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Sequence Number: 10-10-09  
 Rule ID(s): 4500  
 File Date: 10/14/2009  
 Effective Date: 03/31/2010

## Proposed Rule(s) Filing Form

*Proposed rules are submitted pursuant to T.C.A. §4-5-205 in lieu of a rulemaking hearing. It is the intent of the Agency to promulgate these rules 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 rules are published. To be effective, the petition must be filed with the Agency and be signed by twenty-five (25) persons who will be affected by the amendments, or submitted by a municipality which will be affected by the amendments, or an association of twenty-five (25) or more members, or any standing committee of the General Assembly.*

<b>Agency/Board/Commission:</b>	Tennessee Department of Agriculture
<b>Division:</b>	Plant Certification
<b>Contact Person:</b>	Keith Hodges
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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.)

Chapter Number	Chapter Title
0080-06-01	Regulations Governing Nurseries, Dealers and Agents
Rule Number	Rule Title
0080-06-01-.14	Seizure of Stock
0080-06-01-.15	Revocation of Rules
0080-06-01-.16	Interference With Duties
0080-06-01-.17	Violation of Quarantine
0080-06-01-.18	Movement of Other Materials
0080-06-01-.19	Infested Materials
0080-06-01-.20	Civil Penalties for Violations

Chapter 0080-06-01  
 Regulations Governing Nurseries, Dealers and Agents

Amendments

Rule 0080-06-01-.14 Seizure of Stock shall be renumbered as Rule 0080-06-01-.15 Seizure of Stock. The text of the rule shall remain the same.

T.C.A. §§ 43-6-104 and 43-6-106.

Rule 0080-06-01-.15 Revocation of Rules shall be renumbered as Rule 0080-06-01-.16 Revocation of Rules. The text of the rule shall remain the same.

T.C.A. §§ 43-6-104 and 43-6-106.

Rule 0080-06-01-.16 Revocation of Rules shall be renumbered as Rule 0080-6-1-.17 Interference with Duties. The text of the rule shall remain the same.

T.C.A. §§ 43-6-104 and 43-6-106.

Rule 0080-06-01-.17 Violation of Quarantine shall be renumbered as Rule 0080-6-1-.18 Violation of Quarantine. The text of the rule shall remain the same.

T.C.A. §§ 43-6-104 and 43-6-106.

Rule 0080-06-01-.18 Movement of Other Materials shall be renumbered as Rule 0080-6-1-.19 Movement of Other Materials. The text of the rule shall remain the same.

T.C.A. §§ 43-6-104 and 43-6-106.

Rule 0080-06-01-.19 Infested Materials shall be renumbered as Rule 0080-6-1-.20 Infested Materials. The text of the rule shall remain the same.

T.C.A. §§ 43-6-104 and 43-6-106.

Rule 0080-06-01-.20 Civil Penalties for Violations shall be renumbered as Rule 0080-6-1-.21 Civil Penalties for Violations. The text of the rule shall remain the same.

T.C.A. §§ 43-6-104 and 43-6-106.

Chapter 0080-06-01  
Regulations Governing Nurseries, Dealers and Agents

New Rules

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0080-06-01-.14 Pine and Hardwood Seedlings Used for Reforestation

0080-06-01-.14 Pine and Hardwood Seedlings Used for Reforestation

Treatment is necessary to prevent the unnatural intrastate and interstate movement of pest plants such as Cogongrass (*Imperata cylindrica*), Tropical soda apple (*Solanum*), and Tropical spiderwort (Benghal dayflower, *Commelina benghalensis*), as well as other exotic invasive pest plants and noxious weeds in Tennessee, which are known to spread through the extensive reforestation and forestation practices that are common in the state. The preferred method of treatment, to ensure pest-free plant material, is to fumigate seedling plant beds with methyl bromide prior to seeding. All such treatments shall be done using state and federally-registered pesticides. Shipments originating from outside Tennessee must be accompanied by a certificate of inspection issued by the state of origin. Fumigation certificates shall be issued by an inspector for intrastate and interstate shipments of conifer and hardwood seedlings upon request

Authority: T.C.A. §§ 43-6-104 and 43-6-106(5),(6).

