

**Department of State
Division of Publications**

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For Department of State Use Only

Sequence Number: 02-13-14
Rule ID(s): 5668
File Date: 2/20/14
Effective Date: 7/29/14

Proposed Rule(s) Filing Form

Proposed rules are submitted pursuant to T.C.A. §§ 4-5-202, 4-5-207 in lieu of a rulemaking hearing. It is the intent of the Agency to promulgate these rules without a rulemaking hearing unless a petition requesting such hearing is filed within sixty (60) days of the first day of the month subsequent to the filing of the proposed rule with the Secretary of State. To be effective, the petition must be filed with the Agency and 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. The agency shall forward such petition to the Secretary of State.

Agency/Board/Commission:	Department of Agriculture
Division:	Forestry
Contact Person:	Theresa Denton
Address:	P. O. Box 40627
Zip:	37204
Phone:	615-837-5280
Email:	Theresa.Denton@tn.gov

Revision Type (check all that apply):

- Amendment
 New
 Repeal

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

Chapter Number	Chapter Title
0080-07-05	Open-Air Burning Permits
Rule Number	Rule Title
0080-07-05-.01	Purpose
0080-07-05-.02	Definitions
0080-07-05-.03	Burning-Permit General Requirements and Limitations
0080-07-05-.04	Commissioner's Burning Ban

Chapter 0080-07-05
Open-Air Burning Permit

New Rules

0080-07-05-.01 Purpose.

These rules establish the criteria and procedures for the issuance of open-air burning permits or burn bans as provided at Tennessee Code Annotated Section 39-14-306 and shall be known and cited as the "Tennessee Open-Air Burning-Permit Rules."

Authority: T.C.A. §§39-14-306 and 4-3-203.

0080-07-05-.02 Definitions.

- (1) "State Forester" means the director of the Division of Forestry or authorized representative.
- (2) "Open-air fire" means any fire, whether or not confined, burning in the outdoors within 500 feet of any forest, grassland, or woodland. Open-air fire includes but is not limited to woody-debris fires, agricultural and silvicultural fires, and cooking and warming fires. Open-air fire does not include ceremonial fires, fireworks, or cooking-grill fires.
- (3) "Permit" means documentation of permission granted by the State Forester or the State Forester's authorized representative allowing the permittee to conduct an open-air fire.
- (4) "Burning-permit season" is from 8 a.m. local time on October 15 through 11:59 p.m. local time on May 15.
- (5) "Hazardous burning conditions" means that the Division of Forestry's parameters for safe open-air fires have been exceeded.
- (6) "Extreme fire hazard conditions" means that the Division of Forestry's parameters indicate that any open-air fire would create a significant public risk.
- (7) "Burning ban" means a declaration by the Commissioner of the Department of Agriculture forbidding any open-air fire in any area of the state.
- (8) "Seasonal permit" means a single permit that is in effect for an extended period.

Authority: T.C.A. §§39-14-306, 11-4-301 and 4-3-203.

0080-07-05-.03 Burning-Permit General Requirements and Limitations.

- (1) Permits may be issued by any reasonable means, including by telephone, in person or by Internet.
- (2) The permit is valid only for the days and hours specified.
- (3) Permit requests shall be refused any time the State Forester or the State Forester's authorized representative determines that open-air fires are unsafe.
- (4) The permit shall only allow burning of vegetation grown on the site, untreated wood waste, or other materials allowed for open burning by rules of the Tennessee Department of Environment and Conservation.
- (5) Each permit shall include a unique identifying number.
- (6) Each permit should include:
 - (a) Name of permittee.
 - (b) Location of burn.
 - (c) Date and time of burn.
 - (d) Material to be burned.
 - (e) Acres to be burned, if applicable.
 - (f) Identity of the permit issuer.
 - (g) Date and time of issuance.

- (h) Other information required by the Division of Forestry.
- (7) Seasonal permits shall be subject to the same general requirements as nonseasonal permits.
- (8) Seasonal permits may be revoked by the Division of Forestry after notice to the permittee.

Authority: T.C.A. §§39-14-306, 11-4-301, 11-4-405 and 4-3-203.

0080-07-05-.04 Commissioner's Burning Ban.

