

**Department of State
Division of Publications**

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For Department of State Use Only

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Proposed Rule(s) Filing Form

Proposed rules are submitted pursuant to T.C.A. §4-5-205 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 thirty (30) days of the publication date of the issue of the Tennessee Administrative Register in which the proposed rules are published. 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.

Agency/Board/Commission: Department of Agriculture
Division: Division of Regulatory Services
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Revision Type (check all that apply):

- Amendments
- New
- Repeal

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
0080-04-08	Antifreeze Regulations
Rule Number	Rule Title
0080-04-08-.01	Definitions
0080-04-08-.07	Hazardous and Banned Hazardous Substance
0080-04-08-.08	Exemption for Sale of Motor Vehicle

Chapter 0080-04-08
Antifreeze Regulations

Amendments

Rule 0080-04-08-.01 Definitions is amended by deleting the rule in its entirety and substituting instead the following language so that, as amended, the rule shall read:

- (1) "Advertisement" means all representations disseminated in any manner or by any means, other than by labeling, for the purpose of inducing, or which are likely to induce, directly or indirectly, the purchase of antifreeze products.
- (2) "Antifreeze" or "Coolant" means any substance or preparation sold, distributed or intended for use as a cooling liquid or to be added to the cooling liquid in the cooling system of internal combustion engines of motor vehicles to prevent freezing of the cooling liquid, or to lower its freezing point.

- (3) "Banned Hazardous Substance" means any substance as defined in Tennessee Code Annotated § 68-131-102(2)(A).
- (4) "Distribute" means to hold with intent to sell, offer for sale, to sell, barter or otherwise supply to the consumer.
- (5) "Hazardous Substance" means any substance as defined in Tennessee Code Annotated § 68-131-102(10)(A).
- (6) "Home Consumer-Sized Package" as used in 0080-04-08-.04(7) shall refer to packages of one fluid U.S. gallon or less.
- (7) "Labeling" means the labels and any other written, printed or graphic matter accompanying a package.
- (8) "Package" means a sealed tamper-proof retail package, drum, or other container designed for the sale of antifreeze directly to the consumer, or a container from which the antifreeze may be poured directly by the seller into the cooling system, but does not include shipping containers containing properly labeled inner containers.
- (9) "Person" means individuals, partnerships, corporations, companies and associations.

Authority: T.C.A. §§ 68-131-109.

Chapter 0080-04-08
Antifreeze Regulations

New Rules

Table of Contents

- 0080-04-08-.07 Hazardous and Banned Hazardous Substance
- 0080-04-08-.08 Exemption for Sale of Motor Vehicle

0080-04-08-.07 Hazardous and Banned Hazardous Substance - Antifreeze or engine coolant containing at least ten percent (10%) ethylene glycol that is manufactured on or after January 1, 2010, but does not contain denatonium benzoate in a concentration ranging from thirty parts per million (30 p.p.m.) to fifty parts per million (50 p.p.m.), has been deemed by the commissioner to be a hazardous substance and a banned hazardous substance.

Authority: T.C.A. §§ 68-131-103, 68-131-109 and 68-131-113.

0080-04-08-.08 Exemption for Sale of Motor Vehicle - The requirements of this chapter shall not be construed to apply to the sale of a motor vehicle that contains engine coolant or antifreeze.

Authority: T.C.A. §§ 68-131-103, 68-131-109 and 68-131-113.

*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 04/03/2009, 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 thirty (30) days after the publication date of the issue of the Tennessee Administrative Register in which these proposed rules are published.

Date: 04/03/2009

Signature: 10 - Givens

Name of Officer: Ken Givens

Title of Officer: Commissioner, Department of Agriculture



Subscribed and sworn to before me on: 04/03/2009

Notary Public Signature: Joyce M Jackson

My commission expires on: 09/19/2009

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.

RE Cooper, Jr.
Robert E. Cooper, Jr.
Attorney General and Reporter

7-2-09
Date

Department of State Use Only

Filed with the Department of State on: 7/24/09

Effective on: 12/29/09

Tre Hargett by [Signature]
Tre Hargett
Secretary of State

Regulatory Flexibility Addendum

Pursuant to Public Chapter 464 of the 105th General Assembly, prior to initiating the rule making process as described in § 4-5-202(a)(3) and § 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:

The proposed amendments would affect manufacturers of engine coolant or antifreeze and any wholesalers and retailers that persist in supplying or selling engine coolant or antifreeze that does not comply with amended T.C.A. § 68-131-113 beyond January 1, 2010.

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

The number of manufacturers, wholesalers and retailers of antifreeze in the state is unknown, as is the number of manufacturers, wholesalers and retailers of antifreeze in the state that would qualify as small businesses under the Act.

- (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:

Compliance with the proposed amendments would not impose any additional reporting, recordkeeping or other administrative costs.

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

The probable effect on impacted manufacturers of engine coolant or antifreeze, if there are any in the state, would be minimal in terms of the overall cost of each product unit. This is especially true in light of the fact that a number of states already require that a bittering agent be added to antifreeze, with the result that many manufacturers are already set up to do it.

- (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 purposes and/or objectives of the proposed amendments.

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

The Antifreeze Bittering Act of 2009, which would amend the Federal Hazardous Substances Act to require engine coolant and antifreeze to contain a bittering agent, was referred to the House Committee on Energy and Commerce January 21, 2009. At least five states besides Tennessee have enacted legislation similar to Public Chapter No. 1111.

- (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 objectives of the proposed amendments could not be achieved if small businesses were exempted.

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 proposed amendments would provide that antifreeze or engine coolant containing at least ten percent (10%) ethylene glycol that is manufactured on or after January 1, 2010 and does not contain denatonium benzoate in the required concentration is a hazardous substance and a banned hazardous substance under the Tennessee Hazardous Substances Act, Tenn. Code Ann. 68-131-101 et seq.. The proposed amendments effectively limit the bittering agent that may be used under Tenn. Code Ann. § 68-131-113(a) to denatonium benzoate.

- (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 or state law or regulation that mandates the promulgation of the proposed amendments. Tennessee Code Annotated § 68-131-109(a) authorizes the commissioner to promulgate these amendments and Tenn. Code Ann. § 68-131-113 establishes guidelines for them.

- (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 proposed amendments would most directly affect manufacturers, distributors and sellers of engine coolant containing at least 10% ethylene glycol. These groups have neither supported nor opposed the proposed amendments.

- (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 opinions or judicial rulings that directly relate to the proposed amendments.

- (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;

The probable increase or decrease in state and local government revenues and expenditures would be minimal.

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

Buddy Woodson, Food and Dairy Administrator, Tennessee Department of Agriculture

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

Buddy Woodson, Food and Dairy Administrator, Tennessee Department of Agriculture

- (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

Buddy Woodson, Food and Dairy Administrator
Tennessee Department of Agriculture
400 Hogan Road
Nashville, Tennessee 37214
Phone: (615) 837-5177

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

The Department has not received a request for additional information.