

**Wisconsin Department of Natural Resources
Natural Resources Board Agenda Item**

SUBJECT:

Request that the Board authorize public hearing for FR-20-12, proposed rules affecting NR 45.045(2)(a) and NR 45.045(2)(b) related to decreasing the distance from which firewood may be brought onto state lands from 25 to 10 miles and allowing wood from out of state to enter state lands if originating within 10 miles.

FOR: September 2013 Board meeting

PRESENTER'S NAME AND TITLE: Darrell Zastrow

SUMMARY:

Reducing the distance firewood moves minimizes the spread of emerald ash borer (EAB) and other wood infesting invasive species even in counties that are quarantined. By minimizing the spread of EAB and other pests and diseases, we buy time for the development of new control tools and delay the day when communities and woodlots become infested and start taking losses from the invading pest. The actions taken by the state on its public campgrounds and the level of concern shown regarding the risk posed by wood infested with invasive pests and diseases is taken seriously by the public. Surveys of campers and private campground owners show that what is modeled at the state properties influences the choices the public makes in how far they move wood and the steps they take to protect their own properties from infestation. Currently, wood that was cut from within 25 miles of the state campground or property is allowed into the campground or property. The primary change being proposed is to reduce that distance to 10 miles. A risk model shows a significant reduction in risk of introduction of a wood borne invasive species with this change from 25 to 10 miles, especially as the number of infestations in the state increases, as it has with emerald ash borer and beech bark disease in 2013.

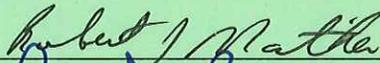
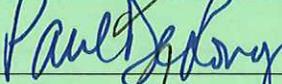
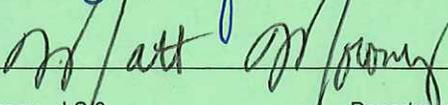
Since 2006, the Board has approved several amendments increasing the protective restrictions on firewood as the threat of especially destructive wood borne invasive pests and diseases has become greater. The last change in regulation was in 2010.

The changes proposed to this rule would minimally affect firewood vendors. Those within 10 miles of state properties and those that are certified as treating their wood to kill infesting organisms would be benefited by these changes. Those vendors getting their wood from less than 25 miles but more than 10 miles and who are not certified would lose sales to campers going to the park.

RECOMMENDATION: That the Board authorize public hearing for FR-20-12.

LIST OF ATTACHED MATERIALS (check all that are applicable):

- | | |
|---|---|
| <input type="checkbox"/> (choose one) | <input type="checkbox"/> Attachments to background memo |
| <input type="checkbox"/> Statement of scope | <input type="checkbox"/> Governor approval of statement of scope |
| <input checked="" type="checkbox"/> Fiscal estimate and economic impact analysis (EIA) form | <input type="checkbox"/> Environmental assessment or impact statement |
| <input checked="" type="checkbox"/> Response summary | <input type="checkbox"/> Board order/rule |

Approved by	Signature	Date
Type bureau director's name, Bureau Director		8/16/2013
(choose division administrator if applicable)		8/22/13
Cathy Stepp, Secretary		8/29/13

cc: Board Liaison - AD/8

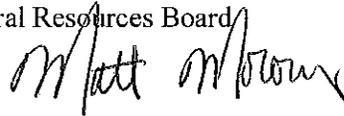
Program attorney - LS/8

Department rule coordinator - LS/8

DATE: 8/12/13

TO: All Members of the Natural Resources Board

FROM: Cathy Stepp, Secretary



SUBJECT: Background memo on Board Order FR-20-12, relating to authorization of public hearings.

Why is this rule amendment being proposed?

In order to provide better protection from introduction of wood borne invasive pests and diseases, the proposed change to NR45.045(2)(a) would reduce the distance from the state campground or property from which allowable firewood may originate from 25 to 10 miles. The proposed elimination of NR45.045(2)(b) would remove a regulation that would no longer provide significant additional protection if the change to (a) is approved.

