



State of Wisconsin
Governor Scott Walker

Department of Agriculture, Trade and Consumer Protection
Ben Brancel, Secretary

DATE: March 14, 2011

TO: The Honorable Mike Ellis
President, Wisconsin State Senate
Room 200 South, State Capitol
PO Box 7882
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The Honorable Jeff Fitzgerald
Speaker, Wisconsin State Assembly
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FROM: Ben Brancel, Secretary
Department of Agriculture, Trade and Consumer Protection

SUBJECT: Thousand Cankers Disease; Final Draft Rule
(Clearinghouse Rule #11-001)

The Department of Agriculture, Trade and Consumer Protection (“DATCP”) is transmitting this rule for legislative committee review, as provided in s. 227.19(2) and (3), Stats. DATCP will publish notice of this referral in the Wisconsin Administrative Register, as provided in s. 227.19(2), Stats.

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.

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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.

Proposed 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.

Public Hearing

A public hearing was held on January 26, 2011 in Madison, Wisconsin. There were no appearances at the hearing, but DATCP subsequently received letters of support from Paul DeLong (state forester with the Department of Natural Resources) and Eileen Norby (private citizen).

Hearing Draft Changes

DATCP made no substantive changes to the final draft rule following public hearing, but did make minor editorial changes in response to Legislative Council Rules Clearinghouse comments.

Response to Rules Clearinghouse Comments

The Legislative Council Rules Clearinghouse made minor editorial comments on the hearing draft rule. DATCP modified the final draft rule to address all of the Rules Clearinghouse comments.

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. A complete *fiscal estimate* is attached.

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 certain untreated 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. A complete *business impact analysis* is attached.

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.

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Surrounding State Programs

Several states, including Minnesota, Indiana, Kansas, Missouri, Michigan, Nebraska 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.