## G.O.C. STAFF RULE ABSTRACT

| | |
|---|---|
| DEPARTMENT: | Environment and Conservation |
| DIVISION: | Remediation |
| SUBJECT: | Inactive Hazardous Substance Sites |
| STATUTORY AUTHORITY: | Amendments to Rule 0400-15-01-.13 List of Inactive Hazardous Substance sites are required by Tennessee Code Annotated, § 68-212-206(e) and are promulgated under the authority of § 68-212-215(e). |
| EFFECTIVE DATES: | June 7, 2017 through June 30, 2018 |
| FISCAL IMPACT: | None |
| STAFF RULE ABSTRACT: | This rulemaking hearing rule adds the former Custom Cleaners site, located at 3517 Southern Avenue in Memphis to the state list of inactive hazardous substance sites because the facility that generated the release is no longer active, tetrachloroethylene is present at the site, which poses or may reasonably pose a threat to health and the environment. Up until the mid-1990's, the site had been used for approximately 50 years by laundries or dry cleaning facilities. The building is currently vacant. |

**Public Hearing Comments**

One copy of a document containing responses to comments made at the public hearing must accompany the filing pursuant to T.C.A. § 4-5-222. Agencies shall include only their responses to public hearing comments, which can be summarized. No letters of inquiry from parties questioning the rule will be accepted. When no comments are received at the public hearing, the agency need only draft a memorandum stating such and include it with the Rulemaking Hearing Rule filing. Minutes of the meeting will not be accepted. Transcripts are not acceptable.

There were no comments received during the public comment period.

**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) 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.

There are no small businesses impacted by this rulemaking.

(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.

There will be no reporting, recordkeeping, and other administrative costs required for compliance.

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

There will be no impact on small businesses or 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.

No alternatives are available to achieve the purpose of this rulemaking

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

The federal counterpart is the federal National Priorities List (NPL) in 40 CFR Part 300 – National Oil and Hazardous Substances Pollution Contingency Plan, Table 1-General Superfund Section.

(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.

This rulemaking does not impact small businesses.

**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)

The Department does not anticipate an impact on local governments from this rulemaking.

**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 proposed rule amendment adds the former Custom Cleaners site, located at 3517 Southern Avenue in Memphis, Shelby County, Tennessee, to the state list of inactive hazardous substance sites because the facility that generated the release is no longer active, tetrachloroethylene is present at the site, and tetrachloroethylene poses or may reasonably pose a threat to health and the environment. Up until the mid-1990s, the site had been used for approximately 50 years by laundries or dry cleaning facilities. The building is currently vacant.

**(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;

Amendments to Rule 0400-15-01-.13 List of Inactive Hazardous Substance Sites are required by Tenn. Code Ann. § 68-212-206(e) and are promulgated under the authority of Tenn. Code Ann. § 68-212-215(e).

**(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;

This proposed rule adds the former Custom Cleaners site, located in Memphis, Shelby County, Tennessee, to the List of Inactive Hazardous Substance Sites. There were no comments received during the public comment period.

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

The Department is not aware of any opinions or judicial rulings that directly relate to this rule.

**(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 increase or decrease in state or local government revenue or expenditures resulting from the promulgation of the rule.

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

Tim Stewart
Division of Remediation
William R. Snodgrass Tennessee Tower
312 Rosa L. Parks Avenue, 14th Floor
Nashville, Tennessee 37243
Tim.Stewart@tn.gov

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

Lucian Geise
Senior Counsel for Legislative Affairs
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) 532-0108
Lucian.Geise@tn.gov

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

The Department is not aware of any additional relevant information requested.

**Department of State**
**Division of Publications**
312 Rosa L. Parks Avenue, 8th Floor Snodgrass/TN Tower
Nashville, TN 37243
Phone: 615-741-2650
Email: publications.information@tn.gov

**For Department of State Use Only**

Sequence Number: 03-05-17
Rule ID(s): 6454
File Date: 3/9/17
Effective Date: 6/7/17

# 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:** | Remediation |
| **Contact Person:** | Tim Stewart |
| **Address:** | William R. Snodgrass Tennessee Tower<br>312 Rosa L. Parks Avenue, 14th Floor<br>Nashville, Tennessee |
| **Zip:** | 37243 |
| **Phone:** | (615) 741-4998 |
| **Email:** | Tim.Stewart@tn.gov |

**Revision Type (check all that apply):**

X 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** |
|---|---|
| 0400-15-01 | Hazardous Substance Remedial Action |
| **Rule Number** | **Rule Title** |
| 0400-15-01-.13 | List of Inactive Hazardous Substance Sites |

(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)

Amendment

0400-15-01
Hazardous Substance Remedial Action

Rule 0400-15-01-.13 List of Inactive Hazardous Substance Sites is amended by adding the following site to the list, such addition being made in a manner so that the entire list remains in numerical order.

