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Sequence Number: 12-11-20
 Notice ID(s): 3222
 File Date: 12/16/2020

Notice of Rulemaking Hearing

Hearings will be conducted in the manner prescribed by the Uniform Administrative Procedures Act, T.C.A. § 4-5-204. For questions and copies of the notice, contact the person listed below.

Agency/Board/Commission:	Department of Agriculture
Division:	Consumer & Industry Services
Contact Person:	David Waddell
Address:	Post Office Box 40627, Nashville, Tennessee 37204
Phone:	(615) 837-5341
Email:	david.waddell@tn.gov

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
Address:	Post Office Box 40627, Nashville, Tennessee 37204
Phone:	(615) 837-5116
Email:	liz.sneed@tn.gov

Hearing Location(s) (for additional locations, copy and paste table)

Address 1:	Tennessee Department of Agriculture		
Address 2:	436 Hogan Road, Porter Building Conference Room		
City:	Nashville, Tennessee		
Zip:	37220		
Hearing Date:	February 16, 2021		
Hearing Time:	10:00 am	<input checked="" type="checkbox"/> CST/CDT	<input type="checkbox"/> EST/EDT

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
0080-06-09	Firewood Quarantine
Rule Number	Rule Title
0080-06-09-.01	Declaration of Quarantine
0080-06-09-.02	Definitions
0080-06-09-.03	Quarantine Areas

0080-06-09-.04	Conditions for Movement of Regulated Articles
0080-06-09-.05	Labeling
0080-06-09-.06	Inspections
0080-06-09-.07	Violations
0080-06-09-.08	Stop Movement Orders

New

Chapter 0080-06-09
Firewood Quarantine

0080-06-09-.01 Declaration of Quarantine.

- (1) Hundreds of non-native species of insects, diseases, and plants are established in the United States and are often moved around the country through various vectors, including firewood and lumber. Numerous of the species are not currently established in Tennessee but are capable of spreading rapidly and causing significant economic and ecological impact to their surroundings, e.g. Asian Longhorned Beetle, Goldspotted Oak Borer, Gypsy Moth, oak wilt (caused by *Ceratocystis fagacearum*), sudden oak death (caused by *Phytophthora ramorum*), and bacterial leaf scorch (caused by *Xylella fastidiosa*). Given the multitude of possible pests and disease, their potential to spread with movement of untreated firewood, and their propensity to cause rapid damage once moved, untreated firewood poses a significant risk to landscapes and commercial lumber and plant industries in Tennessee. Quarantine against untreated firewood is therefore necessary to protect the agricultural, horticultural, silvicultural, and other interests of the state.
- (2) The department hereby establishes a quarantine to restrict movement of firewood and regulated articles under this chapter as capable of supporting dissemination of invasive pests and disease.
- (3) Requirements of this chapter are construed in addition to and not in lieu of other federal or state quarantines applicable to movement of firewood.

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

0080-06-09-.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) Commerce or words of similar import mean involving payment for an item or payment for services incident to production of the item;
 - (c) Compliance agreement means a voluntary agreement between a duly authorized federal or state regulatory official and a person for the treatment of firewood;
 - (d) Firewood shall include any kindling, logs, boards, timbers, or other wood, split or not split four (4) feet or less in length, advertised, offered for sale, or sold as fuel.
 - (e) Firewood shall not include kiln-dried dimensional lumber, nor wood that has been chipped to smaller than 2 cm diameter. In addition, firewood shall not include logs or wood being commercially transported to, or possessed by, the following operations and facilities for use in their primary manufacturing process:
 - i. sawmill for dimensional lumber;
 - ii. pulp and/or paper mills;
 - iii. wood pellet manufacturing facilities;
 - iv. plywood manufacturing facilities;
 - v. wood biomass-using refineries or power plants;
 - vi. artisan manufacturing, such as cabinets, furniture, sculptures;

vii. re-constituted wood or wood composite product manufacturing plants; or
viii facilities treating wood products in accordance with heat-treatment standards

- (e) Infected, infested, or words of similar import mean contaminated with pest or infected with disease or so exposed to pest or disease that contamination or infection can reasonably be expected to occur;
- (f) "invasive pests" means any non-native organisms that cause economic or environmental harm and are capable of spreading to new areas of the state. Invasive pests may also mean any biotic agent injurious to agriculture or the environment including insect pests and plant diseases as defined under the Act and may also include any form of animal or plant life; any infectious plant disease; or any plant disorder that manifests symptoms or behavior determined by any federal or state pest prevention agency to be characteristic of infectious disease;
- (g) Move, distribute, ship, transport, or words of similar import mean to relocate, or to offer to relocate, in any manner an item from one real property to another;
- (h) Person means an individual, partnership, corporation, or any other form of legal entity;
- (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 firewood and any equipment, shipping material, or vehicle exposed to firewood;
- (k) 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;
- (l) Treat means to heat and to maintain a core temperature of 160° F for at least 75 minutes;
- (m) Treatment schedule means the heat treatment applied to the firewood
- (n) Treatment certificate and certification mean a document prepared by a duly authorized federal or state regulatory official that affirms firewood has been treated as defined under this rule.

