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# Rulemaking Hearing Rule(s) Filing Form

*Rulemaking Hearing Rules are rules filed after and as a result of a rulemaking hearing (Tenn. Code Ann. § 4-5-205).*

*Pursuant to Tenn. Code Ann. § 4-5-229, any new fee or fee increase promulgated by state agency rule shall take effect on July 1, following the expiration of the ninety (90) day period as provided in § 4-5-207. This section shall not apply to rules that implement new fees or fee increases that are promulgated as emergency rules pursuant to § 4-5-208(a) and to subsequent rules that make permanent such emergency rules, as amended during the rulemaking process. In addition, this section shall not apply to state agencies that did not, during the preceding two (2) fiscal years, collect fees in an amount sufficient to pay the cost of operating the board, commission or entity in accordance with § 4-29-121(b).*

<b>Agency/Board/Commission:</b>	Department of Agriculture
<b>Division:</b>	Consumer & Industry Services
<b>Contact Person:</b>	Jay Miller
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**Revision Type (check all that apply):**

- Amendment  
 New  
 Repeal

**Rule(s) Revised (ALL chapters and rules contained in filing must be listed here. If needed, copy and paste additional tables to accommodate multiple chapters. 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	License, Certificate, and Packing Requirements
0080-06-01-.04	License Application and Fees
0080-06-01-.05	Inspections
0080-06-01-.06	Requirements of Licensees
0080-06-01-.07	Violations
0080-06-01-.08	Compliance Agreements
0080-06-01-.09	Repealed
0080-06-01-.10	Repealed
0080-06-01-.11	Repealed
0080-06-01-.12	Repealed
0080-06-01-.13	Repealed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	Stop Movement Orders
0080-06-01-.16	Repealed
0080-06-01-.17	Repealed
0080-06-01-.18	Repealed

0080-06-01-.19	Repealed
0080-06-01-.20	Repealed
0080-06-01-.21	Repealed

<b>Chapter Number</b>	<b>Chapter Title</b>
0080-06-21	Repealed
<b>Rule Number</b>	<b>Rule Title</b>

<b>Chapter Number</b>	<b>Chapter Title</b>
0080-06-25	Repealed
<b>Rule Number</b>	<b>Rule Title</b>

<b>Chapter Number</b>	<b>Chapter Title</b>
0080-06-26	Rules and Regulations Governing Quarantine of Sudden Oak Death (Phytophthora Ramorum)
<b>Rule Number</b>	<b>Rule Title</b>
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 plants for sale or distribution. 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 or parts of 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 a plant or 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 movement to a particular state or 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) Not primarily engaged in the business of producing and selling plants or seedlings means that revenue received in the previous calendar year for the sale or production of plants does not exceed 15% of gross revenue from farm operations during that period, as shown on applicable federal tax return documents;
  - (i) Person means an individual, partnership, corporation, or any other form of legal entity;
  - (j) 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;
  - (k) Pest plant means any plant that is injurious to the agricultural, horticultural, silvicultural, or other interests of the state;
  - (l) Plant means nursery stock, annual plants, wild plants, or any part of nursery stock, annual plants, or wild plants. Exceptions: the definition of plant does not include any harvested fruit, nut, or vegetable; cut flower; or non-rooted part of a plant that is incapable of propagation; however, such parts of a plant may be determined by the department to be regulated articles under certain circumstances;
  - (m) 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;

- (n) 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;
- (o) 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;
- (p) Wild plants mean uncultivated, feral plants or parts of plants that are gathered from the environment and are capable of propagation. 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 License, Certificate, and Packing Requirements

- (1) No plant 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, its shipment, or its invoice affirming the plant 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 uses a greenhouse to grow or propagate nursery stock or annual plants for sale or distribution on a commercial basis. 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 or propagating area for plants under greenhouse structure(s), as follows:
    1. Less than 600 square feet: Tier 4 fee;
    2. 600 to 1,000 square feet: Tier 6 fee;
    3. 1,001 to 25,000 square feet: Tier 7 fee;
    4. More than 25,000 square feet: Tier 9 fee.
  - (b) Nursery License. A nursery license is required for each location where a person grows or propagates nursery stock or annual plants for sale or distribution on a commercial basis. 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 or propagating area for plants, as follows:
    1. Less than 600 square feet: Tier 4 fee;
    2. 600 square feet to one acre: Tier 6 fee;
    3. More than one acre to 25 acres: Tier 7 fee;

4. More than 25 acres: Tier 9 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 the plants for distribution 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 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 6 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 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 on a commercial basis 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 on a commercial basis. 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.
  - (j) The fee for any license under this chapter shall be waived for any licensee not primarily engaged in the business of producing and selling plants or seedlings.
- (5) It is the intent of the department that licensees not be unduly required to pay multiple license fees under this chapter. In order to minimize requirements for multiple licenses, the department may, in lieu of requiring separate licensure for ancillary plant operations, determine in its discretion the primary business of any licensee and aggregate under the fee structure of that business license category any additional areas of the licensee's ancillary operations where plants are grown, sold, offered for sale, distributed or held for distribution on a commercial basis.
  - (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 16 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

- (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 inspecting any plant or regulated article as necessary for the prevention or mitigation of pests, pest plants, and disease or for the purposes of examining and copying records necessary to determine compliance with this chapter. Inspection shall include the examination of only such plants, regulated articles, facilities, inventory, records, and invoices as are necessary to determine compliance with the Act and this chapter.
- (2) **Sampling receipts.** If the department obtains a sample in the course of any inspection, the department shall provide to the person inspected, or his agent, a receipt describing the samples obtained.
- (3) **Frequency of inspections.** Inspections shall be commenced and completed with reasonable promptness. The department shall notify the person inspected, or his agent, upon completion of any inspection conducted. The department shall conduct inspections of persons under this chapter as often as the department deems necessary for the prevention or mitigation of pests, pest plants, and disease.

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 Requirements of Licensees

- (1) Persons subject to this chapter shall:
  - (a) 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;
  - (b) 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;
  - (c) Maintain areas where plants are being grown or kept so as to be readily accessible for inspection;
  - (d) Provide lighting necessary for adequate inspection of all plants and areas where plants may be grown or held;
  - (e) Provide full access to facilities, inventory, records, and invoices necessary to departmental inspection;
  - (f) Comply with any order issued by the department for the prevention or mitigation of pests, pest plants, or disease; and,
  - (g) Give full information as to the source of plants currently or previously held in their possession.
- (2) Persons subject to this chapter shall not:
  - (a) Engage in business or activity for which a license is required under this chapter without first securing the applicable license from the department;
  - (b) Sell, offer for sale, or move any plant in violation of the Act or this chapter;
  - (c) Sell, offer for sale, or move any plant previously received without a valid license or certificate affirming the plant to be apparently free of pests, pest plants, and disease;
  - (d) 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;
  - (e) Interfere with an authorized representative of the department in the performance of his duties;
  - (f) Violate any federal or state quarantine of plants, regulated articles, or other material;
  - (g) Violate a compliance agreement to which the department is a party; or,
  - (h) 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-.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 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-.08 Inspection of Plant Dealers or Landscapers 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-.08 Compliance Agreements

- (1) Any breach of a compliance agreement shall constitute a separate violation of this chapter.
- (2) Compliance agreement certification fees.
  - (a) Licensees. Departmental fees for compliance agreement certification shall be waived for 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 annual 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 Stop Movement Orders

- (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 its 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 will not be 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-.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.

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

##### Chapter 0080-06-21 Administrative Fees

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

Authority: T.C.A. §4-3-203.

Chapter 0080-06-25  
Civil Penalty Matrix

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

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

\* If a roll-call vote was necessary, the vote by the Agency on these rulemaking hearing rules was as follows:

Board Member	Aye	No	Abstain	Absent	Signature (if required)

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the Department of Agriculture (board/commission/ other authority) on 03/07/2016 (mm/dd/yyyy), and is in compliance with the provisions of T.C.A. § 4-5-222.

I further certify the following:

Notice of Rulemaking Hearing filed with the Department of State on: 01/07/16

Rulemaking Hearing(s) Conducted on: (add more dates). 02/29/16

Date: 03/07/2016

Signature: [Handwritten Signature]

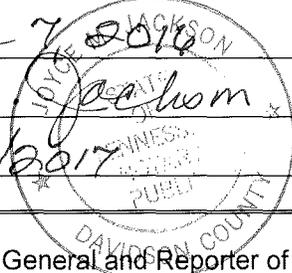
Name of Officer: Julius T. Johnson

Title of Officer: Commissioner

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

Notary Public Signature: [Handwritten Signature]

My commission expires on: 09/11/2017



All rulemaking hearing rules provided for herein have been examined by the Attorney General and Reporter of the State of Tennessee and are approved as to legality pursuant to the provisions of the Administrative Procedures Act, Tennessee Code Annotated, Title 4, Chapter 5.