Summary of the rule amendment:

DNR currently limits firewood entering state lands to that wood originating from within 25 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. In response to concerns from the public, we propose to reduce the allowable distance to 10 miles. A model of the changing risk of introduction of an invasive pest with decreasing allowable distance shows a significant reduction in level of risk between 25 and 10 miles and that difference in reduction in risk is greater with increasing numbers of infestations in WI. With the establishment of emerald ash borer and beech bark disease at several sites in Wisconsin and the new threat of thousand cankers disease of walnut, reducing the allowable distance for wood brought onto state lands seems to be a prudent step to take.

If the allowable distance is reduced to 10 miles, the prohibition of out-of-state wood will no longer provide the additional protection it once contributed. If a pest is established within 10 miles, it will be a short time before it can spread on its own onto the property. In this situation, the out-of-state prohibition doesn't provide additional protection. Regulation that doesn't provide a benefit should be dropped. We also expect a long term benefit of simplifying the message that safe wood is local or treated and avoiding the appearance of blaming other states for invasive pests.

How does the rule amendment affect existing policy?

It would reduce the distance from which wood allowed onto state properties could originate from that property or campground from 25 miles to 10 miles. It would remove the prohibition on wood from out of state that was otherwise allowable.

Has the Board dealt with these issues before?

Yes. Since 2006, the Board has approved several amendments gradually increasing protective restrictions as the threat of introduction of especially destructive wood borne invasive species has become greater.

Who will be impacted by the proposed rule? How will they be impacted?

The changes proposed to this rule would affect firewood vendors. Those within 10 miles of state properties and those that are certified as treating their wood to kill infesting organisms would be benefited by these changes. Those vendors getting their wood from less than 25 miles but more than 10 miles and who are not certified would lose sales to campers going to the state campground.

Environmental assessment

Other than its effect of reducing the spread of wood borne invasive species, this rule amendment would have no effect on the environment.

Small business analysis; Initial regulatory flexibility analysis

Small vendors just outside state campgrounds are already getting their wood from close by given the current 25 mile limit on allowable wood. For this reason, we do not anticipate an additional significant impact on these vendors with the decrease to 10 miles. It may have a beneficial effect on vendors who are certified as treating their wood by the Department of Agriculture, Trade and Consumer Protection as it could increase the convenience of their product since it can be brought into any state property, regardless of where it originated.

Manual Code 1022.4

ADMINISTRATIVE RULES Fiscal Estimate & Economic Impact Analysis

1. Type of Estimate and Analysis

Original Updated Corrected

2. Administrative Rule Chapter, Title and Number

NR 40.045 Firewood

3. Subject

Regulation of firewood that may enter state lands

4. Fund Sources Affected

GPR FED PRO PRS SEG SEG-S

5. Chapter 20, Stats. Appropriations Affected

20.370(1)(mv)

6. Fiscal Effect of Implementing the Rule

No Fiscal Effect Increase Existing Revenues Increase Costs
 Indeterminate Decrease Existing Revenues Could Absorb Within Agency's Budget
 Decrease Cost

7. The Rule Will Impact the Following (Check All That Apply)

State's Economy Specific Businesses/Sectors
 Local Government Units Public Utility Rate Payers
Small Businesses (if checked, complete Attachment A)

8. Would Implementation and Compliance Costs Be Greater Than \$20 million?

Yes No

9. Policy Problem Addressed by the Rule

In order to provide better protection from an increasing threat from wood borne invasive pests and diseases to forests of the state, the proposed change to NR 45.045(2)(a) would reduce the distance from the state campground campground or property from which allowable firewood may originate from 25 to 10 miles. The proposed elimination of NR45.045(2)(b) would remove a regulation that would no longer provide significant additional protection if the change to (a) is approved.

10. Summary of the businesses, business sectors, associations representing business, local governmental units, and individuals that may be affected by the proposed rule that were contacted for comments.

