

Publication Date: September 14, 2009

Effective Dates: September 14, 2009 through February 10, 2010

**WISCONSIN DEPARTMENT OF AGRICULTURE, TRADE AND CONSUMER PROTECTION
EMERGENCY RULE**

The state of Wisconsin department of agriculture, trade and consumer protection hereby adopts the following emergency rule *to amend* s. ATCP 21.17 (1) (b) and *to create* s. ATCP 21.17 (1) (c), *relating to* the quarantines of Milwaukee County, Racine County and Waukesha County for emerald ash borer.

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

This emergency rule creates quarantines for Milwaukee County, Racine County and Waukesha County for the emerald ash borer. Under this rule, the Department of Agriculture, Trade and Consumer Protection (“DATCP”) quarantines Milwaukee County, Racine County and Waukesha County to mitigate the movement of emerald ash borer to other areas of Wisconsin and other states.

DATCP is adopting this temporary emergency rule pending the adoption of federal quarantines for Milwaukee County, Racine County and Waukesha County. This emergency rule will take effect immediately upon publication in the official state newspaper, and will remain in effect for 150 days. The Legislature’s Joint Committee for Review of Administrative Rules may extend the emergency rule for up to 120 additional days.

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 Statutory Authority

The Wisconsin Department of Agriculture, Trade and Consumer Protection (“DATCP”) has broad general authority, under s. 93.07 (1), Stats., to adopt regulations to enforce laws under its jurisdiction. DATCP also has broad general authority, under ss. 93.07 (12) and 94.01, Stats., to adopt regulations to prevent and control plant pest infestations. Emerald ash borer quarantines created by this rule are part of an overall state strategy to prevent and control plant pest infestations, including emerald ash borer infestations. DATCP is adopting this temporary emergency rule, under authority of s. 227.24, Stats., pending the adoption of federal regulations on the same subject.

Background

The United States Department of Agriculture-Animal and Plant Health Inspection Services (APHIS) positively identified emerald ash borer in Milwaukee County, near the borders of Racine County and Waukesha County on August 28, 2000. This emergency rule creates DATCP quarantines for Milwaukee County, Racine County and Waukesha County. A federal quarantine will be enacted approximately two to six weeks after a formal submission by the state plant regulatory official. Emerald ash borer is carried by untreated ash wood products. A two to six week delay until enactment of the federal quarantine leaves too much time for businesses or individuals to move potentially emerald ash borer infested material out of the county to areas of Wisconsin or other states that are not infested with emerald ash borer.

Emerald ash borer is an injurious exotic pest that now endangers Wisconsin’s 750 million ash trees and ash tree resources. This insect has the potential to destroy entire stands of ash, and any incursion of emerald ash borer can result in substantial losses to forest ecosystems and urban trees, as well as the state’s thriving tourism and timber industries. Efforts are currently underway in other states to eradicate emerald ash borer. Those efforts have proven to be costly, time-consuming, and not completely effective. In Michigan, emerald ash borer has caused an estimated \$11.6 million in landscape industry and wood lot losses and approximately \$2 million in lost nursery stock sales annually. The United States Department of Agriculture predicts the national urban impact from this pest could exceed \$370 billion.

DATCP has plant inspection and pest control authority under s. 94.01, Stats., to adopt rules establishing quarantines or other restrictions on the importation into or movement of plants or other materials within this state, if these measures are necessary to prevent or control the spread of injurious plant pests. A quarantine order may prohibit the movement of any pest, or any plant, pest host or pest-harboring material, which may transmit or harbor a pest.

Emergency Rule Content

Under this emergency rule, movement of all hardwood (non-coniferous) firewood of any type plus movement of any ash wood out of Milwaukee County, Racine County and Waukesha County is prohibited with certain exceptions. The emergency rule will do the following:

- Create quarantines of emerald ash borer for Milwaukee County, Racine County and Waukesha County that prohibit the movement of all hardwood species of firewood, nursery stock, green lumber, and other material living, dead, cut or fallen, including logs, stumps, roots, branches and composted and uncomposted chips of the genus *Fraxinus* (Ash wood), out of the county.
- 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 (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 spells out what a company can and cannot do with regulated articles.

