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Sequence Number:	02-09-08
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Emergency or Public Necessity Rule(s) Filing Form

Emergency and Public Necessity rules are effective from date of filing for a period of up to 165 days.

Agency/Board/Commission: Department Of Commerce and Insurance
Division: Regulatory Boards
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Rule Type:

Emergency Rule
 Public Necessity Rule

Revision Type (check all that apply):

Amendment
 New
 Repeal

Statement of Necessity:

Pursuant to T.C.A. § 4-5-209, the Commissioner of Commerce and Insurance is authorized to promulgate public necessity rules in the event that the rules are required by an enactment of the general assembly within a prescribed period of time that precludes utilization of rulemaking procedures described elsewhere in T.C.A. Title 4, Chapter 5, for the promulgation of permanent rules.

Chapter 690 of the Public Acts of 2008, (hereinafter "Act"), created a new registration program for scrap metal dealers and required the Department of Commerce and Insurance to promulgate rules and regulations to effectuate the purposes of the Act. Section 4 of the Act specifically granted the Department of Commerce and Insurance the authority to promulgate rules of public necessary to effectuate the intent of the Act.

The Act made it unlawful to act as a scrap metal dealer beginning on October 1, 2008 unless the person was registered with the Department of Commerce and Insurance. Due to the length of time necessary to complete the rulemaking process, public necessity rules were required in order for the Department of Commerce and Insurance to comply with the enactment of General Assembly and to ensure that the Department of Commerce and Insurance has the resources necessary to implement the Act. The public necessity rules became effective on August 29, 2008 and are set to expire on February 10, 2009. The Department conducted a rule-making hearing on October 21, 2008 in order to make the public necessity rules permanent rules.

The Commissioner has authorized the filing of these public necessity rules to continue the effectiveness of the public necessity rules that are currently in place. Without the continuation of the public necessity rules, there will be no rules in place for the period of time between February 10, 2009 (the last day that the public necessity rules are effective) and the first day that the permanent rules are effective, which will be seventy-five days from the date they were filed, February, 9, 2009. Without any rules in place, there will be no mechanism by which the

Department will be able to register these entities/individuals. The public health, safety and welfare would be impaired if these public necessity rules are not continued because of this lack of a mechanism to register these entities/individuals. It is necessary to continue the public necessity rules because the agency could not have reasonably foreseen that this need for public necessity rules would continue or recur when they promulgated the public necessity rules and conducted the rulemaking hearing in 2008 because of additional comments received after the rulemaking hearing.

Rule(s) Revised (ALL chapters and rules contained in filing must be listed here. If needed, copy and paste additional tables. Please enter only **ONE** Rule Number/RuleTitle per row)

Chapter Number	Chapter Title
0780-05-14	Scrap Metal Dealer Registration Program
Rule Number	Rule Title
0780-05-14-.01	Purpose
0780-05-14-.02	Definitions
0780-05-14-.03	Registration
0780-05-14-.04	Applications
0780-05-14-.05	Renewals
0780-05-14-.06	Fees
0780-05-14-.07	Check Issuance Fee
0780-05-14-.08	Vouchers
0780-05-14-.09	Revocation

Chapter Number	Chapter Title
Rule Number	Rule Title

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(Place substance of rules and other info here. Statutory authority must be given for each rule change. For information on formatting rules go to <http://state.tn.us/sos/rules/1360/1360.htm>)

0780-5-14-.01 Purpose

The purpose of this chapter is to provide for administration and implementation of the scrap metal dealer registration program, T.C.A., Title 62, Chapter 9 (as amended by Public Acts of 2008, Chapter 690), herein referred to as the "Act".

Authority: T.C.A. § 62-9-102.

0780-5-14-.02 Definitions

- (1) As used in this chapter, unless the context otherwise requires, the definitions of terms contained in T.C.A. § 62-9-101 are applicable.
- (2) "Person" means, according to the context, any individual, association, partnership, corporation, or any other legally cognizable organization or entity or their employees and duly authorized agents who have the authority to buy, exchange or deal in scrap metal.

Authority: T.C.A. §§ 62-9-102 and 1-3-105.

0780-5-14-.03 Registration

- (1) Any person who buys, exchanges, or deals in scrap metal either as an employer or employee must register with the Department of Commerce and Insurance as a scrap metal dealer.
- (2) All registrations issued under this part shall expire two (2) years from the date of issuance or renewal thereof.
- (3) Registration may be withdrawn by mailing the certificate of registration, along with any accompanying form required by the department, back to the Department.
- (4) A change in address for a registrant shall be reported to the Department within thirty (30) days.