WDATCP certified firewood vendors and firewood vendors near state campgrounds identified by State Park and Forest staff. We assembled a package of a letter with the solicitation for input on the EIA, a copy of the proposed rule and a draft of the EIA. This package was sent to all certified firewood vendors and state campgrounds were asked to give packets to the firewood vendors outside the property.

11. Identify the local governmental units that participated in the development of this EIA.

None, as this rule change is unlikely to affect local governments

12. Summary of Rule's Economic and Fiscal Impact on Specific Businesses, Business Sectors, Public Utility Rate Payers, Local Governmental Units and the State's Economy as a Whole (Include Implementation and Compliance Costs Expected to be Incurred)

The changes proposed to this rule would affect some firewood vendors. Those sourcing their wood within 10 miles of state properties where they sell and those that are certified as treating their wood to kill infesting organisms would be benefited by these changes. Those vendors getting their wood from less than 25 miles but more than 10 miles and who are not certified would lose sales to campers going to the park.

13. Benefits of Implementing the Rule and Alternative(s) to Implementing the Rule

Firewood vendors within 10 miles of state properties and those that are certified as treating their wood to kill infesting organisms would be benefited by these changes. Campers at state campgrounds near the borders of WI would have a greater choice of firewood vendors. The alternative is to leave the distance from a state campground or property from which allowable firewood may originate at 25 miles.

14. Long Range Implications of Implementing the Rule

ADMINISTRATIVE RULES Fiscal Estimate & Economic Impact Analysis

These changes would slow the spread of wood borne invasive pests and diseases onto state lands, delaying losses and damage and allowing more time to prepare and deal with them . By delaying establishment of pests in state properties, we will benefit from development of management tools such as pesticides, biological controls and resistant trees. Modeling a cautious approach to the movement of firewood can also influence the behavior of the public as we have seen already from the current regulation. As more people get their wood from local sources or from vendors who treat the wood to prevent infestation, the rate of spread of all pests and diseases moving on firewood will be slowed to the general benefit of the residents and forests of WI.

15. Compare With Approaches Being Used by Federal Government

The Apostle Islands National Park has prohibited all firewood into the park since 2006. The Chequamegon-Nicolet National Forest prohibits firewood from south of Route 29 or from outside Wisconsin. The Army Corps of Engineers allows only firewood certified or approved by a state or federal agency to enter their camping area at Blackhawk in WI.

16. Compare With Approaches Being Used by Neighboring States (Illinois, Iowa, Michigan and Minnesota)

Minnesota only allows wood from approved vendors for the state property the wood will be entering. Illinois state properties prohibit wood from state and federally quarantined counties and also the counties bordering the quarantined area for EAB. Michigan state properties prohibit ash firewood and also enforce the state and federal EAB quarantines on all hardwood firewood. Iowa state properties enforce state and federal quarantines for EAB on hardwood firewood and requires all firewood to be labeled with county and state of origin. Indiana only allows state or federally certified treated wood, lumber scraps or debarked wood onto its state properties

17. Contact Name

Andrea Diss-Torrance

18. Contact Phone Number

608-264-9247

This document can be made available in alternate formats to individuals with disabilities upon request.

**ORDER OF THE STATE OF WISCONSIN NATURAL RESOURCES BOARD
REPEALING, RENUMBERING, AMENDING, REPEALING AND RECREATING, AND CREATING
RULES**

The statement of scope for this rule, -LRB #-, was approved by the Governor on -date-, published in Register No. -xxx-, on -date-, and approved by the Natural Resources Board on -date-. This rule was approved by the Governor on -date-.

The Wisconsin Natural Resources Board proposes an order to

FR-20-12

Analysis Prepared by the Department of Natural Resources

1. Statutes interpreted:

Sections. 23.09(2)(intro), 23.091, 23.11(4), 23.17, 23.175, 23.22(2)(a), 23.28(3), 23.293 27.01(2)(i) and (j), and 28.04(2)Stats.