[Handwritten Signature]

Herbert H. Slatery III  
Attorney General and Reporter

3/18/2016  
Date

**Department of State Use Only**

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Filed with the Department of State on: 3/24/16

Effective on: 6/22/16

[Handwritten Signature]

Tre Hargett  
Secretary of State

## Public Hearing Comments

The Department of Agriculture held a public hearing on February 29, 2016. David Waddell served as hearing officer for the Rulemaking Hearing concerning 0080-06-01 Plant Sales and Distribution; 0080-06-21 Administrative Fees; 0080-06-25 Civil Penalty Matrix; and 0080-06-26 Rules and Regulations Governing Quarantine of Sudden Oak Death. Oral comments from the hearing and written comments from constituents are summarized below along with the Department's response:

### Comment:

Mr. Nathan Stilley, Mr. Jon Flanders, and others, objected to the license fee structure as proposed in the rule's notice of rulemaking hearing. They maintain that the fee increase is too large and too disparate across firms of similar size. Mr. Stilley contends that the fee increase is untimely because the last license fee increase occurred recently.

### Response:

The Department appreciates Mr. Stilley's, Mr. Flanders', and others' concerns and finds merit regarding the fee amounts and their previously proposed gradation among firms in the industry. For this reason, the fee increases and the categories of firms affected have been revised to narrow both the range of fee amounts required and the gradation of fees among firms.

Notwithstanding this change in the rule, the Department notes that license fees for plant certification programs were last increased in 2002. Since that time, the Department has been called upon for consecutive and significant budget cuts. The Department believes that further cuts to the plant certification section programs may unduly increase the risk of pests, pest plants, and disease in our state. Consequently, and unfortunately, program cuts are not a viable option to balance these programs' costs with revenues at this time.

The current cost recovery for plant certification programs from license fees is approximately 42%. Changes included in this rule are anticipated to increase that recovery to 53%. While no fee increase is ever desired, the Department believes this middle-ground increase is an appropriate balance to provide needed funds to departmental programs while also not creating an even greater burden on licensees to bridge the remaining cost gap. The Department also believes that the schedule of fees created by this rule appropriately reflects the amount of time and resources the Department commits to providing regulatory services to individual firms.

### Comment:

Mr. Jon Flanders stated his desire for the Department to receive greater appropriations from the state budget to offset fee increases for affected firms.

### Response:

The Department appreciates Mr. Flanders' support for its programs.

### Comment:

Representative Judd Matheny and Mr. Travis Wanamaker, on behalf of the Middle Tennessee Nursery Association, and Kim Holden, on behalf of the Tennessee Nursery and Landscape Association, offered their support for the rule as amended. Rep. Matheny and Mr. Wanamaker stated their appreciation for the Department's efforts to account for the needs this rule is intended to meet.

### Response:

The Department appreciates Rep. Matheny's, Mr. Wanamaker's, and Ms. Holden's comments. The Department always strives to conduct rule review and amendment with an open dialogue with the public stakeholders affected by the rule. The Department appreciates the time and energy these people and the persons they represent have spent in voicing their concerns and suggestions to the Department in a manner aimed at constructive resolution of public needs.

## Regulatory Flexibility Addendum

Pursuant to T.C.A. §§ 4-5-401 through 4-5-404, prior to initiating the rule making process as described in T.C.A. § 4-5-202(a)(3) and T.C.A. § 4-5-202(a), all agencies shall conduct a review of whether a proposed rule or rule affects small businesses.

- (1) Type or types of small business subject to the proposed rule that would bear the cost of and/or directly benefit from the proposed rule:

Businesses subject to the proposed rule include greenhouses, nurseries, plant dealers, florists, landscapers, wild plant collectors, and any business requiring certification of sweet potato plants or turfgrass, as well as any plant related business requiring a compliance agreement for movement of their plants or products.

- (2) Identification and estimate of the number of small businesses subject to the proposed rule:

Approximately 3,400 affected firms will be subject to the proposed rule.

- (3) Projected reporting, recordkeeping and other administrative costs required for compliance with the proposed rule, including the type of professional skills necessary for preparation of the report or record:

Reporting, recordkeeping, and other administrative costs of small businesses are unaffected by this rule inasmuch as the rule does not alter or duplicate those reporting or recordkeeping requirements otherwise applicable under existing regulation.

- (4) Statement of the probable effect on impacted small businesses and consumers:

The effect of these rules on small businesses is to require additional information from license applicants in order to verify their business and contact information and to alter the fee schedule for the programs' licenses. Fees have been adjusted in an effort to better grade the department's fee schedule among small and large business licensees according to departmental expenditures in regulating the program.

- (5) Description of any less burdensome, less intrusive or less costly alternative methods of achieving the purpose and/or objectives of the proposed rule that may exist, and to what extent such alternative means might be less burdensome to small business:

No less burdensome methods for achieving this purpose are possible.

These rules are promulgated to implement Public Chapter 485 of 2015, which expanded the Agricultural Regulatory Fund to include all fee-generated revenue collected by the department. As part of the legislation, all fee amounts charged by the department were removed from the Code, and the commissioner of agriculture was authorized to set the fee amounts by regulation. The intent of the legislation is to allow the department to adjust fees and to improve the percentage of cost recovery for its programs through fee collection rather than relying as heavily on revenue from the general fund.

- (6) Comparison of the proposed rule with any federal or state counterparts:

This rule is consistent with 7 U.S.C.A. §7711, et seq. for federal requirements regarding movement of plants. Most states maintain similar requirements to the requirements of this rule for restrictions on movement of plants or materials harboring pests, pest plants, or disease.

- (7) Analysis of the effect of the possible exemption of small businesses from all or any part of the requirements contained in the proposed rule.

Exemption of small businesses from this rule may expose the state to greater risk of pests, pest plants, and disease, and will compromise the intent to grade fee schedules according to resources expended for oversight of regulatory programs.

### **Impact on Local Governments**

Pursuant to T.C.A. §§ 4-5-220 and 4-5-228 "any rule proposed to be promulgated shall state in a simple declarative sentence, without additional comments on the merits of the policy of the rules or regulation, whether the rule or regulation may have a projected impact on local governments." (See Public Chapter Number 1070 (<http://state.tn.us/sos/acts/106/pub/pc1070.pdf>) of the 2010 Session of the General Assembly)

No impact is expected on local governments.

**Additional Information Required by Joint Government Operations Committee**

All agencies, upon filing a rule, must also submit the following pursuant to T.C.A. § 4-5-226(i)(1).

- (A) A brief summary of the rule and a description of all relevant changes in previous regulations effectuated by such rule;

This rule reorganizes, retitles, clarifies, and simplifies the previous requirements of the Tennessee Plant Pest Act regulations. It requires additional information from license applicants in order to verify their businesses and contact information. The rule also amends fees schedules for licenses issued under the department of agriculture's plant certification program pursuant to amendments of Tenn. Code Ann. §§ 43-1-703 and 43-6-101, et seq.

- (B) A citation to and brief description of any federal law or regulation or any state law or regulation mandating promulgation of such rule or establishing guidelines relevant thereto;

Tenn. Code Ann. §43-6-104, the Tennessee Plant Pest Act, authorizes the department to promulgate rules and regulations necessary to prevention of insect pests, pest plants, and diseases in the state. Tenn. Code Ann. §43-1-701, et seq. requires the commissioner of agriculture to establish by rule fees for the proper administration of the Plant Pest Act and the costs of the department.

- (C) Identification of persons, organizations, corporations or governmental entities most directly affected by this rule, and whether those persons, organizations, corporations or governmental entities urge adoption or rejection of this rule;

Persons and businesses most directly affected by this rule include: greenhouses, nurseries, plant dealers, florists, landscapers, wild plant collectors, and any business requiring certification of sweet potato plants or turfgrass, as well as any plant related business requiring a compliance agreement for movement of their plants or products. The Middle Tennessee Nursery Association and the Tennessee Nursery and Landscape Association offer their support for the rule.

