

1. TITLE OF RULE FILING:

Hemlock Woolly Adelgid Quarantine

2. PROPOSED NUMBER ASSIGNED BY THE SECRETARY OF STATE

21P-025

3. ADOPTING AGENCY:

Agency of Agriculture, Food and Markets

4. PRIMARY CONTACT PERSON:

(A PERSON WHO IS ABLE TO ANSWER QUESTIONS ABOUT THE CONTENT OF THE RULE).

Name: David Huber

Agency: Agency of Agriculture, Food and Markets

Mailing Address: 116 State Street, Montpelier, Vermont
05620

Telephone: 802 461 - 7160 Fax: -

E-Mail: david.huber@vermont.gov

Web URL *(WHERE THE RULE WILL BE POSTED)*:

<https://agriculture.vermont.gov/>

5. SECONDARY CONTACT PERSON:

(A SPECIFIC PERSON FROM WHOM COPIES OF FILINGS MAY BE REQUESTED OR WHO MAY ANSWER QUESTIONS ABOUT FORMS SUBMITTED FOR FILING IF DIFFERENT FROM THE PRIMARY CONTACT PERSON).

Name: Joshua Halman

Agency: Department of Forests, Parks, and Recreation,
Agency of Natural Resources

Mailing Address: Davis 2, 1 National Life Drive,
Montpelier, Vermont 05620

Telephone: 802 279 - 9999 Fax: -

E-Mail: joshua.halman@vermont.gov

6. RECORDS EXEMPTION INCLUDED WITHIN RULE:

(DOES THE RULE CONTAIN ANY PROVISION DESIGNATING INFORMATION AS CONFIDENTIAL; LIMITING ITS PUBLIC RELEASE; OR OTHERWISE EXEMPTING IT FROM INSPECTION AND COPYING?) No

IF YES, CITE THE STATUTORY AUTHORITY FOR THE EXEMPTION:

PLEASE SUMMARIZE THE REASON FOR THE EXEMPTION:

7. LEGAL AUTHORITY / ENABLING LEGISLATION:

(THE SPECIFIC STATUTORY OR LEGAL CITATION FROM SESSION LAW INDICATING WHO THE ADOPTING ENTITY IS AND THUS WHO THE SIGNATORY SHOULD BE. THIS SHOULD BE A SPECIFIC CITATION NOT A CHAPTER CITATION).

6 V.S.A. §§ 1031, 1032(1), 1034

8. EXPLANATION OF HOW THE RULE IS WITHIN THE AUTHORITY OF THE AGENCY:

The Secretary of the Vermont Agency of Agriculture, Food and Markets (VAAF) may establish and maintain quarantines.

9. THE FILING HAS NOT CHANGED SINCE THE FILING OF THE PROPOSED RULE.

10. THE AGENCY HAS NOT INCLUDED WITH THIS FILING A LETTER EXPLAINING IN DETAIL WHAT CHANGES WERE MADE, CITING CHAPTER AND SECTION WHERE APPLICABLE.

11. SUBSTANTIAL ARGUMENTS AND CONSIDERATIONS WERE NOT RAISED FOR OR AGAINST THE ORIGINAL PROPOSAL.

12. THE AGENCY HAS NOT INCLUDED COPIES OF ALL WRITTEN SUBMISSIONS AND SYNOPSES OF ORAL COMMENTS RECEIVED.

13. THE AGENCY HAS NOT INCLUDED A LETTER EXPLAINING IN DETAIL THE REASONS FOR THE AGENCY'S DECISION TO REJECT OR ADOPT THEM.

14. CONCISE SUMMARY (150 WORDS OR LESS):

The hemlock woolly adelgid is an invasive, sap-sucking insect that causes mortality in hemlock trees across the eastern seaboard and other parts of the United States through its feeding. This amendment is necessary to protect Vermont's hemlock resource as hemlock woolly adelgid (HWA) was first reported in Vermont in 2007 and is now established within the state. The existing rule is an external quarantine and only prohibits entry of regulated articles into Vermont. This creates confusion about movement of hemlock from infested counties within Vermont. The amendment is necessary because the existing rule regulates logs, lumber, and chips which, over the past thirty years in Vermont, have not been known to spread hemlock woolly adelgid. Rather, State personnel have determined that the primary means of dispersal - pathway of highest risk - concerning the

Final Proposed Coversheet

spread of the pest is transportation of nursery stock. The amended rule emphasizes regulation of this pathway.

15. EXPLANATION OF WHY THE RULE IS NECESSARY:

This rule is necessary to protect Vermont's hemlock resource. The amendment is necessary because hemlock woolly adelgid (HWA) was first reported in Vermont in 2007 and is now established within the state. The existing rule is an external quarantine and only prohibits entry of regulated articles into Vermont. This creates confusion about movement of hemlock from infested counties within Vermont. The amendment is necessary because the existing rule is outdated and some provisions are no longer relevant.

16. EXPLANATION OF HOW THE RULE IS NOT ARBITRARY:

The rule is no longer arbitrary because this amendment will allow the rule to target the primary means of anthropogenic dispersal in Vermont - transportation of nursery trees.

17. LIST OF PEOPLE, ENTERPRISES AND GOVERNMENT ENTITIES AFFECTED BY THIS RULE:

VAAFM, Vermont Department of Forests, Parks & Recreation, Forest Product Industries, Nurseries, Homeowners, and Landscapers.

18. BRIEF SUMMARY OF ECONOMIC IMPACT (150 WORDS OR LESS):

This amendment will have no significant economic impact on forest products industries and will have a beneficial impact on homeowners and nurseries by enabling both groups to purchase treated hemlocks and by expanding the latter group's market potential through their ability to purchase treated hemlock stock.

19. A HEARING WAS NOT HELD.

20. HEARING INFORMATION

(THE FIRST HEARING SHALL BE NO SOONER THAN 30 DAYS FOLLOWING THE POSTING OF NOTICES ONLINE).

