State of Wisconsin
Governor Scott Walker

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

DATE: August 31, 2016

TO: Board of Agriculture, Trade and Consumer Protection

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

SUBJECT: ATCP 21 Mountain Pine Beetle Quarantine – Final Draft

PRESENTED BY: Tim Allen, Forest Pest Program Coordinator

REQUESTED ACTION:

At the September 8, 2016, Board meeting, the Department of Agriculture, Trade and Consumer Protection ("Department") will ask the Department Board to approve the Final Draft of the proposed rule (copy attached) relating to the establishment of an exterior state quarantine for mountain pine beetle. The proposed rule restricts the import of certain plants, wood, and wood products to prevent the introduction of mountain pine beetle (*Dendroctonus ponderosae* Hopkins) into Wisconsin. The proposed rule restricts the import of affected materials, with some exceptions, from states and nations that are known to be infested with mountain pine beetle.

Legislative Council Rules Clearinghouse

The hearing draft rule was reviewed and approved by the Board at the March 22, 2016, meeting. The Hearing Draft rule was delivered to the Legislative Council Rules Clearinghouse for review and their report has been received. The clearinghouse report noted minor corrections to be made relating to form, style and punctuation. Because no language or content changes were requested from the Legislative Council Rules Clearinghouse, the Final Draft rule is essentially the same as the Hearing Draft rule reviewed at the March 22, 2016, meeting.

Public Hearing

Public hearing notices were published in the Wisconsin Administrative Register and hearings were held in Madison and Wausau on June 8, 2016. There were no attendees at either hearing, however the Department did receive letters of support for the rule from the Wisconsin Chapter of the Society of American Foresters and from the Wisconsin Department of Natural Resources, Division of Forestry. The Department did not receive any comments in opposition to the rule.

SUMMARY:

Background

The mountain pine beetle, *Dendroctonus ponderosae* Hopkins, has been described as the most destructive pest of mature pines in North America. Its major host species are ponderosa, lodgepole, and western white, but mountain pine beetle has been recorded attacking at least a half-dozen other pine species including jack and red pine. The most recent unprecedented outbreak of mountain pine beetle spread over 88 million acres of pine forests in Colorado, Wyoming, Idaho, Montana, and South Dakota, as well as the Canadian provinces of Alberta and British Columbia. Estimates of pine mortality in infested forests can reach 80%.

Red pine, jack pine, and eastern white pine are the most common commercially significant pine species in Wisconsin. Recent research indicates all three species to be viable hosts for the mountain pine beetle. According to the Wisconsin Department of Natural Resources (DNR), over 3.5 billion cubic feet of pine growing stock is present in the state. Wisconsin's State Forests are dominated by pine forest types, occupying about 22% of total state timberland area (an estimated 43 million trees on state land alone). As a whole, pine species comprise about 10.7% of Wisconsin's forest areas. About 59 million cubic feet of Wisconsin pine are removed as timber annually, accounting for 23% of the total annual commercial timber harvest. The current annual stumpage value of Wisconsin's pine resource is estimated by DNR to be about $38 million. That number climbs to over $70 million if processed or finished pine products are included.

While the mountain pine beetle is native to North America, it historically has been limited in distribution to western pine forests from Mexico to central British Columbia. To date, no mountain pine beetle populations have been found in the United States east of the Black Hills area of South Dakota.

The most common pathway for introduction of the mountain pine beetle is in untreated or raw pine wood with the bark still on, including logs, burls, stumps, firewood, green lumber, wood chips, and wood packing material. Movement of untreated pine wood from western states to the east is uncommon, but can occur. Pulp mills, saw mills, and campgrounds may be the most likely pathways for the eastern movement of the mountain pine beetle. Natural spread is another potential pathway as presented by the recent expansion of this pest's range eastward into the Canadian province of Alberta.

The mountain pine beetle may be spread by the movement of firewood, unfinished or untreated pine wood with bark, and products. Subject to certain exemptions, this rule establishes a Department quarantine restricting the movement of host materials, potentially infested with mountain pine beetle, into Wisconsin, if those materials originated from or were exposed to the environment in an area where the mountain pine beetle is known to exist. This rule will establish a quarantine for these materials, potentially infested with the mountain pine beetle, in order to protect the forest pine resource and forest products industry in Wisconsin.

