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Sequence Number: 01-09-16
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 File Date: 1/7/16

Notice of Rulemaking Hearing

Hearings will be conducted in the manner prescribed by the Uniform Administrative Procedures Act, T.C.A. § 4-5-204. For questions and copies of the notice, contact the person listed below.

Agency/Board/Commission:	Department of Agriculture
Division:	Consumer & Industry Services
Contact Person:	Jay Miller
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Any Individuals with disabilities who wish to participate in these proceedings (to review these filings) and may require aid to facilitate such participation should contact the following at least 10 days prior to the hearing:

ADA Contact:	Liz Sneed
Address:	Post Office Box 40627, Nashville, Tennessee 37204
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Hearing Location(s) (for additional locations, copy and paste table)

Address 1:	Tennessee Department of Agriculture, Porter Building		
Address 2:	436 Hogan Road		
City:	Nashville, Tennessee		
Zip:	37220		
Hearing Date :	February 29, 2016		
Hearing Time:	11:00 a.m.	<input checked="" type="checkbox"/> CST/CDT	<input type="checkbox"/> EST/EDT

Additional Hearing Information:

This rule is intended to re-organize, re-title, and update rules of the Tennessee Department of Agriculture Plant Certification program and to amend fee schedules for licenses within the program pursuant to legislative amendments of Tenn. Code Ann. §§ 43-1-703 and 43-6-101, et seq.

Revision Type (check all that apply):

- Amendment
- New
- Repeal

Rule(s) (ALL chapters and rules contained in filing must be listed. If needed, copy and paste additional tables to accommodate more than one chapter. Please enter only ONE Rule Number/Rule Title per row.)

Chapter Number	Chapter Title
0080-06-01	Plant Sales and Distribution
Rule Number	Rule Title
0080-06-01-.01	Scope

0080-06-01-.02	Definitions
0080-06-01-.03	Sales of Nursery Stock and Wild Plants
0080-06-01-.04	License Application and Fees
0080-06-01-.05	Inspections and Requirements
0080-06-01-.06	Violations
0080-06-01-.07	Compliance Agreements
0080-06-01-.08	Repealed
0080-06-01-.09	Repealed
0080-06-01-.10	Repealed
0080-06-01-.11	Repealed
0080-06-01-.12	Repealed
0080-06-01-.13	Repealed
0080-06-01-.15	Seizure of Stock
0080-06-01-.16	Repealed
0080-06-01-.17	Repealed
0080-06-01-.18	Repealed
0080-06-01-.19	Repealed
0080-06-01-.20	Repealed
0080-06-01-.21	Repealed

Chapter Number	Chapter Title
0080-06-21	Repealed
Rule Number	Rule Title

Chapter Number	Chapter Title
0080-06-25	Repealed
Rule Number	Rule Title

Chapter Number	Chapter Title
0080-06-26	Rules and Regulations Governing Quarantine of Sudden Oak Death (Phytophthora Ramorum)
Rule Number	Rule Title
0080-06-26-.12	Penalty

Amendments

Division 0080-06 Division of Regulatory Services is amended by re-titling the division "Plant Certification".

Authority: T.C.A. §4-3-203.

Chapter 0080-06-01 Regulations Governing Nurseries, Dealers and Agents is amended by re-titling the chapter "Plant Sales and Distribution".

Authority: T.C.A. §4-3-203.

Rule 0080-06-01-.01 Regulations is amended by deleting the rule in its entirety and substituting instead the following language so that, as amended, the rule shall read:

Chapter 0080-06-01
Plant Sales and Distribution

0080-06-01-.01 Scope

- (1) This chapter applies to any person who grows or keeps for sale or distribution any nursery stock, annual plants, wild plants, or parts of nursery stock, annual plants, or wild plants. This chapter also applies to any person who owns or possesses any live organism, regulated article, or other material determined by

the department to be capable of harboring pests, pest plants, or disease.

