

Chapter ATCP 21

PLANT INSPECTION AND PEST CONTROL

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Note: Chapter Ag 21 as it existed on November 30, 1990 was repealed and a new ch. Ag 21 was created effective December 1, 1990; Chapter Ag 21 was renumbered ch. ATCP 21 under s. 13.93 (2m) (b) 1., Stats., Register, April, 1993, No. 448.

ATCP 21.01 Definitions. As used in this chapter:

(1) “Africanized honeybee” means any African honeybee, any hybrid of an African honeybee, or any hybrid of that hybrid.

(2) “American foulbrood” means *Paenibacillus* larvae and related pathogens.

(2r) “Asian longhorned beetle” means the live insect, *Anoplophora glabripennis* (Motschulsky), family Cerambycidae, in any living stage of development.

(3) “Beehive” means a honeybee colony and any equipment used to house that colony. “Beehive” does not include a package or shipment consisting only of a queen, a queen and attendant honeybees, or adult honeybees.

(4) “Biological control agent” has the meaning specified in s. 94.03 (2), Stats.

(5) “Colony” means a group of honeybees consisting of a queen, adult honeybees, and brood.

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

(6p) “Firewood” means wood sold or distributed and used for burning for heat, or for recreational burning, and includes home heating and campfire wood.

(6r) “Firewood dealer” means a person who sells or distributes 20 or more cords of firewood each year in this state and whose primary business location is in Wisconsin.

(7) “Genetically engineered pest or biological control agent” means a pest or biological control agent produced in any part by recombinant DNA or recombinant RNA technology.

(8) “Spongy moth” means the live insect, *Lymantria dispar*, family Lymantriidae, in any life stage, including the egg, larva, pupa, or adult stage.

(8g) “Hemlock” means a tree or shrub of the genus *Tsuga*, including all cultivars.

(8r) “Hemlock woolly adelgid” means the live insect, *Adelges tsugae*, family Adelgidae, in any life stage.

(8w) “Infestation” means the presence of a regulated plant pest, or conditions that make it reasonable to believe that a regulated plant pest is present.

(9) “Person” means an individual, corporation, partnership, cooperative, limited liability company, trust, or other legal entity.

(10) “Pest” has the meaning specified in s. 93.01 (10), Stats. “Pest” includes honeybee diseases, pests of honeybees, and undesirable honeybees.

(11) “Pest control official” means a federal, state, or provincial government official or agent who is accredited by the United States department of agriculture to certify that plants, honeybees, or other items are free of pests.

(12m) “Treated firewood” means firewood that a firewood dealer certified under s. ATCP 21.20 (2) has treated, at a location identified in s. ATCP 21.20 (2) (c) 3., according to the dealer’s representations under s. ATCP 21.20 (1) (b).

(13) “Undesirable honeybees” means either of the following:

(a) Africanized honeybees.

(b) Honeybee species which, because of their undesirable genetic traits, are declared by the department or the United States department of agriculture to be pests.

Note: See ss. 93.01 (10) and 94.69 (1), Stats., and s. ATCP 29.02, Wis. Adm. Code.

(14) “Used beekeeping equipment” means any equipment previously used as part of a beehive, and includes a drawn comb.

History: Cr. Register, November, 1990, No. 419, eff. 12–1–90; renum. (1) to (3) to be (4), (6) and (7), r. (4), cr. (1) to (3), (5) and (8) to (15), Register, December, 1994, No. 468, eff. 1–1–95; CR 01–076: am. (2) and (15), r. (9), Register October 2002 No. 562, eff. 11–1–02; CR 02–121: cr. (8g) and (8r) Register July 2003 No. 571, eff. 8–1–03; CR 06–008: cr. (2g), (2r), (6m) and (8w) Register October 2006 No. 610, eff. 11–1–06; CR 07–085: cr. (6p), (6r), (9) and (12m), Register March 2008 No. 627, eff. 4–1–08; renumbering of (12m) from (10), as created, made under s. 13.92 (4) (b) 1., Stats., Register March 2008 No. 627; CR 11–051: am. (6p), (6r) Register July 2012 No. 679, eff. 8–1–12; CR 22–022: r. (2g), (6m), am. (8g), r. (12) Register June 2023 No. 810, eff. 7–1–23; CR 22–080: am. (8), r. (15) Register February 2024 No. 818, eff. 3–1–24.

ATCP 21.02 Pest surveys and inspections; information. The department may conduct surveys and inspections to detect and monitor pest infestations in this state, and to establish a data base for certification and pest control decisionmaking. The department may disseminate pest information to agricultural producers and others, and may charge fees to cover actual costs of publication. In order to conduct a survey or inspection under this section, the department may exercise its inspection authority under ss. 93.08 and 94.01, Stats.

History: Cr. Register, November, 1990, No. 419, eff. 12–1–90.

ATCP 21.03 Pest quarantines and abatement orders. (1) PEST QUARANTINE ORDER. The department may issue a summary quarantine order if, in the department’s judgment, the order is necessary to prevent or control the spread of suspected pests. A quarantine order may prohibit the movement of any pest, or any plant, pest host, or pest–harboring material which may transmit or harbor a pest. A quarantine order issued under this subsection may prohibit the movement of bees, bee colonies, or bee apparatus.

Note: See ss. 94.01 (1) and (2), 93.07 (10) and 94.76, Stats.

(2) PEST ABATEMENT ORDER. The department may issue a summary pest abatement order under s. 94.02 (1), Stats., if, in the department’s judgment, the order is necessary to prevent or control a hazard to plant or animal life in this state. A pest abatement order may require the destruction or removal of pests, plants, pest hosts, or pest–harboring materials within 10 days. A pest abatement order under this section may require the destruction or removal of bees, bee colonies, or bee apparatus.

(3) SERVING THE ORDER. An order under sub. (1) or (2) shall be served on a person having custody or control of the affected property or material, or shall be posted on the premises affected

by the order. An order under sub. (1) or (2) may be served by any of the following methods:

- (a) Personal service.
- (b) Certified mail.

(c) Posting a copy of the order at 2 conspicuous places on the premises affected by the order.

