



State of Wisconsin  
Governor Tony Evers

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**Department of Agriculture, Trade and Consumer Protection**  
Secretary Randy Romanski

**DATE:** July 21, 2022

**TO:** Board of Agriculture, Trade and Consumer Protection

**FROM:** Randy Romanski, Secretary  
Brian Weigel, Administrator, Division of Agricultural Resource Management

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

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

**REQUESTED ACTION:**

At the July 21, 2022, Board meeting, the Department will request approval of a final rule draft, regarding ATCP 21, relating to plant inspection and pest control, in order for the Department to submit the final rule draft to the Governor and the Legislature.

**SUMMARY:**

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

The proposed rule repeals state quarantine regulations for: pine shoot beetle; emerald ash borer; and thousand cankers disease caused by the walnut twig beetle and *Geosmithia morbida* fungal disease complex.

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

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

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The proposed rule also creates a new quarantine regulation for an invasive pest not yet found in Wisconsin, the elongate hemlock scale, which feeds on over 43 species of conifers and threatens our Christmas tree industry as well as native hemlock and balsam fir forests.

The Department held public hearings on the preliminary rule draft on April 6 in Madison and on April 7, 2022 in Wausau. A virtual participation option was available via Zoom for both public hearings. A total of two individuals were recorded to have appeared and registered in support of the preliminary rule draft during the hearings (detailed in the table below). The Department accepted comments in writing, but no comments were received by the April 26, 2022 deadline. Stakeholders appreciated the effort to include industry, tribal, agency, and nonprofit engagement and input throughout the Advisory Committee meetings, emails, and public hearings. The Department also received information from federal and state partners that resulted in modifications to the proposed rule text. For example, after learning that the pest known as the spotted lanternfly was not being contained by quarantine regulations in eastern states, surrounding states were not planning to quarantine this pest, and observed plant health impacts related to this pest have been lower than expected, the Department opted to remove a proposed new quarantine for spotted lanternfly from the draft rule.

The Department incorporated all technical Legislative Council Rules Clearinghouse recommendations, except those related to spotted lanternfly, since we are no longer proposing to create a quarantine rule for that pest. We also considered but did not adopt other minor suggestions related to the hemlock woolly adelgid quarantine rule in an effort to maintain consistency with other parts of ATCP 21.

The Department is requesting Board approval to submit the proposed rule to the Governor and Legislature.

ATCP 21 List of Public Hearing Attendees and Commenters:

The following is a complete list of people who attended the public hearings or submitted comments on the proposed rule during the public comment period, their position taken, and whether they provided written or oral comments.

| Commenter #,<br>Name, Address, and Email   | Position Taken<br>(Support or Opposed)   | Method of Commenting<br>(Oral or Written) |
|--|--|---|
| Jeff Edgar<br>Owner, Silver Creek Nurseries<br>3914 Gass Lake Rd,<br>Manitowoc, WI 54220<br><a href="mailto:trees@silvercreeknurseries.com">trees@silvercreeknurseries.com</a> | Support (registered in support but did not speak; no written comments submitted) | NA  |
| Dean Lemke<br>Wisconsin Christmas Tree Producers Assoc.<br>W2850 Hwy 64<br>Merrill, WI 54452<br><a href="mailto:deancwe@gmail.com">deancwe@gmail.com</a>                       | Support (registered in support but did not speak; no written comments submitted) | NA  |

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

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PROPOSED ORDER

1 The Wisconsin Department of Agriculture, Trade and Consumer Protection proposes an order *to*  
2 *repeal* ATCP 21.01 (2g), (6m), and (12), 21.12, 21.17 and 21.21; *to amend* ATCP 21.01 (8g),  
3 21.16 (title), 21.16 (1), 21.19 (1) (b), 21.19 (1) (note), and 21.19 (2) (a); *to create* ATCP 21.16 (1)  
4 (b) 7. and 8., and (3); 21.19 (2) (a) (note) and 21.23, *relating to* plant inspection and pest control.

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

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

*Statutory Authority:* ss. 93.07 (1), 93.07 (12), 94.01 and 227.11 (2) (a) (intro.), Stats.