- (2) Persons licensed under this chapter shall be responsible for permitted operations until the applicable license expires or the department receives written notification from the licensee desiring to terminate the license. The department shall not refund fees for early termination of any license under this chapter.
- (3) Licenses issued under this chapter are not transferable from person to person.

Authority: T.C.A. §§ 4-3-203; 43-6-106.

Rule 0080-06-01-.02 Definitions is amended by deleting the rule in its entirety and substituting instead the following language so that, as amended, the rule shall read:

Chapter 0080-06-01
Plant Sales and Distribution

0080-06-01-.02 Definitions

- (1) Terms in this chapter share those meanings of terms set forth in the Tennessee Plant Pest Act, T.C.A. §43-6-101, et seq.
- (2) When used in this chapter, unless the context requires otherwise:
 - (a) Act means the Tennessee Plant Pest Act, compiled at T.C.A. §43-6-101, et seq.;
 - (b) Annual plants mean plants that perform their entire life cycle from seed to flower to seed within a single growing season. All roots, stems, and leaves of annual plants die annually, and only their dormant seed bridges the gap between one generation of annual plants and the next;
 - (c) Certificate and certification mean a document prepared by a duly authorized federal or state regulatory official that affirms nursery stock or other regulated article meets regulatory requirements. Certificates are known by the purpose for which they were issued, e.g. Phytosanitary Certificate, for the purpose of verifying compliance with phytosanitary requirements, etc.;
 - (d) Compliance agreement means a voluntary agreement between the department and a person regarding certification of plants or regulated articles for their lawful import into a particular state or movement to a particular location;
 - (e) Infested means contaminated with pest or infected with disease or so exposed to pest or disease that contamination or infection can reasonably be expected to occur;
 - (f) Landscaper means any person who on a commercial basis moves and installs plants or who advertises or solicits business for the movement and installation of plants in the state;
 - (g) Move, distribute, ship, transport, or words of similar import mean to relocate, or to offer to relocate, in any manner an item from one real property to another;
 - (h) Person means an individual, partnership, corporation, or any other form of legal entity;
 - (i) Pest or disease means any biotic agent that is injurious to agriculture or the environment. Pest or disease includes insect pests and plant diseases as defined under the Act and may also include any form of animal or plant life, any infectious plant disease, or any plant disorder that manifests symptoms or behavior determined by any federal or state pest prevention agency to be characteristic of infectious disease;
 - (j) Pest plant means any plant species or plant classification that is injurious to the agricultural, horticultural, silvicultural, or other interests of the state;

- (k) Plant means nursery stock, annual plants, wild plants, or any part of nursery stock, annual plants, or wild plants that are grown or kept for sale or distribution;
- (l) Quarantine means the restriction of movement of infested plants, pest plants, or regulated articles by a duly authorized federal or state regulatory official for the purpose of mitigating risks associated with pests, pest plants, or disease;
- (m) Regulated article means any item or material, biological or otherwise, that is determined by the department to support or to be capable of supporting the dissemination of any pest, pest plant, or disease;
- (n) Stop movement order means a written directive issued by a duly authorized federal or state regulatory official to prohibit or limit the movement of plants or regulated articles;
- (o) Wild plants mean uncultivated, feral plants that are gathered from the environment, capable of propagation, and kept or grown for sale or distribution. A wild plant that is cultivated for at least one growing season shall be considered nursery stock and not a wild plant.

Authority: T.C.A. §§ 4-3-203; 43-6-106.