IF THIS FORM IS INSUFFICIENT TO LIST THE INFORMATION FOR EACH HEARING PLEASE ATTACH A SEPARATE SHEET TO COMPLETE THE HEARING INFORMATION.

Final Proposed Coversheet

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21. DEADLINE FOR COMMENT (NO EARLIER THAN 7 DAYS FOLLOWING LAST HEARING):

08/26/2021

KEYWORDS (PLEASE PROVIDE AT LEAST 3 KEYWORDS OR PHRASES TO AID IN THE SEARCHABILITY OF THE RULE NOTICE ONLINE).

Hemlock woolly adelgid

Nursery

Forest

Quarantine

Pest

Administrative Procedures – Adopting Page

Instructions:

This form must accompany each filing made during the rulemaking process:

Note: To satisfy the requirement for an annotated text, an agency must submit the entire rule in annotated form with proposed and final proposed filings. Filing an annotated paragraph or page of a larger rule is not sufficient. Annotation must clearly show the changes to the rule.

When possible, the agency shall file the annotated text, using the appropriate page or pages from the Code of Vermont Rules as a basis for the annotated version. New rules need not be accompanied by an annotated text.

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2. ADOPTING AGENCY:

Agency of Agriculture, Food and Markets

3. TYPE OF FILING (*PLEASE CHOOSE THE TYPE OF FILING FROM THE DROPDOWN MENU BASED ON THE DEFINITIONS PROVIDED BELOW*):

- **AMENDMENT** - Any change to an already existing rule, even if it is a complete rewrite of the rule, it is considered an amendment as long as the rule is replaced with other text.
- **NEW RULE** - A rule that did not previously exist even under a different name.
- **REPEAL** - The removal of a rule in its entirety, without replacing it with other text.

This filing is **AN AMENDMENT OF AN EXISTING RULE** .

4. LAST ADOPTED (*PLEASE PROVIDE THE SOS LOG#, TITLE AND EFFECTIVE DATE OF THE LAST ADOPTION FOR THE EXISTING RULE*):

SOS Log# 05-021, Hemlock Woolly Adelgid - Joint Quarantine No. 2, 08/01/2005



INTERAGENCY COMMITTEE ON ADMINISTRATIVE RULES (ICAR) MINUTES

Meeting Date/Location: July 12, 2021, Physical Location: 109 State Street, 5th Floor Conference Room, Montpelier VT; Virtual Meeting: Microsoft Teams
Members Present: Chair Kristin Clouser, Dirk Anderson, Diane Bothfeld, Jennifer Mojo, John Kessler, Matt Langham, Diane Sherman
Members Absent: Ashley Berliner, Clare O'Shaughnessy
Minutes By: Melissa Mazza-Paquette and Diane Bothfeld

- 2:12 p.m. meeting called to order, welcome and introductions.
- Review and approval of minutes from the June 14, 2021 meeting.
- No additions/deletions to agenda. Agenda approved as drafted.
- No public comments made.
- Note: The following emergency rules were supported by ICAR Chair Clouser:
 1. 'Access to Health Care Services Related to COVID-19' by the Department of Financial Regulation on 6/30/21.
 2. 'Interim Rules for Clinical Pharmacy' by the Secretary of State, Office of Professional Regulation on 7/7/21.
 3. PUC Emergency Rule 2.600 COVID-19 Emergency Procedures' by the Public Utility Commission on 7/9/21.
- Presentation of Proposed Rules on pages 2-7 to follow.
 1. Hemlock Woolly Adelgid Quarantine, Agency of Agriculture, Food and Markets, page 2
 2. Vermont Joint Quarantine No. 1 (Scleroderris Canker), Agency of Agriculture, Food and Markets, page 3
 3. Hospital Licensing Rule, Agency of Human Services, page 4
 4. Administrative Rules for Veterinarians, Secretary of State, Office of Professional Regulation, page 5
 5. Independent School Program Approval, State Board of Education, page 6
 6. Vermont Use of Public Waters Rules, Agency of Natural Resources, page 7
- Next scheduled meetings:
 - Wednesday, July 14, 2021 - Review of ICAR Forms with the Office of the Secretary of State
 - Monday, August 9, 2021 at 2:00 p.m. – Monthly ICAR meeting
- 3:49 p.m. meeting adjourned.

**Proposed Rule: Hemlock Woolly Adelgid Quarantine, Agency of Agriculture, Food and Markets
Presented By: David Huber, Zach Szczukowski**

Motion made to accept the rule by John Kessler, seconded by Dirk Anderson, and passed unanimously except for Diane Bothfeld who abstained, with the following recommendations:

1. Change 'not applicable' to 'no impacts' or 'no alternatives' where appropriate.
2. Proposed Rule Coversheet, #8 and #9: Reverse the two answers and: In #8 include that the hemlock woolly adelgid is a sap sucking invasive pest which affects hemlock trees across the eastern seaboard and other parts of the United States and is in Vermont. Provide a substance description of what happens, including key facts of how the existing rule needs to be updated to where the risk exists; and in #9: Choose either the first or second paragraph.
3. Proposed Rule Coversheet, #12: Highlight any positive impacts.
4. Adopting Page, #3: Define minimal impact. Include the benefit of treated products and increased market potential. Explain neutral vs. positive.
5. Economic Impact Analysis, #3: Harmonize or provide a general statement whether the impact is neutral or positive as appropriate.
6. Economic Impact Analysis, #3D: Be consistent in explanation of the impact.
7. Environmental Impact, #3 and #4: Clarify the nature of impact.
8. Public Input: Include reach out to landowners, nurseries and greenhouses and schedule a hearing.
9. Proposed Rule Coversheet, #12-14: Update as hearing is recommended.
10. Scientific Information, #3: Include this explanation elsewhere in forms where appropriate.

Administrative Procedures – Economic Impact Analysis

Instructions:

In completing the economic impact analysis, an agency analyzes and evaluates the anticipated costs and benefits to be expected from adoption of the rule; estimates the costs and benefits for each category of people enterprises and government entities affected by the rule; compares alternatives to adopting the rule; and explains their analysis concluding that rulemaking is the most appropriate method of achieving the regulatory purpose.