Authority: T.C.A. §§ 62-9-102.

0780-5-14-.04 Applications

- (1) All applications for registration as a scrap metal dealer shall be made on a form provided by the Department of Commerce and Insurance and accompanied by a non-refundable application fee.
- (2) All applications must include the name of the applicant, the social security number or tax payer identification of the applicant, the physical and mailing address of the scrap metal dealer, and the telephone number of the scrap metal dealer. All applications must be signed by the applicant and by the owner, partner or authorized corporate officer of the scrap metal dealer.
- (3) An applicant shall disclose, under penalty of perjury, any criminal conviction of a violation of this Act and any conviction of the criminal offense of theft, burglary or vandalism where the offense involves scrap metal and the date of any such conviction.
- (4) Failure to disclose a criminal conviction on the application for registration shall be a basis for the denial of the application.
- (5) Failure to submit a complete application for registration shall be a basis for the denial of the application.

Authority: T.C.A. § 62-9-102.

0780-5-14-.05 Renewals

- (1) Prior to the expiration of their registration, a registrant shall submit an application for renewal of registration on the prescribed form and accompanied by a non-refundable renewal fee.
- (2) All applications for renewal must include the name of the applicant, the social security number or tax payer identification of the applicant, the physical and mailing address of the scrap metal dealer, and the telephone number of the scrap metal dealer. All applications for renewal must be signed by the applicant and by the owner, partner or authorized corporate officer of the scrap metal dealer.
- (3) The application for renewal shall disclose, under penalty of perjury, any criminal conviction of a violation of this Act and any conviction of the criminal offense of theft, burglary or vandalism where the offense involves scrap metal and the date of any such conviction.
- (4) Failure to disclose a criminal conviction on the application for renewal shall be a basis for the denial of the renewal.
- (5) Failure to submit a complete application for renewal shall be a basis for the denial of the renewal.
- (6) Registrations cannot be renewed after they expire. If a registration is not renewed prior to expiration, a new application will be required to be submitted.

Authority: T.C.A. § 62-9-102.

0780-5-14-.06 Fees

- (1) All applications for registration under the Act shall be accompanied by a non-refundable fee of one hundred seventy five dollars (\$175).
- (2) All applications for renewal of registration under the Act shall be accompanied by a non-refundable fee of one hundred twenty five dollars (\$125).
- (3) A request for a replacement certificate shall be accompanied by a non-refundable fee of ten dollars (\$10).
- (4) A request to change the address on a certificate shall be accompanied by a non-refundable fee of ten dollars (\$10).

Authority: T.C.A. § 62-9-102.

0780-5-14-.07 Check Issuance Fee

A scrap metal dealer may charge the person selling scrap metal a check issuance fee of ten percent (10%) of the dollar value of the scrap for the dealer's administrative costs of processing and issuing any check required by the Act. However, the fee, if charged, shall be a minimum of two dollars (\$2.00) and shall not exceed five dollars (\$5.00) per check.

Authority: T.C.A. § 62-9-104.

0780-5-14-.08 Vouchers

- (1) A voucher issued as payment for scrap metal as required by the Act shall expire six (6) months from the date of the transaction.

- (2) Any unredeemed voucher funds shall be remitted to the Department of Commerce and Insurance, with a form provided by the Department, within one (1) year of the expiration of the voucher.

Authority: T.C.A. § 62-9-104.

0780-5-14-.09 Revocation

- (1) The registration of a person convicted of a violation of any provision of the Act, or the criminal offense of theft, burglary or vandalism if such offense involved scrap metal, shall be immediately revoked by operation of law upon such conviction.
- (2) The law enforcement agency responsible for the conviction shall transmit to the Commissioner of Commerce and Insurance a copy of the judgment of conviction of a person registered as a scrap metal dealer.

Authority: T.C.A. § 62-9-110.

* If a roll-call vote was necessary, the vote by the Agency on these rules was as follows:

Board Member	Aye	No	Abstain	Absent	Signature (if required)

I certify that this is an accurate and complete copy of emergency or public necessity rules, lawfully promulgated and adopted.



Date: 2/10/09

Signature: Leslie A. Newman

Name of Officer: Leslie A. Newman
Commissioner

Title of Officer: Tennessee Department of Commerce and Insurance

Subscribed and sworn to before me on: 2/10/09

Notary Public Signature: Denise M. Lewis

My commission expires on: 3/5/12

All emergency or public necessity rules provided for herein have been examined by the Attorney General and Reporter of the State of Tennessee and are approved as to legality pursuant to the provisions of the Administrative Procedures Act, Tennessee Code Annotated, Title 4, Chapter 5.