Rule 0080-06-01-.03 Inspection of Sales/Transport is amended by deleting the rule in its entirety and substituting instead the following language so that, as amended, the rule shall read:

Chapter 0080-06-01
Plant Sales and Distribution

0080-06-01-.03 Sales of Nursery Stock and Wild Plants

- (1) No plant or shipment of plants shall be sold, offered for sale, or transported in the state unless a copy of a valid certificate or license from a duly authorized federal or state regulatory official is affixed to the plant or shipment of plants or its invoice affirming the plant or shipment of plants is apparently free of pests, pest plants, and disease.
- (2) No nursery stock or annual plant shall be transported with a wild plant in the same package or lot unless the wild plant is individually packaged or segregated.
- (3) Certificates and Licenses.
 - (a) Unless otherwise stated, all licenses issued under this chapter shall serve as certification that plants and plant parts sold or held by the licensee are apparently free of pests, pest plants, and disease.
 - (b) Certificates or licenses issued for wild plants shall be separate and distinct from certificates or licenses issued for nursery stock or annual plants.
 - (c) Each use of a certificate or license after its expiration shall constitute a separate violation of this chapter.
 - (d) Each use of a certificate or license that is falsified in any manner or that is used in any manner to falsify the contents of a shipment or lot of plants shall constitute a separate violation of this chapter.

Authority: T.C.A. §§ 4-3-203; 43-6-106.

Rule 0080-06-01-.04 Application is amended by deleting the rule in its entirety and substituting instead the following language so that, as amended, the rule shall read:

Chapter 0080-06-01
Plant Sales and Distribution

0080-06-01-.04 License Application and Fees

- (1) All persons to whom these rules apply shall obtain a license in accordance with this chapter.
- (2) Application for any license under this chapter shall be made on forms provided by the department, which shall be completed in full and shall include:
 - (a) Name of the applicant;
 - (b) Date of birth for any applicant who is an individual or a partner in a general partnership;
 - (c) Proof of one of the following for any applicant that is not an individual or a partner in a general partnership:
 1. Applicant's registration in its state of incorporation;
 2. Applicant's registration with the Tennessee Department of Revenue; or,
 3. Applicant's business license issued by a local governmental authority;
 - (d) Contact information for applicant, to include name of person legally responsible for applicant's operations, telephone number, email address, address of the principal place of business, and address of the facility to be licensed;
 - (e) Name and address of applicant's registered agent for service of process, if any;
 - (f) Identification of plants intended to be grown and sources of plants intended to be kept for sale or distribution during the licensure year;
 - (g) Other information as necessary for departmental certification of plants or regulated articles.
- (3) Licensees shall notify the department of any changes to the information or contents of an application within 30 days after the change takes place.
- (4) Applicants for licensure shall include with their application payment of an annual license fee as appropriate for the following categories of licenses.
 - (a) **Greenhouse License.** A greenhouse license is required for each location where a person is engaged in the use of greenhouses for business as a nursery farmer. The annual fee for a greenhouse license is assessed under T.C.A. §43-1-703(f) and is determined according to the size of the total growing area for nursery stock or annual plants under greenhouse structure(s), as follows:
 1. Less than 600 square feet: Tier 3 fee;
 2. 600 to 10,000 square feet: Tier 5 fee;
 3. 10,001 to 25,000 square feet: Tier 7 fee;
 4. 25,001 to 70,000 square feet: Tier 10 fee;
 5. More than 70,000 square feet: Tier 11 fee.
 - (b) **Nursery License.** A nursery license is required for each location where a person is engaged in business as a nursery farmer. The annual fee for a nursery license is assessed under T.C.A. §43-1-703(f) and is determined according to the size of the total growing area for nursery stock or annual plants, as follows:

