

**Department of State
Division of Publications**

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Sequence Number: 07-03-20
Rule ID(s): 9372
File Date: 7/6/2020
Effective Date: 10/4/2020

Rulemaking Hearing Rule(s) Filing Form

Rulemaking Hearing Rules are rules filed after and as a result of a rulemaking hearing (Tenn. Code Ann. § 4-5-205).

Pursuant to Tenn. Code Ann. § 4-5-229, any new fee or fee increase promulgated by state agency rule shall take effect on July 1, following the expiration of the ninety (90) day period as provided in § 4-5-207. This section shall not apply to rules that implement new fees or fee increases that are promulgated as emergency rules pursuant to § 4-5-208(a) and to subsequent rules that make permanent such emergency rules, as amended during the rulemaking process. In addition, this section shall not apply to state agencies that did not, during the preceding two (2) fiscal years, collect fees in an amount sufficient to pay the cost of operating the board, commission or entity in accordance with § 4-29-121(b).

Agency/Board/Commission:	Environment and Conservation
Division:	Solid Waste Management
Contact Person:	Adrienne White
Address:	William R. Snodgrass TN Tower 312 Rosa L. Parks Avenue, 14th Floor Nashville, Tennessee
Zip:	37243
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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 here. If needed, copy and paste additional tables to accommodate multiple chapters. Please make sure that **ALL** new rule and repealed rule numbers are listed in the chart below. Please enter only **ONE** Rule Number/Rule Title per row)

Chapter Number	Chapter Title
1200-01-18	Lead-Based Paint Abatement
Rule Number	Rule Title
1200-01-18-.01	Lead-Based Paint Abatement

Place substance of rules and other info here. Please be sure to include a detailed explanation of the changes being made to the listed rule(s). Statutory authority must be given for each rule change. For information on formatting rules go to <https://sos.tn.gov/products/division-publications/rulemaking-guidelines>.

Chapter 1200-01-18
Lead-Based Paint Abatement

Amendments

Paragraph (4) of Rule 1200-01-18-.01 Lead-Based Paint Abatement is amended by deleting the current definition "Start date" in its entirety and substituting instead the following definition "Start date" in alphabetical order:

"Start date" means the first day of any lead-based paint activities training course or lead-based paint activity.

Authority: T.C.A. §§ 11-1-101, 68-131-401 et seq. and 4-5-201 et seq.

Paragraph (4) of Rule 1200-01-18-.01 Lead-Based Paint Abatement is amended by adding the following new definitions in alphabetical order to read as follows:

"Business day" means Monday through Friday with the exception of federal and state holidays.

"Lead-based paint activities" means, in the case of target housing and child-occupied facilities, inspection, risk assessment, lead hazard screen, clearance testing, lead-based paint abatement, and lead hazard reduction as defined in this rule.

"Start date provided to the Division" means the start date included in the original notification or the most recent start date provided to the Division in an updated notification.

Authority: T.C.A. §§ 11-1-101, 68-131-401 et seq. and 4-5-201 et seq.

Part 4 of subparagraph (e) of paragraph (8) of Rule 1200-01-18-.01 Lead-Based Paint Abatement is amended by deleting it in its entirety and substituting instead the following:

4. Notification: A certified firm must notify the Division of lead-based paint activities as follows:
 - (i) Except as provided in subpart (ii) of this part, the Division must be notified prior to conducting lead-based paint activities. The original notification must be received by the Division at least five business days before the start date of any lead-based paint activities.
 - (ii) Notification for lead-based paint activities required in response to an elevated blood lead level (EBL) determination, or federal, State, Tribal, or local emergency abatement order, should be received by the Division as early as possible before, but must be received no later than, the start date of the lead-based paint activities. Should the start date or location provided to the Division change, an updated notification must be received by the Division on or before the start date provided to the Division. Documentation showing evidence of an EBL determination or a copy of the federal/State/Tribal/local emergency abatement order must be included in the written notification to take advantage of this abbreviated notification period.
 - (iii) Except as provided in subpart (ii) of this part, updated notification must be provided to the Division for lead-based paint activities that will begin on a date other than the start date specified in the original notification as follows:
 - (I) For lead-based paint activities beginning prior to the start date provided to the Division, an updated notification must be received by the Division

at least five business days before the new start date included in the notification.

- (II) For lead-based paint activities beginning after the start date provided to the Division, an updated notification must be received by the Division on or before the start date provided to the Division.
- (iv) Except as provided in subpart (ii) of this part, updated notification must be provided to the Division for any change in location of lead-based paint activities at least five business days prior to the start date provided to the Division.
- (v) Updated notification must be provided to the Division when lead-based paint activities are canceled, or when there are other significant changes including, but not limited to, when the square footage or acreage to be abated changes by more than 20%. This updated notification must be received by the Division on or before the start date provided to the Division, or if work has already begun, within 24 hours of the change.
- (vi) The following must be included in each notification:
 - (I) Notification type (original, updated, cancellation).
 - (II) Date when lead-based paint activities will start.
 - (III) Date when lead-based paint activities will end (approximation using best professional judgment).
 - (IV) Firm's name, Division certification number, address, and telephone number.
 - (V) Type of building (e.g., single family dwelling, multi-family dwelling, child-occupied facilities) on/in which abatement work will be performed.
 - (VI) Property name (if applicable).
 - (VII) Property address including apartment or unit number(s) (if applicable) for abatement work.
 - (VIII) If using the abbreviated time period as described in subpart (ii) of this part, documentation showing evidence of an EBL determination or a copy of the federal/State/Tribal/local emergency abatement order.
 - (IX) Name and Division certification number of the project supervisor.
 - (X) Approximate square footage or acreage to be abated.
 - (XI) Brief description of abatement, risk assessment, inspection, lead hazard screen, lead hazard reduction, and clearance activities to be performed.
 - (XII) Name, title, and signature of the representative of the certified firm who prepared the notification.
- (vii) Notification must be made by written notification or electronically by such means approved by the Commissioner. Written notification can be accomplished using the Division form titled "Lead-Based Paint Activity Notification", or a successor to that form approved by the Division. All written notification must be delivered by U.S. Postal Service, fax, commercial delivery service, or hand delivery (persons submitting notification by U.S. Postal Service are reminded that they should allow three additional business days for delivery in order to ensure that the Division receives the notification by the required date).