0400-15-01-.13 List of Inactive Hazardous Substance Sites.

Promulgated List

| SITE NUMBER | SITE NAME |
|---|---|
| | ANDERSON (01) |
| 01504 | D.O.E Oak Ridge<br>Oak Ridge, TN |
| 01579 | Dupont Smith/Atomic City<br>Oak Ridge, TN |
| 01580 | Anderson County Landfill<br>Clinton, TN |
| SITE NUMBER | SITE NAME |
| | BLOUNT (05) |
| 05501 | Aluminum Co. of America<br>Alcoa, TN |
| 05503 | Aluminum Co. of America<br>Alcoa, TN |
| SITE NUMBER | SITE NAME |
| | BRADLEY (06) |
| 06505 | Duracell Inc.<br>Cleveland, TN |
| SITE NUMBER | SITE NAME |
| | CARTER (10) |
| 10502 | American Bemberg Plant<br>Elizabethtown, TN |
| 10508 | Old Bemberg Bldg.<br>Elizabethtown, TN |
| SITE NUMBER | SITE NAME |
| | COCKE (15) |
| 15504 | Arapahoe/Rock Hill Labs<br>Newport, TN |
| 15505 | Newport Dump |

| | |
|---|---|
| | Newport, TN |
| 15508 | Wall Tube and Metal<br>Newport, TN |

| SITE NUMBER | SITE NAME |
|---|---|
| | DAVIDSON (19) |
| 19511 | Stauffer Chemical<br>Nashville, TN |
| 19524 | Municipal Landfill<br>Nashville, TN |

| SITE NUMBER | SITE NAME |
|---|---|
| | FRANKLIN (26) |
| 26501 | AEDC<br>Arnold Air Force Station, TN |

| SITE NUMBER | SITE NAME |
|---|---|
| | GIBSON (27) |
| 27512 | ITT Telecommunications<br>Milan, TN |

| SITE NUMBER | SITE NAME |
|---|---|
| | HAMBLEN (32) |
| 32506 | BASF/Stauffer Chemical Co.<br>Morristown, TN |
| 32514 | Old Morristown-Hamblen Co. Landfill<br>Morristown, TN |
| 32517 | Neblett Road Dump<br>Morristown, TN |
| 32518 | Pine Brook Road Dumb<br>Morristown, TN |

| SITE NUMBER | SITE NAME |
|---|---|
| | HAMILTON (33) |
| 33527 | Velsicol/Residue Hill<br>Chattanooga, TN |
| 33540 | Montague Park<br>Chattanooga, TN |
| 33543 | Hamill Road Dump #3<br>Chattanooga, TN |
| 33547 | Chattanooga Coke<br>Chattanooga, TN |
| 33550 | North Hawthorne Dump<br>Chattanooga, TN |
| 33557 | USVAAP<br>Chattanooga, TN |
| 33584 | Chattanooga Creek<br>Chattanooga, TN |
| 33596 | Mor-Flo Industries, Inc. |

| | |
|---|---|
| | Chattanooga, TN |
| 33618 | Morningside Chemicals<br>Chattanooga, TN |
| 33620 | National Microdynamics (Lutex Chemical)<br>Chattanooga, TN |
| 33635 | Tennessee Transformer<br>Chattanooga, TN |
| 33660 | Electro-Lite Battery<br>Chattanooga, TN |

| SITE NUMBER | SITE NAME |
|---|---|
| | HARDEMAN (35) |
| 35506 | Velsicol Chemical<br>Toone, TN |

| SITE NUMBER | SITE NAME |
|---|---|
| | HENRY (40) |
| 40506 | Henry County Boneyard<br>Paris, TN |

| SITE NUMBER | SITE NAME |
|---|---|
| | HICKMAN (41) |
| 41504 | Wrigley Charcoal<br>Wrigley, TN |

| SITE NUMBER | SITE NAME |
|---|---|
| | JEFFERSON (45) |
| 45503 | Hodgson, Hollis<br>Jefferson City, TN |

