

Report From Agency

REPORT TO LEGISLATURE
NR , Wis. Adm. Code NR 45.045
Board Order No. FR-25-09
Clearinghouse Rule No. 09-103

Basis and Purpose of the Proposed Rule

DNR currently limits wood entering state lands to that wood originating from within 50 miles and within the state or from dealers that are certified by the state as treating their wood to prevent transmission of pests or diseases. A recently completed model suggests, however, that once an invasive is established at several sites within the state, this 50 mile radius may be too large to meaningfully reduce the risk of introduction of the invasive onto state lands. One of the most damaging invasives moving on firewood, the emerald ash borer (EAB), has been found at five sites in Wisconsin and may be present, undetected, at others. To improve protection for state lands from invasives that move in wood, such as EAB, it is necessary to reduce the distance from which wood is allowed into state lands. We propose the distance for allowable wood be reduced to 25 miles. This distance will increase protection while ensuring adequate firewood supplies for state campgrounds.

In addition to changing the allowable distance for firewood, we also address issues that have arisen in the implementation of the rule in the past three years. We propose adding a statement to allow properties outside areas quarantined or declared zones of infestation for wood borne invasive pests and diseases to exclude wood from these areas within Wisconsin that otherwise would be allowable. We also need to clarify the definition of firewood to include all raw wood even if it is not intended for use in a fire, for example, logs used as wheel chocks.

Summary of FR-25-09

The repeal of NR 45.04(1)(g) and creation of NR 45.045 includes,

- 1) reducing the distance from which allowable firewood may originate from 50 to 25 miles from the state campground or property to which it is transported,
- 2) prohibiting firewood from areas quarantined or declared zones of infestation from entering state properties not within the quarantine or infested zone,
- 3) defining firewood to include all raw wood used for any purpose,
- 4) and defining wood that is not prohibited regardless of location of origin: wood from DATCP certified vendors, dimensional lumber scraps and artificial fireplace logs.

Summary of Public Comments

Four public hearings were held on December 15 at 7:00-9:00 PM in Madison, Green Bay, Wausau and Eau Claire. Hearings in Green Bay, Wausau and Eau Claire were linked by video conference to the hearing in Madison and attendees in these distant sites were able to view, hear and participate in the hearing in the same way as attendees in Madison. There were six attendees, all at the Madison site. Comments were accepted up to Dec. 31, 2009. One email was received.

Significant comments made during the public testimony and the Department's responses are:

- COMMENT: Regulation of wood should be more restrictive than what is proposed. It was recommended that no wood be allowed in from outside the state property unless it was from a state certified dealer who treated it to prevent its harboring pests or diseases.
RESPONSE: In developing the proposed rule, state park managers were asked whether they would be able to supply adequate amounts of firewood for campers if the distance allowable wood could originate from was reduced to 25, 10 or 0 miles. Parks managers were confident they could ensure enough wood at state campgrounds where it is currently available at the 25 mile limit but not at all of these parks if the limit was reduced to 10 or 0 miles. Some parks would not be able to supply enough wood from their own property and as there are currently

only six state certified firewood dealers, the Parks program staff didn't think they would be able to make up the shortfall with certified wood. It is important that parks be consistent in their firewood regulation to avoid confusing the public and thus reducing their compliance with the protective regulations. For this reason, we decided to reduce the allowable distance for all state properties from 50 to 25 miles at this time. We reserve the option to further reduce the allowable distance in the future if certified wood becomes more available.