Rules affecting or regulating schools or school districts must include cost implications to local school districts and taxpayers in the impact statement, a clear statement of associated costs, and consideration of alternatives to the rule to reduce or ameliorate costs to local school districts while still achieving the objectives of the rule (see 3 V.S.A. § 832b for details).

Rules affecting small businesses (excluding impacts incidental to the purchase and payment of goods and services by the State or an agency thereof), must include ways that a business can reduce the cost or burden of compliance or an explanation of why the agency determines that such evaluation isn't appropriate, and an evaluation of creative, innovative or flexible methods of compliance that would not significantly impair the effectiveness of the rule or increase the risk to the health, safety, or welfare of the public or those affected by the rule.

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2. ADOPTING AGENCY:

Agency of Agriculture, Food and Markets

3. CATEGORY OF AFFECTED PARTIES:

LIST CATEGORIES OF PEOPLE, ENTERPRISES, AND GOVERNMENTAL ENTITIES POTENTIALLY AFFECTED BY THE ADOPTION OF THIS RULE AND THE ESTIMATED COSTS AND BENEFITS ANTICIPATED:

Vermont landowners and homeowners; forest products industry; tree nurseries; VAAFM; Vermont Department of Forests, Parks and Recreation.

A. Vermont Landowners and Homeowners: Neutral impact. The rule has both positive and negative impacts which offset each other. Now that hemlock woolly adelgid is in

Economic Impact Analysis

Vermont, natural spread of the insect, tree mortality, and timber value loss are expected. However, the amendment maintains regulations on the primary source of anthropogenic dispersal in Vermont, nursery trees, to slow the spread of HWA to non-infested counties. The rule will benefit Vermont homeowners by allowing them to purchase treated nursery stock.

B.Nurseries: Positive impact. Nursery regulations and compliance inspections will continue under the amended rule. Most of the hemlocks sold and utilized by Vermont's ornamental horticulture industries are imported. The rule continues to place conditions on where hemlocks can be imported from but will now allow treated hemlocks to be imported. The benefit to nurseries is increased market potential and the preservation of a tree species in Vermont.

C.VAAFM: Neutral impact. VAAFM will maintain its normal role in inspecting nurseries and conducting pest delineation surveys.

D.Vermont Department of Forests, Parks and Recreation: Positive impact. Vermont Department of Forests Parks and Recreation will no longer be required to regulate this pest and will be able to dedicate resources and staff to other regulated activities.

4. IMPACT ON SCHOOLS:

INDICATE ANY IMPACT THAT THE RULE WILL HAVE ON PUBLIC EDUCATION, PUBLIC SCHOOLS, LOCAL SCHOOL DISTRICTS AND/OR TAXPAYERS CLEARLY STATING ANY ASSOCIATED COSTS:

No impact.

5. ALTERNATIVES: *CONSIDERATION OF ALTERNATIVES TO THE RULE TO REDUCE OR AMELIORATE COSTS TO LOCAL SCHOOL DISTRICTS WHILE STILL ACHIEVING THE OBJECTIVE OF THE RULE.*

No alternatives.

6. IMPACT ON SMALL BUSINESSES:

Economic Impact Analysis

INDICATE ANY IMPACT THAT THE RULE WILL HAVE ON SMALL BUSINESSES (EXCLUDING IMPACTS INCIDENTAL TO THE PURCHASE AND PAYMENT OF GOODS AND SERVICES BY THE STATE OR AN AGENCY THEREOF):

See Item #3 RE Nurseries and Forest Products Industry

7. SMALL BUSINESS COMPLIANCE: *EXPLAIN WAYS A BUSINESS CAN REDUCE THE COST/BURDEN OF COMPLIANCE OR AN EXPLANATION OF WHY THE AGENCY DETERMINES THAT SUCH EVALUATION ISN'T APPROPRIATE.*

Nurseries may switch to selling other non-regulated species to reduce the burden of compliance. Regardless, nurseries are encouraged to follow prescribed management tools and are subject to inspection by VAAFM.

8. COMPARISON:

COMPARE THE IMPACT OF THE RULE WITH THE ECONOMIC IMPACT OF OTHER ALTERNATIVES TO THE RULE, INCLUDING NO RULE ON THE SUBJECT OR A RULE HAVING SEPARATE REQUIREMENTS FOR SMALL BUSINESS:

Maintain the Existing Rule: The rule causes economic impacts because it is outdated. It regulates forest products that are now known to pose minimal risk to forest health and creates uncertainty about how it applies to moving regulated articles within Vermont. The existing rule also causes economic impacts by restricting out-of-state hemlock purchases.

No Rule: Although HWA occurs in three counties in Vermont, a no-rule scenario would enable the pest to spread more rapidly and ultimately result in increased hemlock mortality across the State.

Amended Rule: The amended rule will reduce confusion for the regulated community; reduce State expenditures; target the primary means of anthropogenic dispersal; and enable nurseries to access a previously inaccessible market through a regulated treatment option. The rule as amended is the most appropriate method while continuing to provide protection to hemlock trees in the other unaffected counties.

9. SUFFICIENCY: *EXPLAIN THE SUFFICIENCY OF THIS ECONOMIC IMPACT ANALYSIS.*

This economic analysis is based on State observations of the spread of HWA, the history of the HWA quarantine

Economic Impact Analysis

in Vermont, and experiences of other neighboring states.

Administrative Procedures – Environmental Impact Analysis

Instructions:

In completing the environmental impact analysis, an agency analyzes and evaluates the anticipated environmental impacts (positive or negative) to be expected from adoption of the rule; compares alternatives to adopting the rule; explains the sufficiency of the environmental impact analysis.

