0400-06-02-.01  RARE PLANT PROTECTION AND CONSERVATION-GENERAL.

(1)  General

(a)  Purpose, Scope, and Applicability

The purpose of these regulations is to provide for the implementation of The Rare Plant Protection and Conservation Act which requires persons to obtain written permission from a landowner or manager before knowingly removing or destroying state-listed endangered plant species and requires nursery farmers to be licensed in order to sell state-listed endangered species.

(b)  Use of Number and Gender

As used in these Rules:

1.  Words in the masculine gender also include the feminine and neuter genders; and

2.  Words in the singular include the plural; and

3.  Words in the plural include the singular.

(c)  Rule Structure

These Rules are organized, numbered, and referenced according to the following outline form:

(1)  paragraph

   (a)  subparagraph

      1.  part

         (i)  subpart

            (l)  item
Definitions

"Act" means "The Rare Plant Protection and Conservation Act of 1985," T.C.A. Section 70-8-301 et seq.

"Acquire," "Acquired", or "Acquisition" means to obtain, to have obtained, or the act of obtaining, by donation, or by exchange of money or other valuable consideration (specifically including barter or exchange), or to take as defined in these regulations.

"Commissioner" means the Commissioner of the Department of Environment and Conservation.

"Conserve" or "Conservation" means to use, or the use of, all methods and procedures for the purpose of increasing the number of individuals of each resident species of plant up to levels adequate to assure their survival in their ecosystems; such methods and procedures also include all activities associated with scientific resource conservation such as research census, law enforcement, habitat protection, acquisition and maintenance, propagation, and transplantation into unoccupied parts of historic range.

"Department" means the Department of Environment and Conservation.

"Endangered species" means any species or subspecies of plant whose continued existence as a viable component of the state's flora is determined by the Commissioner to be in jeopardy, including but not limited to all species of plants determined to be "endangered species" pursuant to the Endangered Species Act.


"Habitat" means the place where a plant species grows, thus implying a particular set of environmental conditions conducive to its survival.

"Landowner" means the person having legal deed to a parcel of land, or a lessee, or any other person entitled to possession, or a manager in the case of publicly owned land.

"Nursery Farmer" means any person engaged in the practice of growing or propagating stock for sale.

"Nursery stock" means all trees, shrubs, or other perennial plants, or parts of such trees, shrubs, or other perennial plants grown or kept for, or capable of, propagation, distribution, or sale on a commercial basis.

"Person" means an individual, corporation, partnership, trust, association, or any other private entity, or any officer, agent, department, or instrumentality of the federal government, any state or political subdivision thereof, or any foreign government.

"Plant" means any member of the plant kingdom, including seeds, roots, cuttings, and other parts of the plant.
"Population" means individuals of a given plant species that are capable of interbreeding with one another via natural mechanisms, or are growing in close proximity, yet self-pollinating or reproducing strictly by vegetative means.

"Rare species" means any species of plant defined as endangered, threatened, or of special concern in Tennessee or pursuant to the Endangered Species Act.

"Sell" or "Sold" means to dispose of, transfer or convey, or to attempt to dispose of, transfer or convey by exchange of money or other valuable consideration, specifically including barter or exchange.

"Special Concern Species" means any species or subspecies of plant which is uncommon in Tennessee, or has unique or highly specific habitat requirements or scientific value and therefore requires careful monitoring of its status.

"Take" or "Taking" means to knowingly uproot, dig, remove, damage, destroy, possess, collect, or otherwise disturb for any purpose.

"Threatened Species" means any species or subspecies of plant which appears likely, within the foreseeable future, to become endangered throughout all or a significant portion of its range in Tennessee, including but not limited to all species of plants determined to be a "threated species" pursuant to the Endangered Species Act.

Authority: T.C.A. §§ 4-5-201, et seq.; 70-8-301; 70-8-305; and Chapter 242, Public Acts of 1985.


0400-06-02-.02 RESERVED.

Authority: T.C.A. §§ 4-5-201, et seq.; 70-8-301; 70-8-305; and Chapter 242, Public Acts of 1985.


0400-06-02-.03 PROMULGATION OF LISTS.

