



State of Wisconsin
Jim Doyle, Governor

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

PUBLIC NOTICE

FINAL DRAFT RULE TO LEGISLATURE

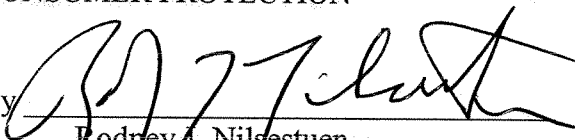
The Department of Agriculture, Trade and Consumer Protection announces that it is submitting the following rule for legislative committee review, pursuant to s. 227.19, Stats.:

CLEARINGHOUSE RULE #: 02-121
SUBJECT: Plant Inspection and Pest Control
ADM. CODE REFERENCE: ATCP 21
DATCP DOCKET #: 02-R-04

Dated this 18 day of March, 2003.

STATE OF WISCONSIN
DEPARTMENT OF AGRICULTURE, TRADE AND
CONSUMER PROTECTION

By


Rodney J. Nilsestuen
Secretary

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

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State of Wisconsin
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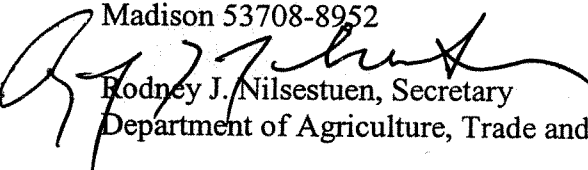
Department of Agriculture, Trade and Consumer Protection

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.

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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.

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.

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

FISCAL ESTIMATE		LRB or Bill No. / Adm. Rule No. ATCP 21
DOA-2048 (R 10/94)	<input checked="" type="checkbox"/> ORIGINAL <input type="checkbox"/> CORRECTED	Amendment No. (If Applicable)
		<input type="checkbox"/> UPDATED <input type="checkbox"/> SUPPLEMENTAL
Subject: Inspection and Certification Service Fees & Hemlock Woolly Adelgid Import Controls		
Fiscal Effect State: <input type="checkbox"/> No State Fiscal Effect		<input type="checkbox"/> Increase Costs -
Check below only if bill makes a direct appropriation or affects a sum sufficient appropriation.		May be possible to absorb within agency's budget? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
<input type="checkbox"/> Increase Existing Appropriation	<input type="checkbox"/> Increase Existing Revenues	<input type="checkbox"/> Decrease Costs
<input type="checkbox"/> Decrease Existing Appropriation	<input type="checkbox"/> Decrease Existing Revenues	
<input type="checkbox"/> Create New Appropriation		
Local : <input checked="" type="checkbox"/> No local government costs		5. Types of Local Gov. Unit Affected:
1. <input type="checkbox"/> Increase Costs	3. <input type="checkbox"/> Increase Revenues	<input type="checkbox"/> Towns <input type="checkbox"/> Villages
<input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory	<input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory	<input type="checkbox"/> Counties <input type="checkbox"/> Cities
2. <input type="checkbox"/> Decrease Costs	4. <input type="checkbox"/> Decrease Revenues	<input type="checkbox"/> Other: <u>County Drainage Boards</u>
<input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory	<input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory	<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. <i>Barbara Knapp</i> 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. Amendment No.
 ATCP 21

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