*Explanation of Agency Authority*

The Department of Agriculture, Trade and Consumer Protection (department) has broad general authority, under s. 93.07 (1), Stats., to interpret laws under its jurisdiction. The department also has broad general authority, under ss. 93.07 (12) and 94.01, Stats., to conduct surveys and inspections for the detection and control of pests injurious to plants; and to make, modify, and enforce reasonable rules, including imposing quarantines, to prevent and control the importation into or movement of plants or other material within this state as needed to prevent or control the introduction, establishment and spread of injurious plant pests. The department is proposing to adopt these rules, under authority of s. 227.11 (2) (a) (intro.), 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, by removing restrictions related to preventing and controlling infestations of the pine shoot beetle, emerald ash borer, and thousand cankers diseases; by revising restrictions related to preventing and controlling infestations or infections caused by the hemlock woolly adelgid and *Phytophthora ramorum*; and by adding restrictions to prevent and control infestations of the introduced, invasive insect pests known as the spotted lanternfly and the elongate hemlock scale.

*Plain Language Analysis*

The department identified ss. ATCP 21.12 and 21.17 as obsolete or unnecessary rules in a report filed with the Joint Committee for Review of Administrative Rules pursuant to s. 227.29. Stats. Section ATCP 21.12 is no longer necessary, as the entire state was added to the federal pine shoot beetle (PSB), *Tomicus piniperda*, quarantine in 2006 prior to its federal deregulation in 2020, and because no severe impacts of this pest have been observed in Christmas tree fields. The quarantine for emerald ash borer (EAB), *Agilus planipennis*, provided by s. ATCP 21.17 is no longer necessary, as the entire state was added to the federal EAB quarantine in 2018 before it was federally deregulated in 2021, and because this pest has now been detected in 65 of Wisconsin's 72 counties. Section ATCP 21.17 was enacted in 2008 and helped slow the spread of EAB while effective chemical controls like emamectin benzoate were developed, ash was removed and municipal urban forests were diversified, hazard trees were removed in high-use areas like campgrounds, and biocontrols were developed and released, including the larval parasitoids *Spathius galinae* and *Tetrastichus planipennisi*. The department also recommends the removal of s. ATCP 21.21, which establishes restrictions on walnut *Juglans* trees and other regulated articles due to concerns about thousand cankers disease, caused by the walnut twig beetle *Pityophthorus juglandis* and *Geosmithia morbida* fungal disease complex, following conferral with central plant board states, new science showing broad distribution of the pathogen, and lack of observed tree mortality or other serious impacts of this disease east of the Mississippi River. This proposed order repeals these obsolete rules.

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

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

Elongate hemlock scale, *Fiorinia externa* (EHS) is an introduced, invasive armored scale insect that feeds on a wide range of conifers, including balsam and Fraser fir, hemlock, and spruce species. EHS damages trees by using their threadlike mouthparts to remove nutrients from the mesophyll cells on the undersides of conifer needles, leading to needle yellowing, needle loss and predisposal to drought and other stressors, including HWA. EHS is hard to control with pesticides because mobile crawlers emerge throughout the season; because adult females, nymphs, and eggs are protected under hard waxy coverings; and because some systemic pesticides like imidacloprid that target vascular tissue do not kill this pest. EHS is relatively cold-tolerant and can survive for weeks on rooted and cut plant material. The department has intercepted this pest over 40 times on hemlock nursery stock, fir Christmas trees, and fir wreaths and holiday décor imported from eastern states since 2014. Although EHS has never been detected on the landscape in Wisconsin, this pest has been confirmed to be established in the states of Connecticut, Delaware, Georgia, Kentucky, Maine, Maryland, Massachusetts, Michigan, New Hampshire, Ohio, New Jersey, New York, North Carolina, Ohio, Pennsylvania, Rhode Island, South Carolina, Tennessee, Virginia, West Virginia; and the District of Columbia since being introduced into the US from Japan in 1908. The department seeks to create s. ATCP 21.23 related to elongate hemlock scale import controls and quarantine, in order to regulate plant products and other items that might spread this harmful, invasive pest into or within our state, where it would threaten Christmas tree growers, nursery stock and native hemlock and balsam fir forests. According to the Wisconsin Department of Natural Resources (DNR), over 424 million cubic ft. of balsam fir growing stock are present in the state, with 96% of growing stock concentrated in northern Wisconsin, mostly in mesic to wet mesic habitat types. Although balsam fir is not a major timber species, it provides important habitat for birds and other wildlife and it is important in Christmas tree, wreath and pulpwood production.