- (D) Identification of any opinions of the attorney general and reporter or any judicial ruling that directly relates to the rule;

No material opinions or judicial rulings in this state have been found related to this rule.

- (E) An estimate of the probable increase or decrease in state and local government revenues and expenditures, if any, resulting from the promulgation of this rule, and assumptions and reasoning upon which the estimate is based. An agency shall not state that the fiscal impact is minimal if the fiscal impact is more than two percent (2%) of the agency's annual budget or five hundred thousand dollars (\$500,000), whichever is less;

These rules are expected to generate an additional \$232,200 of revenue to the Agricultural Regulatory Fund. The additional revenue will help cover approximately 53% of the cost of providing plant certification inspection services by the department, up from 42% cost recovery provided by the current fee structure.

- (F) Identification of the appropriate agency representative or representatives, possessing substantial knowledge and understanding of the rule;

David Waddell, Administrative Director, and Anni Self, Plant Certification Administrator, Tennessee Department of Agriculture, Consumer and Industry Services Division

- (G) Identification of the appropriate agency representative or representatives who will explain the rule at a scheduled meeting of the committees;

David Waddell, Administrative Director, Tennessee Department of Agriculture, Consumer and Industry Services Division

- (H) Office address, telephone number, and email address of the agency representative or representatives who will explain the rule at a scheduled meeting of the committees; and

436 Hogan Road, Nashville, Tennessee 37220; (615) 837-5331; [david.waddell@tn.gov](mailto:david.waddell@tn.gov)

(I) Any additional information relevant to the rule proposed for continuation that the committee requests.

**Department of State**  
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 312 Rosa L. Parks Avenue, 8th Floor Snodgrass/TN Tower  
 Nashville, TN 37243  
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 Email: [publications.information@tn.gov](mailto:publications.information@tn.gov)

**For Department of State Use Only**

Sequence Number: \_\_\_\_\_  
 Rule ID(s): \_\_\_\_\_  
 File Date: \_\_\_\_\_  
 Effective Date: \_\_\_\_\_

# Redline Copy of Rule(s) Filing Form

*Rulemaking Hearing Rules are rules filed after and as a result of a rulemaking hearing (Tenn. Code Ann. § 4-5-205).*

*Pursuant to Tenn. Code Ann. § 4-5-229, any new fee or fee increase promulgated by state agency rule shall take effect on July 1, following the expiration of the ninety (90) day period as provided in § 4-5-207. This section shall not apply to rules that implement new fees or fee increases that are promulgated as emergency rules pursuant to § 4-5-208(a) and to subsequent rules that make permanent such emergency rules, as amended during the rulemaking process. In addition, this section shall not apply to state agencies that did not, during the preceding two (2) fiscal years, collect fees in an amount sufficient to pay the cost of operating the board, commission or entity in accordance with § 4-29-121(b).*

<b>Agency/Board/Commission:</b>	Department of Agriculture
<b>Division:</b>	Consumer & Industry Services
<b>Contact Person:</b>	Jay Miller
<b>Address:</b>	Post Office Box 40627, Nashville, Tennessee
<b>Zip:</b>	37204
<b>Phone:</b>	(615) 837-5341
<b>Email:</b>	<a href="mailto:jay.miller@tn.gov">jay.miller@tn.gov</a>

**Revision Type (check all that apply):**

- Amendment  
 New  
 Repeal

**Rule(s) Revised (ALL chapters and rules contained in filing must be listed here. If needed, copy and paste additional tables to accommodate multiple chapters. 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	License, Certificate, and Packing Requirements
0080-06-01-.04	License Application and Fees
0080-06-01-.05	Inspections
0080-06-01-.06	Requirements of Licensees
0080-06-01-.07	Violations
0080-06-01-.08	Compliance Agreements
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	Stop Movement Orders
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

<b>Chapter Number</b>	<b>Chapter Title</b>
0080-06-21	Repealed
<b>Rule Number</b>	<b>Rule Title</b>

<b>Chapter Number</b>	<b>Chapter Title</b>
0080-06-25	Repealed
<b>Rule Number</b>	<b>Rule Title</b>

<b>Chapter Number</b>	<b>Chapter Title</b>
0080-06-26	Rules and Regulations Governing Quarantine of Sudden Oak Death (Phytophthora Ramorum)
<b>Rule Number</b>	<b>Rule Title</b>
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  
REGULATIONS GOVERNING NURSERIES, DEALERS AND AGENTS Plant Sales and Distribution

0080-06-01-.01 ~~REGULATIONS~~ Scope

- (1) ~~These regulations shall apply to all nursery stock as defined in the "Tennessee Plant Pest Act," T.C.A. 43-6-101, et seq., except such classes of plants or plant material as may be made the subject of special regulations under the authority and provision of said Act. This chapter applies to any person who grows or keeps plants for sale or distribution. 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. 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 or parts of 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 means a document authorized or prepared by a duly authorized federal or state regulatory official that affirms, declares, or verifies that any nursery stock, a plant, product, shipment or other officially-regulated article meets phytosanitary (quarantine), nursery inspection, pest freedom, plant registration or certification, or other legal regulatory requirements. Such documents Certificates are known by the purpose for their issuance: which they were issued, e.g. Phytosanitary Certificate (for the purpose of verifying compliance with phytosanitary [quarantine] requirements), etc.; Nursery Stock Certificate (for the purpose of verifying compliance with nursery inspection and pest freedom standards); registration or certification tags, seals, etc. (for the purpose of verifying compliance with registration or certification requirements).
- (2) "Certification" means the act (by a duly authorized regulatory official of the Department of Agriculture) of affirming, declaring, or verifying compliance with phytosanitary (quarantine), nursery inspection, pest freedom, plant registration or certification, or other legal requirements.
- (3) "Collected Plants" refers to non-cultivated or feral plants gathered from the environment.
- (4) "Consignee" means any person to whom any plant, nursery stock, horticultural product, agricultural commodity, or plant product is shipped for handling, sale, resale, or any other purpose.
- (5) "Consignor" means any person who ships or delivers to any consignee any plant, nursery stock, horticultural product, agricultural commodity or plant product for handling, planting, sale, resale, or any other purpose.
  - (d) Compliance agreement means a voluntary agreement between the department and a person regarding certification of plants or regulated articles for their lawful movement to a particular state or location;
- (6) "Infected" means any article, nursery stock, plant, or product that has been determined by the Department of Agriculture to be contaminated with an infectious, transmissible, or contagious pest, or so exposed to the aforementioned that contamination can reasonably be expected to exist.
- (7) (e) "Infested" means a pest is present contaminated with pest or infected with disease or the article, nursery stock, plant, or product was so exposed to infestation pest or disease that it would be reasonable to believe an infestation exists. contamination or infection can reasonably be expected to occur;
- (8) (f) "Landscape(s)" includes, but is not limited to, means any person(s) who keeps at a premises, or procures for transplantation, nursery stock for installation on the property of another person. on a commercial basis moves and installs plants or who advertises or solicits business for the movement and installation of plants in the state;

- (9) — ~~(g) “Move”, distribute, ship, transport, or words of similar import means to ship, offer for shipment, receive for transport, carry, or in any manner relocate a regulated article from one place to another, relocate, or to offer to relocate, in any manner an item from one real property to another;~~
- (10) — ~~“Native Wild Plants” means uncultivated plants that are collected or dug up in the wild. A plant that has been collected or dug up that is brought into a nursery setting and cultivated for a minimum of one growing season shall be considered a nursery plant.~~
- ~~(h) Not primarily engaged in the business of producing and selling plants or seedlings means that revenue received in the previous calendar year for the sale or production of plants does not exceed 15% of gross revenue from farm operations during that period, as shown on applicable federal tax return documents;~~
- (11) — ~~“Package” means a plant or shipment of plants that, having been separated to form a single unit, would be identifiable to a particular certificate holder by an invoice or accompanying certificate.~~
- (12) — ~~(i) “Person” means an individual, firm, partnership, or corporation, or any other form of legal entity;~~
- (13) — ~~“Plant” means any part of a plant, tree, plant product, shrub, vine, fruit, vegetable, seed, bulb, stolon, tuber, corm, pip, cutting, scion, bud, graft, or fruit pit.~~
- (14) — ~~(j) “Pest” or disease means any biotic agent (any living agent capable of reproducing itself) or any of the following that is known to cause damage or harm that is injurious to agriculture or the environment:~~
- ~~(a) Any infectious, transmissible, or contagious disease of any plant, or any disorder of any plant. 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 which, after an investigation and a hearing, is determined by a duly constituted any federal, or state or local pest prevention agency to be characteristic of an infectious disease, transmissible, or contagious disease.~~
- ~~(b) Any form of animal life.~~
- ~~(c) Any form of plant life.;~~
- (15) — ~~(k) “Pest plants” means any plant species, and parts thereof that might be used for propagation, which are that is injurious to the agricultural, horticultural, silvicultural, or other interests of the state.;~~
- ~~(l) Plant means nursery stock, annual plants, wild plants, or any part of nursery stock, annual plants, or wild plants. Exceptions: the definition of plant does not include any harvested fruit, nut, or vegetable; cut flower; or non-rooted part of a plant that is incapable of propagation; however, such parts of a plant may be determined by the department to be regulated articles under certain circumstances;~~
- (16) — ~~(m) “Quarantine” means a legal instrument duly imposed or enacted by the Department of Agriculture as a means of mitigating pest risk. These actions include, but are not limited to: confinement or restriction of entry, movement, shipment, or transportation of plants known or suspected to be infected or infested with regulated pests. 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;~~
- ~~(n) 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;~~
- (17) — ~~(o) “Stop Movement Order” means a written directive, issued by a duly authorized federal or state regulatory official, to a person who owns or controls any appliance, nursery stock, plant, plant product, or other article, which is determined to be or is likely to be infested with regulated pest(s), such that movement from one location to another is prohibited, except as otherwise prescribed in the directive. to prohibit or limit the movement of plants or regulated articles;~~