2. Statutory authority:

Chap 23.09(2intro): Departmental rules; studies; surveys; services; powers; long-range planning. The department may promulgate such rules, inaugurate such studies, investigations and surveys, and establish such services as it deems necessary to carry out the provisions and purposes of this section. The department shall establish long-range plans, projects and priorities for conservation. The department may:

Chap 23.09(2m)(b): Forest land plans and management. The department shall manage forest land under its jurisdiction in a manner that is consistent with, and that furthers the purpose of, the designation of that forest land as a state forest, southern state forest, state park, state trail, state natural area, state recreation area, or similar designation.

Chap 23.09(10): Conservation easements and rights in property. Confirming all the powers hereinabove granted to the department and in furtherance thereof, the department may acquire any and all easements in the furtherance of public rights, including the right of access and use of lands and waters for hunting and fishing and the enjoyment of scenic beauty, together with the right to acquire all negative easements, restrictive covenants, covenants running with the land, and all rights for use of property of any nature whatsoever, however denominated, which may be lawfully acquired for the benefit of the public. The department also may grant leases and easements to properties and other lands under its management and control under such covenants as will preserve and protect such properties and lands for the purposes for which they were acquired.

Chap 23.091(1): Designation. The department may acquire, develop, operate and maintain state recreation areas. State lands and waters may be designated as state recreation areas that are environmentally adaptable to multiple recreational uses, or are so located to provide regional or urban recreational opportunities or for preservation.

Chap. 23.11(1): General powers. In addition to the powers and duties heretofore conferred and imposed upon said department by this chapter it shall have and take the general care, protection and supervision of all state parks, of all state fish hatcheries and lands used therewith, of all state forests, and of all lands owned by the state or in which it has any interests, except lands the care and supervision of which are vested in some other officer, body or board; and said department is granted such further powers as may be necessary or convenient to enable it to exercise the functions and perform the duties required of it by this chapter and by other provisions of law. But it may not perform any act upon state lands held for sale that will diminish their salable value.

Chap 23.11(4): The department shall have police supervision over all state-owned lands and property under its supervision, management and control, and its duly appointed agents or representatives may arrest, with or without warrant, any person within such area, committing an offense against the laws of this state or in violation of any rule of the department in force in such area, and deliver such person to the proper court of the county wherein such offense has been committed and make and execute a complaint charging such person with the offense committed. The district attorney of the county wherein such offense has been committed shall appear and prosecute all actions arising under this subsection.

Chap 26.30(2): Powers. The department is vested with authority and jurisdiction in all matters relating to the prevention, detection and control of forest pests on the forest lands of the state, and to do all things necessary in the exercise of such authority and jurisdiction, except that this shall not be construed to grant any powers or authority to the department for the silvicultural control of forest pests on any land. This section shall apply only to the detection and control of forest pests on forest lands and does not affect the authority of the department of agriculture, trade and consumer protection under chs. 93 and 94. The action of the department under sub. (4) shall be coordinated with the department of agriculture, trade and consumer protection in accordance with s. 20.901. The secretaries of natural resources and agriculture, trade and consumer protection shall execute annually a memorandum of agreement to enable the coordination of pest control work of their departments.

Chap 27.01(2)(i): Establish and operate in state parks such services and conveniences and install such facilities as will render such parks more attractive for public use and make reasonable charges for the use thereof.

Chap 27.01(2)(j): Promulgate rules necessary to govern the conduct of state park visitors, and for the protection of state park property, or the use of facilities, including the use of boats and other watercraft on lakes or rivers within the limits of a state park, and the use of roads, trails or bridle paths.

Chap 28.04(2)(a) The department shall manage the state forests to benefit the present and future generations of residents of this state, recognizing that the state forests contribute to local and statewide economies and to a healthy natural environment. The department shall assure the practice of sustainable forestry and use it to assure that state forests can provide a full range of benefits for present and future generations. The department shall also assure that the management of state forests is consistent with the ecological capability of the state forest land and with the long-term maintenance of sustainable forest communities and ecosystems. These benefits include soil protection, public hunting, protection of water quality, production of recurring forest products, outdoor recreation, native biological diversity, aquatic and terrestrial wildlife, and aesthetics. The range of benefits provided by the department in each state forest shall reflect its unique character and position in the regional landscape.

