

Wisconsin Department of Agriculture, Trade and Consumer Protection

**Environmental Assessment
Final Draft Rule**

Rule Subject: Voluntary Certification of Firewood Dealers
Administrative Code Reference: ATCP 21
Rules Clearinghouse #: CR07-085
DATCP Docket #: 07-R-03

This hearing draft rule will allow certified firewood dealers to supply firewood to Wisconsin state parks. Certified firewood dealers must follow procedures to ensure that firewood is free of Emerald Ash Borer and other serious pests.

The Department of Agriculture, Trade and Consumer Protection (“DATCP”) is proposing this rule as part of a cooperative effort with the Department of Natural Resources (“DNR”).

Background

DATCP administers Wisconsin’s plant inspection and pest control programs. The Emerald Ash Borer is an exotic pest that endangers Wisconsin’s 717 million ash trees and ash tree resources. The Emerald Ash Borer is a very serious plant pest that has destroyed large numbers of ash trees in neighboring Midwestern states.

The Emerald Ash Borer has the potential to destroy entire stands of ash trees. Ash trees comprise a large share of the state’s forest resource, and up to 20% of Wisconsin’s urban and residential landscaping trees. Emerald Ash Borer can cause heavy losses to forest ecosystems, to state lands, and to the state’s tourism and timber industries.

Firewood movement is a primary means by which Emerald Ash Borer and other major pests are spread. DNR has adopted rules under NR 45 to restrict the movement of firewood into Wisconsin state parks. The DNR state park rules prohibit, in state parks, firewood originating from outside this state or from more than 50 miles from the state park *unless the firewood originates from a Wisconsin firewood dealer certified by DATCP.*

Contents of this Hearing Draft Rule

This rule creates a DATCP program for *voluntary* certification of firewood dealers. Wisconsin firewood dealers certified under this rule may supply firewood to Wisconsin state parks, even if those parks are located more than 50 miles away. There is a \$50 charge for certification.

The voluntary certification program is open to all firewood dealers in the state, regardless of whether they supply firewood to Wisconsin state parks. Certified firewood dealers must promise to implement pest control methods specified in this rule (heat treating, de-barking, etc.). DATCP must conduct a pre-certification inspection to verify that the firewood dealer has the necessary

facilities and equipment to implement the promised controls. DATCP may revoke a certification if a certified firewood dealer fails to implement the promised controls.

A firewood dealer is not required to be certified in order to sell firewood in this state. This rule does not change current rules related to firewood imports from other states.

DATCP may certify a firewood dealer if all of the following apply:

- The firewood dealer submits a complete application that complies with this rule.
- DATCP inspects all of the business premises identified in the certification application and determines, based on that inspection, that the firewood dealer is equipped to fulfill all of the representations included in the certification application.

A certification application must include all of the following:

- The correct legal name of the firewood dealer, and any trade names under which the firewood dealer sells or distributes firewood in this state.
- The address of the firewood dealer's business headquarters.
- The address of every business location from which the firewood dealer sells or distributes firewood in this state.
- The approximate annual volume of firewood that the firewood dealer sells or distributes in this state, including the approximate annual volume sold or distributed from each business location.
- The sources from which the firewood dealer obtains firewood for sale or distribution in this state. The application shall include the name and address of each person, if any, from whom the firewood dealer procures cut firewood.

A certification application must also include the following statement (the firewood dealer must notify DATCP if, at any time before or after the firewood dealer is certified, the statement is no longer accurate):

Firewood the applicant sells or distributes in this state intended to meet the requirements of NR 45.04(1) (g) is treated at the premises of the firewood dealer in at least one of the following ways prior to sale or distribution :

- 1. Each piece of firewood is heated to a temperature at least 160° F. (71.1° C.) at the center of the piece, and is maintained at that temperature for at least 75 minutes.**

2. **All bark, and additional wood to a depth of at least ½ inch beneath the bark, is removed from each piece of firewood.**
3. **The firewood is stored on the firewood dealer’s premises for at least 2 years before it is sold or distributed in this state.**
4. **The firewood is fumigated with a registered fumigant pesticide, according to the pesticide label, to kill all insect pests that may inhabit the firewood.**
5. **The firewood is treated in a manner approved, in writing, by the Wisconsin Department of Agriculture, Trade and Consumer Protection, to kill all insect pests that may inhabit the firewood.**

DATCP must grant or deny a certification application within 60 business days after DATCP receives a complete application. DATCP may withdraw a certification if the applicant materially misrepresents any information in the application, or fails to honor any of the commitments made in the application. A certification does not constitute a warranty, by the department, that firewood is free of pests.

