

## Report From Agency

DATCP Docket No. 04-R-09  
Rules Clearinghouse No. 06-008

Final Hearing Draft  
April 25, 2006

### PROPOSED ORDER OF THE STATE OF WISCONSIN DEPARTMENT OF AGRICULTURE, TRADE AND CONSUMER PROTECTION ADOPTING AND AMENDING RULES

- 1 The state of Wisconsin department of agriculture, trade and consumer protection
- 2 proposes the following order to repeal and recreate Appendix A to ch. ATCP 21; and to
- 3 create ATCP 21.01(2g), (2r), (6m) and (8w), 21.17, 21.18 and 21.19; relating to plant
- 4 pest import controls and quarantines.

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

This rule regulates the import and movement of host materials that may spread infestations of Emerald Ash Borer, Asian Longhorned Beetle, *Phytophthora ramorum* (Sudden Oak Death, ramorum leaf blight or ramorum dieback) or Hemlock Woolly Adelgid. Each of these pests has been found in the United States, and each poses a major threat to Wisconsin's forest and urban landscapes. None of these pests has yet been found in Wisconsin.

This rule regulates imports of host materials, to Wisconsin, from known infested areas. If any of these pests is ever found in Wisconsin, this rule will also affect the movement of host materials from infested areas in this state.

#### *Statutory Authority*

Statutory Authority: ss. 93.07(1) and (12) and 94.01, Stats.  
Statutes Interpreted: ss. 93.07(12) and 94.01, Stats.

The department of agriculture, trade and consumer protection ("DATCP") has general authority to adopt rules interpreting statutes under its jurisdiction (*see* s. 93.07(1), Stats.). DATCP is specifically authorized to adopt rules to prevent the introduction and spread of injurious plant pests, including plant diseases (*see* ss. 93.07(12) and 94.01(1), Stats.). DATCP works with other agencies including the United States department of agriculture, animal and plant health inspection service (USDA-APHIS), to control serious plant pests.

## ***Rule Contents***

### **Emerald Ash Borer**

Emerald Ash Borer, *Agrilus planipennis* Fairmaire, is a wood-boring beetle that attacks and eventually kills ash trees. Ash is a major urban and forest tree species in Wisconsin. An estimated 628 million ash trees in this state are at risk of destruction by Emerald Ash Borer.

Emerald Ash Borer, which is native to Asia, has been found in 3 states and one Canadian province. Thirty-nine counties in Michigan, 9 counties in Ohio, and 2 counties in Indiana have infestations (20 counties in Michigan and one in Ohio are considered “generally infested”). An infestation was recently found, for the first time, in the Upper Peninsula of Michigan. As many as 14 million ash trees have already died as a result of infestations in Michigan, Ohio and Indiana.

Emerald Ash Borer can be spread by the movement of ash host materials, including firewood, nursery stock, trees, logs, bark chips, and any lumber or wood with bark attached. This rule prohibits the import or intrastate movement of the emerald ash borer in any living stage and ash host materials from infested areas designated by USDA-APHIS, unless a pest control official inspects the materials and certifies that they are free of Emerald Ash Borer.

USDA-APHIS publishes a list of infested areas in the Code of Federal Regulations (CFR), and updates the CFR listing as necessary. This rule regulates the import or movement of host materials from infested areas that are currently listed in the CFR, or that may be listed in the future.

### **Asian Longhorned Beetle**

The Asian Longhorned Beetle, *Anoplophora glabripennis* (Motschulsky), infests and kills several types of deciduous trees including maple, a highly important tree species in Wisconsin. The Asian Longhorned Beetle is a serious threat to Wisconsin’s lumber, maple syrup, nursery, commercial fruit and tourism industries.

Infestations have caused the destruction of more than 10,000 trees in New York, New Jersey and Illinois (Cook County). Preemptive destruction of trees is the only known reliable method for controlling the Asian Longhorned Beetle.

This rule prohibits the import or intrastate movement of the Asian longhorned beetle in any living stage and host materials from infested areas designated by USDA-APHIS, unless a pest control official inspects the materials and certifies that they are free of Asian Longhorned Beetle. Host materials include:

- Cut firewood of all non-coniferous species.
- Nursery stock, logs, green lumber, stumps, roots, branches or debris from any of the following trees: maple, buckeye, mimosa, birch, hackberry, ash, sycamore, poplar, willow, mountain ash and elm.

