State of Wisconsin
Governor Scott Walker

Department of Agriculture, Trade and Consumer Protection
Ben Brancel, Secretary

DATE: November 27, 2013

TO: Board of Agriculture, Trade and Consumer Protection

FROM: Ben Brancel, Secretary
John Petty, Administrator, Agricultural Resource Management Division

SUBJECT: **Exotic Plant Pest Emergency Rule; Rulemaking Scope Statement (Wis. Admin. Code Ch. ATCP 21)**

PRESENTED BY: Plant Industry Bureau Staff

REQUESTED ACTION:

At the December 10, 2013 Board meeting, the department will ask the Board to approve a "scope statement" (copy attached) for a proposed emergency rule related to exotic plant pests. A rule authorized by the "scope statement" will create county or multi-county or township or multi-township quarantines in which an exotic pest is detected.

Any emergency rule authorized by this scope statement will be submitted to the Governor for approval pursuant to section 227.24 (1) (e) 1g each time the department finds that a quarantine area for an exotic plant pest is required. The authorization to draft an emergency rule creating a quarantine area pursuant to this statement of scope will expire on the first day following the twelfth month of publication of this statement of scope pursuant to section 227.135(3) and a new statement of scope must be approved and published pursuant to sections 227.135(2) and (3) to continue the authorization of emergency rulemaking related to exotic pest quarantines.

The department obtained approval of the "scope statement" from the Governor's office on October 30, 2013 and filed the attached "scope statement" with the Legislative Reference Bureau for publication in the November 14, 2013 issue of the Wisconsin Administrative Register. The department also filed a copy with the Department of Administration.

At the December 10 meeting, the Board may take action to approve or disapprove the attached "scope statement." Although the department may hold preliminary meetings with advisory councils and others, the department may not make any rulemaking commitments or begin drafting specific rule provisions until the Board approves the "scope statement." Approval of a "scope statement" is the first, preliminary step in this rulemaking process.

State of Wisconsin
Department of Agriculture, Trade & Consumer Protection

Scope of Proposed Emergency Rulemaking

The Department of Agriculture, Trade and Consumer Protection (DATCP) gives notice, pursuant to 227.135, Stats., that it proposes to adopt an emergency administrative rule as follows:

SUBJECT: Exotic Plant Pest Emergency Rule

ADMINISTRATIVE CODE REFERENCE: Chapter ATCP 21, Wis. Adm. Code

STATUTORY AUTHORITY: Sections 93.07(1), 93.07(12), 94.01 and 227.24, Stats.

PRELIMINARY OBJECTIVES:

An emergency rule authorized by this statement of scope will create county or multi-county or township or multi-township quarantines for an exotic plant pest in counties and townships where the pest is detected. Any emergency rule authorized by this scope statement will be submitted to the Governor for approval pursuant to s. 227.24(1) (e), 1g., Stats., each time the department finds that a quarantine area for an exotic plant pest is required. The authorization to draft an emergency rule creating a quarantine area pursuant to this statement of scope will expire on the first day following the twelfth month of publication of this statement of scope pursuant to s. 227.135(3), Stats., and a new statement of scope must be approved and published pursuant to s. 227.135(2) and (3), Stats., to continue the authorization of emergency rulemaking related to exotic pest quarantines.

A rule authorized by this statement of scope will do the following:

- Create county or multi-county or township or multi-township quarantines in which an exotic pest is detected. The quarantine will prohibit the movement of all articles potentially harboring the damaging pest. These regulated articles would likely include: firewood, nursery stock, green lumber, and other woody material living, dead, cut or fallen, including logs, stumps, roots, branches and composted and uncomposted chips in the cases of Emerald Ash Borer (EAB), Asian Longhorned Beetle (ALB), Hemlock Woolly Adelgid (HWA) or Thousand Cankers Disease (TCD), as examples.

- Provide an exemption for items that have been inspected and certified by a pest control official and are accompanied by a written certificate issued by the pest control official (some products, such as nursery stock, cannot be given an exemption).

- Provide an exemption for businesses that enter into a state or federal compliance agreement. The compliance agreement describes in detail what a company can and cannot do with regulated articles.

PRELIMINARY POLICY ANALYSIS:

DATCP 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 dissemination of pests. DATCP also has plant inspection and pest control authority under s. 94.01, Stats. DATCP may by rule impose restrictions on the importation or movement of serious plant pests, or items that may spread serious plant pests.

