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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. TCA Section 4-5-205

Agency/Board/Commission:	Tennessee Department of Agriculture
Division:	Regulatory Services
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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
0080-06-11	Thousand Cankers Quarantine
Rule Number	Rule Title
0080-06-11-.01	Establishment and Purpose of Quarantine
0080-06-11-.02	Definitions
0080-06-11-.03	Regulated Articles
0080-06-11-.04	Quarantined Areas
0080-06-11-.05	Regulated Buffer Areas
0080-06-11-.06	Movement of Regulated Articles from Quarantined areas
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Rules
of
The Tennessee Department of Agriculture
Division of Regulatory Services

Chapter 0080-06-11
Thousand Cankers Disease

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0080-06-11-.01 Establishment and Purpose of Quarantine.

- (1) The destructive pest complex known as Thousand Cankers Disease (*Pityophthorus juglandis* and *Geosmithia morbida*) is established in other states and has been found in Tennessee. This disease can be extremely injurious to Tennessee's walnut trees (genus *Juglans*) and walnut nursery stock. Therefore, it would be in the best interest of Tennessee's citizens, agriculture and silviculture that quarantine be established against it.
- (2) A quarantine is hereby established to regulate the movement of those articles that pose a significant threat of spreading Thousand Cankers Disease.

Authority: T.C.A. §§ 4-3-204, 43-6-104 and 43-6-106.

0080-06-11-.02 Definitions.

- (1) "Commissioner" means the commissioner of the Tennessee Department of Agriculture, or any individual authorized to act for the commissioner.
- (2) "Certificate" means a document that is issued for a regulated article by the commissioner or by a person operating under a compliance agreement which represents that such article is eligible for movement in accordance with this chapter.
- (3) "Compliance agreement" means a written agreement between the Tennessee Department of Agriculture and a person engaged in growing, handling, or moving regulated articles, in which the person agrees to comply with the provisions of this chapter and any conditions imposed under this chapter. Any authority granted to the holder of a compliance agreement shall only pertain to articles owned by such holder.
- (4) "Thousand Cankers Disease" means the insect vector *Pityophthorus juglandis* in any stage of development and the fungus *Geosmithia morbida* sp. nov.
- (5) "Infestation" means the presence of Thousand Cankers Disease or the existence of circumstances that make it reasonable to believe that Thousand Cankers Disease is present.

- (6) "Limited movement permit" means a document in which the commissioner or a person operating under a compliance agreement affirms that a regulated article that is not eligible for a certificate can be moved only to a specified destination and in accordance with conditions specified on the permit. Any authority granted to the holder of a limited permit shall only pertain to articles owned by such holder.
- (7) "Moved" (movement, move) means shipped, offered for shipment, received for transportation, transported, carried, or allowed to be moved, shipped, transported, or carried.
- (8) "Person" means any association, company, corporation, firm, individual, joint stock company, partnership, society, or any other legal entity.
- (9) "Quarantined area" means an area that has been placed under quarantine, as determined by the Tennessee Department of Agriculture.
- (10) "Regulated article" means an article capable of harboring or carrying Thousand Cankers Disease, as determined herein.
- (11) "Regulated buffer area" means a county in Tennessee whose boundary touches the boundary of a county that is under quarantine for Thousand Cankers Disease.

Authority: T.C.A. §§ 4-3-204, 43-6-104 and 43-6-106.

0080-06-11-.03 Regulated Articles.

- (1) The following are regulated articles:
 - (a) The Walnut Twig Beetle, *Pityophthorus juglandis*, in any living stage of development;
 - (b) The fungal pathogen *Geosmithia morbida*.
 - (c) Firewood of any non-coniferous (hardwood) species.
 - (d) All plants and plant parts of the genus *Juglans* including but not limited to nursery stock, budwood, scionwood, green lumber, and other material living, dead, cut, or fallen, including logs, stumps, roots, branches, mulch and composted and uncomposted chips.
 - (e) Any article, product, or means of conveyance when it is determined by the commissioner to present the risk of spread of the Walnut Twig Beetle, *Pityophthorus juglandis*, or the fungal pathogen, *Geosmithia morbida* sp. nov. and the commissioner notifies the person in possession of the article, product, or means of conveyance that it is subject to these regulations.
 - (f) Specific exceptions are nuts, nut meats, hulls, and finished wood products without bark, including walnut furniture, instruments, and gun stocks derived from the genus *Juglans*.