Examples of Environmental Impacts include but are not limited to:

- Impacts on the emission of greenhouse gases
- Impacts on the discharge of pollutants to water
- Impacts on the arability of land
- Impacts on the climate
- Impacts on the flow of water
- Impacts on recreation
- Or other environmental impacts

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3. GREENHOUSE GAS: *EXPLAIN HOW THE RULE IMPACTS THE EMISSION OF GREENHOUSE GASES (E.G. TRANSPORTATION OF PEOPLE OR GOODS; BUILDING INFRASTRUCTURE; LAND USE AND DEVELOPMENT, WASTE GENERATION, ETC.):*

Now that HWA is in Vermont, some temporary reductions in carbon sequestration from tree mortality are expected. The rule provides a benefit in delaying these temporary reductions in carbon sequestration from tree mortality by targeting the primary means of anthropogenic dispersal in Vermont - nursery stock. The amendment is expected to have no additional impact.

4. WATER: *EXPLAIN HOW THE RULE IMPACTS WATER (E.G. DISCHARGE / ELIMINATION OF POLLUTION INTO VERMONT WATERS, THE FLOW OF WATER IN THE STATE, WATER QUALITY ETC.):*

Now that HWA is in Vermont, water quality impacts such as erosion and increased water temperatures are expected due to tree mortality. The rule provides a benefit in delaying these impacts by targeting the

Environmental Impact Analysis

primary means of anthropogenic dispersal in Vermont - nursery stock. The amendment is expected to have no additional impact.

5. **LAND: EXPLAIN HOW THE RULE IMPACTS LAND (E.G. IMPACTS ON FORESTRY, AGRICULTURE ETC.):**

Now that HWA is in Vermont, tree mortality impacts on forestry are expected. The rule provides benefit in delaying these impacts by targeting the primary means of anthropogenic dispersal in Vermont - nursery stock. The amendment is expected to have no additional impact.

6. **RECREATION: EXPLAIN HOW THE RULE IMPACT RECREATION IN THE STATE:**

Now that HWA is in Vermont, fish and wildlife habitat and aesthetic losses from tree mortality are expected. The rule provides benefit in delaying these impacts by targeting the primary means of anthropogenic dispersal in Vermont - nursery stock. The amendment is expected to have no additional impact.

7. **CLIMATE: EXPLAIN HOW THE RULE IMPACTS THE CLIMATE IN THE STATE:**

Now that HWA is in Vermont, some temporary reductions in carbon sequestration from tree mortality is expected. The rule provides benefit in delaying this impact by targeting the primary means of anthropogenic dispersal in Vermont - nursery stock. The amendment is expected to have no additional impact.

8. **OTHER: EXPLAIN HOW THE RULE IMPACT OTHER ASPECTS OF VERMONT'S ENVIRONMENT:**

Not applicable.

9. **SUFFICIENCY: EXPLAIN THE SUFFICIENCY OF THIS ENVIRONMENTAL IMPACT ANALYSIS.**

This environmental analysis is based on State observations of the spread of HWA, the history of the HWA quarantine in Vermont, and experiences of other neighboring states.

Administrative Procedures – Public Input

Instructions:

In completing the public input statement, an agency describes the strategy prescribed by ICAR to maximize public input, what it did do, or will do to comply with that plan to maximize the involvement of the public in the development of the rule.

This form must accompany each filing made during the rulemaking process:

1. TITLE OF RULE FILING:

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Agency of Agriculture, Food and Markets

3. PLEASE DESCRIBE THE STRATEGY PRESCRIBED BY ICAR TO MAXIMIZE PUBLIC INVOLVEMENT IN THE DEVELOPMENT OF THE PROPOSED RULE:

VAAFM will conduct outreach to the nursery industry, landowners, and greenhouses through direct contact with the regulated community.

Outreach to natural resources interest groups, the forestry community, and interested landowners and members of the public will be conducted by contacting over 500 addresses on the Department of Forests, Parks & Recreation forest health email list.

Outreach to the forest products industry will be through the Department of Forests, Parks & Recreation forest industry email list and by direct mail to current compliance agreements holders.

4. PLEASE LIST THE STEPS THAT HAVE BEEN OR WILL BE TAKEN TO COMPLY WITH THAT STRATEGY:

VAAFM will conduct outreach to the nursery industry, landowners, and greenhouses through direct contact with the regulated community.

Public Input

Outreach to natural resources interest groups, the forestry community, and interested landowners and members of the public will be conducted by contacting over 500 addresses on the Department of Forests, Parks & Recreation forest health email list.

Outreach to the forest products industry will be through the Department of Forests, Parks & Recreation forest industry email list and by direct mail to current compliance agreements holders.

5. BEYOND GENERAL ADVERTISEMENTS, PLEASE LIST THE PEOPLE AND ORGANIZATIONS THAT HAVE BEEN OR WILL BE INVOLVED IN THE DEVELOPMENT OF THE PROPOSED RULE:

Vermont Agency of Agriculture, Food and Markets

Vermont Department of Forests, Parks and Recreation

USDA Animal and Plant Health Inspection Service

US Forest Service

Vermont Nursery and Landscape Association

Administrative Procedures – Scientific Information

THIS FORM IS ONLY REQUIRED WHEN INCORPORATING MATERIALS BY REFERENCE. PLEASE REMOVE PRIOR TO DELIVERY IF IT DOES NOT APPLY TO THIS RULE FILING:

Instructions:

In completing the Scientific Information Statement, an agency shall provide a brief summary of the scientific information including reference to any scientific studies upon which the proposed rule is based, for the purpose of validity.

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3. BRIEF EXPLANATION OF SCIENTIFIC INFORMATION:

HWA is an invasive, sap-sucking, insect that causes mortality in hemlock trees through its feeding. Hemlock trees provide many valuable ecosystem functions including, but not limited to, stream shade, bank stability, and wildlife habitat. HWA can be dispersed by wind or animals and, in isolated areas, by transportation of nursery stock.