\* 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 proposed rules, lawfully promulgated and adopted by the TN Department of Agriculture on 07/29/2009, and is in compliance with the provisions of TCA 4-5-222. The Secretary of State is hereby instructed that, in the absence of a petition for proposed rules being filed under the conditions set out herein and in the locations described, he is to treat the proposed rules as being placed on file in his office as rules at the expiration of thirty (30) days after the publication date of the issue of the Tennessee Administrative Register in which these proposed rules are published.

Date: July 29, 2009

Signature: Ken Givens

Name of Officer: Ken Givens

Title of Officer: Commissioner



Subscribed and sworn to before me on: July 29, 2009

Notary Public Signature: Joyce M. Jackson

My commission expires on: September 19, 2009

All proposed 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.

Robert E. Cooper, Jr.  
Attorney General and Reporter

10-2-09

Date

**Department of State Use Only**

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

10/14/09

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

3/31/10

Tre Hargett

Tre Hargett  
Secretary of State

## Regulatory Flexibility Addendum

Pursuant to Public Chapter 464 of the 105<sup>th</sup> General Assembly, prior to initiating the rule making process as described in § 4-5-202(a)(3) and § 4-5-202(a), all agencies shall conduct a review of whether a proposed rule or rule affects small businesses.

### Addendum Regulatory Flexibility Act of 2007 Economic Impact Statement

- (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 seed tree production nursery industry would benefit from the new rules, and could bear minimal costs.

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

There are approximately 719 licensed nurseries in Tennessee. The total number of nurseries is unknown.

- (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:

The projected reporting, recordkeeping and administrative costs would be minimal. No professional skills will be necessary to prepare such reports and records.

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

With some exceptions, the U.S. phased out the production and importation of methyl bromide January 1, 2005, pursuant to its obligations under the Montreal Protocol and the Clean Air Act. The new rules would allow the tree seedling industry to buy and use the chemical under the Quarantine and Preshipment exemption to the law. By having access to an unlimited supply of methyl bromide, the industry should be able to purchase it more cheaply.

- (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:

This is cost-saving measure for the industry, as the supply of fumigants available to the market is limited unless the fumigants are used for the official control of a quarantine pest. As such, the new rules will not be burdensome or costly to comply with.

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

There is no federal counterpart. Alabama, Georgia, Mississippi and North Carolina have similar provisions in their rules.

- (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 exempt from the new rules, most nurseries would also be exempt, since most nurseries in Tennessee are small businesses as that term is defined by the Act. If most nurseries were exempt, most nurseries would not realize the cost savings made possible by the new rules.

### 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 new rule would require growers of pine or hardwood seedlings to fumigate the beds of such seedlings prior to planting, to assist in the control of Cogongrass (*Imperata cylindrica*), Tropical soda apple (*Solanum*), and Tropical spiderwort (Benghal dayflower, *Commelina benghalensis*). The rules preceding the new rule are being renumbered.

- (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 law or regulation or state law or regulation mandating the promulgation of, or establishing guidelines for, the new rule. The distribution, sale and use of restricted use pesticides are addressed by federal and state law.

- (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 seed tree nursery industry would be most directly affected from the new rule.

- (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 opinions or judicial rulings that directly relate to the new 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;

There will be no change in state and local government revenues and expenditures resulting from the promulgation of the new rule. This assumption and reasoning is based on the facts that the new rule does not require industry to pay the State anything, and will not cost the State anything to implement.

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

Gray Haun, Plant Certification Administrator, Tennessee Department of Agriculture

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

Gray Haun, Plant Certification Administrator, Tennessee Department of Agriculture

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

Gray Haun, Plant Certification Administrator  
Tennessee Department of Agriculture  
400 Hogan Road  
Nashville, Tennessee 37214  
Phone: (615) 837-5338

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

The Department has not received a request for additional information.