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

0080-06-09-.03 Quarantine Areas.

- (1) Designated quarantine areas. States and provinces outside Tennessee with the exception of counties that share a border with Tennessee including; Alabama counties of Jackson, Lauderdale, Limestone, and Madison; Arkansas counties of Crittenden and Mississippi; Georgia counties of Dade, Catoosa, Fannin, Murray, Walker and Whitfield; Kentucky counties of Fulton, Hickman, Graves, Calloway, Trigg, Christian, Todd, Logan, Simpson, Allen, Monroe, Cumberland, Clinton, Wayne, McCreary, Whitley and Bell; Mississippi counties of Alcorn, Benton, DeSoto, Marshall, Tippah, Tishomingo; Missouri counties of New Madrid and Pemiscot; North Carolina counties of Ashe, Avery, Cherokee, Graham, Haywood, Madison, Mitchell, Swain, Watauga and Yancey; Virginia counties of Bristol, Grayson, Lee, Scott and Washington.
- (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. Significant symptoms or indicators of pest or disease commonly spread by movement of firewood are observed within the area;
 - 2. Infected firewood or other regulated articles are shipped into the area; or,
 - 3. Any firewood or other regulated article shipped into the area shares a common container, vessel, producer, or shipper with firewood or articles found to be infected.

- (b) The department may lift the temporary quarantine of a non-designated area if after due inspection the pest or disease suspected from firewood 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, 43-6-106.

0080-06-09-.04 Conditions for Movement of Regulated Articles.

- (1) A person shall not ship any firewood into the state or from a quarantined area unless the shipment is accompanied by a treatment certificate, compliance agreement, or written authorization from the department for movement of the wood.
- (2) Each shipment of firewood moved not in conformity with this chapter—or moved contrary to the treatment certificate, compliance agreement, or authorization for which its movement was permitted—shall constitute a separate violation of this chapter.

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

0080-06-09-.05 Labeling:

- (1) Each “Sales by Package” must bear a clear and conspicuous declaration of the following:
 - (a) Compliance agreement number and treatment schedule
 - (b) identify the package as containing firewood, unless the contents can be easily identified through the wrapper or container;
 - (c) net quantity in terms of weight or measure in meters or feet;
 - (d) name and address of the manufacturer, packer, or distributor of the firewood and
 - (e) origin of firewood identified by county or counties and state.
- (2) Each “Sale from Bulk” must be accompanied by a delivery ticket or receipt containing the following information which shall remain with the original shipment or portions of shipments:
 - (a) Compliance agreement number and treatment schedule name and address of the manufacturer, packer, or distributor who weighed or measured the firewood;
 - (b) date delivered;
 - (c) quantity delivered, by cords or cubic meters, including fractions or count of individually wrapped packages delivered, if more than one is delivered;
 - (d) quantity on which the price is based, if different than the quantity delivered;
 - (e) origin of firewood by county or counties and state.

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

0080-06-09-.06 Inspections.

- (1) Scope. The department may enter any location or conveyance during normal business hours where the department has reason to believe that firewood is being kept. The department may enter such place for the purposes of inspecting firewood as necessary for the prevention of spreading pests and disease 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 invasive pests.

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

0080-06-09-.07 Violations.

- (1) In addition to other requirements of this chapter, persons in possession of firewood and persons within the stream of commerce for firewood within the state shall:
 - (a) Provide full access to facilities, inventory, and records necessary to departmental inspection;
 - (b) Comply with any order issued by the department for the prevention or mitigation of pests, pest plants, or disease; and,
 - (c) Give full information as to the source of firewood currently or previously held in their possession.
- (2) In addition to other requirements of this chapter, persons in possession of firewood and persons within the stream of commerce for firewood within the state shall not:
 - (a) Interfere with an authorized representative of the department in the performance of his duties;
 - (b) Violate any federal or state quarantine of firewood;
 - (c) Violate a compliance agreement to which the person is a party; or,
 - (d) Sell, offer for sale, move, or allow movement of any apparently infested firewood.
- (3) A person is responsible for violations of the Act or this chapter when committed by either the person or his agent.
- (4) Each violation of the Act, this chapter, or departmental orders issued under this chapter is grounds for issuance of stop movement orders; actions for injunction; and assessment of criminal charges against the violator.
- (5) Any breach of a compliance agreement shall constitute a separate violation of this chapter.

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

0080-06-09-.08 Stop Movement Orders.

- (1) The department may issue a stop movement order for any firewood 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 pest or disease.
- (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 and at the owner's or possessor's expense. If the item is not treated or returned as ordered by the department within ten 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 ten days of the order being issued. If no petition is filed with the department within the ten 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, 43-6-106.

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: 12/16/2020

Signature: 

Name of Officer: Charlie Hatcher, D.V.M

Title of Officer: Commissioner

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Filed with the Department of State on: 12/16/2020



Tre Hargett
Secretary of State

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