(4) **PROOF OF SERVICE.** Service of an order under sub. (1) or (2) may be proved by affidavit or certified mail return receipt.

(5) **CONTENTS OF ORDER.** An order under sub. (1) or (2) shall contain the following information:

- (a) The name and address of a person having custody or control of the property or material affected by the order, if known.
- (b) A description of the plants or other materials affected by the order.
- (c) A description of the premises affected by the order.
- (d) The reason for the order.
- (e) All terms and conditions applicable to the order.
- (f) Notice that persons adversely affected by the order may request a hearing to review the order.

(6) **DURATION OF QUARANTINE.** A quarantine under sub. (1) remains in effect until the department releases the quarantine in writing, unless the quarantine is set aside after review under sub. (7).

(7) **REVIEW OF ORDERS.** A person adversely affected by an order under sub. (1) or (2) may, within 10 days after the order is served, request a hearing before the department to review the order. The department shall conduct an informal hearing as soon as reasonably possible, and not later than 10 days after receiving a request for hearing. If the matter is not resolved after informal hearing, the person requesting the hearing may seek a formal hearing before the department under ch. 227, Stats. A request for hearing does not stay an order under sub. (1) or (2).

History: Cr. Register, November, 1990, No. 419, eff. 12-1-90.

ATCP 21.04 Pests and biological control agents; permit to move or release. (1) **PERMIT REQUIRED.** Except as provided under sub. (2), no person may knowingly do any of the following without a permit from the department as required under s. 94.03, Stats.:

- (a) Import any pest or biological control agent into this state.
- (b) Move or distribute any pest or biological control agent within this state.
- (c) Release any pest or biological control agent into the environment in this state.

Note: Under s. 146.60, Stats., if the release of a genetically engineered organism is subject to review or regulation by a federal agency, no person may release that organism into the environment of this state without first notifying the department or the department of natural resources. The notification requirement under s. 146.60, Stats., may apply, regardless of whether the genetically engineered organism is a pest or biological control agent for which a permit is required under this section.

(2) **EXEMPTIONS.** No permit is required under sub. (1) for any of the following:

- (a) A pesticide registered by the federal environmental protection agency under 7 USC 136 et seq.
- (b) A pesticide registered by the department under s. ATCP 29.72 to meet a special local need in this state.
- (c) A pesticidal material distributed or used under an experimental use permit issued by the department under s. ATCP 29.71.
- (d) A pest or biological control agent which is indigenous throughout this state, provided that the pest or biological control agent is not restricted by federal or state rule or quarantine order.
- (e) An agricultural, horticultural, or silvicultural plant that suppresses or controls plant pests or pathogens, provided that the plant has not been declared to be a pest under state or federal law.

(3) **GENERIC PERMITS.** The department may issue a generic permit for recurring similar movements of pests or biological control agents by a permit holder, under conditions prescribed by the department.

(4) **PERMIT CONDITIONS.** The department may prescribe permit conditions which it considers necessary to prevent or limit a pest hazard in this state.

(5) **PERMIT APPLICATION.** A permit application shall be made in writing on a form prescribed by the department. An application shall include all relevant information required by the department, including environmental assessment information if required under ch. ATCP 3.

(6) **ACTION ON PERMIT.** (a) The department shall act on a permit application within 30 business days after a complete application is filed with the department, except that the department shall act:

- 1. Within 60 days if the applicant seeks a permit to move a genetically engineered pest or biological control agent.
- 2. Within 120 days if the applicant seeks a permit to release a genetically engineered pest or biological control agent into the environment of this state.

(b) The department may deny an application without prejudice to a subsequent re-application if additional time or information is required for an environmental assessment.

History: Cr. Register, November, 1990, No. 419, eff. 12-1-90; am. (1) (intro.), cr. (2) (e), Register, December, 1994, No. 468, eff. 1-1-95; correction in (2) (b) and (c) made under s. 13.93 (2m) (b) 7., Stats., Register, March, 1999, No. 519.

ATCP 21.05 Inspection and certification services; fees. (1) **SERVICES AVAILABLE.** The department may inspect plants, plant products, bee colonies, and other materials at the request of any person, in order to certify that the materials are free of pest infestations or disease, or to facilitate interstate or international movement of the materials. A person requesting inspection or certification services under this subsection shall pay a fee for the services, as provided under sub. (3). Inspections initiated by the department for survey, enforcement, or nursery licensing purposes do not constitute service inspections for which a fee is required.

Note: Inspection and certification of certain plants and commodities is required by the state of destination, or by federal or international law, as a condition to the interstate or international shipment of those plants or commodities.

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

(2) **REQUEST FOR INSPECTION OR CERTIFICATION.** A person requesting inspection or certification services under this section shall file the request with the department at least 10 days before the requested inspection date. The department may waive the 10 day notice requirement for good cause shown. A request shall specify the purpose for which inspection or certification is required.

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

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

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

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

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

(d) *Service inspections integrated with other inspections.* Whenever possible, service inspections under this section shall be integrated with other routine or regularly scheduled inspections, to minimize overall program costs and make efficient use of department personnel.

(e) *Inspection fees paid to department; delinquent fees.* Fees under this section are due and payable within 30 days after the billing date. The department may bring an action in court to collect any delinquent payment, and may refuse any further inspection or certification service until fees are paid in full.

History: Cr. Register, November, 1990, No. 419, eff. 12-1-90; CR 02-121: cr. (1m), r. and recr. (3) (a) to (c) Register July 2003 No. 571, eff. 8-1-03.

ATCP 21.10 Spongy moth; import controls and quarantine. (1) TREES, UNPROCESSED FOREST PRODUCTS, AND SHRUBS FROM INFESTED AREAS. (a) Except as provided under sub. (3), no person may import into this state any trees, woody shrubs, cut Christmas trees, logs, pulpwood, slabwood, firewood, or wood chips that originate from a spongy moth regulated area designated by the United States department of agriculture under 7 CFR 301.45-2a.

(b) Except as provided under sub. (3), no person may move any trees, woody shrubs, cut Christmas trees, logs, pulpwood, slabwood, firewood, or wood chips out of any area in this state which the United States department of agriculture has designated as a spongy moth regulated area under 7 CFR 301.45-2a.

