

**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). **Administrative History:** Original Rule filed June 5, 1974. Repeal filed September 13, 2001; effective January 28, 2002. Emergency rule filed August 6, 2010; effective through February 2, 2011. Emergency rule filed August 6, 2010 expired on February 2, 2011; on February 3, 2011, the rule reverted to its previous status. New rule filed September 29, 2010; effective February 28, 2011.

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.

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- (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. **Administrative History:** Original Rule filed June 5, 1974. Repeal filed September 13, 2001; effective January 28, 2002. Emergency rule filed August 6, 2010; effective through February 2, 2011. Emergency rule filed August 6, 2010 expired on February 2, 2011; on February 3, 2011, the rule reverted to its previous status. New rule filed September 29, 2010; effective February 28, 2011.

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. **Administrative History:** Original Rule filed June 5, 1974. Repeal filed September 13, 2001; effective January 28, 2002. Emergency rule filed August 6, 2010; effective through February 2, 2011. Emergency rule filed August 6, 2010 expired on February 2, 2011; on February 3, 2011, the rule reverted to its previous status. New rule filed September 29, 2010; effective February 28, 2011.

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

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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). **Administrative History:** Original Rule filed June 5, 1974. Repeal filed September 13, 2001; effective January 28, 2002. Emergency rule filed August 6, 2010; effective through February 2, 2011. Emergency rule filed August 6, 2010 expired on February 2, 2011; on February 3, 2011, the rule reverted to its previous status. New rule filed September 29, 2010; effective February 28, 2011.

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. **Administrative History:** Original Rule filed June 5, 1974. Repeal filed September 13, 2001; effective January 28, 2002. Emergency rule filed August 6, 2010; effective through February 2, 2011. Emergency rule filed August 6, 2010 expired on February 2, 2011; on February 3, 2011, the rule reverted to its previous status. New rule filed September 29, 2010; effective February 28, 2011.

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

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- (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. **Administrative History:** Original Rule filed June 5, 1974. Repeal filed September 13, 2001; effective January 28, 2002. Emergency rule filed August 6, 2010; effective through February 2, 2011. Emergency rule filed August 6, 2010 expired on February 2, 2011; on February 3, 2011, the rule reverted to its previous status. New rule filed September 29, 2010; effective February 28, 2011.

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.

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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. **Administrative History:** Original Rule filed June 5, 1974. Repeal filed September 13, 2001; effective January 28, 2002. Emergency rule filed August 6, 2010; effective through February 2, 2011. Emergency rule filed August 6, 2010 expired on February 2, 2011; on February 3, 2011, the rule reverted to its previous status. New rule filed September 29, 2010; effective February 28, 2011.

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. **Administrative History:** Original Rule filed June 5, 1974. Repeal filed September 13, 2001; effective January 28, 2002. Emergency rule filed August 6, 2010; effective through February 2, 2011. Emergency rule filed August 6, 2010 expired on February 2, 2011; on February 3, 2011, the rule reverted to its previous status. New rule filed September 29, 2010; effective February 28, 2011.

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. **Administrative History:** Original Rule filed June 5, 1974. Repeal filed September 13, 2001; effective January 28, 2002. Emergency rule filed August 6, 2010; effective through February 2, 2011. Emergency rule filed August 6, 2010 expired on February 2, 2011; on February 3, 2011, the rule reverted to its previous status. New rule filed September 29, 2010; effective February 28, 2011.

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 0080-06-25 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. **Administrative History:** Original Rule filed June 5, 1974. Repeal filed September 13, 2001; effective January 28, 2002. Emergency rule filed August 6, 2010; effective through February 2, 2011. Emergency rule filed August 6, 2010 expired on

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February 2, 2011; on February 3, 2011, the rule reverted to its previous status. New rule filed September 29, 2010; effective February 28, 2011.