

Wisconsin Department of Agriculture, Trade and Consumer Protection

Business Impact Analysis Final Draft Rule

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

This 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. DNR state park 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 Wisconsin firewood dealer certified by DATCP.*

Contents of this Proposed Final Draft Rule

Consistent with DNR rules, this rule allows a person to enter a Wisconsin state park with firewood that originates more than 50 miles from the park or from outside this state if all of the following apply:

- The firewood originates from a DATCP-certified firewood dealer.
- The certified firewood dealer has treated the firewood in this state, according to standards in this rule.
- The firewood is labeled as treated firewood, and bears the certification number of the certified firewood dealer that treated it.

This rule creates a voluntary certification program for firewood dealers. A firewood dealer is not required to be certified, except to provide firewood for use in Wisconsin state parks. Under this rule:

- An annual certification expires on December 31 of each year.
- A firewood dealer seeking certification must submit an annual certification application that complies with this rule. There is an annual certification fee of \$50 for each location at which the firewood dealer treats firewood in this state for possible use in Wisconsin state parks.
- DATCP must inspect the dealer's firewood treatment facilities, to determine whether the dealer is capable of meeting the treatment requirements under this rule.
- Firewood treated for possible use in state parks must be treated according to this rule, and must be labeled as treated firewood. The firewood dealer must label the treated firewood with the dealer's certification number.
- A certified dealer may sell untreated, as well as treated, firewood. But only treated firewood, labeled according to this rule, is allowed in state parks.

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 each location in this state at which the dealer treats firewood.
- The approximate annual volume of firewood (treated and untreated) that the firewood dealer sells or distributes in this state.
- The approximate annual volume of firewood that the dealer treats at each treatment location in this state.
- The states and counties from which the firewood dealer obtains firewood for sale or distribution in this state.
- The name and address of each person from whom the firewood dealer procures cut firewood.
- The following statement:

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

- 1. Heating each piece of firewood to a temperature at least 160° F. (71.1° C.) at the center of the piece, and maintaining that temperature for at least 75 minutes.**
- 2. Removing all bark, and additional wood to a depth of at least ½ inch beneath the bark, from each piece of firewood.**
- 3. Storing the firewood on the firewood dealer's premises for at least 2 years.**

4. **Fumigating the firewood with a registered fumigant pesticide, according to the pesticide label, to kill all insect pests that may inhabit the firewood.**
5. **Treating the firewood 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 DATCP, that firewood is free of pests.

This rule does not change current DATCP rules related to firewood imports (firewood may be imported to this state, but may *not* be imported from federally-designated quarantine areas). Firewood originating from outside this state may not be used in Wisconsin state parks unless it complies with this rule. Firewood legally imported from outside this state may be used in Wisconsin state parks if it is treated in this state by a certified firewood dealer.

Under this rule, no seller or distributor of firewood may do any of the following, directly or by implication:

- Misrepresent that the firewood originates from a certified firewood dealer.
- Misrepresent that firewood is treated firewood.
- Represent that firewood is treated firewood, unless the firewood is labeled as treated firewood and the label bears the certification number of the firewood dealer who treated the firewood in this state.

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).

This rule will not have any adverse 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 in this state. Those firewood dealers who are certified must pay a \$50 annual certification fee

DNR state park rules prohibit a firewood dealer from supplying firewood to a state park located more than 50 miles away from the source of the firewood 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. Certification under this rule is available only to firewood dealers who treat the firewood with a method that eliminates pests.

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.

Steps to Assist Small Business

Many firewood dealers are “small businesses.” This rule does not make special provisions for “small businesses,” because pest infestations are unrelated to business size. Firewood dealers of any size may be certified under this rule, provided that they are capable of implementing acceptable firewood treatment options.

As a practical matter, certification will be attractive mainly for larger firewood dealers who can afford to implement acceptable treatment options (some of those larger firewood dealers may still meet the statutory definition of “small businesses”). This rule includes a range of treatment options, some of which may be more economical for small businesses.

Conclusion

This rule creates a voluntary certification program, which may benefit some firewood dealers in this state. This rule will not have any adverse impact on firewood dealers in this state. The certification program is open to all firewood dealers in this state, including those that qualify as “small businesses.”

This rule will not have a significant adverse effect on “small business,” and is not subject to the delayed “small business” effective date provided in s. 227.22(2)(e), Stats.

Dated this _____ day of _____, 2007

STATE OF WISCONSIN
DEPARTMENT OF AGRICULTURE,
TRADE AND CONSUMER PROTECTION

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