

☞ **03hr_AC-Ag_CRule_02-121_pt01**



(FORM UPDATED: 08/11/2010)

WISCONSIN STATE LEGISLATURE ... PUBLIC HEARING - COMMITTEE RECORDS

2003-04

(session year)

Assembly

(Assembly, Senate or Joint)

Committee on Agriculture...

COMMITTEE NOTICES ...

- Committee Reports ... **CR**
- Executive Sessions ... **ES**
- Public Hearings ... **PH**

INFORMATION COLLECTED BY COMMITTEE FOR AND AGAINST PROPOSAL

- Appointments ... **Appt** (w/Record of Comm. Proceedings)
- Clearinghouse Rules ... **CRule** (w/Record of Comm. Proceedings)
- Hearing Records ... bills and resolutions (w/Record of Comm. Proceedings)
 - (**ab** = Assembly Bill) (**ar** = Assembly Resolution) (**ajr** = Assembly Joint Resolution)
 - (**sb** = Senate Bill) (**sr** = Senate Resolution) (**sjr** = Senate Joint Resolution)
- Miscellaneous ... **Misc**

* Contents organized for archiving by: Stefanie Rose (LRB) (August 2012)

Assembly

Record of Committee Proceedings

Committee on Agriculture

Clearinghouse Rule 02-121

Relating to plant and apiary inspection fees and hemlock pest import controls.
Department of Agriculture, Trade and Consumer Protection

March 31, 2003 Referred to Committee on Agriculture.

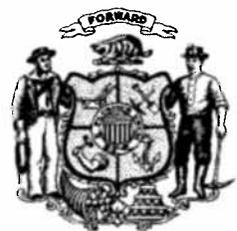
April 30, 2003 No action taken.



Beata Kalies
Committee Clerk



WISCONSIN STATE LEGISLATURE





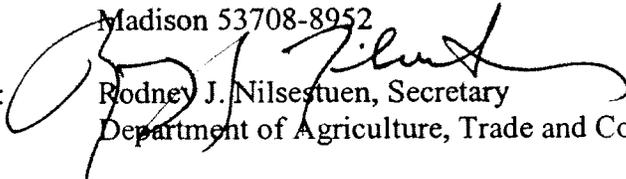
State of Wisconsin
Jim Doyle, Governor

Department of Agriculture, Trade and Consumer Protection
Rod Nilsestuen, Secretary

DATE: March 18, 2003

TO: The Honorable Alan Lasee
President, Wisconsin State Senate
Room 219 South, State Capitol
P.O. Box 7882
Madison 53707-7882

The Honorable John Gard
Speaker, Wisconsin State Assembly
Room 211 West, State Capitol
P.O. Box 8952
Madison 53708-8952

FROM: 
Rodney J. Nilsestuen, Secretary
Department of Agriculture, Trade and Consumer Protection

SUBJECT: **Plant Inspection and Pest Control; Final Draft Rule**
(Clearinghouse Rule #02-121)

The Department of Agriculture, Trade and Consumer Protection is transmitting this rule for legislative committee review, as provided in s. 227.19(2) and (3), Stats. The department will publish a notice of this referral in the Wisconsin Administrative Register, as provided in s. 227.19(2), Stats.

This rule does the following:

- Modifies current fees for plant inspection and certification services that the department provides at the request of persons who wish to export plants or plant products.
- Establishes hemlock import controls to prevent the spread of hemlock woolly adelgid, a serious pest that kills hemlock trees.

Inspection and Certification Fees

The Department of Agriculture, Trade and Consumer Protection (DATCP) inspects plants, plant products and bees (apiaries) at the request of persons who wish to export those products. DATCP provides this inspection service, for a fee, under ch. 94, Stats. Based on its inspection, DATCP certifies that the plants, plant products or bees are apparently free of harmful diseases and pests. DATCP establishes inspection and certification fees by rule. This rule modifies DATCP's current fee formula. This rule will increase fees for some requesters, and reduce fees for others.

Wisconsin Food and Agricultural Products - \$40 Billion for Wisconsin's Economy

Under the current fee formula, DATCP charges for mileage (32.5¢ per mile), food and lodging costs, plus \$20 per hour for staff time. There is a minimum fee of \$20 per inspection. Because most inspectors are based in Madison, charges increase with distance from Madison. DATCP also charges a fee of \$15 per certificate issued. Current fees do *not* cover indirect costs related to general pest surveys, trapping and testing, although those activities provide important information for the certification process.

