

Proposed Rules
of the
Tennessee Department of Agriculture
Division of Regulatory Services

Chapter 0080-6-26
Rules and Regulations Governing
Quarantine of Sudden Oak Death (*Phytophthora ramorum*)

Presented herein are proposed rules of Division of Regulatory Services, Department of Agriculture submitted pursuant to T.C.A. §4-5-202 in lieu of a rulemaking hearing. It is the intent of the Division of Regulatory Services, Department of Agriculture 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 amendments are published. Such petition to be effective must be filed with the Department of Agriculture, 440 Hogan Road, Nashville, Tennessee 37220, and the Department of State, 8th Floor, William R Snodgrass Tower, 312 Eighth Avenue North, Nashville, Tennessee 37243-0307, and must 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.

For copies of the entire text of the proposed rules, contact: Walker G. Haun, Plant Certification Administrator, Department of Agriculture, P. O. Box 40627, Nashville, Tennessee, 37204, 615-837-5338.

The text of the proposed rules is as follows:

New Rules

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0080-6-26-.01 Establishment and Purpose of Quarantine.

- (1) The destructive pathogen known as Sudden Oak Death, ramorum blight/dieback, *Phytophthora ramorum* has been intercepted in Tennessee and found established in other states. This pest can be extremely injurious to Tennessee forests and certain kinds of nursery stock; therefore, it would be in the best interest of man, agriculture and silviculture in Tennessee that a quarantine be established against this pest.
- (2) A quarantine against the above defined pest is hereby established to regulate the movement of certain articles capable of transporting the highly destructive pathogen known as *Phytophthora ramorum*, into uninfected or unregulated areas of the state by regulating the movement of those articles that pose a significant threat of spreading *Phytophthora ramorum*.

Authority: T.C.A. § 43-6-104. Administrative History: Original rule filed

0080-6-26-.02 Definitions.

- (1) Bark chips: Bark fragments broken or shredded from a log or tree.
- (2) Commissioner: Means the Commissioner of Tennessee Department of Agriculture or the Commissioner's duly authorized agents.
- (3) Certificate: A document in which an inspector or person operating under a compliance agreement affirms that a specified regulated article meets the requirements of 0080-6-26-.06(1) of this subject and may be moved intrastate to any destination.
- (4) Compliance agreement: A written agreement between the Tennessee Department of Agriculture and a person engaged in growing, processing, handling, or moving regulated articles, wherein the person agrees to comply with this subpart.
- (5) Departmental permit: A document issued by the Commissioner in which he or she affirms that intrastate movement of the regulated article identified on the document is for scientific or experimental purposes and that the regulated article is eligible for intrastate movement in accordance with 0080-6-26-.05(1)(b) of this subpart.
- (6) Duff: Decaying plant matter that includes leaf litter, green waste, stem material, bark, and any other plant material that, upon visual inspection, does not appear to have completely decomposed into soil.

- (7) Firewood: Wood that has been cut, sawn, or chopped into a shape and size commonly used for fuel.
- (8) Forest stock: All flowers, trees, shrubs, vines, scions, buds, fruit pits, or other seeds of fruit and ornamental trees or shrubs that are wild-grown, backyard-grown, or naturally occurring and do not meet the definition of nursery stock, and that are not located on a nursery premises.
- (9) Inspector: Any employee of the Tennessee Department of Agriculture, Division of Regulatory Services, Plant Certification Section, and/or other person(s) authorized by the Commissioner to perform the duties required under this subpart.
- (10) Intrastate: Movement within the State of Tennessee
- (11) Log: The bole of a tree; trimmed timber that has not been sawn further than to form cants.
- (12) Lumber: Logs that have been sawn into boards, planks, or structural members such as beams.
- (13) Moved (move, movement): Shipped, offered for shipment, received for transportation, transported, carried, or allowed to be moved, shipped, transported or carried.
- (14) Mulch: Bark chips, wood chips, wood shavings, or sawdust, or a mixture thereof that could be used as a protective or decorative ground cover.
- (15) Nursery stock: All greenhouse or field-grown florist's stock, trees, shrubs, vines, cuttings, grafts, scions, buds, fruit pits, and other seeds of fruit and ornamental trees or shrubs, and other plants and plant products for propagation, except field, vegetable, and flower seeds, bedding plants, and other herbaceous plants, bulbs, and roots.
- (16) Person: Any association, company, corporation, firm, individual, joint stock company, partnership, society, or other entity.
- (17) Quarantined area: Any county, or any portion of a county in Tennessee, listed in 0080-6-26-.04 (3) of this subpart or otherwise designated as a quarantined area in accordance with 0080-6-26-.04 (2) of this subpart.
- (18) Regulated article: Any article listed in 0080-6-26-.03 (1) of this subpart.
- (19) Restricted article: Any article listed in 0080-6-26-.03 (2) of this subpart.

