

## Wisconsin Department of Agriculture, Trade and Consumer Protection

### Regulatory Flexibility Analysis

***Rule Subject:*** Plant Pest Import Controls and Quarantines

***Adm. Code Reference:*** ATCP 21

***Clearinghouse #:*** Not Applicable

***DATCP Docket #:***

#### *Rule Description*

This emergency rule creates a quarantine for the following counties: Ashland, Barron, Bayfield, Burnett, Clark, Chippewa, Dunn, Eau Claire, Florence, Forest, Green Lake, Marathon, Marinette, Iron, Langlade, Lincoln, Menominee, Oconto, Pepin, Pierce, Polk, Price, Rusk, Shawano, Saint Croix, Taylor, Vilas, Washburn, Waupaca, and Waushara for the emerald ash borer (“EAB”).

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.

In 2017, the United States Department of Agriculture – Animal and Plant Health Inspection Service (APHIS) positively identified EAB in the following counties:

1. Green Lake: Two adult EAB were collected from an APHIS trap on St. Marie Road on August 22, 2017. Subsequently, on August 25, 2017, an adult EAB was collected from a green Department of Natural Resources (DNR) funnel trap at Margaret Dodge Memorial Park in Markesan.

2. Chippewa: APHIS verified EAB for the first time on August 25, 2017, following the collection of 31 EAB larvae from 3 trees in a private resident’s yard near Lake Wissota.

3. Waushara: On August 22, 2017, EAB was confirmed after a single EAB adult was collected by APHIS staff from a baited purple panel trap in Hancock.

4. Waupaca: On August 22, 2017, EAB was confirmed by APHIS for the first time after a single adult beetle was collected from a baited APHIS purple panel trap along County Road Q, in the Town of Farmington.

5. Marinette: On August 30, 2017, APHIS confirmed the first detection of EAB from 3 baited purple panel traps in the city of Niagara and the Towns of Wagner and Goodman.

6. Marathon: APHIS confirmed EAB for the first time on October 10, 2017, after EAB larvae were collected by a tree company from a local resident’s yard in the Town of Rib Mountain, along the Wisconsin River.

7. Eau Claire: APHIS confirmed EAB for the first time on November 30, 2017, after fifteen EAB larvae were collected by DNR forest health staff from a heavily woodpecker-

damaged tree in the boulevard of a parking lot on the UW-Eau Claire campus on November 27, 2017. City forestry staff initially found this and other infested trees in that area, near Water Street and 2nd Avenue.

While EAB has not yet been positively identified in the remaining 23 counties of Wisconsin, they are in close proximity to existing infestations, many of which include larval detections that evidence reproducing populations that were present for years before their detection in 2017. It is therefore likely that remaining 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 quarantine for Ashland, Barron, Bayfield, Burnett, Clark, Chippewa, Dunn, Eau Claire, Florence, Forest, Green Lake, Marathon, Marinette, Iron, Langlade, Lincoln, Menominee, Oconto, Pepin, Pierce, Polk, Price, Rusk, Shawano, Saint Croix, Taylor, Vilas, Washburn, Waupaca, and Waushara Counties.

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

This rule creates a quarantine for EAB for Ashland, Barron, Bayfield, Burnett, Clark, Chippewa, Dunn, Eau Claire, Florence, Forest, Green Lake, Marathon, Marinette, Iron, Langlade, Lincoln, Menominee, Oconto, Pepin, Pierce, Polk, Price, Rusk, Shawano, Saint Croix, Taylor, Vilas, Washburn, Waupaca, and Waushara Counties. The quarantine of these counties will allow for intrastate movement of regulated articles, including 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). Interstate movement of regulated articles is subject to the federal quarantine requirements.

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

This emergency rule may have an impact on persons or companies that deal in any hardwood firewood or ash materials in Ashland, Barron, Bayfield, Burnett, Clark, Chippewa, Dunn, Eau Claire, Florence, Forest, Green Lake, Marathon, Marinette, Iron, Langlade, Lincoln, Menominee, Oconto, Pepin, Pierce, Polk, Price, Rusk, Shawano, Saint Croix, Taylor, Vilas, Washburn, Waupaca, and Waushara Counties. Many of the affected businesses are small businesses. This emergency rule allows for intrastate movement. Interstate movement of regulated articles is subject to the federal quarantine requirements.

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

1. Nurseries that sell/distribute ash nursery stock outside Wisconsin,
2. Firewood producers/dealers that sell/distribute firewood outside Wisconsin,
3. Sawmills that move untreated ash stock (green lumber) outside Wisconsin, and
4. Untreated wood waste (e.g. ash brush, chips or mulch) that is moved outside the state.

Ashland, Barron, Bayfield, Burnett, Clark, Chippewa, Dunn, Eau Claire, Florence, Forest, Green Lake, Marathon, Marinette, Iron, Langlade, Lincoln, Menominee, Oconto, Pepin, Pierce, Polk, Price, Rusk, Shawano, Saint Croix, Taylor, Vilas, Washburn, Waupaca, and Waushara Counties have 177 licensed nursery growers that could possibly be growing ash nursery stock. There are also an estimated 113 known firewood producers or dealers in these thirty counties. There are

117 known sawmills in these thirty counties and an estimated 174 other tree service/wood processing facilities that may also deal with ash.

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

This rule does not create any reporting or bookkeeping requirements.

***Professional Skills Required***

No professional skills are required.

***Accommodation for Small Business***

This emergency rule lifts restrictions on the movement of regulated materials from or to certain counties and allows for intrastate movement in all counties. No accommodation for small business is needed.

***Conclusion***

This rule will help affected businesses in Ashland, Barron, Bayfield, Burnett, Clark, Chippewa, Dunn, Eau Claire, Florence, Forest, Green Lake, Marathon, Marinette, Iron, Langlade, Lincoln, Menominee, Oconto, Pepin, Pierce, Polk, Price, Rusk, Shawano, Saint Croix, Taylor, Vilas, Washburn, Waupaca, and Waushara Counties to move ash wood and material within Wisconsin. This rule will have no adverse effect on businesses, including small businesses. Therefore, this emergency rule is not subject to the delayed small business effective date provided in Wis. Stat. § 227.22(2)(e).

Dated this \_\_\_\_\_ day of March, 2018.

STATE OF WISCONSIN  
DEPARTMENT OF AGRICULTURE,  
TRADE AND CONSUMER PROTECTION

By \_\_\_\_\_  
John Petty, Administrator  
Division of Agricultural Resource Management