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

The United States Department of Agriculture's Animal Plant Health Inspection Service (USDA APHIS) federally deregulated pine shoot beetle, *Tomicus piniperda*, on November 2, 2020 by rescinding 7 CFR §301.50 due to lack of serious impacts related to this pest. USDA APHIS

federally deregulated the emerald ash borer, *Agrilus planipennis*, by rescinding 7 CFR §301.53 on January 14, 2021, due to significant ongoing spread of this pest, despite regulations, and in order to focus limited resources on pest treatments, including biocontrol. USDA APHIS federally regulates *P. ramorum* through 7 CFR §301.92 by delineating the infested area and requiring nurseries that ship stock outside of this area to submit notifications of all proven and associated hosts shipped out of the area, and by submitting to periodic inspections and removal and sanitation activities when ramorum blight is detected on nursery stock to prevent the spread and establishment of this disease, which causes sudden oak death. There are no federal regulations relating to elongate hemlock scale, hemlock woolly adelgid or thousand cankers disease.

### ***Summary of Public Comments Received during Hearing and Comment Periods***

#### **Preliminary Comment Period and at Public Hearing on Statement of Scope**

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

#### **Comment Period on the Economic Impact Analysis**

The economic impact analysis was posted for 15 days, with comments accepted through February 11, 2022. No comments were received.

#### **Public Hearing and Comment Period on the Preliminary Rule Draft**

The department held public hearings on the preliminary rule draft on April 6, 2022 in Madison and on April 7, 2022 in Wausau. A virtual participation option was available via Zoom for both public hearings but no members of the public used this platform to provide oral testimony or written feedback on the proposed draft rule change. Two individuals, Jeff Edgar, of Silver Creek Nurseries, and Dean Lemke, of Wisconsin Christmas Tree Producers Association, were recorded as having registered and appeared in support of the preliminary rule draft during the public hearings, but neither spoke or submitted written comments. The department accepted comments in writing until April 26, 2022, but no comments were received in that timeframe.

The department also received information from federal and state partners following the public comment deadline that resulted in modifications to the proposed draft rule text. Specifically, after learning that the spotted lanternfly was not being effectively contained by existing state quarantines, that surrounding states and federal partners were not planning to quarantine this pest, and that observed spotted lanternfly impacts have been lower than expected, the department opted to remove the proposed new quarantine for spotted lanternfly from the draft rule. Other factors that played into the decision included limited availability of its preferred host, tree-of-heaven in Wisconsin, and the fact that spotted lanternfly is unlikely to establish in the northern half of Wisconsin because of our cool climate. The department subsequently met internally and consulted with Advisory Committee members associated with tribes (Wisconsin Tribal Conservation Advisory Council Executive Director Jeff Mears 06/16/22), grape growers (WI Grape Growers Association President Craig Carpenter 06/08/22), nurseries (WI Nursery and Landscape

Association Board Member Ross Schwartz 06/08/22), and DNR (Invasive Forest Insects Program Coordinator Andrea Diss Torrance 06/07/22). These key partners agreed with the department's rationale for withdrawing the proposal to create a quarantine rule for spotted lanternfly in Wisconsin. In the absence of a quarantine, the department plans to focus its limited resources on spotted lanternfly outreach, survey and treatments, should spotted lanternfly be detected in this state.

## **Rules Clearinghouse**

The department modified the rule draft to address almost all Clearinghouse comments except comments related to the spotted lanternfly, which were no longer applicable once the department decided not to include that proposed rule into the final rule draft. The department also considered Clearinghouse feedback considering potentially combining items restricted under the hemlock woolly adelgid quarantine, including hemlock logs, branches and cut trees, all with bark, but ultimately decided to continue to list those items separately, since branches and cut trees might be used in holiday décor while logs would be more likely be used for pulp or other products. The department also created s. ATCP 21.16 (3) rather than creating s. 21.16 (1) (m) to prohibit knowingly importing live hemlock woolly adelgid into Wisconsin in order to maintain consistency with other parts of ch. ATCP 21.

### ***Comparison with Rules in Adjacent States***

**Illinois** has rescinded rules related to pine shoot beetle and emerald ash borer, and intends to rescind thousand cankers disease regulations in the near future. Like many states lacking significant hemlock resources, Illinois does not regulate hemlock woolly adelgid or elongate hemlock scale. It appears that Illinois is unlikely to enact a quarantine for spotted lanternfly if it is detected. Illinois regulates *P. ramorum*, per federal requirements.

**Iowa** has a list of insect and disease plant pests 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 its pest list in the near future.

