



State of Wisconsin
Governor Scott Walker

Department of Agriculture, Trade and Consumer Protection

Sheila E. Harsdorf, Secretary

Bureau of Plant Industry Laboratory

DATE: February 14, 2018

TO: Board of Agriculture, Trade and Consumer Protection

FROM: Sheila Harsdorf, 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: Brian Kuhn, Plant Protection Section Chief, Plant Industry Bureau

REQUESTED ACTION:

At the February 27, 2018 Board meeting, the department will ask the Board to approve a scope statement (copy attached) for any 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 30 months after the publication of this statement of scope pursuant to section 227.135(5). The Board has approved statements of scope for exotic plant pests in 2011, 2012, 2013, 2014, 2015, and 2016.

The department obtained approval of the scope statement from the Governor's office on February 9, 2018 and filed the attached scope statement with the Legislative Reference Bureau for publication in the February 12, 2018 issue of the Wisconsin Administrative Register. The department also filed a copy with the Department of Administration.

If the Board approves the scope statement, the Department may begin work to draft an emergency rule. Approval of a scope statement is the first step in the process for adopting an emergency rule. Any emergency rule proposed under this statement of scope must be approved in writing by the Governor and then published in the state newspaper to become effective.

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STATEMENT OF SCOPE

Department of Agriculture, Trade & Consumer Protection

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:

Rule No: Chapter ATCP 21, Wis. Adm. Code (Existing)

Relating to: Exotic Plant Pest Emergency Rule

1. Description of the objective of the rule:

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 § 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 § 227.135 (3) and a new statement of scope must be approved and published pursuant to §§ 227.135(2) and (3) to continue the authorization of emergency rulemaking related to exotic pest quarantines.

2. Description of existing policies relevant to the rule and of new policies proposed to be included in the rule and an analysis of policy alternatives; the history, background and justification for the proposed rule:

History and background. DATCP has authority under § 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 § 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). Introduced, invasive, plant, animal, and microbe species in the United States cause nearly \$120 billion in environmental damages and losses annually (Pimentel et al. 2005). Invasive forest insects are estimated to cost local governments over \$2 billion and reduce

residential property values by \$1.5 billion annually nationwide. To date, EAB and GM have infested Wisconsin.

To focus on one example, EAB is an exotic pest that endangers Wisconsin's 834 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 and residential landscaping trees which 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 31 states (including 46 Wisconsin counties) as well as the Canadian provinces of Ontario and Quebec. Emergency rule authority was used several times over the past six years to gather input from stakeholders to enact timely EAB quarantines. Having a scope statement in place and the emergency rule authority has likely helped significantly slow the spread of this harmful invasive pest. In the past, this has allowed for community response planning as well as the development of chemical, biological, and silvicultural treatments.

Proposed policies. 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 often take effect up to eight weeks or longer after a formal submission by the state plant regulatory official. 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 un-composted chips. Some examples of current plant pests of concern include Emerald Ash Borer (EAB), Gypsy Moth (GM), Asian Longhorned Beetle (ALB), Hemlock Woolly Adelgid (HWA), or Thousand Cankers Disease of Walnut (TCD).
- 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 (depending on the specific pest, 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.

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 their 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.

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

Sections 93.07(1), 93.07(12) and 94.0, Stats.

93.07 Department duties. (1) It shall be the duty of the department:

(1) To make and enforce such regulations, not inconsistent with law, as it may deem necessary for the exercise and discharge of all the powers and duties of the department, and to adopt such measures and make such regulations as are necessary and proper for the enforcement by the state of chs. 93 to 100, which regulations shall have the force of law.

(12) To conduct surveys and inspections for the detection and control of pests injurious to plants, make, modify, and enforce reasonable rules needed to prevent the dissemination of pests, declare and manage emergencies related to the detection and control of pests injurious to plants, provided such declaration does not supersede the authority of the chief state forester under s. 23.114 or the department of natural resources under s. 26.30, and suggest methods of control.

94.01 plant inspection and pest control authority. In the conduct of survey and inspectional programs for the detection, prevention and control of pests, the department may impose quarantines or such other restrictions on the importation into or movement of plants or other material within the state as necessary to prevent or control the dissemination or spread of injurious pests.

4. Estimate of the amount of time that state employees will spend to develop the rule and other resources necessary to develop the rule: 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.

5. Description of all entities that may be impacted by the rule: According to the Wisconsin Council on Forestry, Wisconsin is first in the nation in forestry jobs, employing over 62,200 workers and generating \$22.9 billion in value to our state's economy. Our agricultural industry also annually produces over \$1.3 billion in corn grain, and over \$510 million in soybeans. Wisconsin also leads the nation in cranberry production (\$388 million/year) and ranks third in potato production (\$270 million/year), according to UW – Whitewater's Fiscal and Economic Research Center. Wisconsin produced 51.5 million pounds of apples valued at \$27.8 million in 2015. 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 \$12.3 billion in 2016. Tourism also directly sustains 193,500 jobs in our state. Should Wisconsin's forests, parks, and recreational areas be significantly damaged by an exotic plant pest, our tourism industry could suffer substantially.

Nurseries, firewood producers/dealers, saw mills, and farmers who 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. Other producers and farmers would be required to treat regulated products 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.

