

Clearinghouse Rule 07-085

DATCP Docket No. 07-R-03
Rules Clearinghouse No.

Hearing Draft
August 15, 2007

**PROPOSED ORDER
OF THE WISCONSIN DEPARTMENT OF AGRICULTURE,
TRADE AND CONSUMER PROTECTION
ADOPTING RULES**

The state of Wisconsin department of agriculture, trade and consumer protection hereby proposes the following rule to create s. ATCP 21.20, relating to voluntary certification of firewood dealers.

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

This draft rule creates a voluntary certification program for firewood dealers. Under this rule, the Department of Agriculture, Trade and Consumer Protection (“DATCP”) may certify firewood dealers in Wisconsin who agree to treat firewood intended for use in Wisconsin state parks 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.

Statutory Authority

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

The Wisconsin Department of Agriculture, Trade and Consumer Protection (“DATCP”) has broad general authority, under s. 93.07(1), Stats., to interpret laws under its jurisdiction. DATCP has broad general authority, under ss. 93.06(1p), 93.07(12) and 94.01, Stats., to adopt regulations to prevent and control plant pest infestations. The voluntary certification program created by this rule is part of an overall state strategy to prevent and control plant pest infestations, including Emerald Ash Borer infestations.

Background

Emerald Ash Borer and other major pests are carried by firewood. The Wisconsin Department of Natural Resources (DNR) has adopted rules, under NR 45, to restrict the entry of firewood into Wisconsin state parks. The DNR rules prohibit, in state parks, firewood originating from

outside this state or more than 50 miles from the state park unless the firewood originates from a firewood dealer who is certified by DATCP.

Rule Content

This rule creates a DATCP program for certification of firewood dealers. Firewood dealers certified under this rule may supply firewood to Wisconsin state parks. The certification program would be open to all firewood dealers in the state, regardless of whether they supply firewood to Wisconsin state parks. Certified firewood dealers must comply with this rule. A firewood dealer is not required to be certified under this rule in order to sell firewood in this state. A certified firewood dealer may sell or distribute firewood acquired from an out of state source but must apply the treatment required to be certified at the dealer's premises in Wisconsin. Certification does not authorize firewood imports from quarantined areas that are currently prohibited under ch. ATCP 21, Wis. Adm. Code.

Under this rule, DATCP may annually certify a firewood dealer. An annual certification expires on December 31 of each year. A firewood dealer is not required to be certified in order to sell or distribute firewood in this state. There is a \$50 charge for certification. The authority for the department to charge the fee is in s. 93.06 (1m) and (1q), Stats. Certification permits a firewood dealer to supply firewood to Wisconsin state parks, pursuant to NR 45.04(1)(g).

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 NR45.04(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.

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.

Certification may be especially attractive for large firewood dealers who wish to supply firewood to Wisconsin state parks. DNR state park rules prohibit firewood originating from outside the state or more than 50 miles from the state park, unless the firewood dealer is certified under this rule.

DATCP projects approximately one day of staff time to process each certification application and to inspect the firewood dealer's business premises. DATCP will incur inspector travel costs, but will attempt to minimize those costs by integrating inspections with other inspections. DATCP does not plan to do routine follow-up inspections, but may conduct occasional random inspections of certified firewood dealers.

DATCP assumes that approximately 30 firewood dealers will apply for certification for calendar year 2007. 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.

Business Impact

This rule will not have a significant impact on firewood dealers. 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. Those dealers who choose to be certified will pay a \$50 fee for certification

DNR state park rules prohibit firewood originating outside this state or more than 50 miles away, unless the firewood dealer is certified by DATCP. This rule will allow certified firewood dealers to supply firewood to state parks throughout the state, regardless of the firewood dealer's distance from the park. This rule will primarily benefit large firewood dealers who can afford to implement the firewood treatment regimen required for certification. 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.

Environmental Impact

This rule will not have a significant impact on the environment. 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.

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 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.

DATCP Contact

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

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2 **SECTION 1.** ATCP 21.01(6p), (6r) and (9) are created to read:

3 **(6p)** “Firewood” means wood sold or distributed for burning for heat, or for recreational
4 burning, and includes home heating and campfire wood.

5 **(6r)** “Firewood dealer” means a person who regularly sells or distributes firewood in this
6 state and whose primary business location is in Wisconsin.

7 **(9)** “Person” means an individual, corporation, partnership, cooperative, limited liability
8 company, trust or other legal entity.

