



State of Wisconsin
Governor Tony Evers

Department of Agriculture, Trade and Consumer Protection
Secretary-designee Randy Romanski

DATE: November 6, 2020

TO: Board of Agriculture, Trade and Consumer Protection

FROM: Randy Romanski, Secretary-designee
Sara Walling, Administrator, Division of Agricultural Resource Management

SUBJECT: **ATCP 21, Plant Inspection and Pest Control; Requesting Approval for ATCP 21 Scope Statement ([SS 115-20](#))**

PRESENTED BY: Brian Kuhn, Director, Plant Industry Bureau

REQUESTED ACTION:

At the November 19, 2020, Board meeting, the department will request approval of the “Statement of Scope”, [SS 115-20](#), regarding DATCP rules related to regulating several pests and diseases that impact plants and plant products.

SUMMARY:

The objective of the proposed rule is to consider the modification, repeal, and addition to current plant pest control rules related to the import of plants, plant products, and other regulated articles that may introduce non-native, invasive pests and diseases into Wisconsin; or that may spread non-native, invasive pests and diseases within this state. Specifically, this proposal considers establishing DATCP quarantine regulations to restrict the movement of regulated items into Wisconsin from areas known to be infested with invasive insect pests known as the spotted lanternfly, the elongate hemlock scale, and the balsam woolly adelgid. It considers rescinding quarantines related to restricting the movement of regulated items from areas known to be infested with the non-native, invasive insect known as the emerald ash borer and pine shoot beetle and thousand cankers disease (a complex between the walnut twig beetle, *Pityophthorus juglandus* and the fungus *Geosmithia morbida*). Finally, it considers changes to the import regulations for the invasive insect known as the hemlock woolly adelgid and the plant disease known as Sudden Oak Death, or *Phytophthora ramorum* to reflect current pest and disease host distribution and geographic range.

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 dissemination of plant pests. The Department also has plant inspection and pest control authority under ss. 93.08 and 94.01, Stats. The Department may by rule impose restrictions on the

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importation or movement of serious plant pests, or items that may spread serious plant pests.

The Governor approved scope statement SS115-20 on August 13, 2020, thereby allowing DATCP to submit this scope statement for publication in the Wisconsin Administrative Register and to seek approval for the preliminary public hearing and comment period for the scope statement, from the DATCP Board. DATCP filed the attached statement of scope with the Legislative Reference Bureau for publication in the August 24, 2020, issue of the Wisconsin Administrative Register. DATCP also filed a copy with DOA.

The DATCP Board approved our request for a preliminary public hearing and comment period at its September 24, 2020 Board Meeting. The Department held a preliminary public hearing on the scope statement on October 16, 2020, via conference call and accepted written comments until October 23, 2020. No one attended the public hearing and no public comments were received. DATCP is now requesting approval of the Scope Statement at the November 19, 2020 DATCP Board meeting in order to enable us to commence work to draft the rule revisions.

STATEMENT OF SCOPE

Department of Agriculture, Trade and Consumer Protection (DATCP)

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

Relating to: Plant Inspection and Pest Control

Type: Permanent

1. Description of the objective of the rule:

This proposal will evaluate modification, repeal, and addition to current plant pest control rules related to the import of plants, plant products, and other regulated articles that may introduce non-native, invasive pests and diseases into Wisconsin; or that may spread non-native, invasive pests and diseases within this state.

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

History and background. 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 dissemination of plant pests. The Department also has plant inspection and pest control authority under ss. 93.08 and 94.01, Stats. The Department may by rule impose restrictions on the importation or movement of serious plant pests, or items that may spread serious plant pests.

Proposed policies. This proposal will explore the following mitigating actions to reduce the threat of introduction, establishment and spread of invasive plant pests and diseases to Wisconsin industries and natural resources, both from other states and from infested to uninfested counties within the state:

- Consider establishing three individual quarantine rules to restrict the movement of regulated items into Wisconsin from or through states and provinces known to be infested with the non-native, invasive pests Elongate Hemlock Scale, *Fiorinia externa*, Balsam Woolly Adelgid, *Adelges piceae*, or Spotted Lanternfly, *Lycorma delicatula*. Regulated items, including nursery stock and Christmas trees, will not be allowed into Wisconsin from states or provinces known to be affected by Elongate Hemlock Scale, Balsam Woolly Adelgid, or Spotted Lanternfly. In

the event that these pests reach Wisconsin, we will also explore regulations to restrict intrastate movement of these pests. Exemptions to these rules will be provided for articles with written certificates issued based on inspection by a pest control official, for businesses that enter into a state compliance agreement, or for businesses that possess a permit.

