

**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 quarantine of 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 for the emerald ash borer.

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

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 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.

Statutes Interpreted

Wis. Stat. §§ 93.07 (12) and 94.01

Statutory Authority

Wis. Stat. §§ 93.07 (1), 93.07 (12), 94.01, and 227.24

Explanation of Statutory Authority

Emerald ash borer quarantines created by this rule are part of an overall state strategy to control and manage plant pest infestations, including EAB infestations. DATCP adopts this emergency rule under the authority of Wis. Stat. § 227.24.

Background

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. Firewood restrictions on state and federal lands will remain in effect. The Department will continue outreach related to forest pests in an effort to educate the public as to the benefits of using certified or local firewood to prevent the movement of forest pests.

Emergency Rule Content

The emergency rule will create 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. This quarantine will allow for the 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.

Summary of Factual Data and Analytical Methodologies

Data for this analysis was obtained from DATCP nursery license records, local business directories, and field surveys of the wood products industry (e.g. timber, lumber, firewood) in the affected area. This

analysis was based on the regulatory language of ATCP 21.17 and 7 CFR 301.53, the observations of DATCP Plant Industry Bureau staff, and conversations with stakeholders in the nursery and timber-related industries.

Analysis and Supporting Documents used to Determine Effect on Small Business

DATCP searched its nursery license database to obtain current records for licensed nursery growers operating 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. Based on previous and ongoing work with Wisconsin's Gypsy Moth and firewood certification programs, DATCP staff also identified known sawmills, wood products companies, and firewood industry concerns. Finally, online business listings were also searched to find related tree nursery, timber, firewood, and tree service companies.

Business Impact

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 quantity of:

1. Nurseries that sell or distribute ash nursery stock outside Wisconsin,
2. Firewood producers/dealers that sell or 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.

Environmental Impact

EAB has been confirmed or is believed to exist in all counties of the state. This emergency rule will not have a significant impact on the environment.

Federal and Surrounding State Programs

Federal Programs

Under the federal Plant Protection Act, APHIS has responsibility for excluding, eradicating, and controlling serious plant pests, including EAB. APHIS has instituted statewide quarantines on the

movement of all ash wood for Connecticut, Delaware, Illinois, Indiana, Iowa, Kentucky, Maryland, Massachusetts, Missouri, New Jersey, New York, North Carolina, Ohio, Pennsylvania, South Carolina, Virginia, West Virginia, the District of Columbia, in addition to portions of Alabama, Arkansas, Colorado, Georgia, Kansas, Louisiana, Michigan, Minnesota, Nebraska, New Hampshire, Oklahoma, Texas, Tennessee, and Wisconsin.

APHIS has enacted quarantines for Adams, Brown, Buffalo, Calumet, Columbia, Crawford, Dane, Dodge, Door, Douglas, Fond du Lac, Grant, Green, Iowa, Jackson, Jefferson, Juneau, Kenosha, Kewaunee, La Crosse, Lafayette, Manitowoc, Marquette, Milwaukee, Monroe, Oneida, Ozaukee, Outagamie, Portage, Racine, Richland, Rock, Sauk, Sawyer, Sheboygan, Trempealeau, Vernon, Walworth, Washington, Waukesha, Winnebago, and Wood Counties in Wisconsin. The quarantines include restrictions on the movement of any hardwood (non-coniferous) firewood.

Surrounding State Programs

Surrounding states where EAB has been identified (Illinois, Indiana, Iowa, 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:

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FINDING OF EMERGENCY

(1) The United States Department of Agriculture – Animal and Plant Health Inspection Service (APHIS) positively identified Emerald Ash Borer (“EAB”) in Green Lake, Chippewa, Waushara, Waupaca, Marinette, Marathon, and Eau Claire Counties in 2017. 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, which indicate reproducing populations have been present for years prior to 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. EAB is an exotic, invasive pest that poses a dire risk to the ash forest.

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) 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 are designated as 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.

Dated this _____ day of March, 2018.

STATE OF WISCONSIN
DEPARTMENT OF AGRICULTURE, TRADE AND CONSUMER
PROTECTION

By _____
Sheila E. Harsdorf, Secretary