

CR 90-12

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STATE OF WISCONSIN)
DEPARTMENT OF AGRICULTURE,) ss.
TRADE AND CONSUMER PROTECTION)

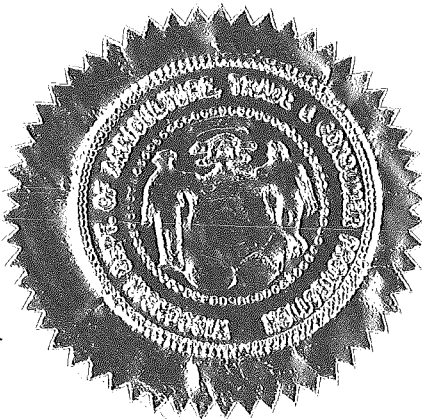
OCT 5 1990
4:00 PM
Revisor of Statutes
Bureau

To All To Whom These Present Shall Come, Greetings:

I, Nicholas J. Neher, Administrator, Agricultural Resource Management Division, State of Wisconsin, Department of Agriculture, Trade and Consumer Protection, and custodian of the official records of said Division, do hereby certify that the annexed order adopting rules relating to agricultural seed testing services, plant inspection and pest control, were duly approved and adopted by the Department on October 5, 1990.

I further certify that said rules have been compared by me with the original on file in the Department and that the same is a true copy thereof, and of the whole of such original.

On testimony whereof, I have hereunto set my hand and affixed the official seal of the Department at the Department offices in the City of Madison, this 5th day of October 1990.



Nicholas J. Neher

Nicholas J. Neher, Administrator
Agricultural Resource Management Division

AN ORDER
OF THE STATE OF WISCONSIN DEPARTMENT OF AGRICULTURE,
TRADE AND CONSUMER PROTECTION
ADOPTING RULES

The Wisconsin department of agriculture, trade and consumer protection hereby adopts the following order to repeal Ag 20.03, Ag 20.04, Ag 20.09, ch. Ag 23 and ch. Ag 25; to renumber Ag 20.05 to Ag 20.08 and Ag 20.10 to Ag 20.12; to repeal and recreate Ag 20.01 and ch. Ag 21; and to create ch. Ag 20.07; related to agricultural seed testing services, plant inspection and pest control.

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

Statutory authority: ss. 93.07(1) and (12), 94.03 and 94.45(3) and (6), Stats.

Statutes interpreted: ss. 93.06(1m) and (9), 93.07(8), (10), (12), (13) and (15), 94.01 to 94.03, 94.11, 94.45(6), and 94.76, Stats.

This rule increases current fees for the inspection and analysis of agricultural seed by the department of agriculture, trade and consumer protection ("DATCP"). It also increases current fees for service inspections of plants and other commodities, including honey bees, to certify that the plants or commodities are free of pest infestations or disease. It repeals current outdated rules related to nursery stock and white pine blister rust, and it modifies other plant inspection and pest control rules to conform with current statutes.

DATCP currently performs service analyses of agricultural seed at its seed lab. Upon request, DATCP analyzes seed for compliance with seed standards under s. 94.38 to 94.46, Stats., and ch. Ag 20, Wis. Adm. Code (Agricultural and Vegetable Seeds). For this service, DATCP charges fees currently prescribed under ch. Ag 20 for various categories of seed. This rule redefines current seed categories, and increases fees in all categories to reflect current program costs. Fees are increased by an average 50% in all categories. Seed samples will be tested on a priority basis for twice the normal fee.

DATCP currently performs service inspections of plants and other commodities, including honey bees, to certify that those plants or commodities are free of pest infestation or disease. (Certification is frequently required to facilitate interstate or international movement of plants or commodities.) For this service, DATCP charges fees currently prescribed under ch. Ag 23, Wis. Adm. Code (Plant Movements; Special Inspections). This rule increases service inspection fees to reflect current program costs. Hourly charges (currently \$12/hr.) are increased to \$20/hr., with a minimum charge of \$20; except that field inspections of crops such as corn, sunflowers, soybeans, onions, potatoes, snap beans and turf are charged at a rate of \$1.50 per acre, with a minimum charge of \$50. For each plant health certificate issued by DATCP, there is a charge of \$15 (currently \$5). As under the current rule, the department will also charge its actual expenses for vehicle mileage, meals and lodging made necessary by the inspection.