Rule Content

Plant Pests; Import Prohibition

Under the proposed rule, no person may knowingly import the mountain pine beetle into this state, except pursuant to a special Department permit (for controlled scientific research or other limited purposes that pose no significant pest risk).

Host Materials; Import Prohibition

Under the proposed rule, no person may import any of the following host materials into Wisconsin from an infested nation, state, or area (as determined by the United States Department of Agriculture or respective state plant pest regulatory officials):

- Firewood from any species of tree.
- Wood or plant parts of the genus *Pinus* (pines). This prohibition applies, for example, to dimensional lumber with bark attached, logs, stumps, and branches.

Exemptions

Under the proposed rule, the prohibition against the importation of host materials does *not* apply to any of the following:

- Processed lumber which is 100% bark-free or kiln-dried.
- Finished wood products without bark (for example, finished furniture, home furnishings, or building materials).
- Pine Christmas trees.
- Pine nursery stock.
- Pine bark mulch or pulpwood chips.
- Materials that are accompanied by a written certificate, signed by a pest control official in the infested area, that describes the materials and states at least one of the following:
    - The materials have not been exposed to the mountain pine beetle. The certificate must explain the basis for the official's statement.

- The materials have been effectively treated to destroy the mountain pine beetle. The certificate must specify the date and method of treatment.

- The materials have been produced, processed, stored, handled, or used under conditions, described in the certificate, that effectively preclude the transmission of mountain pine beetle.

- Materials imported in compliance with a written agreement between the importer and the Department. The agreement must include all of the following:

  - The name and address of the importer.
  - The type and volume of material that may be imported under the agreement.
  - The locations from which the material may be imported under the agreement.
  - The names and addresses of the persons to whom, and the locations to which, the material may be imported under the agreement.
  - The method by which the material may be imported.
  - The time period covered by the agreement.
  - The importer's commitment to keep complete records of each import shipment under the agreement, and to submit those records to the Department for inspection and copying upon request.
  - Specific import terms and conditions that will, in the Department's opinion, effectively ensure that materials imported pursuant to the agreement will not introduce mountain pine beetle into this state.
  - A provision authorizing the Department to terminate the agreement without prior notice, for any reason.

Federal and Surrounding State Programs

Federal Programs

The Animal and Plant Health Inspection Service of the United States Department of Agriculture (APHIS) has not issued any quarantine for the mountain pine beetle. APHIS does not restrict imports from other nations, because the mountain pine beetle is native to North America. Federal law does not prevent Wisconsin from taking regulatory action to prevent the mountain pine beetle from spreading to this state.

Surrounding State Programs

The State of Minnesota recently adopted regulations (January 2015) to prevent the spread of mountain pine beetle across its borders. Recent inquiries regarding the transport of beetle-killed western pine into Wisconsin and neighboring states has prompted additional states (including Wisconsin and Michigan) to consider import restrictions to prevent the spread of this pest. Current regulations in Minnesota are not substantively different than this proposed draft rule. Michigan has not enacted any regulations to date.

Data and Analytical Methodologies

This rule is based on generally accepted plant disease information from reliable sources, including USDA APHIS and the USDA Forest Service.

Regulatory Flexibility Analysis

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 any negative outcomes this rule may yield. Businesses may work with the Department to enter into a compliance agreement that will allow the business to import regulated items, provided that risks have been mitigated.

Fiscal Impact

This rule will not have a significant fiscal impact on state government. The Department will incur some added inspection and monitoring costs, but will minimize those costs by integrating inspection activities under this rule with other plant pest inspection and monitoring activities. The Department will absorb the added costs with current budget and staff. This rule will have no fiscal effect on local governments.

Business Impact

The Department expects the proposed rule to have minimal economic impact statewide. This rule will benefit Wisconsin wood industries by helping to preserve Wisconsin's economically important pine forest resource. Data from the latest U.S. Forest Service Timber Products Report for Wisconsin (2008) indicates that 94% of pine wood utilized by Wisconsin's timber industry is harvested from within Wisconsin. Of the remainder, about 4% comes from Michigan, 1% from Minnesota, and 0.5% from Canada. Less than 0.5% of pine is sourced from western states that have been impacted by mountain pine beetle. Implementation of an exterior quarantine will protect Wisconsin's pine wood products industry, valued at $70 million annually.