This rule establishes a new “flat” fee of \$50 for each inspection *certificate* that DATCP issues. There will be no other charge for inspection, travel, food or lodging costs (except for field inspections of crops). The flat fee will cover these costs, as well as a portion of DATCP’s indirect costs for pest surveys, pest trapping and laboratory analysis. The flat fee is expected to generate approximately \$30,000 in additional revenues for the program as a whole.

This rule establishes a lower fee of \$15 for certificates that merely certify the identity or origin of plants or plant materials, without certifying that they are disease-free or pest-free. This rule maintains the current fee of \$15 for ginseng shipment certificates issued under s. 94.50(3), Stats.

Hemlock Woolly Adelgid; Import Controls

DATCP regulates the movement of plant pests under s. 94.01(1), Stats. Currently, the states of Alaska, California, Oregon and Washington, and portions of 13 other states, are infested with hemlock woolly adelgid. Hemlock woolly adelgid is a serious pest that kills native and ornamental hemlock trees, an important Wisconsin resource. This rule prohibits imports of the following items from infested areas identified in the rule:

- Hemlock seedlings or nursery stock.
- Hemlock logs or lumber with bark.
- Uncomposted hemlock chips with bark.
- Uncomposted hemlock bark.

This prohibition does not apply if any of the following apply:

- A pest control official in the state of origin inspects the imported items and certifies any of the following in a phytosanitary certificate that accompanies the import shipment:
 - That the items originate from non-infested premises and have not been exposed to hemlock woolly adelgid.
 - That the items were found, at the time of inspection, to be free of hemlock woolly adelgid.
 - That the items have been effectively treated to destroy hemlock woolly adelgid. The phytosanitary certificate shall specify the pesticide or other treatment used.

- That the items are produced, processed, stored, handled or used under conditions, described in the phytosanitary certificate, that effectively preclude the transmission of hemlock woolly adelgid.
- The items are exported under a written agreement between the importer and DATCP. DATCP may cancel the agreement at any time. The agreement must specify import terms and conditions including:
 - The name and address of the importer and import recipient.
 - The proposed source and destination of each import shipment.
 - The proposed import dates or time period.
 - The items to be imported in each proposed shipment.
 - The proposed size and frequency of import shipments.
 - The proposed method of import.
 - Required import conditions that will, in the department's opinion, effectively prevent the spread of hemlock woolly adelgid.

Rule Changes After Public Hearing

DATCP held 2 public hearings on this rule – in Madison on October 29 and Wausau on October 30. Only 2 persons testified:

- Kurt Helmstadter, Merrill, a Christmas tree and nursery grower, testified in opposition to fee changes.
- Andrea Diss, Madison, representing the Wisconsin Department of Natural Resources, testified in support of hemlock import controls.

The Timber Producers Association of Michigan and Wisconsin submitted a written comment supporting a provision that DATCP had already included in the hearing draft. DATCP made no changes in response to hearing testimony, but made minor changes in response to comments from the Legislative Council Rules Clearinghouse.

Response to Rules Clearinghouse Comments

The Legislative Council Rules Clearinghouse made three editorial comments on the hearing draft rule. DATCP modified the final draft rule to address two of the editorial comments. The Rules Clearinghouse also commented the s. ATCP 21.05(1m) “does not add much, if anything, to the rules.” DATCP disagrees. Proposed s. ATCP 21.05(1m) lists the various forms that department certifications may take, depending on the certificate's ultimate use by the requestor, or the type of organism being certified (plant vs. apiary). These certificate types are self-explanatory and familiar to the requestors.

Fiscal Estimate

This rule will cause a slight increase in DATCP costs. It will also increase DATCP revenues by approximately \$30,000. The increased revenues will cover DATCP's increased costs, and help cover losses in GPR (general tax revenue) funding for DATCP's plant protection program. A complete fiscal estimate is attached.

Small Business Analysis

This rule modifies the fees that DATCP charges to businesses that request inspection and certification services to facilitate the export of plants, honeybees and related products. This rule will increase fees to some requesters (those located closer to Madison) and reduce fees to others (those located further from Madison). It will increase fees by approximately \$30,000 for the program as a whole. The higher "flat" fee for inspection certificates may reduce requests for unnecessary certificates. DATCP may be able to issue inspection certificates more rapidly, because it will no longer be necessary to calculate travel and inspection costs.

This rule will increase costs for businesses importing hemlock and hemlock products from areas infested with hemlock woolly adelgid. These increased costs may be passed on to Wisconsin nurseries and other Wisconsin businesses that receive the imported hemlock products. A complete small business analysis ("final regulatory flexibility analysis") is attached.