- (viii) In the event of changes to the original notification, lead-based paint activities shall not begin on a date or at location other than that specified in either an original or updated notification.
- (ix) No firm or individual shall engage in lead-based paint activities prior to notifying the Division of such activities according to the requirements of this part.

Authority: T.C.A. §§ 11-1-101, 68-131-401 et seq. and 4-5-201 et seq.

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the Commissioner on 02/04/2020, and is in compliance with the provisions of T.C.A. § 4-5-222.

I further certify the following:

Notice of Rulemaking Hearing filed with the Department of State on: 10/24/19

Rulemaking Hearing(s) Conducted on: (add more dates) 12/18/19



Date: February 4, 2020

Signature: [Handwritten Signature]

Name of Officer: David W. Salyers, P.E.

Title of Officer: Commissioner

Subscribed and sworn to before me on: February 4, 2020

Notary Public Signature: Carol L. Grice

My commission expires on: January 8, 2024

Agency/Board/Commission: Commissioner of the Department of Environment and Conservation

Rule Chapter Number(s): 1200-01-18

All rulemaking hearing 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.

[Handwritten Signature]
Herbert H. Slatery III
Attorney General and Reporter
7/2/2020
Date

Department of State Use Only

Filed with the Department of State on: 7/6/2020

Effective on: 10/4/2020

[Handwritten Signature]
Tre Hargett
Secretary of State

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SECRETARY OF STATE
PUBLICATIONS

Public Hearing Comments

One copy of a document that satisfies T.C.A. § 4-5-222 must accompany the filing.

- Comment: Multiple commenters requested clarification regarding the definition of "start date." One commenter requested that the definition be amended to mean "the first day of any lead-based paint activity or lead-based paint activities training course." Another stated that, by including training courses in the definition, training providers would be required to provide the notifications required of lead-based paint activities, and that requiring such notifications regarding training would be an undue cost. Another stated that it appeared that "start date" should only apply to lead-based paint activities.
- Response: "Start Date" in the Tennessee amended rule has the same definition outlined in 40 CFR 745.223 of the EPA federal program. The Tennessee program must conform to the federal program requirements pursuant to Tennessee Code Annotated Section 68-131-402. The Department understands that these amendments are required for Tennessee to maintain EPA authorization of the Lead-Based Paint Abatement Program.
- Further, as used in Rule 1200-01-18-.01(8)(e)4, "start date" only applies to lead-based paint activities, as defined, which do not include training courses. Training courses have their own notification requirements that are largely set out in Rule 1200-01-18-.01(6)(c)9 and are not impacted by these changes.
- Comment: A commenter requested that the word "five" be replaced with the numeral "5" in proposed Rule 1200-01-18-.01(8)(e)4(i).
- Response: The Department disagrees. The word "five" is used in lieu of the numeral "5" to coincide with the writing standards adopted to ensure consistent written communication.
- Comment: A commenter requested that the following changes be made to Rule 1200-01-18-.01(8)(e)4(ii):
- (1) Remove the comma after "local emergency abatement order" or divide into multiple sentences.
 - (2) In the second sentence, replace "and/or" with "or".
 - (3) Change all references from "on or before the start date" to "before or on the start date" or "before or by the start date".
- Response: As to (1) and (3), the Department disagrees. The amended Rule conforms to the federal program, which is required for Tennessee to maintain EPA authorization of the Lead-Based Paint Abatement Program. However, as to (2), the Department agrees that using "or" provides greater clarity with no potential loss of compliance and, as such, this change has been made.
- Comment: A commenter requested that, for proposed Rule 1200-01-18-01(8)(e)4(iii)(II) to change the language from "on or before the start date" to "before or on the start date" or "before or by the start date".
- Response: The Department disagrees. The amended Rule conforms to the federal program, which is required for Tennessee to maintain EPA authorization of the Lead-Based Paint Abatement Program.
- Comment: A commenter requested that, for proposed Rule 1200-01-18-01(8)(e)4(iii)(I) and (II) that a comma be added after the dependent clause "For lead-based paint abatement activities beginning after the start date provided to the Division".
- Response: The Department agrees and has added commas in both instances.
- Comment: A commenter requested that the language "No firm or individual shall engage in lead-based paint abatement activities" in Rule 1200-01-18-01(8)(e)4(ix) be changed to refer to "lead-based paint activities".