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

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

### ***Summary of Factual Data and Analytical Methodologies***

The department reviewed ch. ATCP 21 and identified s. ATCP 21.12, the pine shoot beetle quarantine, and s. ATCP 21.17, the emerald ash borer quarantine as obsolete or unnecessary rules in a report filed with the Joint Committee for Review of Administrative Rules pursuant to s. 227.29 (1) (c), Stats. The department identified s. ATCP 21.21, the thousand cankers disease quarantine, as being unnecessary after reviewing recent scientific publications and consulting with states in the region. This proposed order repeals these obsolete and unnecessary rules. Remaining rule revisions to s. ATCP 21.16 for hemlock woolly adelgid and s. ATCP 21.19 for *P. ramorum*, as well as the creation of s. ATCP 21.23 to restrict elongate hemlock scale, are based on generally-accepted plant disease information from reliable sources, including USDA APHIS, the USDA Forest Service, USDA NASS, state-level surveys, regulatory interceptions, industry input, and peer-reviewed scientific publications.

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

Most of the businesses affected by these proposed rule changes are small businesses, including nurseries, Christmas tree growers, wreath-makers, loggers, and sawmill owners. The department's Bureau of Plant Industry will endeavor to address negative outcomes experienced by affected businesses, although it is noteworthy that some of these same businesses may be positively impacted by the removal of quarantine rules for PSB, EAB, and TCD. Businesses may enter into compliance agreements with the department, at no charge, that will allow the business to import and move regulated items, provided that risks have been mitigated. In addition, these proposed rules are being implemented to protect the Wisconsin forest resources upon which many of these small businesses depend or rely.

### ***Fiscal Estimate and Economic Impact Analysis***

The Fiscal Estimate and Economic Impact Analysis is attached.

### ***Effect on Small Business***

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

The Regulatory Flexibility Analysis is attached.

### ***Department Contact Person***

Shahla M. Werner, Plant Protection Section Manager  
Division of Agricultural Resource Management  
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(608) 957-5100  
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RULE TEXT

1 SECTION 1. ATCP 21.01 (2g) and (6m) are repealed.

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

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

4 SECTION 3. ATCP 21.01 (12) is repealed.

5 SECTION 4. ATCP 21.12 is repealed.

6 SECTION 5. ATCP 21.16, (title), is amended to read:

7 ATCP 21.16 **(title) Hemlock woolly adelgid; import controls: and quarantine**.

8 SECTION 6. ATCP 21.16 (1) is amended to read:

9 ATCP 21.16 **(1) HEMLOCK MOVEMENT OR IMPORTS RESTRICTED FROM THE INFESTED AREA**. ~~Except~~  
10 ~~as provided in sub. (2) no person may import any of the following items to this state from (a). The~~  
11 infested area means all of the following:

12 1. The states of Alaska, California, Connecticut, Delaware, Georgia, Idaho, Kentucky, Maine, Maryland,  
13 Massachusetts, Michigan, New Hampshire, New York, New Jersey, North Carolina, Ohio, Oregon,  
14 Pennsylvania, Rhode Island, South Carolina, Tennessee, Vermont, Virginia, Washington, West Virginia,  
15 the District of Columbia, and the Canadian provinces of British Columbia, and Nova Scotia.

16 2. Any state or country, or any delineated area within a state or country, which the responsible state agency  
17 has declared to be infested with hemlock woolly adelgid.

18 (b) Except as provided in sub. (2), no person may import any of the following items to this state  
19 from ~~California, Connecticut, Delaware, Georgia, Idaho, Kentucky, Maine, Maryland, Massachusetts,~~  
20 ~~Michigan, New Hampshire, New York, New Jersey, North Carolina, Ohio, Oregon, Pennsylvania, Rhode~~

21 ~~Island, South Carolina, Tennessee, Vermont, Virginia, Washington, West Virginia, the District of~~  
22 ~~Columbia, and the Canadian provinces of British Columbia, Nova Scotia, and any state or country, or any~~  
23 ~~delineated area within a state or country, which the responsible state agency has declared to be infested~~  
24 ~~with hemlock woolly adelgid; the infested area; or move any of the following items from an infested~~  
25 ~~area to an area that is not infested within this state:~~

26 ~~(a) 1.~~ Hemlock seedlings.

27 ~~(b) 2.~~ Hemlock nursery stock.

28 ~~(c) 3.~~ Hemlock logs with bark.