**PROPOSED ORDER OF THE STATE OF WISCONSIN
DEPARTMENT OF AGRICULTURE, TRADE AND CONSUMER PROTECTION
ADOPTING, AMENDING AND REPEALING RULES**

- 1 The state of Wisconsin department of agriculture, trade and consumer protection proposes the
- 2 following order to renumber ATCP 21.01(10) to (15); to repeal and recreate ATCP 21.05(3)(a) to
- 3 (c); and to create ATCP 21.01(9) and (10), 21.05(1m) and 21.16, and ATCP 21(Appendix A);
- 4 relating to plant and apiary inspection fees and hemlock pest import controls.

**Analysis Prepared by the Department of
Agriculture, Trade and Consumer Protection**

Statutory authority: ss. 93.07(1) and (12), 94.01 and 94.76, Stats.
Statutes interpreted: ss. 93.06(1m) and (1p), 93.07(12) and (13), 94.01, 94.11, 94.50
and 94.76, Stats.

This rule modifies fees for plant inspection and certification services. It also establishes import controls on hemlock plants and plant products, to prevent the introduction of a serious hemlock pest in this state.

Fees for Plant Inspection and Certification

The Wisconsin department of agriculture, trade and consumer protection (DATCP) inspects plants, plant products and bees (apiaries) at the request of persons who wish to export those products. DATCP provides this inspection service, for a fee, under ch. 94, Stats. Based on its inspection, DATCP certifies that the plants, plant products or bees are apparently free of harmful diseases and pests. DATCP establishes inspection and certification fees by rule. This rule modifies DATCP's current fee formula. This rule will increase fees for some requesters, and reduce fees for others.

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This prohibition does not apply if any of the following apply:

- A pest control official in the state of origin inspects the imported items and certifies any of the following in a phytosanitary certificate that accompanies the import shipment:
 - That the items originate from non-infested premises and have not been exposed to hemlock woolly adelgid.
 - That the items were found, at the time of inspection, to be free of hemlock woolly adelgid.
 - That the items have been effectively treated to destroy hemlock woolly adelgid. The phytosanitary certificate shall specify the pesticide or other treatment used.
 - That the items are produced, processed, stored, handled or used under conditions, described in the phytosanitary certificate, that effectively preclude the transmission of hemlock woolly adelgid.
- The items are imported under a written agreement between the importer and DATCP. DATCP may cancel the agreement at any time. The agreement must specify import terms and conditions including:
 - The name and address of the importer and import recipient.
 - The proposed source and destination of each import shipment.
 - The proposed import dates or time period.
 - The items to be imported in each proposed shipment.
 - The proposed size and frequency of import shipments.
 - The proposed method of import.
 - Required import conditions that will, in the department's opinion, effectively prevent the spread of hemlock woolly adelgid.

1 SECTION 1. ATCP 21.01(8g) is created to read:

2 ATCP 21.01(8g) "Hemlock" means a tree of the genus *Tsuga*.

3 SECTION 2. ATCP 21.01(8r) is created to read:

4 ATCP 21.01(8r) "Hemlock woolly adelgid" means the live insect, *Adelges tsugae*, family
5 *Adelgidae*, in any life stage.

6 SECTION 3. ATCP 21.05(1m) is created to read:

7 ATCP 21.05(1m) FORM OF CERTIFICATION. The department may issue a certification
8 under sub. (1) in the form of a phytosanitary certificate, plant health certificate, apiary inspection
9 certificate, certificate of identity, certificate of origin or other form, as appropriate.

1 **SECTION 5.** ATCP 21.05(3)(a) to (c) are repealed and recreated to read:

2 ATCP 21.05(3)(a) *General.* (a) Except as provided in par. (c), the department shall
3 charge a fee of \$50 for each certificate issued under this section. There is no other inspection
4 charge, except as provided in par. (b). The department shall charge a \$15 fee to reissue a lost
5 certificate or to issue an amended certificate.

6 (b) *Field inspections.* Fees for field inspection of crops including corn, sunflowers,
7 soybeans, onions, potatoes, snap beans, and turf are \$1.50 per acre, with a minimum fee of \$50.

8 (c) *Certificate of identity or origin.* The department shall charge a fee of \$15 for each of
9 the following:

10 1. A certificate that certifies the identity or origin of plants or plant products, without
11 certifying that the plants or plant products are free of pest infestation or disease.

12 2. A ginseng shipment certificate under s. 94.50(3), Stats.

13 **SECTION 6.** ATCP 21.16 is created to read:

14 **ATCP 21.16 Hemlock woolly adelgid; import controls. (1) HEMLOCK IMPORTS**
15 **RESTRICTED.** Except as provided in sub. (2), no person may import any of the following items to
16 this state from any of the infested areas identified in *Appendix A*:

17 (a) Hemlock seedlings.

