



State of Wisconsin
Governor Tony Evers

Department of Agriculture, Trade and Consumer Protection
Secretary Randy Romanski

DATE: February 17, 2022

TO: Board of Agriculture, Trade and Consumer Protection

FROM: Randy Romanski, Secretary
Sara Walling, Administrator, Division of Agricultural Resource Management

SUBJECT: **ATCP 21 (Plant Inspection and Pest Control)**

PRESENTED BY: Shahla Werner, Plant Protection Section Manager, Division of Agricultural Resource Management

REQUESTED ACTION:

At the March 3, 2022, Board meeting, the Department will request approval of a public hearing draft, regarding ATCP 21, relating to plant inspection and pest control. The Department will also request approval to hold public hearings on the proposed rule.

SUMMARY:

Plant Industry bureau staff will provide an overview of the proposed draft rule changes. The Department reviewed portions of chapter ATCP 21 designated in the approved Scope Statement ([SS 115-20](#)). The proposed rule change repeals three obsolete pest quarantines; amends two quarantines to ensure alignment with federal requirements and known pest distribution; and creates two new pest quarantines to protect agricultural industries and natural resources from emerging plant pests.

The proposed rule repeals state quarantine regulations for:

- pine shoot beetle;
- emerald ash borer; and
- thousand cankers disease, caused by the walnut twig beetle and *Geosmithia morbida* fungal disease complex.

The proposed rule also amends the quarantine for *Phytophthora ramorum*, a harmful, introduced plant pathogen that can be spread on rhododendrons and other nursery stock that has caused the disease known as sudden oak death and resulted in widespread mortality to oaks and other trees in California and Oregon, by replacing the list of regulated plant taxa with references to the lists of proven and associated host plant taxa for this disease in the Code of Federal Regulations.

The proposed revisions also amend the rule for the introduced invasive plant pest known as the hemlock woolly adelgid, which has caused widespread mortality to hemlocks in the United States, by adding Alaska to the infested area; by adding interior quarantine language to prevent within-state pest spread, should this pest establish here; and by adding hemlock shrubs, cultivars, branches, and cut trees to definitions of restricted materials to reduce pest risk.

The proposed rule also creates new regulations for two invasive pests not yet found in Wisconsin, the spotted lanternfly, which kills grape vines and feeds on over 100 species of plants; and the elongate hemlock scale, which feeds on over 43 species of conifers and threatens our Christmas tree industry as well as native hemlock and balsam fir forests.

The Department will hold public hearings on the draft rule on April 6 and April 7, 2022.

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**THE DEPARTMENT OF AGRICULTURE, TRADE AND CONSUMER
PROTECTION'S PROPOSED ORDER TO ADOPT PERMANENT RULES**

PROPOSED ORDER

1 The Wisconsin Department of Agriculture, Trade and Consumer Protection proposes an order *to*
2 *repeal* ATCP 21.01 (2g), ATCP 21.01 (6m), ATCP 21.01 (12), ATCP 21.12, ATCP 21.17 and
3 ATCP 21.21; *to amend* ATCP 21.01 (8g), ATCP 21.16 (title), ATCP 21.16 (1), ATCP 21.19 (1)
4 (b), ATCP 21.19 (1) (note), and 21.19 (2) (a); *to renumber* ATCP 21.16 (3); *to create* ATCP 21.16
5 (2), ATCP 21.19 (2) (a) (note), ATCP 21.23 and ATCP 21.24, *relating to* plant inspection and pest
6 control.

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

Statutes Interpreted: ss. 93.07(12) and 94.01, Stats.

Statutory Authority: ss. 93.07(1), 93.07(12), 94.01 and 227.24, Stats.

Explanation of Agency Authority

The Department of Agriculture, Trade and Consumer Protection (Department) has broad general authority, under s. 93.07(1), Stats., to interpret laws under its jurisdiction. The Department also has broad general authority, under ss. 93.07(12) and 94.01, Stats., to conduct surveys and inspections for the detection and control of pests injurious to plants; and to make, modify, and enforce reasonable rules, including imposing quarantines, to prevent and control the importation into or movement of plants or other material within this state as needed to prevent or control the introduction, establishment and spread of injurious plant pests. The Department is proposing to adopt these rules, under authority of s. 227.24, Stats., by the permanent rulemaking process.

Related Statutes and Rules

The Department has adopted rules regulating a variety of plant pests under ch. ATCP 21, Wis. Adm. Code. This proposed rule amends ch. ATCP 21, Wis. Adm. Code, by removing restrictions related to preventing and controlling infestations of the pine shoot beetle, emerald ash borer, and thousand cankers diseases; by revising restrictions related to preventing and controlling infestations or infections caused by the hemlock woolly adelgid and *Phytophthora ramorum*; and by adding restrictions to prevent and control infestations of the introduced, invasive insect pests known as the spotted lanternfly and the elongate hemlock scale.

Plain Language Analysis

The Department identified ss. ATCP 21.12 and ATCP 21.17 as obsolete or unnecessary rules in a report filed with the Joint Committee for Review of Administrative Rules pursuant to s. 227.29. Stats. Section ATCP 21.12 is no longer necessary, as the entire state was added to the federal pine shoot beetle (PSB), *Tomicus piniperda*, quarantine in 2006 prior to its federal deregulation in 2020, and because no severe impacts of this pest have been observed in Christmas tree fields. The quarantine for emerald ash borer (EAB), *Agrilus planipennis*, ATCP 21.17 is no longer necessary, as the entire state was added to the federal emerald ash borer (EAB) quarantine in 2018 before it was federally deregulated in 2021, and because this pest has now been detected in 61 of Wisconsin's 72 counties. Section ATCP 21.17 was enacted in 2008 and helped slow the spread of EAB while effective chemical controls like emamectin benzoate were developed, ash was removed and municipal urban forests were diversified, hazard trees were removed in high-use areas like campgrounds, and biocontrols were developed and released, including the larval parasitoids *Spathius galinae* and *Tetrastichus planipennis*. The Department also recommends the removal of s. ATCP 21.21, related to restrictions on walnut *Juglans* trees and other regulated articles due to concerns about thousand cankers disease, caused by the walnut twig beetle *Pityophthorus juglandis* and *Geosmithia morbida* fungal disease complex, following conferral with central plant board states, new science showing broad distribution of the pathogen, and lack of observed tree mortality or other serious impacts of this disease east of the Mississippi River. This proposed order repeals these obsolete rules.

Hemlock woolly adelgid *Adelges tsugae* (HWA) is a tiny, aphid-like insect that has caused widespread hemlock mortality since being introduced into eastern North America from Japan in the 1950's. While it has also been introduced into western North America, western and mountain hemlock trees are resistant to HWA damage. It has not been found in Wisconsin to date, although it has established in five coastal counties in lower Michigan, and Department staff intercepted over 900 HWA-infested hemlock seedlings that were sent to our state from an online retailer located in the southeastern part of the infested area in 2017. HWA crawlers spread to new areas aided by wind, birds, humans, and other mammals. Because populations are comprised entirely of asexually reproducing females that lay 100-300 eggs per individual and have two generations per year, HWA can build numbers quickly. HWA adults and nymphs are immobile and feed at the base of hemlock needles on branch undersides from late fall to early summer, secreting woolly wax as they feed on sap. This disrupts nutrient storage and transfer, often killing hemlocks within 10 years. HWA threatens Wisconsin's hemlocks, which, according to the WI DNR, are most prevalent in the northeast, which includes about 81% of the 445 million cubic feet of growing stock, with the remaining 17% occurring in central Wisconsin, especially in unglaciated areas, and 2% in southeastern areas near Lake Michigan. Hemlocks are evergreen, shade-tolerant and long-lived trees that often grow on streambanks. Although hemlock is not a major timber species, it is harvested for pulpwood, sawlogs and veneer. Hemlock is considered a keystone species due to the fact that it moderates water temperatures, reduces erosion, and provides habitat for numerous wildlife species, including birds, fish, insects and mammals. The Department seeks to revise ATCP 21.16, related to hemlock woolly adelgid import controls, in order to add Alaska to the list of states or area within states known to be infested with hemlock woolly adelgid; and add a quarantine to enable us to reduce its spread within the state, should it become established in Wisconsin.