Currently, s. 94.03, Stats., prohibits any person from importing, moving or releasing a "pest" or "biological control agent" in this state without a permit from the department. This rule interprets this current statute. Under this rule, no permit would be required under s. 94.03, Stats., for a state or federally approved pesticide; nor would any permit be required for the intrastate movement of a pest which is indigenous throughout this state, unless movement of the indigenous pest is restricted by state or federal rule or quarantine. This rule cross-references applicable requirements under ch. Ag 170, Wis. Adm. Code (Environmental Impact Statements and Assessments). The department must grant or deny a permit application within 30 days after a complete application is filed with the department, except that the department must act (a) within 60 days if the applicant seeks a permit to move a genetically engineered pest or biological control agent; or (b) within 120 days if the applicant seeks a permit to release a genetically engineered pest or biological control agent into the environment. The deadlines for action on genetically engineered organisms are consistent with federal rules.

This rule spells out DATCP's current authority, under ss. 94.01 and 94.02, Stats., to issue pest quarantines and pest abatement orders. The rule prescribes the procedures to be followed, and guarantees a prompt right of hearing for persons adversely affected by such an order.

This rule repeals current provisions of chs. Ag 21 and Ag 23, Wis. Adm. Code, related to nursery stock. Several of these provisions are no longer relevant, or are inconsistent with current statutes. Other provisions, which prohibit misrepresentations in the sale of nursery stock, are adequately covered by s. 94.10, Stats. Section 94.10, Stats., currently requires that all commercial nursery growers and dealers be licensed, and that all nursery stock be obtained from an "officially inspected source." It prohibits misrepresentations in the sale of nursery stock, and prohibits the sale of infested, damaged or dessicated nursery stock which is not capable of reasonable growth.

Finally, this rule repeals current ch. Ag 25, Wis. Adm. Code, (White Pine Blister Rust). The white pine blister rust program no longer exists, and the rule is therefore unnecessary.

SECTION 1. Ag 20.01 is repealed and recreated to read:

Ag 20.01 PROCEDURES, STANDARDS AND TOLERANCES. Except as otherwise provided in this chapter, the methods, terms and standards used by the department for any of the following shall be those prescribed by the "Rules for Testing Seed," October 1988 edition, published by the Association of Official Seed Analysts:

(1) Sampling and analysis of seed for purity, germination and noxious weed seed content.

(2) Standards of germination of vegetable seed.

(3) Terms commonly used in the labeling and testing of seed.

(4) Tolerances for prohibited noxious weed seeds.

(5) Tolerances for permitted variations between seed analysis data shown on the label of any lot of seed and actual percentages and rates of occurrence as determined by department analysis of a sample from the same lot of seed.

NOTE: Copies of the "Rules for Testing Seed," October 1988 edition are on file with the department, the secretary of state and the revisor of statutes. Copies may be obtained from the secretary-treasurer of the Association of Official Seed Analysts, whose address is available from the department.

SECTION 2. Ag 20.03 and Ag 20.04 are repealed.

SECTION 3. Ag 20.05 to Ag 20.08 are renumbered Ag 20.03 to Ag 20.06.

