

Report From Agency

DATCP Docket No. 15-R-01
Rules Clearinghouse No. 16-032

Final Draft Rule
August 31, 2016

**PROPOSED ORDER
OF THE WISCONSIN DEPARTMENT OF AGRICULTURE,
TRADE AND CONSUMER PROTECTION
ADOPTING RULES**

- 2 The Wisconsin department of agriculture, trade and consumer protection proposes the following
3 order *to create* s. ATCP 21.22, *relating to* restricting the import of certain plants, wood and
4 wood products to prevent the introduction of the mountain pine beetle into Wisconsin.

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

The proposed rule restricts the import of certain plants, wood, and wood products to prevent the introduction of mountain pine beetle (*Dendroctonus ponderosae* Hopkins) into Wisconsin. The proposed rule restricts the import of affected materials from states and nations that are known to be infested with mountain pine beetle (there are certain exemptions).

Statutes Interpreted

Statutes Interpreted: ss. 93.06(1p), 93.07(12) and 94.01, Stats.

Statutory Authority

Statutory Authority: ss. 93.06 (1p), 93.07(1), 93.07(12), 94.01 and 227.24, Stats.

Explanation of Statutory 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 adopt regulations to prevent and control plant pest infestations. The Department is proposed to adopt this rule, under authority of s. 227.24, Stats., 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, Wis. Adm. Code, by adding restrictions, related to preventing and controlling infestations of the mountain pine beetle.

Plain Language Analysis

Background

The mountain pine beetle, *Dendroctonus ponderosae* Hopkins, has been described as the most destructive pest of mature pines in North America. Its major host species are ponderosa, lodgepole, and western white, but mountain pine beetle has been recorded attacking at least a half-dozen other pine species including jack and red pine. The most recent unprecedented outbreak of mountain pine beetle spread over 88 million acres of pine forests in Colorado, Wyoming, Idaho, Montana, and South Dakota, as well as the Canadian provinces of Alberta and British Columbia. Estimates of pine mortality in infested forests can reach 80%.

Red pine, jack pine, and eastern white pine are the most common commercially significant pine species in Wisconsin. Recent research indicates all three species to be viable hosts for the mountain pine beetle. According to the Wisconsin Department of Natural Resources (DNR), over 3.5 billion cubic feet of pine growing stock is present in the state. Wisconsin's State Forests are dominated by pine forest types, occupying about 22% of total state timberland area (an estimated 43 million trees on state land alone). As a whole, pine species comprise about 10.7% of Wisconsin's forest areas. About 59 million cubic feet of Wisconsin pine are removed as timber annually, accounting for 23% of the total annual commercial timber harvest. The current annual stumpage value of Wisconsin's pine resource is estimated by DNR to be about \$38 million. That number climbs to over \$70 million if processed or finished pine products are included.

While the mountain pine beetle is native to North America, it historically has been limited in distribution to western pine forests from Mexico to central British Columbia. To date, no mountain pine beetle populations have been found in the United States east of the Black Hills area of South Dakota.

The most common pathway for introduction of the mountain pine beetle is in untreated or raw pine wood with the bark still on, including logs, burls, stumps, firewood, green lumber, wood chips, and wood packing material. Movement of untreated pine wood from western states to the east is uncommon, but can occur. Pulp mills, saw mills, and campgrounds may be the most likely pathways for the eastern movement of the mountain pine beetle. Natural spread is another potential pathway as presented by the recent expansion of this pest's range eastward into the Canadian province of Alberta.

The mountain pine beetle may be spread by the movement of firewood, unfinished or untreated pine wood with bark, and products. Subject to certain exemptions, this rule establishes a Department quarantine restricting the movement of host materials, potentially infested with

mountain pine beetle, into Wisconsin, if those materials originated from or were exposed to the environment in an area where the mountain pine beetle is known to exist. This rule will establish a quarantine for these materials, potentially infested with the mountain pine beetle, in order to protect the forest pine resource and forest products industry in Wisconsin.

Rule Content

Plant Pests; Import Prohibition

Under the proposed rule, no person may knowingly import the mountain pine beetle into this state, except pursuant to a special Department permit (for controlled scientific research or other limited purposes that pose no significant pest risk).

Host Materials; Import Prohibition

Under the proposed rule, no person may import any of the following host materials into Wisconsin from an infested nation, state, or area (as determined by the United States Department of Agriculture or respective state plant pest regulatory officials):

- Firewood from any species of tree.
- Wood or plant parts of the genus *Pinus* (pines). This prohibition applies, for example, to dimensional lumber with bark attached, logs, stumps, and branches.

