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Sequence Number: 05-03-13
Rule ID(s): 5478
File Date: 5/3/13
Effective Date: 10/29/13

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
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Revision Type (check all that apply):

___ Amendment
X 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**
0080-07-06	Rules Governing Prescribed Burning
Rule Number	**Rule Title**
0080-07-06-.01	Purpose
0080-07-06-.02	Definitions
0080-07-06-.03	Prescribed Burn Manager Certification Program
0080-07-06-.04	Certification
0080-07-06-.05	Conditional Certification
0080-07-06-.06	Continuing Education
0080-07-06-.07	Prescribed Burn Prescription Plan
0080-07-06-.08	Conducting the Prescribed Burn
0080-07-06-.09	Publishing and Maintaining the Certified Prescribed Burn Manager List
0080-07-06-.10	Reciprocity

CHAPTER 0080-07-06

RULES GOVERNING PRESCRIBED BURNING

0080-07-06-.01 Purpose.

These rules are promulgated to effectuate the purposes of the "Tennessee Prescribed Burning Act" T.C.A. §§ 11-4-1001 et seq.

Authority: T.C.A. §§ 4-3-201 et seq. and 11-4-1003(d).

0080-07-06-.02 Definitions.

(1) "Commissioner" means the Commissioner of the Department of Agriculture.

(2) "Department" means the Department of Agriculture.

(3) "Division" means the Division of Forestry within the Department.

(4) "Prescribed Burning" means the controlled application of fire to vegetative fuels under environmental conditions specified in the Prescribed Burn Prescription Plan and following appropriate precautions which cause the fire to be confined to a predetermined area and accomplishes the objectives enumerated in the Prescribed Burn Prescription Plan.

(5) "Prescribed Burn Certification Program" means a training course approved by the Division of Forestry to develop competence in prescribed burning.

(6) "Certified Prescribed Burn Manager" means an individual who possesses valid Prescribed Burn Manager certification under this chapter.

(7) "Prescribed Burn Prescription Plan" means a written plan, approved by a Certified Prescribed Burn Manager, for starting and controlling a prescribed burn to accomplish specified objectives.

Authority: T.C.A. §§ 4-3-201 et seq. and 11-4-1003(d).

0080-07-06-.03 Prescribed Burn Manager Certification Program.

(1) Training will be no less than twenty (20) hours and will include knowledge and skill evaluations; pertinent laws and regulations; and, all aspects of planning and safely implementing a prescribed burn plan.

(2) Electronic or computer based training is permitted but shall not constitute the entire curriculum.

(3) Written tests must be passed with a grade of 70% or higher.

(4) Skills tests must be approved as "passed" by the evaluator.

Authority: T.C.A. §§ 4-3-201 et seq. and 11-4-1003(d).

0080-07-06-.04 Certification.

(1) The Division shall issue Prescribed Burn Manager certification to an applicant who has successfully completed Division approved training.

(2) Division certification shall include a unique certification number.

(3) Certification is valid for thirty-six (36) months from the date of issuance, renewal or reinstatement.

Authority: T.C.A. §§ 4-3-201 et seq. and 11-4-1003(d).

0080-07-06-.05 Conditional Certification.

Instructors or graduates of the Division's Prescribed Fire Training courses offered from 2006 to 2011 shall be issued Prescribed Burn Manager certification upon written request to the Division.

Authority: T.C.A. §§ 4-3-201 et seq. and 11-4-1003(d).

0080-07-06-.06 Continuing Education.

(1) A Certified Prescribed Burn Manager shall maintain certification by receiving three (3) hours of continuing education provided or approved by the Division prior to the expiration of certification.

(2) Continuing education completed within six (6) months of expiration will act to reinstate expired certification.

Authority: T.C.A. §§ 4-3-201 et seq. and 11-4-1003(d).

0080-07-06-.07 Prescribed Burn Prescription Plan.

(1) The Prescribed Burn Prescription Plan shall be submitted on forms provided or approved by the Commissioner and shall include, at a minimum, the information required by the Commissioner and must be signed by the Certified Prescribed Burn Manager.

(a) The Prescribed Burn Prescription Plan shall be kept on file for three (3) years following the date of the burn by the Certified Prescribed Burn Manager.

(b) The Certified Prescribed Burn Manager shall assure that burn operations are conducted according to the Plan.

Authority: T.C.A. §§ 4-3-201 et seq. and 11-4-1003(d).

0080-07-06-.08 Conducting the Prescribed Burn.

(1) The Certified Prescribed Burn Manager is responsible for assuring applicable local, state and federal regulations are met.