- (20) Soil: Any non-liquid combination of organic and/or inorganic material in which plants can grow.

Authority: T.C.A. § 43-6-104. Administrative History: Original Rule Filed.

0080-6-26-.03 Regulated and Restricted Articles.

- (1) The following are regulated articles, and may be moved intrastate from a quarantined area only if accompanied by a certificate issued in accordance with the regulations in this subpart:
- (a) Nursery stock (except acorns and seeds), unprocessed wood and wood products, and plant products, including firewood, logs, lumber, wreaths, garlands, and greenery of Alleghany = Willowood Viburnum (*Viburnum x rhytidophylloides*), Andrew's Clintonia Bead Lily (*Clintonia andrewsiana*), Arrowwood or Bodant Viburnum (*Viburnum x bodnantense*), Bay Laurel (*Laurus nobilis*), Bigleaf Maple (*Acer macrophyllum*), Burkwood Viburnum (*Viburnum x burkwoodii*), California Bay Laurel = Pepperwood = Oregon Myrtle (*Umbellularia californica*), California Black Oak (*Quercus kelloggii*), California Buckeye (*Aesculus californica*), California Coffeeberry (*Rhamnus californica*), California Hazelnut (*Corylus cornuta*), California Honeysuckle (*Lonicera hispidula*), California maidenhair fern (*Adiantum jordanii*), California wood fern (*Dryopteris arguta*), Camellia – all species, hybrids and cultivars (*Camellia* spp.), Canyon live oak (*Quercus chrysolepis*), Cascara (*Rhamnus purshiana*), Chinese Pieris (*Pieris Formosa* var. *forrestii*), Chinese witch-hazel (*Hamamelis mollis*), Coast Live Oak (*Quercus agrifolia*), Coast Redwood (*Sequoia sempervirens*), David Viburnum (*Viburnum davidii*), Doublefile Viburnum (*Viburnum plicatum* var. *tomentosum*), Douglas-fir (*Pseudotsuga menziesii* var. *menziesii*), Drooping leucothoe (*Leucothoe fontanesiana*), European Ash (*Fraxinus excelsior*), European beech (*Fagus sylvatica*), European cranberrybush Viburnum (*Viburnum opulus*), European Ewe (*Taxus baccata*), European Turkey Oak (*Quercus cerris*), False Solomon's Seal (*Maianthemum racemosa* = *Smilacina racemosum*), Formosa Firethorn (*Pyracantha koidzumii*), Fragrant Viburnum (*Viburnum farreri*= *V. fragans*), Goat willow (*Salix caprea*), Grand Fir (*Abies grandis*), Griselinia (*Griselinia littoralis*), Himalaya Pieris (*Pieris formosa*), Holm Oak (*Quercus ilex*), Horse Chestnut (*Aesculus hippocastanum*), huckleberry (*Vaccinium ovatum*), Iron tree (*Parrotia persica*), Japanese Pieris (*Pieris japonica*), Laurustinus (*Viburnum tinus*), Lilac (*Syringa vulgaris*), Loebner Magnolia (*Magnolia x loebneri*), Madrone (*Arbutus menziesii*), Manzanita (*Arctostaphylos manzanita*), Mountain laurel (*Kalmia latifolia*), Northern Red Oak (*Quercus rubra*), Pacific Yew (*Taxus brevifolia*), Pieris (*Pieris formosa* var. *forrestii* x *Pieris japonica*), Pieris "Brouwer's