Pine is a valuable tree, primarily used in pulp and paper industries, as well as lumber production, posts, and pole and log home building. Pine is also used in making paper, furniture, and other important value-added wood products. There are approximately 43 million pine trees growing in Wisconsin's state forests alone, with an estimated annual stumpage value (2014) of $38 million.

This rule will not have a significant adverse impact on businesses in this state. This rule restricts the import of firewood and pine wood from areas *outside* this state, but does not otherwise restrict the distribution or sale of wood or wood products. This rule will restrict the activities of a small number of businesses in this state, and offers ways for those businesses to minimize any potential adverse impacts.

Environmental Impact

This rule will have a positive impact on the environment, by helping to prevent the spread of the mountain pine beetle into this state. This rule will help protect Wisconsin's environmentally important pine forest resource. If the Department does nothing, Wisconsin's pine resource will be increasingly vulnerable to the mountain pine beetle. If the mountain pine beetle becomes established in Wisconsin, it could kill millions of pine trees and adversely affect our forest products industry. Potential impacts to forest ecology are also possible, including changes in forest fire risk, soil erosion, and water retention rates.

Economic Impact

This rule is intended to have a positive impact on Wisconsin's economy. The rule seeks to prevent disruption to the state's robust forest products industry by preventing the import of the destructive mountain pine beetle.

Next Steps

Upon Board approval, the Final Draft rule will be submitted to the Governor's Office. If written approval is received from the Governor, the Department will submit a proposed permanent rule to the Legislature for legislative review. If the Legislature takes no action to stop the rule, the Secretary will sign the final rulemaking order and transmit it for publication.

DATCP Docket No. 15-R-01
Rules Clearinghouse No. 16-032

Final Draft Rule
August 31, 2016

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

1 The Wisconsin department of agriculture, trade and consumer protection proposes the following
2 order ***to create*** s. ATCP 21.22, ***relating to*** restricting the import of certain plants, wood and
3 wood products to prevent the introduction of the mountain pine beetle into Wisconsin.

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

The proposed rule restricts the import of certain plants, wood, and wood products to prevent the introduction of mountain pine beetle (*Dendroctonus ponderosae* Hopkins) into Wisconsin. The proposed rule restricts the import of affected materials from states and nations that are known to be infested with mountain pine beetle (there are certain exemptions).

Statutes Interpreted

Statutes Interpreted: ss. 93.06(1p), 93.07(12) and 94.01, Stats.

Statutory Authority

Statutory Authority: ss. 93.06 (1p), 93.07(1), 93.07(12), 94.01 and 227.24, Stats.

Explanation of Statutory 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 adopt regulations to prevent and control plant pest infestations. The Department is proposed to adopt this rule, 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 adding restrictions, related to preventing and controlling infestations of the mountain pine beetle.

Plain Language Analysis

Background

The mountain pine beetle, *Dendroctonus ponderosae* Hopkins, has been described as the most destructive pest of mature pines in North America. Its major host species are ponderosa, lodgepole, and western white, but mountain pine beetle has been recorded attacking at least a half-dozen other pine species including jack and red pine. The most recent unprecedented outbreak of mountain pine beetle spread over 88 million acres of pine forests in Colorado, Wyoming, Idaho, Montana, and South Dakota, as well as the Canadian provinces of Alberta and British Columbia. Estimates of pine mortality in infested forests can reach 80%.

Red pine, jack pine, and eastern white pine are the most common commercially significant pine species in Wisconsin. Recent research indicates all three species to be viable hosts for the mountain pine beetle. According to the Wisconsin Department of Natural Resources (DNR), over 3.5 billion cubic feet of pine growing stock is present in the state. Wisconsin's State Forests are dominated by pine forest types, occupying about 22% of total state timberland area (an estimated 43 million trees on state land alone). As a whole, pine species comprise about 10.7% of Wisconsin's forest areas. About 59 million cubic feet of Wisconsin pine are removed as timber annually, accounting for 23% of the total annual commercial timber harvest. The current annual stumpage value of Wisconsin's pine resource is estimated by DNR to be about $38 million. That number climbs to over $70 million if processed or finished pine products are included.

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The most common pathway for introduction of the mountain pine beetle is in untreated or raw pine wood with the bark still on, including logs, burls, stumps, firewood, green lumber, wood chips, and wood packing material. Movement of untreated pine wood from western states to the east is uncommon, but can occur. Pulp mills, saw mills, and campgrounds may be the most likely pathways for the eastern movement of the mountain pine beetle. Natural spread is another potential pathway as presented by the recent expansion of this pest's range eastward into the Canadian province of Alberta.