| SITE NUMBER | SITE NAME |
|---|---|
| | KNOX (47) |
| 47514 | Witherspoon Landfill<br>Knoxville, TN |
| 47518 | Badgett Road Landfill<br>Knoxville, TN |
| 47521 | Southern Rail/Coster Shop<br>Knoxville, TN |
| 47523 | Foote Mineral/Cas Walker (Dante)<br>Knoxville, TN |
| 47530 | Screen Art, Inc.<br>Knoxville, TN |
| 47541 | Witherspoon Recycling<br>Knoxville, TN |
| 47545 | Sanitary Laundry & Dry Cleaning<br>Knoxville, TN |
| 47547 | Roscoe Fields Property<br>Knoxville, TN |
| 47559 | Smokey Mountain Smelters<br>Knoxville, TN |

| | |
|---|---|
| 47573 | Dixie Barrel & Drum Co.<br>Knoxville, TN |

| SITE NUMBER | SITE NAME |
|---|---|
| | LAWRENCE (50) |
| 50502 | Murray-Ohio Landfill<br>Lawrenceburg, TN |
| 50505 | Lawrenceburg Horseshoe Bend<br>Lawrenceburg, TN |
| 50509 | Former Murray Ohio Plant<br>Lawrenceburg, TN |

| SITE NUMBER | SITE NAME |
|---|---|
| | LOUDON (53) |
| 53502 | Greenback Industries<br>Greenback, TN |
| 53503 | Lenoir City Car Works<br>Lenoir City, TN |

| SITE NUMBER | SITE NAME |
|---|---|
| | MADISON (57) |
| 57508 | American Creosote Works<br>Jackson, TN |
| 57510 | Porter Cable<br>Jackson, TN |
| 57517 | Boone Dry Cleaners<br>Jackson, TN |

| SITE NUMBER | SITE NAME |
|---|---|
| | MARION (58) |
| 58502 | North American Environmental<br>Whitwell, TN |

| SITE NUMBER | SITE NAME |
|---|---|
| | MARSHALL (59) |
| 59502 | Heil Quaker Corp.<br>Lewisburg, TN |
| 59503 | Lewisburg Dump<br>Lewisburg, TN |

| SITE NUMBER | SITE NAME |
|---|---|
| | MAURY (60) |
| 60501 | Stauffer Chemical Co.<br>Mt. Pleasant, TN |

| | |
|---|---|
| 60534 | Monsanto<br>Columbia, TN |
| SITE NUMBER | SITE NAME |
| | MONROE (62) |
| 62505 | Red Ridge Landfill<br>Madisonville, TN |
| SITE NUMBER | SITE NAME |
| | POLK (70) |
| 70502 | Apache Blast<br>Copperhill, TN |
| SITE NUMBER | SITE NAME |
| | PUTNAM (71) |
| 71502 | Putnam County Landfill<br>Cookeville, TN |
| SITE NUMBER | SITE NAME |
| | ROANE (73) |
| 73504 | Roane Alloys<br>Rockwood, TN |
| 73506 | Rockwood Iron & Metal<br>Rockwood, TN |
| 73512 | Joyner Scrap Yard<br>Rockwood, TN |
| SITE NUMBER | SITE NAME |
| | RUTHERFORD (75) |
| 75522 | Old Murfreesboro City Dump<br>Murfreesboro, TN |
| SITE NUMBER | SITE NAME |
| | SHELBY (79) |
| 79503 | Arlington Blending<br>Arlington, TN |
| 79517 | Bellevue Avenue Landfill<br>Memphis, TN |
| 79518 | Cypress Creek<br>Memphis, TN |
| 79525 | International Harvester<br>Memphis, TN |
| 79536 | W. R. Grace & Co.<br>Memphis, TN |
| 79549 | Chickasaw Ordinance Works<br>Memphis, TN |
| 79552 | Carrier Corporation |

| | |
|---|---|
| | Collierville, TN |
| 79561 | Nilok Chemical Company<br>Memphis, TN |
| 79569 | Chapman Chemical Co.<br>Memphis, TN |
| 79582 | Diesel Recon Co.<br>Memphis, TN |
| 79598 | North Hollywood Dump<br>Memphis, TN |
| 79604 | Memphis Public Works/Jackson Pits<br>Memphis, TN |
| 79676 | Smalley-Piper<br>Collierville, TN |
| 79742 | Pulvair Corporation<br>Millington, TN |
| 79758 | Old Osmose Chemical<br>Memphis, TN |
| 79781 | John Little/Drum<br>Memphis, TN |
| 79798 | 61 Industrial Park Site<br>Memphis, TN |
| 79799 | Tennessee Air National Guard<br>Memphis, TN |
| 79800 | Creotox Chemical Company<br>Memphis, TN |
| 79805 | Fiberfine of Memphis<br>Memphis, TN |
| 79843 | Warfield Place/Pulvair<br>Memphis, TN |
| 79845 | Walker Machine Products<br>Collierville, TN |
| 79897 | Former Custom Cleaners<br>Memphis, TN |

