, this is OK.

**3. Do we intend to include more than what are thought of as charitable organizations in the definition of "nonprofit organization?"**

Yes, because entities like Olbrich Gardens and the Arboretum conduct plant sales.

**4. Avoiding language in a definition that specifies that something is excluded which is not included in the first place, e.g., excluding "heeling-in grounds" from the definition of "nursery."**

The exclusions are needed to clarify the definition. Nursery stock is still "growing" on premises where they are being held temporarily, but we do not want to license these places as growers.

✓ **5. Excluding "seeds" from the definition of nursery stock.**

Exclude all "seeds" from the definition entirely. There is a separate seed law.

✓ **6. Definition of "rooted Christmas tree."**

We suggest simplifying the definition as follows (we do not need the qualifiers listed under 94.10(1)(i)):

(i) "Rooted Christmas tree" means an evergreen tree that is rooted in the soil and grown for eventual harvest and sale as a Christmas tree.

**7. Concept of "offering to sell" in the definition of "sell."**

We agree with your comments and changes and could not find any other places where the concept should be added.

✓ **8. Elimination of the clause "to persons" in the license fee provisions.**

We agree with your comment - the clause should be eliminated. This raised another important issue for us - the clause "in this state" should be eliminated as well because we want to license people doing business in the state, not only selling to people in this state. Dealers in Wisconsin could be buying nursery stock from Pennsylvania and selling it in Minnesota, but we need to keep track of them.

The definition of "nursery dealer" in 94.10(1)(d) should be amended to read "...who sells, offers for sale or distributes nursery stock from a location in this state."

✓ **9. Is there a problem estimating purchases or sales for the preceding license year?**

We suggest changing this to read "preceding fiscal year" for the business. This will help to ensure accuracy and also make paper audits easier since documents will be organized by fiscal year.

**10. Moving the notice of new location requirement to a different section.**

OK

**11. Is it clear that a nursery dealer can refuse a shipment?**

Yes, we believe it is.

**12. Narrowing prohibition language in 94.10(5)(a).**

It is OK as proposed.

**13. Should we require recalls?**

We have no compelling need to require recalls at this time. We have other enforcement options that are working satisfactorily and effectively.

✓ **In addition to your comments, we have another important change that needs to be made. We did not intend to include s. 94.11 in the revenues that would be deposited to the new appropriation under s. 20.115(7)(ja). Please strike this from Section 2. Neither the issue paper nor the B-forms include any changes to revenues collected under s. 94.11.**

**Thank you for your assistance.**

cc: Kirsten Grinde, Executive Policy and Budget Analyst, DOA

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