Phytophthora ramorum (*P. ramorum*) is a water mold fungus that causes sudden oak death, an incurable disease that has caused bleeding cankers and dieback that has killed millions of tanoak *Lithocarpus densiflorus*, coast live oak *Quercus agrifolia*, and California black oak *Quercus kelloggii* trees in California and Oregon forests where it has been introduced and established. *P. ramorum* leaf blight and stem infections travel on nursery stock or contaminated irrigation water to spread the disease to new areas. *P. ramorum* infects over 70 species and cultivars of popular nursery ornamentals, including rhododendron *Rhododendron spp.*, viburnum *Viburnum spp.*, lilac *Syringa vulgaris*, and mountain laurel *Kalmia spp.*. Although *P. ramorum* was detected on rhododendron that was shipped to a Wisconsin nursery in 2019, this disease is not established on the landscape. The Department seeks to revise s. ATCP 21.19, related to *P. ramorum* import controls and quarantine, by removing the list of restricted nursery stock genera and replacing it with the list of host plant taxa identified by USDA APHIS in the code of federal regulations as being proven hosts or plants associated with *P. ramorum*. Including this code reference rather than a specific list of restricted genera will prevent discrepancies between the state and federal regulations and allow for science-based updates that may result in host list changes without the need for state rule changes.

Spotted lanternfly, *Lycorma delicatula* (SLF) is an introduced, invasive planthopper whose immature nymphs and adults feed on over 100 hosts, including the invasive tree-of-heaven *Ailanthus altissima*, grape vines, roses, hops, maple, and walnut trees. Since being detected in a stone yard in Pennsylvania in 2014, this insect has spread to at least 10 other states, including Connecticut, Delaware, Indiana, Maryland, Massachusetts, New Jersey, New York, Ohio, Virginia, and West Virginia. SLF is not found in Wisconsin, although we have had two regulatory interceptions of dead adults on a residential property and a warehouse; and unconfirmed reports of dead or dying adults at an airport and on equipment crating that was shipped from the known infested area. SLF is hard to control because, although it is a weak flier, it hitchhikes on vehicles, plants, and outdoor items to reach new areas. SLF also spreads to new areas when females lay well-camouflaged egg masses on flat surfaces, including outdoor furniture, stone and other products. Adults build up huge numbers and swarm in fall, excreting honeydew as they feed that leads to development of black sooty mold on surfaces below, becoming a serious nuisance pest that hinders outdoor fall recreation. In areas where it has been introduced, SLF feeding has severely damaged grape vines, causing increased susceptibility to winter injury, failure to set fruit, and mortality. There have been reports of vineyard owners spraying insecticides an additional 10-14 times per season for this pest or physically covering fields with nets to prevent infestation, as swarm after swarm arrives to feed in fall. Although there is no federal quarantine planned for SLF, there is federal support for slowing the spread of this pest through trapping and chemical treatments such as dinotefuran. Nine states (California, Connecticut, Delaware, Maryland, New Jersey, New York, Ohio, Pennsylvania, and Virginia) have enacted quarantine regulations for this pest. The Department seeks to create s. ATCP 21.23 related to spotted lanternfly import controls and quarantine, in order to regulate plant products and other items that might spread this harmful, invasive pest into or within our state, where it would threaten vineyards, nurseries, and forest products.

Elongate hemlock scale, *Fiorinia externa* (EHS) is an introduced, invasive armored scale insect that feeds on a wide range of conifers, including balsam and Fraser fir, hemlock, and spruce species. EHS damages trees by using their threadlike mouthparts to remove nutrients from the

mesophyll cells on the undersides of conifer needles, leading to needle yellowing, needle loss and predisposal to drought and other stressors, including HWA. EHS is hard to control with pesticides because mobile crawlers emerge throughout the season, adult females, nymphs, and eggs are protected under hard waxy coverings, and some systemic pesticides like imidacloprid, that target vascular tissue, do not kill this pest. EHS is relatively cold-tolerant and can survive for weeks on rooted and cut plant material. The Department has intercepted this pest over 40 times on hemlock nursery stock, fir Christmas trees, and fir wreaths and holiday décor imported from eastern states since 2014. Although EHS has never been detected on the landscape in Wisconsin, this pest has been confirmed to be established in the states of Connecticut, Delaware, Georgia, Kentucky, Maine, Maryland, Massachusetts, Michigan, New Hampshire, Ohio, New Jersey, New York, North Carolina, Ohio, Pennsylvania, Rhode Island, South Carolina, Tennessee, Virginia, West Virginia; and the District of Columbia since being introduced into the US from Japan in 1908. The Department seeks to create s. ATCP 21.24 related to elongate hemlock scale import controls and quarantine, in order to regulate plant products and other items that might spread this harmful, invasive pest into or within our state, where it would threaten Christmas tree growers, nursery stock and native hemlock and balsam fir forests. According to the Wisconsin Department of Natural Resources (DNR), over 424 million cubic ft. of balsam fir growing stock are present in the state, with 96% of growing stock concentrated in northern Wisconsin, mostly in mesic to wet mesic habitat types. Although balsam fir isn't a major timber species, it provides important habitat for birds and other wildlife and it is important in Christmas tree, wreath and pulpwood production.

Summary of, and Comparison with, Existing or Proposed Federal Statutes and Regulations

The United States Department of Agriculture's Animal Plant Health Inspection Service (USDA APHIS) federally deregulated pine shoot beetle, *Tomicus piniperda*, on November 2, 2020 by rescinding 7 CFR §301.50 due to lack of serious impacts related to this pest. USDA APHIS federally deregulated the emerald ash borer, *Agrilus planipennis*, by rescinding 7 CFR §301.53 on January 14, 2021, due to significant ongoing spread of this pest, despite regulations, and in order to focus limited resources on pest treatments, including biocontrol. USDA APHIS federally regulates *P. ramorum* through CFR §301.92 by delineating the infested area and requiring nurseries that ship stock outside of this area to submit notifications of all proven and associated hosts shipped out of the area, and by submitting to periodic inspections and removal and sanitation activities when ramorum blight is detected on nursery stock to prevent the spread and establishment of this disease, which causes sudden oak death. There are no federal regulations relating to elongate hemlock scale, hemlock woolly adelgid, spotted lanternfly, or thousand cankers disease.

Summary of Public Comments Received during Preliminary Comment Period and at Public Hearing on Statement of Scope

The Department held a preliminary public hearing on the Statement of Scope on October 16, 2020 and accepted public comments until October 23, 2020. No one testified or submitted written comments.

Comparison with Rules in Adjacent States

Illinois has rescinded rules related to pine shoot beetle and emerald ash borer. They intend to rescind thousand cankers disease regulations in the near future. Like many states that lack significant hemlock resources, they do not regulate hemlock woolly adelgid or elongate hemlock scale. They have described they are likely to enact a quarantine for spotted lanternfly if it is detected. They regulate *P. ramorum*, per federal requirements.

Iowa has a list of insect and disease plant pests that are considered to be dangerously injurious or a public nuisance that shall be prevented from being introduced into, or disseminated within, the state. Currently, Iowa does not have pine shoot beetle, hemlock woolly adelgid, elongate hemlock scale, nor spotted lanternfly on the Iowa pest list. Iowa intends to remove emerald ash borer, *P. ramorum*, and the walnut twig beetle from their pest list in the near future.

Michigan rescinded its emerald ash borer quarantine in 2018, and it does not have quarantine rules related to pine shoot beetle, elongate hemlock scale, or spotted lanternfly. MI has exterior and interior quarantines for hemlock woolly adelgid. They are also the only state with an exterior quarantine for balsam woolly adelgid, an invasive, introduced pest that has been introduced into portions of the eastern and western United States that they detected in the state in 2021. Wisconsin also considered adding a quarantine rule for balsam woolly adelgid, but decided against it based on the likely climactic unsuitability of this pest in WI, its extremely low rate of spread in MI, lack of concern and support for regulations by WI Christmas tree growers, and lack of regulatory interceptions on nursery stock or Christmas trees coming into our state.