In recent years the rate of arrival of new exotic plant pests to the United States has increased significantly. Some of the exotic pests which have already invaded our country include Emerald Ash Borer (EAB), Asian Longhorned Beetle (ALB), Hemlock Woolly Adelgid (HWA), Thousand Cankers Disease (TCD) and Gypsy Moth (GM). The annual cost of these invasive forest insects to local governments is estimated at more than $2 billion; residential property value loss due to exotic forest pests averages $1.5 billion per year nationally. To date, EAB and GM have infested Wisconsin. EAB is an exotic pest that endangers Wisconsin's 770 million ash trees and ash tree resources. This insect has the potential to destroy entire stands of ash, including up to 20% of Wisconsin's urban street trees (with an estimated cost of $3 billion) and residential landscaping trees, and may result in substantial losses to forest ecosystems. The insect can cause great harm to state lands and to the state's tourism and timber industries. At this time, EAB has been identified in twenty-two states including Wisconsin, and two Canadian provinces. Twenty Wisconsin counties are currently quarantined to restrict the movement of ash wood in order to prevent the spread of EAB.

Nature of the Emergency

This emergency rule is necessary to create a timely quarantine of the counties or townships, and possibly bordering counties or townships, with new exotic plant pest detections until a federal quarantine is enacted. The federal quarantine will take effect up to six months after a formal submission by the state plant regulatory official.

Statutory authority for the rule (including the statutory citation and language):

ss. 93.07 (1) and (12) and 94.01, Stats.

Section 93.07 (1), Stats., directs DATCP to make such regulations as are necessary for the discharge of all the powers and duties of the department. Section 93.07 (12), Stats., authorizes DATCP 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 dissemination of pests. DATCP also has plant inspection and pest control authority under s. 94.01, Stats.

CURRENT AND PROPOSED FEDERAL LEGISLATION AND COMPARISON TO PROPOSED RULE:

In order to limit the spread of exotic plant pests, the Animal and Plant Health Inspection Service of the United States Department of Agriculture (APHIS) has imposed quarantines for EAB in 20 states, ALB in 3 states, and GM in 18 states. Including Wisconsin, six states plus Canada have imposed an external quarantine for HWA, and sixteen states have done the same for TCD. DATCP rules currently prohibit movement of regulated plant articles from any federally quarantined area except under authorized conditions. This proposed rule is consistent with current state and federal rules.

ENTITIES AFFECTED:

According to the American Forest and Paper Association (June 2011), Wisconsin is first in the nation in forestry jobs, employing over 56,000 workers and annually shipping forest industry products valued over $16.2 billion. Each year the agricultural industry also produces $1.38 billion of corn grain, and $511 million in soybeans. Additionally, Wisconsin leads the nation in snap bean production ($61 million annually) and ranks third in potato production ($293 million annually). Wisconsin apple orchards produce an annual yield of $28 million. This emergency rule could have an impact on persons or companies that deal in any agricultural crop or forest product from the quarantined counties or townships to locations outside of the quarantined counties.

The Wisconsin Department of Tourism reports that travelers to Wisconsin spent a total of $9.9 billion in 2011. Tourism directly sustains an estimated 128,000 jobs, or 5.5% of total employment in the state. Should Wisconsin's forests, parks, recreational areas and community trees be significantly damaged by an exotic plant pest, our tourism industry could also suffer substantially.

Nurseries, firewood producers/dealers, saw mills and farmers that sell or distribute articles potentially harboring the damaging exotic plant pest would all be impacted. In order to sell regulated products outside of a quarantined county, veneer mills and wood processors will have to enter into a compliance agreement with DATCP or APHIS. The agreement authorizes movement of products outside the quarantine only when there is assurance that the movement will not spread the plant pest to other locations. Licensed nursery growers will not be able to sell regulated nursery stock outside of the quarantined counties. Firewood dealers would need to be certified to sell firewood outside of the quarantined counties. Farmers would be required to treat with an approved treatment option, should one exist, before movement out of the quarantine. Grain elevators could enter into compliance agreements with DATCP or APHIS.

POLICY ALTERNATIVES:

If DATCP does nothing, potentially infested wood or agricultural products will be allowed to move freely and the department will not be able to regulate its movement. The department would have no regulatory authority in the counties with new exotic plant pest finds, raising the potential of a more rapid spread of an exotic invasive plant pest.

STATUTORY ALTERNATIVES:

At this time there are no existing or proposed statutory alternatives.

STAFF TIME REQUIRED:

DATCP estimates that it will use approximately 0.1 FTE staff time to develop these rules. This includes time required for investigation and analysis, rule drafting, preparing related documents, holding public hearings, and communicating with affected persons and groups. DATCP will use existing staff to develop this rule.

DATCP BOARD AUTHORIZATION:

DATCP may not begin drafting a rule until the Governor and the Board of Agriculture, Trade and Consumer Protection approves this scope statement. The Board may not approve this scope statement any sooner than 10 days after this scope statement is published in the Wisconsin Administrative Register. The scope statement may not be published in the administrative register until DATCP has received written approval of the scope statement from the Governor. Before the department may publish an emergency rule, it must receive written approval of the proposed emergency rule from the Governor.

Dated this 18th day of Oct, 2013.

STATE OF WISCONSIN
DEPARTMENT OF AGRICULTURE, TRADE
AND CONSUMER PROTECTION

By Ben Brancel
Ben Brancel, Secretary