

Report From Agency

**DATCP Docket No. 10-R-6
Clearinghouse No. 11-001**

**Final Draft Rule
March 14, 2011**

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

2 The Wisconsin department of agriculture, trade and consumer protection hereby proposes the
3 following order *to create* s. ATCP 21.21, *relating to* restricting the import of certain plants,
4 wood and wood products to prevent the introduction of thousand cankers disease of walnut trees
5 into this state.

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

This rule restricts the import of certain plants, wood and wood products to prevent the introduction of thousand cankers disease of walnut trees (“thousand cankers disease”) into this state. This rule restricts the import of affected materials from states and nations that are known to be infested with thousand cankers disease (there are certain exemptions).

Statutes Interpreted

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

Statutory Authority

Statutory Authority: ss. 93.06 (1p), 93.07(1), 93.07(12), 94.01 and 227.24, Stats.

Explanation of Statutory Authority

DATCP has broad general authority, under s. 93.07(1), Stats., to interpret laws under its jurisdiction. DATCP also has broad general authority, under ss. 93.07(12) and 94.01, Stats., to adopt regulations to prevent and control plant pest infestations.

Related Statutes and Rules

DATCP has adopted rules regulating a variety of plant pests under ch. ATCP 21, Wis. Adm. Code. This rule amends ch. ATCP 21 by adding restrictions related to thousand cankers disease.

Plain Language Analysis

Background

Thousand cankers disease is an emerging fungal disease that can be carried by the walnut twig beetle (the beetle is native to this country). The disease poses a serious threat to black walnut trees, an important forest species in Wisconsin. Black walnut is known for its highly valuable lumber, which is used for finished products such as furniture, musical instruments and gun stocks. There are approximately 18.5 million black walnut trees in Wisconsin, with over 13% of them located in the southwestern part of the state. Wisconsin businesses export over \$4 million in black walnut products annually.

Thousand cankers disease was first observed in New Mexico in the 1990's. The disease has spread throughout the western United States, causing dieback and mortality in black walnut trees. In July, 2010, the disease was also confirmed in the Knoxville, Tennessee area. The Tennessee infestation is the first confirmed infestation east of the Mississippi River, the native range of the black walnut tree. The disease is currently known to exist in the states of Arizona, California, Colorado, Idaho, Nevada, New Mexico, Oregon, Tennessee, Utah and Washington. Thousand cankers disease has not yet been found in Wisconsin.

Thousand cankers disease may be spread by the movement of firewood, nursery stock, and unfinished or untreated wood products. Subject to certain exemptions, this rule restricts the movement of potential host materials into Wisconsin, if those materials originated from or were exposed to the environment in an area where thousand cankers disease is known to exist.

Rule Content

Plant Pests; Import Prohibition

Under this rule, no person may knowingly import the walnut twig beetle or the fungal pathogen *Geosmithia morbida sp. Nov* into this state, except pursuant to a special DATCP permit (for controlled scientific research or other limited purposes that pose no significant disease risk).

Host Materials; Import Prohibition

Under this rule, no person may import any of the following host materials into this state from an infested nation, state or area (as determined by the United States department of agriculture):

- Firewood from any species of tree.
- Living or dead plants or plant parts of the genus *Juglans* (walnuts). This prohibition applies,

for example, to nursery stock, budwood, scionwood, green lumber, logs, stumps, roots, branches, composted chips and uncomposted chips.

Exemptions

The prohibition against the importation of host materials does *not* apply to any of the following:

- Nuts, nut meats or nut hulls.
- Processed lumber, with square edges, which is 100% bark-free and kiln-dried.
- Finished wood products without bark (for example, finished furniture, musical instruments or gun stocks).
- Materials that are accompanied by a written certificate, signed by a pest control official in the infested area, which describes the materials and states at least one of the following:
 - The materials have not been exposed to thousand cankers disease. The certificate must explain the basis for the official's statement.
 - The materials have been effectively treated to destroy thousand cankers disease. The certificate must specify the date and method of treatment.
 - The materials have been produced, processed, stored, handled or used under conditions, described in the certificate, which effectively preclude the transmission of thousand cankers disease.
- Materials imported in compliance with a written agreement between the importer and DATCP. The agreement must include all of the following:
 - The name and address of the importer.
 - The type and volume of material that may be imported under the agreement.
 - The locations from which the material may be imported under the agreement.
 - The names and addresses of the persons to whom, and the locations to which, the material may be imported under the agreement.
 - The method by which the material may be imported.
 - The time period covered by the agreement.
 - The importer's commitment to keep complete records of each import shipment under the agreement, and to submit those records to DATCP for inspection and copying upon request.
 - Specific import terms and conditions that will, in DATCP's opinion, effectively ensure that materials imported pursuant to the agreement will not introduce thousand cankers disease into this state.
 - A provision authorizing DATCP to terminate the agreement without prior notice, for any reason.

Fiscal Impact

This rule will not have a significant fiscal impact on state government. DATCP will incur some added inspection and monitoring costs, but will minimize those costs by integrating inspection activities under this rule with other plant pest inspection and monitoring activities. DATCP will absorb the added costs with current budget and staff. This rule will have no fiscal effect on local governments.

Business Impact

This rule will benefit Wisconsin wood industries by helping to preserve Wisconsin's economically important black walnut forest resource. Black walnut is a highly valuable tree, prized for the quality of its wood. Black walnut is used to make furniture and other important value-added wood products. There are approximately 18.5 million black walnut trees in Wisconsin, with over 13% of them located in the southwestern part of the state. Wisconsin businesses export over \$4 million in black walnut products annually.

