

Wisconsin Department of Agriculture, Trade and Consumer Protection

Initial Regulatory Flexibility Analysis

<i>Rule Subject:</i>	Plant Pest Import Controls and Quarantines
<i>Adm. Code Reference:</i>	ATCP 21
<i>Clearinghouse #:</i>	Not Applicable
<i>DATCP Docket #:</i>	15-R-17

Rule Description

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

DATCP is adopting this temporary emergency rule pending the adoption of a federal regulation to quarantine Marquette 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 Service (“APHIS”) positively identified EAB in Marquette County in the town of Montello on July 29, 2015. This emergency rule creates a DATCP quarantine for Marquette County. Federal quarantines 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. A six-week delay until enactment of the federal quarantine leaves too much time for businesses or individuals to move potentially EAB infested material out of the 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 Marquette County 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 the contiguous quarantined area in southeastern Wisconsin.

- 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 Marquette County. The affected businesses are all small businesses. This emergency rule restricts the sale or distribution of ash products plus any hardwood firewood from Marquette County to locations outside of the contiguous quarantined counties of southwestern Wisconsin and neighboring states.

The business impact of this emergency rule depends on the number of 1) nurseries that sell/distribute ash nursery stock outside the county, 2) firewood producers/dealers that sell/distribute outside the county, 3) sawmills that move untreated ash stock (green lumber) outside the county, and 4) untreated wood waste (e.g., ash brush, chips, or mulch) that is moved outside the county.

Marquette County has a total of seven 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 contiguous quarantine area of southwestern Wisconsin, though discussions with the Wisconsin Nursery Association indicate that few, if any, nurseries continue to sell ash trees. There is also one known firewood dealer in Marquette County. Firewood dealers would need to be certified under s. ATCP 21.20 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 five lumber mills in Marquette County and an estimated four other tree service/wood processing facilities that may also deal with ash. To transport ash wood products outside of the contiguous 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 other 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 Marquette County to move ash wood and material without moving EAB from their county to areas free from EAB. This will in turn help to protect the resources on which they depend. This rule may impose 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.