(2) USED OUTDOOR HOUSEHOLD ITEMS; COMMERCIAL MOVEMENT FROM INFESTED AREAS. Except as provided under sub. (3), no common carrier may do either of the following:

(a) Transport into this state, for delivery in this state, any outdoor household item that has been used in a spongy moth regulated area designated by the United States department of agriculture under 7 CFR 301.45-2a.

(b) Transport, out of an area in this state which the United States department of agriculture has designated as a spongy moth regulated area under 7 CFR 301.45-2a, any outdoor household item that has been used in that area.

(3) INSPECTED AND CERTIFIED ITEMS. Subsections (1) and (2) do not apply to items that are inspected and certified by a pest control official in the state or province of origin, provided that the items are accompanied by a written certificate issued by the pest control official who inspected those items. The certificate shall identify the date of inspection and the items inspected. In the certificate, the pest control official shall certify at least one of the following:

(a) That the inspected items originate from non-infested premises and have not been exposed to spongy moth infestation.

(b) That the inspected items were found, at the time of inspection, to be free of spongy moth infestation.

(c) That the inspected items have been effectively treated to destroy the spongy moth. The certificate shall specify the method and date of treatment.

Note: Effective treatment methods include the methods described in the "Gypsy Moth Program Manual" published by the United States department of agriculture, animal and plant health inspection service (USDA-APHIS). A copy of the manual may be obtained from USDA-APHIS or viewed online at: https://www.aphis.usda.gov/aphis/ourfocus/planthealth/complete-list-of-electronic-manuals/ct_online_manuals.

(d) That the inspected items are produced, processed, stored, handled, or used under conditions, described in the certificate, that effectively preclude the transmission of any spongy moth infestation.

History: Cr. Register, December, 1994, No. 468, eff. 1-1-95; CR 22-080: am. (title), (1), (2) (a), (b), (3) (a) to (d) Register February 2024 No. 818, eff. 3-1-24.

ATCP 21.13 Honeybees; import controls.

(1) REPORTING IMPORT SHIPMENTS. (a) No person may ship live honeybees or used beekeeping equipment into this state without first reporting the import shipment to the department in writing. A single report may cover 2 or more import shipments made in the same calendar year.

(b) A report under par. (a) shall include all of the following information for each import shipment covered by the report:

1. The name and address of the person making the import shipment.

2. A description of the import shipment. The description shall indicate whether the shipment includes any beehive or used beekeeping equipment, or whether it includes only a queen, a queen and attendant honeybees, or adult honeybees.

3. The expected date of the import shipment. If 2 or more import shipments are covered by the same report, the report need only include the expected date of the first import shipment.

4. The name and address of the beekeeping operation from which the import shipment will originate, including the state, county and local address of that operation.

5. The name and address of the person receiving the import shipment in this state if that person is a wholesale distributor of honeybees or beekeeping equipment.

6. The original copy of each certificate required in connection with the import shipment under subs. (2) to (4). Each certificate shall be issued by a pest control official in the state of origin, prior to the import shipment date. Each certificate shall be based on an inspection performed by the pest control official within 12 months prior to the import shipment date. A single certificate may cover 2 or more import shipments and may combine certifications under subs. (2) to (4).

(2) SPECIES CERTIFICATION. (a) Except as provided under par. (b), no person may ship into this state any live honeybees or used beekeeping equipment originating from a county or parish in which, according to the National Agricultural Pest Insect Survey published by the United States department of agriculture, undesirable honeybees have been found.

Note: The National Agricultural Pest Insect Survey (NAPIS), which is published on a regular periodic basis by the United States department of agriculture, identifies counties in which Africanized honeybees and other undesirable honeybees have been found. Recent issues of the National Agricultural Pest Insect Survey are available from the department.

(b) Paragraph (a) does not apply to either of the following:

1. Honeybees that a pest control official certifies under par. (c) as being European honeybees.

2. Used beekeeping equipment that a pest control official certifies as being free of live honeybees.

(c) A pest control official may use any of the following methods to certify that honeybees are European honeybees:

1. The Fast Africanized Bee Identification System published by the United States department of agriculture, agricultural research service.

Note: Copies of the Fast Africanized Bee Identification Systems (FABIS) are on file with the department and the legislative reference bureau. Copies are available at cost from the department.

2. The Morphometric Method for Identification of Africanized and European Honey Bees Using Large Reference Populations.

Note: The Morphometric Method for Identification of Africanized and European Honey Bees Using Large Reference Populations is described in Rinderer et al., "Morphometric identification of Africanized and European honey bees using large reference populations," *Apidologie* (1993) 24, 569-585. Copies of this article are on file with the department and the legislative reference bureau. Copies are available at cost from the department.

3. Any other method approved by the department.

(4) AMERICAN FOULBROOD CERTIFICATION. (a) No person may ship live honeybees into this state unless those honeybees originate from a colony which a pest control official has certified as being apparently free of American foulbrood.

(b) A pest control official may certify that colonies found at any location are apparently free of American foulbrood if the pest control official visually examines at least 20% of the colonies at that location, and finds evidence of American foulbrood in fewer than 3% of the colonies examined.

(c) No person may ship used beekeeping equipment into this state unless a pest control official first certifies that the beekeeping equipment is apparently free of American foulbrood.

History: Cr. Register, December, 1994, No. 468, eff. 1-1-95; CR 22-080: r. (3) Register February 2024 No. 818, eff. 3-1-24.

ATCP 21.14 Potato rot nematode. (1) DEFINITIONS. In this section:

(a) "Adjacent field" means any parcel of land contiguous to an infested field.

(b) "Certified seed potatoes" means seed potatoes which have been inspected and certified by the college as having been produced under, and meeting field and bin inspection standards and requirements under, ch. ATCP 156, and which have been graded and certified by the department as being of a grade specified under ch. ATCP 156.

(c) "College" means the college of agricultural and life sciences of the University of Wisconsin.

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

(e) "Exposed field" means any parcel of land which may have been exposed to infestation by the potato rot nematode because of the movement of potatoes, machinery, or equipment, or through any other means.