Criteria for listing a rare plant as endangered, threatened, or of special concern, shall be primarily, but not limited to, the following:

(a) Distribution of the species in Tennessee and throughout its range;
(b) Number of populations in Tennessee and throughout the species' range;
(c) Size of populations relative to estimates of minimal viable populations for the species;
(d) Habitat specificity;
(e) Known or perceived threats to the species and its habitats;
(f) Number of protected populations;
(g) Difficulty of adequately protecting or managing habitats for the species' survival; and
(h) Biological factors relating to such things as the species' ability to reproduce, respond to disturbance, or its dependence on other species that also may be in jeopardy.
(Rule 0400-06-02-.03, continued)

(2) Any interested person may nominate a plant species for listing as endangered, threatened, or special concern status or recommend changes in status or removal of species from the current rare plant list promulgated under the Act.

(3) A Scientific Advisory Committee of twelve (12) botanists knowledgeable about the state’s flora shall serve at the Commissioner’s request to periodically review the rare plant list and consider nominations for changes to it. This group shall meet at least once every three (3) years. Reimbursement for travel and per diem expenses shall be offered by the Department at current state rates.

(4) A public hearing shall be held prior to the addition or deletion of a species to or from the endangered or threatened species lists.

(5) The Department shall submit its proposed list of endangered species or any amendments to it to the Commissioner of the Department of Agriculture for his concurrence.

(6) Copies of the current list of endangered species or the list of threatened or special concern species shall be made available, upon request, by the Department of Environment and Conservation, Resource Management Division, 401 Church Street, Nashville, Tennessee 37243-0447.


0400-06-02-.04 LIST OF ENDANGERED SPECIES.

The endangered plant list of Tennessee includes the following:

<table>
<thead>
<tr>
<th>Latin Name</th>
<th>Common Name</th>
</tr>
</thead>
<tbody>
<tr>
<td>Aconitum reclinatum</td>
<td>trailing white monkshood</td>
</tr>
<tr>
<td>Agalinis auriculata</td>
<td>ear-leaved false-foxglove</td>
</tr>
<tr>
<td>Agalinis decemloba</td>
<td>ten lobe false foxglove</td>
</tr>
<tr>
<td>Agalinis heterophylla</td>
<td>prairie false foxglove</td>
</tr>
<tr>
<td>Agalinis oligophylla Pennell</td>
<td>ridge-stem false foxglove</td>
</tr>
<tr>
<td>Agalinis plukenetti (Ell.) Raf</td>
<td>purple gerardia</td>
</tr>
<tr>
<td>Anemone caroliniana</td>
<td>Carolina anemone</td>
</tr>
<tr>
<td>Apios priceana Robbins</td>
<td>Price’s potato-bean</td>
</tr>
<tr>
<td>Arenaria lanuginosa</td>
<td>wooly sandwort</td>
</tr>
<tr>
<td>Aristida ramosissima Engel. ex Gray</td>
<td>branched three-awn grass</td>
</tr>
<tr>
<td>Asplenium scolopendrium L. var. americanum (Fern.) Kartesz &amp; Gandhi</td>
<td>Hart's-tongue fern</td>
</tr>
<tr>
<td>Astragalus bibullatus</td>
<td>Pyne’s ground-plum</td>
</tr>
<tr>
<td>Betula papyrifera Marsh var. cordifolia (Regel) Fern.</td>
<td>heart-leaved paper birch</td>
</tr>
<tr>
<td>Blephilia subnuda Simmers &amp; Kral</td>
<td>Cumberland pagoda-plant</td>
</tr>
<tr>
<td>Boechera patens (Sull.) Al-Shehbaz</td>
<td>spreading rockcress</td>
</tr>
<tr>
<td>Boechera perstellata (E. L. Braun) Al-Shehbaz</td>
<td>Braun’s rockcress</td>
</tr>
<tr>
<td>Brachydontium trichodes (Web.) Milde</td>
<td>peak moss</td>
</tr>
<tr>
<td>Botrychium simplex E. Hitch.</td>
<td>least moonwort</td>
</tr>
<tr>
<td>Bulbostylis ciliatifolia (Ell.) Fern. var. coarctata (Ell.) Kral</td>
<td>capillary hairsedge</td>
</tr>
<tr>
<td>Calamagrostis cainii Hitchcock</td>
<td>Cain’s reedgrass</td>
</tr>
<tr>
<td>Calamagrostis porteri A. Gray</td>
<td>Porter’s reedgrass</td>
</tr>
<tr>
<td>Caltha palustris L.</td>
<td>marsh marigold</td>
</tr>
<tr>
<td>Carex barrattii Schweinitz and Torr.</td>
<td>Barratt’s sedge</td>
</tr>
</tbody>
</table>
RARE PLANT PROTECTION AND CONSERVATION REGULATIONS