- Response: The Department agrees. The amended Rule 1200-01-18-01(8)(e)4(ix) details the work-practice standards for conducting "lead-based paint abatement". The amended Rule will be changed to clarify that notification is required prior to initiating any "lead-based paint activity".
- Comment: A commenter asked to clarify if the notification requirement of this rule was meant to apply to all lead-based paint activities or only abatement activities.
- Response: The amended Rule 1200-01-18-01(8)(e)4(ix) will be changed to clarify that notification is required prior to initiating any "lead-based paint activity" as defined in paragraph (4) of Rule 1200-01-18-.01, which says: "Lead-based paint activities" means inspection, risk assessment, lead hazard screen, clearance testing, lead-based paint abatement, and lead hazard reduction as defined in this rule.
- Comment: Multiple commenters requested that the rule be amended to require all persons to notify of lead-based paint activities, not just certified firms or requested clarity regarding that provision.
- Response: Prospective Rule 1200-01-18-.01(8)(e)4(ix) requires notification from all firms and individuals irrespective of certification and so no further update to the language of prospective Rule 1200-01-18-.01(8)(e)4 is needed.
- Comment: A commenter requested that emergency abatements be required to be provided to the Division at least 24 hours in advance.
- Response: The Department disagrees and believes the amended notification requirements for an emergency abatement order associated with an elevated blood lead level (EBLL) case are consistent with the federal program requirements. Notification of an emergency abatement order must be received by the start date. This supports the State's diligence to allow for the quick identification and mitigation of lead-based paint hazards that are the source of EBLLs and childhood lead poisoning.
- Comment: A commenter stated that using the wording of the federal requirements would have been easier to understand.
- Response: The wording of the amended rule is equivalent to the federal requirements. The notice requirements were clarified to include lead hazard screen, clearance testing, and lead hazard reduction as lead-based paint activities.
- Comment: A commenter asked that the use of the term "lead-based paint activities training course" be updated to refer to "lead-based paint training course(s)."
- Response: Individuals are required to complete approved training courses to become certified to engage in lead-based paint activities. The State's use of the term "lead-based paint activities training course" is consistent with the federal program.
- Comment: A commenter stated that using the terminology "updated notification" instead of "Notification Revision # ___" would require staff to update their forms unnecessarily.
- Response: The Department disagrees. Using the terminology "updated notification" does not require the Department to make any changes in the form.
- Comment: Two commenters asked if training courses should be included in the definition of "lead-based paint activities."
- Response: Training courses are a separate category and the notification requirements are covered under Rule 1200-01-18-.01(6)(c) Requirements for the accreditation of training programs.
- Comment: A commenter stated that the definition of "Start Date Provided to the Division" is confusing and that allowing those performing lead-based paint activities to provide the most recent start date would create enforcement problems.

Response: The Department disagrees. The use of the term "Start Date Provided to the Division" is consistent with the federal program.

Comment: A commenter asked when the term acreage began to be used in the rules.

Response: The term "acreage" was first used in the federal proposed notification rule that was published in the Federal Register / Vol. 66, No. 14 / Monday, January 22, 2001. The federal regulatory notification requirements were finalized in the Federal Register (Vol. 69, No. 68) Thursday, April 8, 2004.

Comment: A commenter asked that proposed language for Rule 1200-01-18-.01(8)(e)4(vii) be clarified regarding whether or not electronic notification is acceptable.

Response: Rule 1200-01-18-.01(8)(e)4(vii) allows for the use of electronic notification that is approved by the Commissioner. Means for electronic notification approved by the Commissioner will be detailed on the State's webpage.

Comment: A commenter asked that the term "firm" in the proposed language for Rule 1200-01-18-.01(8)(e)4(ix) be updated to "certified firm" for consistency.

Response: The Department disagrees. Prospective Rule 1200-01-18-.01(8)(e)4(ix) applies to all firms and individuals, not just certified firms.

Comment: A commenter asked regarding the definition of the term "lead-based paint activities" but repeated usage in the proposed notification rules regarding "lead-based paint abatement activities." This commenter also asked if the terms as defined in Rule 1200-01-18-.01 had equal application in Rules 1200-01-18-.05 and .06.

Response: The terms "lead-based paint activities" and "lead-based paint abatement activities" are often used interchangeably. The Department agrees and the distinction between these terms will be clarified. The terms defined in Rule 1200-01-18-.01 apply equally throughout Chapter 1200-01-18.

Comment: Multiple commenters requested an online portal or method of submitting forms to the Division.

Response: The Department agrees and will take this under advisement. However, this task is outside the scope of this rulemaking process.

Regulatory Flexibility Addendum

Pursuant to T.C.A. §§ 4-5-401 through 4-5-404, prior to initiating the rule making process, all agencies shall conduct a review of whether a proposed rule or rule affects small business.

- (1) The type or types of small business and an identification and estimate of the number of small businesses subject to the proposed rule that would bear the cost of, or directly benefit from the proposed rule.

Tennessee has 131 small business firms that conduct lead-based paint activities. The cost for complying with the amended Rule would be rolled up into the project costs that these firms charge. The Division estimates that more than 90% of all the project costs, for which notification will be required, are funded by HUD grants that specifically target the reduction of residential lead-based paint hazards in pre-1978 units. There are four HUD lead hazard reduction grantees in Tennessee who together estimate completing 400 units per year. This rule will positively affect more than 800 children less than six-years old that live in pre-1978 housing by removing lead-based paint hazards that cause childhood lead poisoning.

- (2) The 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.