6. Summary and preliminary comparison of any existing or proposed federal regulation that is intended to address the activities to be regulated by the 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 thirty-one states, ALB in three states (Massachusetts, New York, and Ohio), and GM in twenty states plus the District of Columbia. Including Wisconsin, six states plus Canada have imposed an external quarantine for HWA, and eighteen 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.

7. Anticipated economic impact: DATCP expects the rule to have minimal economic impact statewide and minimal to moderate economic impact locally.

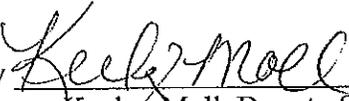
DATCP BOARD AUTHORIZATION:

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.

Contact Person: Brian Kuhn, Director Bureau of Plant Industry; Phone (608) 224-4590

Dated this 9th day of February, 2018.

STATE OF WISCONSIN
DEPARTMENT OF AGRICULTURE, TRADE
AND CONSUMER PROTECTION

By 
Keeley Moll, Deputy Secretary

Cover Memo Rules Checklist for Governor's Office

(Scope Statement for Exotic Plant Pests; Wis. Admin. Code Ch. ATCP 21)

1. Plain Language Summary

Problem: Invasive plant pests and diseases can enter the state any time via nursery stock, wood products (such as furniture or firewood), or solid wood packing material associated with imported goods. These invasive pests, such as Emerald Ash Borer and Asian Longhorned Beetle, can cause vast amounts of economic and ecological damage if not contained within a short time period. Waiting until a pest is detected to draft and request approval of a statement of scope does not allow for the timely implementation of a quarantine. Eradication costs increase every day without the quarantine as the pest becomes more widespread and its negative impacts grow.

Solution: This emergency rule statement of scope allows for the timely implementation of an emergency rule to quickly quarantine counties or townships, in the event a new invasive plant pest is detected. New invasive plant pests will likely be discovered in Wisconsin in the future, just as the Emerald Ash Borer and Velvet Longhorned Beetle were discovered and addressed in the last several years. It is critical that the Department have in place a Statement of Scope for Exotic Plant Pests, so the Department can move quickly to publish an administrative rule quarantining an area where a new exotic plant pest is discovered. This ability to act bridges the gap between discovery and federal quarantine.

2. Stakeholder Outreach

DATCP solicited comments on this Statement of Scope from the Great Lakes Timber Professionals Association (GLTPA) and the Lake States Lumber Association (LSLA). On November 17, 2017, Henry Schienebeck of the GLTPA contacted DATCP by phone to let the Department know that the GLTPA supports this Statement of Scope. Although LSLA has been a partner in helping address forest pest regulatory issues like this in the past, DATCP received no response to voicemails or emails sent to LSLA requesting input.

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3. How / Why was the Rule Initiated

A similar Exotic Plant Pest Scope Statement has been approved by the Governor annually since 2011. Since a federal quarantine often takes effect at least eight weeks after a formal request is initiated by the state plant regulatory official, it is critical that the Department is in a strengthened position to immediately submit an emergency rule to the Governor for approval upon the discovery of a new invasive plant pest. Having an approved statement of scope for this purpose is an important precautionary measure to quickly activate a quarantine by emergency rule, should the need arise.

4. Is it connected to an emergency rule?

Yes, this statement of scope will authorize the drafting of an emergency rule for a quarantine should a situation arise where a new invasive plant pest is discovered in Wisconsin. Any draft emergency rule will be submitted to the Governor for approval pursuant to Wis. Stat. § 227.24(1)(e) 1g. This authority was used effectively several times in prior years to enact emergency rules for Emerald Ash Borer quarantines in Brown, Marquette, Milwaukee, Kenosha, Racine, and Waukesha counties before federal regulations were finalized.

5. Is there a deadline?

The current umbrella Exotic Plant Pest Emergency Rule Statement of Scope pertaining to Wis. Admin. Code Ch. ATCP 21 will expire on the first day following the twelfth month of publication of the previous year's statement of scope, because of the language included in the signed Statement of Scope. Therefore, the current Statement of Scope will expire on December 1, 2017. This new Statement of Scope is intended to be in place for 30 months as authorized by Wis. Stat. § 227.135(5).

6. What happens if the deadline is not met?

If the Department is not granted the approval to draft an emergency rule, infested wood or agricultural products will move freely in Wisconsin until the federal government puts in place a quarantine. While awaiting federal action, in the interim, the Department will not be in a position to regulate the movement of the pest or the material containing the pest. Without an immediate quarantine by emergency rule, a new invasive plant pest has the potential to rapidly spread, which may pose serious threats to Wisconsin's economy and natural resources, including timber and agricultural crops.



SCOTT WALKER
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February 9, 2018

Sheila Harsdorf
Secretary
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Trade, and Consumer Protection
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RE: Scope Statement for Emergency Rule creating ATCP 21 relating to exotic plant pest emergency rule

Dear Secretary Harsdorf,

I hereby approve the statement of scope submitted on November 11, 2017 to SBO, pursuant to Wisconsin Statutes § 227.135, in regards to an emergency rule creating Chapter ATCP of the Wisconsin Administrative Code. You may send the scope statement to the Legislative Reference Bureau for publication pursuant to Wisconsin Statutes § 227.24(1)(e)1d.

Sincerely,

A handwritten signature in black ink, appearing to be "Scott Walker".

Scott Walker
Governor