State of Wisconsin
Governor Scott Walker

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

**DATE:** December 3, 2014

**TO:** Board of Agriculture, Trade and Consumer Protection

**FROM:** Ben Brancel, Secretary
John Petty, Administrator, Agricultural Resource Management Division

**SUBJECT:** **Exotic Plant Pest Emergency Rule; Rulemaking Scope Statement (Wis. Admin. Code Ch. ATCP 21)**

**PRESENTED BY:** Christopher Deegan, Plant Protection Section Chief, Plant Industry Bureau

**REQUESTED ACTION:**

At the December 17, 2014 Board meeting, the department will ask the Board to approve a scope statement (copy attached) for any emergency rule related to exotic plant pests. A rule authorized by the scope statement will create county or multi-county or township or multi-township quarantines in which an exotic pest is detected.

Any emergency rule authorized by this scope statement will be submitted to the Governor for approval pursuant to section 227.24(1) (e) 1g each time the department finds that a quarantine area for an exotic plant pest is required. The authorization to draft an emergency rule creating a quarantine area pursuant to this statement of scope will expire on the first day following the twelfth month of publication of this statement of scope pursuant to section 227.135(3) and a new statement of scope must be approved and published pursuant to sections 227.135(2) and (3) to continue the authorization of emergency rulemaking related to exotic pest quarantines. The Board has approved virtually identical statements of scope in 2011, 2012 and 2013.

The department obtained approval of the scope statement from the Governor's office on November 6, 2014 and filed the attached scope statement with the Legislative Reference Bureau for publication in the November 30, 2014 issue of the Wisconsin Administrative Register. The department also filed a copy with the Department of Administration.

If the Board approves the scope statement, the Department may begin work to draft an emergency rule. Approval of a scope statement is the first step in the process for adopting an emergency rule. Any emergency rule proposed under this statement of scope must be approved in writing by the Governor and then published in the state newspaper to become effective.

# STATEMENT OF SCOPE

Department of Agriculture, Trade & Consumer Protection

The Department of Agriculture, Trade and Consumer Protection (DATCP) gives notice, pursuant to 227.135, Stats., that it proposes to adopt an emergency administrative rule as follows:

**Rule No: Chapter ATCP 21, Wis. Adm. Code (Existing)**

**Relating to:** Exotic Plant Pest Emergency Rule

**1. Description of the objective of the rule:**

An emergency rule authorized by this statement of scope will create county or multi-county or township or multi-township quarantines for an exotic plant pest in counties and townships where the pest is detected. Any emergency rule authorized by this scope statement will be submitted to the Governor for approval pursuant to section 227.24 (1) (e) 1g, Stats., each time the department finds that a quarantine area for an exotic plant pest is required. The authorization to draft an emergency rule creating a quarantine area pursuant to this statement of scope will expire on the first day following the twelfth month of publication of this statement of scope pursuant to section 227.135 (3) and a new statement of scope must be approved and published pursuant to sections 227.135(2) and (3) to continue the authorization of emergency rulemaking related to exotic pest quarantines.

2. **Description of existing policies relevant to the rule and of new policies proposed to be included in the rule and an analysis of policy alternatives; the history, background and justification for the proposed rule:**

History and background. DATCP has authority under s. 93.07 (12), Stats. to conduct surveys and inspections for the detection and control of pests injurious to plants, and to make, modify, and enforce reasonable rules needed to prevent the dissemination of pests. DATCP also has plant inspection and pest control authority under s. 94.01, Stats. DATCP may by rule impose restrictions on the importation or movement of serious plant pests, or items that may spread serious plant pests.

In recent years the rate of arrival of new exotic plant pests to the United States has increased significantly. Some of the exotic pests which have already invaded our country include Emerald Ash Borer (EAB), Asian Longhorned Beetle (ALB), Hemlock Woolly Adelgid (HWA), Thousand Cankers Disease (TCD) and Gypsy Moth (GM). The national annual cost of these invasive forest insects to local governments is estimated at over $2 billion; residential property value loss due to exotic forest pests averages $1.5 billion per year nationally. To date, EAB and GM have infested Wisconsin. To focus on one specific example, EAB is an exotic pest that endangers Wisconsin's 770 million ash

trees and ash tree resources. This insect has the potential to destroy entire stands of ash, including up to 20% of Wisconsin's urban street trees and residential landscaping trees, and may result in substantial losses to forest ecosystems. The insect can cause great harm to state lands and to the state's tourism and timber industries. At this time, EAB has been identified in twenty-four states including Wisconsin, and two Canadian provinces. Thirty-six Wisconsin counties are currently quarantined to restrict the movement of ash wood in order to prevent the spread of EAB.

Proposed policies. This emergency rule is necessary to create a timely quarantine of the counties or townships, and possibly bordering counties or townships, with new exotic plant pest detections until a federal quarantine is enacted. The federal quarantine will take effect up to eight weeks or longer after a formal submission by the state plant regulatory official. A rule authorized by this statement of scope will do the following:

- Create county or multi-county or township or multi-township quarantines in which an exotic pest is detected. The quarantine will prohibit the movement of all articles potentially harboring the damaging pest. These regulated articles would likely include: firewood, nursery stock, green lumber, and other woody material living, dead, cut or fallen, including logs, stumps, roots, branches and composted and uncomposted chips. Some examples of current plant pests of concern include Emerald Ash Borer (EAB), Asian Longhorned Beetle (ALB), Hemlock Woolly Adelgid (HWA) or Thousand Cankers Disease of Walnut (TCD).