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mountain pine beetle, into Wisconsin, if those materials originated from or were exposed to the environment in an area where the mountain pine beetle is known to exist. This rule will establish a quarantine for these materials, potentially infested with the mountain pine beetle, in order to protect the forest pine resource and forest products industry in Wisconsin.

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- Wood or plant parts of the genus *Pinus* (pines). This prohibition applies, for example, to dimensional lumber with bark attached, logs, stumps, and branches.

Exemptions

Under the proposed rule, the prohibition against the importation of host materials does *not* apply to any of the following:

- Processed lumber which is 100% bark-free or kiln-dried.
- Finished wood products without bark (for example, finished furniture, home furnishings, or building materials).
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- Pine nursery stock.
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- The materials have been effectively treated to destroy the mountain pine beetle. The certificate must specify the date and method of treatment.

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- Materials imported in compliance with a written agreement between the importer and the Department. The agreement must include all of the following:

  - The name and address of the importer
  - The type and volume of material that may be imported under the agreement
  - The locations from which the material may be imported under the agreement
  - The names and addresses of the persons to whom, and the locations to which, the material may be imported under the agreement
  - The method by which the material may be imported
  - The time period covered by the agreement
  - The importer's commitment to keep complete records of each import shipment under the agreement, and to submit those records to the Department for inspection and copying upon request
  - Specific import terms and conditions that will, in the Department's opinion, effectively ensure that materials imported pursuant to the agreement will not introduce mountain pine beetle into this state
  - A provision authorizing the Department to terminate the agreement without prior notice, for any reason

Federal and Surrounding State Programs

Federal Programs

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Data and Analytical Methodologies

This rule is based on generally-accepted plant disease information from reliable sources, including USDA APHIS and the USDA Forest Service.

Regulatory Flexibility Analysis

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 any negative outcomes this rule may yield. Businesses may work with the Department to enter into a compliance agreement that will allow the business to import regulated items, provided that risks have been mitigated.

Fiscal Impact

This rule will not have a significant fiscal impact on state government. The Department will incur some added inspection and monitoring costs, but will minimize those costs by integrating inspection activities under this rule with other plant pest inspection and monitoring activities. The Department will absorb the added costs with current budget and staff. This rule will have no fiscal effect on local governments.

Business Impact

The Department expects the proposed rule to have minimal economic impact statewide. This rule will benefit Wisconsin wood industries by helping to preserve Wisconsin's economically important pine forest resource. Data from the latest U.S. Forest Service Timber Products Report for Wisconsin (2008) indicates that 94% of pine wood utilized by Wisconsin's timber industry is harvested from within Wisconsin. Of the remainder, about 4% comes from Michigan, 1% from Minnesota, and 0.5% from Canada. Less than 0.5% of pine is sourced from western states that have been impacted by mountain pine beetle. Implementation of an exterior quarantine will protect Wisconsin's pine wood products industry, valued at $70 million annually.

Pine is a valuable tree, primarily used in pulp and paper industries, as well as lumber production, posts, poles and log home building. Pine is also used in making paper, furniture, and other important value-added wood products. There are approximately 43 million pine trees growing in Wisconsin's state forests alone, with an estimated annual stumpage value (2014) of $38 million.

This rule will not have a significant adverse impact on businesses in this state. This rule restricts the import of firewood and pine wood from areas *outside* this state, but does not otherwise restrict the distribution or sale of wood or wood products. This rule will restrict the activities of a small number of businesses in this state, and offers ways for those businesses to minimize any potential adverse impacts.

Environmental Impact

This rule will have a positive impact on the environment, by helping to prevent the spread of the mountain pine beetle into this state. This rule will help protect Wisconsin's environmentally important pine forest resource. If the Department does nothing, Wisconsin's pine resource will be increasingly vulnerable to the mountain pine beetle. If the mountain pine beetle becomes established in Wisconsin, it could kill millions of pine trees and adversely affect our forest products industry. Potential impacts to forest ecology are also possible, including changes in forest fire risk, soil erosion, and water retention rates.

Economic Impact

This rule is intended to have a positive impact on Wisconsin's economy. The rule seeks to prevent disruption to the state's robust forest products industry by preventing the import of the destructive mountain pine beetle.