| SITE NUMBER | SITE NAME |
|---|---|
| | SULLIVAN (82) |
| 82514 | Sperry/Unisys<br>Bristol, TN |
| 82516 | Earhart<br>Bristol, TN |

| SITE NUMBER | SITE NAME |
|---|---|
| | UNICOI (86) |
| 86501 | Bumpass Cove Landfill<br>Embreeville, TN |
| 86502 | Bumpass Cove – Fowler<br>Erwin, TN |
| 86505 | Morrell Electric, Inc.<br>Erwin, TN |

| SITE NUMBER | SITE NAME |
|---|---|
| | WARREN (89) |
| 89504 | Century Electric Facility<br>McMinnville, TN |

| SITE NUMBER | SITE NAME |
|---|---|
| | WASHINGTON (90) |
| 90510 | Cash Hollow Dump<br>Johnson City, TN |
| SITE NUMBER | SITE NAME |
| | WAYNE (91) |
| 91501 | Mallory Capacitor Co.<br>Waynesboro, TN |
| 91502 | Waynesboro City Dump<br>Waynesboro, TN |
| SITE NUMBER | SITE NAME |
| | WILSON (95) |
| 95501 | TRW/Ross Gear Division<br>Lebanon, TN |

Authority: T.C.A. §§ 68-212-201 et seq. and 4-5-201 et seq.

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

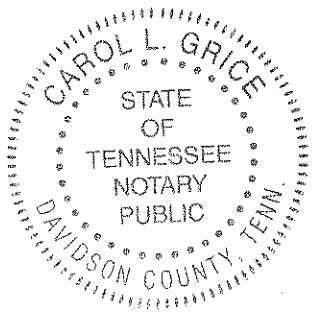
| Board Member | Aye | No | Abstain | Absent | Signature (if required) |
|---|---|---|---|---|---|
| **Marty Calloway** (Petroleum Business with at least 15 Underground Storage Tanks) | X | | | | |
| **Stacey Cothran** (Solid/Hazardous Waste Management Industry) | X | | | | |
| **Kenneth L. Donaldson** (Municipal Government) | X | | | | |
| **Dr. George Hyfantis, Jr.** (Institution of Higher Learning) | | | | X | |
| **Bhag Kanwar** (Single Facility with less than 5 Underground Storage Tanks) | X | | | | |
| **Alan M. Leiserson** Environmental Interests | X | | | | |
| **Jared L. Lynn** (Manufacturing experienced with Solid/Hazardous Waste) | X | | | | |
| **David Martin** (Working in a field related to Agriculture) | | | | X | |
| **Beverly Philpot** (Manufacturing experienced with Underground Storage Tanks/Hazardous Materials) | X | | | | |
| **DeAnne Redman** (Petroleum Management Business) | X | | | | |
| **Mayor A. Franklin Smith, III** (County Government) | | | | X | |
| **Mark Williams** (Small Generator of Solid/Hazardous Materials representing Automotive Interests) | X | | | | |

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the Underground Storage Tanks and Solid Waste Disposal Control Board on 06/01/2016, 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: 02/25/16

Rulemaking Hearing(s) Conducted on: (add more dates). 04/26/16




Date: June 1, 2016

Signature: Stacey Cothran

Name of Officer: Stacey Cothran

Title of Officer: Chair

Subscribed and sworn to before me on: June 1, 2016

Notary Public Signature: Carol L. Grice

My commission expires on: March 3, 2020

Rules of the Board of Underground Storage Tanks and Solid Waste Disposal Control Board
Chapter 0400-15-01 Hazardous Substance Remedial Action
Rule 0400-15-01-.13 List of Inactive Hazardous Substance Sites

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

3/6/2017
Date

**Department of State Use Only**

Filed with the Department of State on: 3/9/17

Effective on: 6/7/17

Tre Hargett
Secretary of State

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## G.O.C. STAFF RULE ABSTRACT

| | |
|---|---|
| DEPARTMENT: | Tennessee Wildlife Resources Agency |
| DIVISION: | Boating and Law Enforcement |
| SUBJECT: | Issuance of Warning Citations |
| STATUTORY AUTHORITY: | Tennessee Code Annotated, Section 69-9-220(c) establishes guidelines for the rule. |
| EFFECTIVE DATES: | June 14, 2017 through June 30, 2018 |
| FISCAL IMPACT: | Minimal |
| STAFF RULE ABSTRACT: | This rulemaking hearing rule provides for the issuance of warning citations by officers of the Tennessee Wildlife Resources Agency. |

**Public Hearing Comments**

One copy of a document containing responses to comments made at the public hearing must accompany the filing pursuant to T.C.A. § 4-5-222. Agencies shall include only their responses to public hearing comments, which can be summarized. No letters of inquiry from parties questioning the rule will be accepted. When no comments are received at the public hearing, the agency need only draft a memorandum stating such and include it with the Rulemaking Hearing Rule filing. Minutes of the meeting will not be accepted. Transcripts are not acceptable.