Fiscal Impact

DATCP will have additional workload related to enforcing the quarantines but it will be able to absorb the projected workload and costs within DATCP's current budget and with current staff. The presence of emerald ash borer may produce additional workload for local governments in Milwaukee County, Racine County and Waukesha County, but the quarantines will not themselves produce any local fiscal impact.

Business Impact

This emergency rule may have an impact on persons or companies that deal in any hardwood firewood or ash materials in Milwaukee County, Racine County or Kenosha County. The affected businesses are all small businesses. This emergency rule restricts the sale or distribution of ash products plus any hardwood firewood from Milwaukee County, Racine County and Waukesha County to locations outside of Milwaukee County, Racine County and Waukesha County.

The business impact of this emergency rule depends on the number of nurseries that sell/distribute ash nursery stock outside the county, firewood producers/dealers that sell/distribute outside the county, saw mills that move untreated ash stock outside the county, and green wood waste that is moved outside the county.

Milwaukee County, Racine County and Waukesha County have a combined total of 84 licensed nursery growers that could possibly be growing ash nursery stock. Those growers will not be able to sell ash nursery stock outside of the county during the quarantine. There are also a total of 50 known firewood dealers in Milwaukee County, Racine County and Waukesha County. Additional firewood dealers are being identified weekly. Firewood dealers would need to be certified under s. ATCP 21.20 to sell firewood outside of the county. To obtain certification a firewood dealer will have to pay an annual certification fee to DATCP of \$50 and treat the firewood in a manner that insures it is free of emerald ash borer. There are 3 mills (non-veneer) in Milwaukee County, Racine County and Waukesha County and an unknown number of wood processing facilities that deal with ash. To sell ash wood products outside of their counties they will have to enter into a compliance agreement with DATCP or APHIS that authorizes movement of ash products outside of their county only when there is assurance that the movement will not spread emerald ash borer to other locations.

Environmental Impact

This emergency rule will not have a significant impact on the environment.

Federal Programs

Under the federal Plant Protection Act, APHIS has responsibility for excluding, eradicating and controlling serious plant pests, including emerald ash borer. APHIS has instituted statewide quarantines on the movement of all ash wood for Illinois, Indiana and Ohio, in addition to the Lower Peninsula of Michigan. APHIS has also instituted quarantines for Ozaukee, Washington, Sheboygan, Fond du Lac, Vernon and Crawford Counties in Wisconsin. The quarantines include restrictions on the movement of any hardwood (non-coniferous) firewood.

Surrounding State Programs

Surrounding states where emerald ash borer has been identified (Illinois, Indiana, Ohio, Minnesota and Michigan) have state and federal quarantines that prohibit the movement of regulated articles out of quarantined areas. A regulated article can only move out of quarantined areas after it is certified by USDA or state officials.

DATCP Contact

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

Brian Kuhn or Bob Dahl
Department of Agriculture, Trade and Consumer Protection
P.O. Box 8911
Madison, WI 53708-8911
Telephone: (608) 224-4590 or (608) 224-4573
E-Mail: Brian.Kuhn@wisconsin.gov or Robert.Dahl@wisconsin.gov

FINDING OF EMERGENCY

(1) On August 28, 2009, APHIS identified emerald ash borer in Milwaukee County, near the borders of Racine County and Waukesha County. Emerald ash borer is an exotic pest that poses a dire risk to the ash forest. When APHIS declares quarantine, DATCP has regulatory authority for import controls and quarantine for emerald ash borer under ATCP 21.17. It is anticipated that APHIS will declare quarantines for Milwaukee County, Racine County and Waukesha County but that it will take up to six weeks for APHIS to act. A six week delay until enactment of the federal quarantines leaves too much time for businesses or individuals to move potentially emerald ash borer infested material out of the county to areas of Wisconsin or other states that are not infested with emerald ash borer.

