

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Note: Chapter Ag 21 as it existed on November 30, 1990 was repealed and a new ch.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 *Bacillus larvae* and related pathogens.
- (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.
- (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) "Gypsy moth" means the live insect, *Lymantria dispar*, family Lymantriidae, in any life stage, including the egg, larva, pupa or adult stage.
- (9) "Japanese beetle" means the live insect, *Popillia japonica*, family Scarabaeidae, in any life stage, including the egg, larva, pupa or adult stage.
- (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.
- (12) "Pine shoot beetle" means the live insect, *Tomicus piniperda*, family Scolytidae, in any life stage, including the egg, larva, pupa or adult stage.
- (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.
- (15) "Varroa mite" means *Varroa jacobsoni*.

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.

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

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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.

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(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.

(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.

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.

ATCP 21.10 Gypsy 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 gypsy 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 gypsy 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 gypsy 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 gypsy 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 gypsy moth infestation.

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

(c) That the inspected items have been effectively treated to destroy the gypsy 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 inspected at the department, or may be obtained from USDA-APHIS.

(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 gypsy moth infestation.

History: Cr. Register, December, 1994, No. 468, eff. 1-1-95.

ATCP 21.11 Japanese beetle; import controls. (1) **SOIL AND PLANT MATERIALS; IMPORTS FROM INFESTED AREAS.** Except as provided under sub. (3), no person may import any of the following items into this state if that item originates from any of the areas identified under sub. (2):

(a) Soil, humus, compost or manure, except packaged products that are commercially processed in a manner that effectively destroys the Japanese beetle.

(b) Woody or perennial plants with roots, except bare-root plants that are free from soil that could conceal Japanese beetle larvae or pupae.

(c) Grass sod.

(d) Woody or perennial plant crowns or roots for propagation, except when free from soil that could conceal Japanese beetle larvae or pupae.

(e) Bulbs, corms, tubers or rhizomes of perennial plants, except when free from soil that could conceal Japanese beetle larvae or pupae.

(f) Any other woody or perennial plant, woody or perennial plant part, or related article or substance that could reasonably harbor any living stage of the Japanese beetle,

and that could reasonably transmit an infestation of the Japanese beetle.

(2) **INFESTED AREAS.** Subsection (1) applies to items originating from any of the following areas:

(a) The states of Alabama, Connecticut, Delaware, Georgia, Illinois, Indiana, 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.

(b) The District of Columbia.

(c) In the state of Missouri, the counties of Crawford, Franklin, Guscinode, Jefferson, St. Charles, St. Louis, Warren and Washington.

(d) In the state of Nebraska, the county of Lancaster.

(e) In the state of Nevada, the county of Clark.

(f) In the province of Ontario, Canada, the counties of Haldimand, Hamilton, Lincoln, Niagara, Norfolk, Welland and Wentworth.

(g) In the province of Quebec, Canada, the counties of Brome, LaPrairie, Missiquoi and St. Jean.

(3) **INSPECTED AND CERTIFIED ITEMS.** Subsection (1) does 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, and shall certify at least one of the following:

(a) That the inspected items have been effectively treated to destroy the Japanese beetle not more than 10 days before the date on which the items were shipped from the infested area. The certificate shall specify the treatment method and date of treatment.

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

(c) That the items originate from an area which the state or province of origin has certified to be free of Japanese beetle infestation.

History: Cr. Register, December, 1994, No. 468, eff. 1-1-95.

ATCP 21.12 Pine shoot beetle; import controls and quarantine. (1) **IMPORTING OR MOVING REGULATED ITEMS FROM INFESTED AREAS; PROHIBITION.** Except as provided under sub. (3), no person may do either of the following:

(a) Import into this state any regulated item identified under sub. (2) if that item originates from any of the regulated areas designated by the United States department of agriculture under 7 CFR 301.50-3.

(b) Move any regulated item identified under sub. (2) out of any regulated area designated in this state by the United States department of agriculture under 7 CFR 301.50-3.

(2) **REGULATED ITEMS.** The following items are regulated under sub. (1):

(a) Plants of the genus *Pinus*, including live plants or plant parts cut live for ornamental use.

(b) Logs or timber with bark from the genera *Abies*, *Picea* or *Pinus*.

(3) **INSPECTED AND CERTIFIED ITEMS; EXEMPTION.** Subsection (1) does not apply to regulated 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 pine shoot beetle is not present on the inspected items.

(b) That the inspected items have been effectively treated to destroy the pine shoot beetle. The certificate shall specify the method and date of treatment.

Note: Effective treatment methods include the methods described in the "Pine Shoot Beetle 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 inspected at the department, or may be obtained from USDA-APHIS.

History: Cr. Register, December, 1994, No. 468, eff. 1-1-95.

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 system (FABIS) are on file with the department, the secretary of state and the revisor of statutes. 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, the secretary of state and the revisor of statutes. Copies are available at cost from the department.

3. Any other method approved by the department.

(3) VARROA MITE 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 Varroa mite infestation.

(b) A pest control official may certify that honeybee colonies found at any location are apparently free of Varroa mite infestation if the pest control official does any of the following:

1. Examines at least 20% of those colonies using the ether roll method, and finds fewer than 3 mites per 250 honeybees in each examination. Under the ether roll method, the pest control official shall treat 250 honeybees with ether, and shall count the number of mites accumulated in the sampling jar.

2. Examines at least 20% of those colonies using the sticky board method, and finds fewer than 200 mites in each examination. Under the sticky board method, the pest control official shall treat a colony with a miticide approved by the federal environmental protection agency, shall collect the mites killed by the miticide during a period of at least 24 hours, and shall count the collected mites.

3. Examines at least 20% of those colonies using another test approved by the department, and finds that every inspected colony is apparently free of Varroa mite infestation based on a standard specified by the department.

(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 Varroa mite infestation.

(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.