RULE: 1660-02-05-.01

| | |
|---|---|
| New | ____ |
| Amendment | __X__ |
| Repeal | ____ |

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[✓] There were no public comments to the above-described rule.

[ ] Attached hereto are the responses to public comments.

**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) 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, and/or directly benefit from the proposed rule;

There are no businesses, small or otherwise, that would bear the cost of or directly benefit from the proposed rule.

(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;

All recordkeeping and administrative costs are estimated to be minimal and would be borne by the Agency through existing staff

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

The rule as proposed would have no effect on businesses or consumers.

(4) A 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;

The rule puts no burden on small business.

(5) A comparison of the proposed rule with any federal or state counterparts; and

The rule is fairly similar to those that have been passed in other states.

(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.

Businesses, small or otherwise, will not be impacted as there are no requirements placed on business.

**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)

Will passage of this rule have a projected financial impact on local governments?

The Agency does not believe that the rule will have any impact on local governments.

Please describe the increase in expenditures or decrease in revenues:

The rule will neither increase expenditures, nor decrease revenues.

**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 rule provides for the issuance of warning citations by officers of the Tennessee Wildlife Resources Agency.

**(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 Section 69-9-220(c) establishes guidelines for the rule.

**(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;

Persons who operate recreational vessels principally in Tennessee.

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

No opinion of the attorney general or any judicial ruling that directly relates to the rule has been identified.

**(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 fiscal impact to state and local governments is minimal.

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

W. Glenn Moates, LT Colonel, Boating & Law Enforcement Division, 615-781-6684, Glenn.Moates@tn.gov

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

Chris Richardson, TWRA Special Assistant to the Director/Policy and Legislation, will explain the rule at the scheduled meeting of the Government Operations Committee.

**(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

Chris Richardson, TWRA, P.O. Box 40747, Ellington Agricultural Center, Nashville, TN 37204; 615-308-0477; Chris.Richardson@tn.gov

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

**Department of State**
**Division of Publications**
312 Rosa L. Parks Avenue, 8th Floor Snodgrass/TN Tower
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**For Department of State Use Only**

Sequence Number: 03-14-17
Rule ID(s): 6464
File Date: 3/16/17
Effective Date: 6/14/17

# 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:** | Tennessee Wildlife Resources Agency |
| **Division:** | Boating and Law Enforcement Division |
| **Contact Person:** | Lisa Crawford |
| **Address:** | PO Box 40747, Nashville, TN |
| **Zip:** | 37204 |
| **Phone:** | 615-781-6606 |
| **Email:** | Lisa.Crawford@tn.gov |

**Revision Type (check all that apply):**

X 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** |
|---|---|
| 1660-02-05 | Rules and Regulations Governing Issuance of Warning Citations |
| **Rule Number** | **Rule Title** |
| 1660-02-05-.01 | Officers |

Amendment

1660-02-05-.01 Officers is amended by removing "Chapter 334, Public Acts 1965" and replacing it with "Title 69, Chapter 9"

1660-02-05-.01 OFFICERS. Officers of the Wildlife Resources Agency, upon observance of violations of ~~Chapter 334, Public Acts 1965~~ Title 69, Chapter 9, and any rules and regulations promulgated by the Commission may, at their discretion, issue warning citations to the offenders.