The Tennessee firms that must comply with the rule amendments currently comply with state regulatory record-keeping associated with lead-based paint activities. Their current infrastructure is sufficient to comply with this amendment without increased administrative costs.

- (3) A statement of the probable effect on impacted small businesses and consumers.

This rule amendment reduces the amount of notice that small businesses must provide to the State before they conduct regulated lead-based paint activities. The reduced time is an advantage to small businesses and allows them to better serve their consumers.

- (4) A description of any less burdensome, less intrusive or less costly alternative methods of achieving the purpose and objectives of the proposed rule that may exist, and to what extent the alternative means might be less burdensome to small business.

There are no less burdensome, less costly or less intrusive alternative methods at this time. This rule amendment will make the current requirements less burdensome to small businesses.

- (5) A comparison of the proposed rule with any federal or state counterparts.

The wording of the amended rule is equivalent to the federal requirements with the exception of words and phrases that denote State authority and jurisdiction or clerical changes that increase clarity without changing the meaning or scope of the underlying federal rules. The amended rule conforms to the federal program, which is required for Tennessee to maintain EPA authorization of the Lead-Based Paint Abatement Program.

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

Small business entities are the primary group that conducts lead-based paint activities in Tennessee. The amended rule is necessary for the Department to retain authorization of the federal lead-based paint abatement regulatory program from EPA. This authorization is required for the Department to continue to receive full federal funding for program operations. There are four jurisdictions in Tennessee that have received more than \$10-MM in HUD grants to identify and remove residential lead-based paint hazards. The award of the HUD grants is attributable to Tennessee having and maintaining a state lead-based paint certification and abatement program. The federal program does not allow for small business exemption.

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://publications.tnsosfiles.com/acts/106/pub/pc1070.pdf>) of the 2010 Session of the General Assembly)

This rule is not anticipated to have a projected impact on 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;

Tennessee, to continue operating the lead-based paint certification and training program, must have requirements at least as protective as the respective federal program. As such, this amendment reduces Tennessee's notice period from 15 days to 5 business days, adds provisions allowing for emergency abatement orders, clarifies when updated notification is required, and provides greater guidance regarding what must be included in each notification of lead-based paint abatement. These provisions have been carefully modeled on the current federal rules regarding lead-based paint abatements to ensure that Tennessee's requirements are at least as protective as the respective federal program without creating any additional, unnecessary burdens. New, necessary definitions are also added for clarity regarding these provisions.

- (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;

40 C.F.R. § 745.325 – Requirements of EPA-authorized state lead-based paint programs.
40 C.F.R. Subpart L – Federal regulations regarding lead-based paint activities.
Tennessee Code Annotated Title 68, Chapter 131, Part 4 - Tennessee Lead-Based Paint Abatement Certification Act of 1997

- (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;

Lead-based abatement firms are most directly affected by these rules. They would be expected to be supportive of this rule, as it shortens the notification period and allows for emergency abatement orders.

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

None known.

- (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;

There will be no fiscal impact resulting from this rulemaking.

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

Michael Driver
Senior Associate Counsel
Office of General Counsel
Tennessee Department of Environment and Conservation
William R. Snodgrass Tennessee Tower
312 Rosa L. Parks Avenue, 2nd Floor
Nashville, Tennessee 37243
(615) 253-2027
Michael.D.Driver@tn.gov

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

Horace Tipton
Office of General Counsel

- (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

Office of General Counsel
Tennessee Department of Environment and Conservation
William R. Snodgrass Tennessee Tower
312 Rosa L. Parks Avenue, 2nd Floor
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(615) 253-5339
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- (I) Any additional information relevant to the rule proposed for continuation that the committee requests.

Economic Impact Statement [Tenn. Code Ann. § 4-33-104(b)]

- (1) A description of the action proposed, the purpose of the action, the legal authority for the action and the plan for implementing the action.

Proposed action: To amend the rules of Tennessee's lead-based paint abatement program, in compliance with federal requirements, to reduce the notice period prior to lead-based paint activities from 15 days to 5 business days, add provisions allowing for emergency abatement orders, clarify when updated notification is required, and provide greater guidance regarding what must be included in each notification of lead-based paint abatement.

Legal authority for the action: Tenn. Code Ann. § 68-131-406.

Plan for implementing the action: These rules were implemented through a rulemaking hearing process.

- (2) A determination that the action is the least-cost method for achieving the stated purpose.

This action is the least-cost method to achieve the purpose, as the reduction in notification timeline cannot be achieved without rulemaking and the proposed deadline matches the federal requirement and, as such, cannot be further reduced.

- (3) A comparison of the cost-benefit relation of the action to nonaction.

Nonaction would result in more-stringent rules staying in place – which are greater than current federal requirements - and, as such, there is greater benefit to reducing the notification requirements.

- (4) A determination that the action represents the most efficient allocation of public and private resources.

This action represents the most efficient allocation of public and private resources, as this is a rulemaking within the authority of the Department under Tennessee Code Annotated Section 68-131-406 and creates greater compliance with current federal standards.

- (5) A determination of the effect of the action on competition.

This action is unlikely to affect competition.

- (6) A determination of the effect of the action on the cost of living in the geographical area in which the action would occur.

This action is unlikely to affect the cost of living in any geographical area.

- (7) A determination of the effect of the action on employment in the geographical area in which the action would occur.

This action is unlikely to affect employment in any geographical area.

- (8) The source of revenue to be used for the action.