- COMMENT: Skepticism was voiced that parks couldn't supply enough wood from certified dealers and their own properties.
RESPONSE: The presenter has asked the Parks program to give specific information from five parks on how much firewood is needed, how much they could supply on a sustainable basis from the property and if certified firewood dealers would be able to make up the shortfall.
- COMMENT: Concern was voiced that loggers in counties quarantined for EAB who usually sell logs for pulp are now selling them to firewood dealers. What was being done to ensure this firewood is not moving out of the quarantined area?
RESPONSE: Anna Healy from DATCP was able to address this concern. Firewood is covered by the federal and state quarantines and if a business outside of the quarantine is buying logs from quarantined areas, they must have entered a compliance agreement with the state which would require that the wood be treated to kill any EAB by the end of April among other requirements. Firewood dealers taking logs from a quarantined area which are not in compliance are in violation of the quarantine and at risk of heavy fines and or jail time.
- COMMENT: What about firewood coming in from other states? Why is that allowed over the border?
RESPONSE: This rule only regulates firewood that enters state properties. Firewood from quarantined counties or states can only come into other states if they are certified by the USDA Animal and Plant Health Inspection Service as having been treated to their specifications for the pest for which the area is quarantined. Firewood from non-quarantined counties or states may move freely across state boundaries.
- COMMENT: Why only regulate wood that goes onto state lands? Shouldn't we regulate firewood entering private campgrounds?
RESPONSE: The DNR can only regulate firewood on our own properties; we don't have authority to regulate wood entering private campgrounds. Our example has influenced private campground owners, counties and municipalities that have campgrounds and many of them now regulate what wood may enter their properties.
- COMMENT: If you go to 0 miles, you will hurt the people who live close to the park by making them pay for wood.
RESPONSE: Wood that is from close by is unlikely to introduce pests that are not already present in the park. Wood that has been treated to kill any pests in it poses no possibility of introducing pests. While it may require some people to buy wood they might not otherwise, the cost is small compared with the cost of the damage invasive pests can do to the park these people enjoy.
- COMMENT: As part of a camping registration fee, provide a small amount of free firewood to those who would want it.
RESPONSE: I will discuss this idea with the Parks Bureau staff as a way to encourage compliance with the regulations. It would, however, require getting approval to increase camping fees.
- COMMENT: Don't charge dealers to become certified.
RESPONSE: The charge for certification is \$50/year which is fairly low already. The major cost of becoming certified is that for equipment to treat wood. A kiln to heat treat wood can cost thousands of dollars for example. We have included one treatment for certification, aging the wood for two years which doesn't require the purchase of special equipment.
- COMMENT: Write the regulations to allow firewood from certified dealers to be taken into campgrounds no matter the distance.
RESPONSE: This is already the case in the rule.

Modifications Made

No changes were made as a response to public comments for the reasons given above.

Appearances at the Public Hearing

Dec 15, 2009

Madison

In support:

Harold Norselien, 4732 Hwy 78, Black Earth, WI

Anna Healy, DATCP EAB Regulatory Officer, 2811 Agriculture Dr. Madison, WI 53708-8911

In opposition:

Jan Primus, 4801 Starker Ave., Madison, WI 53716

As interest may appear:

Duane Kitzerow, 8099 Leuth Rd., Sauk City, WI 53583

Chad Zeman, 59805 Hwy 12, Prairie Du Sac, WI 53578

Bob Tomesh, 1515 Sunden Dr. Madison, WI 53706

Green Bay, Wausau, Eau Claire – no appearances

Changes to Rule Analysis and Fiscal Estimate

No changes were made as a response to public comments for the reasons given above. The fiscal effect remains the same.

Response to Legislative Council Rules Clearinghouse Report

All Clearinghouse structural changes were accepted and the rule revised accordingly. Not incorporated into the rule was the substantive change recommended removing the specific statement defining state campgrounds as the point from which to measure distance to firewood origin unless there was no campground on the property in which case the property boundary would be used. This definition must be retained in order to ensure intended protection for campgrounds on very large state properties. For example, if the distance to firewood origin were measured from the borders of the Northern Highland American Legion State Forest instead of the state campgrounds within the Forest, wood would have to be allowed into those campgrounds from much greater than the intended 25 miles. This would put the campgrounds in this State Forest at a greater risk of introduction of wood borne invasive pests than a campground in a much smaller property.

Final Regulatory Flexibility Analysis

Small businesses potentially affected by the rule. Small firewood dealers that get their wood more than 25 miles from state lands where they wish to sell wood could be affected by the change in the allowable distance from which wood may be brought onto these lands. Currently, firewood dealers that contract with state properties have been able to continue with their contracts by providing wood from within the allowable distance if they segregate that wood from non-allowable wood.

Reporting required by the rule. When campers check into state campgrounds they are asked if they brought wood and if so where it is from. This has been done for three years now but the responses are not recorded unless there is a quarantine violation that is passed onto DATCP or USDA Animal and Plant Health Inspection Service. If a business decides to become certified by DATCP for treating its wood to prevent transmission of wood borne pests or diseases, they will keep records of the agreed on treatment for that purpose but it is not required as part of this rule.

Types of skills necessary for compliance with the rule. The rule requires visitors to state lands to know where their wood originated from and to be able to distinguish dimensional lumber scraps or artificial fireplace logs from raw or minimally processed wood. The department provides a visual guide to what sort of wood is allowed and not allowed onto state lands at <http://dnr.wi.gov/invasives/firewood/>.