USDA-APHIS publishes a list of infested areas in the Code of Federal Regulations (CFR), and updates the CFR listing as necessary. This rule regulates the import or movement of host materials from infested areas that are currently listed in the CFR, or that may be listed in the future.

### **Phytophthora ramorum**

Since 1995, thousands of oaks in California and Oregon have died of *Phytophthora ramorum* (Werres *et al.*), also known as Sudden Oak Death, ramorum leaf blight, and ramorum dieback. *Phytophthora ramorum*, the pathogen that causes these diseases, is harbored in a large number of different plant species. The pathogen is also found in soil in infested areas.

This rule restricts the import or intrastate movement of host materials from infested areas designated by USDA-APHIS, unless a pest control official inspects the materials and certifies that they are free of *Phytophthora ramorum*. Host materials include:

- Nursery stock, unprocessed wood, and unprocessed wood and plant products (including bark chips, firewood, logs, lumber, mulch, wreaths, garlands and greenery) from species designated in this rule. The designated species include a large variety of different trees and plants, including for example: fir, maple, buckeye, heather, camellia, chestnut, hazelnut, wood fern, beech, ash, witch-hazel, holly, laurel, oak, tanoak, honeysuckle, Douglas fir, rhododendron, sumac, rose, raspberry, blackberry, huckleberry, willow, redwood, lilac, yew, poison ivy, viburnum, magnolia and sumac.
- Soil and potted media.
- Any other material that could reasonably harbor *Phytophthora ramorum*.

USDA-APHIS publishes a list of infested areas in the Code of Federal Regulations (CFR), and updates the CFR listing as necessary. This rule regulates the import or movement of host materials from infested areas that are currently listed in the CFR, or that may be listed in the future.

### **Hemlock Woolly Adelgid**

Hemlock Woolly Adelgid, *Adelges tsugae* (Annand), is a serious pest that kills native and ornamental hemlock trees, an important Wisconsin resource. Infestations of Hemlock Woolly Adelgid currently exist in 17 states. DATCP rules currently limit the import and movement of Hemlock Woolly Adelgid host materials from infested areas identified in the current rules.

USDA-APHIS does not have a formal regulatory program for the Hemlock Woolly Adelgid, but the United States Forest Service maintains and updates a list of infested areas. Because the Forest Service does not publish its list in the Code of Federal Regulations (CFR), DATCP lists the infested areas in its rule (rather than by reference to the CFR).

The current DATCP rule is based on an outdated Forest Service list. This rule updates the current DATCP list to conform to the most recent Forest Service list. This rule makes no other changes to current DATCP rules.

### ***Federal Regulation***

USDA-APHIS regulates plant pests and diseases at the federal level. Wisconsin and other states work with USDA-APHIS to prevent the introduction and spread of plant pests and diseases.

States may regulate *intrastate* movement within their own territory, and may also restrict imports of host materials from infested areas in other states. States may act on their own authority (independent of USDA-APHIS), and may restrict imports and movement from infested areas other than those designated by USDA-APHIS. However, a coordinated federal-state program promotes consistent regulation of interstate commerce throughout the United States.

The federal-state regulatory scheme may vary, depending on the type of pest or disease. In the case of Emerald Ash Borer, Asian Longhorned Beetle and *Phytophthora ramorum*, it takes the following general form:

- USDA-APHIS lists infested areas (such as counties) in the Code of Federal Regulations (CFR), and updates the list from time to time.
- If a state fails to quarantine an infested area listed by USDA-APHIS in that state, USDA-APHIS may quarantine the *entire state*. The threat of a statewide federal quarantine is an incentive for state action. A statewide federal quarantine restricts exports from the entire state (not just infested areas), but does not affect the movement of materials within the state.
- If a state quarantines infested areas that USDA-APHIS has listed for that state, USDA-APHIS also quarantines those areas (*not* the entire state). The state and federal quarantines restrict interstate *and intrastate* movement from the quarantined areas, but do *not* affect interstate exports from other parts of the state.
- State and federal quarantines prohibit the movement of potential host materials (such as firewood and untreated lumber) from quarantined areas. State quarantines must meet federal standards, in order to be recognized by USDA-APHIS for federal quarantine purposes.