(2) DATCP is adopting this rule as a temporary emergency rule, pending completion of federal quarantine regulations. DATCP does not anticipate completing a permanent rule.

EMERGENCY RULE

SECTION 1. ATCP 21.17 (1) (b) is amended to read:

ATCP 21.17 (1) (b) Move any regulated item under sub. (2) Out of an emerald ash borer regulated area that is identified in 7 CFR 301.53-3 and located in this state or out of an emerald ash borer regulated area identified in (c).

SECTION 2. ATCP 21.17 (1) (c) is created to read:

ATCP 21.17 (1) (c) Milwaukee County, Racine County and Waukesha County are designated emerald ash borer regulated areas.

SECTION 3. EFFECTIVE DATE: This emergency rule takes effect upon publication, and remains in effect for 150 days. The department may seek to extend this emergency rule as provided in s. 227.24, Stats.

Wisconsin Department of Agriculture, Trade and Consumer Protection

Business Impact Analysis¹

Rule Subject: Plant Pest Import Controls and Quarantines
Adm. Code Reference: ATCP 21
Rules Clearinghouse #: Not yet assigned
DATCP Docket #:

Rule Description

This emergency rule creates quarantines for Milwaukee County, Racine County and Waukesha County for emerald ash borer. Under this rule, the Department of Agriculture, Trade and Consumer Protection (“DATCP”) quarantines Milwaukee County, Racine County and Waukesha County to mitigate the movement of emerald ash borer to other areas of Wisconsin and other states.

DATCP is adopting this temporary emergency rule pending the adoption of a federal regulation to quarantine Milwaukee County, Racine County and Waukesha County. The emergency rule will take effect immediately upon publication in the official state newspaper, and will remain in effect for 150 days. The Legislature’s Joint Committee for Review of Administrative Rules may extend the emergency rule for up to 120 additional days.

The United States Department of Agriculture-Animal and Plant Health Inspection Services (APHIS) positively identified emerald ash borer in Milwaukee County near the border of Racine County and Waukesha County on August 28, 2009. This emergency rule creates DATCP quarantines for Milwaukee County, Racine County and Waukesha County. Federal quarantines will be enacted approximately two to six weeks after a formal submission by the state plant regulatory official. Emerald ash borer is carried by untreated ash wood products. A two to six week delay until enactment of the federal quarantine leaves too much time for businesses or individuals to move potentially emerald ash borer infested material out of the county to areas of Wisconsin or other states that are not infested with emerald ash borer.

Key Rule Provisions

This rule includes the following key provisions:

- Creates quarantines of emerald ash borer for Milwaukee County, Racine County and Waukesha County that prohibit the movement of all hardwood species of firewood, nursery stock, green lumber, and other material living, dead, cut or fallen, including logs, stumps, roots, branches and composted and uncomposted chips of the genus *Fraxinus* (Ash wood), out of the county.
- Provides 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 (some products, such as nursery stocks, cannot be given an exemption).
- Provides an exemption for businesses that enter into a state or federal compliance agreement. The compliance agreement spells out what a company can and cannot do with regulated articles.

Business Impact

This emergency rule may have an impact on persons or companies that deal in any hardwood firewood or ash materials in Milwaukee County, Racine County or Waukesha County. The affected businesses are all small businesses. This emergency rule restricts the sale or distribution of ash products plus any hardwood firewood from Milwaukee County, Racine County and Waukesha County to locations outside of Milwaukee County, Racine County and Waukesha County.

¹ This analysis includes, but is not limited to, a small business analysis (“regulatory flexibility analysis”) under s. 227.114, Stats..

The business impact of this emergency rule depends on the number of nurseries that sell/distribute ash nursery stock outside the county, firewood producers/dealers that sell/distribute outside the county, saw mills that move untreated ash stock outside the county, and green wood waste that is moved outside the county.