Beauty”(Pieris floribunda x japonica), Pieris “Forest Flame” (Pieris Formosa x japonica), Planetree Maple (Acer pseudoplatanus), Poison Oak (Toxicodendron diversilobum), Prague Viburnum (Viburnum x pragense), Red Tip Photinia (Photinia fraseri), Rhododendron (Rhododendron species, including azalea), Robel Beech (Nothofagus obliqua), Salmonberry (Rubus spectabilis), Saucer Magnolia (Magnolia x soulangeana), Scotch Heather (Calluna vulgaris), Shreve's oak (Quercus parvula var. shrevei), Southern Red Oak (Quercus falcata), Spicebush (Calycanthus occidentalis), Star Magnolia, (Magnolia stellata), Strawberry tree (Arbutus unedo), Sweet Chestnut (Castanea sativa), Tanoak (Lithocarpus densiflorus), Toyon (Heteromeles arbutifolia), Viburnum (Viburnum x carlcephalum x V. utile), Victorian box (Pittosporum undulatum), Wayfaringtree Viburnum (Viburnum lantana), Western starflower (Trientalis latifolia), Winter’s bark (Drimys winteri), Witch Hazel (Hamamelis virginiana), Wood Rose (Rosa gymnocarpa), Yew (Taxus media),

- (b) Soil.
 - (c) Any other product or article that an inspector determines to present a risk of spreading *Phytophthora ramorum*, if an inspector notifies the person in possession of the product or article that it is subject to the restrictions in the regulations.
- (2) The following are restricted articles, and may only be moved intrastate from a quarantined area by permit from the Tennessee Department of Agriculture for experimental or scientific purposes, and only in accordance with the regulations in 0080-6-26-.05 (1)(b) of this subpart:
- (a) Bark chips, forest stock, or mulch of Alleghany = Willowood Viburnum (Viburnum x rhytidophylloides), Andrew’s Clintonia Bead Lily (Clintonia andrewsiana), Arrowwood or Bodant Viburnum (Viburnum x bodnantense), Bay Laurel (Laurus nobilis), Bigleaf Maple (Acer macrophyllum), Burkwood Viburnum (Viburnum x burkwoodii), California Bay Laurel = Pepperwood = Oregon Myrtle (Umbellularia californica), California Black Oak (Quercus kelloggii), California Buckeye (Aesculus californica), California Coffeeberry (Rhamnus californica), California Hazelnut (Corylus cornuta), California Honeysuckle (Lonicera hispidula), California maidenhair fern (Adiantum jordanii) California wood fern (Dryopteris arguta), Camellia – all species, hybrids and cultivars (Camellia spp.), Canyon live oak (Quercus chrysolepis), Cascara (Rhamnus purshiana), Chinese Pieris (Pieris Formosa var. forrestii), Chinese witch-hazel (Hamamelis mollis), Coast Live Oak (Quercus agrifolia), Coast Redwood (Sequoia sempervirens), David Viburnum (Viburnum davidii), Doublefile Viburnum (Viburnum plicatum var. tomentosum), Douglas-fir