This rulemaking hearing was held with existing Departmental resources and is not anticipated to have any significant ongoing costs.

- (9) A conclusion as to the economic impact upon all persons substantially affected by the action, including an analysis containing a description as to which persons will bear the costs of the action and which persons will benefit directly and indirectly from the action.

This action is unlikely to have any economic impact, although it should allow lead-based paint professionals to begin lead-based paint activities sooner, as less notice is now required prior to beginning such activities.

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Pursuant to Tenn. Code Ann. § 4-5-229, any new fee or fee increase promulgated by state agency rule shall take effect on July 1, following the expiration of the ninety (90) day period as provided in § 4-5-207. This section shall not apply to rules that implement new fees or fee increases that are promulgated as emergency rules pursuant to § 4-5-208(a) and to subsequent rules that make permanent such emergency rules, as amended during the rulemaking process. In addition, this section shall not apply to state agencies that did not, during the preceding two (2) fiscal years, collect fees in an amount sufficient to pay the cost of operating the board, commission or entity in accordance with § 4-29-121(b).

Agency/Board/Commission:	Environment and Conservation
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Chapter 1200-01-18
Lead-Based Paint Abatement

Amendments

Paragraph (4) of Rule 1200-01-18-.01 Lead-Based Paint Abatement is amended by deleting the current definition "Start date" in its entirety and substituting instead the following definition "Start date" in alphabetical order:

"Start date" means the ~~date on which activities begin on a first day of any~~ lead-based paint ~~abatement project requiring the use of certified individuals, and may include the abatement area isolation and preparation or any other activity which may disturb lead-based paint~~ activities training course or lead-based paint activity.

Authority: T.C.A. §§ 11-1-101, 68-131-401 et seq. and 4-5-201 et seq.

Paragraph (4) of Rule 1200-01-18-.01 Lead-Based Paint Abatement is amended by adding the following new definitions in alphabetical order to read as follows:

"Business day" means Monday through Friday with the exception of federal and state holidays.

"Lead-based paint activities" means, in the case of target housing and child-occupied facilities, inspection, risk assessment, lead hazard screen, clearance testing, lead-based paint abatement, and lead hazard reduction as defined in this rule.

"Start date provided to the Division" means the start date included in the original notification or the most recent start date provided to the Division in an updated notification.

Authority: T.C.A. §§ 11-1-101, 68-131-401 et seq. and 4-5-201 et seq.

Part 4 of subparagraph (e) of paragraph (8) of Rule 1200-01-18-.01 Lead-Based Paint Abatement is amended by deleting it in its entirety and substituting instead the following:

4. ~~Notification of the Commencement of Lead-Based Paint Abatement Activities in a residential dwelling or child-occupied facility or as a result of a Federal, State or local order shall be submitted to the Division on forms provided by the Division, at least fifteen (15) days before the beginning of abatement activities. A copy of the Inspection Report described in part (b)4 of this paragraph or the Risk Assessment report described in part (d)11 of this paragraph, shall be included with the Notification sent to the Division.~~
Notification: A certified firm must notify the Division of lead-based paint activities as follows:
 - (i) Except as provided in subpart (ii) of this part, the Division must be notified prior to conducting lead-based paint activities. The original notification must be received by the Division at least five business days before the start date of any lead-based paint activities.
 - (ii) Notification for lead-based paint activities required in response to an elevated blood lead level (EBL) determination, or federal, State, Tribal, or local emergency abatement order, should be received by the Division as early as possible before, but must be received no later than, the start date of the lead-based paint activities. Should the start date or location provided to the Division change, an updated notification must be received by the Division on or before the start date provided to the Division. Documentation showing evidence of an EBL determination or a copy of the federal/State/Tribal/local emergency abatement order must be included in the written notification to take advantage of this

abbreviated notification period.

(iii) Except as provided in subpart (ii) of this part, updated notification must be provided to the Division for lead-based paint activities that will begin on a date other than the start date specified in the original notification as follows:

(I) For lead-based paint activities beginning prior to the start date provided to the Division, an updated notification must be received by the Division at least five business days before the new start date included in the notification.

(II) For lead-based paint activities beginning after the start date provided to the Division, an updated notification must be received by the Division on or before the start date provided to the Division.

(iv) Except as provided in subpart (ii) of this part, updated notification must be provided to the Division for any change in location of lead-based paint activities at least five business days prior to the start date provided to the Division.

(v) Updated notification must be provided to the Division when lead-based paint activities are canceled, or when there are other significant changes including, but not limited to, when the square footage or acreage to be abated changes by more than 20%. This updated notification must be received by the Division on or before the start date provided to the Division, or if work has already begun, within 24 hours of the change.

(vi) The following must be included in each notification:

(I) Notification type (original, updated, cancellation).

(II) Date when lead-based paint activities will start.

(III) Date when lead-based paint activities will end (approximation using best professional judgment).

(IV) Firm's name, Division certification number, address, and telephone number.

(V) Type of building (e.g., single family dwelling, multi-family dwelling, child-occupied facilities) on/in which abatement work will be performed.

(VI) Property name (if applicable).

(VII) Property address including apartment or unit number(s) (if applicable) for abatement work.

(VIII) If using the abbreviated time period as described in subpart (ii) of this part, documentation showing evidence of an EBL determination or a copy of the federal/State/Tribal/local emergency abatement order.

(IX) Name and Division certification number of the project supervisor.