18 (b) Hemlock nursery stock.

19 (c) Hemlock logs with bark.

20 (d) Hemlock lumber with bark.

21 (e) Uncomposted hemlock chips with bark.

22 (f) Uncomposted hemlock bark.

23 (2) **EXEMPTIONS.** Subsection (1) does not apply if any of the following apply:

1 (a) A pest control official in the state of origin inspects the imported items and certifies
2 any of the following in a phytosanitary certificate that accompanies the import shipment:

3 1. That the items originate from non-infested premises and have not been exposed to
4 hemlock woolly adelgid.

5 2. That the items were found, at the time of inspection, to be free of hemlock woolly
6 adelgid.

7 3. That the items have been effectively treated to destroy hemlock woolly adelgid. The
8 phytosanitary certificate shall specify the pesticide or other treatment used.

9 4. That the items are produced, processed, stored, handled or used under conditions,
10 described in the phytosanitary certificate, that effectively preclude the transmission of hemlock
11 woolly adelgid.

12 (b) The items are imported under a written agreement between the importer and the
13 department. The agreement shall specify import terms and conditions including the following:

14 1. The name and address of the importer and import recipient.

15 2. The proposed source and destination of each import shipment.

16 3. The proposed import dates or time period.

17 4. The items to be imported in each proposed shipment.

18 5. The proposed size and frequency of import shipments.

19 6. The proposed method of import.

20 7. Required import conditions that will, in the department's opinion, effectively prevent
21 the spread of hemlock woolly adelgid.

22 8. Provisions authorizing the department to cancel the agreement at any time, with or
23 without cause or prior notice.

SECTION 7. Appendix A to ch. ATCP 21 is created to read:

Appendix A

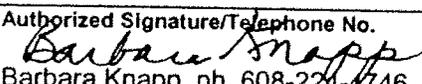
AREAS INFESTED BY HEMLOCK WOOLLY ADELGID

States (entire state)

- Alaska
- California
- Oregon
- Washington

Counties

- In the state of **Connecticut**, the counties of: Fairfield, Hartford, Litchfield, Middlesex, New Haven, New London, Tolland, Windham.
- In the state of **Delaware**, the counties of: Kent, New Castle, Sussex.
- In the state of **Maryland**, the counties of: Allegany, Anne Arundel, Baltimore, Baltimore, Calvert, Carroll, Cecil, Frederick, Garrett, Harford, Howard, Montgomery, Prince Georges, Queen Annes, Washington.
- In the state of **Massachusetts**, the counties of: Barnstable, Berkshire, Bristol, Essex, Franklin, Hampden, Hampshire, Middlesex, Nantucket, Norfolk, Plymouth, Suffolk, Worcester.
- In the state of **New Hampshire**, the county of: Rockingham.
- In the state of **New Jersey**, the counties of: Atlantic, Bergen, Burlington, Camden, Cape May, Cumberland, Essex, Gloucester, Hudson, Hunterdon, Mercer, Middlesex, Monmouth, Morris, Ocean, Passaic, Salem, Somerset, Sussex, Union, Warren.
- In the state of **New York**, the counties of: Bronx, Columbia, Dutchess, Erie, Greene, Kings, Nassau, New York, Orange, Putnam, Queens, Richmond, Rockland, Suffolk, Sullivan, Ulster, Westchester.
- In the state of **North Carolina**, the counties of: Alamance, Alleghany, Ashe, Burke, Caldwell, Caswell, Forsyth, Graham, Jackson, Macon, Mitchell, Orange, Rockingham, Stokes, Surry, Swain, Watauga, Yancey.