*Authority: T.C.A. §§70-1-206 and 69-9-220. Administrative History: Original rule certified May 8, 1974. Amendment filed _____; effective _____.*

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

| Board Member | Aye | No | Abstain | Absent | Signature (if required) |
|---|---|---|---|---|---|
| Chad Baker | | | | ✓ | |
| Jim Bledsoe | ✓ | | | | |
| Harold Cannon | ✓ | | | | |
| Jeff Cook | ✓ | | | | |
| Bill Cox | | | | ✓ | |
| Kurt Holbert | ✓ | | | | |
| Connie King | ✓ | | | | |
| Jeff McMillan | ✓ | | | | |
| Jim Ripley | ✓ | | | | |
| Bill Swan | ✓ | | | | |
| Trey Teague | | | | ✓ | |
| David Watson | ✓ | | | | |
| Jamie Woodson | | | | ✓ | |

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the Tennessee Fish and Wildlife Commission on 10/28/2016 (mm/dd/yyyy), 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: *08/29/2016*

Rulemaking Hearing(s) Conducted on: (add more dates). *10/28/2016*

Date: 11-8-16

Signature: Ed Carter

Name of Officer: Ed Carter

Title of Officer: Executive Director

LISA CRAWFORD STATE OF TENNESSEE NOTARY PUBLIC DAVIDSON COUNTY

Subscribed and sworn to before me on: 11-8-16

Notary Public Signature: Lisa Crawford

My commission expires on: 3-10-2019

---

All rulemaking hearing rules provided for herein (Tennessee Wildlife Resources Agency Rule 1660-02-05) 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

Herbert H. Slatery III
Attorney General and Reporter

3/6/2017

Date

**Department of State Use Only**

Filed with the Department of State on: 3/16/17

Effective on: 9/14/17

Tre Hargett
Secretary of State

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SECRETARY OF STATE
PUBLICATIONS

## G.O.C. STAFF RULE ABSTRACT

| | |
|---|---|
| DEPARTMENT: | Tennessee Wildlife Resources Agency |
| DIVISION: | Boating and Law Enforcement |
| SUBJECT: | Operations of Vessels in Special Areas |
| STATUTORY AUTHORITY: | 33 CFR 175 provides guidelines for life jacket labeling. |
| EFFECTIVE DATES: | June 14, 2017 through June 30, 2018 |
| FISCAL IMPACT: | Minimal |
| STAFF RULE ABSTRACT: | This rulemaking hearing rule prescribes the wearing of a life jacket while boating in special areas. The rule changes the designation of the type of life jacket to be worn. |

**Public Hearing Comments**

One copy of a document containing responses to comments made at the public hearing must accompany the filing pursuant to T.C.A. § 4-5-222. Agencies shall include only their responses to public hearing comments, which can be summarized. No letters of inquiry from parties questioning the rule will be accepted. When no comments are received at the public hearing, the agency need only draft a memorandum stating such and include it with the Rulemaking Hearing Rule filing. Minutes of the meeting will not be accepted. Transcripts are not acceptable.

RULE: 1660-02-07-.11

| | |
|---|---|
| New | ____ |
| Amendment | X |
| Repeal | ____ |

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[✓] There were no public comments to the above-described rule.

[ ] Attached hereto are the responses to public comments.

**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) 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, and/or directly benefit from the proposed rule;

There are no businesses, small or otherwise, that would bear the cost of or directly benefit from the proposed rule.

(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;

All recordkeeping and administrative costs are estimated to be minimal and would be borne by the Agency through existing staff.

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

The rule as proposed would have no effect on businesses or consumers.

(4) A 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;

The rule puts no burden on small business.

(5) A comparison of the proposed rule with any federal or state counterparts; and

The rule follows Federal guidelines for life jacket labeling.

(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.

Businesses, small or otherwise, will not be impacted as there are no requirements placed on business.

**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)

Will passage of this rule have a projected financial impact on local governments?

The Agency does not believe that the rule will have any impact on local governments.

Please describe the increase in expenditures or decrease in revenues:

The rule will neither increase expenditures, nor decrease revenues.

**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 rule prescribes the wearing of a life jacket while boating in special areas. This rule changes the designation of the type of life jacket to be worn.

**(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;

33 CFR 175 provides guidelines for life jacket labeling.

**(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;

Persons who operate recreational vessels principally in Tennessee.

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

No opinion of the attorney general or any judicial ruling that directly relates to the rule has been identified.

**(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 fiscal impact to state and local governments is minimal.

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

W. Glenn Moates, LT Colonel, Boating & Law Enforcement Division, 615-781-6684, Glenn.Moates@tn.gov

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

Chris Richardson, TWRA Special Assistant to the Director/Policy and Legislation, will explain the rule at the scheduled meeting of the Government Operations Committee.

