



State of Wisconsin
Jim Doyle, Governor

Department of Agriculture, Trade and Consumer Protection
Rod Nilsestuen, Secretary

DATE: December 13, 2007

TO: The Honorable Fred Risser
President, Wisconsin State Senate
Room 220, South, State Capitol
PO Box 7882
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The Honorable Michael Huebsch
Speaker, Wisconsin State Assembly
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FROM: Rodney J. Nilsestuen, Secretary
Department of Agriculture, Trade and Consumer Protection

SUBJECT: Voluntary Certification of Firewood Dealers
(Clearinghouse Rule #07-085)

The Department of Agriculture, Trade and Consumer Protection ("DATCP") is transmitting this rule for legislative committee review, as provided in s. 227.19(2) and (3), Stats. DATCP will publish notice of this referral in the Wisconsin Administrative Register, as provided in s. 227.19(2), Stats.

This rule creates a voluntary certification program for firewood dealers. Under this rule, DATCP may certify firewood dealers in Wisconsin who agree to treat firewood intended for use in Wisconsin state parks. The firewood must be treated according to rule standards to eliminate potential infestations of Emerald Ash Borer and other pests. A firewood dealer is not required to be certified under this rule in order to sell firewood in this state.

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.

Agriculture generates \$51.5 billion for Wisconsin

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

Rule Contents

This rule creates a DATCP program for *voluntary* certification of firewood dealers. Wisconsin firewood dealers certified under this rule may supply treated firewood to Wisconsin state parks, even if those parks are located more than 50 miles away. The firewood must be labeled as treated firewood, and must include the certification number of the firewood dealer.

The voluntary certification program is open to all firewood dealers in the state, regardless of whether they supply firewood to Wisconsin state parks. A certified firewood dealer selling treated firewood must treat that firewood according to this rule (by heat treating, de-barking or other specified methods). DATCP must conduct a pre-certification inspection to verify that the firewood dealer has the necessary facilities and equipment to implement the promised treatment. DATCP may revoke the certification of a firewood dealer who sells, as treated firewood, firewood that has not been properly treated according to this rule.

A firewood dealer is not required to be certified in order to sell firewood in this state. Nor is a certified firewood dealer required to treat all firewood that the dealer sells. But firewood may not be used in state parks unless it is treated and labeled by a certified dealer according to this rule (or originates from a Wisconsin source within 50 miles of the park).

This rule does not change current rules related to firewood imports from other states. 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.

This rule is similar to a temporary emergency rule that is currently in effect (the emergency rule is scheduled to expire on January 16, 2008). This rule differs from the emergency rule in the following ways:

- This rule includes a \$50 certification fee. The emergency rule has no fee.
- This rule does not require a certified firewood dealer to treat all of the firewood distributed by that dealer (only firewood that is sold as treated firewood for possible use in state parks). The emergency rule requires a certified firewood dealer to treat *all* firewood produced by that dealer.

- This rule allows a certified firewood dealer to obtain treated firewood from outside Wisconsin, provided that the dealer treats the firewood in this state (so that DATCP can inspect the treatment facilities). Under the emergency rule, all firewood distributed by certified firewood dealers must originate from trees grown and cut in Wisconsin.
- Under this rule, a firewood dealer who sells firewood as treated firewood (for possible use in state parks) must label it as treated firewood. The label must include the firewood dealer's certification number. This rule prohibits a firewood dealer from misrepresenting firewood as treated firewood. The emergency rule does not include any of these provisions (the emergency rule prohibits a certified dealer from selling any firewood other than treated firewood).

Federal and Surrounding State Regulations

Federal Programs

Under the federal Plant Protection Act, the Animal and Plant Health Inspection Service of the United States Department of Agriculture (USDA-APHIS) is responsible for controlling serious plant pests such as the Emerald Ash Borer. USDA-APHIS has instituted statewide quarantines on the movement of ash wood for Illinois, Indiana and Ohio, in addition to 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 an APHIS certificate that shows the firewood to be free of infested wood.

Surrounding State Programs

Surrounding states where EAB has been identified (Illinois, Indiana, Ohio and Michigan) 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. Other surrounding states, such as Minnesota and Iowa, are conducting information and education campaigns about the danger of moving firewood and are considering regulatory options for dealing with firewood movement.

Public Hearings

DATCP held 2 public hearings on this rule. DATCP held the hearings on October 16, 2007 in Wausau and on October 18, 2007 in Madison and accepted written comments until November 2, 2007. No persons attended the hearings and no persons offered written comments.

Changes from Hearing Draft

DATCP modified the final draft rule to address comments from the Legislative Council Rules Clearinghouse, and to clarify the rule. There were no major substantive changes.

Response to Rules Clearinghouse Comments

DATCP modified the final draft rule to address all of the comments from the Legislative Council Rules Clearinghouse.

Fiscal Impact

There are thousands of firewood dealers in Wisconsin, but few of them will have a strong incentive to be certified under this rule. DATCP assumes that, at least initially, certification will be attractive mainly for large firewood dealers who can afford to implement the firewood treatment regimen required for certification.

DATCP estimates that approximately 30 firewood dealers will apply for certification and that the \$50 certification fee will cover a portion of DATCP's expenses for operation of the certification program. DATCP will absorb the remaining expenses (see attached *Fiscal Estimate*).

Business Impact

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). Those dealers who choose to be certified will pay a \$50 annual certification fee (see attached *Business Impact Analysis*).

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 to verify that the firewood dealer has the necessary facilities and equipment to honor the agreement (see attached *Environmental Assessment*).