29 ~~(d) 4.~~ Hemlock lumber with bark.

30 ~~(e) 5. Uncomposted hHemlock bark chips with bark.~~

31 ~~(f) 6. Uncomposted hHemlock bark.~~

32 SECTION 7. ATCP 21.16 (1) (b) 7. and 8. are created to read:

33 7. Cut hemlock trees.

34 8. Hemlock branches.

35 SECTION 8. ATCP 21.16 **(3)** is created to read:

36 ATCP 21.16 **(3)** KNOWINGLY IMPORTING PLANT PEST; PROHIBITION. No person may knowingly  
37 import live hemlock woolly adelgid, *Adelges tsugae* (Annand) into this state, except pursuant to a  
38 permit under s. 94.03, Stats., and s. ATCP 21.04.

39 SECTION 9. ATCP 21.17 is repealed.

40 SECTION 10. ATCP 21.19 **(1) (b)** is amended to read:

41 ATCP 21.19 **(1) (b)** Move any regulated item under sub. (2) out of any *Phytophthora ramorum*  
42 regulated area that is identified in [7 CFR 301.92-3](#) and located within this state to any  
43 *Phytophthora ramorum* unregulated area within this state.

44 SECTION 11. ATCP 21.19 **(1) (note)** is amended to read:

45 ATCP 21.19 **(1) Note:** The United States department of agriculture, animal and plant health  
46 inspection service (USDA-APHIS) periodically updates the listing of regulated areas in [7 CFR](#)  
47 [301.92-3](#). ~~Subsection (1) applies to new regulated areas as those areas are identified in the CFR.~~  
48 ~~Each year, as a service, the Wisconsin department of agriculture, trade and consumer protection~~  
49 ~~distributes an updated federal CFR listing to nursery license holders and other affected persons in~~  
50 ~~this state. More frequent updates, Updates, if any, are available on the department's website at~~  
51 ~~[www.datep.state.wi.us](http://www.datep.state.wi.us) [www.datcp.wi.gov](http://www.datcp.wi.gov).~~ Subsection (1) applies to new regulated areas as those  
52 areas are identified in the CFR, regardless of whether affected persons receive update notices from  
53 the department. Persons may request update notices by ~~calling (608) 224-4573, by visiting the~~  
54 department's website, or by writing to the following address:

55 Wisconsin Department of Agriculture, Trade and Consumer Protection  
56 Division of Agricultural Resource Management  
57 P.O. Box 8911  
58 Madison, WI 53708-8911

59 SECTION 12. ATCP 21.19 **(2) (a)** is amended to read:

60 ATCP 21.19 **(2) (a)** Nursery stock (except acorns and seeds), unprocessed wood, and unprocessed  
61 wood and plant products, including bark chips, firewood, logs, lumber, mulch, wreaths, garlands,  
62 and greenery of the following ~~genera: *Abies* (fir), *Acer* (maple), *Adiantum* (maidenhair fern),~~  
63 ~~*Aesculus* (buckeye), *Arbutus* (madrone), *Arctostaphylos* (manzanita), *Calluna* (heather),~~  
64 ~~*Calycanthus* (spicebush), *Camellia* (camellia), *Castanea* (chestnut), *Clintonia* (blue bead lily),~~  
65 ~~*Corylus* (hazelnut), *Drimys* (winter's bark), *Dryopteris* (wood fern), *Fagus* (beech), *Fraxinus*~~  
66 ~~(ash), *Griselinia* (griselinia), *Hamamelis* (witch-hazel), *Heteromeles* (toyon), *Kalmia* (mountain~~  
67 ~~laurel), *Laurus* (laurel), *Leucothoe* (drooping leucothoe), *Lithocarpus* (tanoak), *Lonicera*~~