**(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

Chris Richardson, TWRA, P.O. Box 40747, Ellington Agricultural Center, Nashville, TN 37204; 615-308-0477; Chris.Richardson@tn.gov

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

**Department of State**
**Division of Publications**
312 Rosa L. Parks Avenue, 8th Floor Snodgrass/TN Tower
Nashville, TN 37243
Phone: 615-741-2650
Email: publications.information@tn.gov

**For Department of State Use Only**

Sequence Number: 03-15-17
Rule ID(s): 6465
File Date: 3/16/17
Effective Date: 6/14/17

# 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:** | Tennessee Wildlife Resources Agency |
| **Division:** | Boating and Law Enforcement Division |
| **Contact Person:** | Lisa Crawford |
| **Address:** | PO Box 40747, Nashville, TN |
| **Zip:** | 37204 |
| **Phone:** | 615-781-6606 |
| **Email:** | Lisa.Crawford@tn.gov |

**Revision Type (check all that apply):**

X 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** |
|---|---|
| 1660-02-07 | Rules and Regulations Governing Operations of Vessels |
| **Rule Number** | **Rule Title** |
| 1660-02-07-.11 | Special Areas |

Amendment

1660-02-07-.11 Special Areas is amended by removing "Type I, Type II, Type III, or Type V" and replacing with "wearable" and "in accordance with the approval label" in paragraph (2) so that, as amended, the rule shall read:

1660-02-07-.11 SPECIAL AREAS.

(1) All motorboats being operated within 300 feet of a commercial dock or marina shall be operated at a "slow, no-wake speed" unless otherwise marked and approved under 1660-2-6-.01, or a specific rule and regulation.

(a) The measurement shall be made from the last structure associated with the dock or

marina except as noted above.

(b) For this rule, a commercial marina is defined as any permanent facility accessible by boat which:

1. offers goods or services to the general public in exchange for currency or other consideration

2. has a valid business license, if required, and a Tennessee Tax Identification number

3. is permitted by the U.S. Corps of Engineers, and the Tennessee Valley Authority if applicable, as a commercial boat dock or marina.

(2) No person shall operate or use any vessel, within the area designated and appropriately marked as a hazardous area, below any dam and/or lock unless each person aboard is wearing a U. S. Coast Guard approved wearable flotation device~~, Type I, Type II, Type III or Type V.~~ in accordance with the approval label.

(a) This regulation is not intended to affect regulations promulgated by other governmental agencies, federal or state, related to activities that may or may not be conducted within said hazardous area.

(3) Vessels being operated within 300 yards of the Tennessee Wildlife Resources Agency access ramp on Indian Creek will be operated at a "Slow—No Wake" speed.

(4) Vessels being operated on Deer Creek located at River Mile 125 on Kentucky Lake shall operate at a "Slow—No Wake" speed within the embayment area.

(5) Water skiing is prohibited on Great Falls Reservoir in the Rock River Embayment from its mouth upstream to Blanks Bridge.

(6) Vessels being operated on Crooked Creek located at River Mile 121.5 on Kentucky Lake shall operate at a "Slow—No Wake" speed from the mouth of the Tennessee River to the Crooked Creek embayment.

(7) Vessels being operated within the buoyed area in Eagle Creek located at river mile 1 on the big Sandy River, from a point east of Big Eagle picnic area, west to the west boundary of Buchanan's boat dock, shall operate at a "slow—No Wake" speed.

*Authority: T.C.A. §§70-1-206 and 69-9-209. Administrative History: Original rule certified May 8, 1974. Amendment filed November 20, 1975; effective December 20, 1975. Amendment filed November 4, 1976; effective December 4, 1976. Amendment filed June 8, 1977; effective July 8, 1977. Amendment filed February 6, 1978; effective March 8, 1978. Amendment filed April 20, 1988; effective June 4, 1988. Amendment filed June 8, 1989; effective July 23, 1989. Amendment filed January 28, 2002; effective April 13, 2002. Amendment filed April 26, 2004; effective July 10, 2004. Amendment filed _____; effective _____.*

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

| Board Member | Aye | No | Abstain | Absent | Signature (if required) |
|---|---|---|---|---|---|
| Chad Baker | | | | ✓ | |
| Jim Bledsoe | ✓ | | | | |
| Harold Cannon | ✓ | | | | |
| Jeff Cook | ✓ | | | | |
| Bill Cox | | | | ✓ | |
| Kurt Holbert | ✓ | | | | |
| Connie King | ✓ | | | | |
| Jeff McMillan | ✓ | | | | |
| Jim Ripley | ✓ | | | | |
| Bill Swan | ✓ | | | | |
| Trey Teague | | | | ✓ | |
| David Watson | ✓ | | | | |
| Jamie Woodson | | | | ✓ | |

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the Tennessee Fish and Wildlife Commission on 10/28/2016 (mm/dd/yyyy), 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: *08/29/2016*