USDA-APHIS does not have a formal regulatory program for the Hemlock Woolly Adelgid, but the United States Forest Service maintains and updates a list of infested areas. DATCP lists infested areas in its current rule (rather than by reference to the CFR), because the Forest Service does not publish its list in the CFR. DATCP must modify its rule if it wishes to incorporate changes in the Forest Service list.

### ***Surrounding State Regulation***

#### **Emerald Ash Borer**

Michigan regulates the import and movement of host materials from infested areas designated by USDA-APHIS. Thirty-nine counties are currently affected by state and federal quarantines. The quarantines prohibit movement of uninspected host materials from infested areas. Quarantines further prohibit all shipments of ash *nursery stock* within or from Michigan's Lower Peninsula.

Emerald Ash Borer has not been detected in any of the other states surrounding Wisconsin (Illinois, Iowa or Minnesota). None of those states has adopted regulations related to Emerald Ash Borer. However, Illinois has adopted a readiness plan, and Minnesota has implemented a detection program.

#### **Asian Longhorned Beetle**

Illinois is the only state, adjacent to Wisconsin, in which Asian Longhorned Beetle has been detected to date. Over 1,500 trees have been destroyed in Cook County since 1998 (tree destruction is the only effective method of control). Illinois and USDA-APHIS have established quarantines in Cook County. Quarantines prohibit the movement of host materials from the quarantined area.

The Asian Longhorned Beetle has not been detected in Iowa, Michigan or Minnesota. Those states have not adopted any regulations related to Asian Longhorned Beetle.

#### ***Phytophthora ramorum***

*Phytophthora ramorum* has not been found in Michigan, Illinois, Iowa or Minnesota (only Illinois and Minnesota have implemented nursery inspection programs for the fungus). None of the states surrounding Wisconsin has adopted regulations related to *Phytophthora ramorum*.

#### **Hemlock Woolly Adelgid**

Wisconsin is one of five states that currently regulate the import and movement of Hemlock Woolly Adelgid host materials. The other states are Michigan, Maine, New Hampshire and Vermont.

Michigan, like Wisconsin, has large populations of native hemlock, mostly in the northern portion of the Lower Peninsula and in the entire Upper Peninsula. Michigan experienced one introduction of Hemlock Woolly Adelgid on nursery stock a few years ago, but successfully eradicated that introduction.

Minnesota and Illinois have no large populations of native hemlock, and Iowa has no native hemlock. None of those states regulates the import or movement of Hemlock Woolly Adelgid host materials.

### ***Business Impact***

This rule regulates the import and movement of certain host materials from areas infested with Emerald Ash Borer, Asian Longhorned Beetle, *Phytophthora ramorum* or Hemlock Woolly Adelgid. Regulated host materials vary, depending on the pest in question, but include things like nursery stock, firewood, untreated lumber and mulch.

This rule is designed to prevent and limit the spread of these pests, which pose a grave threat to Wisconsin forest and urban landscapes. This rule will help protect Wisconsin industries, by helping to protect the resources on which they depend. This rule may have some adverse impact on some individual businesses, but that adverse impact is greatly outweighed (even for those businesses) by the protection that this rule affords.

None of the pests regulated by this rule have been detected in Wisconsin to date, so the initial impact of this rule will be limited to businesses that may be importing host materials from outside this state. Importers may not import host materials from infested areas in other states, unless a pest control official in the state of origin inspects the materials and certifies that they are free of the relevant pest.

This may increase costs or limit supply options for some materials. However, there are many alternative supply options at this time, so this rule is expected to have a very limited impact on Wisconsin businesses in the short term. In any case, this rule merely duplicates and reinforces existing federal rules related to interstate movement. It also protects Wisconsin importers from pest infestations that could destroy their businesses.

Wisconsin importers affected by this rule must make sure that import shipments from infested areas have been properly inspected and certified. This rule does not impose additional recordkeeping requirements, and does not require affected businesses to hire additional professional services or pest experts. But *with or without* this rule, businesses would benefit from increased knowledge of plant pest threats. DATCP will work with affected industries to provide helpful information and education.