(*Pseudotsuga menziesii* var. *menziesii*), Drooping leucothoe (*Leucothoe fontanesiana*), European Ash (*Fraxinus excelsior*), European beech (*Fagus sylvatica*), European cranberrybush *Viburnum* (*Viburnum opulus*), European Ewe (*Taxus baccata*), European Turkey Oak (*Quercus cerris*), False Solomon's Seal (*Maianthemum racemosa* = *Smilacina racemosum*), Formosa Firethorn (*Pyracantha koidzumii*), Fragrant *Viburnum* (*Viburnum farreri*= *V. fragans*), Goat willow (*Salix caprea*), Griselinia (*Griselinia littoralis*), Grand Fir (*Abies grandis*), Himalaya Pieris (*Pieris formosa*), Holm Oak (*Quercus ilex*), Horse Chestnut (*Aesculus hippocastanum*), huckleberry (*Vaccinium ovatum*), Iron tree (*Parrotia persica*), Japanese Pieris (*Pieris japonica*), Laurustinus (*Viburnum tinus*), Lilac (*Syringa vulgaris*), Loebner Magnolia (*Magnolia x loebneri*) Madrone (*Arbutus menziesii*), Manzanita (*Arctostaphylos manzanita*), Mountain laurel (*Kalmia latifolia*), Northern Red Oak (*Quercus rubra*), Pacific Yew (*Taxus brevifolia*), Pieris (*Pieris formosa* var. *forrestii* x *Pieris japonica*), Pieris "Brouwer's Beauty" (*Pieris floribunda* x *japonica*), Pieris "Forest Flame" (*Pieris formosa* x *japonica*), Planetree maple (*Acer pseudoplatanus*), Poison Oak (*Toxicodendron diversilobum*), Prague *Viburnum* (*Viburnum x pragense*), Red Tip Photinia (*Photinia fraseri*), Rhododendron (*Rhododendron* species, including azalea), Robel Beech (*Nothofagus obliqua*), Salmonberry (*Rubus spectabilis*), Saucer Magnolia (*Magnolia x soulangeana*), Scotch Heather (*Calluna vulgaris*), Shreve's oak (*Quercus parvula* var. *shrevei*), Southern Red Oak (*Quercus falcata*), Spicebush (*Calycanthus occidentalis*) Star Magnolia (*Magnolia stellata*), Strawberry tree (*Arbutus unedo*), Sweet Chestnut (*Castanea sativa*), Tanoak (*Lithocarpus densiflorus*), Toyon (*Heteromeles arbutifolia*), *Viburnum* (*Viburnum x carlcephalum* x *V. utile*), Victorian box (*Pittosporum undulatum*), Wayfaringtree *Viburnum* (*Viburnum lantana*), Western starflower (*Trientalis latifolia*), Winter's bark (*Drimys winteri*), Witch Hazel (*Hamamelis virginiana*), Wood Rose (*Rosa gymnocarpa*), Yew (*Taxus media*),

- (b) Any other product or article that an inspector determines to present a risk of spreading *Phytophthora ramorum*, if an inspector notifies the person in possession of the product or article that it is a restricted article.

Authority: T.C.A. §§ 43-6-104 and 43-6-106. Administrative History.

0080-6-26-.04 Quarantined Areas.

- (1) Except as otherwise provided in paragraph (2) of this section, the Commissioner will list as a quarantined area in paragraph (3) of this section each County, or each portion of a County, in which *Phytophthora ramorum* has been found by an inspector, in which the Commissioner has reason to believe that *Phytophthora ramorum* is present, or that the Commissioner

considers necessary to quarantine because of its inseparability for quarantine enforcement purposes from localities in which *Phytophthora ramorum* has been found. Less than an entire county will be designated as a quarantined area if the Commissioner determines that the designation of less than the entire county as a quarantined area will prevent the intrastate spread of *Phytophthora ramorum*.

- (2) The Commissioner may temporarily designate any non-quarantined area in the State as a quarantined area in accordance with paragraph (1) of this section. The Commissioner will give a copy of this regulation along with a written notice for the temporary designation to the owner or person in possession of regulated/restricted items that are within the temporary designated quarantined area. Thereafter, the intrastate movement of any regulated/restricted article from an area temporarily designated as a quarantined area will be subject to this subpart. As soon as practicable, this area will be added to the list in paragraph (3) of this section or the Commissioner will terminate the designation. The owner or person in possession of regulated/restricted articles for which designation is terminated will be given notice of the termination as soon as practicable.
- (3) The following areas are designated as quarantined areas: Currently, there are no quarantined areas in Tennessee.

