

Clearinghouse Rule 22-022

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

PROPOSED ORDER

2 The Wisconsin Department of Agriculture, Trade and Consumer Protection proposes an order *to*
3 *repeal* ATCP 21.01 (2g), ATCP 21.01 (6m), ATCP 21.01 (12), ATCP 21.12, ATCP 21.17 and
4 ATCP 21.21; *to amend* ATCP 21.01 (8g), ATCP 21.16 (title), ATCP 21.16 (1), ATCP 21.19 (1)
5 (b), ATCP 21.19 (1) (note), and 21.19 (2) (a); *to renumber* ATCP 21.16 (3); *to create* ATCP 21.16
6 (2), ATCP 21.19 (2) (a) (note), ATCP 21.23 and ATCP 21.24, *relating to* plant inspection and pest
7 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 227.24, 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. 227.24, 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 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 ATCP 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), *Agrilus planipennis*, ATCP 21.17 is no longer necessary, as the entire state was added to the federal emerald ash borer (EAB) quarantine in 2018 before it was federally deregulated in 2021, and because this pest has now been detected in 61 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 planipennisi*. The Department also recommends the removal of s. ATCP 21.21, related to 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 generation 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 ATCP 21.16, related to hemlock woolly adelgid import controls, in order to add Alaska to the list of states or area within states known to be infested with hemlock woolly adelgid; and 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.

Spotted lanternfly, *Lycorma delicatula* (SLF) is an introduced, invasive planthopper whose immature nymphs and adults feed on over 100 hosts, including the invasive tree-of-heaven *Ailanthus altissima*, grape vines, roses, hops, maple, and walnut trees. Since being detected in a stone yard in Pennsylvania in 2014, this insect has spread to at least 10 other states, including Connecticut, Delaware, Indiana, Maryland, Massachusetts, New Jersey, New York, Ohio, Virginia, and West Virginia. SLF is not found in Wisconsin, although we have had two regulatory interceptions of dead adults on a residential property and a warehouse; and unconfirmed reports of dead or dying adults at an airport and on equipment crating that was shipped from the known infested area. SLF is hard to control because, although it is a weak flier, it hitchhikes on vehicles, plants, and outdoor items to reach new areas. SLF also spreads to new areas when females lay well-camouflaged egg masses on flat surfaces, including outdoor furniture, stone and other products. Adults build up huge numbers and swarm in fall, excreting honeydew as they feed that leads to development of black sooty mold on surfaces below, becoming a serious nuisance pest that hinders outdoor fall recreation. In areas where it has been introduced, SLF feeding has severely damaged grape vines, causing increased susceptibility to winter injury, failure to set fruit, and mortality. There have been reports of vineyard owners spraying insecticides an additional 10-14 times per season for this pest or physically covering fields with nets to prevent infestation, as swarm after swarm arrives to feed in fall. Although there is no federal quarantine planned for SLF, there is federal support for slowing the spread of this pest through trapping and chemical treatments such as dinotefuran. Nine states (California, Connecticut, Delaware, Maryland, New Jersey, New York, Ohio, Pennsylvania, and Virginia) have enacted quarantine regulations for this pest. The Department seeks to create s. ATCP 21.23 related to spotted lanternfly 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 vineyards, nurseries, and forest products.

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, adult females, nymphs, and eggs are protected under hard waxy coverings, and 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 21.24 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 isn't 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 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, spotted lanternfly, or thousand cankers disease.

Summary of Public Comments Received during 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.

Comparison with Rules in Adjacent States

Illinois has rescinded rules related to pine shoot beetle and emerald ash borer. They intend to rescind thousand cankers disease regulations in the near future. Like many states that lack significant hemlock resources, they do not regulate hemlock woolly adelgid or elongate hemlock scale. They have described they are likely to enact a quarantine for spotted lanternfly if it is detected. They regulate *P. ramorum*, per federal requirements.