(2) The Certified Prescribed Burn Manager supervising the burn shall personally direct, observe and coordinate the lighting of the initial fire to begin the burn operation.

(3) At least one Certified Prescribed Burn Manager shall be present and supervising the burn operation at all times.

(4) The Certified Prescribed Burn Manager shall have a copy of the Certified Prescribed Burn Prescription Plan with him or her on site at all times during burn operations.

(5) The Certified Prescribed Burn Manager shall assure that burn operations are conducted according to the Plan.

Authority: T.C.A. §§ 4-3-201 et seq. and 11-4-1003(d).

0080-07-06-.09 Publishing and Maintaining the Certified Prescribed Burn Manager List.

(1) The Division will maintain the current Certified Prescribed Burn Manager list on the Department's website, with paper or electronic copies available upon request.

Authority: T.C.A. §§ 4-3-201 et seq. and 11-4-1003(d).

0080-07-06-.10 Reciprocity.

(1) Prescribed burn manager certification from other states shall not be recognized.

(2) Other prescribed burn certification may not be substituted for the Tennessee Prescribed Burn Manager certification.

Authority: T.C.A. §§ 4-3-201 et seq. and 11-4-1003(d).

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 03/05/2013 (*date as mm/dd/yyyy*), and is in compliance with the provisions of T.C.A. § 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: March 5, 2013

Signature: Julius T. Johnson

Name of Officer: Julius T Johnson

Title of Officer: Commissioner

Subscribed and sworn to before me on: March 5, 2013

Notary Public Signature: Joyce M. Jackson

My commission expires on: 09/08/2013

JOYCE M. JACKSON STATE OF TENNESSEE NOTARY PUBLIC JOHNSON COUNTY

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.

R E Cooper Jr.

Robert E. Cooper, Jr.
Attorney General and Reporter

4-29-13
Date

Department of State Use Only

Filed with the Department of State on: 5/3/13

Effective on: 10/29/13

Tre Hargett by Mark Catt, RDA

Tre Hargett
Secretary of State

RECEIVED 2013 MAY 3 AM 4:04 DEPARTMENT OF STATE 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:

Consulting foresters, vendors that provide prescribed fire services, farmers, forest landowners, timberland management companies and non-government organizations will be the most to bear the cost and/or realize the benefits of complying with these rules.

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

The rules are voluntary, therefore only those small businesses that would benefit from the rules are expected to comply. It is estimated that fifteen (15) consulting foresters and vendors, one hundred (100) farmers, one hundred (100) forest landowners, ten (10) timberland management companies and five (5) non-government organizations may comply.

(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 those who successfully complete the training and are certified burn managers will be kept by the division of forestry. The record keeping process will be done using electronic spreadsheets and database systems that are currently being used to record and track similar types of information.

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

The certified burn manager rules will encourage more small businesses to become practitioners in the use of prescribed fire in Tennessee. The rules will promote safer and wider use of prescribed burning.

(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 are no less burdensome, less intrusive or less costly alternative methods of achieving the purpose and/or objectives of the proposed rules.

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

There are no counterparts in federal law or in Tennessee state law; however, there are similar statutes in other states, including Alabama, Florida, Georgia, Louisiana, Mississippi, South Carolina and Texas.

(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 profitability and safe business practices.

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 will not have any 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;

These new rules are being promulgated for the purpose of implementing the "Tennessee Prescribed Burning Act" T. C. A. §§ 11-4-1001 et seq. which authorizes the division of forestry of the Tennessee department of agriculture to establish a certification program for certified prescribed burn managers who may manage and conduct a "prescribed burn" which is the controlled application of fire to naturally occurring vegetative fuels for ecological, silvicultural and wildlife management purposes under specified environmental conditions and the following of appropriate precautionary measures which cause the fire to be confined to a predetermined area and accomplishes planned land management objectives. A person conducting a prescribed burn in compliance with the Act shall only be liable for damages in the event of negligence.

(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;

There is no federal certified prescribed burn manager program. T. C. A. § 11-4-1003(d) authorizes but does not mandate the division of forestry to promulgate rules to effectuate the purposes of the Act.

(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 Prescribed Fire Council; University of Tennessee Extension Service; Tennessee Forestry Association; Tennessee Association of Consulting Foresters; Wild Turkey Federation; Quail Unlimited. These endorse the proposed rules.

(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 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 very minimal costs 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, john.kirksey@tn.gov, 615-837-5425; David Arnold, david.arnold@tn.gov, 615-837-5426, 440 Hogan Road, Nashville, TN 37220

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