Chap 28.04(2)(c): In managing the state forests, the department shall recognize that management may consist of both active and passive techniques.

Chap 227.11(2)(a): Rule-making authority is expressly conferred as follows: Each agency may promulgate rules interpreting the provisions of any statute enforced or administered by the agency, if the agency considers it necessary to effectuate the purpose of the statute, but a rule is not valid if the rule exceeds the bounds of correct interpretation. All of the following apply to the promulgation of a rule interpreting the provisions of a statute enforced or administered by an agency:

3. Explanation of agency authority:

Section 23.11(1), Stats., states that the department shall have and take general care, protection and supervision of all state parks, of all state fish hatcheries and lands used therewith, of all state forests, and of all lands owned by the state or in which it has any interests, except lands where the care and supervision of which are vested in some other officer, body or board; said department is granted such further powers as may be necessary or convenient to enable it to exercise the functions and perform the duties required of it by this chapter and by other provisions of the law. Sections 23.09(2)(intro), 23.091, 23.28(3), and 27.01(2)(j), Stats., describe department responsibilities on specific types of properties covered in s. 23.11(1), Stats.. The department interprets s. 23.22(2)(a), Stats., to require the department to establish a statewide program to control invasive species in this state. Rules to control the spread of emerald ash borer, and invasive species, are a part of that program. Finally, s. 227.11(2)(a), Stats., expressly confers rulemaking authority on the department to promulgate rules interpreting any statute enforced or administered by it, if the agency considers it necessary to effectuate the purpose of the statute.

4. Related statutes or rules:

Wisconsin Department of Agriculture, Trade and Consumer Protection (DATCP) ch. ATCP 21 regulates import and movement of firewood and other host material of the emerald ash borer, Asian longhorn beetle, hemlock woolly adelgid and sudden oak death. The Wisconsin Department of Natural Resources ch. NR 40 prohibits the movement of materials carrying specific

invasive species, such as firewood with emerald ash borer (EAB) or asian longhorned beetle. This rule supports ch. ATCP 21 and NR 40.

5. Plain language analysis:

DNR currently limits firewood entering state lands to that wood originating from within 25 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. In response to concerns from the public, we propose to reduce the allowable distance to 10 miles. A model of the changing risk of introduction of an invasive pest with decreasing allowable distance shows a significant reduction in level of risk between 25 and 10 miles and that difference in reduction in risk is greater with increasing numbers of infestations in WI. With the establishment of emerald ash borer and beech bark disease at several sites in Wisconsin and the new threat of thousand cankers disease of walnut, reducing the allowable distance for wood brought onto state lands seems to be a prudent step to take.

If the allowable distance is reduced to 10 miles, the prohibition of out-of-state wood will no longer provide the additional protection it once contributed. If a pest is established within 10 miles, it will be a short time before it can spread on its own onto the property. In this situation, the out-of-state prohibition doesn't provide additional protection. Regulation that doesn't provide a benefit should be dropped. We also expect a long term benefit of simplifying the message that safe wood is local or treated and avoiding the appearance of blaming other states for invasive pests.

6. Summary and comparison with existing and proposed federal regulations.

The Apostle Islands National Park has prohibited all firewood into the park since 2006. The Chequamegon-Nicolet National Forest prohibits firewood from south of Route 29 or from outside Wisconsin. The Huron-Manistee National Forest in Michigan prohibits bringing ash firewood onto the forest. The Army Corps of Engineers regulates firewood they allow onto their lands in Wisconsin.