This rule may have a larger impact on in-state business if any of the regulated pests is ever found in this state. The rule could then affect a variety of in-state businesses including nursery growers and dealers, lumber mills, paper mills, firewood sellers, landscapers and loggers. Businesses would not be able to move host materials from

infested areas unless a state inspector first inspected the materials and certified that they were pest free. There is a flat fee of \$50 for an inspection certificate.

Businesses in infested areas would likely incur added costs, and could lose some markets for their products. However, those consequences would result from the infestation itself, *with or without* this rule. This rule might add some incremental costs, but would provide a mechanism by which commerce could continue subject to regulation. The rule would protect businesses and forest resources in other areas of the state, and would forestall more general federal quarantines that could limit exports from the entire state (including exports from uninfested areas).

This rule applies to large and small businesses alike. An exemption for small business would undermine the effectiveness of the rule in preventing the introduction and spread of harmful pests. This rule will not have a significant adverse economic impact on small business. Therefore, it is not subject to the delayed small business effective date provision in s. 227.22(2)(e), Stats.

Under 2003 Wis. Act 145, DATCP and other agencies must adopt rules spelling out their enforcement policy for small businesses. DATCP has not incorporated a small business enforcement policy in this rule, but will propose a separate rule on that subject. DATCP will, to the maximum extent feasible, seek voluntary compliance with this rule.

### ***Fiscal Impact***

This rule will have little fiscal impact on Wisconsin state government in the short term, and no fiscal impact on local government. DATCP will incur some costs to provide information and education to affected businesses. However, DATCP expects to absorb those costs. A fiscal estimate is attached.

The attached fiscal estimate is based on the *current* distribution of the regulated pests, which have not been found in Wisconsin to date. There could be a much more dramatic fiscal impact on state government in the future, if any of the regulated pests is ever found in Wisconsin. However, that impact will largely result from the infestation itself, *not* this rule. This rule will help to prevent increased costs, by helping to prevent the introduction of pests to this state.

If an infestation is ever found in this state, DATCP may experience the following fiscal impacts *with or without this rule*:

- Substantial costs and personnel demands for detection, monitoring and control efforts. Costs may vary, depending on the nature and scope of the infestation, and cannot be accurately predicted at this time. However, control programs could be comparable to the gypsy moth control program which currently costs Wisconsin approximately \$3.6 million per year (including federal grant funds to Wisconsin, but excluding direct federal services). Michigan reportedly hired at least 140 additional staff to control infestations of Emerald Ash Borer in that state.

- Greatly increased demand for state inspection and certification of commodities (host materials) shipped from infested areas, to satisfy buyers that the commodities are free of relevant pests. DATCP can charge fees to cover its cost to perform requested inspections, but would need legislative authorization to hire additional inspectors. The number of inspection requests may depend on the nature and scope of the infestation, and cannot be accurately predicted at this time. However, the number could be very large, given the importance of the nursery, landscaping and forest-based industries in this state.
- Increased costs for information and education.

If infestation occurs in this state, local governments may also experience dramatically increased costs related to dying trees and pest control. However, those costs will result from the infestation itself, and not from this rule. This rule will not, by itself, impose significant costs on local government. By helping to prevent the introduction and spread of serious pests, this rule will help to minimize local costs.

### ***Environmental Impact***

This rule will have a positive impact on the environment, by helping to prevent the introduction and spread of serious plant pests that threaten key tree species in Wisconsin. A preliminary environmental assessment is attached.

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1           **SECTION 1.** ATCP 21.01(2g) is created to read:

2           ATCP 21.01(2g) “Ash” means a tree of the genus *Fraxinus*.

3           **SECTION 2.** ATCP 21.01(2r) is created to read:

4           ATCP 21.01(2r) “Asian longhorned beetle” means the live insect, *Anoplophora*  
5 *glabripennis* (Motschulsky), family Cerambycidae, in any living stage of development.