September, 2020 (Revised) 5

(Rule 0400-06-02-.04, continued)

Carex buxbaumii Wahlenb.  Buxbaum’s sedge
Carex canescens L. ssp. disjuncta Fern.  hoary sedge
Carex fumosimontana Estes  Smoky Mountain sedge
Carex interior L. H. Bailey  inland sedge
Carex lonicocarpa Willd. ex Spreng.  southern long sedge
Carex manhartii Bryson  Manhart’s sedge
Carex muskingumensis Schwein.  Muskingum sedge
Carex pellita Willd.  woolly sedge
Carex tetanica Schkuhr  rigid sedge
Cephaloziella messalongi (Spruce) K. Muell.  a liverwort
Cerastium velutinum Raf.  velvety cerastium
Clematis fremontii S. Wats.  Fremont’s Leather Flower
Clematis vinacea Floden  wine colored leatherflower
Clematis morefieldii Kral  Huntsville vasevine
Clethra alnifolia L.  coastal pepperbush
Coeloglossum viride (L.) Hartman  long-bracted green orchis
var. virens (Muhl. ex Willd.) Luer
Collinsia verna Nutt.  blue-eyed Mary
Comptonia peregrina (L.) Coulter  sweet-fern
Coreopsis latifolia Michx.  broad-leaved tickseed
Crataegus arborspina Beadle  Harbison’s hawthorn
Cypripedium kentuckiense Reed  southern lady's-slipper
Cypripedium reginae Walt.  showy lady's-slipper
Dalea foliosa (A. Gray) Barneby  leafy prairie-clover
Dalea purpurea Vent.  purple prairie-clover
Delphinium exaltatum Ait.  tall larkspur
Desmodium ochroleucum M. A. Curtis ex Canby  creamflower tick-trefoil
Diamorpha smallii Britt.  Small's stonecrop
Dichanthelium acuminatum ssp. spretum  Eaton’s witchgrass
(Schult.) Freckmann & Lelong
Dichanthelium ensifolium ssp. curtifolium  short-leaved panic grass
(Nash) Freckmann & Lelong
Echinacea pallida (Nutt.) Nutt.  pale purple coneflower
Eleocharis elliptica Kunth  elliptic spike rush
Eleocharis equisetoides (Ell.) Torr.  horse-tail spike-rush
Eleocharis intermedia J. A. Schultes  matted spike rush
Eleocharis wolffii A. Gray  Wolf’s spike rush
Eriocaulon decangulare L.  ten-angle pipewort
Eriogonum harperi Goodman  Harper's umbrella-plant
Eriophorum virginicum L.  tawny cotton grass
Erysimum capitatum (Dougl.) Greene  western wallflower
Eupatorium leucopleus (DC.) Torr. and A. Gray  white-bracted thoroughwort
Eurybia saxicastelli (J. J. N. Campbell & Medley) Rockcastle aster
G. L. Nesom