Authority: T.C.A. §§ 43-6-104, 43-6-106. Administrative History.

0080-6-26-.05 Conditions Governing the Intrastate Movement of Regulated and Restricted Articles From Quarantined Areas.

Regulated articles and restricted articles may be moved intrastate from a quarantined area only if moved in accordance with this section. Requirements under all other applicable State and Federal domestic plant quarantines and regulations must also be met.

- (1) With a certificate or departmental permit.
 - (a) Any regulated articles may be moved intrastate from a quarantined area if accompanied by a certificate issued and attached in accordance with 0080-6-26-.06 and 0080-6-26-.09 of this subpart, and provided that the regulated article is moved through the quarantined area without stopping except for refueling, rest stops, emergency repairs, and for traffic conditions, such as traffic lights or stop signs.
 - (b) Any restricted article may be moved intrastate from a quarantined area for experimental or scientific purposes only if the article is moved:
 1. Pursuant to a departmental permit issued by the Commissioner for the article; and

2. Under conditions specified on the departmental permit and found by the Commissioner to be adequate to prevent the spread of *Phytophthora ramorum*; and
 3. With a tag or label bearing the number of the departmental permit issued for the article attached to the outside of the container holding the article, or attached to the article itself if not in a container.
- (2) Without a certificate or departmental permit.
- (a) The regulated or restricted article originated outside the quarantined area and the point of origin of the article is indicated on the waybill of the vehicle transporting the article; and
 - (b) The regulated or restricted article is moved from outside the quarantined area through the quarantined area without stopping except for refueling or for traffic conditions, such as traffic lights or stop signs, and the article is not unpacked or unloaded in the quarantined area.

Authority: T.C. A. § 43-6-106. Administrative History: Original rule filed.

0080-6-26-.06 Issuance and Cancellation of Certificates.

- (1) An inspector may issue a certificate for the intrastate movement of regulated articles if an inspector determines that:
 - (a) The regulated articles have been treated under the direction of an inspector in accordance with 0080-6-26-.10 of this subpart; or
 - (b) The regulated articles are wood products such as firewood, logs, or lumber that are free of bark; or
 - (c) The regulated article is soil that has not been in direct physical contact with any article infected with *Phytophthora ramorum*, and from which all duff has been removed.
 - (d) The regulated articles are articles of nursery stock that:
 1. Are shipped from a nursery or premises in a quarantined area that is inspected annually in accordance with the inspection and sampling protocol described in 0080-6-26-.11 (1) of this subpart, and that has been found free of *Phytophthora ramorum*; and

2. Are part of a shipment of nursery stock that has been inspected prior to intrastate movement in accordance with 0080-6-26-.11 (2) of this subpart, and that has been found free of *Phytophthora ramorum*; and
 3. Have been kept separate from regulated articles not inspected between the time of the inspection and the time of intrastate movement; and
 4. Have not been grown in, or moved from, other areas within a quarantined area except nurseries or premises that are annually inspected for *Phytophthora ramorum* in accordance with this section, and that have been found free of *Phytophthora ramorum*.
- (e) The regulated article is to be moved in compliance with any additional emergency conditions the Commissioner may impose under the Tennessee Plant Act to prevent the spread of *Phytophthora ramorum*; and
- (f) The regulated article is eligible for unrestricted movement under all other State and Federal domestic plant quarantines and regulations applicable to the regulated article.
- (2) Certificates may be issued by any person engaged in the business of growing, processing, handling, or moving regulated articles provided such person has entered into and is operating under a compliance agreement. Any such person may execute and issue a certificate for the intrastate movement of regulated articles if an inspector has previously made the determination that the article is eligible for a certificate in accordance with 0080-6-26-.06 (1) of this subpart.
- (3) Any certificate that has been issued may be withdrawn, either orally or in writing, by an inspector if he or she determines that the holder of the certificate has not complied with all conditions in this subpart for the use of the certificate. If the withdrawal is oral, the withdrawal and the reasons for the withdrawal will be confirmed in writing within 3 days. Any person whose certificate has been withdrawn may appeal the decision in writing to the Commissioner within 10 days after receiving the written notification of the withdrawal. The appeal must state all of the facts and reasons upon which the person relies to show that the certificate was wrongfully withdrawn. The Commissioner, or his designee, will hold a hearing within 30 days to resolve any conflict as to any material fact. The Commissioner or his designee, will grant or deny the appeal, in writing, stating the reasons for the decision, within 15 days of the date of the hearing.