1. Less than one acre: Tier 3 fee;
 2. One acre to 25 acres: Tier 5 fee;
 3. More than 25 acres to 50 acres: Tier 7 fee;
 4. More than 50 acres to 100 acres: Tier 10 fee;
 5. More than 100 acres: Tier 11 fee.
- (c) Plant Dealer License. A plant dealer license is required for each location where a person who is not the original grower of nursery stock or annual plants, sells, offers for sale, distributes, or holds for distribution the nursery stock, annual plants, or their parts on a commercial basis. The annual fee for a plant dealer license is assessed under T.C.A. §43-1-703(f) and is determined according to the size of the location's area where plants are sold, offered for sale, distributed, or held for distribution, as follows:
1. Less than 100 square feet: Tier 2 fee;
 2. 100 to 1,000 square feet: Tier 7 fee;
 3. More than 1,000 square feet: Tier 10 fee.
- (d) Florist License. A florist license is required for each location where a person otherwise subject to licensure as a plant dealer is engaged in business as a florist. The fee for a florist license is a Tier 2 annual fee under T.C.A. §43-1-703(f).
- (e) Landscaper License. A landscaper license is required for any person engaged in business as a landscaper. The fee for a landscaper license is a Tier 7 annual fee under T.C.A. §43-1-703(f).
- (f) Wild Plant Collector License. A wild plant collector license is required for any person who acquires wild plants or their parts to be grown or kept for sale or distribution on a commercial basis. The fee for a wild plant collector license is a Tier 5 annual fee under T.C.A. §43-1-703(f).
- (g) Sweet Potato License. A sweet potato license is required for any person who sells, offers for sale, distributes, holds for distribution, or holds as certified stock any viable sweet potato plant or plant part. The fee for a sweet potato license is a Tier 5 annual fee under T.C.A. §43-1-703(f).
- (h) Turfgrass License. A turfgrass license is required for any person who sells, offers for sale, distributes, or holds for distribution turfgrass sod. A turfgrass license issued under this part shall serve as departmental certification that turfgrass sod sold or held by the licensee is apparently free of pests, pest plants, disease, weeds, and other grasses. The fee for a turfgrass license is a Tier 5 annual fee under T.C.A. §43-1-703(f).
- (i) Educational/Nonprofit Plant Organization License. An educational/nonprofit plant organization license may be issued to any person in lieu of any license otherwise required under this chapter. A person may be eligible for an educational/nonprofit plant organization license if the person operates primarily as an educational or nonprofit organization. There is no fee for an educational/nonprofit plant organization license; however, proof of the licensee's valid status as an educational or nonprofit organization in the person's state of incorporation may be required by the department prior to issuing the license.
- (5) It is the intent of the department that licensees not be unduly required to pay multiple licensure fees under this chapter. In order to minimize instances where licensees are required to obtain multiple licenses, the department may determine, in its discretion, the primary business of any licensee and aggregate under the fee structure of that business license category, in lieu of separate licensure, any additional areas of the licensee's ancillary operations where plants are grown, sold, offered for sale, distributed or held for distribution.
- (6) The fee for nematode sample analysis is a Tier 1 fee under T.C.A. §43-1-703(f). No nematode sample

analysis shall be conducted by the department prior to receipt of the analysis fee.

- (7) The fee for phytosanitary certificates shall be equivalent to those of the United States Department of Agriculture, Animal Health Inspection Service (USDA APHIS), as set in 7 C.F.R. §354.3.
- (8) An applicant for licensure under this chapter shall remit its application and annual license fee to the department on or before July 1 of each year. All licenses issued under this chapter shall expire on June 30 following their issuance. If an applicant for renewal fails to remit payment of the license fee on or before July 15 of the licensure year for which renewal is sought, the applicant shall also be required to pay a late charge assessed under T.C.A. §43-1-703 prior to renewal of the applicant's license.
- (9) Applications for licensure may be denied where applicants do not undergo prior to the licensure year an adequate inspection of their plants necessary for certification. Applicants are encouraged to notify the department as early as possible of their intention to seek licensure so that adequate inspection of plants can be conducted prior to the licensure year.
- (10) The department may deny any application for licensure that is not completed in accordance with this rule.

Authority: T.C.A. §§ 4-3-203; 43-6-106; 43-6-113.