- (p) Wild plants mean uncultivated, feral plants or parts of plants that are gathered from the environment and are capable of propagation. 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 INSPECTION OF SALES/TRANSPORT License, Certificate, and Packing Requirements

- (1) No nursery stock and other rooted plants or propagating materials shall be sold, offered for sale, or transported within or into in the state of Tennessee unless it has been inspected and the owner of same holds a copy of a valid certificate or license from a duly authorized federal or state regulatory official is affixed to the plant, its shipment, or its invoice affirming that said nursery stock the plant is true to its name (scientific and/or approved common name) and apparently free of insect-pests, pest plants, and/or plant diseases.
- (2) Any person or firm selling nursery stock on a wholesale basis must obtain a valid Nursery, Greenhouse, Florist, Native Wild Plant, Certified Sod, Plant Dealer, or Landscaper Certificate from the person or firm that is purchasing nursery stock, other plants, or propagating material. These records shall be kept for a minimum of three years. 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 APPLICATION License Application and Fees

All persons desiring certification of nursery stock and other plants or propagating materials shall make application to the Commissioner, Tennessee Department of Agriculture by or before September 30 of each calendar year. All

~~persons desiring certification of stock grown in greenhouses (greenhouse stock) shall make application to the Commissioner, Tennessee Department of Agriculture by or before December 31 of each calendar year. Applicants may be required to furnish information as to the amounts and kinds of stock for which application for certification is made, and locations where such stock is being grown or held. In the case of native wild plants, applicants may be required to furnish information as to the kinds to be collected and the area from which collections will be made. Applicants must also furnish any other information necessary for inspection and certification.~~

- ~~(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 uses a greenhouse to grow or propagate nursery stock or annual plants for sale or distribution on a commercial basis. 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 or propagating area for plants under greenhouse structure(s), as follows:
    - ~~1. Less than 600 square feet: Tier 4 fee;~~
    - ~~2. 600 to 1,000 square feet: Tier 6 fee;~~
    - ~~3. 1,001 to 25,000 square feet: Tier 7 fee;~~
    - ~~4. More than 25,000 square feet: Tier 9 fee.~~~~
  - ~~(b) Nursery License. A nursery license is required for each location where a person grows or propagates nursery stock or annual plants for sale or distribution on a commercial basis. 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 or propagating area for plants, as follows:

1. Less than 600 square feet: Tier 4 fee;
2. 600 square feet to one acre: Tier 6 fee;
3. More than one acre to 25 acres: Tier 7 fee;
4. More than 25 acres: Tier 9 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 the plants for distribution 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 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 6 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 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 on a commercial basis 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 on a commercial basis. 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.

(j) The fee for any license under this chapter shall be waived for any licensee not primarily engaged in the business of producing and selling plants or seedlings.

(5) It is the intent of the department that licensees not be unduly required to pay multiple license fees under this chapter. In order to minimize requirements for multiple licenses, the department may, in lieu of requiring separate licensure for ancillary plant operations, determine in its discretion the primary business of any licensee and aggregate under the fee structure of that business license category any additional

areas of the licensee's ancillary operations where plants are grown, sold, offered for sale, distributed or held for distribution on a commercial basis.

- (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 16 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 OF NURSERIES-Inspections~~

- (1) ~~Each nursery shall be inspected for injurious pests by the Commissioner at least once each year and as often as individual circumstances warrant and require.~~ 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 inspecting any plant or regulated article as necessary for the prevention or mitigation of pests, pest plants, and disease or for the purposes of examining and copying records necessary to determine compliance with this chapter. Inspection shall include the examination of only such plants, regulated articles, facilities, inventory, records, and invoices as are necessary to determine compliance with the Act and this chapter.
- (2) ~~Fields in which nursery stock is being grown shall be maintained essentially free of weeds and grasses. Failure or refusal to maintain fields or blocks in such condition shall be grounds for refusal of inspection and certification.~~ Sampling receipts. If the department obtains a sample in the course of any inspection, the department shall provide to the person inspected, or his agent, a receipt describing the samples obtained.
- (3) ~~It shall be the nursery's responsibility to furnish adequate lighting adequate for the effective inspection of~~

~~packing sheds, storage areas, or other indoor areas where nursery stock is inspected. Refusal or failure to provide such lighting shall be grounds for refusal of inspection and certification. Frequency of inspections. Inspections shall be commenced and completed with reasonable promptness. The department shall notify the person inspected, or his agent, upon completion of any inspection conducted. The department shall conduct inspections of persons under this chapter as often as the department deems necessary for the prevention or mitigation of pests, pest plants, and disease.~~

- ~~(4) — If the inspection shows that the nursery is essentially free of insect pests, pest plants, and/or plant diseases, and the firm submits the appropriate application, certification fee and payment for penalties, if applicable, a certificate affirming this fact shall be issued. Such certificates shall expire on September 30 of each year.~~
- ~~(5) — If the inspection of a nursery reveals an infestation by an insect pest, pest plant, or plant disease, the infested or infected plant material shall be treated if there is a practical and effective treatment available, or destroyed, as determined and ordered by the Commissioner.~~
- ~~(6) — If the owner of such infested or infected plant material neglect [sic] or refuses to carry out the order for treatment or destruction, certification of the nursery shall be denied; or, if such nursery already holds a certificate, such certificate shall be revoked. Whenever a certificate is revoked, it shall be surrendered immediately to the Commissioner, on written order signed by the Commissioner.~~

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 ~~INSPECTION OF GREENHOUSES~~ Requirements of Licensees

- (1) ~~Each greenhouse shall be inspected for injurious pests by the Commissioner at least once each year and as often as individual circumstances warrant and require. Persons subject to this chapter shall:~~
  - ~~(a) 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;~~
  - ~~(b) 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;~~
  - ~~(c) Maintain areas where plants are being grown or kept so as to be readily accessible for inspection;~~
  - ~~(d) Provide lighting necessary for adequate inspection of all plants and areas where plants may be grown or held;~~
  - ~~(e) Provide full access to facilities, inventory, records, and invoices necessary to departmental inspection;~~
  - ~~(f) Comply with any order issued by the department for the prevention or mitigation of pests, pest plants, or disease; and,~~
  - ~~(g) Give full information as to the source of plants currently or previously held in their possession.~~
- (2) ~~If the inspection reveals that the greenhouse is essentially free of insect pests, pest plants, and/or plant diseases, and the firm submits the appropriate application, certification fee, and payment for penalties, if applicable, a certificate affirming this fact shall be issued. Persons subject to this chapter shall not:~~