Iowa has a list of insect and disease plant pests that are 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 their 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. MI has exterior and interior quarantines for hemlock woolly adelgid. They are also the only state with an exterior quarantine for balsam woolly adelgid, an invasive, introduced pest that has been introduced into portions of the eastern and western United States that they 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 WI, its extremely low rate of spread in MI, lack of concern and support for regulations by WI 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 it does not have quarantine rules related to pine shoot beetle, thousand cankers disease, hemlock woolly adelgid, elongate hemlock scale, or spotted lanternfly. They regulate *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, 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 rules. Remaining rule revisions to s. ATCP 21.16 for hemlock woolly adelgid and s. ATCP 21.19 for *P. ramorum*; and additions to s. ATCP 21.23 creating spotted lanternfly restrictions and s. ATCP 21.24 creating elongate hemlock scale restrictions 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, vineyards, wreath-makers, loggers, and sawmill owners. 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, 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 work with the Department to enter into a compliance agreements, at no charge, that will allow the business to import and move regulated items, provided that risks have been mitigated.

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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Place Where Comments are to Be Submitted and Deadline for Submission:

Comments must be received on or before April 26, 2022 to be included in the record of rule-making proceedings. Submit comments:

By mail to:

Shahla M. Werner, Plant Protection Section Manager
Division of Agricultural Resource Management
Department of Agriculture, Trade and Consumer Protection
P.O. Box 8911
Madison, WI 53708-8911

By email to: Shahla.Werner@wisconsin.gov

RULE TEXT

1 SECTION 1. ATCP 21.01 (2g), ATCP 21.01 (6m), ATCP 21.01 (12), ATCP 21.12, ATCP 21.17,
2 and ATCP 21.21 are repealed.

3 SECTION 2. ATCP 21.01 (8g) is amended to read:

4 ATCP 21.01 (8g) “Hemlock” means any tree or shrub of the genus *Tsuga*, including all cultivars.

5 SECTION 3. ATCP 21.16, Hemlock woolly adelgid; Import controls (title), is amended to read:

6 **ATCP 21.16 Hemlock woolly adelgid import controls and quarantine.**

7 SECTION 4. ATCP 21.16 (1) is amended to read:

8 ATCP 21.16 (1) HEMLOCK IMPORTS OR MOVEMENT RESTRICTED. Except as provided
9 in sub. ~~(2)~~(3), no person may import any of the following items to this state from Alaska,
10 California, Connecticut, Delaware, Georgia, Idaho, Kentucky, Maine, Maryland, Massachusetts,
11 Michigan, New Hampshire, New York, New Jersey, North Carolina, Ohio, Oregon, Pennsylvania,
12 Rhode Island, South Carolina, Tennessee, Vermont, Virginia, Washington, West Virginia, the
13 District of Columbia, and the Canadian provinces of British Columbia, Nova Scotia and any
14 delineated area within a state or country, which the responsible state agency has declared to be
15 infested with hemlock woolly adelgid; or move any of the following items from an infested area
16 to an area that is not infested within this state:

17 (a) Hemlock seedlings.

18 (b) Hemlock nursery stock.

19 (c) Hemlock logs with bark.

20 (d) Hemlock lumber with bark.

21 (e) ~~Uncomposted~~ Hemlock bark chips with bark.

22 (f) ~~Uncomposted~~ Hemlock bark.

23 (g) Cut hemlock trees.

24 (h) Hemlock branches.

25 SECTION 5. ATCP 21.16 (2) is created to read:

26 ATCP 21.16 (2) KNOWINGLY IMPORTING PLANT PEST: PROHIBITION. No person may
27 knowingly import live hemlock woolly adelgid, *Adelges tsugae* Annand into this state, except
28 pursuant to a permit under s. 94.03 Stats. and s. ATCP 21.04.

29 SECTION 6. ATCP 21.16 (2) is renumbered to ATCP 21.16 (3)

30 SECTION 7. ATCP 21.19 (1) (b) is amended to read:

31 (b) Move any regulated item under sub. (2) out of any *Phytophthora ramorum* regulated area that
32 is identified in [7 CFR 301.92-3](#) ~~and located within this state~~ to any *Phytophthora ramorum*
33 unregulated area within this state.