6           **SECTION 3.** ATCP 21.01(6m) is created to read:

7           ATCP 21.01(6m) “Emerald ash borer” means the live insect, *Agrilus planipennis*  
8 Fairmaire, family Buprestidae, in any living stage of development.

9           **SECTION 4.** ATCP 21.01(8w) is created to read:

10          ATCP 21.01(8w) “Infestation” means the presence of a regulated plant pest, or  
11 conditions that make it reasonable to believe that a regulated plant pest is present.



1           **SECTION 5.** ATCP 21.17 is created to read:

2           **ATCP 21.17 Emerald ash borer; import controls and quarantine. (1)**

3   IMPORTING OR MOVING REGULATED ITEMS FROM INFESTED AREAS; PROHIBITION. Except  
4 as provided in sub. (3), no person may do any of the following:

5           (a) Import a regulated item under sub. (2) into this state if that item originates  
6 from an emerald ash borer regulated area identified in 7 CFR 301.53-3.

7           (b) Move any regulated item under sub. (2) out of an emerald ash borer regulated  
8 area that is identified in 7 CFR 301.53-3 and located in this state.

9           **NOTE:** The United States department of agriculture, animal and plant health  
10 inspection service (USDA-APHIS) periodically updates the list of  
11 regulated areas in 7 CFR 301.53-3. Subsection (1) applies to new  
12 regulated areas as those areas are identified in the CFR.

13  
14           Each year, as a service, the Wisconsin department of agriculture, trade and  
15 consumer protection distributes an updated federal CFR listing to nursery  
16 license holders and other affected persons in this state. More frequent  
17 updates, if any, are available on the department's website at  
18 [www.datcp.state.wi.us](http://www.datcp.state.wi.us). Subsection (1) applies to new regulated areas as  
19 those areas are identified in the CFR, regardless of whether affected  
20 persons receive update notices from the department. Persons may request  
21 update notices by calling (608) 224-4573, by visiting the department's  
22 website, or by writing to the following address:

23  
24           Wisconsin Department of Agriculture, Trade and Consumer Protection  
25           Division of Agricultural Resource Management  
26           P.O. Box 8911  
27           Madison, WI 53708-8911  
28

29           **(2) REGULATED ITEMS.** The following are regulated items for purposes of sub.

30           (1):

31           (a) The emerald ash borer, *Agrilus planipennis* Fairmaire, in any living stage.

32           (b) Ash trees.

33           (c) Ash limbs, branches and roots.

1 (d) Ash logs, slabs or untreated lumber with bark attached.

2 (e) Cut firewood of all non-coniferous species.

3 (f) Ash chips and ash bark fragments (both composted and uncomposted) larger  
4 than one inch in diameter.

5 (g) Any other item or substance not listed in sub. (2) that may be designated as a  
6 regulated item if a pest control official determines that it presents a risk of spreading  
7 emerald ash borer and notifies the person in possession of the item or substance that it is  
8 subject to the restrictions of the regulations.

9 (3) INSPECTED AND CERTIFIED ITEMS; EXEMPTION. Subsection (1) does not  
10 prohibit the shipment of a regulated item if a pest control official in the state or province  
11 of origin does all of the following:

12 (a) Inspects the regulated item.

13 (b) Certifies any of the following in a certificate that accompanies the shipment:

14 1. The regulated item originates from non-infested premises and has not been  
15 exposed to emerald ash borer.

16 2. The regulated item was found, at the time of inspection, to be free of emerald  
17 ash borer.

18 3. The regulated item has been effectively treated to destroy emerald ash borer.  
19 The certificate shall specify the date and method of treatment.

20 4. The regulated item is produced, processed, stored, handled or used under  
21 conditions, described in the certificate, that effectively preclude the transmission of  
22 emerald ash borer.

23 **SECTION 6.** ATCP 21.18 is created to read:

1           **ATCP 21.18 Asian longhorned beetle; import controls and quarantine. (1)**

2   IMPORTING OR MOVING REGULATED ITEMS FROM INFESTED AREAS; PROHIBITION. Except  
3   as provided in sub. (3), no person may do any of the following:

4           (a) Import a regulated item under sub. (2) into this state if that item originates  
5   from an Asian longhorned beetle regulated area identified in 7 CFR 301.51-3.