Minnesota has a quarantine for emerald ash borer, but it does not have quarantine rules related to pine shoot beetle, thousand cankers disease, hemlock woolly adelgid, elongate hemlock scale, or spotted lanternfly. They regulate *P. ramorum* per federal requirements.

Summary of Factual Data and Analytical Methodologies

The Department reviewed ch. ATCP 21 and identified s. ATCP 21.12, the pine shoot beetle quarantine, and s. ATCP 21.17, the emerald ash borer quarantine as obsolete or unnecessary rules in a report filed with the Joint Committee for Review of Administrative Rules pursuant to s. 227.29, Stats. The Department identified s. ATCP 21. 21, the thousand cankers disease quarantine, as being unnecessary after reviewing recent scientific publications and consulting with states in the region. This proposed order repeals these obsolete rules. Remaining rule revisions to s. ATCP 21.16 for hemlock woolly adelgid and s. ATCP 21.19 for *P. ramorum*; and additions to s. ATCP 21.23 creating spotted lanternfly restrictions and s. ATCP 21.24 creating elongate hemlock scale restrictions are based on generally-accepted plant disease information from reliable sources, including USDA APHIS, the USDA Forest Service, USDA NASS, state-level surveys, regulatory interceptions, industry input, and peer-reviewed scientific publications.

Analysis and Supporting Documents Used to Determine Effect on Small Business or in Preparation of an Economic Impact Analysis

Most of the businesses affected by these proposed rule changes are small businesses, including nurseries, Christmas tree growers, vineyards, wreath-makers, loggers, and sawmill owners. Affected businesses will be encouraged to work with the Department's Bureau of Plant Industry to find solutions to any negative outcomes this rule may yield, although it is noteworthy that some of these same businesses may be positively impacted by the removal of quarantine rules for PSB, EAB, and TCD. Businesses may work with the Department to enter into a compliance agreements, at no charge, that will allow the business to import and move regulated items, provided that risks have been mitigated.

Fiscal Estimate and Economic Impact Analysis

The Fiscal Estimate and Economic Impact Analysis is attached.

Effect on Small Business

The Department's Regulatory Review Coordinator may be contacted by:
Email at Bradford.Steine1@wisconsin.gov
Telephone at (608) 224-5024

The Regulatory Flexibility Analysis is attached.

Department Contact Person

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(608) 957-5100
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Place Where Comments are to Be Submitted and Deadline for Submission:

Comments must be received on or before April 26, 2022 to be included in the record of rule-making proceedings. Submit comments:

By mail to:

Shahla M. Werner, Plant Protection Section Manager
Division of Agricultural Resource Management
Department of Agriculture, Trade and Consumer Protection
P.O. Box 8911
Madison, WI 53708-8911

By email to: Shahla.Werner@wisconsin.gov

RULE TEXT

1 SECTION 1. ATCP 21.01 (2g), ATCP 21.01 (6m), ATCP 21.01 (12), ATCP 21.12, ATCP 21.17,
2 and ATCP 21.21 are repealed.

3 SECTION 2. ATCP 21.01 (8g) is amended to read:

4 ATCP 21.01 (8g) “Hemlock” means any tree or shrub of the genus *Tsuga*, including all cultivars.

5 SECTION 3. ATCP 21.16, Hemlock woolly adelgid; Import controls (title), is amended to read:

6 **ATCP 21.16 Hemlock woolly adelgid import controls and quarantine.**

7 SECTION 4. ATCP 21.16 (1) is amended to read:

8 ATCP 21.16 (1) HEMLOCK IMPORTS OR MOVEMENT RESTRICTED. Except as provided
9 in sub. ~~(2)~~(3), no person may import any of the following items to this state from Alaska,
10 California, Connecticut, Delaware, Georgia, Idaho, Kentucky, Maine, Maryland, Massachusetts,
11 Michigan, New Hampshire, New York, New Jersey, North Carolina, Ohio, Oregon, Pennsylvania,
12 Rhode Island, South Carolina, Tennessee, Vermont, Virginia, Washington, West Virginia, the
13 District of Columbia, and the Canadian provinces of British Columbia, Nova Scotia and any
14 delineated area within a state or country, which the responsible state agency has declared to be
15 infested with hemlock woolly adelgid; or move any of the following items from an infested area
16 to an area that is not infested within this state:

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 bark chips with bark.

22 (f) ~~Uncomposted~~ Hemlock bark.

23 (g) Cut hemlock trees.

24 (h) Hemlock branches.

25 SECTION 5. ATCP 21.16 (2) is created to read:

26 ATCP 21.16 (2) KNOWINGLY IMPORTING PLANT PEST: PROHIBITION. No person may
27 knowingly import live hemlock woolly adelgid, *Adelges tsugae* Annand into this state, except
28 pursuant to a permit under s. 94.03 Stats. and s. ATCP 21.04.

29 SECTION 6. ATCP 21.16 (2) is renumbered to ATCP 21.16 (3)

30 SECTION 7. ATCP 21.19 (1) (b) is amended to read:

31 (b) Move any regulated item under sub. (2) out of any *Phytophthora ramorum* regulated area that
32 is identified in [7 CFR 301.92-3](#) ~~and located within this state~~ to any *Phytophthora ramorum*
33 unregulated area within this state.

34 SECTION 8. ATCP 21.19 (1) (note) is amended to read:

35 **ATCP 21.19 (1) Note:** The United States department of agriculture, animal and plant health
36 inspection service (USDA-APHIS) periodically updates the listing of regulated areas in [7 CFR](#)
37 [301.92-3](#). Subsection (1) applies to new regulated areas as those areas are identified in the CFR.

38 ~~Each year, as a service, the Wisconsin department of agriculture, trade and consumer protection~~
39 ~~distributes an updated federal CFR listing to nursery license holders and other affected persons in~~

40 ~~this state. More frequent u~~ Updates, if any, are available on the department's website
41 at ~~www.datcp.state.wi.us~~ www.datcp.wi.gov. Subsection (1) applies to new regulated areas as

42 those areas are identified in the CFR, regardless of whether affected persons receive update notices

43 from the department. Persons may request update notices by calling (608) 224-4573, by visiting
44 the department's website, or by writing to the following address:

45 Wisconsin Department of Agriculture, Trade and Consumer Protection

46 Division of Agricultural Resource Management

47 P.O. Box 8911

48 Madison, WI 53708-8911

49 SECTION 9. ATCP 21.19 (2) (a) is amended to read:

50 ATCP 21.19 (2) REGULATED ITEMS. The following are regulated items for purposes of sub.

51 (1): (a) Nursery stock (except acorns and seeds), unprocessed wood, and unprocessed wood and
52 plant products, including bark chips, firewood, logs, lumber, mulch, wreaths, garlands, and

53 greenery of the following genera: *Abies* (fir), *Acer* (maple), *Adiantum* (maidenhair fern), *Aesculus*

54 (buckeye), *Arbutus* (madrone), *Aretostaphylos* (manzanita), *Calluna* (heather), *Calycanthus*

55 (spicebush), *Camellia* (camellia), *Castanea* (chestnut), *Clintonia* (blue bead lily), *Corylus*

56 (hazelnut), *Drimys* (winter's bark), *Dryopteris* (wood fern), *Fagus* (beech), *Fraxinus* (ash),

57 *Griselinia* (griselinia), *Hamamelis* (witch hazel), *Heteromeles* (toyon), *Kalmia* (mountain laurel),

58 *Laurus* (laurel), *Leucothoe* (drooping leucothoe), *Lithocarpus* (tanoak), *Lonicera* (honeysuckle),

59 *Maianthemum* (false Solomon's seal), *Magnolia* (magnolia), *Michelia* (michelia), *Nothofagus*

60 (Roble beech), *Osmorhiza* (sweet cicely), *Parrotia* (Persian ironwood), *Pieris* (pieris), *Photinia*

61 (photinia), *Pittosporum* (Victorian box), *Pseudotsuga* (Douglas fir), *Pyracantha* (Firethorn),

62 *Quercus* (oak), *Rhamnus* (buckthorn), *Rhododendron* (rhododendron), *Rhus* (sumac), *Rosa* (rose),

63 *Rubus* (salmonberry, raspberry, blackberry), *Salix* (willow), *Sequoia* (coast redwood), *Syringa*

64 (lilac), *Taxus* (yew), *Toxicodendron* (poison ivy), *Torreya* (nutmeg), *Trientalis* (western

65 starflower), *Umbellularia* (California bay laurel), *Vaccinium* (huckleberry), *Vancouveria*

66 ~~(redwood ivy), *Viburnum* (*viburnum*)~~ of the host plant taxa identified in [7 CFR 301.92-2](#) (d) as
67 being proven hosts of *Phytophthora ramorum* or identified in [7 CFR 301.92-2](#) (e) as being
68 associated with *Phytophthora ramorum*.