Great Plains goldentop

Harper’s fimbriystis

prairie gentian

yellow avens

bent avens

spreading avens

limp manna grass

Florida hedge-hyssop

Rock Mountain bluet

Canada frostedeed
Helianthemum propinquum E.P. Bicknell  
low frostweed

Helianthus verticillatus Small  
whorled sunflower

Homaliadelphus sharpii (Williams) Sharp  
Sharp's homaliadelphus moss

Hydrocotyle americana L.  
American water-pennywort

Hypericum adpressum Barton  
creeping St. John's-wort

Hypericum ellipticum Hook.  
pale St. John's-wort

Hypericum graveolens Bickl.  
mountain St. John's-wort

Iris brevicaulis Raf.  
Lamance iris

Isoetes appalachiana D.F. Brunton & D.M. Britton  
Appalachian quillwort

Isoetes melanopoda Gay and Durieu  
blackfoot quillwort

Isoetes tennesseensis N.T. Luebke & J.M. Budke  
small whorled pogonia

Lachnanthes caroliana (Lam.)  
Carolina redroot

Lechea pulchella Raf.  
Leggett's pinweed

Lejeunea sharpii (Schust.) Schust.  
Sharp's lejeunia

Leptodinium viticulosoides var. sulphureum  
(Müller Hal.) R. H. Zander  
Mount Le Conte moss