34 SECTION 8. ATCP 21.19 (1) (note) is amended to read:

35 **ATCP 21.19 (1) Note:** The United States department of agriculture, animal and plant health
36 inspection service (USDA-APHIS) periodically updates the listing of regulated areas in [7 CFR](#)
37 [301.92-3](#). ~~Subsection (1) applies to new regulated areas as those areas are identified in the CFR.~~
38 ~~Each year, as a service, the Wisconsin department of agriculture, trade and consumer protection~~
39 ~~distributes an updated federal CFR listing to nursery license holders and other affected persons in~~
40 ~~this state. More frequent u~~ Updates, if any, are available on the department's website
41 at ~~[www.datcp.state.wi.us](#)~~ [www.datcp.wi.gov](#). Subsection (1) applies to new regulated areas as
42 those areas are identified in the CFR, regardless of whether affected persons receive update notices

43 from the department. Persons may request update notices by calling ~~(608) 224-4573~~, by visiting
44 the department's website, or by writing to the following address:

45 Wisconsin Department of Agriculture, Trade and Consumer Protection

46 Division of Agricultural Resource Management

47 P.O. Box 8911

48 Madison, WI 53708-8911

49 SECTION 9. ATCP 21.19 (2) (a) is amended to read:

50 ATCP 21.19 (2) REGULATED ITEMS. The following are regulated items for purposes of sub.

51 (1): (a) Nursery stock (except acorns and seeds), unprocessed wood, and unprocessed wood and
52 plant products, including bark chips, firewood, logs, lumber, mulch, wreaths, garlands, and

53 greenery of the following genera: ~~*Abies* (fir), *Acer* (maple), *Adiantum* (maidenhair fern), *Aesculus*~~

54 ~~(buckeye), *Arbutus* (madrone), *Arctostaphylos* (manzanita), *Calluna* (heather), *Calycanthus*~~

55 ~~(spicebush), *Camellia* (camellia), *Castanea* (chestnut), *Clintonia* (blue bead lily), *Corylus*~~

56 ~~(hazelnut), *Drimys* (winter's bark), *Dryopteris* (wood fern), *Fagus* (beech), *Fraxinus* (ash),~~

57 ~~*Griselinia* (griselinia), *Hamamelis* (witch hazel), *Heteromeles* (toyon), *Kalmia* (mountain laurel),~~

58 ~~*Laurus* (laurel), *Leucothoe* (drooping leucothoe), *Lithocarpus* (tanoak), *Lonicera* (honeysuckle),~~

59 ~~*Maianthemum* (false Solomon's seal), *Magnolia* (magnolia), *Michelia* (michelia), *Nothofagus*~~

60 ~~(Roble beech), *Osmorhiza* (sweet cicely), *Parrotia* (Persian ironwood), *Pieris* (pieris), *Photinia*~~

61 ~~(photinia), *Pittosporum* (Victorian box), *Pseudotsuga* (Douglas fir), *Pyracantha* (Firethorn),~~

62 ~~*Quercus* (oak), *Rhamnus* (buckthorn), *Rhododendron* (rhododendron), *Rhus* (sumac), *Rosa* (rose),~~

63 ~~*Rubus* (salmonberry, raspberry, blackberry), *Salix* (willow), *Sequoia* (coast redwood), *Syringa*~~

64 ~~(lilac), *Taxus* (yew), *Toxicodendron* (poison ivy), *Torreya* (nutmeg), *Trientalis* (western~~

65 ~~starflower), *Umbellularia* (California bay laurel), *Vaccinium* (huckleberry), *Vancouveria*~~

66 ~~(redwood ivy), *Viburnum* (*viburnum*)~~ of the host plant taxa identified in [7 CFR 301.92-2](#) (d) as
67 being proven hosts of *Phytophthora ramorum* or identified in [7 CFR 301.92-2](#) (e) as being
68 associated with *Phytophthora ramorum*.

69 SECTION 10. ATCP 21.19 (2) (a) (note) is created to read:

70 **ATCP 21.19 (2) Note:** The United States department of agriculture, animal and plant health
71 inspection service (USDA-APHIS) periodically updates the listing of proven hosts and associated
72 plant taxa in [7 CFR 301.92-2](#). Updates, if any, are available on the department's website
73 at www.datcp.wi.gov. Subsection (2) applies to new proven hosts and associated plant taxa as
74 those areas are identified in the CFR, regardless of whether affected persons receive update notices
75 from the department. Persons may request update notices by visiting the department's website, or
76 by writing to the following address:

77 Wisconsin Department of Agriculture, Trade and Consumer Protection
78 Division of Agricultural Resource Management
79 P.O. Box 8911
80 Madison, WI 53708-8911

81 SECTION 11. ATCP 21.23 is created to read:

82 **ATCP 21.23 Spotted lanternfly; Import controls and quarantine.**

83 (1) DEFINITIONS. In this section:

84 (a) “Spotted Lanternfly” means any living life stage of the invasive insect *Lycorma delicatula*
85 (White), including adults, nymphs or viable egg masses.