Authority: T.C.A. § 43-6-106. Administrative History: Original rule filed.

0080-6-26-.07 Compliance Agreements and Cancellation.

- (1) Any person engaged in growing, processing, handling, or moving regulated articles other than nursery stock may enter into a compliance agreement when an inspector determines that the person understands this subpart, agrees to comply with its provisions, and agrees to comply with all the provisions contained in the compliance agreement.
- (2) Any person engaged in growing, processing, handling, or moving regulated articles of nursery stock may enter into a compliance agreement when 0080-6-26-.06 (1)(d) requirements are met and a inspector determines that the person understands this subpart, agrees to comply with its provisions, and agrees to comply with all the provisions contained in the compliance agreement.
- (3) Any compliance agreement may be canceled, either orally or in writing, by an inspector whenever the inspector finds that the person who has entered into the compliance agreement has failed to comply with this subpart. If the cancellation is oral, the cancellation and the reasons for the cancellation will be confirmed in writing within 3 days. Any person whose compliance agreement has been canceled may appeal the decision, in writing, within 10 days after receiving written notification of the cancellation. The appeal must state all of the facts and reasons upon which the person relies to show that the compliance agreement was wrongfully canceled. The Commissioner, or his designee, will hold a hearing within 30 days to resolve any conflict as to any material fact. The Commissioner or his designee, will grant or deny the appeal, in writing, stating the reasons for the decision, within 15 days of the date of the hearing.

Authority: T.C.A. §§ 43-6-104, 43-6-106, 43-6-110. Administrative History: Original rule filed.

0080-6-26-.08 Assembly and Inspection of Regulated Articles.

- (1) Any person (other than a person authorized to issue certificates under 0080-6-26-.06(2) of this subpart) who desires to move a regulated article intrastate accompanied by a certificate must notify an inspector as far in advance of the desired intrastate movement as possible, but no less than 14 days before the desired intrastate movement.
- (2) The regulated article must be assembled at the place and in the manner the inspector designates as necessary to comply with this subpart.

0080-6-26-.09 Attachment and Disposition of Certificates.

- (1) A certificate required for the intrastate movement of a regulated article must, at all times during the intrastate movement, be:

- (a) Attached to the outside of the container containing the regulated article;
or
 - (b) Attached to the regulated article itself if not in a container; or
 - (c) Attached to the consignee's copy of the accompanying waybill. If the certificate is attached to the consignee's copy of the waybill, the regulated article must be sufficiently described on the certificate and on the waybill to identify the regulated article.
- (2) The certificate for the intrastate movement of a regulated article must be relinquished by the carrier to the consignee listed on the certificate upon arrival at the location provided on the certificate.

Authority: T.C.A. §§ 43-6-104, 43-6-106. Administrative History: Original rule filed

0080-6-26-.10 Treatments.