FISCAL ESTIMATE		LRB or Bill No. / Adm. Rule No. ATCP 21
DOA-2048 (R 10/94)	<input checked="" type="checkbox"/> ORIGINAL <input type="checkbox"/> UPDATED <input type="checkbox"/> CORRECTED <input type="checkbox"/> SUPPLEMENTAL	Amendment No. (If Applicable)
Subject: Inspection and Certification Service Fees & Hemlock Woolly Adelgid Import Controls		
Fiscal Effect State: <input type="checkbox"/> No State Fiscal Effect Check below only if bill makes a direct appropriation or affects a sum sufficient appropriation. <input type="checkbox"/> Increase Existing Appropriation <input type="checkbox"/> Increase Existing Revenues <input type="checkbox"/> Decrease Existing Appropriation <input type="checkbox"/> Decrease Existing Revenues <input type="checkbox"/> Create New Appropriation		<input type="checkbox"/> Increase Costs – May be possible to absorb within agency's budget? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Decrease Costs
Local: <input checked="" type="checkbox"/> No local government costs 1. <input type="checkbox"/> Increase Costs <input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory 2. <input type="checkbox"/> Decrease Costs <input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory 3. <input type="checkbox"/> Increase Revenues <input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory 4. <input type="checkbox"/> Decrease Revenues <input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory		5. Types of Local Gov. Unit Affected: <input type="checkbox"/> Towns <input type="checkbox"/> Villages <input type="checkbox"/> Counties <input type="checkbox"/> Cities <input type="checkbox"/> Other: <u>County Drainage Boards</u> <input type="checkbox"/> School Districts <input type="checkbox"/> WTCS Districts
Fund Source Affected: <input type="checkbox"/> GPR <input type="checkbox"/> FED <input checked="" type="checkbox"/> PRO <input type="checkbox"/> PRS <input type="checkbox"/> SEG <input type="checkbox"/> SEG-S		Affected Ch. 20 Appropriations: 20.115(7)(ga)
Assumptions Used in Arriving at Fiscal Estimate These import controls imposed by the rule would have some costs in terms of notifying affected industries but could be absorbed by existing staff. The department will present information through development of written material, press releases, and cooperative efforts with affected industries. Ongoing duties would be to monitor industry compliance with the rule. Industry compliance is already monitored for other sections of ATCP 21 and this new section would be a small addition. The changes in the inspection and certification service fees would increase revenues to a program revenue account. Existing fees do not cover actual expenses of the program. The new fee structure will allow the department to recover the cost of administering the phytosanitary program.		
Long - Range Fiscal Implications None anticipated.		
Agency/prepared by: (Name & Phone No.) DATCP Robert Dahl ph. (608) 224-4573	Authorized Signature/Telephone No.  Barbara Knapp, ph. 608-224-4746	Date December 13, 2002

FISCAL ESTIMATE WORKSHEET

2002 SESSION

Detailed Estimate of Annual Fiscal Effect
DOA-2047 (R10/94)

ORIGINAL UPDATED
 CORRECTED SUPPLEMENTAL

LRB or Bill No./Adm. Rule No. ATCP 21	Amendment No.
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SUBJECT
Inspection and Certification Service Fees & Hemlock Woolly Adelgid Import Controls

I. One-time Cost or Impacts for State and/or Local Government (do not include in annualized fiscal effect):

II. Annualized Cost:

Annualized Fiscal Impact on State funds from:
--

A. State Costs by Category	Increased Costs	Decreased Costs
1. State Operations - Salaries and Fringes	\$	\$ -
2. (FTE Position Changes)	(FTE)	(- FTE)
3. State Operations - Other Costs		-
4. Local Assistance		-
5. Aids to Individuals or Organizations		-
TOTAL State Costs by Category	\$	\$ -

B. State Costs by Source of Funds	Increased Costs	Decreased Costs
1. GPR	\$	\$ -
2. FED		-
3. PRO/PRS		-
4. SEG/SEG-S		-

III. State Revenues -	Increased Revenue	Decreased Revenue
<small>Complete this section only when proposal will increase or decrease state revenues (e.g., tax increase, decrease in license fees)</small>		
• GPR Taxes	\$	\$ -
• GPR Earned		-
• FED		-
• PRO/PRS	30,000	-
• SEG/SEG-S		-
TOTAL State Revenues	\$ 30,000	\$ -

NET ANNUALIZED FISCAL IMPACT

	<u>STATE</u>	<u>LOCAL</u>
NET CHANGE IN COSTS	\$	\$
NET CHANGE IN REVENUES	\$ 30,000	\$

Agency Prepared by: (Name & Phone No.) DATCP Robert Dahl ph. (608) 224-4573	Authorized Signature/Telephone No. <i>Barbara Knapp</i> Barbara Knapp (608) 224-4746	Date December 13, 2002
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Wisconsin Department of Agriculture, Trade and Consumer Protection

Final Regulatory Flexibility Analysis

Rule Subject: Inspection and certification service fees and hemlock woolly adelgid import controls.

Adm. Code Reference: ATCP 21

Rules Clearinghouse #: 02-121

DATCP Docket #: 02-R-04

Rule Description

This rule repeals and recreates Wisconsin's current Inspection and Certification rules. This rule creates a fee of \$50.00 per certificate, which will include mileage, meals, lodging and staff time for inspection and travel. The current fee for certification is \$15.00 for a certificate, plus mileage (.325 cents/mile), meals, lodging and staff time (\$20.00/hour, with a \$20.00 minimum) for inspection and travel.

This rule also creates import controls for hemlock woolly adelgid, a serious pest of hemlock trees in the eastern US. This insect has been intercepted on nursery stock in other states and can possibly be spread by logs, mulch or bark chips of hemlock trees.