Exemptions

Under the proposed rule, the prohibition against the importation of host materials does *not* apply to any of the following:

- Processed lumber which is 100% bark-free or kiln-dried.
- Finished wood products without bark (for example, finished furniture, home furnishings, or building materials).
- Pine Christmas trees.
- Pine nursery stock.
- Pine bark mulch or pulpwood chips.
- Materials that are accompanied by a written certificate, signed by a pest control official in the infested area, that describes the materials and states at least one of the following:
 - The materials have not been exposed to the mountain pine beetle. The certificate must explain the basis for the official's statement.

- The materials have been effectively treated to destroy the mountain pine beetle. The certificate must specify the date and method of treatment.
- The materials have been produced, processed, stored, handled, or used under conditions, described in the certificate, that effectively preclude the transmission of mountain pine beetle.
- Materials imported in compliance with a written agreement between the importer and the Department. The agreement must include all of the following:
 - The name and address of the importer
 - The type and volume of material that may be imported under the agreement
 - The locations from which the material may be imported under the agreement
 - The names and addresses of the persons to whom, and the locations to which, the material may be imported under the agreement
 - The method by which the material may be imported
 - The time period covered by the agreement
 - The importer's commitment to keep complete records of each import shipment under the agreement, and to submit those records to the Department for inspection and copying upon request
 - Specific import terms and conditions that will, in the Department's opinion, effectively ensure that materials imported pursuant to the agreement will not introduce mountain pine beetle into this state
 - A provision authorizing the Department to terminate the agreement without prior notice, for any reason

Federal and Surrounding State Programs

Federal Programs

The Animal and Plant Health Inspection Service of the United States Department of Agriculture (APHIS) has not issued any quarantine for the mountain pine beetle. APHIS does not restrict imports from other nations, because the mountain pine beetle is native to North America. Federal law does not prevent Wisconsin from taking regulatory action to prevent the mountain pine beetle from spreading to this state.

Surrounding State Programs

The State of Minnesota recently adopted regulations (January 2015) to prevent the spread of mountain pine beetle across its borders. Recent inquiries regarding the transport of beetle-killed western pine into Wisconsin and neighboring states has prompted additional states (including Wisconsin and Michigan) to consider import restrictions to prevent the spread of this pest. Current regulations in Minnesota are not substantively different than this proposed draft rule. Michigan has not enacted any regulations to date.

Data and Analytical Methodologies

This rule is based on generally-accepted plant disease information from reliable sources, including USDA APHIS and the USDA Forest Service.

Regulatory Flexibility Analysis

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 any negative outcomes this rule may yield. Businesses may work with the Department to enter into a compliance agreement that will allow the business to import regulated items, provided that risks have been mitigated.

Fiscal Impact

This rule will not have a significant fiscal impact on state government. The Department will incur some added inspection and monitoring costs, but will minimize those costs by integrating inspection activities under this rule with other plant pest inspection and monitoring activities. The Department will absorb the added costs with current budget and staff. This rule will have no fiscal effect on local governments.

Business Impact

The Department expects the proposed rule to have minimal economic impact statewide. This rule will benefit Wisconsin wood industries by helping to preserve Wisconsin's economically important pine forest resource. Data from the latest U.S. Forest Service Timber Products Report for Wisconsin (2008) indicates that 94% of pine wood utilized by Wisconsin's timber industry is harvested from within Wisconsin. Of the remainder, about 4% comes from Michigan, 1% from Minnesota, and 0.5% from Canada. Less than 0.5% of pine is sourced from western states that have been impacted by mountain pine beetle. Implementation of an exterior quarantine will protect Wisconsin's pine wood products industry, valued at \$70 million annually.

Pine is a valuable tree, primarily used in pulp and paper industries, as well as lumber production, posts, poles and log home building. Pine is also used in making paper, furniture, and other important value-added wood products. There are approximately 43 million pine trees growing in Wisconsin's state forests alone, with an estimated annual stumpage value (2014) of \$38 million.

This rule will not have a significant adverse impact on businesses in this state. This rule restricts the import of firewood and pine wood from areas *outside* this state, but does not otherwise restrict the distribution or sale of wood or wood products. This rule will restrict the activities of a small number of businesses in this state, and offers ways for those businesses to minimize any potential adverse impacts.

Environmental Impact

This rule will have a positive impact on the environment, by helping to prevent the spread of the mountain pine beetle into this state. This rule will help protect Wisconsin's environmentally important pine forest resource. If the Department does nothing, Wisconsin's pine resource will be increasingly vulnerable to the mountain pine beetle. If the mountain pine beetle becomes established in Wisconsin, it could kill millions of pine trees and adversely affect our forest products industry. Potential impacts to forest ecology are also possible, including changes in forest fire risk, soil erosion, and water retention rates.