- (a) Engage in business or activity for which a license is required under this chapter without first securing the applicable license from the department;
  - (b) Sell, offer for sale, or move any plant in violation of the Act or this chapter;
  - (c) Sell, offer for sale, or move any plant previously received without a valid license or certificate affirming the plant to be apparently free of pests, pest plants, and disease;
  - (d) Move or allow movement of any 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;
  - (e) Interfere with an authorized representative of the department in the performance of his duties;
  - (f) Violate any federal or state quarantine of plants, regulated articles, or other material;
  - (g) Violate a compliance agreement to which the department is a party; or,
  - (h) Sell, offer for sale, move, or allow movement of any apparently infested material.
- (3) ~~Such certificates shall expire on December 31 of each year.~~
- (4) ~~If the inspection of a greenhouse reveals an infestation by an insect pest, pest plant, or plant disease, the infested or infected plant material shall be treated if there is a practical and effective treatment available, or destroyed, as determined and ordered by the Commissioner.~~
- (5) ~~If the owner of such infested or infected plant material neglects or refuses to carry out the order for treatment or destruction, certification of the greenhouse shall be denied; or, if such greenhouse already holds a certificate, such certificate shall be revoked. Whenever a certificate is revoked, it shall be surrendered immediately to the Commissioner, on written order signed by the Commissioner.~~

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 ~~INSPECTION OF COLLECTED PLANT DEALERS. Violations~~

- (1) ~~The range from which plants are collected may be inspected for injurious pests during the growing season. At least once a year, during the packing and shipping season and as often as individual circumstances warrant and require, the collected plants present will be inspected for injurious pests. Violations of the Act or this chapter are punishable against any person when committed by either the person or his agent.~~
- (2) ~~If the inspection shows that the collected plants are essentially free of insect pests, pest plants, and/or plant diseases, and the firm submits the appropriate application, certification fee, and payment for penalties, if applicable, a certificate affirming this fact shall be issued. 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.~~
- (3) ~~Such certificates shall expire on September 30 of each year.~~
- (4) ~~The certificate issued for collected plants shall be separate and distinct from that issued for nursery-~~

grown stock.

- (5) ~~If the collected plant inspection reveals an infestation by an insect pest, pest plant, or plant disease, the infested or infected plant material shall be treated if there is a practical and effective treatment available, or destroyed, as determined and ordered by the Commissioner.~~
- (6) ~~If the owner of such infested or infected plant material neglects or refuses to carry out the order for treatment or destruction, certification for the collected plant dealer shall be denied; or, if such collected plant dealer already holds a certificate, such certificate shall be revoked.~~
- (7) ~~Whenever a certificate is revoked, it shall be surrendered immediately to the Commissioner, on written order signed by the Commissioner.~~

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

Rule 0080-06-01-.08 Inspection of Plant Dealers or Landscapers 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-.08 ~~INSPECTION OF PLANT DEALERS OR LANDSCAPERS.~~ Compliance Agreements

- (1) ~~Plant dealers or landscapers may be inspected for injurious pests by the Commissioner as often as individual circumstances warrant and require. Any breach of a compliance agreement shall constitute a separate violation of this chapter.~~
- (2) ~~If the plant dealer or landscaper completes and submits the appropriate application, certification fee, and payment for penalties, if applicable, a Nursery Plant Dealer certificate shall be issued. Compliance agreement certification fees.~~
  - (a) ~~Licensees. Departmental fees for compliance agreement certification shall be waived for 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 annual 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) ~~Such certificates shall expire on September 30 of each year. 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.~~
- (4) ~~If the inspection of a plant dealer or landscaper reveals an infestation by an insect pest, pest plant, or plant disease, the infested or infected plant material shall be treated if there is a practical and effective treatment available, or destroyed, as determined and ordered by the Commissioner.~~
- (5) ~~If the owner of such infested or infected plant material neglects or refuses to carry out the order for treatment or destruction, certification for the nursery plant dealer shall be denied; or, if such plant dealer or landscaper already holds a certificate, such certificate shall be revoked.~~
- (6) ~~Whenever a certificate is revoked, it shall be surrendered immediately to the Commissioner, on written order signed by the Commissioner.~~

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 ~~Stop Movement Orders~~

- (1) ~~Nursery stock, other plants, or propagating material found to be infested by an insect pest, pest plant, and/or infected by a plant disease while being moved in, into, or from the state, or being moved in violation of any section of the Plant Pest Act or any of the regulations promulgated thereunder, shall be seized, and a stop movement order placed on the items by the Commissioner. The owner of such seized stock, at the discretion of the Commissioner and depending on the mitigation of the problem, will be given the option of:~~
  - ~~(a) Having the stock treated at the expense of the owner, consignor, and/or~~
  - ~~(b) Having the stock returned to its origin at the expense of the owner, consignor and/or consignee, and/or~~
  - ~~(c) Having the stock destroyed at the expense of the owner, consignor and/or consignee. 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) ~~It shall be illegal for the owner, consignor, consignee, carrier or other person to move or deliver such seized stock until it is released by the Commissioner. 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 its 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 will not be 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".

0080-06-26-.12 PENALTY.

Any person, firm, or corporation who shall violate any of the provisions of this quarantine shall be deemed guilty of a misdemeanor as provided in T.C.A. Section 43-6-112 of the Plant Pest Act, and shall be liable to the penalties as prescribed therein as well as applicable civil penalties 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-.09 Inspection of Florists is repealed in its entirety.

~~0080-06-01-.09 INSPECTION OF FLORISTS.~~

- ~~(1) — If a florist completes and submits the appropriate application, certification fee, and payment for penalties, if applicable, a florist certificate shall be issued.~~
- ~~(2) — Such certificates shall expire on September 30 of each year. Florists may be inspected for injurious pests by the Commissioner as often as individual circumstances warrant and require.~~
- ~~(3) — If the inspection of a florist reveals an infestation by an insect pest, pest plant, or plant disease, the infested or infected plant material shall be treated if there is a practical and effective treatment available, or destroyed, as determined and ordered by the Commissioner.~~
- ~~(4) — If the owner of such infested or infected plant material neglects or refuses to carry out the order for treatment or destruction, certification for the florist shall be denied; or, if such florist already holds a certificate, such certificate shall be revoked. Whenever a certificate is revoked, it shall be surrendered immediately to the Commissioner, on written order signed by the Commissioner.~~

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

~~0080-06-01-.10 USE OF CERTIFICATES.~~

- ~~(1) — All nursery stock shipped, sold, delivered or transported for sale or delivery in this state shall have affixed to each invoice, package, or plant (when sold or delivered without packaging):
  - ~~(a) — a tag bearing a copy of the valid certificate and/or~~
  - ~~(b) — an actual copy of the valid certificate covering such nursery stock.~~~~
- ~~(2) — In the event both native wild plants and nursery-grown plants are delivered in the same package or lot without being individually packaged, they must be segregated, and certification for each of the two classes must be displayed on the invoice for each.~~
- ~~(3) — All copies of certificates, tags and/or invoices bearing certificate designation shall expire on the same date as the certificates under which they are printed, unless such certificates shall be revoked prior to that date. In case of revocation of a certificate, all copies of certificates, tags and/or invoices bearing certificate designation shall be immediately surrendered to the Commissioner, on written order signed by the Commissioner. Use of all copies of certificates, tags and/or invoices bearing certificate designation beyond their expiration date shall be a violation of these regulations.~~

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

~~0080-06-01-.11 REVOCATION OF RULES.~~

~~All Rules and Regulations heretofore promulgated on this subject are hereby rescinded revoked and suspended [sic]~~

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

~~0080-06-01-.12 PLANT DEALER, LANDSCAPER AND FLORIST CERTIFICATES.~~

~~It shall be illegal for any person to engage in the business of being a Plant Dealer, Landscaper or Florist without first having secured a Nursery Plant Dealer certificate, Landscaper certificate, or Florist certificate from the Tennessee Department of Agriculture. Such certificate shall be issued when the firm has remitted its application, appropriate certification fee and payment for penalties, if applicable; when it has affirmed that all nursery stock handled has been secured from a source holding a valid certificate issued by the proper official of this state or other state(s); and when it has furnished to the Commissioner with a list of such certified sources from which it proposes to secure nursery stock. It shall be the responsibility of the nursery plant dealer or florist holding a certificate under these regulations to maintain such records as are necessary to demonstrate that stock sold, displayed for sale, held or transported was in fact secured from such stipulated certified sources. An itemized sales invoice showing the source of the acquisition shall accompany unpackaged stock being moved by means other than common carrier.~~

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

~~0080-06-01-.13 OUT-OF-STATE NURSERIES.~~

~~A certificate may be issued to out-of-state nurseries that grow, or contract for the production of, nursery stock in Tennessee. This certificate is valid only for stock grown or produced in Tennessee. Such nurseries will be subject to the same requirements as in-state nurseries.~~