Small Businesses Affected by this Rule

A "small business," as defined in s. 227.114(1)(a), Stats., means a business entity, including its affiliates, which is independently owned and operated and not dominant in its field, and which employs fewer than twenty-five full-time employees or which has gross annual sales of less than \$2,500,000.

Small nurseries and sole proprietors shipping interstate or internationally are the small businesses that will be affected by this rule.

Effects on Small Business

This rule may have some impact on nurseries in Wisconsin that purchase hemlock nursery stock from states infested with hemlock woolly adelgid, because costs incurred by nurseries in other states to meet our requirements may be passed along to the receiving nurseries in Wisconsin. There would be no extra skills required since nurseries deal with similar certificates for other plant pests.

The fee increase for certificates (\$15 to \$50) may decrease the number of certificates issued by a small amount. Some businesses, mostly larger enterprises, request certificates as a sort of insurance policy; the country to which they are exporting doesn't

require a certificate but having one expedites the importation of the commodity. Many of the companies will pass the increased cost onto their customers.

Small businesses may see more efficient turnaround time in receiving their certificates since no calculations will need to be made by the department concerning mileage, meals, hours and lodging. Small nursery businesses receiving plant health certificates may reconsider their current practice of requesting the certificate if they don't ship nursery stock interstate because of the increase in the fee.

Dated this 16th day of December, 2002

STATE OF WISCONSIN
DEPARTMENT OF AGRICULTURE,
TRADE AND CONSUMER PROTECTION

By Nicholas J. Neher
Nicholas J. Neher, Administrator,
Division of Agricultural Resource Management

- In the state of **Pennsylvania**, the counties of: Adams, Bedford, Berks, Blair, Bucks, Carbon, Centre, Chester, Clinton, Columbia, Cumberland, Dauphin, Delaware, Franklin, Fulton, Huntingdon, Juniata, Lackawanna, Lancaster, Lebanon, Lehigh, Luzerne, Lycoming, Mifflin, Monroe, Montgomery, Montour, Northampton, Northumberland, Perry, Philadelphia, Pike, Schuylkill, Snyder, Sullivan, Union, Wayne, Wyoming, York.
- In the state of **Rhode Island**, the counties of: Bristol, Kent, Newport, Providence, Washington.
- In the state of **South Carolina**, the county of: Oconee.
- In the state of **Virginia**, the counties of: Albemarle, Alleghany, Amherst, Appomattox, Arlington, Augusta, Bath, Bedford, Bland, Botetourt, Campbell, Caroline, Carroll, Chesterfield, Clarke, Craig, Essex, Fairfax, Floyd, Fluvanna, Franklin, Franklin, Frederick, Giles, Grayson, Greene, Hanover, Henrico, Henry, Highland, King William, Lunenburg, Madison, Montgomery, Nelson, Northumberland, Orange, Page, Patrick, Pittsylvania, Prince William, Pulaski, Rappahannock, Roanoke, Rockbridge, Rockingham, Shenandoah, Smyth, Spotsylvania, Warren, Washington, Wythe.
- In the state of **West Virginia**, the counties of: Berkeley, Grant, Greenbrier, Hampshire, Hardy, Jefferson, Mercer, Mineral, Monroe, Morgan, Pendleton, Pocahontas, Raleigh, Randolph, Summers, Tucker.

1 **EFFECTIVE DATE.** The rules contained in this order shall take effect on the first day of
 2 the month following publication in the Wisconsin administrative register, as provided under s.
 3 227.22(2)(intro.), Stats.

Dated this _____ day of _____, 2003.

STATE OF WISCONSIN
 DEPARTMENT OF AGRICULTURE,
 TRADE AND CONSUMER PROTECTION

By _____
 Secretary



WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

Ronald Sklansky
Clearinghouse Director

Terry C. Anderson
Legislative Council Director

Richard Sweet
Clearinghouse Assistant Director

Laura D. Rose
Legislative Council Deputy Director

CLEARINGHOUSE REPORT TO AGENCY

[THIS REPORT HAS BEEN PREPARED PURSUANT TO S. 227.15, STATS. THIS IS A REPORT ON A RULE AS ORIGINALLY PROPOSED BY THE AGENCY; THE REPORT MAY NOT REFLECT THE FINAL CONTENT OF THE RULE IN FINAL DRAFT FORM AS IT WILL BE SUBMITTED TO THE LEGISLATURE. THIS REPORT CONSTITUTES A REVIEW OF, BUT NOT APPROVAL OR DISAPPROVAL OF, THE SUBSTANTIVE CONTENT AND TECHNICAL ACCURACY OF THE RULE.]