The Department Contact

Questions and comments related to this rule may be directed to:

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Department of Agriculture, Trade and Consumer Protection
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Madison, WI 53708-8911
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E-Mail: Renee.Pinski@wisconsin.gov or Timothy.Allen@wisconsin.gov

Comments must be received no later than June 27, 2016.

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1 **SECTION 1.** ATCP 21.22 is created to read:

2 **ATCP 21.22 Mountain Pine Beetle; import controls and quarantine. (1)**

3 DEFINITIONS. In this section:

4 (a) "Bark" means all of the following:

5 1. The exterior bark of a tree.

6 2. Ingrown bark around knots in a tree.

1 3. Bark pockets occurring between a tree's annual growth rings.

2 4. All inner bark and phloem tissue adjacent to any bark under subds. 1. to 3.

3 (b) "Firewood" has the meaning given in s. ATCP 21.01(6p).

4 (c) "Infested area" means all of the following:

5 1. The states of Arizona, California, Colorado, Idaho, Montana, Nebraska, Nevada, New
6 Mexico, Oregon, South Dakota, Utah, Washington, Wyoming and the Canadian provinces of
7 Alberta, British Columbia and Saskatchewan.

8 2. Any state or nation, or any delineated area within a state or nation, which the U. S.
9 department of agriculture, U. S. forest service or respective state plant pest regulatory officials
10 has declared infested with mountain pine beetle.

11 (d) "Pest control official" has the meaning given in s. ATCP 21.01 (11).

12 **(2)** KNOWINGLY IMPORTING PLANT PEST; PROHIBITION. No person may knowingly
13 import living mountain pine beetles, *Dendroctonus ponderosae* Hopkins, into this state, except
14 pursuant to a permit under s. 94.03, Stats., and s. ATCP 21.04.

15 **(3)** IMPORTING MATERIALS FROM INFESTED AREAS; PROHIBITION. Except as provided in
16 sub. (4), no person may import any of the following materials into this state if those materials
17 originate from or have been exposed to the environment in any infested area:

18 (a) Firewood from any species of tree.

19 (b) Wood or plant parts of the genus *Pinus*, including dimensional lumber with bark
20 attached, logs, stumps and branches. This paragraph does not apply to any of the following:

21 1. Processed lumber which is 100% bark-free or kiln-dried.

22 2. Finished wood products without bark, including finished furniture, home furnishings
23 or building materials.

1 3. Pine Christmas trees.

2 4. Pine nursery stock.

3 5. Pine bark mulch or pulpwood chips.

4 **(4)** EXEMPTIONS. Subsection (3) does not apply to any of the following: (a) Material
5 specified in sub. (3) (a) and (b) that are accompanied by a written certificate, signed by a pest
6 control official in the infested area, which describes the materials and states at least one of the
7 following:

8 1. The materials have not been exposed to the mountain pine beetle. The certificate
9 shall explain the basis for the official's statement.

10 2. The materials have been effectively treated to destroy mountain pine beetle. The
11 certificate shall specify the date and method of treatment.

12 3. The materials have been produced, processed, stored, handled, or used under
13 conditions, described in the certificate, which effectively preclude the transmission of mountain
14 pine beetle.

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

17 1. The name and address of the importer.

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

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

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

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

23 6. The time period covered by the agreement.

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

8. Specific import terms and conditions that will, in the department's opinion, effectively ensure that materials imported pursuant to the agreement will not introduce the mountain pine beetle into this state.

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

SECTION 2. EFFECTIVE DATE: This rule takes effect on the first day of the month following publication in the Wisconsin administrative register, as provided in s. 227.22(2)(intro.), Stats.

Dated this _____day of _____, 2016.

WISCONSIN DEPARTMENT OF AGRICULTURE,
TRADE AND CONSUMER PROTECTION

By _____
Ben Brancel, Secretary

Wisconsin Department of Agriculture, Trade and Consumer Protection

Final Regulatory Flexibility Analysis

Rule Subject:	**Mountain pine beetle exterior quarantine**
Adm. Code Reference:	**ATCP 21.22**
Rules Clearinghouse #:	**16-032**
DATCP Docket #:	**15-R-01**

Rule Summary

This proposed rule will restrict the import of certain pine wood products from states and provinces with infestations of the mountain pine beetle into Wisconsin. Pine products effectively treated to preclude the transmission of the mountain pine beetle will be exempt from the rule or permitted under a compliance agreement.

