

Proposed Rules
of the
Tennessee Department of Agriculture
Division of Regulatory Services

Chapter 0080-06-01

Regulations Governing Nurseries, Greenhouses, Plant Dealers, Florists and Collected Plant Dealers

Presented herein are proposed amendments of the Tennessee Department of Agriculture, submitted pursuant to Tennessee Code Annotated § 4-5-202 in lieu of a rulemaking hearing. It is the intent of the Tennessee Department of Agriculture intends to promulgate these amendments without a rulemaking hearing unless a petition requesting such hearing is filed within thirty (30) days of the publication date of the issue of the Tennessee Administrative Register in which the proposed amendments are published. Such petition to be effective must be filed with the Tennessee Department of Agriculture, Legal Services, Ellington Agricultural Center, P. O. Box 40627, Nashville, TN 37204, and in the Department of State, Administrative Procedures Division, 8th Floor, William R Snodgrass Tower, 312 Eighth Avenue North, Nashville, Tennessee 37243-0307, and must be signed by twenty-five (25) persons who will be affected by the amendment, or submitted by a municipality which will be affected by the amendment, or an association of twenty-five (25) or more members, or any standing committee of the General Assembly.

For copies of the entire text of the proposed amendments, contact: Gray Haun, Plant Certification Administrator, Regulatory Services, TN Department of Agriculture, P. O. Box 40627, Ellington Agricultural Center, Nashville, TN 37204, 615-837-5338.

The text of the proposed amendments is as follows:

Amendments

Rule 0080-06-01 Regulations Governing Nurseries, Dealers and Agents. This rule is amended by deleting the chapter in its entirety and substituting the following language so that, as amended, the chapter shall read:

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0080-06-01-.01 Regulations. 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.

Authority: T.C.A. § 43-6-104.

0080-06-01-.02 Definitions.

- (1) "Certificate" means a document authorized or prepared by a duly authorized federal or state regulatory official that affirms, declares, or verifies that any nursery stock, plant, product, shipment or other officially regulated article meets phytosanitary (quarantine), nursery inspection, pest freedom, plant registration or certification, or other legal requirements. Such documents are known by the purpose for their issuance: Phytosanitary Certificate (for the purpose of verifying compliance with phytosanitary [quarantine] requirements); 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.
- (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) "Infested" means a pest is present or the article, nursery stock, plant, or product was so exposed to infestation that it would be reasonable to believe an infestation exists.
- (8) "Landscape(s)" includes, but is not limited to, any person(s) who keeps at a premises, or procures for transplantation, nursery stock for installation on the property of another person.
- (9) "Move" means to ship, offer for shipment, receive for transport, carry, or in any manner relocate a regulated article from one place 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.

- (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) "Person" means an individual, firm, or corporation.
- (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) "Pest" means any biotic agent (any living agent capable of reproducing itself) or any of the following that is known to cause damage or harm to agriculture or the environment:
 - (a) Any infectious, transmissible, or contagious disease of any plant; or any disorder of any plant that manifests symptoms or behavior which, after an investigation and a hearing, is determined by a duly constituted federal, state or local pest prevention agency to be characteristic of an infectious, transmissible, or contagious disease.
 - (b) Any form of animal life.
 - (c) Any form of plant life.
- (15) "Pest plants" means plant species, and parts thereof that might be used for propagation, which are injurious to the agricultural, horticultural, silvicultural, or other interests of the state.
- (16) "Quarantine" means a legal instrument duly imposed or enacted by the Department of Agriculture as a means for 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.
- (17) "Stop Movement Order" means a written directive, issued by a duly authorized 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.

Authority: T.C.A. §§ 43-6-104 and 43-6-106.

0080-06-01-.03 Inspection of Sales/Transport.

- (1) No nursery stock and other rooted plants or propagating materials shall be sold, offered for sale, or transported within or into the state of Tennessee unless it has been inspected and the owner of same holds a valid certificate affirming that said nursery stock 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.

Authority: T.C.A. §§ 43-6-104 and 43-6-106.

0080-06-01-.04 Application. 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.

Authority: T.C.A. §§ 43-6-104 and 43-6-106.

0080-06-01-.05 Inspections of Nurseries.

- (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.
- (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.
- (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.
- (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 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. §§ 43-6-104 and 43-6-106.

0080-06-01-.06 Inspection of Greenhouses.

- (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.
- (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.
- (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. §§ 43-6-104 and 43-6-106.

0080-6-.07 Inspection of Collected Plant Dealers.

- (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.
- (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.
- (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. §§ 43-6-104 and 43-6-106.

0080-6-.08 Inspection of Plant Dealers or Landscapers.

- (1) Plant dealers or landscapers may be inspected for injurious pests by the Commissioner as often as individual circumstances warrant and require.
- (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.

- (3) Such certificates shall expire on September 30 of each year.
- (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. §§ 43-6-104 and 43-6-106.

0080-6-.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.

Authority: T.C.A. §§ 43-6-104 and 43-6-106.

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.

Authority: T.C.A. §§ 43-6-104 and 43-6-106.

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.

Authority: T.C.A. §§ 43-6-104 and 43-6-106.

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.

Authority: T.C.A. §§ 43-6-104 and 43-6-106.

0080-06-01-.14 Seizure of Stock.

- (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.
- (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.

Authority: T.C.A. §§ 43-6-104 and 43-6-106

0080-06-01-.15 Revocation of Rules. All Rules and Regulations heretofore promulgated on this subject are hereby rescinded, revoked and suspended.

Authority: T.C.A. § 43-6-104.

0080-06-01-.16 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.

Authority: T.C.A. §§ 43-6-104 and 43-6-105.

0080-06-01-.17 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.

Authority: T.C.A. §§ 43-6-104, 43-6-106 and 43-6-109.

0080-06-01-.18 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.

Authority: T.C.A. §§ 43-6-104 and 43-6-106.

0080-06-01-.19 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.

Authority: T.C.A. §§ 43-6-104 and 43-6-106.

0080-06-01-.20 Civil Penalties for Violations. In addition to the revocation of one's certificate, violators may be subject to civil penalties as published in rule 0080-6-25 and T.C.A. § 4-3-204.

Authority: T.C.A. §§ 43-6-104 and 43-6-106.

The proposed rules set out herein were properly filed in the Department of State on the 27th day of April, 2007, and pursuant to the instructions set out above, and in the absence of the filing of an appropriate petition calling for a rulemaking hearing, will become effective on the 28th day of August, 2007. (FS 04-31-07, DBID 2525)