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Who is Affected, and How?

This rule creates a *voluntary* firewood dealer certification program for the benefit of Wisconsin firewood dealers. A firewood dealer is not required to be certified in order to sell firewood in this state. However, certification will make it possible for certified firewood dealers to supply firewood to Wisconsin state parks (current DNR rules might otherwise preclude them from doing so). This rule may give state park users a wider choice of firewood sources.

Costs or Savings

This rule does not impose any mandatory costs on firewood dealers. However, firewood dealers who apply for certification will need to implement pest control measures prescribed in this rule. There is a \$50 fee for certification.

DATCP will incur some additional costs to implement this rule. The \$50 annual certification fee will offset a portion of DATCP’s expenses related to the operation of the firewood certification program. DATCP will absorb the remaining expenses. There are no cost savings from this rule, except that state park users may have a wider choice of firewood sources. That may help limit firewood costs to state park users.

Business Impact

This rule will not have any adverse impact on firewood dealers in this state. This rule does not require firewood dealers to be certified, nor does it restrict the sale or distribution of firewood by uncertified dealers. This rule creates a voluntary certification program, which may benefit some firewood dealers in this state.

This rule will primarily benefit large firewood dealers who can afford to implement the firewood treatment regimen required for certification. Certification under this rule is available only to firewood dealers who treat the firewood with a method that eliminates pests.

Environmental Impact

This rule will not have a significant impact on the environment. The impact that it does have will be positive in that it will help limit the spread of invasive species. This rule does not restrict the sale or movement of firewood in this state. This rule will allow some firewood in state parks that would otherwise be prohibited by DNR rules, but only if the wood comes from a certified dealer who agrees to treat the wood to destroy plant pests such as Emerald Ash Borer. DATCP will inspect at least annually to verify that the firewood dealer has the necessary facilities and equipment to honor the agreement.

This rule does not authorize or prohibit imports of firewood from outside this state. Current DATCP rules under ATCP 21.17 prohibit imports of firewood from areas which the U.S. Department of Agriculture has formally designated as being infested with certain wood pests, such as Emerald Ash Borer.

Economic Effects

This rule may be of economic benefit to some firewood dealers in this state, but will not have a significant effect on the overall economy of this state.

Social and Cultural Effects

This rule will not have significant social or cultural effects.

Alternatives to this Rule

No Action

Without this rule, some Wisconsin firewood dealers will be precluded from supplying firewood to Wisconsin state parks (if they are located more than 50 miles from the park).

Modify Certification Standards

The certification standards under this rule are designed to ensure that firewood sold by certified dealers is free of Emerald Ash Borer and like pests. The rule provides a choice of treatment options that are considered to be effective. Other options may be ineffective, or prohibitively expensive.

Controversial Public Issues

DATCP does not anticipate major public controversy related to this rule.

Conclusion

This rule will not have any significant impact on the environment. The rule creates a *voluntary* certification program, so there are no mandatory costs to comply. There are no preferable alternatives to this rule. This rule is not a “major action significantly affecting the quality of the environment,” for purposes of s. 1.11, Stats. No environmental impact statement is required under s. 1.11, Stats. or ch. ATCP 3, Wis. Adm. Code.

Signed this _____ day of _____, 2007.

WISCONSIN DEPARTMENT OF AGRICULTURE,
TRADE AND CONSUMER PROTECTION

By _____
Kathy F. Pielsticker, Administrator
Division of Agricultural Resource Management