Authority: T.C.A. §§ 4-3-204, 43-6-104 and 43-6-106.

0080-06-11-.04 Quarantined Areas.

- (1) The following areas in Tennessee are designated as quarantined areas:
 - (a) Anderson County – The entire county.
 - (b) Blount County – The entire county.
 - (c) Knox County – The entire county.
 - (d) Union County – The entire county.

- (e) Other counties where thousand cankers disease is found by the commissioner, or counties determined by the commissioner to be at high risk for the presence of thousand cankers disease. Such counties shall be conspicuously posted on the department's website at <http://state.tn.us/agriculture/regulatory/plants.html>.

Authority: T.C.A. §§ 4-3-204, 43-6-104 and 43-6-106.

0080-06-11-.05 Regulated Buffer Areas.

- (1) The following counties in Tennessee are designated as regulated buffer areas:
 - (a) Campbell County – the entire county.
 - (b) Claiborne County – the entire county.
 - (c) Grainger County – the entire county.
 - (d) Jefferson County – the entire county.
 - (e) Loudon County – the entire county.
 - (f) Monroe County – the entire county.
 - (g) Morgan County – the entire county.
 - (h) Roane County – the entire county.
 - (i) Scott County – the entire county.
 - (j) Sevier County – the entire county.
 - (k) Other counties in Tennessee whose boundary touches the boundary of a county that has been quarantined for Thousand Cankers Disease. Such counties shall be conspicuously posted on the department's website at <http://state.tn.us/agriculture/regulatory/plants.html>.

Authority: T.C.A. §§ 4-3-204, 43-6-104 and 43-6-106.

0080-06-11-.06 Movement of Regulated Articles from Quarantined Areas.

- (1) Regulated articles may be moved from and through a quarantined area only if moved:
 - (a) With a certificate or limited permit issued and attached in accordance with this chapter.
 - (b) Without a certificate or limited permit only when the regulated article originates outside the quarantined area and is moved through the quarantined area under the following conditions:
 - 1. The points of origin and destination are indicated on a document accompanying the regulated article; and
 - 2. The regulated article is moved directly through the quarantined area without stopping (except for refueling or for traffic conditions, such as traffic lights or stop signs), or has been stored, packed, or handled at locations approved by the commissioner as not posing a risk of infestation by Thousand Cankers Disease; and
 - 3. The article has not been combined or commingled with other articles so as to lose its individual identity.

Authority: T.C.A. §§ 4-3-204, 43-6-104 and 43-6-106.

0080-06-11-.07 Movement of Regulated Articles from Regulated Buffer Areas.

- (1) Regulated articles may be moved from and through a regulated buffer area only if moved:
 - (a) With a certificate or limited permit issued and attached in accordance with this chapter.
 - (b) Without a certificate or limited permit only when:
 1. The regulated article originates outside the quarantined or other regulated buffer area and is moved through the regulated buffer area under the following conditions:
 - (i) The points of origin and destination are indicated on a document accompanying the regulated article; and
 - (ii) The regulated article is moved directly through the regulated buffer area without stopping (except for refueling or for traffic conditions, such as traffic lights or stop signs), or has been stored, packed, or handled at locations approved by the commissioner as not posing a risk of infestation by Thousand Cankers Disease; and
 - (iii) The article has not been combined or commingled with other articles so as to lose its individual identity; or
 2. The regulated article is moved directly to a quarantined area or directly to another regulated buffer area.

Authority: T.C.A. §§ 4-3-204, 43-6-104 and 43-6-106.

0080-06-11-.08 Issuance and Cancellation of Certificates.

- (1) The commissioner or a person operating under a compliance agreement may issue a certificate for the movement of a regulated article if he or she determines that the regulated article:
 - (a) Is apparently free of Thousand Cankers Disease, based on inspection; or
 - (b) Has been grown, produced, manufactured, stored, or handled in a manner that, in the judgment of the commissioner, prevents the regulated article from presenting a risk of spreading Thousand Cankers Disease; and
 - (c) Is to be moved in compliance with any additional emergency conditions that the commissioner may impose in order to prevent the artificial spread of Thousand Cankers Disease;
- (2) The commissioner or a person operating under a compliance agreement may issue a limited movement permit for the movement of a regulated article not eligible for a certificate if he determines that the regulated article:
 - (a) Is to be moved to a specified destination for specific processing, handling, or use (the destination and other conditions to be listed on the limited permit), and this movement will not result in the spread of Thousand Cankers Disease because the pathogen will be destroyed by the specific processing, handling, or use; and
 - (b) Is to be moved in compliance with any additional emergency conditions that the commissioner may impose in order to prevent the spread of Thousand Cankers Disease; and
- (3) The commissioner may issue blank certificates and limited permits to a person operating under a compliance agreement in accordance with this chapter or authorize reproduction of the certificates or limited permits on shipping containers, or both, as requested by the person operating under the compliance agreement. These certificates and limited permits may then be completed and used, as needed, for the movement of regulated articles marketed by such person that have met all of the requirements of paragraph (1) or (2) of this section.