4. CITATION OF SOURCE DOCUMENTATION OF SCIENTIFIC INFORMATION:

Letheren, A., Hill, S., Salie, J., Parkman, J., & Chen, J. (2017). A Little Bug with a Big Bite: Impact of Hemlock Woolly Adelgid Infestations on Forest Ecosystems in the Eastern USA and Potential Control Strategies. *International journal of environmental research and public health*, 14(4), 438.
<https://doi.org/10.3390/ijerph14040438>

5. INSTRUCTIONS ON HOW TO OBTAIN COPIES OF THE SOURCE DOCUMENTS OF THE SCIENTIFIC INFORMATION FROM THE AGENCY OR OTHER PUBLISHING ENTITY:

Scientific Information

The document can be obtained by using the following link: <https://doi.org/10.3390/ijerph14040438>. For further information on how to obtain a copy of the article please contact VAAFM at 802-461-7160.

Annotate
Text

STATE OF VERMONT Fermont

**Agency of Agriculture and Department of
Forests, Parks and Recreation, Food and
Markets**

**Joint Quarantine #2--Hemlock Woolly Adelgid
Quarantine**

Section 1I.: General Statement of Concerns

Statement of Concerns. Whereas Hemlock Woolly Adelgid (*Adelges tsugae* Annand) has been found to cause mortality of Eastern Hemlock (*Tsuga canadensis*),

Whereas Hemlock Woolly Adelgid is established in ~~Southern~~ New England and has shown rapid movement northward,

Whereas this pest has been found to be difficult to control in natural Hemlock stands,

Whereas Hemlock is a very valuable component of Northern New England's forest for both timber and wildlife as well as a high value landscape ornamental,

1.1 Therefore, the State of Vermont is ~~hereby~~ establishing this ~~exterior~~ plant quarantine against Hemlock Woolly Adelgid for the protection of these valuable resources.

1.2 Enabling Legislation. The statutory authority for this regulation is 6 V.S.A. Chapter 84 'Pest Survey, Detection and Management.'

Section 2H. Definitions

2.1 "Bark" means the tissue of woody stem outside cambium.

2.2.1 "Hemlock" means all the species within the genus, *Tsuga*.

2.3 "Compliance Agreement" means the contract between State of Vermont and lumber mills to allow movement of Hemlock.

2.2 "Hemlock Woolly Adelgid" means the insect known as Hemlock Woolly Adelgid, *Adelges tsugae* Annand, in the order Homoptera and family Adelgidae.

2.4 "Inspector" means a representative of the Vermont State Agency of Agriculture, Food and Markets, when authorized by the Secretary to act in that capacity.

2.3

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~~2.52.4~~ "Nursery Stock" means all woody or herbaceous shrubs, trees, plants and vines, including bulbs and rhizomes as well as buds, grafts, scions and other parts capable of propagation whether wild, cultivated or grown under artificial covering or artificial conditions. This definition does not include cut flowers or seeds.

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~~2.6~~ "Secretary" means the Secretary of Agriculture, Food and Markets.

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~~2.5~~

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~~2.7~~ "Lumber" shall include sawed timber.

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2.8 "Logs" means the main stem of a tree including smaller sections used for pulp.

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Section III.: Statutory Authority.

The statutory authority for these regulations is 6 V.S.A., Chapter 84 "Pest Survey, Detection and Management".

Section ~~3~~IV. Specific Purpose and Factual Basis

3.1 Purpose. The specific purpose of ~~these~~ this regulations is to protect Vermont's Hemlock resource by preventing the introduction of Hemlock Woolly Adelgid into Vermont and its spread within the State.

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3.2 Factual Basis. The Agency of Agriculture, Food, and Markets has determined that this quarantine is necessary based on the following facts:

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- (a) The Hemlock Woolly Adelgid is an introduced species native to Asia, and a serious pest of Eastern Hemlock in many Eastern States.
- (b) This insect feeds mainly on the young branches by inserting its piercing and sucking mouthparts and removing sap.
- (c) This feeding retards or prevents tree growth, causes needles to discolor and drop prematurely, kills branches, ~~generally weakens and~~ disfigures the tree, and causes tree mortality.

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Section ~~4~~V.: Hemlock Woolly Adelgid ~~Exterior~~ Quarantine.

A quarantine is established against the following pest and possible carriers:

4.1 Pest. A quarantine is established against ~~Pest.~~ Hemlock Woolly Adelgid (*Adelges tsugae* Annand).

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4.2 Area Under Quarantine. All counties where hemlock woolly adelgid is known to occur.

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4.2(a) In the Eastern United States and Canada, the counties where hemlock woolly adelgid has been detected according to the most recent map depicting the "Distribution of HWA" produced by included in the USDA Forest Service's publication entitled "List of Counties and States with Known Hemlock Woolly Adelgid Infestations" dated December 2003, and or any subsequent updates lists published hereafter.

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(b) In the Wwestern United States and Canada, the State of Alaska, the State of California, the State of Oregon, and the State of Washington, and the - Also the province of British Columbia in western Canada.

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~~4.3 Regulated Articles. Hemlock seedlings, hemlock-nursery stock, hemlock logs, hemlock lumber with bark and chips and any other article when found by an inspector to present a hazard of spreading hemlock woolly adelgid.~~

~~4.3~~

4.4 Restrictions. All regulated articles are prohibited entry into ~~the State of Vermont~~non-quarantined areas of Vermont except as specifically allowed and conditioned below.

- (a) ~~Hemlock seedlings and~~ nursery stock originating from or having previously been held in an area under quarantine ~~is~~are prohibited entry into non-quarantined areas of Vermont unless treated by a method approved by the Vermont Agency of Agriculture, Food and Markets. VermontTreated nursery stock shall be accompanied by a State Phytosanitary Certificate indicating the number and type of regulated articles and the treatment used.
- (b) Hemlock ~~seedlings and~~ nursery stock originating from a non-quarantined areas and shipped into Vermont must be accompanied by a State Phytosanitary Certificate, or a Certificate of Origin, indicating the number and type of regulated articles, and attesting to the fact that the regulated articles:
 - (i) originated from a non-quarantined area;
 - (ii) originated from a non-quarantined areas adjacent to quarantined counties which are annually surveyed and found negative for Hemlock Woolly Adelgid by a State Plant Protection Agencies;
 - (iii) have not been held in an area under quarantine; and
 - (iv) have not been exposed to a regulated articles from a quarantined areas.

