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Report From Agency

DATCP Docket No. 10-R-05
Rules Clearinghouse No. 11-051

ORDER
OF THE WISCONSIN DEPARTMENT OF AGRICULTURE,
TRADE AND CONSUMER PROTECTION
AMENDING RULES

2 The Wisconsin department of agriculture, trade and consumer protection hereby adopts the
3 following order *to amend* ATCP 21.01(6p) and (6r) and 21.20 (1) (c), (2) (a) and (c) 9; *to repeal*
4 *and recreate* ATCP 21.20 (2) (d) and *to create* ATCP 21.20 (2) (dm) *relating to* voluntary
5 certification of firewood dealers.

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

The Department of Agriculture, Trade and Consumer Protection (“DATCP”) has administered a voluntary certification program for firewood dealers since 2008. The purposes of the program are to prevent the spread of pests such as Emerald Ash Borer and to enable firewood dealers to sell firewood for use in state parks and other state lands. DATCP is proposing changes to the certification program based on its experience administering the program. The Wisconsin Department of Natural Resources (“DNR”) has adopted rules limiting the use of firewood from *uncertified* sources in Wisconsin state parks and other state lands. Firewood from a *certified* dealer, if treated and labeled according to our rule, may be used in Wisconsin state parks and other state lands.

Statutes Interpreted

Statutes Interpreted: ss. 93.06(1p) and (1q), 93.07(12), 94.01 and 100.20, Stats.

Statutory Authority

Statutory Authority: ss. 93.06(1p) and (1q), 93.07(1), 93.07(12), 94.01 and 100.20, Stats.

Explanation of Statutory Authority

DATCP has general authority, under s. 93.07(1), Stats., to interpret laws under its jurisdiction. DATCP has authority, under ss. 93.07(12) and 94.01, Stats., to adopt regulations to prevent and control plant pest infestations. DATCP has authority, under ss. 93.06 (1p) and (1q), to provide

inspection and marketing services upon request and to charge a fee for its services. DATCP has authority, under s. 100.20(2), Stats., to regulate business practices and methods of competition.

Related Rules or Statutes

This rule supplements and is consistent with s. NR 45.045, Wis. Admin. Code.

Plain Language Analysis

The DATCP voluntary firewood certification program was created to allow firewood to move onto state lands. When s. NR 45.045 was adopted it prohibited firewood on state lands if the wood was harvested from a distance of 50 miles or more from those state lands unless the firewood was certified by DATCP. The DNR has since amended that rule and shortened the distance to 25 miles.

Rule Content

This rule makes changes to the voluntary certification program for firewood dealers that will do the following:

- Alters the definition of firewood so that some forms of wood such as slabs and trimmings from saw mills will now be considered firewood.
- Alters the definition of a firewood dealer to provide that a minimum annual distribution of 20 cords is required to meet the definition in order to limit certification to commercial operations.
- Provides that, in addition to the certification number, the firewood label must identify the treatment method and the state and county where the wood was harvested and requires a minimum font size for the certification number on the label.
- Changes the expiration date of the certification from December 31 to the anniversary date of the initial certification.
- Provides for a fee of \$200 to a dealer for each additional test DATCP must observe for certification for heat treatment when the dealer does not meet the time and temperature requirements during the first observed run.
- Eliminates fumigation as a treatment option. Currently, Wisconsin has no commercial fumigation facilities and there are no plans for one to be built in the future.
- Terminates bark removal as a treatment option after 2014.
- Lowers the heat treatment temperature and time from 160° to 140° F and from 75 to 60 minutes. New research has found that heating to 140° F for 60 minutes is effective in killing the Emerald Ash Borer (EAB). The federal standard is now 140° F for 60 minutes and surrounding states have adopted the federal standard.
- Requires a dealer that employs heat treatment to have time and temperature recording equipment and retain records of each run for three years at a central location.

Fiscal Impact

The voluntary firewood dealer certification program was created in 2008. With experience operating the certification program DATCP has identified areas where certification standards could be improved, streamlined and have more transparency. The provisions contained in this rule will not significantly increase department workload and therefore the rule has no fiscal effect on DATCP. The rule will not affect local government costs or revenues. A complete *fiscal estimate* is attached.

Business Impact

This rule will not have an impact on firewood dealers. The record keeping requirements may produce a minor expense for certified firewood dealers, as will the fee for additional heat treatment run exams. However, certification remains voluntary. The time and temperature reductions for heat treatment will produce a savings for dealers using this method and the reduced expense may result in more businesses to becoming certified. The changes by the rule will benefit firewood dealers, many of which are small businesses, and those that heat treat wood. Chapter ATCP 3, Subch. VII, includes special considerations for the application of all DATCP rules to small businesses. A complete *Business Impact Analysis* is attached.

Economic Impact Analysis

This rule will not have a significant impact on firewood dealers or the state economy. This rule has no effect upon local governments or utility ratepayers. The provisions in this rule and the economic impact analysis of the rule were developed in consultation with the DNR and firewood dealers. A complete *Economic Impact Analysis* is attached.

Environmental Impact

This rule will not have a significant impact on the environment. DATCP will inspect at least annually to verify that the certified firewood dealer has the necessary facilities and equipment to treat firewood so that it is free of pests.

