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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 (Tenn. Code Ann. § 4-5-205).

Pursuant to Tenn. Code Ann. § 4-5-229, any new fee or fee increase promulgated by state agency rule shall take effect on July 1, following the expiration of the ninety (90) day period as provided in § 4-5-207. This section shall not apply to rules that implement new fees or fee increases that are promulgated as emergency rules pursuant to § 4-5-208(a) and to subsequent rules that make permanent such emergency rules, as amended during the rulemaking process. In addition, this section shall not apply to state agencies that did not, during the preceding two (2) fiscal years, collect fees in an amount sufficient to pay the cost of operating the board, commission or entity in accordance with § 4-29-121(b).

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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 here. If needed, copy and paste additional tables to accommodate multiple chapters. Please make sure that **ALL** new rule and repealed rule numbers are listed in the chart below. Please enter only **ONE** Rule Number/Rule Title per row)

| Chapter Number | Chapter Title |
|----------------|--|
| 0080-06-01 | Plant Sales and Distribution |
| Rule Number | Rule Title |
| 0080-06-01-.03 | License, Certificate, and Packing Requirements |

| Chapter Number | Chapter Title |
|----------------|---|
| 0080-06-07 | Boxwood Blight Quarantine |
| Rule Number | Rule Title |
| 0080-06-07-.01 | Declaration of Quarantine |
| 0080-06-07-.02 | Definitions |
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| Chapter Number | Chapter Title |
|----------------|-------------------------------------|
| 0080-06-11 | Thousand Cankers Disease Quarantine |

| Rule Number | Rule Title |
|----------------|------------------|
| 0080-06-11-.04 | Quarantine Areas |
| 0080-06-11-.05 | Repealed |
| 0080-06-11-.07 | Repealed |

New

Chapter 0080-06-07
Boxwood Blight Quarantine

0080-06-07-.01 Declaration of Quarantine.

- (1) Boxwood blight, also known as box blight and boxwood leaf drop, is a plant disease that may affect all *Buxus* and *Sarcococca* species of plants. The disease is caused by the fungus *Calonectria pseudonaviculatum*. It has been observed in the United States and is known to spread rapidly in warm and humid conditions. Symptoms include leaf spots, stem lesions, and premature leaf drop. Fungicides applied to affected plants do not cure the disease but only mask these symptoms. The disease is often fatal to infected plants. Boxwood blight does not require a wound entry to infect a host plant. Consequently, the disease may spread easily and rapidly. Given the ease of contagion and risk of unknowingly moving infected plant material, boxwood blight poses a significant risk to Tennessee landscapes and commercial plant industries in the state. Therefore, a quarantine against boxwood blight is necessary to protect the agricultural, horticultural, silvicultural, and other interests of the state.
- (2) The department hereby establishes a quarantine to restrict movement of all plants and regulated articles under this chapter as capable of supporting dissemination of boxwood blight.

Authority: T.C.A. §§ 4-3-203, 43-6-104, and 43-6-106.

0080-06-07-.02 Definitions.

- (1) Terms in this chapter share those meanings of terms set forth in the Tennessee Plant Pest Act, T.C.A. §43-6-101, et seq.
- (2) When used in this chapter, unless the context requires otherwise:
 - (a) Act means the Tennessee Plant Pest Act, compiled at T.C.A. §43-6-101, et seq.;
 - (b) Boxwood plant means any plant of a species within the *Buxus* genus and includes any part of the plant in any form;
 - (c) Boxwood blight means any plant disease or symptom of disease caused by the fungus *Calonectria pseudonaviculatum*;
 - (d) Cleanliness program agreement means a voluntary compliance agreement between a duly authorized federal or state regulatory official and a person for the growth, holding, or movement of regulated articles in accordance with principles of a cleanliness program recognized by the issuing official for the prevention of spreading boxwood blight;
 - (e) Infected, infested, diseased, or words of similar import mean infected with boxwood blight or so exposed to the disease that infection can reasonably be expected to occur;
 - (f) Move, distribute, ship, transport, or words of similar import mean to relocate, to offer to relocate, or to cause the relocation of an item from one real property to another;
 - (g) Person means an individual, partnership, corporation, or any other form of legal entity;
 - (h) Phytosanitary certificate means a certificate of phytosanitary inspection prepared by a duly authorized federal or state regulatory official that affirms a regulated article has been inspected

and found to be apparently free of boxwood blight;

