

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

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.

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 planipennis*. 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.Steine1@wisconsin.gov
Telephone at (608) 224-5024

The Regulatory Flexibility Analysis is attached.

Department Contact Person

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Division of Agricultural Resource Management
Department of Agriculture, Trade and Consumer Protection
P.O. Box 8911

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.datcp.state.wi.us 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. 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.

(END OF RULE TEXT)

Dated this ____ day of July, 2022

WISCONSIN DEPARTMENT OF AGRICULTURE,
TRADE AND CONSUMER PROTECTION

By: Randy Romanski, Secretary