- (1) The State Forester shall immediately notify the Commissioner of the Department of Agriculture when extreme fire hazard conditions exist in any area of the state.
- (2) Prior to issuing a Commissioner's burning ban, the Commissioner shall consult with the county mayor or county executive of any area that will be subject to the burning ban.
- (3) The Commissioner shall make the final determination to issue the burning ban.

Authority: T.C.A. §39-14-306.

*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 proposed rules, lawfully promulgated and adopted by the Tennessee Department of Agriculture on February 4, 2014 and is in compliance with the provisions of TCA 4-5-222. The Secretary of State is hereby instructed that, in the absence of a petition for proposed rules being filed under the conditions set out herein and in the locations described, he is to treat the proposed rules as being placed on file in his office as rules at the expiration of sixty (60) days of the first day of the month subsequent to the filing of the proposed rule with the Secretary of State.

Date: February 4, 2014

Signature: *Julius T. Johnson*

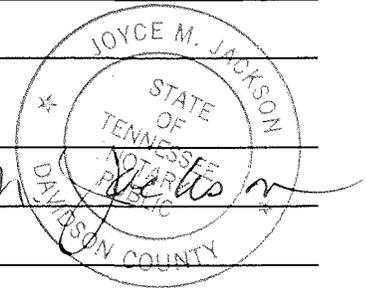
Name of Officer: Julius T. Johnson

Title of Officer: Commissioner

Subscribed and sworn to before me on: February 4, 2014

Notary Public Signature: *Joyce M. Jackson*

My commission expires on: 09/11/2017



All proposed 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

2-18-14

Date

Department of State Use Only

Filed with the Department of State on: 2/20/14

Effective on: 7/29/14



Tre Hargett
Secretary of State

Regulatory Flexibility Addendum

Pursuant to T.C.A. §§ 4-5-401 through 4-5-404, prior to initiating the rule making process as described in T.C.A. § 4-5-202(a)(3) and T.C.A. § 4-5-202(a), all agencies shall conduct a review of whether a proposed rule or rule affects small businesses.

- (1) Type or types of small business subject to the proposed rule that would bear the cost of, and/or directly benefit from the proposed rule:

Sawmills, pallet manufacturers, handle mills, farmers, forest landowners, timberland management companies, consulting foresters and vendors that provide prescribed fire services. The only cost to these businesses would be the time spent obtaining the outdoor burning permit which is free. These businesses would benefit from the rule by having a process provided to them by the state that allows legal and safe outdoor burning.

- (2) Identification and estimate of the number of small businesses subject to the proposed rule:

Approximately 300 small businesses in the wood manufacturing and land management businesses would be affected by the rule.

- (3) Projected reporting, recordkeeping and other administrative costs required for compliance with the proposed rule, including the type of professional skills necessary for preparation of the report or record:

Records of permits issued are currently being kept by the Division of Forestry. The record keeping process uses electronic database systems. No increased costs are anticipated as a result of this rule.

- (4) Statement of the probable effect on impacted small businesses and consumers:

The impact of this rule on small businesses and consumers is negligible. The permits are free and the permit program and process costs are borne by the state. Those who do not comply with the permit law are in violation of T.C.A. § 39-14-306 and potentially face fines and other penalties.

- (5) Description of any less burdensome, less intrusive or less costly alternative methods of achieving the purpose and/or objectives of the proposed rule that may exist, and to what extent, such alternative means might be less burdensome to small business:

There is no alternative to these rules that would alleviate the issues enumerated above. The rules are a balance of the need for public safety through preventing wildfires and the imposition on small businesses. Permits from the state forester for certain described open air fires are required by T.C.A. § 39-14-306.

- (6) Comparison of the proposed rule with any federal or state counterparts:

No federal rules are comparable. Permits of this type are issued by the forestry agencies in the southern states of Alabama, Florida, Georgia, Mississippi, North Carolina and South Carolina. Arkansas, Kentucky, Louisiana, Oklahoma, Texas and Virginia forestry agencies do not issue outdoor burning permits.

- (7) Analysis of the effect of the possible exemption of small businesses from all or any part of the requirements contained in the proposed rule.

The exemption of small businesses from any or all of these requirements would be counter to safe business practices, do little to increase profitability; and, require a statutory change.