Economic Impact

This rule is intended to have a positive impact on Wisconsin's economy. The rule seeks to prevent disruption to the state's robust forest products industry by preventing the import of the destructive mountain pine beetle.

The Department Contact

Questions and comments related to this rule may be directed to:

Renee Pinski or Timothy Allen
Department of Agriculture, Trade and Consumer Protection
P.O. Box 8911
Madison, WI 53708-8911
Telephone: Renee Pinski (608) 224-4745 or Timothy Allen (715) 536-7736
E-Mail: Renee.Pinski@wisconsin.gov or Timothy.Allen@wisconsin.gov

Comments must be received no later than June 27, 2016.

- 1 **SECTION 1.** ATCP 21.22 is created to read:
- 2 **ATCP 21.22 Mountain Pine Beetle; import controls and quarantine. (1)**
- 3 DEFINITIONS. In this section:
- 4 (a) "Bark" means all of the following:
- 5 1. The exterior bark of a tree.
- 6 2. Ingrown bark around knots in a tree.

1 3. Bark pockets occurring between a tree's annual growth rings.

2 4. All inner bark and phloem tissue adjacent to any bark under subds. 1. to 3.

3 (b) "Firewood" has the meaning given in s. ATCP 21.01(6p).

4 (c) "Infested area" means all of the following:

5 1. The states of Arizona, California, Colorado, Idaho, Montana, Nebraska, Nevada, New
6 Mexico, Oregon, South Dakota, Utah, Washington, Wyoming and the Canadian provinces of
7 Alberta, British Columbia and Saskatchewan.

8 2. Any state or nation, or any delineated area within a state or nation, which the U. S.
9 department of agriculture, U. S. forest service or respective state plant pest regulatory officials
10 has declared infested with mountain pine beetle.

11 (d) "Pest control official" has the meaning given in s. ATCP 21.01 (11).

12 **(2) KNOWINGLY IMPORTING PLANT PEST; PROHIBITION.** No person may knowingly
13 import living mountain pine beetles, *Dendroctonus ponderosae* Hopkins, into this state, except
14 pursuant to a permit under s. 94.03, Stats., and s. ATCP 21.04.

15 **(3) IMPORTING MATERIALS FROM INFESTED AREAS; PROHIBITION.** Except as provided in
16 sub. (4), no person may import any of the following materials into this state if those materials
17 originate from or have been exposed to the environment in any infested area:

18 (a) Firewood from any species of tree.

19 (b) Wood or plant parts of the genus *Pinus*, including dimensional lumber with bark
20 attached, logs, stumps and branches. This paragraph does not apply to any of the following:

21 1. Processed lumber which is 100% bark-free or kiln-dried.

22 2. Finished wood products without bark, including finished furniture, home furnishings
23 or building materials.

- 1 3. Pine Christmas trees.
- 2 4. Pine nursery stock.
- 3 5. Pine bark mulch or pulpwood chips.

4 **(4) EXEMPTIONS.** Subsection (3) does not apply to any of the following: (a) Material
5 specified in sub. (3) (a) and (b) that are accompanied by a written certificate, signed by a pest
6 control official in the infested area, which describes the materials and states at least one of the
7 following:

8 1. The materials have not been exposed to the mountain pine beetle. The certificate
9 shall explain the basis for the official's statement.

10 2. The materials have been effectively treated to destroy mountain pine beetle. The
11 certificate shall specify the date and method of treatment.

12 3. The materials have been produced, processed, stored, handled, or used under
13 conditions, described in the certificate, which effectively preclude the transmission of mountain
14 pine beetle.

15 (b) Material imported in compliance with a written agreement, between the importer and
16 the department, which includes all of the following:

17 1. The name and address of the importer.

18 2. The type and volume of material that may be imported under the agreement.

19 3. The locations from which the material may be imported under the agreement.

20 4. The names and addresses of the persons to whom, and the locations to which, the
21 material may be imported under the agreement.

22 5. The method by which the material may be imported.

23 6. The time period covered by the agreement.

1 7. The importer’s commitment to keep complete records of each import shipment under
2 the agreement, and to submit those records to the department for inspection and copying upon
3 request.

4 8. Specific import terms and conditions that will, in the department’s opinion, effectively
5 ensure that materials imported pursuant to the agreement will not introduce the mountain pine
6 beetle into this state.

7 9. A provision authorizing the department to terminate the agreement, without prior
8 notice, for any reason.

SECTION 2. EFFECTIVE DATE: This rule takes effect on the first day of the month
following publication in the Wisconsin administrative register, as provided in s.
227.22(2)(intro.), Stats.

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Dated this _____ day of _____, 2017.

WISCONSIN DEPARTMENT OF AGRICULTURE,
TRADE AND CONSUMER PROTECTION

By _____
Ben Brancel, Secretary