86 (b) “Infested area” means all of the following:

87 1. The states of Connecticut, Delaware, Indiana, Maryland, Massachusetts, New York, New
88 Jersey, Ohio, Pennsylvania, Virginia, and West Virginia.

89 2. Any state or country, or any delineated area within a state or country, which the responsible
90 state agency has declared to have an infestation of or interior quarantine for spotted lanternfly.

91 (c) “Pest control official” has the meaning given in ATCP 21.01 (11).

92 **(2) KNOWINGLY IMPORTING PLANT PEST; PROHIBITION.** No person may knowingly
93 import any living life stage of the spotted lanternfly, except pursuant to a permit under s. 94.03,
94 Stats. and s. ATCP 21.04.

95 **(3) IMPORTING OR MOVING MATERIALS FROM INFESTED AREAS; PROHIBITION.**
96 Except as provided in sub. 4, no person may import any of the following materials into this state,
97 or move any of the following materials from an infested area to an area that is not infested within
98 this state, if those materials originate from and /or have been exposed to the environment in any
99 infested area.

100 (a) All plants and plant parts. This shall include, but is not limited to, annual plants, bark, bark
101 chips, branches, budwood, firewood, garden plants, logs, live or dead trees, lumber, nursery stock,
102 perennial plants, roots, shrubs, stumps, vines, and yard waste.

103 (b) Non-plant products. This shall include, but is not limited to outdoor household articles,
104 vehicles, or means of conveyance that pose a reasonable risk of spreading any living life stage of
105 the spotted lanternfly as determined by a pest control official.

106 **(4) EXEMPTIONS.** Subsection (3) does not apply to any of the following:

107 (a) Plant products not exposed to the environment, including, but not limited to, houseplants or
108 indoor furniture.

109 (b) Non-plant products, including outdoor household articles, vehicles, or conveyances that are
110 either accompanied by a spotted lanternfly permit issued by the responsible state agency or for
111 which a spotted lanternfly checklist, obtained from the department’s website at datcp.wi.gov or

112 from the state of origin, was completed by the transporter within 24 hours of leaving the infested
113 area.

114 (c) Material in sub. (3) (a) and (b) that are accompanied by a written certificate, signed by a pest
115 control official in the infested area, which describes the materials and states at least one of the
116 following:

117 1. The materials originate from an area that is free from spotted lanternfly, or have not been
118 exposed to spotted lanternfly. The certificate shall explain the basis for the official's statement.

119 2. That the items were found, at the time of inspection, to be free of spotted lanternfly.

120 3. That the items have been effectively treated to destroy spotted lanternfly. The phytosanitary
121 certificate shall specify the pesticide or other treatment used.

122 4. That the items are produced, processed, stored, handled, or used under conditions, described in
123 the phytosanitary certificate, that effectively preclude the transmission of spotted lanternfly.

124 (d) Materials imported in compliance with a written agreement between the importer and the
125 department, which includes all of the following:

126 1. The name and address of the importer and import recipient.

127 2. The type and volume of materials that may be imported under the agreement.

128 3. The locations from which materials may be imported under the agreement.

129 4. The names and addresses of the persons to whom and the locations to which, the materials may
130 be imported under the agreement.

131 5. The method by which the materials may be imported.

132 6. The time period covered by the agreement.

133 7. The importer's commitment to keep complete records of each import shipment under the
134 agreement, and to submit those records to the department for inspection and copying upon request.

135 8. Specific import terms and conditions that will, in the department’s opinion, effectively prevent
136 the introduction or spread of spotted lanternfly.

137 9. A provision authorizing the department to suspend the agreement, without prior notice, for any
138 reason.