SECTION 4. Ag 20.07 is created to read:

Ag 20.07 FEES. Fees for testing seed samples submitted to the state seed laboratory are set forth in this section. Except as otherwise described, the 3 basic tests consist of the purity analysis, the noxious weed seed examination and the germination test. The fees for the various types and categories of seeds and seed tests, and the sizes of samples needed for testing, are as follows:

	PURITY	NOXIOUS	GERMINATION	COMPLETE	SIZE OF SAMPLE NEEDED
(1) AGRICULTURAL SEED					
(a) Large					
Corn, field peas, popcorn, & soybean	\$6.75	NC	\$8.25	\$12.75	1 1/2 lb. (681 Gms)
Barley, buckwheat, oats, rye, sorghum, sudangrass, sunflower, triticale, vetch, & wheat	\$6.75	\$4.50	\$8.25	\$17.50	1 1/2 lb. (681 Gms)
(b) Medium					
Crownvetch, flax, millets (foxtail, Japanese, proso), rape, & smooth brome	\$4.50	\$4.50	\$6.00	\$13.50	9 oz. (255 Gms)
(c) Small					
Alfalfa, canarygrass, clovers (alsike, red, sweet, & white), fescues (chewings, hard, meadow, red & tall), orchardgrass, ryegrasses (annual & perennial), timothy, trefoils (birdsfoot & yellow)	\$9.00	\$9.00	\$7.50	\$22.50	3 oz. (85 Gms)

	PURITY	NOXIOUS	GERMINATION	COMPLETE	SAMPLE NEEDED
(c) Extra small					
Bentgrass, bluegrass, redtop & tobacco	\$9.00	\$7.50	\$9.00	\$24.75	2/3 oz. (19 Gms)
(2) VEGETABLE SEED					
(a) Brussels sprouts, cabbage, collards, cucumbers, kale, kohlrabi, leek, lettuce, muskmelon, mustard, okra, onions, radish, rutabaga	\$6.75	NA	\$7.50	\$12.00	800 Seeds
(b) Artichoke, asparagus, beans, beets, carrots, celeriac, celery, chicory, citron, dill, eggplant, endive, mangel, New Zealand spinach, parsley, parsnip, peas, pepper, pumpkins, Swiss chard, rhubard, salsify, squash, sweet corn, tomato, watermelon	\$7.50	NA	\$8.25	\$13.50	800 Seeds

(3) SEED MIXTURES. The charge for seed mixtures (in which more than one kind of crop seed is present to the extent of 5% or more) is the total of the fee for the kind of crop seed in the mixture having the highest fee and 50% of the fees applicable to the other kinds in the mixture.

(4) UNUSUAL SAMPLES. The work of testing screenings, dirty samples and unusual seeds (including flowers, shrubs and weeds) will be performed on an actual cost basis to be estimated and quoted upon request after receipt of the sample.

(5) SPECIAL TESTS. (a) The fee for a tetrazolium test is \$15.00.

(b) Upon request, to facilitate the sale of seed in another state, the department will examine a seed sample for seeds

designated as noxious weed seeds by that state. The fee for performing each state's noxious weed seed test is the same as the fee for performing the Wisconsin noxious weed seed test. The fee for each state test is added to the fee for the Wisconsin test if the Wisconsin test is also requested.

(c) The fee for an "all states" noxious weed test is \$60.00.

(6) PRIORITY TESTS. Samples will be tested on a priority basis for twice the normal fee under this section.

SECTION 5. Ag 20.09 is repealed.

SECTION 6. Ag 20.10 to Ag 20.12 are renumbered Ag 20.08 to Ag 20.10.

SECTION 7. Ag 21 is repealed and recreated to read:

CHAPTER AG 21

PLANT INSPECTION AND PEST CONTROL

Ag 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.

Ag 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.

Ag 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).

Ag 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. Ag 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. Ag 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. Ag 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. Ag 170.

(6) ACTION ON PERMIT. 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.

Ag 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.

SECTION 8. Ch. Ag 23 is repealed.

SECTION 9. Ch. Ag 25 is repealed.

SECTION 10. EFFECTIVE DATE. The rules contained in this order shall take effect on the first day of the month following publication in the Wisconsin administrative register, as provided in s. 227.22(2)(intro.), Stats.

Dated this 5th day of October, 1990.

STATE OF WISCONSIN
DEPARTMENT OF AGRICULTURE,
TRADE & CONSUMER PROTECTION

BY Nicholas J. Neher
Nicholas J. Neher, Administrator
Agricultural Resource Mgmt. Div.

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10/04/90