

ADMINISTRATIVE RULES Fiscal Estimate & Economic Impact Analysis

1. Type of Estimate and Analysis <input checked="" type="checkbox"/> Original <input type="checkbox"/> Updated <input type="checkbox"/> Corrected	2. Date 01/28/2022
3. Administrative Rule Chapter, Title and Number (and Clearinghouse Number if applicable) ATCP 21, Plant Inspection and Pest Control	
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.	
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	6. Chapter 20, Stats. Appropriations Affected 20.115(7) (qc)
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	
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)	
9. Estimate of Implementation and Compliance to Businesses, Local Governmental Units and Individuals, per s. 227.137(3)(b)(1). \$132,000 (total cost to a subset of nursery dealers, wreathmakers or other plant-related businesses for 3 staff members spending 22 hours per year on regulatory issues and earning an average of \$20 per hour at an estimated 100 businesses. Nursery staff may need training to identify and treat pests, conduct growing season inspections, and handle compliance agreement and record-keeping paperwork related to the import of regulated articles from infested portions of the eastern US for EHS and SLF).	
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	
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. 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 70 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. EHS is an invasive pest introduced into at least 16 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	

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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 36 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 climactic 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 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.

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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 hemlock and 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 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 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

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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 harvests approximately 600,000 trees per year 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 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)

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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, PA, NY, NJ, DE, MD, and OH all have quarantines for this pest, and it is likely neighboring states will enact regulations once that pest reaches their borders, depending on natural resources and resources 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
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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
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