Leptohymenium sharpii (Crum & Anders.) Buck & Crum  
a liverwort

Lilium grayi S. Wats.  
Gray's lily

Lilium philadelphicum L.  
wood lily

Listera australis Lindl.  
southern twayblade

Lithospermum parviflorum  
sothair marbleseed

Lithospermum subsetosum  
smooth false gromwell

Lonicera prolifera (Kirchner) Rehder  
grape honeysuckle

Melanthium latifolium Desr.  
Virginia bunchflower

Melanthium virginicum L.  
mountain sandwort

Minuartia cumberlandensis (Wofford & Kral) McNeill  
Cumberland sandwort

Minuartia godfreyi (Shinners) McNeill  
Goffrey's stitchwort

Minuartia groenlandica (Retzius) Ostenfeld  
mountain sandwort

Muhlenbergia cuspidata (Torr.) Rydb.  
plains muhly

Muhlenbergia torreyana (Shult.) Hitchcock  
Torrey's dropseed

Myriophyllum pinnatum (Walt.) B.S.P.  
cutleaf Watermilfoil

Nabalis asper (Michx.) Torr. & A. Gray  
rough rattlesnake root

Nestonia umbellula Raf.  
conjurer's nut

Packera crawfordii (Britt.) A.M. Mahoney & R.R. Lowal  
Crawford's ragwort

Patiottus racemosus  
mountain ricegrass

(Paxistima canbyi A. Gray  
Canby's mountain-lover

Paysonia perforata (Rollins) O'Kane & Al-Shebaaz  
Spring Creek bladderpod

Paysonia stonensis (Rollins) O'Kane & Al-Shebaaz  
Stones River bladderpod

Penstemon kralii D. Estes  
Kral's beardtongue

Physaria globosa (Desv.) O'Kane  
thicket parsley

Pityopsis ruthii (Small) Small  
long beech fern

Platantly cordata Lam.  
globe bladderpod

Platanthera grandiflora (Bigelow) Lindl.  
Ruth's golden-aster
Platanthera integriflora (Nutt.) A. Gray ex Beck  yellow fringeless orchid
Platanthera integriflora (Correll) Luer  white fringeless orchid
Platanthera nivea (Nutt.) Luer  snowy orchid
Poa palustris L.  owl bluegrass
Pogonia ophioglossoides (L.) Ker-Gawl.  rose pogonia
tiny dwarf milkwort
Polygala nana (Michx.) DC.  small southern jointweed
Polygala nuttallii Torr. and A. Gray  Nuttall's milkwort
Polygonella americana (Fisch. and Mey)  shadow-witch
Ponthieva racemosa (Walt.) Mohr  hot porella
Porella gracillima  sand cherry
Pycnanthemum beardlei (Small) Fern.  Beadle's mountain mint
Pycnanthemum torrei Benth.  Torrey's mountain mint
Pycnanthemum verticillatum (Michx.) Pers.  American wintergreen
Pyrola americana Sweet  eastern white water crowfoot
Rhamnus alnifolia L'Hér.  alderleaf buckthorn
Rhynchospora capillacea Torr.  few-flowered beak-rush
Rhynchospora debilis Gale  savannah beak-rush
Rhynchospora rariflora (Michx.) Ell.  Rugel's ragwort
Rudbeckia triloba var. beardlei (Small) Fernald  browneyed susan
Rugelia nudicaulis Shuttlw. ex Chapman  Nevius' stonecrop
Sabatia capitata (Raf.) Blake  sessile-fruited arrowhead
caniad burnet
Sagittaria rigida Pursh  Carolina saxifrage
Sanguisorba canadensis L.  swamp saxifrage
Saxifraga caroliniana A. Gray  swaying bulrush
Saxifraga pensylvanica L.  hairy scullcap
Schoenoplectus subterminalis (Torr.) Sojak  narrow-leaved meadow-sweet
Scutellaria arguta Buckl.  Virginia spiraea
Sedum nevii A. Gray  Great Plains ladies'-tresses
Silene ovata Pursh  yellow nodding ladies'-tresses
Silphium brachiatum Gattinger  sweet scent ladies'-tresses
Solidago gattingeri Chapm.  Piney-woods dropseed
Solidago lancifolia Torr. and A. Gray  Appalachian hedge-nettle
Solidago porteri Small  trailing stitchwort
Solidago ptarmicoides (Nees) Bovin  Cumberland featherbells
Solidago rupestris Raf.  Sullivan's coolwort
Solidago spithamæae M.A. Curtis  bushy aster
Sparganium androcladum (Engelm.) Morong  barrens silky aster
Sphagnetum magnificum Sheviak  skunk-cabbage
Spiranthes ochroleuca (Rydby.) Rydb.  American yew
Spiranthes odorata (Nutt.) Lindl.  cutleaf meadow parsnip
Stachys appalachiana D.B. Poind. & J.B. Nelson  American yew
Stellaria alsine Grimm  cutleaf meadow parsnip
Stenanthium diffusum Wofford  American yew
Sullivantia sullivantii (Torr. & Gray) Brittt.  American yew
Symphyotrichum ericoides  American yew
(L.) G.L. Nesom var. ericoides  American yew
Symphyotrichum pratense (Rafinesque) Nesom  American yew
Symphoricarpus foetidus (L.) Nutt.  American yew
Taxus canadensis Marsh.  American yew
Thaspium pinnatifidum (Buckley) A. Gray  American yew
0400-06-02-.05 PERMISSION FOR NURSERY FARMERS TO TAKE ENDANGERED PLANTS.

(1) Nursery farmers engaged in the taking of any endangered species from land other than their own shall obtain written permission to do so from the landowner. The Department has permission forms available upon request for use by the landowner, but any written permission by the landowner is adequate if it contains the following:

(a) Landowner’s name, address, telephone number, signature, and any restrictions the landowner wishes to impose as conditions of permission.

(b) The date on which permission to take endangered species is granted.

(c) The name of the individual to whom permission to take endangered species is granted.

(2) An original and one copy of each permission statement or form shall be made. The original shall remain in the possession of the person to whom permission to take endangered species is granted. The copy shall be sent to the Department along with the annual reports, or earlier if desired.

(3) Written permission from a landowner shall be valid for one (1) year from the date permission is granted unless otherwise indicated on the permission statement or form.
0400-06-02-.06 REGISTRATION AND LICENSING OF NURSERY FARMERS.

(1) All nursery farmers who desire to sell or export Tennessee listed endangered plant species must first register with the Department and obtain a license as issued by the Department.

(2) Blank forms for license application shall be provided by the Department upon request and shall contain the following information:

(a) Applicant’s business name, address, and telephone number.

(b) Applicant’s business name, home address, and telephone number.

(c) Applicant’s signature with date signed.

(3) Upon receipt by the Department of a completed application form, the Department will issue a license. No fee will be charged for the license.

(4) The license shall be valid from January 1st to the following December 31st and shall be renewed annually by the Department unless the nursery farmer is found in violation of T.C.A. §§ 70-8-301 et seq. or these regulations.

Authority: T.C.A. §§ 4-5-201, et seq.; 70-8-301; 70-8-305; and Chapter 242, Public Acts of 1985.

0400-06-02-.07 REPORTING BY NURSERY FARMERS.