68 (~~honeysuckle~~), ~~*Maianthemum*~~ (false Solomon's seal), ~~*Magnolia*~~ (magnolia), ~~*Michelia*~~ (michelia),  
69 ~~*Nothofagus*~~ (Roble beech), ~~*Osmorhiza*~~ (sweet cicely), ~~*Parrotia*~~ (Persian ironwood), ~~*Pieris*~~ (pieris),  
70 ~~*Photinia*~~ (photinia), ~~*Pittosporum*~~ (Victorian box), ~~*Pseudotsuga*~~ (Douglas fir), ~~*Pyracantha*~~  
71 (Firethorn), ~~*Quercus*~~ (oak), ~~*Rhamnus*~~ (buckthorn), ~~*Rhododendron*~~ (rhododendron), ~~*Rhus*~~ (sumac),  
72 ~~*Rosa*~~ (rose), ~~*Rubus*~~ (salmonberry, raspberry, blackberry), ~~*Salix*~~ (willow), ~~*Sequoia*~~ (coast redwood),  
73 ~~*Syringa*~~ (lilac), ~~*Taxus*~~ (yew), ~~*Toxicodendron*~~ (poison ivy), ~~*Torreya*~~ (nutmeg), ~~*Trientalis*~~ (western  
74 starflower), ~~*Umbellurlaria*~~ (California bay laurel), ~~*Vaccinium*~~ (huckleberry), ~~*Vancouveria*~~  
75 (redwood ivy), ~~*Viburnum*~~ (viburnum) host plant taxa identified in [7 CFR 301.92-2](#) (d) as being  
76 proven hosts of *Phytophthora ramorum* or identified in [7 CFR 301.92-2](#) (e) as being associated  
77 with *Phytophthora ramorum*.

78 SECTION 13. ATCP 21.19 **(2) (a) (note)** is created to read:

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

86 Wisconsin Department of Agriculture, Trade and Consumer Protection

87 Division of Agricultural Resource Management

88 P.O. Box 8911

89 Madison, WI 53708-8911

90 SECTION 14. ATCP 21.21 is repealed.

91 SECTION 15. ATCP 21.23 is created to read:

92 **ATCP 21.23 Elongate Hemlock Scale; Import controls and quarantine.**

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

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

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

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

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

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

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

107 **(3) IMPORTING OR MOVING MATERIALS FROM INFESTED AREAS; PROHIBITION.** Except as provided in  
108 sub. (4), no person may do either of the following:

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

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

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

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

120 b. Processed lumber which is 100 percent bark-free or kiln-dried.

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

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

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

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

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

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

135 1. The name and address of the importer.

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

- 137 3. The locations from which the material may be imported under the agreement.
- 138 4. The names and addresses of the persons to whom, and the locations to which, the material may  
139 be imported under the agreement.
- 140 5. The method by which the material may be imported.
- 141 6. The time period covered by the agreement.
- 142 7. The importer's commitment to keep complete records of each import shipment under the  
143 agreement, and to submit those records to the department for inspection and copying upon request.
- 144 8. Specific import terms and conditions that will, in the department's opinion, effectively ensure  
145 that materials imported pursuant to the agreement will not introduce or spread the elongate  
146 hemlock scale.
- 147 9. A provision authorizing the department to terminate the agreement, without prior notice, for any  
148 reason.
- 149 SECTION 16. EFFECTIVE DATE. The rules adopted in this order shall take effect on the first day  
150 of the month following publication in the Wisconsin Administrative Register, pursuant to s. 227.22  
151 (2) (intro.), Stats.

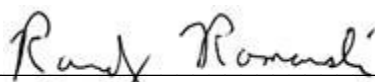
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(END OF RULE TEXT)

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Dated this 12th day of July, 2022

