

**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 adopts 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.

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**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 adopts 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.

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 it 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.

The following table shows the current and proposed fees.

Activity or Certificate	Current Fee	Proposed Fee
Requested inspections of plants, plant products, bee colonies and related materials.	\$20/hour for inspection and travel time plus vehicle mileage, meal and lodging expenses. Minimum charge is \$20. Add charge for each inspection certificate issued (see below).	No separate fee, except for field inspections of crops (see below). Aggregate costs are covered by certificate charges (see below).
Field inspection of crops such as corn, sunflowers, soybeans, onions, potatoes, snap beans and turf.	\$1.50 per acre (minimum \$50), plus mileage, food and lodging expenses.	\$1.50 per acre (minimum \$50) plus mileage, food and lodging expenses.
Certification that materials are disease-free or pest-free (phytosanitary certificate, plant health certificate or apiary inspection certificate).	\$15 per certificate.	\$50 per certificate.
Ginseng shipment certificate. Certificate of identity or origin.	\$15 per certificate.	\$15 per certificate.

### **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 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.

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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.

- 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