(X) Approximate square footage or acreage to be abated.

(XI) Brief description of abatement, risk assessment, inspection, lead hazard screen, lead hazard reduction, and clearance activities to be performed.

(XII) Name, title, and signature of the representative of the certified firm who prepared the notification.

- (vii) Notification must be made by written notification or electronically by such means approved by the Commissioner. Written notification can be accomplished using the Division form titled "Lead-Based Paint Activity Notification", or a successor to that form approved by the Division. All written notification must be delivered by U.S. Postal Service, fax, commercial delivery service, or hand delivery (persons submitting notification by U.S. Postal Service are reminded that they should allow three additional business days for delivery in order to ensure that the Division receives the notification by the required date).
- (viii) In the event of changes to the original notification, lead-based paint activities shall not begin on a date or at location other than that specified in either an original or updated notification.
- (ix) No firm or individual shall engage in lead-based paint activities prior to notifying the Division of such activities according to the requirements of this part.

Authority: T.C.A. §§ 11-1-101, 68-131-401 et seq. and 4-5-201 et seq.

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the Commissioner on 02/04/2020, and is in compliance with the provisions of T.C.A. § 4-5-222.

I further certify the following:

Notice of Rulemaking Hearing filed with the Department of State on: 10/24/19

Rulemaking Hearing(s) Conducted on: (add more dates). 12/18/19

Date: February 4, 2020

Signature: _____

Name of Officer: David W. Salyers, P.E.

Title of Officer: Commissioner

Subscribed and sworn to before me on: _____

Notary Public Signature: _____

My commission expires on: _____

Agency/Board/Commission: Commissioner of the Department of Environment and Conservation

Rule Chapter Number(s): 1200-01-18

All rulemaking hearing 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.

Herbert H. Slatery III
Attorney General and Reporter

Date

Department of State Use Only

Filed with the Department of State on: _____

Effective on: _____

Tre Hargett
Secretary of State

Public Hearing Comments

One copy of a document that satisfies T.C.A. § 4-5-222 must accompany the filing.

- Comment: Multiple commenters requested clarification regarding the definition of “start date.” One commenter requested that the definition be amended to mean “the first day of any lead-based paint activity or lead-based paint activities training course.” Another stated that, by including training courses in the definition, training providers would be required to provide the notifications required of lead-based paint activities, and that requiring such notifications regarding training would be an undue cost. Another stated that it appeared that “start date” should only apply to lead-based paint activities.
- Response: “Start Date” in the Tennessee amended rule has the same definition outlined in 40 CFR 745.223 of the EPA federal program. The Tennessee program must conform to the federal program requirements pursuant to Tennessee Code Annotated Section 68-131-402. The Department understands that these amendments are required for Tennessee to maintain EPA authorization of the Lead-Based Paint Abatement Program.
- Further, as used in Rule 1200-01-18-.01(8)(e)4, “start date” only applies to lead-based paint activities, as defined, which do not include training courses. Training courses have their own notification requirements that are largely set out in Rule 1200-01-18-.01(6)(c)9 and are not impacted by these changes.
- Comment: A commenter requested that the word “five” be replaced with the numeral “5” in proposed Rule 1200-01-18-.01(8)(e)4(i).
- Response: The Department disagrees. The word “five” is used in lieu of the numeral “5” to coincide with the writing standards adopted to ensure consistent written communication.
- Comment: A commenter requested that the following changes be made to Rule 1200-01-18-.01(8)(e)4(ii):
- (1) Remove the comma after “local emergency abatement order” or divide into multiple sentences.
 - (2) In the second sentence, replace “and/or” with “or”.
 - (3) Change all references from “on or before the start date” to “before or on the start date” or “before or by the start date”.
- Response: As to (1) and (3), the Department disagrees. The amended Rule conforms to the federal program, which is required for Tennessee to maintain EPA authorization of the Lead-Based Paint Abatement Program. However, as to (2), the Department agrees that using “or” provides greater clarity with no potential loss of compliance and, as such, this change has been made.
- Comment: A commenter requested that, for proposed Rule 1200-01-18-01(8)(e)4(iii)(II) to change the language from “on or before the start date” to “before or on the start date” or “before or by the start date”.
- Response: The Department disagrees. The amended Rule conforms to the federal program, which is required for Tennessee to maintain EPA authorization of the Lead-Based Paint Abatement Program.
- Comment: A commenter requested that, for proposed Rule 1200-01-18-01(8)(e)4(iii)(I) and (II) that a comma be added after the dependent clause “For lead-based paint abatement activities beginning after the start date provided to the Division”.
- Response: The Department agrees and has added commas in both instances.
- Comment: A commenter requested that the language “No firm or individual shall engage in lead-based paint abatement activities” in Rule 1200-01-18-01(8)(e)4(ix) be changed to refer to “lead-based paint activities”.