- (4) Any certificate or limited permit may be canceled orally or in writing by the commissioner whenever he determines that the holder of the certificate or limited permit has not complied with this chapter. If the cancellation is oral, the cancellation will become effective immediately, and the cancellation and the reasons for the cancellation will be confirmed in writing as soon as circumstances permit.

Authority: T.C.A. §§ 4-3-204, 43-6-104 and 43-6-106.

0080-06-11-.09 Compliance Agreements and Cancellation.

- (1) Persons engaged in growing, handling, or moving regulated articles may enter into a compliance agreement if such persons review with the commissioner each provision of the compliance agreement. Any person who enters into a compliance agreement with the Tennessee Department of Agriculture must agree to comply with the provisions of this chapter.
- (2) Any compliance agreement may be canceled orally or in writing by the commissioner whenever the commissioner determines that the person who has entered into the compliance agreement has not complied with this chapter or any conditions imposed under this chapter. If the cancellation is oral, the cancellation will become effective immediately, and the cancellation and the reasons for the cancellation will be confirmed in writing as soon as circumstances permit.

Authority: T.C.A. §§ 4-3-204, 43-6-104 and 43-6-106.

0080-06-11-.10 Assembly and Inspection of Regulated Articles.

- (1) Persons requiring certification, requesting a limited movement permit, or requesting other similar services shall request the services from the commissioner at least 48 hours before the regulated article is to be moved.
- (2) The regulated articles must be assembled at the place and in the manner that the commissioner designates as necessary to comply with this chapter.

Authority: T.C.A. §§ 4-3-204, 43-6-104 and 43-6-106.

0080-06-11-.11 Attachment and Disposition of Certificates and Limited Movement Permits.

- (1) A regulated article must be plainly marked with the name and address of the consignor and the name and address of the consignee and must have the certificate or limited movement permit issued for the movement of a regulated article securely attached at all times during movement to:
 - (a) The regulated article;
 - (b) The container carrying the regulated article; or
 - (c) The consignee's copy of the accompanying document, provided that the description of the regulated article on the certificate or limited movement permit, and on the document, are sufficient to identify the regulated article; and
- (2) The carrier must furnish the certificate or limited movement permit authorizing movement of a regulated article to the consignee at the destination of the shipment.

Authority: T.C.A. §§ 4-3-204, 43-6-104 and 43-6-106.

0080-06-11-.12 Prohibited Entry into Tennessee

- (1) Regulated articles from the areas listed below are prohibited entry into Tennessee.
 - (a) Arizona

- (b) California
 - (c) Colorado
 - (d) Idaho
 - (e) Nevada
 - (f) New Mexico
 - (g) Oregon
 - (h) Utah
 - (i) Washington
 - (j) Any other area of the United States where federal or state plant regulatory officials have determined Thousand Cankers Disease to be present.
- (2) The only exception to this prohibition is when a permit for the movement of any regulated article is issued by the commissioner for research purposes only. Stipulations for safeguarding will be spelled out in the issuance of the permit.

Authority: T.C.A. §§ 4-3-204, 43-6-104 and 43-6-106.

0080-06-11-.13 Penalties.

Any person who violates any of the provisions of this chapter is subject to civil and criminal penalties pursuant to Chapter 0080-6-25 and T.C.A. § 43-6-112, respectively. Regulated articles transported in violation of this quarantine may be destroyed, or returned to the point of origin, at the discretion of the commissioner. The cost of such destruction or return shall be borne by the violator.

Authority: T.C.A. §§ 4-3-204, 43-6-104 and 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 Tennessee Department of Agriculture on 12/15/2010 and is in compliance with the provisions of TCA 4-5-222.