Milwaukee County, Racine County and Waukesha County have a combined total of 84 licensed nursery growers that could possibly be growing ash nursery stock. Those growers will not be able to sell ash nursery stock outside of the county during the quarantine. There are also a total of 50 known firewood dealers in Milwaukee County, Racine County and Waukesha County. Additional firewood dealers are being identified weekly. Firewood dealers would need to be certified under s. ATCP 21.20 to sell firewood outside of the county. To obtain certification a firewood dealer will have to pay an annual certification fee to DATCP of \$50 and treat the firewood in a manner that insures it is free of emerald ash borer. There are 3 mills (non-veneer) in Milwaukee County, Racine County and Waukesha County and an unknown number of wood processing facilities that deal with ash. To sell ash wood products outside of their counties they will have to enter into a compliance agreement with DATCP or APHIS that authorizes movement of ash products outside of their county only when there is assurance that the movement will not spread emerald ash borer to other locations.

Accommodation for Small Business

DATCP recognizes that every small business is different. DATCP will work with individual businesses to meet the requirements of the quarantine while accommodating the unique character of the individual business. Therefore, each compliance agreement will be designed to satisfy the regulations with minimal negative effects to the business.

Conclusion

This rule will help affected businesses in Milwaukee County, Racine County and Waukesha County to move ash wood and material without moving emerald ash borer from their counties to areas free from emerald ash borer. This will in turn help to protect the resources on which they depend. This rule may impose some additional costs on some businesses, including small businesses, depending on the nature of their ash wood business. The department works closely with each affected business to minimize any costs and these costs are outweighed by the protection of Wisconsin's ash resource.

Dated this _____ day of _____, 2009

STATE OF WISCONSIN
DEPARTMENT OF AGRICULTURE,
TRADE AND CONSUMER PROTECTION

By _____
Kathy F. Pielsticker, Administrator

Division of Agricultural Resource Management

FISCAL ESTIMATE DOA-2048 (R 10/94) <input checked="" type="checkbox"/> ORIGINAL <input type="checkbox"/> UPDATED <input type="checkbox"/> CORRECTED <input type="checkbox"/> SUPPLEMENTAL	LRB or Bill No. / Adm. Rule No. ATCP 21 <hr/> Amendment No. (If Applicable)
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Subject:
Emergency Rule for Quarantines of Milwaukee County, Racine County and Waukesha County for Emerald Ash Borer

Fiscal Effect State: <input checked="" type="checkbox"/> No State Fiscal Effect Check below only if bill makes a direct appropriation or affects a sum sufficient appropriation. <input type="checkbox"/> Increase Existing Appropriation <input type="checkbox"/> Increase Existing Revenues <input type="checkbox"/> Decrease Existing Appropriation <input type="checkbox"/> Decrease Existing Revenues <input type="checkbox"/> Create New Appropriation	<input type="checkbox"/> Increase Costs – May be possible to absorb within agency’s budget? <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Decrease Costs
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Local : <input checked="" type="checkbox"/> No local government costs 1. <input type="checkbox"/> Increase Costs <input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory 2. <input type="checkbox"/> Decrease Costs <input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory 3. <input type="checkbox"/> Increase Revenues <input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory 4. <input type="checkbox"/> Decrease Revenues <input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory	5. Types of Local Gov. Unit Affected: <input type="checkbox"/> Towns <input type="checkbox"/> Villages <input type="checkbox"/> Counties <input type="checkbox"/> Cities <input type="checkbox"/> Other: <u>County Drainage Boards</u> <input type="checkbox"/> School Districts <input type="checkbox"/> WTCS Districts
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Fund Source Affected: <input type="checkbox"/> GPR <input type="checkbox"/> FED <input type="checkbox"/> PRO <input type="checkbox"/> PRS <input type="checkbox"/> SEG <input type="checkbox"/> SEG-S	Affected Ch. 20 Appropriations:
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Assumptions Used in Arriving at Fiscal Estimate

The United States Department of Agriculture-Animal and Plant Health Inspection Services (APHIS) positively identified emerald ash borer in Milwaukee County on August 28, 2009. The location of the infested trees is within close proximity to both Racine County and Waukesha County. This emergency rule creates DATCP quarantines for Milwaukee County, Racine County and Waukesha County. A federal quarantine will be enacted approximately two to six weeks after a formal submission by the state plant regulatory official. Emerald ash borer is carried by untreated ash wood products. A two to six week delay until enactment of the federal quarantines leaves too much time for businesses or individuals to move potentially emerald ash borer infested material out of the counties to areas of Wisconsin or other states that are not infested with emerald ash borer.