(f) "Infested field" means any parcel of land which is declared to be an infested field under sub. (3), or which is known to be currently infested in fact with potato rot nematode.

(g) "Potato rot nematode" means the nematode (*Ditylenchus destructor*) which attacks potatoes, causing rot.

(h) "Quarantine" means an order of the department requiring isolation of the material named and prohibiting its movement or disposition except as authorized by the department.

(i) "Table stock potatoes" means potatoes grown for use or processing as food for human consumption.

(2) LIVING ORGANISM. No person shall move or transport any living specimen of the potato rot nematode or of any soil or plant materials containing such organism without a permit from the department. Permit may be granted only for experimental work or research by governmental agencies, educational institutions, or private laboratories engaged in plant pest research. The department shall grant or deny a permit application within 20 business days after the application is filed with the department, provided that the application is accompanied by all requisite information and documentation.

(3) INFESTED FIELDS; QUARANTINES. (a) The department shall, by notice in writing, declare as an infested field any field or parcel of land on which potatoes infected with potato rot nematode have been grown.

(b) No potatoes grown on an infested field may be sold or moved without department approval. Before granting approval, the department shall perform a harvest-time inspection of the infested field and randomly selected potatoes grown on the field. The department may issue a quarantine covering potatoes grown on other exposed or adjacent fields if, in the judgment of the department, potatoes grown on those fields may be infected.

(c) No person may plant potatoes on any infested field without giving prior written notice to the department. Notice shall indicate the type of potatoes to be grown on the infested field. The department shall, by March 1 of each year, mail a questionnaire to all persons known by the department to be owners of potato rot nematode infested fields or parcels of land. The questionnaire shall state what crops, if any, are to be grown on the infested field or parcel of land and any other information required by the department. After the questionnaire is completed and signed by the owner, it shall be returned to the department by April 15 of each year. Copies of each completed questionnaire shall be made available to the Wisconsin potato growers association and the college.

(d) When the department has reason to believe that any material, machinery or equipment used in the production, processing, or distribution of potatoes is contaminated, the person in charge thereof shall, upon order of the department, fumigate, disinfect, wash, burn, bury, or otherwise dispose of such contaminated material, machinery, or equipment as required by such order.

(e) If a field used in the production of table stock potatoes is designated as an infested field under par. (a), the department may withdraw that designation only if one of the following conditions is met:

1. The field has been fumigated in accordance with pesticide laws and the fumigant's label and there is no evidence of potato rot nematode infestation in the next potato crop grown on the field. No fumigation may be done without prior written notice to the department.

2. There is no evidence of potato rot nematode infestation in 2 successive potato crops grown on the field.

(f) If any field used in the production of certified seed potatoes is designated as an infested field under par. (a), the department may not withdraw that designation unless both of the following conditions are met:

1. The field has been fumigated in accordance with pesticide laws and the fumigant's label. No fumigation may be done without prior written notice to the department.

2. After the field is fumigated, 2 successive potato crops grown on the field show no evidence of potato rot nematode infestation.

(g) If a notice of infestation is withdrawn under par. (e) or (f), the department may continue to examine potatoes grown on the field to verify that there is no evidence of potato rot nematode infestation.

(4) SALE OR PROCESSING OF TABLE STOCK POTATOES. (a) No table stock potatoes may be marketed unless free from any visible evidence of infection by the potato rot nematode. Culls and waste materials removed in the process of inspection or grading shall be destroyed or disposed of in a manner as approved by the department which will not result in the spread of the disease.

(b) Potatoes from an infested field or warehouse where infected potatoes are found that have been randomly inspected by the department and show no visible evidence of infection may be marketed or shipped for grading or processing for food purposes provided adequate safeguards are taken to prevent the spread of the disease during transit, grading, or processing. Potatoes showing evidence of infection and all cull and waste material resulting from the inspection, grading, or processing of the potatoes shall be destroyed or disposed of in a manner which prevents spread of the disease.

(c) No potatoes from an infested field may be delivered to another state without written approval of the department and the responsible plant pest control authority in that other state.

(5) SALE AS CERTIFIED SEED. (a) Potatoes grown on infested fields shall not be certified or sold for seed purposes, except that potatoes grown on infested fields in the second year following fumigation may be certified or sold for seed purposes with the approval of the department. The department may grant approval if, in the judgment of the department and the college, the infestation has been thoroughly eliminated and a disease hazard no longer exists.

(b) Potatoes grown on adjacent or exposed fields may be certified and sold for seed purposes only with written approval of the department. Approval shall not be granted if, in the judgment of the department and the college, the fields may be infested or there is a danger that the disease may spread.

(c) If potatoes infected with potato rot nematode are found in any warehouse, no potatoes from that warehouse may be certified or sold for seed purposes except with the approval of the department and the college. Approval may be granted for the certifica-

tion or sale of potatoes from the warehouse for seed purposes if, in the judgment of the department and the college, all of the following conditions are met:

1. The potatoes were cultivated, harvested, and stored in a manner which minimizes the spread of potato rot nematode.
2. The potatoes were not stored in the same bin with potatoes infested with potato rot nematode.
3. The warehouse and storage bins are constructed, maintained, and operated in a manner which effectively precludes the spread of potato rot nematode between bins.
4. There is minimal risk that the certification or sale of the potatoes will result in the spread of potato rot nematode.

(d) If a warehouse is found to contain potatoes infected with potato rot nematode, certified seed potatoes shall not be stored in that warehouse until all potatoes are removed from the warehouse and the warehouse is thoroughly cleaned and disinfected under the supervision of the college.

History: Renum. from ATCP 27.01 to 27.05 and am. (1) (b), (f), (3) (e) (intro.), (f) (intro.) and (g), Register, February, 1996, No. 482, eff. 3-1-96.

ATCP 21.15 Potato late blight. (1) DEFINITIONS. In this section:

(a) "Cull pile" means a waste pile of harvested potatoes and includes seed cutting slivers and waste, storage remnants, and sweepings.

(b) "Late blight" means the fungal disease *Phytophthora infestans*.

(c) "Volunteer potato plants" means potato plants that germinate in places where they were not intentionally planted during the current calendar year, or that germinate from cull potatoes spread on land.