- (i) Quarantine area means a defined area from where the movement of regulated articles is prohibited except in accordance with this chapter;
- (j) Regulated article means any item or material determined by the department to pose a material risk for spreading boxwood blight. Regulated articles include:
 - 1. Boxwood plants and any material containing boxwood plants, e.g. compost, mulch, soil, or waste;
 - 2. Sarcococca plants and any material containing Sarcococca plants, e.g. compost, mulch, soil, or waste; and,
 - 3. Any equipment, shipping material, compost, mulch, soil, or waste exposed to boxwood or Sarcococca plants.
- (k) Sarcococca plant means any plant of a species within the Sarcococca genus and includes any part of the plant in any form;
- (l) Stop movement order means a written directive issued by a duly authorized federal or state regulatory official to prohibit or limit the movement of regulated articles.

Authority: T.C.A. §§ 4-3-203, 43-6-104, and 43-6-106.

0080-06-07-.03 Quarantine Areas.

- (1) Designated quarantine areas. [RESERVED]
- (2) Temporary quarantine of non-designated areas.
 - (a) The department may temporarily quarantine any non-designated area upon written notice to its owner or upon general publication if:
 - 1. Boxwood blight is observed within the area;
 - 2. Significant symptoms or indicators of boxwood blight are observed within the area;
 - 3. Infected plants or regulated articles are shipped into the area; or,
 - 4. Any plants or regulated articles shipped into the area share a common container, vessel, producer, or shipper with plants or articles found to be infected.
 - (b) The department may lift the temporary quarantine of a non-designated area if after due inspection boxwood blight is not observed within the area and there exists no reasonable cause to continue the quarantine.

Authority: T.C.A. §§ 4-3-203, 43-6-104, and 43-6-106.

0080-06-07-.04 Conditions for Movement of Regulated Articles.

- (1) A person shall not ship any boxwood plant, Sarcococca plant, or other regulated article into the state unless:
 - (a) The shipment is plainly marked with the name and address of the sender and the recipient; and,

- (b) The shipment is accompanied by a phytosanitary certificate and cleanliness program agreement issued for the plant or article; or is accompanied by written authorization from the department for movement of the plant or article, e.g. for research, destruction, or emergency purposes.
- (2) A person shall not ship any boxwood plant, Sarcococca plant, or other regulated article from a quarantine area unless the shipment is accompanied by a phytosanitary certificate and cleanliness program agreement; or is accompanied by written authorization from the department.
- (3) A person shall not ship any boxwood plant, Sarcococca plant, or other regulated article through a quarantine area in route to its destination unless:
 - (a) No items are loaded on to or off of the shipment within the quarantine area; or,
 - (b) After the shipment is loaded or unloaded within the quarantine area, all items being moved out of the quarantine area are accompanied by cleanliness program agreements and newly issued phytosanitary certificates.
- (4) Each boxwood plant, Sarcococca plant, or other regulated article moved not in conformity with this chapter—or moved contrary to the phytosanitary certificate, cleanliness program agreement, or authorization for which its movement was permitted—shall constitute a separate violation of this chapter.
- (5) Any person licensed by the department as a greenhouse, nursery, plant dealer, florist, landscaper, or wild plant collector shall notify the department within three days of importing or receiving any boxwood or Sarcococca plant from an origin outside the state. The person shall include in the notification the species, number, location, and date of plants received. To comply with this requirement a person may notify the department of anticipated shipments of boxwood or Sarcococca plants prior to their actual import.

Authority: T.C.A. §§ 4-3-203, 43-6-104, and 43-6-106.

0080-06-07-.05 Inspections.

- (1) Scope of inspections. The department may enter any property or location during normal business hours where the department has reason to believe that boxwood plants, Sarcococca plants, or other regulated articles are being grown or kept. The department may enter such place for the purposes of inspecting any plant or regulated article as necessary for the prevention of spreading boxwood blight or for the purposes of examining and copying records necessary to determine compliance with this chapter.
- (2) The department may conduct inspections of persons under this chapter as often as the department deems necessary for the prevention of spreading boxwood blight.

Authority: T.C.A. §§ 4-3-203, 43-6-104, and 43-6-106.

0080-06-07-.06 Violations.

