

Wisconsin Department of Agriculture, Trade and Consumer Protection

Business Impact Analysis¹

| | |
|--------------------------------------|---|
| <i>Rule Subject:</i> | Plant Pest Import Controls and Quarantines |
| <i>Adm. Code Reference:</i> | ATCP 21 |
| <i>Rules Clearinghouse #:</i> | 06-008 |
| <i>DATCP Docket #:</i> | 04-R-09 |

Rule Description

This rule regulates the import and movement of host materials that may spread infestations of Emerald Ash Borer, Asian Longhorn Beetle, *Phytophthora ramorum* 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 is designed to prevent and limit the spread of these pests, by regulating 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.

Businesses Affected

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 affects a variety of businesses such as nursery growers and dealers, lumber mills, paper mills, firewood sellers, landscapers and loggers. This rule applies to large and small businesses alike. The Department of Agriculture, Trade and Consumer Protection ("DATCP") estimates that 50-60% of the affected businesses are "small businesses."

This rule is designed to prevent the introduction and spread of Emerald Ash Borer, Asian Longhorned Beetle, *Phytophthora ramorum* and Hemlock Woolly Adelgid. These pests 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.

¹ This analysis includes, but is not limited to, a small business analysis ("regulatory flexibility analysis") under s. 227.114, Stats..

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 infested areas outside this state. The negative effects on those businesses will be small. The rule will help protect Wisconsin importers from pest infestations that could destroy their businesses.

If any of the regulated pests is ever found in this state, the *infestation* may have a major impact on affected businesses. Businesses in infested areas will incur added costs, and some may lose markets for their products. But those consequences will result from the infestation itself, *with or without* this rule.

This rule may add some incremental costs for businesses in infested areas, but will protect businesses in other areas. It will also forestall a more general federal quarantine that could limit exports from the entire state (including exports from uninfested areas).

Key Rule Provisions

This rule includes the following key provisions:

Emerald Ash Borer

This rule prohibits the import or intrastate movement of host materials from infested areas designated by USDA-APHIS in the Code of Federal Regulations (CFR), unless a pest control official inspects the materials and certifies that they are free of Emerald Ash Borer. Host materials include:

- Ash trees.
- Ash limbs, branches and roots.
- Ash logs, slabs or untreated ash lumber with bark attached.
- Cut firewood of all non-coniferous species.
- Ash chips and ash bark fragments (both composted and uncomposted) larger than one inch in diameter.

Asian Longhorned Beetle

This rule prohibits the import or intrastate movement of host materials from infested areas designated by USDA-APHIS in the Code of Federal Regulations (CFR), 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, horse chestnut, mimosa, birch, hackberry, ash, sycamore, poplar, willow, mountain ash and elm.

Phytophthora ramorum

This rule restricts the import or intrastate movement of host materials from infested areas designated by USDA-APHIS in the Code of Federal Regulations (CFR), 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, viburnum, magnolia, lilac, yew, and poison-ivy.
- Soil and potted media.
- Any other material that could reasonably harbor *Phytophthora ramorum*.

Hemlock Woolly Adelgid

DATCP rules currently limit the import and movement of Hemlock Woolly Adelgid host materials from infested areas identified in the current rules. 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.

Effects on Businesses

Asset Protection and Loss Prevention

This rule is designed to protect Wisconsin forest and landscape resources, on which many Wisconsin businesses rely. The rule will help prevent or delay pest infestations that would deprive Wisconsin businesses of key raw materials and markets, and drive up business costs in a variety of ways.

Pest infestation costs are difficult to predict, and may depend on the nature, timing, location, scope and spread of the infestation. However, the pests regulated by this rule would likely be at least as destructive as the gypsy moth, which currently infests large portions of Wisconsin. The gypsy moth infestation has cost Wisconsin businesses an estimated \$48,000 in 2005, and the cost will continue to grow over time. This rule is designed to prevent or delay business costs of this sort.

Costs to Comply

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.

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 non-infested areas).

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.

Small Business Impact

Approximately 50-60% of the businesses affected by this rule are small businesses. Because none of the regulated pests has yet been found in this state, only a small percentage of these businesses (those importing host materials from outside this state) will be affected by this rule in the short term. The effect, even for those businesses, will be minimal.

This rule may have a larger impact on small in-state business if any of the regulated pests is ever found in this state. 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 (see inspection charges above). Small businesses would need to comply, just like large businesses.

Small 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.

Steps to Assist Small Business

This rule will help, not harm, small businesses in this state. This rule will not have a significant adverse economic impact on small business. An exemption for small business would undermine the effectiveness of the rule in preventing the introduction and spread of harmful pests. DATCP will provide information and education to help small businesses recognize pest threats, and protect their businesses from those threats. DATCP will also provide training and assistance related to compliance with this rule.

Conclusion

This rule will help protect Wisconsin industries, by helping to protect the resources on which they depend. This rule may impose additional costs on some businesses, including small businesses, but the costs are minimal, and are greatly outweighed (even for those businesses) by the protection that this rule affords. Most costs would result from the pest infestations themselves, and not from this rule.

Dated this _____ day of _____, 2006

STATE OF WISCONSIN
DEPARTMENT OF AGRICULTURE,
TRADE AND CONSUMER PROTECTION

By _____
Kathy F. Pielsticker, Administrator
Division of Agricultural Resource Management