(2) DISPOSING OF CULL PILES. A person who owns or controls land on which potato cull piles are located shall dispose of those cull piles by May 20 of each year by one of the following methods:

(a) By feeding the cull potatoes to livestock so that they are completely consumed by May 20.

(b) By spreading the cull potatoes on fields and incorporating the cull potatoes into the soil.

(c) By depositing the cull potatoes in a licensed landfill with the written permission of the landfill operator.

(d) By another method which the department approves in writing.

(3) CONTROLLING VOLUNTEER POTATO PLANTS. Whenever volunteer potato plants appear on land, the person who owns or controls that land shall immediately remove or kill those volunteer potato plants. Pesticides used to kill volunteer potato plants shall be labeled for the crop in which the volunteer plants emerge, or for the site at which they emerge.

(4) ENFORCEMENT. (a) The department may issue pest quarantine and abatement orders under ss. 94.01 and 94.02, Stats., and s. ATCP 21.03, to prevent or control late blight infestations, or to remedy violations of this section.

(b) If the department finds any field infested with late blight, the department may order the person owning or controlling that field to treat it, in a manner specified by the department, in order to control or eliminate the infestation. Treatment may include pesticide applications specified by the department.

(c) The department may order the destruction of a potato crop infested with late blight if the department finds that alternative measures will not adequately prevent or mitigate the spread of late blight.

(d) The department may seek to prosecute violations of this section under s. 94.77, Stats.

Note: The University of Wisconsin–Extension plant pathology and horticulture departments have developed integrated pest management procedures (IPM) that help protect against late blight. Growers are urged to follow these IPM procedures. IPM procedures and late blight forecasting information are available from the UW–extension

county agricultural agent, or through a UW–extension computer program called the potato disease management plan under WISDOM.

History: Emerg. cr. eff. 5-1-96; cr. Register, April, 1997, No. 496, eff. 5-1-97.

ATCP 21.16 Hemlock woolly adelgid; import controls and quarantine. (1) HEMLOCK MOVEMENT OR IMPORTS RESTRICTED FROM THE INFESTED AREA. (a) In this subsection, "infested area" means all of the following:

1. The states of Alaska, California, Connecticut, Delaware, Georgia, Idaho, Kentucky, Maine, Maryland, Massachusetts, Michigan, New Hampshire, New York, New Jersey, North Carolina, Ohio, Oregon, Pennsylvania, Rhode Island, South Carolina, Tennessee, Vermont, Virginia, Washington, West Virginia, the District of Columbia, and the Canadian provinces of British Columbia, and Nova Scotia.

2. Any state or country, or any delineated area within a state or country, which the responsible state agency has declared to be infested with hemlock woolly adelgid.

(b) Except as provided in sub. (2), no person may import any of the following items to this state from the infested area; or move any of the following items from an infested area to an area that is not infested within this state:

1. Hemlock seedlings.
2. Hemlock nursery stock.
3. Hemlock logs with bark.
4. Hemlock lumber with bark.
5. Hemlock bark chips.
6. Hemlock bark.
7. Cut hemlock trees.
8. Hemlock branches.

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

(a) 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:

1. That the items originate from non-infested premises and have not been exposed to hemlock woolly adelgid.
2. That the items were found, at the time of inspection, to be free of hemlock woolly adelgid.
3. That the items have been effectively treated to destroy hemlock woolly adelgid. The phytosanitary certificate shall specify the pesticide or other treatment used.
4. 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.

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

1. The name and address of the importer and import recipient.
2. The proposed source and destination of each import shipment.
3. The proposed import dates or time period.
4. The items to be imported in each proposed shipment.
5. The proposed size and frequency of import shipments.
6. The proposed method of import.
7. Required import conditions that will, in the department's opinion, effectively prevent the spread of hemlock woolly adelgid.
8. Provisions authorizing the department to cancel the agreement at any time, with or without cause or prior notice.

(3) KNOWINGLY IMPORTING PLANT PEST; PROHIBITION. No person may knowingly import live hemlock woolly adelgid, *Adelges tsugae* (Annand) into this state, except pursuant to a permit under s. 94.03, Stats., and s. ATCP 21.04.

History: CR 02-121: cr. Register July 2003 No. 571, eff. 8-1-03; CR 18-019: am. (1) Register January 2020 No. 769, eff. 2-1-20; CR 22-022: am. (title), cr. (1)

(a), renum. (1) (intro.) to (1) (b), renum. (1) (a) to (d) to (1) (b) 1. to 4., renum. (1) (e), (f) to (1) (b) 5., 6. and am. cr. (1) (b) 7., 8., cr. (3) Register June 2023 No. 810, eff. 7-1-23; correction in (1) (a) (intro.) made under s. 35.17, Stats., Register June 2023 No. 810.

ATCP 21.18 Asian longhorned beetle; import controls and quarantine. (1) IMPORTING OR MOVING REGULATED ITEMS FROM INFESTED AREAS; PROHIBITION. Except as provided in sub. (3), no person may do any of the following:

(a) Import a regulated item under sub. (2) into this state if that item originates from an Asian longhorned beetle regulated area identified in 7 CFR 301.51-3.

(b) Move a regulated item under sub. (2) out of a regulated area that is identified in 7 CFR 301.51-3 and located in this state.

Note: The United States department of agriculture, animal and plant health inspection service (USDA-APHIS) periodically updates the listing of regulated areas in 7 CFR 301.51-3. Subsection (1) applies to new regulated areas as those areas are identified in the CFR.

Each year, as a service, the Wisconsin department of agriculture, trade and consumer protection distributes an updated federal CFR listing to nursery license holders and other affected persons in this state. More frequent updates, if any, are available on the department's website at <https://datcp.wi.gov/Pages/Homepage.aspx>. Subsection (1) applies to new regulated areas as those areas are identified in the CFR, regardless of whether affected persons receive update notices from the department. Persons may request update notices by visiting the department's website, or by writing to the following address:

Wisconsin Department of Agriculture, Trade and Consumer Protection
Division of Agricultural Resource Management
P.O. Box 8911
Madison, WI 53708-8911

(2) REGULATED ITEMS. The following are regulated items for purposes of sub. (1):

(a) The Asian longhorned beetle, *Anoplophora glabripennis* (Motschulsky), in any living stage.