69 SECTION 10. ATCP 21.19 **(2) (a) (note)** is created to read:

70 **ATCP 21.19 (2) Note:** The United States department of agriculture, animal and plant health
71 inspection service (USDA-APHIS) periodically updates the listing of proven hosts and associated
72 plant taxa in [7 CFR 301.92-2](#). Updates, if any, are available on the department's website
73 at www.datcp.wi.gov. Subsection (2) applies to new proven hosts and associated plant taxa as
74 those areas are identified in the CFR, regardless of whether affected persons receive update notices
75 from the department. Persons may request update notices by visiting the department's website, or
76 by writing to the following address:

77 Wisconsin Department of Agriculture, Trade and Consumer Protection
78 Division of Agricultural Resource Management
79 P.O. Box 8911
80 Madison, WI 53708-8911

81 SECTION 11. ATCP 21.23 is created to read:

82 **ATCP 21.23 Spotted lanternfly; Import controls and quarantine.**

83 **(1) DEFINITIONS.** In this section:

84 (a) “Spotted Lanternfly” means any living life stage of the invasive insect *Lycorma delicatula*
85 (White), including adults, nymphs or viable egg masses.

86 (b) “Infested area” means all of the following:

87 1. The states of Connecticut, Delaware, Indiana, Maryland, Massachusetts, New York, New
88 Jersey, Ohio, Pennsylvania, Virginia, and West Virginia.

89 2. Any state or country, or any delineated area within a state or country, which the responsible
90 state agency has declared to have an infestation of or interior quarantine for spotted lanternfly.

91 (c) “Pest control official” has the meaning given in ATCP 21.01 (11).

92 **(2) KNOWINGLY IMPORTING PLANT PEST; PROHIBITION.** No person may knowingly
93 import any living life stage of the spotted lanternfly, except pursuant to a permit under s. 94.03,
94 Stats. and s. ATCP 21.04.

95 **(3) IMPORTING OR MOVING MATERIALS FROM INFESTED AREAS; PROHIBITION.**
96 Except as provided in sub. 4, no person may import any of the following materials into this state,
97 or move any of the following materials from an infested area to an area that is not infested within
98 this state, if those materials originate from and /or have been exposed to the environment in any
99 infested area.

100 (a) All plants and plant parts. This shall include, but is not limited to, annual plants, bark, bark
101 chips, branches, budwood, firewood, garden plants, logs, live or dead trees, lumber, nursery stock,
102 perennial plants, roots, shrubs, stumps, vines, and yard waste.

103 (b) Non-plant products. This shall include, but is not limited to outdoor household articles,
104 vehicles, or means of conveyance that pose a reasonable risk of spreading any living life stage of
105 the spotted lanternfly as determined by a pest control official.

106 **(4) EXEMPTIONS.** Subsection (3) does not apply to any of the following:

107 (a) Plant products not exposed to the environment, including, but not limited to, houseplants or
108 indoor furniture.

109 (b) Non-plant products, including outdoor household articles, vehicles, or conveyances that are
110 either accompanied by a spotted lanternfly permit issued by the responsible state agency or for
111 which a spotted lanternfly checklist, obtained from the department’s website at datcp.wi.gov or

112 from the state of origin, was completed by the transporter within 24 hours of leaving the infested
113 area.

114 (c) Material in sub. (3) (a) and (b) that are accompanied by a written certificate, signed by a pest
115 control official in the infested area, which describes the materials and states at least one of the
116 following:

117 1. The materials originate from an area that is free from spotted lanternfly, or have not been
118 exposed to spotted lanternfly. The certificate shall explain the basis for the official's statement.

119 2. That the items were found, at the time of inspection, to be free of spotted lanternfly.

120 3. That the items have been effectively treated to destroy spotted lanternfly. The phytosanitary
121 certificate shall specify the pesticide or other treatment used.

122 4. That the items are produced, processed, stored, handled, or used under conditions, described in
123 the phytosanitary certificate, that effectively preclude the transmission of spotted lanternfly.

124 (d) Materials imported in compliance with a written agreement between the importer and the
125 department, which includes all of the following:

126 1. The name and address of the importer and import recipient.

127 2. The type and volume of materials that may be imported under the agreement.

128 3. The locations from which materials may be imported under the agreement.

129 4. The names and addresses of the persons to whom and the locations to which, the materials may
130 be imported under the agreement.

131 5. The method by which the materials may be imported.

132 6. The time period covered by the agreement.

133 7. The importer's commitment to keep complete records of each import shipment under the
134 agreement, and to submit those records to the department for inspection and copying upon request.

135 8. Specific import terms and conditions that will, in the department’s opinion, effectively prevent
136 the introduction or spread of spotted lanternfly.

137 9. A provision authorizing the department to suspend the agreement, without prior notice, for any
138 reason.

139 SECTION 12. ATCP 21.24 is created to read:

140 **ATCP 21.24 Elongate Hemlock Scale; Import controls and quarantine.**

141 **(1) DEFINITIONS.** In this section:

142 (a) “Elongate hemlock scale” means any living life stage of the invasive insect *Fiorinia externa*
143 (Ferris), including adults, nymphs, crawlers, or eggs.

144 (b) “Infested area means all of the following:

145 1. The states of Connecticut, Delaware, Georgia, Kentucky, Maine, Maryland, Massachusetts,
146 Michigan, New Hampshire, New Jersey, New York, North Carolina, Ohio, Pennsylvania, Rhode
147 Island, South Carolina, Tennessee, Vermont, Virginia, and West Virginia; and the District of
148 Columbia.

149 2. Any state or country, or any delineated area within a state or country, which the responsible
150 state agency has declared to be infested with elongate hemlock scale.

151 (c) “Pest control official” has the meaning given in s. ATCP 21.01 (11).

152 **(2) KNOWINGLY IMPORTING PLANT PEST; PROHIBITION.** No person may knowingly
153 import elongate hemlock scale, *Fiorinia externa* Ferris, into this state, except pursuant to a permit
154 under s. 94.03, Stats. and s. ATCP 21.04.

155 **(3) IMPORTING OR MOVING MATERIALS FROM INFESTED AREAS; PROHIBITION.**

156 Except as provided in sub. (4), no person may do either of the following:

157 (a) Import conifer plants or plant parts of the following plant taxa: *Abies spp.*, *Biota orientalis*,
158 *Juniperus chinensis*, *Juniperus rigida*, *Cedrus spp.*, *Picea spp.*, *Pinus spp.*, *Pseudotsuga menziesii*,
159 *Tsuga canadensis*, *Tsuga spp.*, and *Taxus spp.*, including cut Christmas trees, nursery stock,
160 branches, wreaths, or décor into this state if those materials originate from or have been exposed
161 to the environment in any infested area.