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DATCP has plant inspection and pest control authority under s. 94.01, Stats., to adopt rules establishing quarantines or other restrictions on the importation into or movement of plants or other materials within this state, if these measures are necessary to prevent or control the spread of injurious plant pests. A quarantine order may prohibit the movement of any pest, or any plant, pest host or pest-harboring material, which may transmit or harbor a pest. The proposed rule will do the following:

- Create quarantines of emerald ash borer for Milwaukee County, Racine County and Waukesha County that prohibit the movement of all hardwood species of firewood, nursery stock, green lumber, and other material living, dead, cut or fallen, including logs, stumps, roots, branches and composted and uncomposted chips of the

genus *Fraxinus* (Ash wood), out of the county.

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

This rule will be administered by DATCP. DATCP will have additional workload related to enforcing the quarantine but it will be able to absorb the projected workload and costs within DATCP's current budget and with current staff. The presence of the emerald ash borer may produce additional workload for local governments in Milwaukee County, Racine County and Waukesha County, but the quarantines will not themselves produce any local fiscal impact.

Long - Range Fiscal Implications

If multiple infestations are found in this state, DATCP may experience substantial costs and personnel demands for providing regulatory oversight and working with affected industries. Costs may vary, depending on the nature and scope of the infestations, and cannot be accurately predicted at this time.

Agency/prepared by: (Name & Phone No.)
 DATCP
 Jennifer Heaton-Amrhein 608-224-4512

Authorized Signature/Telephone No.

Date
 9/08/2009

FISCAL ESTIMATE WORKSHEET

2009 SESSION

Detailed Estimate of Annual Fiscal Effect DOA-2047 (R10/94)
 ORIGINAL UPDATED
 CORRECTED SUPPLEMENTAL

LRB or Bill No/Adm. Rule No.
 ATCP 21

Amendment No.

SUBJECT

Emergency Rule

I. One-time Cost or Impacts for State and/or Local Government (do not include in annualized fiscal effect):

II. Annualized Cost:

Annualized Fiscal Impact on State funds from:

A. State Costs by Category

Increased Costs

Decreased Costs

1. State Operations - Salaries and Fringes

\$-0

\$ - 0

2. (FTE Position Changes)

(FTE)

(- FTE)

3. State Operations - Other Costs

4. Local Assistance		- 0
5. Aids to Individuals or Organizations	0	- 0
TOTAL State Costs by Category	\$-0	\$ - 0
B. State Costs by Source of Funds	Increased Costs	Decreased Costs
1. GPR	\$	\$ - 0
2. FED	0	- 0
3. PRO/PRS	0	- 0
4. SEG/SEG-S	\$-0	- 0
III. State Revenues - Complete this section only when proposal will increase or decrease state revenues (e.g., tax increase, decrease in license fees)	Increased Revenue	Decreased Revenue
• GPR Taxes	\$ 0	\$ - 0
• GPR Earned	0	- 0
• FED	0	- 0
• PRO/PRS	0	- 0
• SEG/SEG-S	0	- 0
TOTAL State Revenues	\$ 0	\$ - 0

NET ANNUALIZED FISCAL IMPACT

	<u>STATE</u>	<u>LOCAL</u>
NET CHANGE IN COSTS	\$ <u>0</u>	\$ <u>0</u>
NET CHANGE IN REVENUES	\$ <u>0</u>	\$ <u>0</u>

Agency Prepared by: (Name & Phone No.) DATCP Jennifer Heaton-Amrhein, 608-224-4512	Authorized Signature/Telephone No.	Date 9/08/2009
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