

# Wisconsin Department of Agriculture, Trade and Consumer Protection

## Initial Regulatory Flexibility Analysis

<b><i>Rule Subject:</i></b>	<b>Plant Pest Import Controls and Quarantines</b>
<b><i>Adm. Code Reference:</i></b>	<b>ATCP 21</b>
<b><i>Clearinghouse #:</i></b>	<b>Not Applicable</b>
<b><i>DATCP Docket #:</i></b>	<b>14-R-15</b>

### ***Rule Description***

This emergency rule creates a quarantine for Adams, Buffalo, Calumet, Juneau, Kewaunee, Manitowoc, Oneida and Outagamie Counties for emerald ash borer (“EAB”). Under this rule, the Department of Agriculture, Trade and Consumer Protection (“DATCP”) quarantines these counties to mitigate the risk of movement of EAB to other areas of Wisconsin and to other states.

DATCP is adopting this temporary emergency rule pending the adoption of a federal regulation to quarantine Adams, Buffalo, Calumet, Juneau, Kewaunee, Manitowoc, Oneida and Outagamie Counties. 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 Service (“APHIS”) positively identified EAB in Adams County near Lake Petenwell in the Town of Monroe on July 31, 2014. APHIS subsequently identified EAB in Merrick State Park, Buffalo County, on August 5, 2014. On August 29, 2014, APHIS identified EAB in the Village of Sherwood, Calumet County, only four miles from the Outagamie County line. On October 6, 2014, APHIS identified EAB in the City of Rhineland, Oneida County. While EAB has not yet been positively identified in Juneau, Kewaunee, Manitowoc and Outagamie Counties, these four are now almost completely surrounded by the state EAB quarantine and are in relatively close proximity to existing infestations. It is likely that these four counties already contain some level of EAB infestation, and there is little economic or ecological benefit to maintaining their status outside of the EAB quarantine.

This emergency rule creates a DATCP quarantine for Adams, Buffalo, Calumet, Juneau, Kewaunee, Manitowoc, Oneida and Outagamie Counties. A Federal quarantine will be enacted approximately six to eight weeks after a formal submission by the state plant regulatory official. EAB is carried and spread by untreated ash wood products. An eight-week delay until enactment of the federal quarantine leaves too much time for businesses

or individuals to move potentially EAB infested material out of these eight counties to areas of Wisconsin or other states that are not infested with EAB.

### ***Key Rule Provisions***

This rule includes the following key provisions:

- Creates a quarantine for EAB for Adams, Buffalo, Calumet, Juneau, Kewaunee, Manitowoc, Oneida and Outagamie Counties that prohibits 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 these counties or any contiguous EAB quarantined counties.
- 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 ash nursery stock, cannot be given an exemption).
- Provides 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.

### ***Small Business Affected***

This emergency rule may have an impact on persons or companies that deal in any hardwood firewood or ash materials in Adams, Buffalo, Calumet, Juneau, Kewaunee, Manitowoc, Oneida and Outagamie Counties. The affected businesses are all small businesses. This emergency rule restricts the sale or distribution of ash trees and ash wood products plus any hardwood firewood from these eight counties to locations outside of these counties or outside any contiguously quarantined counties.

The business impact of this emergency rule depends on the number of:

- 1) nurseries that sell/distribute ash nursery stock outside these counties,
- 2) firewood producers/dealers that sell/distribute outside these counties,
- 3) sawmills that move untreated ash stock (green lumber) outside these counties, and
- 4) untreated wood waste (*e.g.* ash brush, chips or mulch) that is moved outside these counties.

Adams, Buffalo, Calumet, Juneau, Kewaunee, Manitowoc, Oneida and Outagamie Counties have a total of 39 licensed nursery growers that could possibly be growing ash nursery stock. Those growers will not be able to move or sell ash nursery stock outside of the quarantine area, though discussions with the Wisconsin Nursery and Landscape Association indicate that few, if any, nurseries continue to sell ash trees. There are also an estimated 58 known firewood dealers in these eight counties. Firewood dealers would need to be certified under *s.* ATCP 21.20, Wis. Admin. Code, to sell or move firewood outside of the contiguous quarantine area. To obtain certification, a firewood dealer pays a \$50 annual certification fee to DATCP and treats the firewood in a manner that ensures it is free of EAB. There are 59 known lumber mills in these eight counties and an

estimated 67 other tree service/wood processing facilities that may also deal with ash. To transport ash wood products outside of the quarantine area they will have to enter into a compliance agreement with DATCP or APHIS that authorizes movement of ash products outside of the quarantine only when there is assurance that the movement will not spread EAB to non-quarantined locations.

### ***Reporting, Bookkeeping and other Procedures***

Nursery growers will not have any additional reporting or record-keeping requirements. Wood products industries (*e.g.* firewood producers or saw mills) who enter into a compliance agreement shall keep records of all regulated product movement that leaves the contiguous quarantine area.

### ***Professional Skills Required***

No additional professional skills are required.

### ***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 compliance agreements will be designed to satisfy the regulations with minimal negative effects to the business.

### ***Conclusion***

This rule will help affected businesses in Adams, Buffalo, Calumet, Juneau, Kewaunee, Manitowoc, Oneida and Outagamie Counties to move ash wood and material without moving EAB to areas free from EAB. This will in turn help to protect the resources on which these businesses depend. This rule may impose additional costs on some businesses, including small businesses, depending on the nature of their reliance on ash trees or ash wood products. 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.