CLEARINGHOUSE RULE 02-121

AN ORDER to renumber ATCP 21.01 (10) to (15); to repeal and recreate ATCP 21.05 (3) (a) to (c); and to create ATCP 21.01 (9) and (10), 21.05 (1m) and 21.16, relating to plant and apiary inspection fees and hemlock pest import controls.

Submitted by **DEPARTMENT OF AGRICULTURE, TRADE AND CONSUMER PROTECTION**

10-01-2002 RECEIVED BY LEGISLATIVE COUNCIL.

10-17-2002 REPORT SENT TO AGENCY.

RS:DLL

LEGISLATIVE COUNCIL RULES CLEARINGHOUSE REPORT

This rule has been reviewed by the Rules Clearinghouse. Based on that review, comments are reported as noted below:

1. STATUTORY AUTHORITY [s. 227.15 (2) (a)]
Comment Attached YES NO
2. FORM, STYLE AND PLACEMENT IN ADMINISTRATIVE CODE [s. 227.15 (2) (c)]
Comment Attached YES NO
3. CONFLICT WITH OR DUPLICATION OF EXISTING RULES [s. 227.15 (2) (d)]
Comment Attached YES NO
4. ADEQUACY OF REFERENCES TO RELATED STATUTES, RULES AND FORMS [s. 227.15 (2) (e)]
Comment Attached YES NO
5. CLARITY, GRAMMAR, PUNCTUATION AND USE OF PLAIN LANGUAGE [s. 227.15 (2) (f)]
Comment Attached YES NO
6. POTENTIAL CONFLICTS WITH, AND COMPARABILITY TO, RELATED FEDERAL REGULATIONS [s. 227.15 (2) (g)]
Comment Attached YES NO
7. COMPLIANCE WITH PERMIT ACTION DEADLINE REQUIREMENTS [s. 227.15 (2) (h)]
Comment Attached YES NO



WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

Ronald Sklansky
Clearinghouse Director

Terry C. Anderson
Legislative Council Director

Richard Sweet
Clearinghouse Assistant Director

Laura D. Rose
Legislative Council Deputy Director

CLEARINGHOUSE RULE 02-121

Comments

[NOTE: All citations to “Manual” in the comments below are to the Administrative Rules Procedures Manual, prepared by the Revisor of Statutes Bureau and the Legislative Council Staff, dated September 1998.]

2. Form, Style and Placement in Administrative Code

a. A preferable way of drafting the definitions of “hemlock” and “hemlock woolly adelgid” would be, for example, “‘Hemlock’ means a tree of the genus *Tsuga*.” Inclusion of the family name is unnecessary, since genus names are unique. In addition, the phrase “including the egg, nymph or adult stage” is unnecessary, since it is clearly implied by the phrase “in any life stage.” Finally, these definitions could be numbered s. ATCP 21.01 (8g) and (8r), avoiding the need to renumber all subsequent definitions.

b. Appendix A to ch. ATCP 21 will be a part of the Wisconsin Administrative Code. Therefore, an additional section of the rule is needed to create it, as with any other rule text, rather than simply attaching the appendix to the rule package.

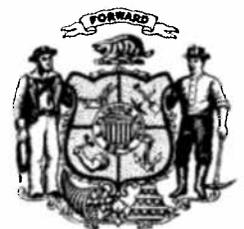
5. Clarity, Grammar, Punctuation and Use of Plain Language

The new s. ATCP 21.05 (1m) does not add much, if anything, to the rules. It identifies a number of types of certificates, but does not say what they are, how they differ from each other, what they are used for, or what their significance is. It then says that the Department of Agriculture, Trade, and Consumer Protection (DATCP) may issue certificates in any of those forms or in any other form, as appropriate--that is, the DATCP may issue certificates in any form that it finds appropriate. The department should decide what it wants to accomplish with this provision and rewrite it to do so. For example, since the new s. ATCP 21.16 deals with phytosanitary certificates, it may be valuable to specify what such a certificate is, who may issue

it, what it must contain, etc. However, if the requirements of s. ATCP 21.16 (2) (a) are sufficient for this purpose, it does not matter what the certificate is called and all references to types of certificates can be omitted from the rule. Note that s. ATCP 21.05 (3) (c) 1. refers to certificates of identity and certificates of origin without using those terms, and subd. 2. refers to ginseng shipment certificates by name, although that type of certificate is not identified in s. ATCP 21.05 (1m).



WISCONSIN STATE LEGISLATURE



DATE: March 31, 2003

TO: Beata Kalies

Committee on Agriculture

FROM: Patrick E. Fuller, Assembly Chief Clerk

RE: Clearinghouse Rules Referral

The following Clearinghouse Rule has been referred to your committee.