(b) Cut firewood of all non-coniferous species.

(c) Trees, tree parts, wood, or debris, more than 1/2 inch in diameter, from any of the following genera: *Acer* (maple), *Aesculus* (buckeye), *Albizia* (mimosa), *Betula* (birch), *Celtis* (hackberry), *Fraxinus* (ash), *Platanus* (sycamore), *Populus* (poplar), *Salix* (willow), *Sorbus* (mountain ash), and *Ulmus* (elm). This includes nursery stock, logs, green lumber, stumps, roots, and branches, whether living, dead, cut, or fallen.

(d) Any other item or substance not listed in sub. (2) that may be designated as a regulated item if a pest control official determines that it presents a risk of spreading Asian longhorned beetle and notifies the person in possession of the item or substance that it is subject to the restrictions of the regulations.

(3) INSPECTED AND CERTIFIED ITEMS; EXEMPTION. Subsection (1) does not prohibit the shipment of a regulated item if a pest control official in the state or province of origin does all of the following:

(a) Inspects the regulated item.

(b) Certifies any of the following in a certificate that accompanies the shipment:

1. The inspected item originates from non-infested premises and has not been exposed to Asian longhorned beetle.

2. The inspected item was found, at the time of inspection, to be free of Asian longhorned beetle.

3. The inspected item has been effectively treated to destroy Asian longhorned beetle. The certificate shall specify the date and method of treatment.

4. The inspected item was produced, processed, stored, handled, or used under conditions, described in the certificate, that effectively preclude the transmission of Asian longhorned beetle.

History: CR 06-008: cr. Register October 2006 No. 610, eff. 11-1-06.

ATCP 21.19 *Phytophthora ramorum*; import controls and quarantine. (1) IMPORTING OR MOVING REGULATED ITEMS FROM INFESTED AREAS; PROHIBITION. Except as provided in sub. (3), no person may do any of the following:

(a) Import a regulated item under sub. (2) into this state if that item originates from any *Phytophthora ramorum* regulated area identified in 7 CFR 301.92-3.

(b) Move any regulated item under sub. (2) out of any *Phytophthora ramorum* regulated area that is identified in 7 CFR 301.92-3 to any *Phytophthora ramorum* unregulated area within this state.

Note: The United States department of agriculture, animal and plant health inspection service (USDA-APHIS) periodically updates the listing of regulated areas in 7 CFR 301.92-3. Updates, if any, are available on the department's website at <https://www.datcp.wi.gov>. Subsection (1) applies to new regulated areas as those areas are identified in the CFR, regardless of whether affected persons receive update notices from the department. Persons may request update notices by visiting the department's website, or by writing to the following address:

Wisconsin Department of Agriculture, Trade and Consumer Protection
Division of Agricultural Resource Management
P.O. Box 8911
Madison, WI 53708-8911

(2) REGULATED ITEMS. The following are regulated items for purposes of sub. (1):

(a) Nursery stock (except acorns and seeds), unprocessed wood, and unprocessed wood and plant products, including bark chips, firewood, logs, lumber, mulch, wreaths, garlands, and greenery of the host plant taxa identified in 7 CFR 301.92-2 (d) as being proven hosts of *Phytophthora ramorum* or identified in 7 CFR 301.92-2 (e) as being associated with *Phytophthora ramorum*.

Note: The United States department of agriculture, animal and plant health inspection service (USDA-APHIS) periodically updates the listing of proven hosts and associated plant taxa in 7 CFR 301.92-2. Updates, if any, are available on the department's website at <https://www.datcp.wi.gov>. Subsection (2) applies to new proven hosts and associated plant taxa as those areas are identified in the CFR, regardless of whether affected persons receive update notices from the department. Persons may request update notices by visiting the department's website, or by writing to the following address:

Wisconsin Department of Agriculture, Trade and Consumer Protection
Division of Agricultural Resource Management
P.O. Box 8911
Madison, WI 53708-8911

(b) Soil or potted media.

(c) All cultures and live material of *Phytophthora ramorum* (Werres *et al.*).

(d) Any other item or substance not listed in sub. (2) that may be designated as a regulated item if a pest control official determines that it presents a risk of spreading *Phytophthora ramorum* and notifies the person in possession of the item or substance that it is subject to the restrictions of the regulations.

(3) INSPECTED AND CERTIFIED ITEMS; EXEMPTION. Subsection (1) does not apply if a pest control official in the state or province of origin inspects the regulated item and certifies any of the following in a certificate that accompanies the shipment:

(a) That the inspected items originate from non-infested premises and have not been exposed to *Phytophthora ramorum*.

(b) That the inspected items were found, at the time of inspection, to be free of *Phytophthora ramorum*.

(c) That the inspected items have been effectively treated to destroy *Phytophthora ramorum*. The certificate shall specify the date and method of treatment used.

(d) That the inspected items are produced, processed, stored, handled, or used under conditions, described in the certificate, that effectively preclude the transmission of *Phytophthora ramorum*.

History: CR 06-008: cr. Register October 2006 No. 610, eff. 11-1-06; CR 22-022: am. (1) (b), (2) (a) Register June 2023 No. 810, eff. 7-1-23.

ATCP 21.20 Treated firewood from certified sources. (1) FIREWOOD IN WISCONSIN STATE PARKS. For purposes of s. NR 45.045, firewood is from a source approved by the department if all of the following apply:

(a) The firewood originates from a firewood dealer who is certified under sub. (2).

(b) The certified firewood dealer has treated the firewood, at a location identified in sub. (2) (c) 3., according to the representations made in sub. (2) (d).

(c) The firewood is labeled as treated firewood. The label shall bear the certification number under sub. (2) (a) of the firewood dealer who treated the firewood in this state and shall specify the method of treatment of the firewood and the state and county in which the wood was harvested. The certification number on each label shall be not less than twelve-point font.

