

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.: not yet assigned

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 spotted lanternfly (SLF) or elongate hemlock scale (EHS), in order to prevent their 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, mainly our 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 grower, 1,232 nursery dealer and 374 Christmas tree grower licenses in 2021. Although the Department doesn't require them to be licensed, previous outreach on EHS indicates that we have about 118 wreathmakers in the state. These businesses would only be impacted by proposed regulations if they import fir material from the EHS infested-area. While proposed quarantine rules will require compliance agreements, which offer limited exemptions to a quarantine rule for businesses that import plant products such as nursery stock from EHS and SLF infested areas that agree to mitigate pest risks, the department does not charge for these agreements. The Department also 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, main costs associated with these new rules will likely be related 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.

Reporting, Bookkeeping and other Procedures

This rule would create new bookkeeping and notification requirements for nurseries and other green industry businesses to obtain a compliance agreement from the Department, which provides a limited exemption to the quarantine to allow them to continue importing plant products while mitigating the risk of introducing pests.

However, the Department is able to absorb the cost of creating and maintaining these agreements with existing staff, and these costs may also be offset by avoiding the introduction of EHS and SLF, which would result in additional costs for inspections and control.

Businesses wishing to import regulated items would need to enter into a compliance agreement with the Department and notify the Department prior to receiving regulated items. Businesses would also need to maintain records of the regulated items received for a 36-month period and make those records available for review by Department personnel upon request.

Professional Skills Required

The proposed rule does not require any new professional skills from small businesses, as many are already familiar with similar regulations and possess the inspection and bookkeeping skills needed for compliance. Many of the same businesses impacted by EHS and SLF rules are familiar with compliance agreements and have had no significant compliance issues maintaining records and /or completing notification requirements for other pests like HWA and black stem rust.

Accommodation for Small Business

Most of the businesses affected by this rule are small businesses. Affected businesses will be encouraged to work with the Department's Bureau of Plant Industry to find solutions to negative outcomes this rule may yield. Businesses may work with the Department to enter into a compliance agreement, which will allow the business to import regulated items provided that risks of EHS and SLF have been mitigated. The Department also offers free pest identification training and free lab diagnostics for nursery licensees.

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 _____ day of _____, 2022.

STATE OF WISCONSIN
DEPARTMENT OF AGRICULTURE,
TRADE AND CONSUMER PROTECTION

By _____
Sara Walling, Administrator,
Division of Agricultural Resource Management