Businesses Affected

The vast majority of Wisconsin businesses that use pine acquire pine that has been grown in Wisconsin, Minnesota, or Michigan. The mountain pine beetle is not known to exist in Wisconsin or in any state bordering Wisconsin, so this rule is not anticipated to have a significant effect on Wisconsin businesses. There are, however, some businesses that will certainly be at least somewhat affected by this rule and include the following:

1. Wisconsin log home crafters.

   Some species of western pine, including lodgepole pine (*Pinus contorta*), are desirable for the construction of log homes. Businesses that use western pine for log home construction may need to switch to Midwestern or southern pine, or non-pine tree species for construction. Continued use of western pine may result in higher material costs as certain treatments would need to be applied to western pine logs in order to prevent mountain pine beetle introductions.

2. Wisconsin importers.

   Log Brokers. Brokers of logs from western states and/or Canadian provinces may have to be more selective about the logs they send to Wisconsin and will have additional reporting and bookkeeping requirements if they wish to import western pine logs into Wisconsin. The rule will create an option to enter into a compliance agreement with the Department to make sure that imported logs have been effectively treated to preclude the transmission of mountain pine beetle. Importers will also need

to work with the Department and compliant receiving facilities to ensure the Department is notified prior to the import of regulated articles.

3. Pole manufacturers.

   Pole manufactures that occasionally import bark-free Ponderosa pine will be asked to enter into a compliance agreement with the Department. Any additional costs associated with record keeping or notifications would be minimal.

Reporting, Bookkeeping and other Procedures

This rule would create new bookkeeping and notification requirements for businesses that hold a compliance agreement with the Department.

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.

Professional Skills Required

The skills and abilities needed to comply with reporting and bookkeeping requirements are not expected to exceed those already possessed by the businesses the Department anticipates working with.

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 mountain pine beetle have been mitigated.

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.

Dated this 29th day of August, 2016.

STATE OF WISCONSIN
DEPARTMENT OF AGRICULTURE,
TRADE AND CONSUMER PROTECTION

By _____
John Petty, Administrator
Division of Agricultural Resource Management

STATE OF WISCONSIN
DEPARTMENT OF ADMINISTRATION
DOA 2049 (R 07/2011)

ADMINISTRATIVE RULES
FISCAL ESTIMATE AND ECONOMIC IMPACT ANALYSIS

Type of Estimate and Analysis

☒ Original ☐ Updated ☐ Corrected

Administrative Rule Chapter, Title and Number

Ch. ATCP 21, Plant Inspection and Pest Control

Subject

Mountain pine beetle import controls and quarantine

Fund Sources Affected	Chapter 20, Stats. Appropriations Affected
☐ GPR ☐ FED ☐ PRO ☐ PRS ☒ SEG SEG-S	20.115(7) (qc)

Fiscal Effect of Implementing the Rule

☒ No Fiscal Effect ☐ Indeterminate	☐ Increase Existing Revenues ☐ Decrease Existing Revenues	☐ Increase Costs ☒ Could Absorb Within Agency's Budget ☐ Decrease Costs

The Rule Will Impact the Following (Check All That Apply)

☐ State's Economy ☐ Local Government Units	☒ Specific Businesses/Sectors ☐ Public Utility Rate Payers

Would Implementation and Compliance Costs Be Greater Than $20 million?

☐ Yes ☒ No

Policy Problem Addressed by the Rule

Under s. 94.01, Wis. Stats., the Department of Agriculture, Trade and Consumer Protection ("Department") 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. Current research shows that mountain pine beetle has the ability to attack and kill species of pine that are native to Wisconsin. In light of the devastating effects of the mountain pine beetle attacks on the pine resource in the western U.S. and Canada, the Department's Bureau of Plant Industry has determined that mountain pine beetle constitutes a serious plant pest and that steps should be taken to prevent the introduction and establishment of this forest pest in Wisconsin.