6           (b) Move a regulated item under sub. (2) out of a regulated area that is identified  
7   in 7 CFR 301.51-3 and located in this state.

8           **NOTE:** The United States department of agriculture, animal and plant health  
9           inspection service (USDA-APHIS) periodically updates the listing of  
10          regulated areas in 7 CFR 301.51-3. Subsection (1) applies to new  
11          regulated areas as those areas are identified in the CFR.

12  
13          Each year, as a service, the Wisconsin department of agriculture, trade and  
14          consumer protection distributes an updated federal CFR listing to nursery  
15          license holders and other affected persons in this state. More frequent  
16          updates, if any, are available on the department's website at  
17          [www.datcp.state.wi.us](http://www.datcp.state.wi.us). Subsection (1) applies to new regulated areas as  
18          those areas are identified in the CFR, regardless of whether affected  
19          persons receive update notices from the department. Persons may request  
20          update notices by calling (608) 224-4573, by visiting the department's  
21          website, or by writing to the following address:

22  
23                  Wisconsin Department of Agriculture, Trade and Consumer Protection  
24                  Division of Agricultural Resource Management  
25                  P.O. Box 8911  
26                  Madison, WI 53708-8911  
27

28           **(2) REGULATED ITEMS.** The following are regulated items for purposes of sub.  
29   **(1):**

30           (a) The Asian longhorned beetle, *Anoplophora glabripennis* (Motschulsky), in  
31   any living stage.

32           (b) Cut firewood of all non-coniferous species.

1 (c) Trees, tree parts, wood or debris, more than ½ inch in diameter, from any of  
2 the following genera: *Acer* (maple), *Aesculus* (buckeye), *Albizia* (mimosa), *Betula*  
3 (birch), *Celtis* (hackberry), *Fraxinus* (ash), *Platanus* (sycamore), *Populus* (poplar), *Salix*  
4 (willow), *Sorbus* (mountain ash), and *Ulmus* (elm). This includes nursery stock, logs,  
5 green lumber, stumps, roots and branches, whether living, dead, cut or fallen.

6 (d) Any other item or substance not listed in sub. (2) that may be designated as a  
7 regulated item if a pest control official determines that it presents a risk of spreading  
8 Asian longhorned beetle and notifies the person in possession of the item or substance  
9 that it is subject to the restrictions of the regulations.

10 (3) INSPECTED AND CERTIFIED ITEMS; EXEMPTION. Subsection (1) does not  
11 prohibit the shipment of a regulated item if a pest control official in the state or province  
12 of origin does all of the following:

13 (a) Inspects the regulated item.

14 (b) Certifies any of the following in a certificate that accompanies the shipment:

15 1. The inspected item originates from non-infested premises and has not been  
16 exposed to Asian longhorned beetle.

17 2. The inspected item was found, at the time of inspection, to be free of Asian  
18 longhorned beetle.

19 3. The inspected item has been effectively treated to destroy Asian longhorned  
20 beetle. The certificate shall specify the date and method of treatment.

21 4. The inspected item was produced, processed, stored, handled or used under  
22 conditions, described in the certificate, that effectively preclude the transmission of Asian  
23 longhorned beetle.

1           **SECTION 7.** ATPC 21.19 is created to read:

2           **ATCP 21.19 *Phytophthora ramorum*; import controls and quarantine.** (1)

3   IMPORTING OR MOVING REGULATED ITEMS FROM INFESTED AREAS; PROHIBITION. Except  
4 as provided in sub. (3), no person may do any of the following:

5           (a) Import a regulated item under sub. (2) into this state if that item originates  
6 from any *Phytophthora ramorum* regulated area identified in 7 CFR 301.92-3.

7           (b) Move any regulated item under sub. (2) out of any *Phytophthora ramorum*  
8 regulated area that is identified in 7 CFR 301.92-3 and located in this state.

9           **NOTE:** The United States department of agriculture, animal and plant health  
10 inspection service (USDA-APHIS) periodically updates the listing of  
11 regulated areas in 7 CFR 301.92-3. Subsection (1) applies to new  
12 regulated areas as those areas are identified in the CFR.