7. Comparison of similar rules in adjacent states:

Michigan prohibits movement of ash products including firewood from quarantined counties from entering state properties in un-quarantined areas. Campers from quarantined areas entering Michigan parks are questioned if they brought firewood from the quarantined area and if so confiscation of firewood and fines could result. Minnesota state parks allow wood from DNR approved vendors: wood must not include ash, be from within Minnesota and from within 50 miles of the destination park or be certified by MN Department of Agriculture as being treated to EAB standards. Firewood from EAB quarantined counties is not allowed into parks outside the quarantined area. Iowa state parks prohibit wood from EAB or gypsy moth quarantined areas unless carrying a USDA certificate stamp indicating the wood has been treated to prevent transmission of the pest. Illinois prohibits the movement of ash wood out of counties quarantined by the state for EAB, individual parks may have firewood regulations. Indiana prohibits all wood except from certified vendors.

8. Summary of factual data and analytical methodologies:

These changes are being made in response to requests from the public to do more to protect state lands, increasing threat from highly damaging invasive pests moving on firewood and a model of risk of introduction of invasive pests on firewood.

9. Analysis and supporting documents used to determine effect on small business or in preparation of an economic impact analysis:

We are directly contacting firewood dealers who could be affected by these changes to solicit their input in the development of the EIA: those who sell wood close to state campgrounds and those who are certified by WI DATCP as treating their wood to kill infesting organisms.

10. Effect on small business:

The changes proposed to this rule would affect firewood vendors. Those within 10 miles of state

properties and those that are certified as treating their wood to kill infesting organisms would be benefited by these changes. Those vendors getting their wood from less than 25 miles but more than 10 miles and who are not certified would lose sales to campers going to the state campground.

11. A copy of any comments and opinion prepared by the Board of Veterans Affairs under s. 45.03 (2m), Stats., for rules proposed by the Department of Veterans Affairs: [if not applicable, so state]
Not applicable

12. Agency Contact (include email and telephone number):

Andrea Diss-Torrance
PO Box 7921
Madison, WI 53707
608-264-92467
Andrea.DissTorrance@wisconsin.gov

13. Place where comments are to be submitted and deadline for submission.

The deadline for input to the Economic Impact Assessment is Aug 15, 2013. No other deadlines are currently scheduled.

NR 45.045 Firewood.

(1) In this section, "firewood" includes limbs, branches, roots, unprocessed logs, lumber, slabs with bark, cut firewood and chips, intended for use on any property.

(2) No person may possess firewood that originates from any of the following:

(a) An area more than 25 10 miles from the campground, or the property itself if there is no campground, to which the firewood will be transported.

~~(b) An area outside the borders of the state.~~

(c) An area, outside of the property on which firewood will be used, where firewood is identified as a carrier of invasive terrestrial invertebrates and plant-disease causing microorganisms, including any of the following:

1. An area that is in a zone of infestation designated by the department under s. 26.30 (7), Stats.

2. An area quarantined by the department of agriculture, trade and consumer protection under s. 94.01, Stats.

3. An area quarantined by the U.S. department of agriculture and animal and plant health inspection service under USC 7714 or 7715.

4. An area quarantined by an American Indian tribe within the reservation of the tribe.

(d) This section does not apply to firewood from sources approved by department of agriculture, trade and consumer protection, to dimensional lumber that is debarked, kiln dried and smoothed, or artificial fireplace logs.

(e) The department may seize and dispose of firewood possessed in violation of this paragraph.

Note: A list of firewood sources approved by Wisconsin Department of Agriculture, Trade and Consumer Protection can be obtained by contacting Robert Dahl Plant Protection, WI DATCP (608) 224-4573.

History: CR 09-103; cr. Register May 2010 No. 653, eff. 6-1-10.

Section XX. EFFECTIVE DATE. This rule shall take effect on the first day of the month following publication in the Wisconsin administrative register as provided in s. 227.22 (2) (intro.), Stats

Section XX. BOARD ADPTION. This rule was approved and adopted by the State of Wisconsin

Natural Resources Board on _____.

Dated at Madison, Wisconsin _____.

STATE OF WISCONSIN
DEPARTMENT OF NATURAL
RESOURCES

By _____
Cathy Stepp, Secretary

(SEAL)