

EmR1407

Filed with LRB: March 28, 2014

Publication Date: March 31, 2014

Effective Dates: March 31, 2014 to August 27, 2014

This emergency rule was approved by the Governor on March 13, 2014.

The blanket scope for this rule, SS 141-13, was approved by the Governor on October 30, 2013 published in register No. 695 on November 14, 2013, and approved by the Board of Agriculture, Trade & Consumer Protection on December 10, 2013.

**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 21.10 (1) (b) and *to create* s. ATCP 21.10 (1) (c), *relating to* the quarantine of Iowa County for the gypsy moth.

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

This emergency rule creates a quarantine for Iowa County for the gypsy moth (“GM”). Under this rule, the Department of Agriculture, Trade and Consumer Protection (“DATCP”) quarantines Iowa County to restrict the movement of GM from generally infested areas to other areas of Wisconsin and to other states.

DATCP is adopting this temporary emergency rule pending the adoption of a parallel federal regulation to quarantine Iowa 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

Statutes Interpreted: ss. 93.07 (12) and 94.01, Stats.

Statutory Authority

Statutory Authority: ss. 93.07 (1), 93.07 (12), 94.01 and 227.24, Stats.

Explanation of Statutory Authority

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. Under s. 94.01, Stats., DATCP may 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. 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

Gypsy moth is a highly destructive insect pest of approximately 500 species of trees and shrubs. This insect has the potential to defoliate entire stands of forest, shade, and commercial trees such as nursery stock and Christmas trees. Any infestation of GM can result in substantial losses both to forest ecosystems and to urban trees, as well as to Wisconsin's vital tourism and timber industries. In the United States, GM has defoliated an estimated 30 million forest hectares since 1970, and has cost millions of dollars annually in losses to the timber and nursery industries and local municipalities.

DATCP conducts annual trapping surveys for *Lymantria dispar*, the gypsy moth (GM). The 2013 survey in Iowa County showed that current and projected GM populations there have reached the threshold level to trigger implementation of further regulatory measures. Over the last three years, multiple trap sites in Iowa County have caught over 100 individual moths, with an average trap count of 28 in 2013. These counts represent a five-fold increase from 2011. The survey data indicate that reproducing populations of GM now exist at significant levels in Iowa County and that eradication is not feasible. These findings support the need for a quarantine to limit movement and to prevent the artificial spread of this infestation.

This emergency rule creates a DATCP quarantine for Iowa County. Gypsy moth quarantines created by this rule are part of an overall state strategy to prevent and control plant pest infestations, including GM infestations. A parallel federal quarantine will be enacted approximately six to eight weeks after a formal submission by the state plant regulatory official.

Emergency Rule Content

Under this emergency rule, movement of all logs, timbers, and firewood of any type, plus movement of any woody nursery stock or Christmas trees out of Iowa County is prohibited with certain exceptions. The emergency rule will do the following:

- Create a quarantine for GM for Iowa County that prohibits the movement of all trees, woody shrubs, cut Christmas trees, logs, pulpwood, slabwood, firewood or wood chips out of Iowa County or any contiguous GM quarantined counties.
- Prohibit any common carrier from transporting any used outdoor household item out of Iowa County or any contiguous GM quarantined counties.
- Provide an exemption for articles that have been inspected and certified by a pest control official or trained inspector and are accompanied by a written certificate issued by that official or inspector.
- Provide 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.

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 area. This analysis was based on the regulatory language of ATCP 21.10 and 7 CFR 301.45, on the observations of DATCP nursery inspectors, and on conversations with stakeholders in the nursery and other 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 and dealers operating in Iowa County. Based on previous and ongoing work with Wisconsin's gypsy moth and firewood certification programs, DATCP staff also identified known sawmills, loggers, wood products companies and firewood industry concerns. Finally, online Yellow Pages 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 nursery stock, hardwood firewood or timber materials in Iowa County. The affected businesses are all small businesses. This emergency rule restricts the sale or distribution of nursery trees, Christmas trees, timber and raw wood products plus any hardwood firewood from Iowa County to locations outside of this county or any contiguously quarantined counties, and to neighboring states.