162 (b) Move conifer plants or plant parts of the following plant taxa: *Abies spp.*, *Biota orientalis*,
163 *Juniperus chinensis*, *Juniperus rigida*, *Cedrus spp.*, *Picea spp.*, *Pinus spp.*, *Pseudotsuga menziesii*,
164 *Tsuga canadensis*, *Tsuga spp.*, and *Taxus spp.*, including cut Christmas trees, nursery stock,
165 branches, wreaths, or décor from an infested area to an area that is not infested within this state.

166 (4) EXEMPTIONS. Subsection (3) does not apply to any of the following:

167 a. Shredded bark and mulch of all tree species.

168 b. Processed lumber which is 100% bark-free or kiln-dried.

169 c. Finished wood products without bark, including furniture or building materials.

170 d. Material specified in sub. (3) (a) and (b) that are accompanied by a written certificate, signed by
171 a pest control official in the infested area, which describes the materials and states at least one of
172 the following:

173 1. The materials originate from an area that is known to be free of elongate hemlock scale, or have
174 not been exposed to elongate hemlock scale. The certificate shall explain the basis for the official's
175 statement.

176 2. The materials have been effectively treated to destroy elongate hemlock scale. The certificate
177 shall specify the date, method of treatment, and post-treatment data indicating that treated material
178 was examined in the laboratory and found to have no living life stages of elongate hemlock scale.

179 3. The materials have been produced, processed, stored, handled, or used under conditions,
180 described in the certificate, which effectively preclude the transmission of elongate hemlock scale.

181 (b) Material imported in compliance with a written agreement, between the importer and the
182 department, which includes all of the following:

183 1. The name and address of the importer.

184 2. The type and volume of material that may be imported under the agreement.

185 3. The locations from which the material may be imported under the agreement.

186 4. The names and addresses of the persons to whom, and the locations to which, the material may
187 be imported under the agreement.

188 5. The method by which the material may be imported.

189 6. The time period covered by the agreement.

190 7. The importer's commitment to keep complete records of each import shipment under the
191 agreement, and to submit those records to the department for inspection and copying upon request.

192 8. Specific import terms and conditions that will, in the department's opinion, effectively ensure
193 that materials imported pursuant to the agreement will not introduce or spread the elongate
194 hemlock scale.

195 9. A provision authorizing the department to terminate the agreement, without prior notice, for any
196 reason.

197 SECTION 13. EFFECTIVE DATE. The rules adopted in this order shall take effect on the first day
198 of the month following publication in the Wisconsin Administrative Register, pursuant to s. 227.22

199 (2) (intro.), Stats.

(END OF RULE TEXT)

Dated this ___ day of _____, 2022

WISCONSIN DEPARTMENT OF AGRICULTURE,
TRADE AND CONSUMER PROTECTION

By: Randy Romanski, Secretary

ADMINISTRATIVE RULES Fiscal Estimate & Economic Impact Analysis

<p>1. Type of Estimate and Analysis <input checked="" type="checkbox"/> Original <input type="checkbox"/> Updated <input type="checkbox"/> Corrected</p>	<p>2. Date 01/28/2022</p>
<p>3. Administrative Rule Chapter, Title and Number (and Clearinghouse Number if applicable) ATCP 21, Plant Inspection and Pest Control</p>	
<p>4. Subject Proposed removal of emerald ash borer (EAB), pine shoot beetle (PSB), and thousand cankers disease (TCD) quarantine rules; revisions of hemlock woolly adelgid (HWA) and Phytophthora ramorum quarantine rules; addition of spotted lanternfly (SLF) and elongate hemlock scale (EHS) quarantine rules.</p>	
<p>5. Fund Sources Affected <input type="checkbox"/> GPR <input type="checkbox"/> FED <input type="checkbox"/> PRO <input type="checkbox"/> PRS <input type="checkbox"/> SEG <input checked="" type="checkbox"/> SEG-S</p>	<p>6. Chapter 20, Stats. Appropriations Affected 20.115(7) (qc)</p>
<p>7. Fiscal Effect of Implementing the Rule <input checked="" type="checkbox"/> No Fiscal Effect <input type="checkbox"/> Increase Existing Revenues <input type="checkbox"/> Increase Costs <input type="checkbox"/> Decrease Costs <input type="checkbox"/> Indeterminate <input type="checkbox"/> Decrease Existing Revenues <input checked="" type="checkbox"/> Could Absorb Within Agency's Budget</p>	
<p>8. The Rule Will Impact the Following (Check All That Apply) <input type="checkbox"/> State's Economy <input checked="" type="checkbox"/> Specific Businesses/Sectors <input type="checkbox"/> Local Government Units <input type="checkbox"/> Public Utility Rate Payers <input checked="" type="checkbox"/> Small Businesses (if checked, complete Attachment A)</p>	
<p>9. Estimate of Implementation and Compliance to Businesses, Local Governmental Units and Individuals, per s. 227.137(3)(b)(1). It is anticipated that up to 100 of Wisconsin's approximately 1,600 licensed nursery dealers and Christmas tree growers or other businesses importing host plant material from the EHS and SLF infested areas will experience a cost related to this rule change. DATCP estimates the total cost to these 100 businesses could be up to \$132,000 annually. This estimate is based on the assumption of 3 nursery staff members at each business spending 22 hours per year on plant pest inspections and compliance agreement-related recordkeeping, earning an average of \$20 per hour, for a total per business impact of \$1,320 in staff time costs. These costs to green industry businesses may be avoided by not importing plants from portions of the eastern US infested with EHS and SLF.</p>	
<p>10. Would Implementation and Compliance Costs Businesses, Local Governmental Units and Individuals Be \$10 Million or more Over Any 2-year Period, per s. 227.137(3)(b)(2)? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p>	
<p>11. Policy Problem Addressed by the Rule The Department of Agriculture, Trade and Consumer Protection (Department) administers laws related to the control of plant pests. The Department has authority under s. 93.07 (12), Stats., to conduct surveys and inspections for the detection and control of pests injurious to plants, and to make, modify, and enforce reasonable rules needed to prevent the spread of plant pests. Under s. 94.01, Wis. Stats. the Department also has pest control authority and may impose, by rule, restrictions on the importation of serious plant pests, or items that may spread serious plant pests.</p> <p>SLF is an introduced, invasive planthopper that has been introduced to at least 11 eastern states since being detected in Pennsylvania in 2014. SLF can feed on over 100 hosts, including grape vines, hops, maple, walnut, roses, and fruit trees. In areas where it has been introduced, SLF can kill grape vines, and act as a severe nuisance pest when insects swarm and build up huge numbers in late summer and fall, potentially hindering wine and orchard tourism and other outdoor activities. An economic analysis conducted by Penn State's College of Agricultural Sciences in 2020 estimated SLF damage to be \$324 million a year, if left unchecked, including acute impacts on nursery operators, fruit and grape growers, and Christmas tree growers. Because no federal quarantine is planned for SLF, and the devastating threat it poses to vineyards, nurseries, and our tourism industry, the Department proposes creating a quarantine regulation to prevent the establishment of this injurious plant pest in Wisconsin.</p>	

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EHS is an invasive pest introduced into 20 eastern states that sucks fluid from the undersides of needles of many conifers, including hemlock, fir, and spruce, making them more susceptible to drought and other stressors. EHS feeds on a wide variety of conifers besides hemlock, including fir and spruce, making it a threat to Wisconsin's native conifers and our Christmas tree industry. EHS feeding on needle undersides removes plant nutrients, leading to needle yellowing, needle loss and predisposal to impacts of drought and other stressors. Once EHS is established, it can be costly and difficult to control, because its immature form, known as crawlers, emerge throughout the season, and because immobile scales are protected from pesticides under hard wax coverings. The Department has intercepted EHS on hemlock nursery stock, cut fir Christmas trees, and fir décor imported to Wisconsin from other states over 40 times since 2014. In light of the devastating impact of EHS on Wisconsin's native conifers and Christmas tree industry, the Department proposes creating a quarantine regulation to prevent its introduction and establishment in Wisconsin.

Other proposed changes to ATCP 21 include minor revisions to existing quarantine rules for HWA and *Phytophthora ramorum* to update the infested area and proven and associated plant taxa lists, respectively. Because these regulations are already in place, the Department does not anticipate that there will be increased compliance costs related to these changes.