13  
14           Each year, as a service, the Wisconsin department of agriculture, trade and  
15 consumer protection distributes an updated federal CFR listing to nursery  
16 license holders and other affected persons in this state. More frequent  
17 updates, if any, are available on the department's website at  
18 [www.datcp.state.wi.us](http://www.datcp.state.wi.us). Subsection (1) applies to new regulated areas as  
19 those areas are identified in the CFR, regardless of whether affected  
20 persons receive update notices from the department. Persons may request  
21 update notices by calling (608) 224-4573, by visiting the department's  
22 website, or by writing to the following address:

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24           Wisconsin Department of Agriculture, Trade and Consumer Protection  
25           Division of Agricultural Resource Management  
26           P.O. Box 8911  
27           Madison, WI 53708-8911  
28

29           **(2) REGULATED ITEMS.** The following are regulated items for purposes of sub.

30           (1):

31           (a) Nursery stock (except acorns and seeds), unprocessed wood, and unprocessed  
32 wood and plant products, including bark chips, firewood, logs, lumber, mulch, wreaths,  
33 garlands, and greenery of the following genera: *Abies* (fir), *Acer* (maple), *Adiantum*

1 (maidenhair fern), *Aesculus* (buckeye), *Arbutus* (madrone), *Arctostaphylos* (manzanita),  
2 *Calluna* (heather), *Calycanthus* (spicebush), *Camellia* (camellia), *Castanea* (chestnut),  
3 *Clintonia* (blue-bead lily), *Corylus* (hazelnut), *Drimys* (winter's bark), *Dryopteris* (wood  
4 fern), *Fagus* (beech), *Fraxinus* (ash), *Griselinia* (griselinia), *Hamamelis* (witch-hazel),  
5 *Heteromeles* (toyon), *Kalmia* (mountain laurel), *Laurus* (laurel), *Leucothoe* (drooping  
6 leucothoe), *Lithocarpus* (tanoak), *Lonicera* (honeysuckle), *Maianthemum* (false  
7 Solomon's seal), *Magnolia* (magnolia), *Michelia* (michelia), *Nothofagus* (Roble beech),  
8 *Osmorhiza* (sweet cicely), *Parrotia* (Persian ironwood), *Pieris* (pieris), *Photinia*  
9 (photinia), *Pittosporum* (Victorian box.), *Pseudotsuga* (Douglas fir), *Pyracantha*  
10 (Firethorn), *Quercus* (oak), *Rhamnus* (buckthorn), *Rhododendron* (rhododendron), *Rhus*  
11 (sumac), *Rosa* (rose), *Rubus* (salmonberry, raspberry, blackberry), *Salix* (willow),  
12 *Sequoia* (coast redwood), *Syringa* (lilac), *Taxus* (yew), *Toxicodendron* (poison-ivy),  
13 *Torreya* (nutmeg), *Trientalis* (western starflower), *Umbellularia* (California bay laurel),  
14 *Vaccinium* (huckleberry), *Vancouveria* (redwood ivy), *Viburnum* (viburnum).

15 (b) Soil or potted media.

16 (c) All cultures and live material of *Phytophthora ramorum* (Werres *et al.*).

17 (d) Any other item or substance not listed in sub. (2) that may be designated as a  
18 regulated item if a pest control official determines that it presents a risk of spreading  
19 *Phytophthora ramorum* and notifies the person in possession of the item or substance that  
20 it is subject to the restrictions of the regulations.

21 (3) INSPECTED AND CERTIFIED ITEMS; EXEMPTION. Subsection (1) does not apply  
22 if a pest control official in the state or province of origin inspects the regulated item and  
23 certifies any of the following in a certificate that accompanies the shipment:

1 (a) That the inspected items originate from non-infested premises and have not  
2 been exposed to *Phytophthora ramorum*.

3 (b) That the inspected items were found, at the time of inspection, to be free of  
4 *Phytophthora ramorum*.

5 (c) That the inspected items have been effectively treated to destroy  
6 *Phytophthora ramorum*. The certificate shall specify the date and method of treatment  
7 used.

8 (d) That the inspected items are produced, processed, stored, handled or used  
9 under conditions, described in the certificate, that effectively preclude the transmission of  
10 *Phytophthora ramorum*.