The business impact of this emergency rule depends on the number of 1) nurseries that sell/distribute nursery stock or Christmas trees outside these counties, 2) firewood producers/dealers that sell/distribute outside these counties, 3) loggers and sawmills that move untreated timber or raw wood products outside these counties, and 4) untreated wood waste (*e.g.* brush, chips or mulch) that is moved outside these counties.

Iowa County has a total of 14 licensed nursery growers and dealers that could possibly transport nursery stock. Those growers will not be able to move or sell nursery stock outside of the quarantine area without a compliance agreement with DATCP or U.S. Department of Agriculture – Animal and Plant Health Inspection Service (“APHIS”) that authorizes movement of nursery stock outside of the quarantine only when there is assurance that the movement will not spread GM to non-quarantined locations.

There are also an estimated eight known firewood dealers in Iowa 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 regulated insect pests.

There are an estimated 15 lumber mills in Iowa County and an estimated 12 other tree service/wood processing facilities that may also deal with woody material. These businesses also will have to enter into a compliance agreement to transport logs, timber or raw wood products outside of the quarantine area.

Businesses with compliance agreements can self-inspect regulated articles moved from quarantine areas. State or Federal officials will provide inspection and certification services to businesses without compliance agreements at no additional cost. Certification and compliance agreements will require some additional recordkeeping on the part of those businesses.

Environmental Impact

This emergency rule will not have a significant negative impact on the environment. By reducing the spread of gypsy moth, this emergency rule is expected to have a net positive impact on Wisconsin’s forested environments and treescapes.

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 GM. APHIS has instituted statewide quarantines on the movement of all regulated materials for Connecticut, Delaware, Maryland, Massachusetts, Michigan, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island and Vermont in addition to portions of Illinois, Indiana, Maine, Ohio, Virginia and West Virginia. APHIS has also enacted quarantines for Adams, Ashland, Bayfield, Brown, Calumet, Clark, Columbia, Dane, Dodge, Door, Florence, Fond du Lac, Forest, Green Lake, Iron, Jackson, Jefferson, Juneau, Kenosha, Kewaunee, Langlade, Lincoln, Manitowoc, Marathon, Marinette, Marquette, Menominee, Milwaukee, Monroe, Oconto, Oneida, Outagamie, Ozaukee, Portage, Price, Racine, Rock, Sauk, Shawano, Sheboygan, Vilas, Walworth, Washington, Waukesha, Waupaca, Waushara, Winnebago and Wood Counties in Wisconsin. The quarantines include restrictions on the movement of firewood.

Surrounding State Programs

Surrounding states where GM has been identified (Illinois, Indiana, 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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Rule comments will be accepted up to two weeks after the last public hearing is held on this rule. Hearing dates will be scheduled after this emergency rule is approved by the Governor and published in the Wisconsin State Journal.

FINDING OF EMERGENCY

(1) Gypsy moth is an exotic, invasive pest that poses a serious risk to Wisconsin's forest, shade and commercial trees. The 2013 DATCP survey in Iowa County shows that current and projected GM populations in that county have reached the threshold level to trigger implementation of further regulatory measures. Since 2011, multiple trap sites in Iowa County have caught over 100 individual moths, with an average trap count of 28 in 2013 (a five-fold increase from 2011). The survey data indicate that reproducing populations of GM now exist at significant levels in Iowa County and that eradication is not feasible. This evidence supports the need for a quarantine to limit movement from this infestation. When APHIS declares a quarantine, DATCP has regulatory authority for import controls and quarantine for GM under s. ATCP 21.10. It is anticipated that APHIS will declare a quarantine for Iowa County but that it will take six to eight 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 GM infested material out of this county to areas of Wisconsin or other states that are not infested with GM.