The Department also proposes removing the pine shoot beetle (PSB), emerald ash borer (EAB), and thousand cankers disease (TCD) quarantines in ATCP 21.12, 21.17 and 21.21, as both PSB and EAB are widely distributed in Wisconsin, and both have been federally deregulated by the United States Animal Plant Health Inspection Service; and because no severe impacts of TCD have been observed in the eastern United States. Removing obsolete rules for EAB, PSB, and TCD will reduce costs for impacted businesses and allow natural resource managers to focus on treatments and other emerging pests.

12. Summary of the Businesses, Business Sectors, Associations Representing Business, Local Governmental Units, and Individuals that may be Affected by the Proposed Rule that were Contacted for Comments.

The Department held a preliminary hearing on the Scope statement for ATCP 21 on 10/16/2020. No one appeared at the (virtual) hearing and no comments were received by the 10/23/2020 deadline.

In 2021 the Department formed an Advisory Committee and held three meetings in March, September and December to gather input from key stakeholders on proposed rule revisions. Advisory Committee members were comprised of representatives from the Great Lakes Timber Producers Association (GLTPA), Wisconsin Nursery and Landscape Association (WNLA), the Wisconsin Christmas Tree Producers Association (WCTPA), Wisconsin Grape Growers Association (WGGA), the Wisconsin Tribal Conservation Advisory Council (WTCAC), The Nature Conservancy (TNC), university researchers, and Wisconsin Department of Natural Resources (WI DNR), The United States Department of Agriculture's Animal Plant Health Inspection Service (USDA APHIS) and the United States Department of Agriculture's Forest Service (USDA FS). After the first meeting, members supported removing quarantine rules for EAB, PSB, and TCD, as well as proposals to revise the HWA and *Phytophthora ramorum* rules. Although SLF research was presented at the second meeting suggesting limited host availability of tree-of-heaven and low climatic suitability for this insect in northern Wisconsin, members voiced support for regulating this pest through a quarantine rule, based on threats SLF poses to Wisconsin's vineyards and nursery industry, as well as its general nuisance impact on citizens, and its rapid rate of spread.

Due to its broad conifer host range, including fir Christmas trees, native hemlocks and balsam firs, and high frequency of regulatory interceptions on imported hemlock stock, Christmas trees and other plant products led to support for regulating elongate hemlock scale through a quarantine rule. The USDA FS also provided information on balsam woolly adelgid (BWA), an introduced, aphid-like insect that attacks true firs, at the third meeting indicating limited cold

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tolerance of that pest and extremely slow spread in Michigan since being introduced into that state. Because the Department has never intercepted BWA, the lack of concern and support for regulating BWA by the WCTPA, and its limited cold tolerance and slow rate of spread, the Department opted against creating a quarantine rule for BWA.

13. Identify the Local Governmental Units that Participated in the Development of this EIA.

Because local governmental units will not be impacted by proposed ATCP 21 rule changes, they were not involved in the development of this EIA.

14. Summary of Rule's Economic and Fiscal Impact on Specific Businesses, Business Sectors, Public Utility Rate Payers, Local Governmental Units and the State's Economy as a Whole (Include Implementation and Compliance Costs Expected to be Incurred)

Proposed changes to ATCP 21 are not anticipated to have any impacts on public utility rate payers or local units of government. EHS and SLF rules could reduce costs to municipalities by reducing treatment costs that would be incurred, were these pests to become established. New quarantine regulations for SLF and EHS are likely to have the greatest impacts on nursery dealers that bring nursery stock in from the eastern US where these pests are established. Although these businesses would need to enter into a compliance agreement with the Department, the Department does not charge businesses for these agreements, which provide a limited exemption to a quarantine rule that allows them to continue importing plant products while mitigating risk of introducing pests (which also potentially offsets compliance costs by keeping markets open). Therefore, the only costs to these businesses would be related to staff time needed to undergo training in pest identification and life cycles and the time needed to inspect plant material as it comes into the state. We estimate that the number of businesses needing compliance agreements for EHS and SLF would be limited and similar to those needing agreements for other invasive plant pests like HWA, for which we issued 20 compliance agreements in 2021. The Bureau of Plant Industry will be able to absorb staff time costs related to inspections and compliance work in their current budget, based on the small number of businesses that are expected to be affected.

15. Benefits of Implementing the Rule and Alternative(s) to Implementing the Rule

Removing restrictions on ash, pine, and walnut by removing the quarantine rules for EAB, PSB, and TCD, respectively, will relieve compliance burdens on the forest products and Christmas tree industries, and allow natural resource managers to focus on treatments, and ensures alignment between state and federal regulations, and between regional state regulations for TCD. Once pests, like EAB, are widely established the value of quarantines are greatly diminished, and scientific and empirical data showing pests like PSB and TCD (walnut twig beetle) and *Geosmithia morbida* to be less damaging than initially assumed, provide strong justification for removing these regulations.

Failing to adopt rules to prevent the introduction and establishment of other emerging non-native, invasive forest pests and diseases could bring heavy consequences to Wisconsin's environment and our economy. Research by Aukema et al. in 2011 found that 62 of 455 nonnative, invasive pests cost billions of dollars in annual economic damage in the US for timber producers, residential property owners, and governments at the local, state, and federal levels, including \$1.7 billion in local government expenditures and around \$830 million in lost residential property values. Upticks in invasive species introductions are related to increases in international trade, with the most common pathways for spreading invasive insects and diseases being the domestic movement of commodities, such as firewood and nursery stock, and vehicles. While introduced insects and diseases occur throughout the nation, Lovett et al. found, in an analysis published in *Ecological Applications* in 2016, that the problem is most acute in the Northeast and Upper Midwest, likely due to high population densities and abundant suitable hosts in these areas. Nonnative forest pests and diseases are the only disturbance agent that has the potential to eliminate an entire tree species or genera of trees within the span of a few decades. Losses resulting from invasive insects and pathogens result in changes to forest structure and species composition and changes ecosystem functions, including productivity, nutrient cycling, and wildlife habitat. Lovett et al. also concluded that the most effective policy solutions for invasive insects and pathogens involve forward-thinking initiatives to prevent the arrival and establishment of potentially damaging pests. Preventing invasive pest and disease establishment and spread (i.e., via quarantine rules) avoids a cascade of less effective, increasingly

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costly solutions that are taken on by landowners, businesses and municipalities, including tree removal and pesticide treatments. Even when regulations do not result in the complete eradication or permanent exclusion of an invasive pest, slowing the spread of these species has been found to buy critical time that allows natural enemies to establish and research on effective biocontrols and chemical controls to advance, as has been demonstrated with pests like EAB and gypsy moth (*Lymantria dispar*).

Updating the host list for the *Phytophthora ramorum* rule will ensure that our rule matches the federal rule at a potential savings to businesses, as it avoids the need for removing plant hosts that were listed at the state-level only.

Updating the HWA rule to include all known infested states and allow for a future interior quarantine is not anticipated to add any costs to businesses over current rules, and it will potentially avoid the loss of this important forest species and substantial costs of pesticides and other treatments for this pest, were it to become established in Wisconsin.

Placing restrictions on the import of SLF and EHS reduces the potential for establishment of these destructive, introduced pests and reduces the associated treatment costs and potential interstate shipping barriers they could create for products such as locally-grown nursery stock, Christmas trees, and wreaths. Regulating EHS and SLF will help safeguard Wisconsin's nursery industry, which generates \$2.85 billion in revenue per year and supports over 52,000 Wisconsin jobs, according to a study published in the *Journal of Environmental Horticulture* published in 2020. Regulating EHS will help protect Wisconsin's Christmas tree industry that harvested over 700,000 trees and generated \$23.3 million in sales in 2019, comprising 6.5% of the total cut Christmas trees sold in the nation (USDA NASS). Regulating EHS will also help Wisconsin retain its position as a top 5 Christmas tree producing state, along with Oregon, North Carolina, Michigan, & Pennsylvania. Regulating SLF will help safeguard Wisconsin's 98 wineries, which the MSU Wine Tourism Group estimates generated \$88 million in wine tourism and supported 1,350 jobs in 2016, and resulted in 1.78 million visits to wine tasting rooms in 2015.