WISCONSIN DEPARTMENT OF AGRICULTURE,  
TRADE AND CONSUMER PROTECTION

  
By: Randy Romanski, Secretary

## ADMINISTRATIVE RULES Fiscal Estimate & Economic Impact Analysis

|   |  |
|---|--|
| <p>1. Type of Estimate and Analysis<br/><input type="checkbox"/> Original <input checked="" type="checkbox"/> Updated <input type="checkbox"/> Corrected</p>  | <p>2. Date<br/>06/28/2022</p>  |
| <p>3. Administrative Rule Chapter, Title and Number (and Clearinghouse Number if applicable)<br/>ATCP 21, Plant Inspection and Pest Control</p>   |  |
| <p>4. Subject<br/>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 elongate hemlock scale (EHS) quarantine rule.</p>   |  |
| <p>5. Fund Sources Affected<br/><input type="checkbox"/> GPR <input type="checkbox"/> FED <input type="checkbox"/> PRO <input type="checkbox"/> PRS <input type="checkbox"/> SEG <input checked="" type="checkbox"/> SEG-S</p>  | <p>6. Chapter 20, Stats. Appropriations Affected<br/>s. 20.115(7) (qc)</p> |
| <p>7. Fiscal Effect of Implementing the Rule<br/><input checked="" type="checkbox"/> No Fiscal Effect <input type="checkbox"/> Increase Existing Revenues <input type="checkbox"/> Increase Costs <input type="checkbox"/> Decrease Costs<br/><input type="checkbox"/> Indeterminate <input type="checkbox"/> Decrease Existing Revenues <input checked="" type="checkbox"/> Could Absorb Within Agency's Budget</p>  |  |
| <p>8. The Rule Will Impact the Following (Check All That Apply)<br/><input type="checkbox"/> State's Economy <input checked="" type="checkbox"/> Specific Businesses/Sectors<br/><input type="checkbox"/> Local Government Units <input type="checkbox"/> Public Utility Rate Payers<br/><input checked="" type="checkbox"/> Small Businesses (if checked, complete Attachment A)</p>   |  |
| <p>9. Estimate of Implementation and Compliance to Businesses, Local Governmental Units and Individuals, per s. 227.137(3)(b)(1).<br/>It is anticipated that up to 100 of Wisconsin's approximately 1,600 licensed nursery dealers and Christmas tree growers or other businesses importing host plant material from the EHS infested areas will experience a cost related to this rule change. The Department of Agriculture, Trade and Consumer Protection (Department) estimates the total cost to these 100 businesses could be up to \$132,000 annually. This estimate is based on the assumption of 3 nursery staff members at each business spending 22 hours per year on plant pest inspections and compliance agreement-related recordkeeping, earning an average of \$20 per hour, for a total per business impact of \$1,320 in staff time costs. These costs to green industry businesses may be avoided by not importing plants from portions of the eastern US infested with EHS.</p> |  |
| <p>10. Would Implementation and Compliance Costs Businesses, Local Governmental Units and Individuals Be \$10 Million or more Over Any 2-year Period, per s. 227.137(3)(b)(2)?<br/><input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p>  |  |
| <p>11. Policy Problem Addressed by the Rule<br/>The 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, Stats., the Department also has pest control authority and may impose, by rule, restrictions on the importation of serious plant pests, or items that may spread serious plant pests.</p>  |  |
| <p>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.<br/>The Department held a preliminary hearing on the Scope statement for s. ATCP 21 on 10/16/2020. No one appeared at the (virtual) hearing and no comments were received by the 10/23/2020 deadline.</p> <p>The Department held public hearings on the draft rule package for s. ATCP 21 on 04/06/22 in Madison and on 04/07/22 in Wausau. One person, Jeff Edgar, a member of the Advisory Committee and owner of Silver Creek Nursery of Manitowoc, WI attended the Madison hearing, registered in support of proposed changes but did not speak. One person, Dean Lemke, president of the Wisconsin Christmas Tree Producers Association attended the Wausau public hearing,</p>  |  |



## **ADMINISTRATIVE RULES**

### **Fiscal Estimate & Economic Impact Analysis**

registered in support of proposed changes but did not speak. No additional written comments were received by the 04/26/22 public comment 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 ATCP 21 Advisory Committee meeting, members supported removing quarantine rules for EAB, PSB, and TCD, as well as proposals to revise the HWA and Phytophthora ramorum rules.

At the second ATCP 21 Advisory Committee meeting, on 09/10/21, Dr. Christelle Guedot presented research on the spotted lanternfly, *Lycorma delicatula* (SLF), suggesting limited host availability of tree-of-heaven, *Ailanthus altissima*, and low climactic suitability for this insect in northern Wisconsin. Despite this, members voiced some support for regulating this pest through a quarantine rule, based on threats SLF could pose to Wisconsin's vineyards and nursery industry, as well as its general nuisance impact on citizens, and its potential impact on interstate trade. However, the Department later decided against creating a new quarantine rule for SLF upon learning that existing state quarantines have not been successful at preventing pest spread, neither APHIS nor any surrounding states plan to regulate SLF through quarantines, and SLF ecological and economic impacts on crops have been lower than expected. The Department subsequently met internally and consulted with Advisory Committee members associated with tribes (WTCAC Executive Director Jeff Mears 06/16/22), grape growers (WI Grape Growers Association President Craig Carpenter 06/08/22), nurseries (WNLA Board Member Ross Schwartz 06/08/22), and DNR (Invasive Forest Insects Program Coordinator Andrea Diss Torrance 06/07/22), and gained consensus for withdrawing the proposal to create a quarantine rule for SLF in Wisconsin. In the absence of a quarantine, the Department plans to focus our limited resources on SLF outreach, survey and treatments, should it be detected in this state.