- (1) A person is responsible for violations of the Act or this chapter when committed by either the person or his agent.
- (2) Each violation of the Act, this chapter, or departmental orders issued under this chapter is grounds for issuance of stop movement orders; denial or revocation of any license issued by the department; actions for injunction; and imposition of civil penalties or criminal charges against the violator.

Authority: T.C.A. §§ 4-3-203, 43-6-104, and 43-6-106.

0080-06-07-.07 Cleanliness Program Agreements.

- (1) Any breach of a cleanliness program agreement shall constitute a separate violation of this chapter.
- (2) Revocation of any license issued by the department shall be grounds for immediate rescission of any cleanliness program agreement to which the licensee or the department is a party.

Authority: T.C.A. §§ 4-3-203, 43-6-104, and 43-6-106.

0080-06-07-.08 Stop Movement Orders.

- (1) The department may issue a stop movement order for any boxwood plant, Sarcococca plant, or other regulated article that is: moved in violation of the Act or this chapter; found to be infected; or found to be capable of spreading boxwood blight.
- (2) The department may lift a stop movement order when the item that is subject to the order is treated, returned, or destroyed as directed by the department at the owner's or possessor's expense. If the item is not treated or returned as ordered by the department within 10 days of the stop movement order being issued, the department may order the item destroyed at the owner's expense.
- (3) Any person aggrieved by an order of the department issued under the Act or this chapter, may petition the department for review of the order under T.C.A. §43-6-105 and the Uniform Administrative Procedures Act. Petitions for review of a departmental order must be submitted to the department in writing within 10 days of the order being issued. If no petition is filed with the department within the 10 day period, the department's order shall become final and will not be subject to review.

Authority: T.C.A. §§ 4-3-203, 43-6-104, and 43-6-106.

Amendments

Chapter 0080-06-01 Plant Sales and Distribution

Paragraph 0080-06-01-.03(1) is amended by deleting the paragraph in its entirety and substituting instead the following language so that as amended the paragraph shall read:

0080-06-01-.03 License, Certificate, and Packing Requirements.

- (1) A person shall not sell, offer for sale, or transport a plant in commerce unless the plant or its shipment is accompanied by a copy of a valid license or certificate from a duly authorized federal or state regulatory official, affirming the plant is apparently free of pests, pest plants, and disease.

Authority: T.C.A. §§ 4-3-203, 43-6-104, and 43-6-106.

Chapter 0080-06-11 Thousand Cankers Disease Quarantine

Chapter 0080-06-11 Thousand Cankers Disease is amended by re-titling the chapter "Thousand Cankers Disease Quarantine".

Authority: T.C.A. §§ 4-3-203, 43-6-104, and 43-6-106.

Rule 0080-06-11-.04 Quarantined Areas is amended by deleting the rule in its entirety and substituting instead the

following language so that as amended the rule shall read:

0080-06-11-.04 Quarantine Areas.

- (1) Designated quarantine areas. Anderson, Blount, Jefferson, Knox, Loudon, Morgan, Rhea, Roane, Sevier, and Union counties are designated quarantine areas.
- (2) Temporary quarantine of non-designated areas.
 - (a) The department may temporarily quarantine any non-designated area upon written notice to its owner or upon general publication if:
 1. Thousand Cankers Disease is observed within the area;
 2. Significant symptoms or indicators of Thousand Cankers Disease are observed within the area;
 3. Infected plants or regulated articles are shipped into the area; or,
 4. Any plants or regulated articles shipped into the area share a common container, vessel, producer, or shipper with plants or articles found to be infected.
 - (b) The department may lift the temporary quarantine of a non-designated area if after due inspection Thousand Cankers Disease is not observed within the area and there exists no reasonable cause to continue its quarantine.

Authority: T.C.A. §§ 4-3-203, 43-6-104, and 43-6-106.

Repeal

Chapter 0080-06-11
Thousand Cankers Disease Quarantine

Rule 0080-06-11-.05 Regulated Buffer Areas is repealed in its entirety.

Authority: T.C.A. §§ 4-3-203, 43-6-104, and 43-6-106.

Rule 0080-06-11-.07 Movement of Regulated Articles from Regulated Buffer Areas is repealed in its entirety.

Authority: T.C.A. §§ 4-3-203, 43-6-104, and 43-6-106.