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Notice of Rulemaking Hearing

Hearings will be conducted in the manner prescribed by the Uniform Administrative Procedures Act, Tennessee Code Annotated, Section 4-5-204. For questions and copies of the notice, contact the person listed below.

Agency/Board/Commission:	Tennessee Department of Agriculture
Division:	Regulatory Services
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Any Individuals with disabilities who wish to participate in these proceedings (to review these filings) and may require aid to facilitate such participation should contact the following at least 10 days prior to the hearing:

ADA Contact:	Liz Sneed
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Hearing Location(s) (for additional locations, copy and paste table)

Address 1:	Tennessee Department of Agriculture		
Address 2:	Ellington Agricultural Center – Porter Building Conference Room		
Address 3:	440 Hogan Road		
City:	Nashville, Tennessee		
Zip:	37220		
Hearing Date :	12/15/2010		
Hearing Time:	1:00 p.m.	<input checked="" type="checkbox"/> CST	<input type="checkbox"/> EST

Additional Hearing Information:

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Revision Type (check all that apply):

- Amendment
- New
- Repeal

Rule(s) (ALL chapters and rules contained in filing must be listed. If needed, copy and paste additional tables to accommodate more than one chapter. Please enter only **ONE** Rule Number/Rule Title per row.)

Chapter Number	Chapter Title
0080-06-11	Thousand Cankers Disease
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, 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) 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 the 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. §§ 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) 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. §§ 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;
- (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. Stipulations for safeguarding will be spelled out in the issuance of the permit.

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.

I certify that the information included in this filing is an accurate and complete representation of the intent and scope of rulemaking proposed by the agency.

Date: October 28, 2010

Signature: _____

Name of Officer: Terry J. Oliver

Title of Officer: Commissioner

Subscribed and sworn to before me on: October 28, 2010

Notary Public Signature: _____

My commission expires on: September 8, 2013



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Filed with the Department of State on: _____

10/29/10
Tre Hargett

Tre Hargett
Secretary of State

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