CLEARINGHOUSE RULE 02-121

AN ORDER to renumber ATCP 21.01 (10) to (15); to repeal and recreate ATCP 21.05 (3) (a) to (c); and to create ATCP 21.01 (9) and (10), 21.05 (1m) and 21.16, relating to plant and apiary inspection fees and hemlock pest import controls.

Submitted by **Department of Agriculture, Trade and Consumer Protection.**

Report received from Agency on **March 21, 2003.**

To committee on **Agriculture.**

Referred on **Monday, March 31, 2003.**

Last day for action - **Wednesday, April 30, 2003.**

Under section 227.19 (4) of the Wisconsin Statutes, your committee has 30 days to take action or get an extension. The day **after** the official referral date is day one of your review period. Therefore, the 30th day should fall four weeks and two days after the referral date. For example, for Clearinghouse Rules referred on a Monday, a Wednesday would be your 30th day. For Clearinghouse Rules referred on a Tuesday, a Thursday would be your 30th day. For Clearinghouse Rules referred on a Wednesday, a Friday would be your 30th day. For Clearinghouse Rules referred on a Thursday or Friday, your 30th day would fall on a weekend. Therefore, your time would expire on the next working day (Monday) as provided for in s. 990.001 of the Wisconsin Statutes. Also, if the 30th day falls on a legal holiday, time would expire on the next working day.

Section 227.19 **requires** you to notify each member of your committee that you have received this Clearinghouse Rule. Although some committee chairs choose to do so, you are not required by law or rule to send a copy of the text of the rule to each member at this time. Instead, your notice could state that members should contact you if they wish to receive a hard copy of the rule. Another option would be to email the rule to members. **(Please note that the text of Rules beginning with the prefix "01" is available online in the Clearinghouse Rules infobase in FOLIO.)** Please put a copy of your official notification memo in the rule jacket.

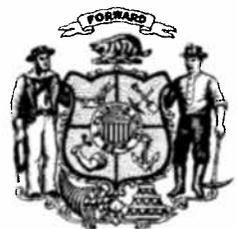
Three copies of the Clearinghouse Rule and its accompanying documents are contained in the jacket. If you wish to have your Legislative Council attorney review the Clearinghouse Rule, send him/her a copy. I only need one copy remaining in the jacket when you report it out of committee at the end of the review period.

The identical process is happening simultaneously in the Senate. Keep track of their action on the rule.

For assistance with the Clearinghouse Rule process, please consult Ken Stigler (6-2406) or your Legislative Council attorney. If you wish to learn more on this subject, read section 227.19 of the Wisconsin Statutes or part 2 of the *Administrative Rules Procedures Manual* written by the Revisor of Statutes Bureau and the Wisconsin Legislative Council staff.



WISCONSIN STATE LEGISLATURE





Al Ott

State Representative • 3rd Assembly District

Assembly Agriculture Committee

MEMO

TO: Members of the Assembly Committee on Agriculture

FROM: Representative Al Ott, Chair 

DATE: April 1, 2003

RE: Clearinghouse Rule 02-121

The following clearinghouse rule has been referred to the Assembly Committee on Agriculture for a thirty-day review period:

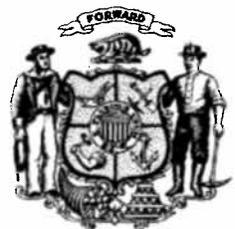
Clearinghouse Rule 02-121 - Relating to plant and apiary inspection fees and hemlock pest import controls.

The content of the final draft rule is enclosed. Please look it over and contact Beata Kalies in my office (6-5831) if you have questions or propose to take action on the rule.

The deadline for committee review is April 30, 2003.



WISCONSIN STATE LEGISLATURE



Kalies, Beata

From: Hughes, Carolyn
Sent: Tuesday, April 15, 2003 12:09 PM
To: Kalies, Beata
Subject: Questions

Here are our questions on Clearinghouse Rule 02-121.

- 1) What was the average fee before this proposed change? Is \$50 just a random number chosen out of the air to raise revenue?
- 2) Considering our budget situation, why were we giving staff \$20 an hour plus lodging and food. Legislative staff doesn't get that.
- 3) Are these people using state cars? If so, we should we be charging for gas?
- 4) Leg. Council made some points about DATCP not being very specific...should we make them be more specific?

Please let me know if you have any questions.

Carolyn Hughes
Research Assistant
Rep. J.A. Hines

(608) 266-7746 or Toll-Free: (888) 534-0042
Carolyn.Hughes@legis.state.wi.us