139 SECTION 12. ATCP 21.24 is created to read:

140 **ATCP 21.24 Elongate Hemlock Scale; Import controls and quarantine.**

141 (1) DEFINITIONS. In this section:

142 (a) “Elongate hemlock scale” means any living life stage of the invasive insect *Fiorinia externa*
143 (Ferris), including adults, nymphs, crawlers, or eggs.

144 (b) “Infested area means all of the following:

145 1. The states of Connecticut, Delaware, Georgia, Kentucky, Maine, Maryland, Massachusetts,
146 Michigan, New Hampshire, New Jersey, New York, North Carolina, Ohio, Pennsylvania, Rhode
147 Island, South Carolina, Tennessee, Vermont, Virginia, and West Virginia; and the District of
148 Columbia.

149 2. Any state or country, or any delineated area within a state or country, which the responsible
150 state agency has declared to be infested with elongate hemlock scale.

151 (c) “Pest control official” has the meaning given in s. ATCP 21.01 (11).

152 (2) KNOWINGLY IMPORTING PLANT PEST; PROHIBITION. No person may knowingly
153 import elongate hemlock scale, *Fiorinia externa* Ferris, into this state, except pursuant to a permit
154 under s. 94.03, Stats. and s. ATCP 21.04.

155 (3) IMPORTING OR MOVING MATERIALS FROM INFESTED AREAS; PROHIBITION.

156 Except as provided in sub. (4), no person may do either of the following:

157 (a) Import conifer plants or plant parts of the following plant taxa: *Abies spp.*, *Biota orientalis*,
158 *Juniperus chinensis*, *Juniperus rigida*, *Cedrus spp.*, *Picea spp.*, *Pinus spp.*, *Pseudotsuga menziesii*,
159 *Tsuga canadensis*, *Tsuga spp.*, and *Taxus spp.*, including cut Christmas trees, nursery stock,
160 branches, wreaths, or décor into this state if those materials originate from or have been exposed
161 to the environment in any infested area.

162 (b) Move conifer plants or plant parts of the following plant taxa: *Abies spp.*, *Biota orientalis*,
163 *Juniperus chinensis*, *Juniperus rigida*, *Cedrus spp.*, *Picea spp.*, *Pinus spp.*, *Pseudotsuga menziesii*,
164 *Tsuga canadensis*, *Tsuga spp.*, and *Taxus spp.*, including cut Christmas trees, nursery stock,
165 branches, wreaths, or décor from an infested area to an area that is not infested within this state.

166 (4) EXEMPTIONS. Subsection (3) does not apply to any of the following:

167 a. Shredded bark and mulch of all tree species.

168 b. Processed lumber which is 100% bark-free or kiln-dried.

169 c. Finished wood products without bark, including furniture or building materials.

170 d. Material specified in sub. (3) (a) and (b) that are accompanied by a written certificate, signed by
171 a pest control official in the infested area, which describes the materials and states at least one of
172 the following:

173 1. The materials originate from an area that is known to be free of elongate hemlock scale, or have
174 not been exposed to elongate hemlock scale. The certificate shall explain the basis for the official's
175 statement.

176 2. The materials have been effectively treated to destroy elongate hemlock scale. The certificate
177 shall specify the date, method of treatment, and post-treatment data indicating that treated material
178 was examined in the laboratory and found to have no living life stages of elongate hemlock scale.

179 3. The materials have been produced, processed, stored, handled, or used under conditions,
180 described in the certificate, which effectively preclude the transmission of elongate hemlock scale.

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

183 1. The name and address of the importer.

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

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

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

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

189 6. The time period covered by the agreement.

190 7. The importer's commitment to keep complete records of each import shipment under the
191 agreement, and to submit those records to the department for inspection and copying upon request.

192 8. Specific import terms and conditions that will, in the department's opinion, effectively ensure
193 that materials imported pursuant to the agreement will not introduce or spread the elongate
194 hemlock scale.

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

197 SECTION 13. EFFECTIVE DATE. The rules adopted in this order shall take effect on the first day
198 of the month following publication in the Wisconsin Administrative Register, pursuant to s. 227.22

199 (2) (intro.), Stats.

(END OF RULE TEXT)

Dated this 23rd day of February, 2022

WISCONSIN DEPARTMENT OF AGRICULTURE,
TRADE AND CONSUMER PROTECTION

By: Randy Romanski, Secretary