~~A copy of the State Phytosanitary Certificate or Certificate of Origin must be signed by a plant regulatory official in the originating state and upon issuance must be faxed to the Agency of Agriculture, Plant Protection Section, at (802) 241-3008 or such other fax number as the Agency may from time to time publish. A copy must also be mailed to the Vermont Agency of Agriculture, Laboratory Building, Plant Protection Section, 103 South Main Street, Waterbury, VT 05671-0101 within 3 days of issuance.~~

- (iv) ~~The hemlock seedlings and nursery stock may not be sold or further distributed unless a written release is issued by the Vermont Agency of Agriculture.~~
- (c) For Sections 4.4(a)-(b), a copy of the State Phytosanitary Certificate or Certificate of Origin shall be signed by a plant regulatory official in the originating state and upon issuance shall be submitted to the Agency of Agriculture, Food and Markets – Plant Protection Health, within three days of issuance.

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~~(e)(d)~~ Hemlock seedlings and nursery stock which ~~has~~ have been transported through an area under quarantine ~~are~~ is prohibited entry into Vermont except in accordance with the following conditions:

~~(a)(i)~~ The vehicle transporting the regulated articles must transit the area under quarantine without stopping, except for refueling;

~~(b)(ii)~~ The regulated articles were not off-loaded in the area under quarantine; and

~~(e)(iii)~~ No regulated articles were added to the shipment in the quarantined area.

Hemlock logs, hemlock lumber with bark and chips are admissible provided that said material is only shipped to pre-approved sites within Vermont where

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compliance agreements are in effect. If said material is shipped to other sites, it must be accompanied by a certificate issued by the Departments of Agriculture or Forestry of the state of origin affirming:

- a. originated from a non-quarantined area;
- b. non-quarantined areas adjacent to quarantined counties are annually surveyed and found negative for Hemlock Woolly Adelgid by State Plant Protection Agencies;
- c. have not been held in an area under quarantine; and
- d. have not been exposed to regulated articles from quarantined areas.

A copy of the State Phytosanitary Certificate or Certificate of Origin must be signed by a plant regulatory official in the originating state and upon issuance must be faxed to the Agency of Agriculture, Plant Protection Section, at (802) 241-3008 or such other fax number as the Agency may from time to time publish. A copy must also be mailed to the Vermont Agency of Agriculture, Laboratory Building, Plant Protection Section, 103 South Main Street, Waterbury, VT 05671-0101 within 3 days of issuance.

Vermont Agency of Agriculture, Food and Markets

Hemlock Woolly Adelgid Quarantine

Section 1. General

- 1.1 Statement of Concerns. Whereas Hemlock Woolly Adelgid (*Adelges tsugae* Annand) has been found to cause mortality of Eastern Hemlock (*Tsuga canadensis*). Whereas Hemlock Woolly Adelgid is established in New England and has shown rapid movement northward. Whereas this pest has been found to be difficult to control in natural Hemlock stands. Whereas Hemlock is a very valuable component of Northern New England's forest for both timber and wildlife as well as a high value landscape ornamental. Therefore, the State of Vermont is establishing this plant quarantine against Hemlock Woolly Adelgid for the protection of these valuable resources.
- 1.2 Enabling Legislation. The statutory authority for this regulation is 6 V.S.A. Chapter 84 'Pest Survey, Detection and Management.'

Section 2. Definitions

- 2.1 "Hemlock" means all the species within the genus, *Tsuga*.
- 2.2 "Hemlock Woolly Adelgid" means the insect known as Hemlock Woolly Adelgid, *Adelges tsugae* Annand, in the order Homoptera and family Adelgidae.
- 2.3 "Inspector" means a representative of the Vermont State Agency of Agriculture, Food and Markets, when authorized by the Secretary to act in that capacity.
- 2.4 "Nursery Stock" means all woody or herbaceous shrubs, trees, plants and vines, including bulbs and rhizomes as well as buds, grafts, scions and other parts capable of propagation whether wild, cultivated or grown under artificial covering or artificial conditions. This definition does not include cut flowers or seeds.
- 2.5 "Secretary" means the Secretary of Agriculture, Food and Markets.

Section 3. Specific Purpose and Factual Basis

- 3.1 Purpose. The specific purpose of this regulation is to protect Vermont's Hemlock resource by preventing the introduction of Hemlock Woolly Adelgid into Vermont and its spread within the State.
- 3.2 Factual Basis. The Agency of Agriculture, Food and Markets has determined that this quarantine is necessary based on the following facts:
 - (a) The Hemlock Woolly Adelgid is an introduced species native to Asia, and a serious pest of Eastern Hemlock in many Eastern States.
 - (b) This insect feeds mainly on the young branches by inserting its piercing and sucking mouthparts and removing sap.

- (c) This feeding retards or prevents tree growth, causes needles to discolor and drop prematurely, kills branches, weakens and disfigures the tree, and causes tree mortality.

Section 4. Hemlock Woolly Adelgid Quarantine

4.1 Pest. A quarantine is established against Hemlock Woolly Adelgid (*Adelges tsugae* Annand).

4.2 Area Under Quarantine. All counties where hemlock woolly adelgid is known to occur.

- (a) In the Eastern United States and Canada, the counties where hemlock woolly adelgid has been detected according to the most recent map depicting the “Distribution of HWA” produced by the USDA Forest Service or any subsequent updates.
- (b) In the Western United States and Canada, the State of Alaska, the State of California, the State of Oregon, the State of Washington, and the province of British Columbia.

4.3 Regulated Articles. Hemlock nursery stock and any other article when found by an inspector to present a hazard of spreading hemlock woolly adelgid.

4.4 Restrictions. All regulated articles are prohibited entry into non-quarantined areas of Vermont except as specifically allowed and conditioned below.