16. Long Range Implications of Implementing the Rule

Over the long-term, implementation of these rule changes will benefit the environment, citizens, and businesses that produce and use Wisconsin plant products, from Christmas tree growers to nurseries to vineyard owners, loggers and sawmill owners. Overall, proposed rule additions will protect natural resources, such as native conifer forests, as well as protecting our Christmas tree, nursery, orchard and wine industries by slowing the spread of destructive, costly pests that threaten Wisconsin's economy and our environment. At the same time proposed rule revisions based on the best available science and removal of rules that are no longer necessary or effective will relieve regulatory burdens, save time and money, and allow businesses and natural resource managers to focus on treatments and other emerging pest and disease issues.

17. Compare With Approaches Being Used by Federal Government

The United States Department of Agriculture's Animal Plant Health Inspection Service (USDA APHIS) federally deregulated pine shoot beetle, *Tomicus piniperda*, on November 2, 2020 by rescinding 7 CFR §301.50 due to lack of serious impacts related to this pest. USDA APHIS federally deregulated the emerald ash borer, *Agrilus planipennis*, by rescinding 7 CFR §301.53 on January 14, 2021, due to significant ongoing spread of this pest, despite regulations, and in order to focus limited resources on pest treatments, including biocontrol. USDA APHIS federally regulates *Phytophthora ramorum* through CFR §301.92 by delineating the infested area and requiring nurseries that ship stock outside of this area to submit notifications of all proven and associated hosts shipped out of the area and by submitting to periodic inspections and removal and sanitation activities when *ramorum* blight is detected on nursery stock to prevent the spread and establishment of this disease, which causes sudden oak death. Therefore, the department's approach of removing quarantine rules for PSB, EAB, and TCD; and revising the *P. ramorum* rule to better align the host list with APHIS will better align Wisconsin's approach to these regulatory pests and diseases with federal regulations, at little to no impact to business. Although the federal government doesn't regulate EHS, HWA, or SLF, impacts of these regulations should not be significant. Existing HWA regulations have mainly impacted the 20 nursery dealers per year that import stock from the eastern United States, and we do not charge for Compliance Agreements that are required by these regulations. Main costs would likely be related to staff time for pest identification training and inspection of plant products being imported

ADMINISTRATIVE RULES Fiscal Estimate & Economic Impact Analysis

from infested areas, which are far less than the costs of allowing pests to establish and spread into Wisconsin where they will threaten our nursery, Christmas tree, vineyard, and tourism industries and our natural resources.

18. Compare With Approaches Being Used by Neighboring States (Illinois, Iowa, Michigan and Minnesota)

Wisconsin's proposal to remove quarantine rules for EAB, PSB, and TCD are consistent with most surrounding states with the exception of those to the west that are on the leading edge of EAB infestation. The lack of observed impacts of TCD east of the Mississippi have resulted in all states in our region intending to remove regulations for that pest and disease complex, while still maintaining surveys for the walnut twig beetle to comply with export requirements for the European Union.

Although surrounding states have not enacted SLF quarantines, CA, CT, DE, MD, NJ, NY, OH, PA and VA all have quarantines for this pest, and it is likely additional states will enact regulations once that pest reaches their borders, depending on natural resources and industries such as wineries that may be at risk.

Finally, while surrounding states do not have regulations on elongate hemlock scale, those states either already have that pest, in the case of Michigan, or lack the hemlock and balsam fir resources and significant Christmas tree industry present in Wisconsin.

Iowa has a list of insect and disease plant pests that are considered to be dangerously injurious or a public nuisance that shall be prevented from being introduced into, or disseminated within, the state. Currently, Iowa does not have pine shoot beetle, hemlock woolly adelgid, elongate hemlock scale, nor spotted lanternfly on the Iowa pest list. Iowa intends to remove emerald ash borer, *P. ramorum*, and the walnut twig beetle from their pest list in the near future.

Illinois has rescinded rules related to pine shoot beetle and emerald ash borer. They intend to rescind thousand cankers disease regulations in the near future. Like many states that lack significant hemlock resources, they do not regulate hemlock woolly adelgid or elongate hemlock scale. They have indicated that they are likely to enact a quarantine for spotted lanternfly if it is detected. They regulate *P. ramorum*, per federal requirements.

Michigan rescinded its emerald ash borer quarantine in 2018, and it does not have quarantine rules related to pine shoot beetle, elongate hemlock scale or spotted lanternfly. MI has exterior and interior quarantines for hemlock woolly adelgid. They are also the only state with an exterior quarantine for balsam woolly adelgid, an invasive, introduced pest that has caused fir mortality in portions of the eastern and western US. This pest was detected in MI in 2021. Wisconsin also considered adding a quarantine rule for balsam woolly adelgid, but decided against it after hearing a presentation from the USDA FS on the potential climactic unsuitability of this pest in WI, its extremely low rate of spread in MI, lack of concern and support for regulations by WI Christmas tree growers, and lack of regulatory interceptions on stock coming into our state.

Minnesota has a quarantine for emerald ash borer, but it does not have quarantine rules related to pine shoot beetle, thousand cankers disease, hemlock woolly adelgid, elongate hemlock scale, or spotted lanternfly. They regulate *P. ramorum* per federal requirements.

19. Contact Name
Shahla M. Werner

20. Contact Phone Number
(608) 957-5100

This document can be made available in alternate formats to individuals with disabilities upon request.

ADMINISTRATIVE RULES Fiscal Estimate & Economic Impact Analysis

ATTACHMENT A

1. Summary of Rule's Economic and Fiscal Impact on Small Businesses (Separately for each Small Business Sector, Include Implementation and Compliance Costs Expected to be Incurred)

The adverse impact to green industry businesses is potentially the cost of inspection and/or the mandatory implementation of best management practices entailed by Compliance Agreements (compliance agreements give the regulated industry a limited exemption to the quarantine to allow them to import products while mitigating risk of introducing pests) needed to reduce the risk of spread of SLF and EHS. It is expected that these costs will be minimal, as the Department does not charge businesses a fee for Compliance Agreements. These costs are predicted to be largely offset with the savings of pest treatment costs for SLF and EHS; or the potential loss or decline of natural resources, Christmas trees, plant products and tourism that would result from allowing these pests to establish in Wisconsin.

2. Summary of the data sources used to measure the Rule's impact on Small Businesses

Data for compliance and implementation were based on current fees charged by the Department and the estimated impacts of similar regulations on businesses, such as nursery dealers.

3. Did the agency consider the following methods to reduce the impact of the Rule on Small Businesses?

- Less Stringent Compliance or Reporting Requirements
- Less Stringent Schedules or Deadlines for Compliance or Reporting
- Consolidation or Simplification of Reporting Requirements
- Establishment of performance standards in lieu of Design or Operational Standards
- Exemption of Small Businesses from some or all requirements
- Other, describe:

Specifically with regards to our SLF quarantine rule, the Department opted to go with a traditional quarantine similar to the one enacted for this pest in Ohio on October 28, 2021 that regulates plant industries, based on the specific risks they pose by imported plant products pose to the state, while avoiding a cumbersome permitting system, similar to the SLF requirements in eastern states, for all businesses traversing the infested area, due to the burdens it would put on the Department and industry while being unlikely to significantly slow the westward spread of this pest.

4. Describe the methods incorporated into the Rule that will reduce its impact on Small Businesses

DATCP does not charge any fees for compliance agreements or inspections, and we offer free training and lab diagnostics to licensed nurseries. Therefore, cost of compliance should be minimal for nursery dealers and Christmas tree growers, especially when considering the ability of a compliance agreement to provide a limited quarantine exemption that allows them to keep markets open for plant imports; and for nursery dealers, who may need to enter into a compliance agreement in order to import nursery stock, Christmas trees, or other regulated plant products obtained from the SLF and EHS quarantine areas, respectively.