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)

Business Sectors:
Initial investigations show that few Wisconsin businesses import pine forest products from western states. Therefore, the Department expects the proposed rule to have minimal economic impact statewide. Data from the latest U.S. Forest Service Timber Products Report for Wisconsin (2008) indicates that 94% of pine wood utilized by Wisconsin's timber industry is harvested from within Wisconsin. Of the remainder, about 4% comes from Michigan, 1% from Minnesota, and 0.5% from Canada. Less than 0.5% of pine is sourced from western states, with the majority of western pine imported for use by pole producers and custom log home building industries. Such imports may contain logs with or without bark attached. Logs without bark pose no risk. Implementation of a mountain pine beetle exterior host quarantine will primarily affect businesses receiving logs with bark still attached.

Although the vast majority of log home building companies use Wisconsin pine, a few import western pine logs, both with and without the bark still attached. Such companies would be asked to enter into a compliance agreement with the Department so that shipments could be inspected and documented. Anticipated expenses for the importing company would include costs associated with the implementation of mitigating measures such

as debarking or heat treatment, as outlined in the compliance agreement. Recent discussions with a business that purchases western pine logs with bark attached seemed amenable to the creation of this rule. The company representative referred to the compliance agreement system and bark removal requirement as "reasonable." The expenses born by the company related to compliance agreements would be minimal, though they may see higher raw material prices if logs need to be debarked prior to import.

Local Governments:
This rule will not impact local governments. Local governments will not have any implementation or compliance costs.

Utility Rate Payers:
The rule will have no effect on utility rate payers.

The Department's Bureau of Plant Industry:
The Bureau of Plant Industry will be able to absorb costs related to inspections and compliance work in their current budget, based on the small number of businesses that are expected to be affected.

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

This rule seeks to protect Wisconsin's pine resource and the industries that use Wisconsin-grown pine. The benefits of this rule are demonstrated by the impressive pine resource that Wisconsin currently possesses as well as the economic activity it generates. Based on Forest Inventory and Analysis (FIA) data from 2013, Wisconsin has the equivalent of over 45 million cords of pine growing stock (at least 5 inches in diameter). Using FIA data and calculating average value information for various pine products, a forest economist with the Department of Natural Resources (DNR) estimates the value of Wisconsin's pine resource at just over $3 billion. Pine species comprise nearly 11% of Wisconsin's forest area and an estimated 43 million pines stand on state forest land alone. In addition, an estimated $38 million of pine stumpage is harvested annually to help support Wisconsin jobs in logging, mill work, transportation, and support services. That number climbs to over $70 million if finished pine products are included.

If Wisconsin were to experience high levels of pine mortality, industries that benefit from healthy, productive pine forests such as recreation and tourism could be negatively impacted. In addition, other Wisconsin industries that may be impacted include those that utilize pine parts such as for seed collection, decoupage or craft supplies, pine straw mulch, wreaths and roping.

Implementation of this rule would not only protect the health of the pine resource, but would also prevent countless negative effects associated with mountain pine beetle mortality as observed in western states. Potential impacts include, but are not limited to, increased wildfire intensity, loss of tree species diversity, increase in tree removal costs, lower property values, loss of viable reforestation options, increased soil erosion, diminished air and water quality, and loss of wildlife habitat.

If this rule is not enacted, Wisconsin's pine resource will be increasingly vulnerable to the mountain pine beetle. If this pest becomes established it has the potential to kill millions of trees and adversely affect the forest products industry.

Long Range Implications of Implementing the Rule

In the long-term, implementation of this rule will benefit the environment, the citizenry, and businesses that use Wisconsin-grown pine. By placing restrictions on the import of mountain pine beetle infested material coming into the state, the potential for establishment of this pest is reduced. As a result the pine resource is protected from this destructive pest and the long term sustainability of Wisconsin's pine resource ensured.

Compare With Approaches Being Used by Federal Government

The federal government does not currently regulate the mountain pine beetle because it is a forest pest native to the western United States. The method of establishing a quarantine and restricting the import of regulated items though the use of compliance agreements, which this rule seeks to adopt, is widely used by the federal government.

Compare With Approaches Being Used by Neighboring States (Illinois, Iowa, Michigan and Minnesota)
Minnesota is currently the only state with an active exterior quarantine rule in place that limits the import of material that could harbor mountain pine beetle. Minnesota prohibits the import of pine wood or logs with bark attached from mountain pine beetle infested western states unless the items are delivered with a phytosanitary (plant health) certificate. Wisconsin's proposed rule outlines comparable import restrictions and exemptions.
Comments Received in Response to the Public's Economic Impact and DATCP Response
No comments were received in response either to the posting on the Department external website or the statewide administrative rules website.
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