- (a) Hemlock nursery stock originating from or having previously been held in an area under quarantine is prohibited entry into non-quarantined areas of Vermont unless treated by a method approved by the Vermont Agency of Agriculture, Food and Markets. Treated nursery stock shall be accompanied by a State Phytosanitary Certificate indicating the number and type of regulated articles and the treatment used.
- (b) Hemlock nursery stock originating from a non-quarantined area and shipped into Vermont must be accompanied by a State Phytosanitary Certificate, or a Certificate of Origin, indicating the number and type of regulated articles, and attesting to the fact that the regulated articles:
 - (i) originated from a non-quarantined area;
 - (ii) originated from a non-quarantined area adjacent to quarantined counties which are annually surveyed and found negative for Hemlock Woolly Adelgid by a State Plant Protection Agency;
 - (iii) have not been held in an area under quarantine; and
 - (iv) have not been exposed to a regulated article from a quarantined area.
- (c) For Sections 4.4(a)-(b), a copy of the State Phytosanitary Certificate or

Certificate of Origin shall be signed by a plant regulatory official in the originating state and upon issuance shall be submitted to the Agency of Agriculture, Food and Markets within three days of issuance.

- (d) Hemlock nursery stock which has been transported through an area under quarantine is prohibited entry into Vermont except in accordance with the following conditions:
 - (i) The vehicle transporting the regulated articles must transit the area under quarantine without stopping, except for refueling.
 - (ii) The regulated articles were not off-loaded in the area under quarantine.
 - (iii) No regulated articles were added to the shipment in the quarantined area.

The Vermont Statutes Online

Title 6 : Agriculture

Chapter 084 : Pest Survey, Detection, And Management

(Cite as: 6 V.S.A. § 1031)

§ 1031. Functions of Secretary of Agriculture, Food and Markets and Commissioner of Forests, Parks and Recreation cooperation

Under the provisions of this chapter, the Secretary of Agriculture, Food and Markets shall have jurisdiction over plans for the survey, detection, and management of agricultural plant pests, and the Commissioner of Forests, Parks and Recreation over plans for the survey, detection, and management of forest pests. When the word "Secretary" is used in sections 1033 and 1034 of this title, it shall mean either the Secretary of Agriculture, Food and Markets or the Commissioner of Forests, Parks and Recreation. The two officials shall cooperate with each other on jointly operated projects to avoid duplication of efforts or duties. (Added 1995, No. 68 (Adj. Sess.), § 2; amended 2003, No. 42, § 2, eff. May 27, 2003; 2003, No. 121 (Adj. Sess.), § 87, eff. June 8, 2004.)

The Vermont Statutes Online

Title 6 : Agriculture

Chapter 084 : Pest Survey, Detection, And Management

(Cite as: 6 V.S.A. § 1032)

§ 1032. Powers of the Secretary

The Secretary in furtherance of the purposes of this chapter may:

(1) Adopt and amend rules as he or she deems necessary in order to carry out the provisions of sections 1033, 1034, 1035, and 1040 of this chapter.

(2) Appoint assistants, subject to applicable laws and rules, to perform or assist in the performance of any of the duties or functions of the Secretary under this chapter.

(3) Excluding private domiciles and curtilage, enter any premises, public or private, as may be necessary to carry out the provisions of this chapter. Whenever practicable, advance notice of a proposed survey or examination shall be given to the owner or occupant of the property to be entered.

(4) Solicit and receive federal or private funds.

(5) Cooperate with the federal government and any agencies, departments, and instrumentalities of the federal government, the State of Vermont and any agencies, departments, divisions, or political subdivisions of the State, and any other state or commonwealth and any agencies, departments, or political subdivisions of a state or commonwealth, in order to carry out the provisions of this chapter.

(6) Enter into compliance agreements with any person engaged in growing, handling, or moving regulated articles, plant pests, plants, or plant products. (Added 1995, No. 68 (Adj. Sess.), § 2; amended 2003, No. 42, § 2, eff. May 27, 2003.)

The Vermont Statutes Online

Title 6 : Agriculture

Chapter 084 : Pest Survey, Detection, And Management

(Cite as: 6 V.S.A. § 1034)

§ 1034. Quarantines

The Secretary may establish and maintain quarantines and adopt other orders and rules pursuant to 3 V.S.A. chapter 25 concerning the planting, exposing, sale, importation, and transportation of all plants and plant products and regulated articles capable of carrying plant pests of an injurious nature in any living stage within the State. (Added 1995, No. 68 (Adj. Sess.), § 2; amended 2003, No. 42, § 2, eff. May 27, 2003.)

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	Vermont Lawyer (hunter.press.vermont@gmail.com)	Attn: Will Hunter

FROM: APA Coordinator, VSARA

Date of Fax: August 4, 2021

RE: The "Proposed State Rules " ad copy to run on

August 12, 2021

PAGES INCLUDING THIS COVER MEMO:

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***NOTE* 8-pt font in body. 12-pt font max. for headings - single space body. Please include dashed lines where they appear in ad copy. Otherwise minimize the use of white space. Exceptions require written approval.**

If you have questions, or if the printing schedule of your paper is disrupted by holiday etc. please contact VSARA at 802-828-3700, or E-Mail sos.statutoryfilings@vermont.gov, Thanks.

PROPOSED STATE RULES

By law, public notice of proposed rules must be given by publication in newspapers of record. The purpose of these notices is to give the public a chance to respond to the proposals. The public notices for administrative rules are now also available online at <https://secure.vermont.gov/SOS/rules/> . The law requires an agency to hold a public hearing on a proposed rule, if requested to do so in writing by 25 persons or an association having at least 25 members.

To make special arrangements for individuals with disabilities or special needs please call or write the contact person listed below as soon as possible.

To obtain further information concerning any scheduled hearing(s), obtain copies of proposed rule(s) or submit comments regarding proposed rule(s), please call or write the contact person listed below. You may also submit comments in writing to the Legislative Committee on Administrative Rules, State House, Montpelier, Vermont 05602 (802-828-2231).