The following methods may be used to treat the regulated articles listed for *Phytophthora ramorum*:

- (1) Soil must be heated to a temperature of at least 180° F for 30 minutes in the presence of an inspector.
- (2) Wreaths, garlands, and greenery of Alleghany = Willowood Viburnum (*Viburnum x rhytidophylloides*), Andrew's Clintonia Bead Lily (*Clintonia andrewsiana*), Arrowwood or Bodant Viburnum (*Viburnum x bodnantense*), Bay Laurel (*Laurus nobilis*), Bigleaf Maple (*Acer macrophyllum*), Burkwood Viburnum (*Viburnum x burkwoodii*), California Bay Laurel = Pepperwood = Oregon Myrtle (*Umbellularia californica*), Californina Black Oak (*Quercus kelloggii*), California Buckeye (*Aesculus californica*), California Coffeeberry (*Rhamnus californica*), California Hazelnut (*Corylus cornuta*), California Honeysuckle (*Lonicera hispidula*), California maidenhair fern (*Adiantum jordanii*), California wood fern (*Dryopteris arguta*), Camellia – all species, hybrids and cultivars (*Camellia* spp.), Canyon live oak (*Quercus chrysolepis*), Cascara (*Rhamnus purshiana*), Chinese Pieris (*Pieris Formosa* var. *forrestii*), Chinese witch-hazel (*Hamamelis mollis*), Coast Live Oak (*Quercus agrifolia*), Coast Redwood (*Sequoia sempervirens*), David Viburnum (*Viburnum davidii*), Doublefile Viburnum (*Viburnum plicatum* var. *tomentosum*), Douglas-fir (*Pseudotsuga menziesii* var. *menziesii*), Drooping leucothoe (*Leucothoe fontanesiana*), European Ash (*Fraxinus excelsior*), European beech (*Fagus sylvatica*), European cranberrybush Viburnum (*Viburnum opulus*), European Ewe (*Taxus baccata*), European Turkey Oak (*Quercus cerris*), False Solomon's Seal (*Maianthemum racemosa* = *Smilacina racemosum*), Formosa Firethorn (*Pyracantha koidzumii*), Fragrant Viburnum

(*Viburnum farreri*= *V. fragans*), Goat willow (*Salix caprea*), Grand Fir (*Abies grandis*), Giselinia (*Griselinia littoralis*), Himalaya Pieris (*Pieris formosa*), Holm Oak (*Quercus ilex*), Horse Chestnut (*Aesculus hippocastanum*), huckleberry (*Vaccinium ovatum*), Iron tree (*Parrotia persica*), Japanese Pieris (*Pieris japonica*), Laurustinus (*Viburnum tinus*), Lilac (*Syringa vulgaris*), Loebner Magnolia (*Magnolia x loebneri*) Madrone (*Arbutus menziesii*), Manzanita (*Arctostaphylos manzanita*), Mountain laurel (*Kalmia latifolia*), Northern Red Oak (*Quercus rubra*), Pacific Yew (*Taxus brevifolia*), Pieris (*Pieris formosa* var. *forrestii* x *Pieris japonica*), Pieris “Brouwer’s Beauty”(Pieris *floribunda* x *japonica*), Pieris “Forest Flame” (*Pieris formosa* x *japonica*), Planetree Maple (*Acer pseudoplatanus*), Poison Oak (*Toxicodendron diversilobum*), Prague Viburnum (*Viburnum x pragense*), Red Tip Photinia (*Photinia fraseri*), Rhododendron (*Rhododendron* species, including azalea), Robel Beech (*Nothofagus obliqua*), Salmonberry (*Rubus spectabilis*), Saucer Magnolia (*Magnolia x soulangeana*), Scotch Heather (*Calluna vulgaris*), Shreve's oak (*Quercus parvula* var. *shrevei*), Spicebush (*Calycanthus occidentalis*), Southern Red Oak (*Quercus falcata*), Star Magnolia (*Magnolia stellata*), Strawberry tree (*Arbutus unedo*), Sweet Chestnut (*Castanea sativa*), Tanoak (*Lithocarpus densiflorus*), Toyon (*Heteromeles arbutifolia*), Viburnum (*Viburnum x carlcephalum* x *V. utile*), Victorian box (*Pittosporum undulatum*), Wayfaringtree Viburnum (*Viburnum lantana*), Western starflower (*Trientalis latifolia*), Winter’s bark (*Drimys winteri*), Witch Hazel (*Hamamelis virginiana*), Wood Rose (*Rosa gymnocarpa*), Yew (*Taxus media*) and must be dipped for 1 hour in water that is held at a temperature of at least 160° F.