11 **SECTION 8.** Appendix A to ch. ATCP 21 is repealed and recreated in the form  
12 attached.

13 **EFFECTIVE DATE.** The rules contained in this order shall take effect on the first  
14 day of the month following publication in the Wisconsin administrative register, as  
15 provided under s. 227.22(2)(intro.), Stats.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_

STATE OF WISCONSIN,  
DEPARTMENT OF AGRICULTURE,  
TRADE AND CONSUMER PROTECTION

By \_\_\_\_\_  
Rodney J. Nilsestuen, Secretary

# *Appendix A*

## *AREAS INFESTED BY HEMLOCK WOOLLY ADELGID*

### **States (entire state)**

- Alaska
- California
- Connecticut
- Delaware
- New Jersey
- Oregon
- Rhode Island
- Washington

### **Counties**

- In the state of **Georgia**, the counties of: Dawson, Fannin, Gilmer, Habersham, Lumpkin, Murray, Rabun, Towns, Union, White.
- In the state of **Maine**, the county of York.
- In the state of **Maryland**, the counties of: Allegany, Anne Arundel, Baltimore City, Baltimore, Calvert, Caroline, Carroll, Cecil, Frederick, Garrett, Harford, Howard, Kent, Montgomery, Prince George's, Queen Anne's, Talbot, Washington.
- In the state of **Massachusetts**, the counties of: Barnstable, Berkshire, Bristol, Dukes, Essex, Franklin, Hampden, Hampshire, Middlesex, Norfolk, Plymouth, Suffolk, Worcester.
- In the state of **New Hampshire**, the county of: Rockingham.
- In the state of **New York**, the counties of: Albany, Bronx, Columbia, Delaware, Dutchess, Erie, Greene, Kings, Monroe, Nassau, New York, Orange, Putnam, Queens, Richmond, Rockland, Suffolk, Sullivan, Ulster, Westchester.



- In the state of **North Carolina**, the counties of: Alamance, Alleghany, Ashe, Avery, Buncombe, Burke, Caldwell, Caswell, Cherokee, Clay, Forsyth, Graham, Haywood, Henderson, Jackson, Macon, Madison, Mitchell, Orange, Rockingham, Stokes, Surry, Swain, Watauga, Wilkes, Yancey.
- In the state of **Pennsylvania**, the counties of: Adams, Allegheny, Bedford, Berks, Blair, Bradford, Bucks, Carbon, Centre, Chester, Clinton, Columbia, Cumberland, Dauphin, Delaware, Franklin, Fulton, Huntingdon, Juniata, Lackawanna, Lancaster, Lebanon, Lehigh, Luzerne, Lycoming, Mifflin, Monroe, Montgomery, Montour, Northampton, Northumberland, Perry, Philadelphia, Pike, Schuylkill, Snyder, Somerset, Sullivan, Union, Wayne, Wyoming, York.
- In the state of **South Carolina**, the counties of: Oconee, Pickens.
- In the state of **Tennessee**, the counties of: Blount, Carter, Cocke, Greene, Johnson, Knox, Monroe, Sevier, Sullivan, Unicoi, Washington.
- In the state of **Virginia**, the counties of: Albemarle, Alleghany, Amherst, Appomattox, Arlington, Augusta, Bath, Bedford, Bland, Botetourt, Campbell, Caroline, Carroll, Chesterfield, Clarke, Craig, Essex, Fairfax, Floyd, Fluvanna, Franklin, Frederick, Giles, Grayson, Greene, Hanover, Henrico, Henry, Highland, King William, Lunenburg, Madison, Montgomery, Nelson, Northumberland, Orange, Page, Patrick, Pittsylvania, Prince William, Pulaski, Rappahannock, Roanoke, Rockbridge, Rockingham, Shenandoah, Smyth, Spotsylvania, Warren, Washington, Wythe.
- In the state of **West Virginia**, the counties of: Berkeley, Fayette, Grant, Greenbrier, Hampshire, Hardy, Jefferson, McDowell, Mercer, Mineral, Monongalia, Monroe, Morgan, Nicholas, Pendleton, Pocahontas, Preston, Raleigh, Randolph, Summers, Tucker, Webster.