EHS's 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 supports regulating elongate hemlock scale through a quarantine rule. At the third Advisory Committee meeting, the USDA Forest Service also provided information on balsam woolly adelgid (BWA), an introduced aphid-like insect that attacks true firs. This presentation indicated 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 Wisconsin Christmas Tree Producers Association (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 ch. ATCP 21 rule changes, they were not involved in the development of this EIA.

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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 ch. ATCP 21 are not anticipated to have any impacts on public utility rate payers or local units of government. An EHS quarantine could reduce costs to municipalities by reducing treatment costs that would be

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## **ADMINISTRATIVE RULES**

### **Fiscal Estimate & Economic Impact Analysis**

incurred, were this pest to become established. A new quarantine regulation for EHS is likely to have the greatest impacts on nursery dealers that bring nursery stock in from the eastern US where this pest is 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 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 would be limited and similar to those needing agreements for other invasive plant pests like HWA, for which we issued 20 compliance agreements in 2021. The Bureau of Plant Industry will be able to absorb staff time costs related to inspections and compliance work in their current budget, based on the small number of businesses that are expected to be affected.

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#### 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, will allow natural resource managers to focus on treatments, and will ensure 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, TCD, and *Geosmithia morbida* to be less damaging than initially assumed, provide strong justification for removing these regulations.

Failing to adopt a quarantine rule to prevent the introduction and establishment of an emerging non-native, invasive forest pest like EHS 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 research on effective biocontrols and chemical controls to advance, as has been demonstrated with pests like EAB and *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.

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## **ADMINISTRATIVE RULES**

### **Fiscal Estimate & Economic Impact Analysis**

Placing restrictions on the import of EHS reduces the potential for establishment of this destructive, introduced pest 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 will help safeguard Wisconsin's nursery industry, which generates \$2.85 billion in revenue per year and supports over 52,000 Wisconsin jobs, according to a study published in the Journal of Environmental Horticulture published in 2020. Regulating EHS will help protect Wisconsin's Christmas tree industry that harvested over 700,000 trees and generated \$23.3 million in sales in 2019, comprising 6.5% of the total cut Christmas trees sold in the nation (USDA NASS). Regulating EHS will also help Wisconsin retain its position as a top 5 Christmas tree producing state, along with Oregon, North Carolina, Michigan, & Pennsylvania.

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#### 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.

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#### 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 or HWA, impacts of these state 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 EHS to establish and spread into Wisconsin where it will threaten our nursery and Christmas tree industries and our natural resources.

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

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

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

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## ADMINISTRATIVE RULES Fiscal Estimate & Economic Impact Analysis

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 unlikely 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.

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19. Contact Name  
Shahla M. Werner

20. Contact Phone Number  
(608) 957-5100

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

## ADMINISTRATIVE RULES Fiscal Estimate & Economic Impact Analysis

### ATTACHMENT A

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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 spreading 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 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.

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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.

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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:

---

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

The Department 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 EHS quarantine area.

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5. Describe the Rule's Enforcement Provisions

Enforcement, if needed, will be implemented according to s. 94.77, Stats., 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.

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

- Yes     No
-

# Wisconsin Department of Agriculture, Trade and Consumer Protection

## Regulatory Flexibility Analysis

***Rule Subject: Plant Inspection and Pest Control***

***Adm. Code Reference: ATCP 21***

***Rules Clearinghouse No.: CR #22-022***

***DATCP Docket No.: 22-R-06***

### ***Rule Summary***

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

### ***Small Businesses Affected***

The Department believes the changes proposed will have minimal impacts on small businesses, including the state's licensed nursery dealers, Christmas tree growers, and wreathmakers who import nursery stock, conifer trees or fir wreaths from other states.

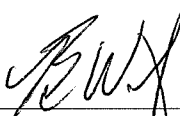
The Department licensed 611 nursery growers, 1,232 nursery dealers, and 374 Christmas tree growers in 2021. Although the Department does not require wreathmakers to be licensed, previous outreach on EHS indicates about 118 wreathmakers in the state. These businesses would only be impacted by proposed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

*Conclusion*

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

Dated this 05 day of July, 2022.

STATE OF WISCONSIN  
DEPARTMENT OF AGRICULTURE,  
TRADE AND CONSUMER PROTECTION

By  \_\_\_\_\_  
Brian Weigel, Administrator,  
Division of Agricultural Resource Management