(2) **VOLUNTARY CERTIFICATION OF FIREWOOD DEALERS.** (a) *General.* The department may annually certify a firewood dealer for purposes of sub. (1) (a). The department shall issue its certification in writing. The certification shall include a unique certification number assigned to the firewood dealer. An annual certification expires on the anniversary date of the initial certification. A firewood dealer is not required to be certified under this subsection in order to sell or distribute firewood in this state.

(b) *Certification standards.* The department may certify a firewood dealer under par. (a) if all of the following apply:

1. The firewood dealer submits a complete application under par. (c).

2. The department inspects all of the business premises identified under par. (c) 3. and determines, based on that inspection, that the firewood dealer is equipped to fulfill all of the firewood dealer's representations under par. (d).

(c) *Applying for certification.* A firewood dealer who wishes to be certified under par. (a) shall submit a certification application to the department, on a form provided by the department. The application shall include all of the following:

1. The correct legal name of the firewood dealer, and any trade names under which the firewood dealer sells or distributes firewood in this state.

2. The address of the firewood dealer's business headquarters.

3. The address of every business location in this state at which the firewood dealer treats firewood for purposes of sub. (1) (b).

4. The approximate annual volume of firewood that the firewood dealer sells or distributes in this state, including treated and untreated firewood.

5. The approximate annual volume of firewood that the firewood dealer treats at each location identified under subd. 3.

6. Each state and county from which the firewood dealer obtains firewood for sale or distribution in this state.

7. The name and address of each person from whom the firewood dealer procures wood for sale or distribution in this state.

8. The statement required under par. (d).

9. An annual certification fee of \$50 for each firewood treatment location identified under subd. 3. If the certification standards for heat treating are not met on the first attempt, the department shall charge a fee of \$200.

Note: You may obtain an application form, without charge, by contacting the Department of Agriculture, Trade and Consumer Protection, P.O. Box 8911, Madison, WI 53708-8911. You may also obtain the application form at the following web address: <https://datcp.wi.gov/Documents/FirewoodDealerApplication.pdf>.

(d) *Statement of firewood dealer.* An application under par. (c) shall include the following signed and notarized statement by the firewood dealer or by an authorized officer or representative of the firewood dealer:

"The firewood dealer certifies that, before selling or distributing any firewood in this state as treated firewood, the dealer will treat that firewood in this state in one of the following ways:

1. Heating each piece of firewood to a temperature at least 140° F. (60° C.) at the center of the piece, and maintaining that temperature for at least 60 minutes.

2. Removing all bark, and additional wood to a depth of at least ½ inch beneath the bark, from each piece of firewood. The treatment option contained in this paragraph may be used before January 1, 2015.

3. Storing the firewood on the firewood dealer's premises for at least 2 years.

4. Treating the firewood in a manner approved, in writing, by the Wisconsin Department of Agriculture, Trade and Consumer Protection, to kill all insect pests that may inhabit the firewood."

(dm) *Recording equipment and records.* For the treatment of firewood under item 1. in the statement required under par. (d) (intro.) a firewood dealer shall have electronic temperature and time recording equipment for each heat treatment vessel the dealer operates. The dealer shall keep a record of the time and temperature recorded by the electronic time and temperature recording equipment of each heat treatment the dealer runs for 3 years after the date of the treatment.

(e) *Notice of change.* A firewood dealer shall immediately notify the department if, at any time before or after the firewood dealer is certified under par. (a), the firewood dealer's statement under par. (d) is no longer accurate.

(f) *Action on application.* The department shall grant or deny an application under par. (c) within 60 business days after the department receives a complete application. If the department denies an application, the denial notice shall include the reasons for denial.

(g) *Withdrawing certification.* The department may withdraw a certification under par. (a) if the department finds that the firewood dealer has materially misrepresented any information in the application under par. (c), or has failed to fulfill any representation included in the statement under par. (d).

(h) *Department not a warrantor.* A certification under this subsection does not constitute a warranty by the department that firewood is free of pests, or that the certified firewood dealer has complied with all of the representations made in the application for certification.

(3) **SELLER REPRESENTATIONS.** No seller or distributor of firewood may do any of the following, directly or by implication:

(a) Misrepresent that the firewood originates from a dealer certified under sub. (2).

(b) Misrepresent that that firewood is treated firewood.

(c) Represent that firewood is treated firewood, unless the firewood is labeled as treated firewood and the label bears the certification number under sub. (2) (a) of the firewood dealer who treated the firewood in this state.

History: CR 07-085: cr. Register March 2008 No. 627, eff. 4-1-08; correction in (1) made under s. 13.92 (4) (b) 7., Stats., Register July 2011 No. 667; CR 11-051: am. (1) (c), (2) (a), (c) 9., r. and recr. (2) (d), cr. (2) (dm) Register July 2012 No. 679, eff. 8-1-12.

ATCP 21.22 Mountain Pine Beetle; import controls and quarantine. (1) DEFINITIONS. In this section:

(a) "Bark" means all of the following:

1. The exterior bark of a tree.

2. Ingrown bark around knots in a tree.

3. Bark pockets occurring between a tree's annual growth rings.

4. All inner bark and phloem tissue adjacent to any bark under subds. 1. to 3.

(b) "Firewood" has the meaning contained in s. ATCP 21.01 (6p).

(c) "Infested area" means all of the following:

1. The states of Arizona, California, Colorado, Idaho, Montana, Nebraska, Nevada, New Mexico, Oregon, South Dakota, Utah, Washington, Wyoming, and the Canadian provinces of Alberta, British Columbia, and Saskatchewan.

2. Any state or nation, or any delineated area within a state or nation, which the U. S. department of agriculture, U. S. forest service or respective state plant pest regulatory officials has declared infested with mountain pine beetle.

(d) "Pest control official" has the meaning given in s. ATCP 21.01 (11).

(2) KNOWINGLY IMPORTING PLANT PEST; PROHIBITION. No person may knowingly import living mountain pine beetles, *Dendroctonus ponderosae* Hopkins, into this state, except pursuant to a permit under s. 94.03, Stats., and s. ATCP 21.04.