Impact on Local Governments

Pursuant to T.C.A. §§ 4-5-220 and 4-5-228 “any rule proposed to be promulgated shall state in a simple declarative sentence, without additional comments on the merits of the policy of the rules or regulation, whether the rule or regulation may have a projected impact on local governments.” (See Public Chapter Number 1070 (<http://state.tn.us/sos/acts/106/pub/pc1070.pdf>) of the 2010 Session of the General Assembly)

If adopted, these rules would have no impact on the expenditures or revenue of local governments.

Additional Information Required by Joint Government Operations Committee

All agencies, upon filing a rule, must also submit the following pursuant to T. C. A. § 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 Open Air Burning Permit Rules provide definitions and establish guidelines for the Tennessee Department of Agriculture, Division of Forestry to issue permits for outdoor burning. There are no previous rules.

- (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;

T.C.A. § 39-14-306 authorizes but does not mandate the Division of Forestry to promulgate rules to effectuate the purposes of the Act. There is no federal requirement for outdoor burning on private lands in Tennessee.

- (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;

The entities most affected by this rule are State of Tennessee, Department of Agriculture, Division of Forestry, Tennessee Department of Environment and Conservation, Division of Air Pollution Control, homeowners, farmers, forest landowners, foresters and vendors that provide prescribed fire services will be the most directly affected by this rule. As burning permits have no cost to the recipient, their only obligation is to call or go online to obtain a permit. The permit recipient is given information on safe outdoor burning. Also, permits are not issued when fire danger is high. These points are overwhelmingly recognized by permit recipients as beneficial. These parties encourage the adoption of these rules. Federal land management agencies in Tennessee comply with the State's burning permit laws and rules by their own volition.

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

There are no attorney general and reporter opinions or judicial rulings directly relating to these proposed 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;

State and local government revenues and expenditures will only be minimally affected as a result of the

promulgation of the proposed rules. The proposed rules do not include fees and the department will incur a cost of less than \$500,000 to administer.

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

John Kirksey, Resource Protection Unit Leader
Tennessee Department of Agriculture, Division of Forestry

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

John Kirksey, Resource Protection Unit Leader and David Arnold, Assistant State Forester
Tennessee Department of Agriculture, Division of Forestry

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

John Kirksey – (615) 837-5425 – john.kirksey@tn.gov
David Arnold – (615) 837-5426 – david.arnold@tn.gov
Tennessee Department of Agriculture
Division of Forestry
440 Hogan Road
Nashville, Tennessee 37220

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

(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>)

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Authority: T.C.A. §§39-14-306 and 4-3-203.

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Authority: T.C.A. §§39-14-306, 11-4-301 and 4-3-203.

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- (4) The permit shall only allow burning of vegetation grown on the site, untreated wood waste, or other materials allowed for open burning by rules of the Tennessee Department of Environment and Conservation.
- (5) Each permit shall include a unique identifying number.
- (6) Each permit should include:
 - (a) Name of permittee.
 - (b) Location of burn.
 - (c) Date and time of burn.
 - (d) Material to be burned.
 - (e) Acres to be burned, if applicable.
 - (f) Identity of the permit issuer.
 - (g) Date and time of issuance.

- (h) Other information required by the Division of Forestry.
- (7) Seasonal permits shall be subject to the same general requirements as nonseasonal permits.
- (8) Seasonal permits may be revoked by the Division of Forestry after notice to the permittee.

Authority: T.C.A. §§39-14-306, 11-4-301, 11-4-405 and 4-3-203.

0080-07-05-.04 Commissioner's Burning Ban.

- (1) The State Forester shall immediately notify the Commissioner of the Department of Agriculture when extreme fire hazard conditions exist in any area of the state.
- (2) Prior to issuing a Commissioner's burning ban, the Commissioner shall consult with the county mayor or county executive of any area that will be subject to the burning ban.
- (3) The Commissioner shall make the final determination to issue the burning ban.

Authority: T.C.A. §39-14-306.

*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 proposed rules, lawfully promulgated and adopted by the Tennessee Department of Agriculture on February 4, 2014 and is in compliance with the provisions of TCA 4-5-222. The Secretary of State is hereby instructed that, in the absence of a petition for proposed rules being filed under the conditions set out herein and in the locations described, he is to treat the proposed rules as being placed on file in his office as rules at the expiration of sixty (60) days of the first day of the month subsequent to the filing of the proposed rule with the Secretary of State.