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

~~0080-06-01-.16 REVOCATION OF RULES.~~

~~All Rules and Regulations heretofore promulgated on this subject are hereby rescinded, revoked and suspended.~~

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

~~0080-06-01-.17 INTERFERENCE WITH DUTIES.~~

~~It shall be illegal for any person or firm to interfere with an authorized representative of the Tennessee Department of Agriculture in the performance of their duties.~~

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

~~0080-06-01-.18 VIOLATION OF QUARANTINE.~~

~~It shall be illegal for any person or firm to violate a plant quarantine or compliance agreement to which the Tennessee Department of Agriculture is a party.~~

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

~~0080-06-01-.19 MOVEMENT OF OTHER MATERIALS.~~

~~It shall be illegal for any person or firm to move live organisms or other material capable of harboring insect pests, pest plant, and/or plant diseases, as determined by the Commissioner, without a valid certificate or permit from the Tennessee Department of Agriculture.~~

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

~~0080-06-01-.20 INFESTED MATERIALS.~~

~~It shall be illegal for any person or firm to sell or offer for sale plant materials, soil or other materials apparently infested by insect pests, pest plants, and/or infected by plant diseases.~~

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

~~0080-06-01-.21 CIVIL PENALTIES FOR VIOLATIONS.~~

In addition to the revocation of one's certificate, violators may be subject to civil penalties as published in rule 0080-06-25 and T.C.A. § 4-3-204.

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

Chapter 0080-06-21  
Administrative Fees

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

~~0080-6-21-.01 ADMINISTRATIVE FEES.~~

~~(1) The Department adopts the following fee schedule for the corresponding services. (Educational institutions shall be exempt from payment of these fees.)~~

~~(a) Certification of nursery stock or other plant material:~~

~~1. Florist certification  
Twenty five [sic] dollars — (\$25.00)~~

~~2. Greenhouse grown plants certification  
Two Hundred Dollars — (\$200.00)~~

~~(i) Greenhouse grown plants being grown in areas less than 600 square feet.  
One hundred dollars — (\$100.00)~~

~~3. Irish potato certification  
One hundred dollars — (\$100.00)~~

~~4. Native wild plant certification  
Two Hundred Dollars — (\$200.00)~~

~~5. Native wild plant dealer  
Two Hundred Dollars — (\$200.00)~~

~~6. Nursery stock certification  
Two Hundred Dollars — (\$200.00)~~

~~(i) Nursery stock grown in areas less than 600 square feet.  
One hundred dollars — (\$100.00)~~

~~(ii) The following persons are exempt from the fees imposed under Tenn. Code Ann. §43-1-703(f)(8), the greenhouse plant certification fee, or any licensure or plant certification fee established by this rule:~~

~~(i) Any person engaged in the production of tobacco seedlings, and any farmer who produces and sells plants or seedlings in connection with such person's farming operations, but who is not primarily engaged in the business of producing and selling plants or seedlings. For purposes of this chapter, "not primarily engaged" means receipts from selling plants or seedlings do not exceed 15% of gross farm receipts for the average of the two previous years or one year if the operation has only been in existence for one year, as shown in federal tax return documents.~~

~~7. Strawberry plant certification  
One hundred dollars — (\$100.00)~~

8. ~~\_\_\_\_\_~~ Sweet potato certification (plants, slip)  
~~\_\_\_\_\_~~ One hundred dollars — (\$100.00)
9. ~~\_\_\_\_\_~~ Sweet potato certification (seed)  
~~\_\_\_\_\_~~ One hundred dollars — (\$100.00)
10. ~~\_\_\_\_\_~~ Turfgrass certification  
~~\_\_\_\_\_~~ Two Hundred Dollars — (\$200.00)
11. ~~\_\_\_\_\_~~ Vegetable plant certification  
~~\_\_\_\_\_~~ Two Hundred Dollars — (\$200.00)
- (b) ~~\_\_\_\_\_~~ Plant dealer certificates (each):  
~~\_\_\_\_\_~~ Two Hundred Dollars — (\$200.00)
1. ~~\_\_\_\_\_~~ Plant dealers that sell only annual plants and cover an area equal to or less than 100 square feet of space with plant materials.  
~~\_\_\_\_\_~~ Thirty Dollars — (\$30.00)
- (c) ~~\_\_\_\_\_~~ Phytosanitary certificates (each):  
~~\_\_\_\_\_~~ Equivalent to federal U.S. Department of Agriculture, Animal Health Inspection Service (USDA APHIS) fees in 7 CFR Part 354.3.
- (d) ~~\_\_\_\_\_~~ Pesticide dealer license (each):  
~~\_\_\_\_\_~~ Fifty dollars — (\$50.00)
- (e) ~~\_\_\_\_\_~~ Pesticide dealer license late fee (each):  
~~\_\_\_\_\_~~ Twenty five dollars — \$25.00 This is in addition to the regular fee in (1)(d).
- (f) ~~\_\_\_\_\_~~ Pesticide product registration (each):  
~~\_\_\_\_\_~~ One hundred dollars — (\$100.00)
- (g) ~~\_\_\_\_\_~~ Pesticide product registration late fee (each):  
~~\_\_\_\_\_~~ Fifty dollars — (\$50.00) this is in addition to the regular fee in (1)(f).
- (h) ~~\_\_\_\_\_~~ Special local need (24-C) fee (each):  
~~\_\_\_\_\_~~ Two hundred fifty dollars — (\$250.00)
- (i) ~~\_\_\_\_\_~~ Nematode sample analysis (each): Ten dollars — (\$10.00)
- (j) ~~\_\_\_\_\_~~ Commercial pesticide applicator certification (each exam):  
~~\_\_\_\_\_~~ Fifteen dollars — (\$15.00)
- (k) ~~\_\_\_\_\_~~ Commercial pesticide applicator recertification or replacement card (each card):  
~~\_\_\_\_\_~~ Five dollars — (\$5.00)
- (l) ~~\_\_\_\_\_~~ Private pesticide applicator certification (each):  
~~\_\_\_\_\_~~ Ten dollars — (\$10.00)
- (m) ~~\_\_\_\_\_~~ Pest control charter (each):  
~~\_\_\_\_\_~~ Two hundred dollars — (\$200.00)
- (n) ~~\_\_\_\_\_~~ Pest control license (per category):  
~~\_\_\_\_\_~~ Twenty dollars — (\$20.00)
- (o) ~~\_\_\_\_\_~~ Solicitor/technician cards:  
~~\_\_\_\_\_~~ Twenty dollars — (\$20.00)
- (p) ~~\_\_\_\_\_~~ Consultant or custom applicator license exams (each):  
~~\_\_\_\_\_~~ One hundred fifty dollars — (\$150.00)

(q) Aerial-applicator license (each):  
Two hundred dollars (\$200.00)

(r) Aerial decals (each):  
One hundred fifty dollars (\$150.00)

Authority: T.C.A. §4-3-203.

Chapter 0080-06-25  
Civil Penalty Matrix

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

~~0080-6-25-.01 CIVIL PENALTY MATRIX PURSUANT TO LAWFUL PROCEEDING RESPECTING LICENSING~~

	Offense	Penalty				
		1st	2nd	3rd	4th	5th
(1)	Any person and/or firm who knowingly introduces into the State any live or reproductive stages of insect, disease, virus, or any other plant pest or pest plant injurious to the agriculture environment.	\$500	\$500	\$500	\$500	\$500
(2)	Any person and/or firm who refrains from providing full information to an authorized agent as to the origin and sources of insects, disease organism, or species of articles in their possession likely to carry insects, plant pests, and/or plant diseases.	\$500	\$500	\$500	\$500	\$500
(3)	Any person and/or firm who refuses an authorized agent entry to inspect plant(s), plant parts, plant products, or other articles or things that may be, in the opinion of the authorized agent, capable of disseminating or carrying insects, pest plants, plant pests, and/or plant diseases.	\$500	\$500	\$500	\$500	\$500
(4)	Any person and/or firm who has plant stock governed by the Plant Pest Act that is sold, offered for sale, or transported within or into the State of Tennessee before it has been inspected by an authorized agent and does not have a valid copy of a state certificate of inspection affirming said stock has been inspected and is apparently free of insects, plant pests, and plant diseases.	Warning	\$500	\$500	\$500	\$500
(5)	Any person and/or firm whose plant stock is shipped, sold, delivered, and/or transported for sale in this State that does not have a certificate or tag(s) that bears a copy of the valid certificate covering such stock.	Warning	\$100	\$250	\$500	\$500
(6)	Any person and/or firm whose nursery grown plants and native wild collected plants are	\$500	\$500	\$500	\$500	\$500

