



State of Wisconsin
Governor Scott Walker

Department of Agriculture, Trade and Consumer Protection
Ben Brancel, Secretary

DATE: January 9, 2017

TO: The Honorable Roger Roth
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The Honorable Robin Vos
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FROM: Ben Brancel, Secretary
Department of Agriculture, Trade and Consumer Protection

**SUBJECT: ATCP 21–Mountain Pine Beetle Exterior Quarantine
(Clearinghouse Rule #16-032)**

Introduction

The Department of Agriculture, Trade and Consumer Protection (“Department”) is transmitting this rule for legislative committee review, as provided in Wis. Stat. §§ 227.19 (2) and (3). The Department will publish notice of this referral in the Wisconsin Administrative Register, as provided in Wis. Stat. § 227.19 (2). This proposed rule amends Wis. Admin. Code ch. ATCP 21 by adding restrictions related to preventing and controlling infestations of the mountain pine beetle. The proposed rule restricts the import of certain plants, wood, and wood products, with some exceptions, from states and nations that are known to be infested with mountain pine beetle.

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 and 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%.

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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 the Department of Natural Resources 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 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 Wisconsin, 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 (i.e., 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.

Summary of, and Comparison with, Existing or Proposed Federal Statutes and Regulations

The Animal and Plant Health Inspection Service of the United States Department of Agriculture (APHIS) has not issued a 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 Wisconsin.

Comparison with Rules in Adjacent States

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.

Summary of Factual 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.

Effect on Small Business Impact

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.

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, and pole 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.

Small Business Regulatory Review Report

The Small Business Regulatory Review Board did not issue a report on this rule.

Hearings

Public hearing notices were published in the Wisconsin Administrative Register and hearings held in Madison and Wausau on June 8, 2016. There were no attendees at either hearing, however the Department did receive letters of support for the rule from the Wisconsin Chapter of the Society of American Foresters and from the Wisconsin Department of Natural Resources, Division of Forestry. The Department did not receive any comments in opposition to the rule.

Changes from Hearing Draft

There are no substantive policy changes from the hearing draft. The Department did incorporate the minor corrections relating to form, style, and punctuation as suggested by the Rules Clearinghouse.