Date: February 4, 2014

Signature: _____

Name of Officer: Julius T. Johnson

Title of Officer: Commissioner

Subscribed and sworn to before me on: February 4, 2014

Notary Public Signature: _____

My commission expires on: 09/11/2017



All proposed 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

2-18-14

Date

Department of State Use Only

Filed with the Department of State on: _____

Effective on: _____

Tre Hargett
Secretary of State

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- (1) Type or types of small business subject to the proposed rule that would bear the cost of, and/or directly benefit from the proposed rule:

Sawmills, pallet manufacturers, handle mills, farmers, forest landowners, timberland management companies, consulting foresters and vendors that provide prescribed fire services. The only cost to these businesses would be the time spent obtaining the outdoor burning permit which is free. These businesses would benefit from the rule by having a process provided to them by the state that allows legal and safe outdoor burning.

- (2) Identification and estimate of the number of small businesses subject to the proposed rule:

Approximately 300 small businesses in the wood manufacturing and land management businesses would be affected by the rule.

- (3) Projected reporting, recordkeeping and other administrative costs required for compliance with the proposed rule, including the type of professional skills necessary for preparation of the report or record:

Records of permits issued are currently being kept by the Division of Forestry. The record keeping process uses electronic database systems. No increased costs are anticipated as a result of this rule.

- (4) Statement of the probable effect on impacted small businesses and consumers:

The impact of this rule on small businesses and consumers is negligible. The permits are free and the permit program and process costs are borne by the state. Those who do not comply with the permit law are in violation of T.C.A. § 39-14-306 and potentially face fines and other penalties.

- (5) Description of any less burdensome, less intrusive or less costly alternative methods of achieving the purpose and/or objectives of the proposed rule that may exist, and to what extent, such alternative means might be less burdensome to small business:

There is no alternative to these rules that would alleviate the issues enumerated above. The rules are a balance of the need for public safety through preventing wildfires and the imposition on small businesses. Permits from the state forester for certain described open air fires are required by T.C.A. § 39-14-306.

- (6) Comparison of the proposed rule with any federal or state counterparts:

No federal rules are comparable. Permits of this type are issued by the forestry agencies in the southern states of Alabama, Florida, Georgia, Mississippi, North Carolina and South Carolina. Arkansas, Kentucky, Louisiana, Oklahoma, Texas and Virginia forestry agencies do not issue outdoor burning permits.

- (7) Analysis of the effect of the possible exemption of small businesses from all or any part of the requirements contained in the proposed rule.

The exemption of small businesses from any or all of these requirements would be counter to safe business practices, do little to increase profitability; and, require a statutory change.

Impact on Local Governments

Pursuant to T.C.A. §§ 4-5-220 and 4-5-228 "any rule proposed to be promulgated shall state in a simple declarative sentence, without additional comments on the merits of the policy of the rules or regulation, whether the rule or regulation may have a projected impact on local governments." (See Public Chapter Number 1070 (<http://state.tn.us/sos/acts/106/pub/pc1070.pdf>) of the 2010 Session of the General Assembly)

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The Open Air Burning Permit Rules provide definitions and establish guidelines for the Tennessee Department of Agriculture, Division of Forestry to issue permits for outdoor burning. There are no previous rules.

- (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;

T.C.A. § 39-14-306 authorizes but does not mandate the Division of Forestry to promulgate rules to effectuate the purposes of the Act. There is no federal requirement for outdoor burning on private lands in Tennessee.

- (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;

The entities most affected by this rule are State of Tennessee, Department of Agriculture, Division of Forestry, Tennessee Department of Environment and Conservation, Division of Air Pollution Control, homeowners, farmers, forest landowners, foresters and vendors that provide prescribed fire services will be the most directly affected by this rule. As burning permits have no cost to the recipient, their only obligation is to call or go online to obtain a permit. The permit recipient is given information on safe outdoor burning. Also, permits are not issued when fire danger is high. These points are overwhelmingly recognized by permit recipients as beneficial. These parties encourage the adoption of these rules. Federal land management agencies in Tennessee comply with the State's burning permit laws and rules by their own volition.

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

There are no attorney general and reporter opinions or judicial rulings directly relating to these proposed 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;

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

John Kirksey, Resource Protection Unit Leader
Tennessee Department of Agriculture, Division of Forestry

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

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Tennessee Department of Agriculture
Division of Forestry
440 Hogan Road
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- (I) Any additional information relevant to the rule proposed for continuation that the committee requests.

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