- Provide an exemption for items that have been inspected and certified by a pest control official and are accompanied by a written certificate issued by the pest control official (depending on the specific pest, some products, such as nursery stock, cannot be given an exemption).

- Provide an exemption for businesses that enter into a state or federal compliance agreement. The compliance agreement describes in detail what a company can and cannot do with regulated articles.

Policy alternatives. If DATCP does nothing, potentially infested wood or agricultural products will be allowed to move freely and the department will not be able to regulate its movement. The department would have no regulatory authority in the counties with new exotic plant pest finds, raising the potential of a more rapid spread of an exotic invasive plant pest.

3. **Statutory authority for the rule (including the statutory citation and language):**

Sections 93.07(1), 93.07(12) and 94.0, Stats.

93.07 **Department duties**. (1) It shall be the duty of the department:

(1) To make and enforce such regulations, not inconsistent with law, as it may deem necessary for the exercise and discharge of all the powers and duties of the department,

and to adopt such measures and make such regulations as are necessary and proper for the enforcement by the state of chs. 93 to 100, which regulations shall have the force of law.

(12) To conduct surveys and inspections for the detection and control of pests injurious to plants, make, modify, and enforce reasonable rules needed to prevent the dissemination of pests, declare and manage emergencies related to the detection and control of pests injurious to plants, provided such declaration does not supersede the authority of the chief state forester under s. 23.114 or the department of natural resources under s. 26.30, and suggest methods of control.

94.01 **plant inspection and pest control authority**. In the conduct of survey and inspectional programs for the detection, prevention and control of pests, the department may impose quarantines or such other restrictions on the importation into or movement of plants or other material within the state as necessary to prevent or control the dissemination or spread of injurious pests.

**4. Estimate of the amount of time that state employees will spend to develop the rule and other resources necessary to develop the rule:** DATCP estimates that it will use approximately 0.1 FTE staff time to develop these rules. This includes time required for investigation and analysis, rule drafting, preparing related documents, holding public hearings, and communicating with affected persons and groups. DATCP will use existing staff to develop this rule.

**5. Description of all entities that may be impacted by the rule:** According to the American Forest and Paper Association (December 2012), Wisconsin is first in the nation in forestry jobs, employing over 53,000 workers and annually shipping forest industry products valued over $17.7 billion. Our agricultural industry also annually produces over $1.3 billion in corn grain, and over $510 million in soybeans. Additionally, in 2013 Wisconsin led the nation in cranberry production ($190 million) and ranked third in potato production ($270 million). Wisconsin apple orchards produced a yield of $19.3 million in 2013. This emergency rule could have an impact on persons or companies that deal in any agricultural crop or forest product from the quarantined counties or townships to locations outside of the quarantined counties.

The Wisconsin Department of Tourism reports that travelers to Wisconsin spent a total of $10.8 billion in 2013. Tourism directly sustains an estimated 185,500 jobs, or 7.8% of total employment in the state. Should Wisconsin's forests, parks, and recreational areas be significantly damaged by an exotic plant pest, our tourism industry could also suffer substantially.

Nurseries, firewood producers/dealers, saw mills and farmers that sell or distribute articles potentially harboring the damaging exotic plant pest would all be impacted. In order to sell regulated products outside of a quarantined county, veneer mills and wood processors will have to enter into a compliance agreement with DATCP or APHIS. The agreement authorizes movement of products outside the quarantine only when there is

assurance that the movement will not spread the plant pest to other locations. Licensed nursery growers will not be able to sell regulated nursery stock outside of the quarantined counties. Firewood dealers would need to be certified to sell firewood outside of the quarantined counties. Other producers and farmers would be required to treat regulated products with an approved treatment option, should one exist, before movement out of the quarantine. Grain elevators could enter into compliance agreements with DATCP or APHIS.

**6. Summary and preliminary comparison of any existing or proposed federal regulation that is intended to address the activities to be regulated by the rule:** In order to limit the spread of exotic plant pests, the Animal and Plant Health Inspection Service of the United States Department of Agriculture (APHIS) has imposed quarantines for EAB in twenty-four states, ALB in three states, and GM in eighteen states. Including Wisconsin, six states plus Canada have imposed an external quarantine for HWA, and sixteen states have done the same for TCD. DATCP rules currently prohibit movement of regulated plant articles from any federally quarantined area except under authorized conditions. This proposed rule is consistent with current state and federal rules.

**7. Anticipated economic impact:** DATCP expects the rule to have minimal economic impact statewide and minimal to moderate economic impact locally.

**DATCP BOARD AUTHORIZATION:**

DATCP may not begin drafting a rule until the Governor and the Board of Agriculture, Trade and Consumer Protection approves this scope statement. The Board may not approve this scope statement any sooner than 10 days after this scope statement is published in the Wisconsin Administrative Register. The scope statement may not be published in the administrative register until DATCP has received written approval of the scope statement from the Governor. Before the department may publish an emergency rule, it must receive written approval of the proposed emergency rule from the Governor.

**Contact Person:** Brian Kuhn, Director Bureau of Plant Industry; Phone (608) 224-4590

Dated this 20th day of October, 2014.

STATE OF WISCONSIN
DEPARTMENT OF AGRICULTURE, TRADE
AND CONSUMER PROTECTION

By Ben Brancel
Ben Brancel, Secretary