This rule will not have a significant adverse impact on businesses in this state. This rule restricts the import of firewood and untreated black walnut wood products from areas *outside* this state, but does not otherwise restrict the distribution or sale of wood or wood products. This rule will restrict the activities of a small number of businesses in this state, and offers ways for those businesses to minimize any potential adverse impacts.

Environmental Impact

This rule will have a positive impact on the environment, by helping to prevent the spread of thousand cankers disease into this state. This rule will help protect Wisconsin's environmentally-important black walnut forest resource.

Federal and Surrounding State Programs

Federal Programs

The Animal and Plant Health Inspection Service of the United States Department of Agriculture (APHIS) has not yet issued any quarantine for thousand cankers disease. APHIS does not restrict imports from other nations, because the walnut twig beetle is native to North America. APHIS is working with the U.S. Forest Service on strategies to limit the spread of the disease. Federal law does not prevent Wisconsin from taking regulatory action to prevent thousand cankers disease from spreading to this state.

Surrounding State Programs

Several states, including Minnesota, Indiana, Kansas, Missouri, Michigan, Nebraska North Carolina and Oklahoma, have adopted regulations to prevent the spread of thousand cankers disease. The recent disease finding in Tennessee -- the first finding in the black walnut's native

range east of the Mississippi – has prompted many states (including Wisconsin and some surrounding states) to consider import restrictions to prevent the spread of the disease. Regulations in Minnesota, Michigan and Indiana are not substantively different than this proposed final draft rule. Illinois and Iowa have not enacted any regulations to date.

Data and Analytical Methodologies

This rule is based on generally-accepted plant disease information from reliable sources, including APHIS and the U.S. Forest Service.

DATCP Contact

Questions and comments (including hearing comments) related to this rule may be directed to:

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- 1 **SECTION 1.** ATCP 21.21 is created to read:
- 2 **ATCP 21.21 Thousand cankers disease of walnut trees. (1) DEFINITIONS.** In this
- 3 section:
- 4 (a) “Bark” means all of the following:
- 5 1. The exterior bark of a tree.
- 6 2. Ingrown bark around knots in a tree.
- 7 3. Bark pockets occurring between a tree’s annual growth rings.
- 8 4. One-half inch of wood and all vascular cambium adjacent to any bark under subds. 1.
- 9 to 3.
- 10 (b) “Firewood” has the meaning contained in ATCP 21.01(6p).
- 11 (c) “Infested area” means all of the following:

1 1. The states of Arizona, California, Colorado, Idaho, Nevada, New Mexico, Oregon,
2 Tennessee, Utah and Washington.

3 2. Any state or country, or any delineated area within a state or nation, which the U. S.
4 department of agriculture has declared to be infested with thousand cankers disease.

5 (d) “Pest control official” is the same as defined in ATCP 21.01 (11).

6 (e) “Thousand cankers disease” means a pest complex, consisting of the walnut twig
7 beetle *Pityophthorus juglandis* and the fungal pathogen *Geosmithia morbida sp. Nov.*.

8 Note: Information on areas with confirmed populations by the USDA can be found at:

9 <http://www.thousandcankerdisease.com/>

10 **(2) KNOWINGLY IMPORTING PLANT PEST; PROHIBITION.** No person may knowingly
11 import the walnut twig beetle or the fungal pathogen *Geosmithia morbida sp. Nov* into this state,
12 except pursuant to a permit under s. 94.03, Stats., and s. ATCP 21.04.

13 **(3) IMPORTING MATERIALS FROM INFESTED AREAS; PROHIBITION.** Except as provided in
14 sub. (4), no person may import any of the following materials into this state if those materials
15 originate from or have been exposed to the environment in any infested area:

16 (a) Firewood from any species of tree.

17 (b) Living or dead plants or plant parts of the genus *Juglans*, including nursery stock,
18 budwood, scionwood, green lumber, logs, stumps, roots, branches, composted chips and
19 uncomposted chips. This paragraph does not apply to any of the following:

20 1. Nuts, nut meats, or nut hulls.

21 2. Processed lumber, with square edges, which is 100% bark-free and kiln-dried.

22 3. Finished wood products without bark, including furniture, musical instruments, and
23 gun stocks made with walnut.

1 **(4) EXEMPTIONS.** Subsection (3) does not apply to any of the following: (a) Material
2 specified in sub. (3) (a) and (b) that are accompanied by a written certificate, signed by a pest
3 control official in the infested area, which describes the materials and states at least one of the
4 following:

5 1. The materials have not been exposed to thousand cankers disease. The certificate
6 shall explain the basis for the official's statement.

7 2. The materials have been effectively treated to destroy thousand cankers disease. The
8 certificate shall specify the date and method of treatment.

9 3. The materials have been produced, processed, stored, handled or used under
10 conditions, described in the certificate, which effectively preclude the transmission of thousand
11 cankers disease.

12 (b) Material imported in compliance with a written agreement, between the importer and
13 the department, which includes all of the following:

14 1. The name and address of the importer.

15 2. The type and volume of material that may be imported under the agreement.

16 3. The locations from which the material may be imported under the agreement.

17 4. The names and addresses of the persons to whom, and the locations to which, the
18 material may be imported under the agreement.

19 5. The method by which the material may be imported.

20 6. The time period covered by the agreement.

21 7. The importer's commitment to keep complete records of each import shipment under
22 the agreement, and to submit those records to the department for inspection and copying upon
23 request.

1 8. Specific import terms and conditions that will, in the department's opinion, effectively
2 ensure that materials imported pursuant to the agreement will not introduce thousand cankers
3 disease into this state.

4 9. A provision authorizing the department to suspend the agreement, without prior
5 notice, for any reason.

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

Dated this _____ day of _____, 2011.

WISCONSIN DEPARTMENT OF AGRICULTURE,
TRADE AND CONSUMER PROTECTION

By _____
Ben Brancel, Secretary