Hemlock Woolly Adelgid Quarantine.

Vermont Proposed Rule: 21P025

AGENCY: Agriculture, Food & Markets

CONCISE SUMMARY: The hemlock woolly adelgid is an invasive, sap-sucking insect that causes mortality in hemlock trees across the eastern seaboard and other parts of the United States through its feeding. This amendment is necessary to protect Vermont's hemlock resource as hemlock woolly adelgid (HWA) was first reported in Vermont in 2007 and is now established within the state. The existing rule is an external quarantine and only prohibits entry of regulated articles into Vermont. This creates confusion about movement of hemlock from infested counties within Vermont. The amendment is necessary because the existing rule regulates logs, lumber, and chips which, over the past thirty years in Vermont, have not been known to spread hemlock woolly adelgid. Rather, State personnel have determined that the primary means of dispersal - pathway of highest risk - concerning the spread of the pest is transportation of nursery stock. The amended rule emphasizes regulation of this pathway.

FOR FURTHER INFORMATION, CONTACT: David Huber, Agency of Agriculture, Food and Markets, 116 State Street, Montpelier, VT 05620 Tel: 802-461-7160 Email: david.huber@vermont.gov URL: <https://agriculture.vermont.gov>.

FOR COPIES: Joshua Halman, Department of Forests, Parks and Recreation, 1 National Life Drive, Davis 2 Montpelier, VT 05620 Tel; 802-279-9999 Email: joshua.halman@vermont.gov.

Vermont Joint Quarantine No. 1 (Scleroderris Canker).

Vermont Proposed Rule: 21P026

AGENCY: Agriculture, Food & Markets

CONCISE SUMMARY: Joint Quarantine #1 was established to control the spread of Scleroderris Canker – a disease which can cause mortality in species of pine trees. This filing is to repeal the Scleroderris Canker Joint Quarantine. The repeal is necessary because there has been a substantial lack of evidentiary findings or complaints regarding this disease in Vermont and phytosanitary certificates have not been requested by the

regulated community. The repeal is necessary because online records demonstrate this disease has not been reported in the state going back to at least 2011. Since State personnel have not detected this disease, this quarantine cannot be justified because continuing to maintain the rule may cause unnecessary worry for the public and regulated community. Additionally, nursery rules already regulate the primary means of dispersal - moving the fungus on live trees. The rule is not needed to export pine products from Vermont.

FOR FURTHER INFORMATION, CONTACT: David Huber, Agency of Agriculture, Food and Markets, 116 State Street, Montpelier, VT 05620 Tel: 802-461-7160 Email: david.huber@vermont.gov URL: <https://agriculture.vermont.gov>.

FOR COPIES: Joshua Halman, Department of Forests, Parks and Recreation, 1 National Life Drive, Davis 2 Montpelier, VT 05620 Tel; 802-279-9999 Email: joshua.halman@vermont.gov.



Proposed Rules Postings

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Deadline For Public Comment

Deadline: Aug 26, 2021

The deadline for public comment has expired. Contact the agency or primary contact person listed below for assistance.

Rule Details

Rule Number:	21P025
Title:	Hemlock Woolly Adelgid Quarantine.
Type:	Standard
Status:	Proposed
Agency:	Agency of Agriculture, Food and Markets
Legal Authority:	6 V.S.A. §§ 1031, 1032(1), and 1034.
Summary:	The hemlock woolly adelgid is an invasive, sap-sucking insect that causes mortality in hemlock trees across the eastern seaboard and other parts of the United States through its feeding. This amendment is necessary to protect Vermont's hemlock resource as hemlock woolly adelgid (HWA) was first reported in

Vermont in 2007 and is now established within the state. The existing rule is an external quarantine and only prohibits entry of regulated articles into Vermont. This creates confusion about movement of hemlock from infested counties within Vermont. The amendment is necessary because the existing rule regulates logs, lumber, and chips which, over the past thirty years in Vermont, have not been known to spread hemlock woolly adelgid. Rather, State personnel have determined that the primary means of dispersal - pathway of highest risk - concerning the spread of the pest is transportation of nursery stock. The amended rule emphasizes regulation of this pathway.

Persons Affected: Vermont Agency of Agriculture, Food and Markets (VAAF), Vermont Department of Forests, Parks & Recreation, Forest Product Industries, Nurseries, Homeowners, and Landscapers.

Economic Impact: This amendment will have no significant economic impact on forest products industries and will have a beneficial impact on homeowners and nurseries by enabling both groups to purchase treated hemlocks and by expanding the latter group's market potential through their ability to purchase treated hemlock stock.

Posting date: Aug 04,2021

Hearing Information



There are not Hearings scheduled for this Rule

Contact Information

Information for Primary Contact


PRIMARY CONTACT PERSON - A PERSON WHO IS ABLE TO ANSWER QUESTIONS ABOUT THE CONTENT OF THE RULE.

Level: Primary
Name: David Huber
Agency: Agency of Agriculture, Food and Markets
Address: 116 State Street
City: Montpelier
State: VT
Zip: 05620

Telephone: 802-461-7160
 Fax:
 Email: david.huber@vermont.gov

 Website Address: https://agriculture.vermont.gov


Information for Secondary Contact

SECONDARY CONTACT PERSON - A SPECIFIC PERSON FROM WHOM COPIES OF FILINGS MAY BE REQUESTED OR WHO MAY ANSWER QUESTIONS ABOUT FORMS SUBMITTED FOR FILING IF DIFFERENT FROM THE PRIMARY CONTACT PERSON.

Level: Secondary
 Name: Joshua Halman
 Agency: Department of Forests, Parks, and Recreation, Agency of Natural Resources
 Address: 1 National Life Drive, Davis 2
 City: Montpelier
 State: VT
 Zip: 05620
 Telephone: 802-279-9999
 Fax:
 Email: joshua.halman@vermont.gov


Keyword Information

Keywords:
 Hemlock woolly adelgid
 Nursery
 Forest
 Quarantine
 Pest