I further certify the following:

Notice of Rulemaking Hearing filed with the Department of State on: October 29, 2010

Rulemaking Hearing(s) Conducted on: (add more dates). December 15, 2010

Date: April 20, 2011

Signature: *Julius Johnson*

Name of Officer: Julius Johnson

Title of Officer: Commissioner

Subscribed and sworn to before me on: April 20, 2011

Notary Public Signature: *Joyce M. Jackson*

My commission expires on: 09/08/2013



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.

RE Cooper Jr

Robert E. Cooper, Jr.
Attorney General and Reporter

5-9-11

Date

Department of State Use Only

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Filed with the Department of State on: 5/17/11

Effective on: 8/15/11

Tre Hargett
Tre Hargett
Secretary of State

Public Hearing Comments

One copy of a document containing responses to comments made at the public hearing must accompany the filing pursuant to T.C.A. § 4-5-222. Agencies shall include only their responses to public hearing comments, which can be summarized. No letters of inquiry from parties questioning the rule will be accepted. When no comments are received at the public hearing, the agency need only draft a memorandum stating such and include it with the Rulemaking Hearing Rule filing. Minutes of the meeting will not be accepted. Transcripts are not acceptable.

See attached memorandum.

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:

The walnut log and lumber, nursery, and firewood industries will be most bear the cost/realize the benefits of complying with these rules.

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

The small businesses subject to the proposed rule would include any business that deals in the movement of black walnuts materials – excluding nuts, nut meats, hulls, or finished products made from walnut without bark. This would include all hardwood firewood dealers in the 14 county affected area, loggers, sawmills, arborists, wood chip producers, yard waste retrieval firms, wood carvers, and to a very limited extent, nurseries. An estimated 1,400 businesses would be affected.

- (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:

There will be no additional reporting, recordkeeping or other administrative costs required for compliance with the proposed rules.

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

The proposed rules would help in the orderly marketing of black walnut logs for veneering and lumber, and help move black walnut logs interstate from non infected areas of Tennessee. The movement out of regulated and quarantine areas will be allowed if the pest can be mitigated with treatments.

- (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:

There are no less burdensome, less intrusive or less costly alternative methods of achieving the purpose and/or objectives of the proposed rules.

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

There is no federal or state counterpart. The department has used the model rule developed by the National Plant Board. Missouri, Indiana, Michigan, and other states have used it.

- (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.

If small businesses were exempted from the proposed rules, it would completely undermine the rules'

effectiveness.

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)

If adopted, these rules will not have any impact on the expenditures or revenue of local governments.

Additional Information Required by Joint Government Operations Committee

All agencies, upon filing a rule, must also submit the following pursuant to TCA 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;

The rule limits the movement of host materials that are capable of harboring the invasive pest known as Thousand Cankers Disease. The host materials include the green wood of walnut and hardwood firewood.

- (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;

There is no federal quarantine at present.

- (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;

The walnut log and lumber industry, nursery, and firewood industry will be most directly affected. Tennessee industry supports the adoption of the rules because without them, the whole state will be placed under additional state quarantine.

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

There are no attorney general and reporter opinions or judicial rulings directly relating to these rules.

- (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;

There will be no increase or decrease in state and local government revenues and expenditures resulting from the promulgation of this rule.

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

Walker Gray Haun, Tennessee Department of Agriculture, Division of Regulatory Services, Plant Certification Administrator

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

Walker Gray Haun, Tennessee Department of Agriculture, Division of Regulatory Services, Plant Certification Administrator

- (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

Tennessee Department of Agriculture, Gray Haun, Ellington Agricultural Center, P.O. Box 40627, Nashville, TN 37204. Office number: 615-837-5338, walker.haun@tn.gov

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



TENNESSEE DEPARTMENT OF AGRICULTURE

**JULIUS JOHNSON
COMMISSIONER**

REGULATORY SERVICES

MEMORANDUM

TO: Tennessee Department of State

FROM: Gray Haun
Plant Certification Administrator
Tennessee Department of Agriculture

SUBJECT: Rulemaking Hearing for Chapter 0080-06-11

On December 15, 2010, a hearing was held at the department to take public comments on the promulgation of TDA Chapter 0080-06-11. Notice of the hearing (ID # 1524) was duly filed with the Secretary of State October 29, 2010.

No members of the public attended the hearing and no comments were received from the public, either before or during the hearing.