- Response: The Department agrees. The amended Rule 1200-01-18-01(8)(e)4(ix) details the work-practice standards for conducting “lead-based paint abatement”. The amended Rule will be changed to clarify that notification is required prior to initiating any “lead-based paint activity”.
- Comment: A commenter asked to clarify if the notification requirement of this rule was meant to apply to all lead-based paint activities or only abatement activities.
- Response: The amended Rule 1200-01-18-01(8)(e)4(ix) will be changed to clarify that notification is required prior to initiating any “lead-based paint activity” as defined in paragraph (4) of Rule 1200-01-18-.01, which says: “Lead-based paint activities” means inspection, risk assessment, lead hazard screen, clearance testing, lead-based paint abatement, and lead hazard reduction as defined in this rule.
- Comment: Multiple commenters requested that the rule be amended to require all persons to notify of lead-based paint activities, not just certified firms or requested clarity regarding that provision.
- Response: Prospective Rule 1200-01-18-.01(8)(e)4(ix) requires notification from all firms and individuals irrespective of certification and so no further update to the language of prospective Rule 1200-01-18-.01(8)(e)4 is needed.
- Comment: A commenter requested that emergency abatements be required to be provided to the Division at least 24 hours in advance.
- Response: The Department disagrees and believes the amended notification requirements for an emergency abatement order associated with an elevated blood lead level (EBLL) case are consistent with the federal program requirements. Notification of an emergency abatement order must be received by the start date. This supports the State’s diligence to allow for the quick identification and mitigation of lead-based paint hazards that are the source of EBLLs and childhood lead poisoning.
- Comment: A commenter stated that using the wording of the federal requirements would have been easier to understand.
- Response: The wording of the amended rule is equivalent to the federal requirements. The notice requirements were clarified to include lead hazard screen, clearance testing, and lead hazard reduction as lead-based paint activities.
- Comment: A commenter asked that the use of the term “lead-based paint activities training course” be updated to refer to “lead-based paint training course(s).”
- Response: Individuals are required to complete approved training courses to become certified to engage in lead-based paint activities. The State’s use of the term “lead-based paint activities training course” is consistent with the federal program.
- Comment: A commenter stated that using the terminology “updated notification” instead of “Notification Revision # ___” would require staff to update their forms unnecessarily.
- Response: The Department disagrees. Using the terminology “updated notification” does not require the Department to make any changes in the form.
- Comment: Two commenters asked if training courses should be included in the definition of “lead-based paint activities.”
- Response: Training courses are a separate category and the notification requirements are covered under Rule 1200-01-18-.01(6)(c) Requirements for the accreditation of training programs.
- Comment: A commenter stated that the definition of “Start Date Provided to the Division” is confusing and that allowing those performing lead-based paint activities to provide the most recent start date would create enforcement problems.

Response: The Department disagrees. The use of the term “Start Date Provided to the Division” is consistent with the federal program.

Comment: A commenter asked when the term acreage began to be used in the rules.

Response: The term “acreage” was first used in the federal proposed notification rule that was published in the Federal Register / Vol. 66, No. 14 / Monday, January 22, 2001. The federal regulatory notification requirements were finalized in the Federal Register (Vol. 69, No. 68) Thursday, April 8, 2004.

Comment: A commenter asked that proposed language for Rule 1200-01-18-.01(8)(e)4(vii) be clarified regarding whether or not electronic notification is acceptable.

Response: Rule 1200-01-18-.01(8)(e)4(vii) allows for the use of electronic notification that is approved by the Commissioner. Means for electronic notification approved by the Commissioner will be detailed on the State’s webpage.

Comment: A commenter asked that the term “firm” in the proposed language for Rule 1200-01-18-.01(8)(e)4(ix) be updated to “certified firm” for consistency.

Response: The Department disagrees. Prospective Rule 1200-01-18-.01(8)(e)4(ix) applies to all firms and individuals, not just certified firms.

Comment: A commenter asked regarding the definition of the term “lead-based paint activities” but repeated usage in the proposed notification rules regarding “lead-based paint abatement activities.” This commenter also asked if the terms as defined in Rule 1200-01-18-.01 had equal application in Rules 1200-01-18-.05 and .06.

Response: The terms “lead-based paint activities” and “lead-based paint abatement activities” are often used interchangeably. The Department agrees and the distinction between these terms will be clarified. The terms defined in Rule 1200-01-18-.01 apply equally throughout Chapter 1200-01-18.

Comment: Multiple commenters requested an online portal or method of submitting forms to the Division.

Response: The Department agrees and will take this under advisement. However, this task is outside the scope of this rulemaking process.

Regulatory Flexibility Addendum

Pursuant to T.C.A. §§ 4-5-401 through 4-5-404, prior to initiating the rule making process, all agencies shall conduct a review of whether a proposed rule or rule affects small business.

- (1) The type or types of small business and an identification and estimate of the number of small businesses subject to the proposed rule that would bear the cost of, or directly benefit from the proposed rule.

Tennessee has 131 small business firms that conduct lead-based paint activities. The cost for complying with the amended Rule would be rolled up into the project costs that these firms charge. The Division estimates that more than 90% of all the project costs, for which notification will be required, are funded by HUD grants that specifically target the reduction of residential lead-based paint hazards in pre-1978 units. There are four HUD lead hazard reduction grantees in Tennessee who together estimate completing 400 units per year. This rule will positively affect more than 800 children less than six-years old that live in pre-1978 housing by removing lead-based paint hazards that cause childhood lead poisoning.

- (2) The 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.

The Tennessee firms that must comply with the rule amendments currently comply with state regulatory record-keeping associated with lead-based paint activities. Their current infrastructure is sufficient to comply with this amendment without increased administrative costs.

- (3) A statement of the probable effect on impacted small businesses and consumers.

This rule amendment reduces the amount of notice that small businesses must provide to the State before they conduct regulated lead-based paint activities. The reduced time is an advantage to small businesses and allows them to better serve their consumers.