Federal and Surrounding State Programs

Federal Programs

Under the federal Plant Protection Act, the Animal and Plant Health Inspection Service of the United States Department of Agriculture (USDA-APHIS) has responsibility for excluding, eradicating and controlling serious plant pests, including EAB. USDA-APHIS has instituted statewide quarantines for emerald ash borer on the interstate movement of ash for Illinois, Indiana, Ohio, Pennsylvania, West Virginia and the Lower Peninsula of Michigan. These quarantines include restrictions on the interstate movement of any hardwood (non-coniferous) firewood, and are in addition to the regulations adopted by each state related to the movement of

firewood. Firewood cannot be moved from a quarantined area unless it is accompanied by a USDA-APHIS certificate that shows the firewood to be treated in accordance of federal regulations.

The USDA-APHIS is working on rules governing labeling of firewood for interstate movement and record keeping requirements.

Surrounding State Programs

Surrounding states where EAB has been identified (Illinois, Iowa, Indiana, Michigan, and Minnesota) have state and federal quarantines that prohibit the movement of regulated articles, including all hardwood firewood, out of quarantined areas. Firewood can only move out of quarantined areas after it is certified by USDA-APHIS or state officials. Only Minnesota has a state certification program for the heat treatment of firewood. The other surrounding states defer to federal treatment options for firewood movement.

Data and Analytical Methodologies

DATCP consulted DNR and firewood dealers and utilized a substantial body of research conducted by the United States Department of Agriculture (“USDA”) to determine effective methods for eliminating pests from firewood.

DATCP Contact

Questions and comments related to this rule may be directed to:

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- 1 **SECTION 1.** ATCP 21.01(6p) and (6r) are amended to read:
- 2 ATCP 21.01(6p) “Firewood” means wood sold or distributed and used for burning for
- 3 heat, or for recreational burning, and includes home heating and campfire wood.
- 4 (6r) “Firewood dealer” means a person who ~~regularly~~ sells or distributes 20 or more cords
- 5 of firewood each year in this state and whose primary business location is in Wisconsin.
- 6 **SECTION 2.** ATCP 21.20(1)(c), (2)(a), and (c)9. are amended to read:

1 ATCP 21.20(1)(c) The firewood is labeled as treated firewood. The label shall bear the
2 certification number under sub. (2)(a) of the firewood dealer who treated the firewood in this
3 state and shall specify the method of treatment of the firewood and the state and county in which
4 the wood was harvested. . The certification number on each label shall be not less than twelve-
5 point font.

6 (2)(a) *General.* The department may annually certify a firewood dealer for purposes of
7 sub. (1)(a). The department shall issue its certification in writing. The certification shall include
8 a unique certification number assigned to the firewood dealer. An annual certification expires on
9 ~~December 31 of each year~~ the anniversary date of the initial certification. A firewood dealer is
10 not required to be certified under this subsection in order to sell or distribute firewood in this
11 state.

12 (c)9. An annual certification fee of \$50 for each firewood treatment location identified
13 under subd. 3. If the certification standards for heat treating are not met on the first attempt, the
14 department shall charge a fee of \$200.

15 **SECTION 3.** ATCP 21.20(2)(d) is repealed and recreated to read:

16
17 ATCP 21.20(2) (d) *Statement of firewood dealer.* An application under par. (c) shall
18 include the following signed and notarized statement by the firewood dealer or by an
19 authorized officer or representative of the firewood dealer:

20
21 “The firewood dealer certifies that before selling or distributing any firewood in this
22 state as treated firewood, the dealer will treat that firewood in one of the following ways:

- 23
24 **1. Heating each piece of firewood to a temperature at least 140° F. (60° C.) at the**
25 **center of the piece, and maintaining that temperature for at least 60 minutes.**
26
27 **2. Removing all bark, and additional wood to a depth of at least ½ inch beneath the**
28 **bark, from each piece of firewood. The treatment option contained in this**
29 **paragraph may be used before January 1, 2015.**
30
31 **3. Storing the firewood on the firewood dealer’s premises for at least 2 years.**
32

1 **4. Treating the firewood in a manner approved, in writing by the Wisconsin**
2 **Department of Agriculture, Trade and Consumer Protection, to kill all insect**
3 **pests that may inhabit the firewood”.**

4 **SECTION 4.** ATCP 21.20(2)(dm) is created to read:

5 ATCP 21.20(2) (dm) *Recording equipment and records.* For the treatment of firewood
6 under item 1. in the statement required under par. (d)(intro.) a firewood dealer shall have
7 electronic temperature and time recording equipment for each heat treatment vessel the dealer
8 operates. The dealer shall keep a record of the time and temperature recorded by the electronic
9 time and temperature recording equipment of each heat treatment the dealer runs for 3 years after
10 the date of the treatment.

11 **SECTION 5. EFFECTIVE DATE:** This rule takes effect on the first day of the month
12 following publication in the Wisconsin administrative register, as provided in s.
13 227.22(2)(intro.), Stats.

Dated this _____ day of _____, 2012.

WISCONSIN DEPARTMENT OF AGRICULTURE,
TRADE AND CONSUMER PROTECTION

By _____
Ben Brancel, Secretary