Publication Date: **November 1, 2010**
Effective Dates: **November 1, 2010 through March 30, 2011**

WISCONSIN DEPARTMENT OF AGRICULTURE,
TRADE AND CONSUMER PROTECTION

EMERGENCY RULE

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

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

This emergency 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).

The Wisconsin department of agriculture, trade and consumer protection (DATCP) is adopting this temporary emergency rule pending the adoption of a more "permanent" rule on the same subject. This emergency rule will take effect immediately upon publication in the official state newspaper, and will remain in effect for 150 days. The legislature's joint committee for review of administrative rules may extend the emergency rule for up to 120 additional days.

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. DATCP is adopting this temporary emergency rule, under authority of s. 227.24, Stats., pending the adoption of a more "permanent" rule by the normal rulemaking process.

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 emergency 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 emergency 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 emergency 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 southeastern part of the state. Wisconsin businesses export over $4 million in black walnut products annually.

This emergency rule will not have a significant adverse impact on businesses in this state. This emergency 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.

Environmental Impact

This emergency rule will have a positive impact on the environment, by helping to prevent the spread of thousand cankers disease into this state. This emergency 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 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.

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:

Robert Dahl

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P.O. Box 8911
Madison, WI 53708-8911
Telephone (608) 224-4573
E-Mail: Robert.Dahl@wisconsin.gov

FINDING OF EMERGENCY

(1) 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 southeastern part of the state. Wisconsin businesses export over $4 million in black walnut products annually.

(2) 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.

(3) Thousand cankers disease is currently known to exist in the states of Arizona, California, Colorado, Idaho, Nevada, New Mexico, Oregon, Tennessee, Utah and Washington. The disease has not yet been found in Wisconsin.

(3) Thousand cankers disease may be spread by the movement of firewood, nursery stock, and unfinished or untreated wood products. It is important to restrict the import of host materials from infested areas, to prevent the disease from being introduced into Wisconsin. The disease, if introduced into Wisconsin, could cause great damage to Wisconsin's economically-important and environmentally important walnut forest resource.

(4) It is important to restrict the import of host materials from infested areas as soon as possible. Without this emergency rule, host materials may be imported into Wisconsin from infested areas without adequate safeguards to prevent the introduction of thousand cankers disease into this state.

(5) It would take over a year to adopt the necessary import restrictions by the normal rulemaking procedure prescribed in ch. 227, Stats. DATCP is therefore adopting this temporary emergency rule under s. 227.24, Stats., pending the adoption of a more "permanent" rule by the normal rulemaking procedures. This temporary emergency rule is necessary to protect the public peace, health, safety and welfare, and to help prevent the introduction of a serious plant disease in this state, pending the adoption of a "permanent" rule by the normal procedure.

EMERGENCY RULE

SECTION 1. ATCP 21.21 is created to read:

ATCP 21.21 Thousand cankers disease of walnut trees. (1) DEFINITIONS. In this section:

(a) "Bark" means all of the following:

1. The exterior bark of a tree.
2. Ingrown bark around knots in a tree.
3. Bark pockets occurring between a tree's annual growth rings.
4. One-half inch of wood and all vascular cambium adjacent to any bark under subds. 1. to 3.

(c) "Firewood" has the meaning contained in ATCP 21.01(6p).

(d) "Infested area" means all of the following:

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

2. Any state or nation, or any delineated area within a state or nation, which the United States department of agriculture has declared to be infested with thousand cankers disease.

(g) "Thousand cankers disease" means a pest complex, consisting of the walnut twig beetle *Pityophthorus juglandis* and the fungal pathogen *Geosmithia morbida sp. Nov,* which is injurious to black walnut trees.

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

(3) IMPORTING OR MOVING HOST MATERIALS FROM INFESTED AREAS; PROHIBITION. Except as provided in sub. (4), no person may import any of the following materials into this state if those materials originate from or have been

exposed to the environment in any infested area:

(a) Firewood from any species of tree.

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

1. Nuts, nut meats or nut hulls.
2. Processed lumber, with square edges, which is 100% bark-free and kiln-dried.
3. Finished wood products without bark, including walnut furniture, instruments, and gun stocks.

(4) EXEMPTIONS. Subsection (3) does not apply to any of the following: (a) 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:

1. The materials have not been exposed to thousand cankers disease. The certificate shall explain the basis for the official's statement.
2. The materials have been effectively treated to destroy thousand cankers disease. The certificate shall specify the date and method of treatment.
3. 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.

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

1. The name and address of the importer.
2. The type and volume of material that may be imported under the agreement.
3. The locations from which the material may be imported under the agreement.
4. The names and addresses of the persons to whom, and the locations to which, the material may be imported under the agreement.
5. The method by which the material may be imported.
6. The time period covered by the agreement.
7. The importer's commitment to keep complete records of each import shipment under the agreement, and to submit those records to the department for inspection and copying upon request.
8. Specific import terms and conditions that will, in the department's opinion, effectively ensure that materials imported pursuant to the agreement will not introduce thousand cankers disease into this state.
9. A provision authorizing the department to suspend the agreement, without prior notice, for any reason.

SECTION 2. EFFECTIVE DATE: This emergency rule takes effect upon publication, and remains in effect for 150 days. The department may seek to extend this emergency rule as provided in s. 227.24, Stats.

Dated this _____day of _____, 2010.

WISCONSIN DEPARTMENT OF AGRICULTURE,
TRADE AND CONSUMER PROTECTION

By _____
Martin Henert, Executive Assistant

Wisconsin Department of Agriculture, Trade and Consumer Protection

Business Impact Analysis[1]

Rule Subject: **Plant Pest Import Controls and Quarantines**
Adm. Code Reference: **ATCP 21**
Rules Clearinghouse #: **None (emergency rule)**
DATCP Docket #: **10-R-7**

Rule Summary

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Rule Content

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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

[1] This analysis includes, but is not limited to, a small business analysis ("regulatory flexibility analysis") under s. 227.114, Stats..

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):

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  - 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.

Business Impact

This emergency 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 southeastern part of the state. Wisconsin businesses export over $4 million in black walnut products annually.

This emergency rule will not have a significant adverse impact on small businesses or other businesses in this state. This emergency 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. This rule will not impose significant new costs, recordkeeping, reporting or professional service requirements on affected businesses in this state.

Accommodation for Small Business

This rule will not have a significant impact on small businesses in this state. This rule does not exempt small businesses from the import restrictions under this rule, because the spread of thousand cankers disease is unrelated to business size. This rule provides certain import exemptions and alternatives that are available to businesses of all sizes.

Conclusion

This emergency rule will help to protect Wisconsin's black walnut resource, on which many Wisconsin wood processing businesses depend. This rule will not have significant adverse effects, or impose significant costs, on businesses in this state. Costs, if any, are outweighed by the need to protect Wisconsin's black walnut forest resource from destruction by thousand cankers disease.

Dated this _____ day of _____, 2010

STATE OF WISCONSIN
DEPARTMENT OF AGRICULTURE,
TRADE AND CONSUMER PROTECTION

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