(3) IMPORTING MATERIALS FROM INFESTED AREAS; PROHIBITION. Except as provided in sub. (4), no person may import any of the following materials into this state if those materials originate from or have been exposed to the environment in any infested area:

- (a) Firewood from any species of tree.
- (b) Wood or plant parts of the genus *Pinus*, including dimensional lumber with bark attached, logs, stumps, and branches. This paragraph does not apply to any of the following:
 1. Processed lumber which is 100% bark-free or kiln-dried.
 2. Finished wood products without bark, including finished furniture, home furnishings, or building materials.
 3. Pine Christmas trees.
 4. Pine nursery stock.
 5. Pine bark mulch or pulpwood chips.

(4) EXEMPTIONS. Subsection (3) does not apply to any of the following:

(a) Material specified in sub. (3) (a) and (b) that are accompanied by a written certificate, signed by a pest control official in the infested area, which describes the materials and states at least one of the following:

1. The materials have not been exposed to the mountain pine beetle. The certificate shall explain the basis for the official's statement.
2. The materials have been effectively treated to destroy mountain pine beetle. The certificate shall specify the date and method of treatment.
3. The materials have been produced, processed, stored, handled, or used under conditions, described in the certificate, which effectively preclude the transmission of mountain pine beetle.

(b) Material imported in compliance with a written agreement, between the importer and the department, which includes all of the following:

1. The name and address of the importer.
2. The type and volume of material that may be imported under the agreement.
3. The locations from which the material may be imported under the agreement.
4. The names and addresses of the persons to whom, and the locations to which, the material may be imported under the agreement.
5. The method by which the material may be imported.
6. The time period covered by the agreement.
7. The importer's commitment to keep complete records of each import shipment under the agreement, and to submit those records to the department for inspection and copying upon request.

8. Specific import terms and conditions that will, in the department's opinion, effectively ensure that materials imported pursuant to the agreement will not introduce the mountain pine beetle into this state.

9. A provision authorizing the department to terminate the agreement, without prior notice, for any reason.

History: CR 16-032; cr. Register April 2017 No. 736, eff. 5-1-17.

ATCP 21.23 Elongate hemlock scale; import controls and quarantine. (1) DEFINITIONS. In this section:

(a) "Elongate hemlock scale" means any living life stage of the invasive insect *Fiorinia externa* (Ferris), including adults, nymphs, crawlers, or eggs.

(b) "Infested area" means all of the following:

1. The states of Connecticut, Delaware, Georgia, Kentucky, Maine, Maryland, Massachusetts, Michigan, New Hampshire, New Jersey, New York, North Carolina, Ohio, Pennsylvania, Rhode Island, South Carolina, Tennessee, Vermont, Virginia, and West Virginia; and the District of Columbia.

2. Any state or country, or any delineated area within a state or country, which the responsible state agency has declared to be infested with elongate hemlock scale.

(c) "Pest control official" has the meaning given in s. ATCP 21.01 (11).

(2) KNOWINGLY IMPORTING PLANT PEST; PROHIBITION. No person may knowingly import elongate hemlock scale, *Fiorinia externa* (Ferris), into this state, except pursuant to a permit under s. 94.03, Stats., and s. ATCP 21.04.

(3) IMPORTING OR MOVING MATERIALS FROM INFESTED AREAS; PROHIBITION. Except as provided in sub. (4), no person may do either of the following:

(a) Import conifer plants or plant parts of the plant taxa *Abies spp.*, *Biota orientalis*, *Juniperus chinensis*, *Juniperus rigida*, *Cedrus spp.*, *Picea spp.*, *Pinus spp.*, *Pseudotsuga menziesii*, *Tsuga canadensis*, *Tsuga spp.*, and *Taxus spp.*, including cut Christmas trees, nursery stock, branches, wreaths, or décor, into this state if those materials originate from or have been exposed to the environment in any infested area.

(b) Move conifer plants or plant parts of the plant taxa *Abies spp.*, *Biota orientalis*, *Juniperus chinensis*, *Juniperus rigida*, *Cedrus spp.*, *Picea spp.*, *Pinus spp.*, *Pseudotsuga menziesii*, *Tsuga canadensis*, *Tsuga spp.*, and *Taxus spp.*, including cut Christmas trees, nursery stock, branches, wreaths, or décor, from an infested area to an area that is not infested within this state.

(4) EXEMPTIONS. Subsection (3) does not apply to any of the following:

- (a) Shredded bark and mulch of all tree species.
- (b) Processed lumber which is 100 percent bark-free or kiln-dried.
- (c) Finished wood products without bark, including furniture or building materials.
- (d) Material specified in sub. (3) (a) and (b) that are accompanied by a written certificate, signed by a pest control official in the infested area, which describes the materials and states at least one of the following:

1. The materials originate from an area that is known to be free of elongate hemlock scale, or have not been exposed to elongate hemlock scale. The certificate shall explain the basis for the official's statement.

2. The materials have been effectively treated to destroy elongate hemlock scale. The certificate shall specify the date, method of treatment, and post-treatment data indicating that treated material was examined in the laboratory and found to have no living life stages of elongate hemlock scale.

3. The materials have been produced, processed, stored, handled, or used under conditions, described in the certificate, which effectively preclude the transmission of elongate hemlock scale.

(e) Material imported in compliance with a written agreement, between the importer and the department, which includes all of the following:

1. The name and address of the importer.
2. The type and volume of material that may be imported under the agreement.
3. The locations from which the material may be imported under the agreement.
4. The names and addresses of the persons to whom, and the locations to which, the material may be imported under the agreement.
5. The method by which the material may be imported.
6. The time period covered by the agreement.

7. The importers commitment to keep complete records of each import shipment under the agreement, and to submit those records to the department for inspection and copying upon request.

8. Specific import terms and conditions that will, in the departments opinion, effectively ensure that materials imported pursuant to the agreement will not introduce or spread the elongate hemlock scale.

9. A provision authorizing the department to terminate the agreement, without prior notice, for any reason.

History: CR 22-022: cr. Register June 2023 No. 810, eff. 7-1-23; correction in (3) (a) made under s. 35.17, Stats., and correction in numbering of (4) (e) made under s. 13.92 (4) (b) 1., Stats., Register June 2023 No. 810.