(1) Any nursery farmer selling or exporting Tennessee listed endangered plants shall file with the Department an annual report on forms provided by the Department. The report forms, available upon request, shall include, but shall not be limited to, the following information:

(a) The name and number of individuals of Tennessee listed endangered plant species purchased or otherwise acquired, indicating which plants were wild and which were propagated.

(b) The county and location from which the plants were originally taken (if the source is another nursery farmer, include that name and address).

(c) The name of the Tennessee listed endangered species sold or otherwise disposed of, indicating which plants were wild and which were propagated, and stating the number of wild plants sold.

(d) The name and address of the person or business to whom one hundred (100) or more of any endangered species were sold.

(2) Annual reports shall be due no later than January 31 of the following year and shall cover the period set out on the form provided by the Department.

Authority: T.C.A. §§ 4-5-201, et seq.; 70-8-301; 70-8-305; and Chapter 242, Public Acts of 1985.
0400-06-02-.08 RECORDKEEPING BY NURSERY FARMERS.

(1) Nursery farmers shall retain a copy of each annual report for a period of at least three (3) years, following its submission to the Department.

(2) Upon reasonable notice to the nursery farmer, all records required under this section, and original statements of written permission to take endangered species required under section 0400-06-02-.05 shall be made available to the Department at the nursery farmer’s place of business and during the nursery farmer’s normal working hours.


0400-06-02-.09 INSPECTION. Nurseries may be subject to announced or unannounced inspections of current stock of wild and/or propagated endangered species.


0400-06-02-.10 CERTIFICATION OF NATIVE RARE PLANT STOCK. A nursery engaged in the propagation of native rare plants may receive official certification as a native rare plant propagator. At the invitation of the nursery, a Department official, or officials, will inspect native plant stock to confirm those species under propagation. Upon being satisfied as to which native rare species are involved, the Department will issue a certificate naming those native rare species which the nursery is propagating.


0400-06-02-.11 TAKING RARE SPECIES FROM DEPARTMENT LANDS FOR SCIENTIFIC, EDUCATIONAL, OR PROPAGATIVE PURPOSES.

(1) Anyone wishing to take rare plant species from Department lands for scientific, educational, or propagative purposes shall first obtain a scientific collecting permit from the Department. Application forms for permits will be provided by the Department.

(2) A scientific collecting permit shall be valid for one (1) year from the date of issuance unless otherwise indicated on the permit.

(3) All persons permitted to take rare plants for scientific, educational, or propagative purposes shall submit to the Department brief reports on the status and results of their collecting. A progress report shall be filed every six (6) months of the permit period and a final report must be submitted at the end of the permit period. Only a final report is necessary if the permit period does not exceed eight (8) months. The final reports shall include but shall not be limited to the following information:

(a) Name and number of individuals, cuttings, or any other plant parts of each rare species collected unless exception is granted by the Department.

(b) Locality of collection for each specimen of a rare species (specific locations, indicated on maps, may be required).

(c) Estimated relative abundance of each rare species collected.

(d) Description of any environmental alterations resulting during or after the completion of collecting.
(Rule 0400-06-02-.11, continued)

(4) The holder of a scientific collecting permit shall notify the Department if, during the permit period, he wishes to change the specific conditions of the permit.


0400-06-02-.12 REPORTING FORM AND CONTENT. The Department is authorized to prescribe the content for written permission to take endangered species, and the form and content of the application for license, the endangered species dealer license, acquisition and purchase records, annual reports, application for scientific collecting, scientific collecting permit, and the scientific collecting and progress and final reports required by the regulations. The form and/or content of the above form(s) are subject to change from time to time as deemed necessary by the Department.


0400-06-02-.13 VIOLATIONS.

(1) As provided by T.C.A. § 70-8-310, any person violating the provisions of these regulations shall be guilty of a misdemeanor.

(2) The Commissioner may suspend, revoke, and/or deny the issuance of a license or permit to a nursery farmer, or person who takes for scientific, educational, or propagative purposes, who violates the act or these regulations. The nursery farmer, or person who takes for scientific, educational, or propagative purposes, shall have the right to contest and appeal any suspension, revocations, and/or denial of license or permit, under the provisions of the Uniform Administrative Procedures Act, compiled in Chapter 5 of Title 4 of the Tennessee Code Annotated.