

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

SUBJECT:

Request that the Board approve the statement of scope for FR-20-12, proposed rules affecting NR40.45.045(a) related to decreasing the distance from which firewood may be brought onto state lands from 25 to 10 miles, deleting NR 45.045(2)(b) and any appropriate housekeeping.

FOR: Oct 2012 Board meeting

PRESENTER'S NAME AND TITLE: Andrea Diss-Torrance, Invasive Forest Insect program Coordinator

SUMMARY:

Reducing the distance firewood moves minimizes the spread of 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 in 2012.

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 park.

RECOMMENDATION: That the Board approve the statement of scope for Board Order 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 checked="" type="checkbox"/> Statement of scope | <input checked="" type="checkbox"/> Governor approval of statement of scope |
| <input type="checkbox"/> Fiscal estimate and economic impact analysis (EIA) form | <input type="checkbox"/> Environmental assessment or impact statement |
| <input type="checkbox"/> Response summary | <input type="checkbox"/> Board order/rule |

Approved by	Signature	Date
Bob Mather, Bureau Director	<i>Bob Mather</i>	9/17/2012
Paul DeLong, Administrator	<i>Paul DeLong by [initials]</i>	9/17/2012
Cathy Stepp, Secretary	<i>[Signature]</i>	10/2/2012

cc: Board Liaison - AD/8
Andrea Diss-Torrance- FR/4

Program attorney - LS/8
Kristen Lambert FR/4

Department rule coordinator - LS/8

DATE: September 13, 2012

TO: Natural Resources Board

FROM: Cathy Stepp, Secretary

SUBJECT: Scope Statement approval for Board Order FR-20-12 related to firewood allowed onto state lands.

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.

Has the Natural Resources 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.

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.

Public hearings

Four public hearings are planned in Madison, Green Bay, Eau Claire and Wausau in June 2013.

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 affect 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.

STATEMENT OF SCOPE

Department of Natural Resources

Rule No.: NR45.045

FR-20-12

Relating to: Regulation of firewood entering state lands

Rule Type: Permanent

1. Finding/nature of emergency (Emergency Rule only):

This is not an emergency rule.

2. Detailed description of the objective of the proposed rule:

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.

3. Description of the existing policies relevant to the rule, new policies proposed to be included in the rule, and an analysis of policy alternatives:

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. 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; this 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.

4. Detailed explanation of statutory authority for the rule (including the statutory citation and language):

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:

5. Estimate of amount of time that state employees will spend developing the rule and of other resources necessary to develop the rule:

206 hours total, before and after public hearings.

6. List with description of all entities that may be affected by the proposed rule:

We expect campers and firewood dealers would be impacted or interested in this rule.

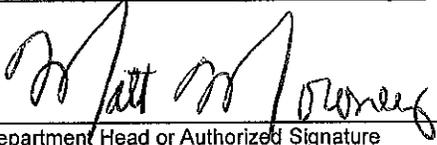
7. Summary and preliminary comparison with any existing or proposed federal regulation that is intended to address the activities to be regulated by the proposed rule:

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.

8. Anticipated economic impact of implementing the rule (note if the rule is likely to have a significant economic impact on small businesses):

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.

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Department Head or Authorized Signature

6/22/12

Date Submitted



SCOTT WALKER
OFFICE OF THE GOVERNOR
STATE OF WISCONSIN

P.O. Box 7863
MADISON, WI 53707

July 25, 2012

Cathy Stepp
Secretary
Wisconsin Department of Natural Resources
101 South Webster St.
P.O. Box 7921
Madison, WI 53707-7921

**RE: Statement of Scope for Modifications to NR 45.045 relating to regulation of
firewood entering state lands**

Dear Secretary Stepp,

I hereby approve the statement of scope submitted on June 22, 2012, pursuant to Wisconsin Statutes § 227.135, in regards to modifications to NR 45.045. You may send the scope statement to LRB for publication pursuant to Wisconsin Statutes § 227.135(3).

Sincerely,

Scott Walker
Governor