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Emergency Rule Filing Form

Emergency rules are effective from date of filing for a period of up to 180 days.

Agency/Board/Commission:	Tennessee Department of Agriculture
Division:	Regulatory Services
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Rule Type:

Emergency Rule

Revision Type (check all that apply):

Amendment
 New
 Repeal

Statement of Necessity:

T.C.A. § 4-5-208(a)(1) permits an agency to adopt emergency rules without prior notice or hearing when an immediate danger to the public health, safety or welfare exists and the nature of this danger is such that the use of any other form of rulemaking authorized by T.C.A. Title 4 Chapter 5 would not adequately protect the public.

In July 2010, officials from the United States Department of Agriculture - Animal and Plant Health Inspection Service confirmed that the pest known as Emerald Ash Borer (*Agrilus planipennis*) was found in Knox County, Tennessee – the first time the pest has been found within the state. Emerald Ash Borer is an invasive species that is highly destructive to ash trees (genus *Fraxinus*) in its introduced range, having killed at least 50-100 million ash trees so far and threatening to kill most of the ash trees throughout North America if not brought under control. Since its accidental introduction into the United States and Canada in the 1990s, it has spread to 14 other states and adjacent parts of Canada. In view of these facts, the department finds that Emerald Ash Borer poses an immediate danger to the public's welfare, and that the adoption of an emergency rule is necessary and justified.

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
0080-06-10	Emerald Ash Borer Quarantine
Rule Number	Rule Title
0080-06-10-.01	Establishment and Purpose of Quarantine
0080-06-10-.02	Definitions
0080-06-10-.03	Regulated Articles
0080-06-10-.04	Quarantined Areas
0080-06-10-.05	Conditions Governing the Movement of Regulated Articles from Quarantined Areas
0080-06-10-.06	Issuance and Cancellation of Certificates

0080-06-10-.07	Compliance Agreements and Cancellation
0080-06-10-.08	Assembly and Inspection of Regulated Articles
0080-06-10-.09	Attachment and Disposition of Certificates and Limited Permits
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Rules
of
The Tennessee Department of Agriculture
Division of Regulatory Services

Chapter 0080-06-10
Emerald Ash Borer Quarantine

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0080-06-10-.01 Establishment and Purpose of Quarantine.

- (1) The destructive pest known as Emerald Ash Borer (*Agrilus planipennis*) is established in other states and has been found in Tennessee. This pest can be extremely injurious to Tennessee's ash trees (genus *Fraxinus*) and ash nursery stock. Therefore, it would be in the best interest of Tennessee's citizens, agriculture and silviculture that a 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 Emerald Ash Borer.

Authority: T.C.A. §§ 43-6-104 and 43-6-106(9).

0080-06-10-.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 and that represents that such article is eligible for movement in accordance with 7 C.F.R. § 301.53-5(a).
- (3) "Compliance agreement" means a written agreement between the Tennessee Department of Agriculture, the United States Department of Agriculture - Animal and Plant Health Inspection Service 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) "Emerald Ash Borer" means the insect known as Emerald Ash Borer (*Agrilus planipennis* [Coleoptera: Buprestidae]) in any stage of development.
- (5) "Infestation" means the presence of Emerald Ash Borer or the existence of circumstances that make it reasonable to believe that Emerald Ash Borer is present.

- (6) "Limited permit" means a document in which the commissioner or a person operating under a compliance agreement affirms that a regulated article belonging to that person 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 Emerald Ash Borer, as determined herein.

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

0080-06-10-.03 Regulated Articles.

- (1) The following are regulated articles:
 - (a) Emerald Ash Borer; firewood of all hardwood (non-coniferous) species; nursery stock, green lumber, and other material living, dead, cut, or fallen, including logs, stumps, roots, branches, mulch and composted and uncomposted chips of the genus *Fraxinus*.
 - (b) Any other article, product, or means of conveyance not listed in paragraph (a) of this section may be designated as a regulated article if the commissioner determines that it presents a risk of spreading Emerald Ash Borer and notifies the person in possession of the article, product, or means of conveyance that it is subject to these regulations.

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

0080-06-10-.04 Quarantined Areas.

- (1) The following areas in Tennessee are designated as quarantined areas:
 - (a) Knox County – The entire county.
 - (b) Loudon County – The entire county.
 - (c) Other counties where the Emerald Ash Borer is found to be present by the commissioner, or counties determined by the commissioner to be at high risk for the presence of Emerald Ash Borer. Such counties shall be conspicuously posted on the department's website at <http://state.tn.us/agriculture/regulatory/plants.html>.