9 **ATCP 21.20 Voluntary certification of firewood dealers. (1) GENERAL.** The

10 department may annually certify a firewood dealer who complies with sub. (2). The department

1 shall issue its certification in writing. An annual certification expires on December 31 of each
2 year. A firewood dealer is not required to be certified under this subsection in order to sell or
3 distribute firewood in this state. Certification constitutes approval of a firewood source for
4 purposes of s. NR 45.04(1)(g). The department shall charge \$50 for certification.

5 **(2) CERTIFICATION STANDARDS.** The department may certify a firewood dealer under
6 sub. (1) if all of the following apply:

7 (a) The firewood dealer submits a complete application under sub. (3).

8 (b) The department inspects all of the business premises identified in the certification
9 application and determines, based on that inspection, that the firewood dealer is equipped to
10 fulfill all of the representations included in the statement under sub. (4).

11 **(3) APPLYING FOR CERTIFICATION.** A firewood dealer who wishes to be certified under
12 sub. (1) shall submit a certification application to the department, on a form provided by the
13 department. The application shall include all of the following:

14 (a) The correct legal name of the firewood dealer, and any trade names under which the
15 firewood dealer sells or distributes firewood in this state.

16 (b) The address of the firewood dealer's business headquarters.

17 (c) The address of every business location from which the firewood dealer sells or
18 distributes firewood in this state.

19 (d) The approximate annual volume of firewood that the firewood dealer sells or
20 distributes in this state, including the approximate annual volume sold or distributed from each
21 business location under par. (c).

1 (e) The sources from which the firewood dealer obtains firewood for sale or distribution
2 in this state. The application shall include the name and address of each person, if any, from
3 whom the firewood dealer procures wood for sale or distribution as firewood.

4 (f) The statement required under sub. (4).

5 (4) STATEMENT BY FIREWOOD DEALER. An application under sub. (3) shall include the
6 following signed and notarized statement by the firewood dealer, or by an authorized officer or
7 representative of the firewood dealer:

8 **Firewood the applicant sells or distributes in this state intended to meet the**
9 **requirements of NR45.04(1) (g) is treated at the premises of the firewood dealer in**
10 **at least one of the following ways prior to sale or distribution :**

- 11
- 12 **1. Each piece of firewood is heated to a temperature at least 160° F. (71.1° C.) at**
13 **the center of the piece, and is maintained at that temperature for at least 75**
14 **minutes.**
- 15
- 16 **2. All bark, and additional wood to a depth of at least ½ inch beneath the bark, is**
17 **removed from each piece of firewood.**
- 18
- 19 **3. The firewood is stored on the firewood dealer’s premises for at least 2 years**
20 **before it is sold or distributed in this state.**
- 21
- 22 **4. The firewood is fumigated with a registered fumigant pesticide, according to the**
23 **pesticide label, to kill all insect pests that may inhabit the firewood.**
- 24
- 25 **5. The firewood is treated in a manner approved, in writing, by the Wisconsin**
26 **Department of Agriculture, Trade and Consumer Protection, to kill all insect**
27 **pests that may inhabit the firewood.”**
- 28

29 (5) NOTICE OF CHANGE. A firewood dealer certified under sub. (1) shall immediately
30 notify the department if, at any time before or after the department grants a certification under
31 sub. (1), the firewood dealer’s statement under sub. (4) is no longer accurate.

32 (6) ACTION ON APPLICATION. The department shall grant or deny an application under
33 sub. (3) within 60 business days after the department receives a complete application. If the
34 department denies an application, the denial notice shall include the reasons for denial.

1 (7) WITHDRAWING CERTIFICATION. The department may withdraw a certification under
2 sub. (1) if the department finds that the firewood dealer has materially misrepresented any
3 information in the application under sub. (3), or has failed to fulfill any representation included
4 in the statement under sub. (4).

5 (8) The department shall provide a certification number to each certified firewood dealer.
6 Each bundle, cord or other size parcel of firewood the certified firewood dealer sells or
7 distributes, and that meets the requirements of **NR45.04 (1) (g)** shall bear a label that displays
8 the firewood dealer's certification number.

9 (9) DEPARTMENT NOT A WARRANTOR. A certification under sub. (1) does not constitute a
10 warranty by the department that firewood is free of pests, or that the certified firewood dealer has
11 complied with all of the representations made in the application for certification.

12 **EFFECTIVE DATE:** This rule takes effect upon publication.

Dated this _____ day of _____, 2007.

STATE OF WISCONSIN DEPARTMENT
OF AGRICULTURE TRADE AND
CONSUMER PROTECTION

By _____
Rodney J. Nilsestuen, Secretary