Rule 0080-06-01-.05 Inspections of Nurseries is amended by deleting the rule in its entirety and substituting instead the following language so that, as amended, the rule shall read:

Chapter 0080-06-01
Plant Sales and Distribution

0080-06-01-.05 Inspections and Requirements

- (1) **Scope of inspections.** The department may enter any property or location during normal business hours where the department has reason to believe that plants are being grown or kept for sale or distribution. The department may enter such place for the purposes of inspection necessary to prevent or to mitigate pests, pest plants, and disease or for the purposes of examining and copying records necessary to determine compliance with this chapter.
- (2) **Frequency of inspections.** The department shall conduct inspections as often as the department deems necessary for the prevention or mitigation of pests, pest plants, and disease.
- (3) **Requirements.**
 - (a) **Persons subject to this chapter shall:**
 1. Maintain their establishment and operation in a manner necessary to show that plants in their possession are apparently free of pests, pest plants, and disease;
 2. Maintain records and invoices of any plant sold, offered for sale, distributed, or held for distribution in the state within the previous three years. Such records must be sufficient to show that the plant was received from a certified source and compliant with any applicable quarantine;
 3. Maintain areas where plants are being grown or kept so as to be readily accessible for inspection;
 4. Provide lighting necessary for adequate inspection of all plants and areas where plants may be grown or held;
 5. Provide full access to facilities, inventory, records, and invoices necessary to departmental inspection;
 6. Comply with any order issued by the department for the prevention or mitigation of pests,

pest plants, or disease; and,

7. Give full information as to the source of plants currently or previously held in their possession.

(b) Persons subject to this chapter shall not:

1. Engage in business or activity for which a license is required under this chapter without first securing the applicable license from the department;
2. Sell, offer for sale, or distribute any plant previously received without a valid license or certificate affirming the plant to be apparently free of pests, pest plants, and disease;
3. Move or allow movement of any plant, live organism, regulated article, or other material determined by the department to be capable of harboring pests, pest plants, or disease without first receiving a valid license, certificate, or other written authorization from the department for movement of the item;
4. Interfere with an authorized representative of the department in the performance of his duties;
5. Violate any federal or state quarantine of plants, regulated articles, or other material;
6. Violate a compliance agreement to which the department is a party; or,
7. Sell, offer for sale, move, or allow movement of any apparently infested material.

Authority: T.C.A. §§ 4-3-203; 43-6-106.

Rule 0080-06-01-.06 Inspection of Greenhouses is amended by deleting the rule in its entirety and substituting instead the following language so that, as amended, the rule shall read:

Chapter 0080-06-01
Plant Sales and Distribution

0080-06-01-.06 Violations

- (1) Violations of the Act or this chapter are punishable against any person when committed by either the person or his agent.
- (2) Each violation of the Act or this chapter is grounds for issuance of stop movement order(s) against any plant, regulated article, or other material held by the violator or his agent; denial or revocation of any license issued under this chapter; actions for injunction; and imposition of civil penalties or criminal charges against the violator.

Authority: T.C.A. §§ 4-3-203; 43-6-106.

Rule 0080-06-01-.07 Inspection of Collected Plant Dealers is amended by deleting the rule in its entirety and substituting instead the following language so that, as amended, the rule shall read:

Chapter 0080-06-01
Plant Sales and Distribution

0080-06-01-.07 Compliance Agreements

- (1) Any breach of a compliance agreement shall constitute a separate violation of this chapter.

- (2) Compliance agreement certification fees.
 - (a) Licensees. The department shall not assess a fee for compliance agreement certification against any person licensed under this chapter.
 - (b) Non-licensees. The fee for compliance agreement certification for persons not licensed under this chapter is a Tier 3 fee under T.C.A. §43-1-703(f). Nonpayment of the compliance agreement certification fee shall be grounds for immediate rescission of any compliance agreement.
- (3) Revocation of any license issued under this chapter shall be grounds for immediate rescission of any compliance agreement to which the licensee or the department is a party.

Authority: T.C.A. §§ 4-3-203; 43-6-106.

