

Department of State
Division of Publications
 312 Rosa L. Parks, 8th Floor Snodgrass/TN Tower
 Nashville, TN 37243
 Phone: 615-741-2650
 Fax: 615-741-5133
 Email: register.information@tn.gov

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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 |
| Contact Person: | Keith Hodges |
| Address: | P.O. Box 40627 |
| Zip: | 37204 |
| Phone: | 615-837-5331 |
| Email: | keith.hodges@tn.gov |

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 August 2010, officials from the U.S. Forest Service confirmed that the destructive pest complex known as Thousand Cankers Disease was found in Knox County, Tennessee – the first time the pest complex has been found within the state. Thousand Cankers Disease has recently been discovered to be causing mortality in Walnut (*Juglans* spp.) in at least eight (8) western states. It is particularly lethal to Black Walnut (*Juglans nigra*), which is of tremendous economic importance in Tennessee. In view of these facts, the department finds that Thousand Cankers Disease 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/RuleTitle 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 |
| 0080-06-11-.07 | Movement of Regulated Articles from Regulated Buffer Areas |
| 0080-06-11-.08 | Issuance and Cancellation of Certificates |
| 0080-06-11-.09 | Compliance Agreements and Cancellation |
| 0080-06-11-.10 | Assembly and Inspection of Regulated Articles |

| | |
|----------------|-------------------------------------------------------------------------|
| 0080-06-11-.11 | Attachment and Disposition of Certificates and Limited Movement Permits |
| 0080-06-11-.12 | Prohibited entry into Tennessee |
| 0080-06-11-.13 | Penalties |

Rules
of
The Tennessee Department of Agriculture
Division of Regulatory Services

Chapter 0080-06-11
Thousand Cankers Disease

Table of Contents

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
0080-06-11-.07 Movement of Regulated Articles from Regulated Buffer Areas
0080-06-11-.08 Issuance and Cancellation of Certificates
0080-06-11-.09 Compliance Agreements and Cancellation
0080-06-11-.10 Assembly and Inspection of Regulated Articles
0080-06-11-.11 Attachment and Disposition of Certificates and Limited Movement permits
0080-06-11-.12 Prohibited Entry into Tennessee
0080-06-11-.13 Penalties

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. §§ 43-6-104 and 43-6-106(9).

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. §§ 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, processed lumber (one hundred percent (100%) bark-free, kiln-dried with squared edges), and finished wood products without bark, including walnut furniture, instruments, and gun stocks derived from the genus *Juglans*.

Authority: T.C.A. §§ 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) Knox County – The entire county.
 - (b) Blount County – The entire county.

- (c) Other counties where the thousand cankers disease is found to be present 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. §§ 43-6-104 and 43-6-106(9).

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

- (1) The following counties in Tennessee are designated as regulated buffer areas:
 - (a) Anderson – the entire county.
 - (b) Grainger – the entire county.
 - (c) Jefferson – the entire county.
 - (d) Loudon – the entire county.
 - (e) Monroe – the entire county.
 - (f) Sevier – the entire county.
 - (g) Union – the entire county.
 - (h) Other counties in Tennessee whose boundary touches the boundary of a quarantined county 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. §§ 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. §§ 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. §§ 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; and
- (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. §§ 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. §§ 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. §§ 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. §§ 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. At a minimum, in order to receive such permit, the regulated article must be inspected at the point of origin, a state phytosanitary certificate must be issued by the state plant regulatory official in the state of origin, and notice that the article will be shipped to Tennessee must be given to the Tennessee Department of Agriculture, Plant Certification Section, at least twenty-four (24) hours prior to shipment.

Authority: T.C.A. §§ 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.

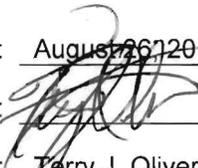
Authority: T.C.A. §§ 4-3-204, 43-6-104, 43-6-106 and 43-6-112.

* 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.

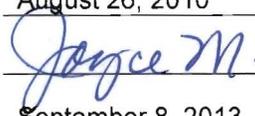
Date: August 26, 2010

Signature: 

Name of Officer: Terry J. Oliver

Title of Officer: Commissioner

Subscribed and sworn to before me on: August 26, 2010

Notary Public Signature: 

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.



Robert E. Cooper, Jr.
Attorney General and Reporter

8-31-10

Date

Department of State Use Only

Filed with the Department of State on: 9/1/10
Effective for: 180 *days
Effective through: 2/28/11

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



Tre Hargett
Secretary of State

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.