Authority: T.C.A. §§ 43-6-104 and 43-6-106(9).

0080-06-10-.05 Conditions Governing the Movement of Regulated Articles from Quarantined Areas.

Regulated articles may be moved from a quarantined area only if moved:

- (1) With a certificate or limited permit issued and attached in accordance with 7 C.F.R. § 301.53–5 and 7 C.F.R. § 301.53–8;
- (2) Without a certificate or limited permit and:

- (a) The regulated article is moved by the United States Department of Agriculture for experimental or scientific purposes; or
- (b) 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, if moved through the quarantined area during the period of April 1 through September 30 or when the ambient air temperature is 40 °F or higher, is moved in an enclosed vehicle or is completely covered to prevent access by Emerald Ash Borer; and
 - 3. 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 Emerald Ash Borer; and
 - 4. The article has not been combined or commingled with other articles so as to lose its individual identity.

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

0080-06-10-.06 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 Emerald Ash Borer, based on inspection; or
 - (b) Has been grown, produced, manufactured, stored, or handled in a manner that, in the judgment of the commissioner and based on an inspection, prevents the regulated article from presenting a risk of spreading Emerald Ash Borer; 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 Emerald Ash Borer; and
 - (d) Is eligible for unrestricted movement under all other federal domestic plant quarantines and regulations applicable to the regulated articles.
- (2) The commissioner or a person operating under a compliance agreement may issue a limited 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 Emerald Ash Borer because the pest 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 Emerald Ash Borer; and
 - (c) Is eligible for unrestricted movement under all other federal domestic plant quarantines and regulations applicable to the regulated article.
- (3) The commissioner may issue blank certificates and limited permits to a person operating under a compliance agreement in accordance with 7 C.F.R. § 301.53–6, or may authorize the reproduction of blank certificates and limited permits for use on shipping containers. These certificates and limited

permits may then be completed and used for the movement of regulated articles as needed, provided such articles meet 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. §§ 43-6-104 and 43-6-106.

0080-06-10-.07 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. §§ 43-6-104 and 43-6-106.

0080-06-10-.08 Assembly and Inspection of Regulated Articles.

- (1) Persons requiring certification or other 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. §§ 43-6-104 and 43-6-106.

0080-06-10-.09 Attachment and Disposition of Certificates and Limited 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 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 permit, and on the document, are sufficient to identify the regulated article; and
- (2) The carrier must furnish the certificate or limited permit authorizing movement of a regulated article to the consignee at the destination of the shipment.

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

0080-06-10-.10 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.

Authority: T.C.A. §§ 4-3-204, 43-6-104, 43-6-106 and 43-6-112.

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

Board Member	Aye	No	Abstain	Absent	Signature (if required)

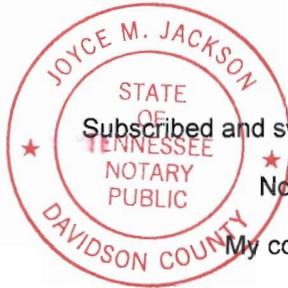
I certify that this is an accurate and complete copy of an emergency rule(s), lawfully promulgated and adopted.

Date: August 4, 2010

Signature: [Handwritten Signature]

Name of Officer: Terry J. Oliver

Title of Officer: Deputy Commissioner



Subscribed and sworn to before me on: August 4, 2010

Notary Public Signature: [Handwritten Signature: Joyce M. Jackson]

My commission expires on: September 8, 2013

All emergency 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: Robert E. Cooper, Jr.]

Robert E. Cooper, Jr.
Attorney General and Reporter

8-5-10

Date

Department of State Use Only

Filed with the Department of State on: 08/06/2010

Effective for: 180 *days

Effective through: 02/02/2011

* Emergency rule(s) may be effective for up to 180 days from the date of filing.

[Handwritten Signature: Tre Hargett]

Tre Hargett
Secretary of State

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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 the Emerald Ash Borer. The host materials include the green wood of ash 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;

Although current federal Emerald Ash Borer regulations (7 C.F.R. §§ 301.53-1 et seq.) do not include any parts of Tennessee in the list of quarantined areas, the USDA has indicated that it intends to amend those regulations to include Tennessee. In order to avoid a federal quarantine over the entire state, 7 C.F.R. § 301.53-3(b) requires that each state adopt and enforce restrictions on the intrastate movement of the regulated articles listed in 7 C.F.R. § 301.53-2 that are equivalent to the restrictions imposed on the interstate movement of such articles.

- (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 ash 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 a federal 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.