Rule 0080-06-01-.15 Seizure of Stock is amended by deleting the rule in its entirety and substituting instead the following language so that, as amended, the rule shall read:

Chapter 0080-06-01
Plant Sales and Distribution

0080-06-01-.15 Seizure of Stock

- (1) The department may issue a stop movement order for any plant, regulated article, or other material being moved in violation of the Act or this chapter or that is found to be infested or to be capable of harboring pests, pest plants, or disease.
- (2) A stop movement order may be lifted by the department when the owner or possessor of the item subject to the order performs one of the following actions at the owner's or possessor's expense:
 - (a) The item is treated as ordered by the department to mitigate or prevent dissemination of pests, pest plants, and disease;
 - (b) The item is returned to its origin as ordered by the department; or,
 - (c) The item is destroyed as ordered by the department to prevent dissemination of any pest, pest plant, or disease.
 - (d) If none of the actions under subparagraphs (a)-(c) is taken by the owner or possessor of the item within 10 days of the stop movement order being issued, the department may order the item be destroyed at the owner's expense.
- (3) Any person aggrieved by an order of the department issued under the Act or this chapter, may petition the department for review of the order under T.C.A. §43-6-105 and the Uniform Administrative Procedures Act. Petitions for review of a departmental order must be submitted to the department in writing within 10 days of the order being issued. If no petition is filed with the department within the 10 day period, the department's order shall become final and not subject to review.

Authority: T.C.A. §§ 4-3-203; 43-6-106.

Rule 0080-06-26-.12 Penalty is amended by deleting the language, "found in chapter 0080-6-25".

Authority: T.C.A. §§ 4-3-203; 43-6-106.

Repeal

Chapter 0080-06-01
Plant Sales and Distribution

Rule 0080-06-01-.08 Inspection of Plant Dealers and Landscapers is repealed in its entirety.

Rule 0080-06-01-.09 Inspection of Florists is repealed in its entirety.

Rule 0080-06-01-.10 Use of Certificates is repealed in its entirety.

Rule 0080-06-01-.11 Revocation of Rules is repealed in its entirety.

Rule 0080-06-01-.12 Plant Dealers, Landscapers, and Florists Certificates is repealed in its entirety.

Rule 0080-06-01-.13 Out of State Nurseries is repealed in its entirety.

Rule 0080-06-01-.16 Revocation of Rules is repealed in its entirety.

Rule 0080-06-01-.17 Interference with Duties is repealed in its entirety.

Rule 0080-06-01-.18 Violation of Quarantine is repealed in its entirety.

Rule 0080-06-01-.19 Movement of Other Materials is repealed in its entirety.

Rule 0080-06-01-.20 Infested Materials is repealed in its entirety.

Rule 0080-06-01-.21 Civil Penalties for Violations is repealed in its entirety.

Chapter 0080-06-21
Administrative Fees

Chapter 0080-06-21 Administrative Fees is repealed in its entirety.

Chapter 0080-06-25
Civil Penalty Matrix

Chapter 0080-06-25 Civil Penalty Matrix is repealed in its entirety.

I certify that the information included in this filing is an accurate and complete representation of the intent and scope of rulemaking proposed by the agency.

Date: 1/7/16

Signature: [Handwritten Signature]

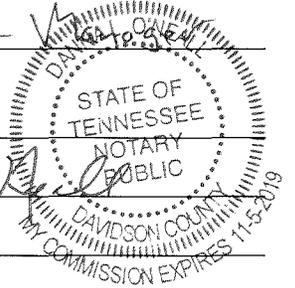
Name of Officer: K. David Waddell

Title of Officer: Administrative Manager

Subscribed and sworn to before me on: January 7, 2016

Notary Public Signature: [Handwritten Signature]

My commission expires on: 11-05-19



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Filed with the Department of State on: 1/7/16

[Handwritten Signature]

Tre Hargett
Secretary of State

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