

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Note: Chapter Ag 21 as it existed on November 30, 1990 was repealed and a new ch.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) "Biological control agent" has the meaning specified in s. 94.03 (2), Stats.
- (2) "Department" means the state of Wisconsin department of agriculture, trade and consumer protection.
- (3) "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.
- (4) "Pest" has the meaning specified in s. 93.01 (10), Stats., and includes bee diseases and pests of bees.

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

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. ATCP 159.03:

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(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 29.08 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 29.07.

(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.

(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.

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.

(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 under par. (b), there is a fee of \$20 per hour for inspection and certification services under this section, with a minimum fee of \$20. The \$20 hourly fee applies to inspection time and travel time to and from the place of inspection. Additional charges shall be assessed for any certificate issued under par. (c), and for actual vehicle mileage, meal and lodging expenses made necessary by the inspection.

(b) *Crop inspections.* Fees for field inspection of crops such as corn, sunflowers, soybeans, onions, potatoes, snap beans and turf are \$1.50 per acre, with a minimum fee of \$50. Additional charges shall be assessed for any certificate issued under par. (c), and for actual vehicle mileage, meal and lodging expenses made necessary by the inspection.

(c) *Certificates.* In addition to the fees under par. (a) or (b), the department shall charge a fee of \$15 for each phytosanitary certificate or health certificate issued by the department at the request of any person.

(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.