Authority: T.C.A. §§ 43-6-104, 43-6-106. Administrative History: Original rule filed.

0080-6-26-.11 Inspection and Sampling Protocol.

- (1) Annual nursery inspection and sampling. To meet the requirements of 0080-6-26.06 (1)(d) of this subpart, nurseries that ship regulated articles of nursery stock intrastate must be inspected for symptoms of *Phytophthora ramorum* annually in accordance with this section.
 - (a) If the nursery contains 100 or fewer regulated articles, an inspector will inspect each regulated article. If the nursery contains more than 100 regulated articles, an inspector will inspect 100 regulated articles and at least 2 percent of the number of regulated articles contained in the nursery that exceeds 100. The regulated articles to be inspected will be randomly selected from throughout the nursery.
 - (b) If symptomatic plants are found upon inspection, the inspector must collect at least one sample per symptomatic plant.

- (c) If fewer than 40 symptomatic plants are found in a nursery during an annual inspection, the inspector must collect samples from non symptomatic regulated articles of nursery stock so that the total number of sampled plants is at least 40.
 - (d) Samples must be labeled and sent for testing to a laboratory approved by APHIS.
 - (e) If any regulated articles within a nursery are found to be infected with *Phytophthora ramorum*, the nursery will be prohibited from moving regulated articles intrastate until such time as an inspector can determine that the nursery is free of *Phytophthora ramorum*.
- (2) Inspection and sampling of individual shipments. To meet the requirements of 0080-6-26-.06 (1)(d) of this subpart, each shipment of regulated articles of nursery stock intended for intrastate movement must be inspected for symptoms of *Phytophthora ramorum* in accordance with this section.
- (a) If a shipment contains 100 or fewer regulated articles, an inspector will inspect each regulated article. If a shipment contains more than 100 regulated articles, an inspector will inspect 100 regulated articles and at least 2 percent of the number of regulated articles contained in the shipment that exceeds 100. The regulated articles to be inspected will be randomly selected.
 - (b) If symptomatic plants are found upon inspection, the inspector will collect at least one sample per symptomatic plant, and one sample per regulated article of nursery stock that is in close proximity to or that has had physical contact with a symptomatic plant.
 - (c) Samples will be labeled and sent for testing to a laboratory approved by APHIS, and must be found free of *Phytophthora ramorum* prior to the intrastate movement of any regulated articles contained in the shipment.
 - (d) If any plants intended for intrastate movement are found to be infected with *Phytophthora ramorum*, the nursery from which they originate will be prohibited from moving regulated articles intrastate until such as time as an inspector can determine that the nursery is free of *Phytophthora ramorum*.

Authority: T.C.A. §§ 43-6-107, 43-6-110. Administrative History: Original rule filed.

0080-6-26-.12 Penalty.

Any person, firm, or corporation who shall violate any of the provisions of this quarantine shall be deemed guilty of a misdemeanor as provided in T.C.A. Section 43-6-

112 of the Plant Pest Act, and shall be liable to the penalties as prescribed therein as well as applicable civil penalties found in chapter 0080-6-25.

Authority: T.C.A. § 43-6-112. Administrative History: Original rule filed.

The proposed rules set out herein were properly filed in the Department of State 9th day of November, 2005, and pursuant to the instructions set out above, and in the absence of the filing of an appropriate petition calling for a rulemaking hearing, will become effective on the 30th day of March, 2006.