5. Describe the Rule's Enforcement Provisions

Enforcement, if needed, will be implemented according to Wis. Stat. 94.77, which specifies that any person who violates any provision of this chapter for which a specific penalty is not prescribed, or an order issued or rule promulgated under such a provision, may be fined not more than \$1,000 for the first offense and may be fined not less than \$500 nor more than \$5,000 or imprisoned for not more than 6 months or both for each subsequent offense. In lieu of the criminal penalty under sub. (1), a person who violates any provision of this chapter for which a specific penalty is not prescribed, or an order issued or rule promulgated under such a provision, may be required to forfeit not less than \$200 nor more than \$5,000, or for an offense committed within 5 years of an offense for which a penalty has been assessed under this section, may be required to forfeit not less than \$400 nor more than \$10,000.

6. Did the Agency prepare a Cost Benefit Analysis (if Yes, attach to form)

- Yes No

Wisconsin Department of Agriculture, Trade and Consumer Protection

Regulatory Flexibility Analysis

Rule Subject: Plant Inspection and Pest Control

Adm. Code Reference: ATCP 21

Rules Clearinghouse No.: not yet assigned

DATCP Docket No.: 22-R-06

Rule Summary

This proposed rule will create import restrictions and quarantines for plant products and other materials from states and provinces with infestations of the spotted lanternfly (SLF) or elongate hemlock scale (EHS), in order to prevent their introduction into or spread within the state of Wisconsin. Plant products effectively inspected or treated to preclude the transmission of these pests will be exempt from the rule or permitted under a compliance agreement or phytosanitary certificate. The proposed rule makes revisions to existing hemlock woolly adelgid (HWA) and *Phytophthora ramorum* rules. The proposed rule removes quarantine rules for the pine shoot beetle (PSB), emerald ash borer (EAB), and thousand cankers disease (TCD).

Small Businesses Affected

The Department believes the changes proposed will have minimal impacts on small businesses, mainly our licensed nursery dealers, Christmas tree growers, and wreathmakers who import nursery stock, conifer trees or fir wreaths from other states. The Department licensed 611 nursery grower, 1,232 nursery dealer and 374 Christmas tree grower licenses in 2021. Although the Department doesn't require them to be licensed, previous outreach on EHS indicates that we have about 118 wreathmakers in the state. These businesses would only be impacted by proposed regulations if they import fir material from the EHS infested-area. While proposed quarantine rules will require compliance agreements, which offer limited exemptions to a quarantine rule for businesses that import plant products such as nursery stock from EHS and SLF infested areas that agree to mitigate pest risks, the department does not charge for these agreements. The Department also already requires retailers that have imported plant products infested with EHS to destroy and remove materials from sale, via the Department's general pest abatement authority. Therefore, main costs associated with these new rules will likely be related to staff time associated with trainings and inspections required by compliance agreements. Moreover, cost savings will be realized through the proposed rule's elimination of the EAB and TCD quarantine rules, which mainly impacted loggers and sawmills that harvest ash and walnut respectively. The elimination of the PSB rule will also reduce regulatory burdens for the approximately 118 Christmas tree growers with Plant Health Certificates that ship pine Christmas trees to states that are not known to have PSB, although most states are removing regulations on PSB now that this pest has been federally deregulated.

Reporting, Bookkeeping and other Procedures

This rule would create new bookkeeping and notification requirements for nurseries and other green industry businesses to obtain a compliance agreement from the Department, which provides a limited exemption to the quarantine to allow them to continue importing plant products while mitigating the risk of introducing pests.

However, the Department is able to absorb the cost of creating and maintaining these agreements with existing staff, and these costs may also be offset by avoiding the introduction of EHS and SLF, which would result in additional costs for inspections and control.

Businesses wishing to import regulated items would need to enter into a compliance agreement with the Department and notify the Department prior to receiving regulated items. Businesses would also need to maintain records of the regulated items received for a 36-month period and make those records available for review by Department personnel upon request.

Professional Skills Required

The proposed rule does not require any new professional skills from small businesses, as many are already familiar with similar regulations and possess the inspection and bookkeeping skills needed for compliance. Many of the same businesses impacted by EHS and SLF rules are familiar with compliance agreements and have had no significant compliance issues maintaining records and / or completing notification requirements for other pests like HWA and black stem rust.

Accommodation for Small Business

Most of the businesses affected by this rule are small businesses. Affected businesses will be encouraged to work with the Department's Bureau of Plant Industry to find solutions to negative outcomes this rule may yield. Businesses may work with the Department to enter into a compliance agreement, which will allow the business to import regulated items provided that risks of EHS and SLF have been mitigated. The Department also offers free pest identification training and free lab diagnostics for nursery licensees.

Conclusion

This rule will generally have a relatively minor effect on a small number of businesses, including small businesses. This rule will not have a significant adverse effect on small business, and is not subject to the delayed small business effective date provided in s. 227.22(2)(e), Stats. The Department will, to the maximum extent feasible, seek voluntary compliance with these rules.

Dated this 20th day of January, 2022.

STATE OF WISCONSIN
DEPARTMENT OF AGRICULTURE,
TRADE AND CONSUMER PROTECTION

By 
Sara Walling, Administrator,
Division of Agricultural Resource Management

**State of Wisconsin
Department of Agriculture, Trade and Consumer Protection**

NOTICE OF PUBLIC HEARING AND COMMENT PERIOD

The Department of Agriculture, Trade and Consumer Protection announces that it will hold a public hearing on a permanent rule for ATCP 21 relating to plant inspection and pest control, at the time and place shown below.

Hearing Dates and Locations:

DATE: Wednesday April 6, 2022

TIME: 1:00 p.m. – 3:30 p.m.

LOCATION: In Person: Prairie Oak State Office Building, Room 106
2811 Agriculture Drive
Madison, Wisconsin 53708
Virtual: <https://www.zoomgov.com/j/1617628468?pwd=bVRqcEFoc3lIQS9vNXovMXczc3FHdz09>
Telephone: +1 (551) 285-1373, Meeting ID: 161 762 8468 Passcode: 696078

DATE: Thursday April 7, 2022

TIME: 4:00 p.m. – 7:00 p.m.

LOCATION: In Person: Marathon County Public Library
Wausau Community Room (2nd Floor)
300 North First Street Wausau WI 54403 USA
Wausau, Wisconsin
Virtual: <https://www.zoomgov.com/j/1604718168?pwd=VHh6Nk5CMzIFUWUxakRGRzdHQ2ZSQT09>
Telephone: +1 (551) 285-1373, Meeting ID: 160 471 8168 Passcode: 442089

Appearances at the Hearing and Submittal of Written Comments:

Comments may be submitted to Shahla Werner, Plant Protection Section Manager, Department of Agriculture, Trade and Consumer Protection, 2811 Agriculture Drive, P.O. Box 8911, Madison, WI 53708-8911 or by email to shahla.werner@wisconsin.gov. Comments must be received by April 26, 2022 to be included in the record of rule-making proceedings.

The rule may be reviewed and comments made at: <https://docs.legis.wisconsin.gov/code/chr/hearings>. You may also obtain a copy by contacting the Plant Protection Section Manager, Shahla Werner, at shahla.werner@wisconsin.gov or by calling (608) 957-5100.

Hearing-impaired persons may request accommodation for this hearing. Please make reservations by April 4, 2022 by writing, calling, or emailing Plant Protection Section Manager, Shahla Werner.

Initial Regulatory Flexibility Analysis

The rule has some economic impacts on small businesses, as defined in s. 227.114 (1), Stats. The Initial Regulatory Flexibility Analysis is attached.

Agency Small Business Regulatory Coordinator

Bradford Steine, Bradford.Steine1@wisconsin.gov, (608) 224-5024

Dated this ____ day of February, 2022

STATE OF WISCONSIN,
DEPARTMENT OF AGRICULTURE, TRADE
AND CONSUMER PROTECTION

By _____
Randy Romanski, Secretary