- ~~being packaged in such manner(s) as to falsify  
the classes of stock contained in the  
packages(s) [sic]~~
- (7) ~~Any person and/or firm whose plant stock is~~ ~~Warning~~ ~~\$100~~ ~~\$250~~ ~~\$500~~ ~~\$500~~  
~~shipped under an expired certification.~~
- (8) ~~Any person and/or firm whose plant stock is~~ ~~\$500~~ ~~\$500~~ ~~\$500~~ ~~\$500~~ ~~\$500~~  
~~Shipped under false certification.~~
- (9) ~~Any person and/or firm who sells, trades,~~ ~~Warning~~ ~~\$100~~ ~~\$250~~ ~~\$500~~ ~~\$500~~  
~~and/or delivers plants that are not in a viable  
condition.~~
- (10) ~~Any person and/or firm who does not~~ ~~Warning~~ ~~\$100~~ ~~\$250~~ ~~\$500~~ ~~\$500~~  
~~maintain their plant stock in a viable  
condition.~~
- (11) ~~Any person and/or firm whose plant stock~~ ~~Warning~~ ~~\$100~~ ~~\$250~~ ~~\$500~~ ~~\$500~~  
~~offered for sale or transported within or into  
the State and not properly labeled with  
scientific and/or approved common name,  
which may render stock not true to name.~~
- (12) ~~Any person and/or firm who (knowingly)~~ ~~\$500~~ ~~\$500~~ ~~\$500~~ ~~\$500~~ ~~\$500~~  
~~receives plant stock that does not meet the  
requirement(s) of the Plant Pest Act.~~
- (13) ~~Any person and/or firm who sells, offers for~~ ~~Warning~~ ~~\$100~~ ~~\$250~~ ~~\$500~~ ~~\$500~~  
~~sale, stores and/or holds for sale, and/or  
transports into or within the State strawberry  
plant(s) that does/do not meet the  
requirement(s) of the Regulations Governing  
Strawberry Plant Growers and Dealers [sic]~~
- (14) ~~Any person and/or firm who offers for sale,~~ ~~Warning~~ ~~\$100~~ ~~\$250~~ ~~\$500~~ ~~\$500~~  
~~stores or holds for sale, and/or transports  
within or into the State turfgrass sod that has  
not been inspected and approved By [sic] the  
Tennessee Department of Agriculture and  
does not have with the turfgrass sod a copy of  
the non-certified sod permit, certified sod  
certificate, or nursery certificate covering  
said sod.~~
- (15) ~~Any person and/or firm who moves soil, live~~ ~~Warning~~ ~~\$100~~ ~~\$250~~ ~~\$500~~ ~~\$500~~  
~~organisms, and/or materials capable of  
harboring insect(s), and/or plant disease  
pest(s) without a permit from the Tennessee  
Department of Agriculture.~~
- (16) ~~Plants, soil, or material infected with harmful~~ ~~\$250~~ ~~\$500~~ ~~\$500~~ ~~\$500~~ ~~\$500~~  
~~organisms and not treated and/or used in  
accordance with the Department of  
Agriculture.~~
- (17) ~~Any person and/or firm who violates a plant~~ ~~\$500~~ ~~\$500~~ ~~\$500~~ ~~\$500~~ ~~\$500~~  
~~And/or quarantine or compliance agreement.~~
- (18) ~~Any person and/or firm who interferes with~~ ~~\$500~~ ~~\$500~~ ~~\$500~~ ~~\$500~~ ~~\$500~~

~~\_\_\_\_\_ an authorized representative of the Tennessee  
\_\_\_\_\_ Department of Agriculture in the  
\_\_\_\_\_ performance of his/her duties.~~

~~(19) \_\_\_\_\_ Any person and/or firm who fails to maintain \_\_\_\_\_ Warning \$50 \$100 \$250 \$500  
\_\_\_\_\_ such records as are necessary to demonstrate & seven  
\_\_\_\_\_ that plants sold, displayed for sale, held or \_\_\_\_\_ days to  
\_\_\_\_\_ transported were in fact secured from \_\_\_\_\_ comply  
\_\_\_\_\_ certified sources.~~

~~(20) \_\_\_\_\_ Any person and/or firm who sells, moves, \_\_\_\_\_ \$500 \$500 \$500 \$500 \$500  
\_\_\_\_\_ delivers, or destroys seized plant stock or  
\_\_\_\_\_ plant stock being grown under detention  
\_\_\_\_\_ (until released) by the Tennessee Department  
\_\_\_\_\_ of Agriculture, or treats plants stock with any  
\_\_\_\_\_ chemical(s) until authorized by the Tennessee  
\_\_\_\_\_ Department of Agriculture.~~

~~(21) \_\_\_\_\_ Any person and/or firm who sells, offers for \_\_\_\_\_ Warning \$100 \$250 \$500 \$500  
\_\_\_\_\_ sale, or moves plants without having first \_\_\_\_\_ & seven  
\_\_\_\_\_ secured a Nursery and Plant Dealer's \_\_\_\_\_ days to  
\_\_\_\_\_ Certificate. \_\_\_\_\_ comply~~

~~(22) \_\_\_\_\_ Any person and/or firm that does not pay \_\_\_\_\_ Warning \$250 \$500 \$500 \$500  
\_\_\_\_\_ Certification fees due the State [sic] \_\_\_\_\_ & seven  
\_\_\_\_\_ \_\_\_\_\_ days to  
\_\_\_\_\_ \_\_\_\_\_ comply~~

~~(23) \_\_\_\_\_ Any person and/or firm that changes any \_\_\_\_\_ \$500 \$500 \$500 \$500 \$500  
\_\_\_\_\_ inspection report left by an inspector or the  
\_\_\_\_\_ Tennessee Department of Agriculture [sic]~~

~~(24) \_\_\_\_\_ Any person and/or firm that violates any \_\_\_\_\_ Warning \$250 \$500 \$500 \$500  
\_\_\_\_\_ provisions of TCA 43-6-201 et. Seq. [sic] and/or  
\_\_\_\_\_ its rules and regulations, for which a civil  
\_\_\_\_\_ penalty is not otherwise set shall be subject to  
\_\_\_\_\_ the following:~~

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

\* If a roll-call vote was necessary, the vote by the Agency on these rulemaking hearing rules was as follows:

Board Member	Aye	No	Abstain	Absent	Signature (if required)

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the Department of Agriculture (board/commission/ other authority) on \_\_\_\_\_ (mm/dd/yyyy), and is in compliance with the provisions of T.C.A. § 4-5-222.

I further certify the following:

Notice of Rulemaking Hearing filed with the Department of State on: 01/07/16

Rulemaking Hearing(s) Conducted on: (add more dates). 02/29/16

Date: \_\_\_\_\_

Signature: \_\_\_\_\_

Name of Officer: \_\_\_\_\_

Title of Officer: \_\_\_\_\_

Subscribed and sworn to before me on: \_\_\_\_\_

Notary Public Signature: \_\_\_\_\_

My commission expires on: \_\_\_\_\_

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All rulemaking hearing rules provided for herein have been examined by the Attorney General and Reporter of the State of Tennessee and are approved as to legality pursuant to the provisions of the Administrative Procedures Act, Tennessee Code Annotated, Title 4, Chapter 5.

\_\_\_\_\_  
Herbert H. Slatery III  
Attorney General and Reporter

\_\_\_\_\_  
Date

**Department of State Use Only**

Filed with the Department of State on: \_\_\_\_\_

Effective on: \_\_\_\_\_

\_\_\_\_\_  
Tre Hargett  
Secretary of State

## Public Hearing Comments

The Department of Agriculture held a public hearing on February 29, 2016. David Waddell served as hearing officer for the Rulemaking Hearing concerning 0080-06-01 Plant Sales and Distribution; 0080-06-21 Administrative Fees; 0080-06-25 Civil Penalty Matrix; and 0080-06-26 Rules and Regulations Governing Quarantine of Sudden Oak Death. Oral comments from the hearing and written comments from constituents are summarized below along with the Department's response:

### Comment:

Mr. Nathan Stilley, Mr. Jon Flanders, and others, objected to the license fee structure as proposed in the rule's notice of rulemaking hearing. They maintain that the fee increase is too large and too disparate across firms of similar size. Mr. Stilley contends that the fee increase is untimely because the last license fee increase occurred recently.