Robert E. Cooper, Jr.
Robert E. Cooper, Jr.
Attorney General and Reporter
2-17-09
Date

Department of State Use Only

Filed with the Department of State on: 2/18/09

Effective for: state: 165 *days

Effective through: 8/0/09

* Temporary rules may be effective for up to 165 days from the date of filing.

Tre Hargett
Tre Hargett
Secretary of State

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Additional Information Required by Joint Government Operations Committee

All agencies, upon filing a rule, must also submit the following pursuant to TCA 4-5-226(i)(1).

- (A)** A brief summary of the rule and a description of all relevant changes in previous regulations effectuated by such rule;

The Public Necessity Rules implement Chapter 690 of the Public Acts of 2008, (hereinafter "Act"), which creates a new registration program for scrap metal dealers administered by the Department of Commerce and Insurance.

The Act makes it unlawful to act as a scrap metal dealer beginning on October 1, 2008 unless the person is registered with the Department of Commerce and Insurance. These rules are necessary for the Department of Commerce and Insurance to establish the registration requirements and fees so that scrap metal dealers can register with the Department of Commerce and Insurance. The rules are summarized as follows:

Rule 0780-5-14-.01 Purpose - Declares that the chapter provides for the administration and implementation of the scrap metal dealer registration program.

Rule 0780-5-14-.02 Definitions - Defines terms relevant to the chapter.

Rule 0780-5-14-.03 Registration – This rule sets forth who is required to be registered and the term of the registration. The rule also requires a registrant to notify the Department of a change in address within 30 days.

Rule 0780-5-14-.04 Applications – This rule sets forth the requirements for completion of the scrap metal dealer registration application.

Rule 0780-5-14-.05 Renewals – This rule sets forth the requirements for completion of the renewal application for a scrap metal dealer.

Rule 0780-5-14-.06 Fees – This rule specifies fees for the original issuance of a scrap metal dealer registration, the renewal thereof, for a replacement certificate and for a change of address.

Rule 0780-5-14-.07 Check issuance fee – This rule specifies the fee a scrap metal dealer may charge for issuing a check for the dealer's administrative costs of processing the same.

0780-5-14-.08 Vouchers – This rule reiterates the statutory provision concerning expiration of vouchers issued as payment for scrap metal and the remittance of unredeemed voucher funds to the Department of Commerce and Insurance.

0780-5-14-.09 Revocation – This rule reiterates the statutory provision providing for revocation of the registration of a person for conviction of a violation of any provisions of the Act or the offenses of theft, burglary or vandalism if such offenses involved scrap metal.

- (B)** A citation to and brief description of any federal law or regulation or any state law or regulation mandating promulgation of such rule or establishing guidelines relevant thereto;

The Rules are promulgated pursuant to T.C.A. §§62-9-102, 104 and 110.

- (C)** Identification of persons, organizations, corporations or governmental entities most directly affected by this rule, and whether those persons, organizations, corporations or governmental entities urge adoption or rejection of this rule;

These Rules will affect individuals and entities that buy, exchange, or deal in scrap metal.

- (D)** Identification of any opinions of the attorney general and reporter or any judicial ruling that directly relates to the rule;

I am unaware of any opinion of the attorney general or any judicial ruling that directly relates to these rules.

- (E) An estimate of the probable increase or decrease in state and local government revenues and expenditures, if any, resulting from the promulgation of this rule, and assumptions and reasoning upon which the estimate is based. An agency shall not state that the fiscal impact is minimal if the fiscal impact is more than two percent (2%) of the agency's annual budget or five hundred thousand dollars (\$500,000), whichever is less;

These rules will have no fiscal impact on the Department as the fees for the registration program are to cover the administrative costs associated with the program.

- (F) Identification of the appropriate agency representative or representatives, possessing substantial knowledge and understanding of the rule;

Steve Majchrzak, Assistant Commissioner for Regulatory Boards, and J. Wayne Pugh have substantial knowledge and understanding of these rules.

- (G) Identification of the appropriate agency representative or representatives who will explain the rule at a scheduled meeting of the committees;

Steve Majchrzak, Assistant Commissioner for Regulatory Boards, and J. Wayne Pugh will explain these rules at any meeting of the committees.

- (H) Office address and telephone number of the agency representative or representatives who will explain the rule at a scheduled meeting of the committees; and

500 James Robertson Parkway, Davy Crockett Tower, Nashville, Tennessee 37243, (615) 253-2371.

- (I) Any additional information relevant to the rule proposed for continuation that the committee requests.