- Consider rescinding current plant pest control rules related to the import of plants and plant products related to Emerald Ash Borer, *Agrilus planipennis*, Thousand Cankers Disease (a complex between the walnut twig beetle, *Pityophthorus juglandus* and the fungus *Geosmithia morbida*), and Pine Shoot Beetle, *Tomicus piniperda*. Emerald ash borer and pine shoot beetle are both known to be widely distributed throughout Wisconsin. Emerald ash borer has been proposed for federal deregulation, and federal pine shoot beetle deregulation was finalized in July 2020. Annual surveys confirm that Wisconsin is negative for thousand cankers disease, and other eastern and Midwestern states have not observed any significant mortality attributable to thousand cankers disease.
- Consider revising current rules related to introducing the pathogen responsible for Sudden Oak Death, *Phytophthora ramorum*, into Wisconsin to add plant genera that are present on the federal but not the state list of regulated hosts, and to remove plant genera that are present on the state but not the federal list, based on current, best available science.
- Evaluate current rules such that the list of infested areas include all states and provinces known to contain Hemlock Woolly Adelgid, *Adelges tsugae*.

Policy Alternatives. If the Department does not establish individual quarantine rules for Elongate Hemlock Scale, Balsam Woolly Adelgid, or Spotted Lanternfly, these pests could become established in Wisconsin. These pests threaten Wisconsin's Christmas tree and nursery industries by reducing the quality and salability of Christmas trees and nursery stock to other states, and increasing pesticide costs for growers. Spotted Lanternfly feeding damage also threatens hops and fruit trees, and populations of this insect build up and swarm, becoming a public nuisance.

Maintaining Wisconsin's state Emerald Ash Borer quarantine could create incongruence between state and federal rules. In 2018, United States Department of Agriculture Animal and Plant Health Inspection Service Plant Protection and Quarantine (USDA-APHIS-PPQ) announced a proposal to federally deregulate Emerald Ash Borer to focus limited resources on biocontrol and other management, and because regulations no longer seemed to be preventing its spread.

Keeping Wisconsin's state Pine Shoot Beetle quarantine in place could prevent wood movement from Wisconsin to other states, and create incongruence between state and federal rules. In September 2019, USDA-APHIS-PPQ initiated the process of seeking input to lift the domestic quarantine for Pine Shoot Beetle, due to the limited impact of interstate movement restrictions on its spread; minimal damage caused to native pines, plantations and the nursery trade; and regulatory burden on businesses and individuals. This proposal was finalized in 2020.

If the Department fails to update rules for Sudden Oak Death and Hemlock Woolly Adelgid, the Department's list of regulated plants and infested areas may not reflect current science, and this could leave Wisconsin industries and natural resources unprotected from these threats.

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

Sections 93.07 (12), 94.01 (1), and 94.76 (1), (4), and (5), Stats.

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

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

94.01 Plant inspection and pest control authority.

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

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

The Department estimates that it will use approximately 0.20 FTE staff time to develop these rules over the next two years. This includes time required for investigation and analysis, rule drafting, preparing related documents, coordinating advisory committee meetings, holding public hearings, and communicating with affected persons and groups. The Department will use existing staff to develop this rule.

5. Description of all entities that may be impacted by the rule:

This rule will affect any person or business in a state or province known to be affected with the above pests that exports or transports regulated articles to or through Wisconsin. This rule will also affect any Wisconsin person or business that wishes to import regulated articles into Wisconsin. The rule will affect Christmas tree growers, nursery growers, and nursery dealers within Wisconsin.

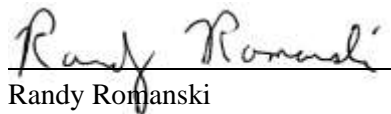
6. Summary and preliminary comparison of any existing or proposed federal regulation that is intended to address the activities to be regulated by the rule:

Department rules prohibit imports from any federally quarantined area, except under authorized conditions. Federal regulations related to the quarantine of specific exotic plant pests currently include Gypsy Moth, *Phytophthora ramorum*, Emerald Ash Borer, and Pine Shoot Beetle. However, there is no federal quarantine for Elongate Hemlock Scale, Balsam Woolly Adelgid, or Spotted Lanternfly, nor is one expected. This proposed rule is consistent with current state and federal rules.

7. Anticipated economic impact

The Department expects the proposed rule to result in minimal economic burdens, both statewide and locally. Wreathmakers and Christmas tree lot operators are most likely to import material from states infested with Elongate Hemlock Scale or Balsam Woolly Adelgid, but it is possible that they can find local source material or un-infested material from areas where those pests are not present. Implementation of an exterior quarantine for Elongate Hemlock Scale and Balsam Woolly Adelgid, while lifting the Pine Shoot Beetle quarantine will protect Wisconsin's Christmas tree industry, which harvests approximately 600,000 trees per year valued at over \$16 million. Implementing a Spotted Lanternfly quarantine, updating the Sudden Oak Death quarantine, and rescinding the Emerald Ash Borer quarantine will benefit Wisconsin's nursery industry, which contributes \$325 million to the Wisconsin economy annually, according to Steven Deller's latest [report on the Contribution of Agriculture to the Wisconsin Economy](#). It will also protect Wisconsin's 17 million acres of forest lands that support our forest products sector, which employs over 60,000 workers and generates \$24 billion a year to our economy, according to the Wisconsin Department of Natural Resources.

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Randy Romanski
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06 August 2020

Date Submitted