- (4) A description of any less burdensome, less intrusive or less costly alternative methods of achieving the purpose and objectives of the proposed rule that may exist, and to what extent the alternative means might be less burdensome to small business.

There are no less burdensome, less costly or less intrusive alternative methods at this time. This rule amendment will make the current requirements less burdensome to small businesses.

- (5) A comparison of the proposed rule with any federal or state counterparts.

The wording of the amended rule is equivalent to the federal requirements with the exception of words and phrases that denote State authority and jurisdiction or clerical changes that increase clarity without changing the meaning or scope of the underlying federal rules. The amended rule conforms to the federal program, which is required for Tennessee to maintain EPA authorization of the Lead-Based Paint Abatement Program.

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

Small business entities are the primary group that conducts lead-based paint activities in Tennessee. The amended rule is necessary for the Department to retain authorization of the federal lead-based paint abatement regulatory program from EPA. This authorization is required for the Department to continue to receive full federal funding for program operations. There are four jurisdictions in Tennessee that have received more than \$10-MM in HUD grants to identify and remove residential lead-based paint hazards. The award of the HUD grants is attributable to Tennessee having and maintaining a state lead-based paint certification and abatement program. The federal program does not allow for small business exemption.

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://publications.tnsosfiles.com/acts/106/pub/pc1070.pdf>) of the 2010 Session of the General Assembly)

This rule is not anticipated to have a projected impact on 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;

Tennessee, to continue operating the lead-based paint certification and training program, must have requirements at least as protective as the respective federal program. As such, this amendment reduces Tennessee's notice period from 15 days to 5 business days, adds provisions allowing for emergency abatement orders, clarifies when updated notification is required, and provides greater guidance regarding what must be included in each notification of lead-based paint abatement. These provisions have been carefully modeled on the current federal rules regarding lead-based paint abatements to ensure that Tennessee's requirements are at least as protective as the respective federal program without creating any additional, unnecessary burdens. New, necessary definitions are also added for clarity regarding these provisions.

- (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;

40 C.F.R. § 745.325 – Lead-based paint activities: State and Tribal program requirements.
40 C.F.R. Subpart L – Federal regulations regarding lead-based paint activities.
Tennessee Code Annotated Title 68, Chapter 131, Part 4 - Tennessee Lead-Based Paint Abatement Certification Act of 1997

- (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;

Lead-based abatement firms are most directly affected by these rules. They would be expected to be supportive of this rule, as it shortens the notification period and allows for emergency abatement orders.

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

None known.

- (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;

There will be no fiscal impact resulting from this rulemaking.

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

Michael Driver
Senior Associate Counsel
Office of General Counsel
Tennessee Department of Environment and Conservation
William R. Snodgrass Tennessee Tower
312 Rosa L. Parks Avenue, 2nd Floor
Nashville, Tennessee 37243
(615) 253-2027
Michael.D.Driver@tn.gov

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

Horace Tipton
Office of General Counsel

- (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

Office of General Counsel
Tennessee Department of Environment and Conservation
William R. Snodgrass Tennessee Tower
312 Rosa L. Parks Avenue, 2nd Floor
Nashville, Tennessee 37243
(615) 253-5339
Horace.Tipton@tn.gov

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

Economic Impact Statement [Tenn. Code Ann. § 4-33-104(b)]

- (1) A description of the action proposed, the purpose of the action, the legal authority for the action and the plan for implementing the action.

Proposed action: To amend the rules of Tennessee's lead-based paint abatement program, in compliance with federal requirements, to reduce the notice period prior to lead-based paint activities from 15 days to 5 business days, add provisions allowing for emergency abatement orders, clarify when updated notification is required, and provide greater guidance regarding what must be included in each notification of lead-based paint abatement.

Legal authority for the action: Tenn. Code Ann. § 68-131-406.

Plan for implementing the action: These rules were implemented through a rulemaking hearing process.

- (2) A determination that the action is the least-cost method for achieving the stated purpose.

This action is the least-cost method to achieve the purpose, as the reduction in notification timeline cannot be achieved without rulemaking and the proposed deadline matches the federal requirement and, as such, cannot be further reduced.

- (3) A comparison of the cost-benefit relation of the action to nonaction.

Nonaction would result in more-stringent rules staying in place – which are greater than current federal requirements - and, as such, there is greater benefit to reducing the notification requirements.

- (4) A determination that the action represents the most efficient allocation of public and private resources.

This action represents the most efficient allocation of public and private resources, as this is a rulemaking within the authority of the Department under Tennessee Code Annotated Section 68-131-406 and creates greater compliance with current federal standards.

- (5) A determination of the effect of the action on competition.

This action is unlikely to affect competition.

- (6) A determination of the effect of the action on the cost of living in the geographical area in which the action would occur.

This action is unlikely to affect the cost of living in any geographical area.

- (7) A determination of the effect of the action on employment in the geographical area in which the action would occur.

This action is unlikely to affect employment in any geographical area.

- (8) The source of revenue to be used for the action.

This rulemaking hearing was held with existing Departmental resources and is not anticipated to have any significant ongoing costs.

- (9) A conclusion as to the economic impact upon all persons substantially affected by the action, including an analysis containing a description as to which persons will bear the costs of the action and which persons will benefit directly and indirectly from the action.

This action is unlikely to have any economic impact, although it should allow lead-based paint professionals to begin lead-based paint activities sooner, as less notice is now required prior to beginning such activities.