### Response:

The Department appreciates Mr. Stilley's, Mr. Flanders', and others' concerns and finds merit regarding the fee amounts and their previously proposed gradation among firms in the industry. For this reason, the fee increases and the categories of firms affected have been revised to narrow both the range of fee amounts required and the gradation of fees among firms.

Notwithstanding this change in the rule, the Department notes that license fees for plant certification programs were last increased in 2002. Since that time, the Department has been called upon for consecutive and significant budget cuts. The Department believes that further cuts to the plant certification section programs may unduly increase the risk of pests, pest plants, and disease in our state. Consequently, and unfortunately, program cuts are not a viable option to balance these programs' costs with revenues at this time.

The current cost recovery for plant certification programs from license fees is approximately 42%. Changes included in this rule are anticipated to increase that recovery to 53%. While no fee increase is ever desired, the Department believes this middle-ground increase is an appropriate balance to provide needed funds to departmental programs while also not creating an even greater burden on licensees to bridge the remaining cost gap. The Department also believes that the schedule of fees created by this rule appropriately reflects the amount of time and resources the Department commits to providing regulatory services to individual firms.

### Comment:

Mr. Jon Flanders stated his desire for the Department to receive greater appropriations from the state budget to offset fee increases for affected firms.

### Response:

The Department appreciates Mr. Flanders' support for its programs.

### Comment:

Representative Judd Matheny and Mr. Travis Wanamaker, on behalf of the Middle Tennessee Nursery Association, and Kim Holden, on behalf of the Tennessee Nursery and Landscape Association, offered their support for the rule as amended. Rep. Matheny and Mr. Wanamaker stated their appreciation for the Department's efforts to account for the needs this rule is intended to meet.

### Response:

The Department appreciates Rep. Matheny's, Mr. Wanamaker's, and Ms. Holden's comments. The Department always strives to conduct rule review and amendment with an open dialogue with the public stakeholders affected by the rule. The Department appreciates the time and energy these people and the persons they represent have spent in voicing their concerns and suggestions to the Department in a manner aimed at constructive resolution of public needs.

### Regulatory Flexibility Addendum

Pursuant to T.C.A. §§ 4-5-401 through 4-5-404, prior to initiating the rule making process as described in T.C.A. § 4-5-202(a)(3) and T.C.A. § 4-5-202(a), all agencies shall conduct a review of whether a proposed rule or rule affects small businesses.

- (1) Type or types of small business subject to the proposed rule that would bear the cost of and/or directly benefit from the proposed rule:

Businesses subject to the proposed rule include greenhouses, nurseries, plant dealers, florists, landscapers, wild plant collectors, and any business requiring certification of sweet potato plants or turfgrass, as well as any plant related business requiring a compliance agreement for movement of their plants or products.

- (2) Identification and estimate of the number of small businesses subject to the proposed rule:

Approximately 3,400 firms will be subject to the proposed rule.

- (3) Projected reporting, recordkeeping and other administrative costs required for compliance with the proposed rule, including the type of professional skills necessary for preparation of the report or record:

Reporting, recordkeeping, and other administrative costs of small businesses are unaffected by this rule inasmuch as the rule does not alter or duplicate those reporting or recordkeeping requirements otherwise applicable under existing regulation.

- (4) Statement of the probable effect on impacted small businesses and consumers:

The effect of these rules on small businesses is to require additional information from license applicants in order to verify their business and contact information and to alter the fee schedule for the programs' licenses. Fees have been adjusted in an effort to better grade the department's fee schedule among small and large business licensees according to departmental expenditures in regulating the program.

- (5) Description of any less burdensome, less intrusive or less costly alternative methods of achieving the purpose and/or objectives of the proposed rule that may exist, and to what extent such alternative means might be less burdensome to small business:

No less burdensome methods for achieving this purpose are possible.

These rules are promulgated to implement Public Chapter 485 of 2015, which expanded the Agricultural Regulatory Fund to include all fee-generated revenue collected by the department. As part of the legislation, all fee amounts charged by the department were removed from the Code, and the commissioner of agriculture was authorized to set the fee amounts by regulation. The intent of the legislation is to allow the department to adjust fees and to improve the percentage of cost recovery for its programs through fee collection rather than relying as heavily on revenue from the general fund.

- (6) Comparison of the proposed rule with any federal or state counterparts:

This rule is consistent with 7 U.S.C.A. §7711, et seq. for federal requirements regarding movement of plants. Most states maintain similar requirements to the requirements of this rule for restrictions on movement of plants or materials harboring pests, pest plants, or disease.

- (7) Analysis of the effect of the possible exemption of small businesses from all or any part of the requirements contained in the proposed rule.

Exemption of small businesses from this rule may expose the state to greater risk of pests, pest plants, and disease, and will compromise the intent to grade fee schedules according to resources expended for oversight of regulatory programs.

### **Impact on Local Governments**

Pursuant to T.C.A. §§ 4-5-220 and 4-5-228 "any rule proposed to be promulgated shall state in a simple declarative sentence, without additional comments on the merits of the policy of the rules or regulation, whether the rule or regulation may have a projected impact on local governments." (See Public Chapter Number 1070 (<http://state.tn.us/sos/acts/106/pub/pc1070.pdf>) of the 2010 Session of the General Assembly)

No impact is expected on local governments.

## Additional Information Required by Joint Government Operations Committee

All agencies, upon filing a rule, must also submit the following pursuant to T.C.A. § 4-5-226(i)(1).

- (A) A brief summary of the rule and a description of all relevant changes in previous regulations effectuated by such rule;

This rule reorganizes, retitles, clarifies, and simplifies the previous requirements of the Tennessee Plant Pest Act regulations. It requires additional information from license applicants in order to verify their businesses and contact information. The rule also amends fees schedules for licenses issued under the department of agriculture's plant certification program pursuant to amendments of Tenn. Code Ann. §§ 43-1-703 and 43-6-101, et seq.

- (B) A citation to and brief description of any federal law or regulation or any state law or regulation mandating promulgation of such rule or establishing guidelines relevant thereto;

Tenn. Code Ann. §43-6-104, the Tennessee Plant Pest Act, authorizes the department to promulgate rules and regulations necessary to prevention of insect pests, pest plants, and diseases in the state. Tenn. Code Ann. §43-1-701, et seq. requires the commissioner of agriculture to establish by rule fees for the proper administration of the Plant Pest Act and the costs of the department.

- (C) Identification of persons, organizations, corporations or governmental entities most directly affected by this rule, and whether those persons, organizations, corporations or governmental entities urge adoption or rejection of this rule;

Persons and businesses most directly affected by this rule include: greenhouses, nurseries, plant dealers, florists, landscapers, wild plant collectors, and any business requiring certification of sweet potato plants or turfgrass, as well as any plant related business requiring a compliance agreement for movement of their plants or products. The Middle Tennessee Nursery Association and the Tennessee Nursery and Landscape Association offer their support for the rule.

- (D) Identification of any opinions of the attorney general and reporter or any judicial ruling that directly relates to the rule;

No material opinions or judicial rulings in this state have been found related to this rule.

- (E) An estimate of the probable increase or decrease in state and local government revenues and expenditures, if any, resulting from the promulgation of this rule, and assumptions and reasoning upon which the estimate is based. An agency shall not state that the fiscal impact is minimal if the fiscal impact is more than two percent (2%) of the agency's annual budget or five hundred thousand dollars (\$500,000), whichever is less;

These rules are expected to generate an additional \$232,200 of revenue to the Agricultural Regulatory Fund. The additional revenue will help cover approximately 53% of the cost of providing plant certification inspection services by the department, up from 42% cost recovery provided by the current fee structure.

- (F) Identification of the appropriate agency representative or representatives, possessing substantial knowledge and understanding of the rule;

David Waddell, Administrative Director, and Anni Self, Plant Certification Administrator, Tennessee Department of Agriculture, Consumer and Industry Services Division

- (G) Identification of the appropriate agency representative or representatives who will explain the rule at a scheduled meeting of the committees;

David Waddell, Administrative Director, Tennessee Department of Agriculture, Consumer and Industry Services Division

- (H) Office address, telephone number, and email address of the agency representative or representatives who will explain the rule at a scheduled meeting of the committees; and

436 Hogan Road, Nashville, Tennessee 37220; (615) 837-5331; [david.waddell@tn.gov](mailto:david.waddell@tn.gov)

(I) Any additional information relevant to the rule proposed for continuation that the committee requests.