(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 21.10 (1) (b) is amended to read:

ATCP 21.10 (1) (b) Except as provided under sub. (3), no person may move any trees, woody shrubs, cut Christmas trees, logs, pulpwood, slabwood, firewood or wood chips out of any area of this state which the United States department of agriculture has designated as a gypsy moth regulated area under 7 CFR 301.45-2 or out of a gypsy moth regulated area identified in (c).

SECTION 2. ATCP 21.10 (1) (c) is created to read:

ATCP 21.10 (1) (c) Iowa County is designated a gypsy moth regulated area.

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, 2014.

STATE OF WISCONSIN
DEPARTMENT OF AGRICULTURE,
TRADE AND CONSUMER
PROTECTION

By _____
Ben Brancel, Secretary

Wisconsin Department of Agriculture, Trade and Consumer Protection

Initial 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 Iowa County for the gypsy moth *Lymantria dispar* (“GM”). Under this rule, the Department of Agriculture, Trade and Consumer Protection (“DATCP”) quarantines Iowa County to restrict the movement of GM from generally infested areas to other areas of Wisconsin and to other states.

DATCP is adopting this temporary emergency rule pending the adoption of a parallel federal regulation to quarantine Iowa County. The federal quarantine will be enacted approximately six to eight weeks after a formal submission by the state plant regulatory official. 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.

DATCP conducts annual trapping surveys for GM. The 2013 survey in Iowa County showed that current and projected GM populations there have reached the threshold level to trigger implementation of further regulatory measures. Over the last three years, multiple trap sites in Iowa County have caught over 100 individual moths, with an average trap count of 28 in 2013. These counts represent a five-fold increase from 2011. The survey data indicate that reproducing populations of GM now exist at significant levels in Iowa County and that eradication is not feasible. These findings support the need for a quarantine to limit movement and to prevent the artificial spread of this infestation.

Key Rule Provisions

This rule includes the following key provisions:

- Create a quarantine for GM for Iowa County that prohibits the movement of all trees, woody shrubs, cut Christmas trees, logs, pulpwood, slabwood, firewood or wood chips out of Iowa County or any contiguous GM quarantined counties.
- Prohibit any common carrier from transporting any used outdoor household item out of Iowa County or any contiguous GM quarantined counties.
- Provide an exemption for articles that have been inspected and certified by a pest control official or trained inspector and are accompanied by a written certificate issued by that official or inspector.
- Provide 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 nursery stock, hardwood firewood or timber materials in Iowa County. The affected businesses are all small businesses. This emergency rule restricts the sale or distribution of nursery trees, Christmas trees, timber and raw wood products plus any hardwood firewood from Iowa County to locations outside of the county or any contiguously quarantined counties, and to neighboring states.

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

Iowa County has a total of 14 licensed nursery growers and dealers that could possibly transport nursery stock. Those growers will not be able to move or sell nursery stock outside of the quarantine area without a compliance agreement with DATCP or U.S. Department of Agriculture – Animal and Plant Health Inspection Service (“APHIS”) that authorizes movement of nursery

stock outside of the quarantine only when there is assurance that the movement will not spread GM to non-quarantined locations.

There are also an estimated eight known firewood dealers in Iowa 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 regulated insect pests.

There are an estimated 15 lumber mills in Iowa County and an estimated 12 other tree service/wood processing facilities that may also deal with woody material. These businesses also will have to enter into a compliance agreement to transport logs, timber or raw wood products outside of the quarantine area.

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 sawmills) 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 Iowa County to move nursery stock and timber material without moving GM to areas free from GM. 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 nursery trees or timber products. The department works closely with each affected business to minimize any costs and these costs are outweighed by the protection of Wisconsin's woodland and forest resource.

Dated this _____ day of March, 2014

STATE OF WISCONSIN
DEPARTMENT OF AGRICULTURE,
TRADE AND CONSUMER PROTECTION

By _____
John Petty, Administrator

Division of Agricultural Resource Management