Rulemaking Hearing(s) Conducted on: (add more dates). *10/28/2016*

Date: 11-8-16

Signature: Ed Carter

Name of Officer: Ed Carter

Title of Officer: Executive Director

LISA CRAWFORD STATE OF TENNESSEE NOTARY PUBLIC DAVIDSON COUNTY

Subscribed and sworn to before me on: 11-8-16

Notary Public Signature: Lisa Crawford

My commission expires on: 03/10/2019

---

All rulemaking hearing rules provided for herein (Tennessee Wildlife Resources Agency Rule 1660-02-07) 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

Herbert H. Slatery III
Attorney General and Reporter

3/6/2017

Date

**Department of State Use Only**

Filed with the Department of State on: 3/16/17

Effective on: 6/14/17

Tre Hargett
Secretary of State

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PUBLICATIONS

## G.O.C. STAFF RULE ABSTRACT

| | |
|---|---|
| DEPARTMENT: | Tennessee Wildlife Resources Agency |
| DIVISION: | Boating and Law Enforcement |
| SUBJECT: | Boating Education |
| STATUTORY AUTHORITY: | Tennessee Code Annotated, Section 69-9-226 establishes guidelines for the rule. |
| EFFECTIVE DATES: | June 14, 2017 through June 30, 2018 |
| FISCAL IMPACT: | Minimal |
| STAFF RULE ABSTRACT: | The rule prescribes requirements for the boating education program. |

**Public Hearing Comments**

One copy of a document containing responses to comments made at the public hearing must accompany the filing pursuant to T.C.A. § 4-5-222. Agencies shall include only their responses to public hearing comments, which can be summarized. No letters of inquiry from parties questioning the rule will be accepted. When no comments are received at the public hearing, the agency need only draft a memorandum stating such and include it with the Rulemaking Hearing Rule filing. Minutes of the meeting will not be accepted. Transcripts are not acceptable.

RULE: 1660-02-12-.01

| | |
|---|---|
| New | _____ |
| Amendment | __X__ |
| Repeal | _____ |

---

[✓] There were no public comments to the above-described rule.

[ ] Attached hereto are the responses to public comments.

**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) 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, and/or directly benefit from the proposed rule;

There are no businesses, small or otherwise, that would bear the cost of or directly benefit from the proposed rule.

(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;

All recordkeeping and administrative costs are estimated to be minimal and would be borne by the Agency through existing staff.

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

The rule as proposed would have no effect on businesses or consumers.

(4) A 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;

The rule puts a minimal burden on small business.

(5) A comparison of the proposed rule with any federal or state counterparts; and

The rule follows guidelines as set forth in T.C.A. 69-9-226.

(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.

Businesses, small or otherwise, will not be impacted as there are no requirements placed on business.

**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)

Will passage of this rule have a projected financial impact on local governments?

The Agency does not believe that the rule will have any impact on local governments.

Please describe the increase in expenditures or decrease in revenues:

The rule will neither increase expenditures, nor decrease revenues.

**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 rule prescribes requirements for the boating education program.

**(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 Section 69-9-226 establishes guidelines for the rule.

**(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;

Persons who operate recreational vessels principally in Tennessee.

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

No opinion of the attorney general or any judicial ruling that directly relates to the rule has been identified.

**(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 fiscal impact to state and local governments is minimal.

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

W. Glenn Moates, LT Colonel, Boating & Law Enforcement Division, 615-781-6684, Glenn.Moates@tn.gov

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

Chris Richardson, TWRA Special Assistant to the Director/Policy and Legislation, will explain the rule at the scheduled meeting of the Government Operations Committee.

**(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

Chris Richardson, TWRA, P.O. Box 40747, Ellington Agricultural Center, Nashville, TN 37204; 615-308-0477; Chris.Richardson@tn.gov

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

**Department of State**
**Division of Publications**
312 Rosa L. Parks Avenue, 8th Floor Snodgrass/TN Tower
Nashville, TN 37243
Phone: 615-741-2650
Email: publications.information@tn.gov

**For Department of State Use Only**

Sequence Number: 03-16-17
Rule ID(s): 6466
File Date: 3/16/17
Effective Date: 6/14/17

# 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:** | Tennessee Wildlife Resources Agency |
| **Division:** | Boating and Law Enforcement Division |
| **Contact Person:** | Lisa Crawford |
| **Address:** | PO Box 40747, Nashville, TN |
| **Zip:** | 37204 |
| **Phone:** | 615-781-6606 |
| **Email:** | Lisa.Crawford@tn.gov |

**Revision Type (check all that apply):**

X 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** |
|---|---|
| 1660-02-12 | Rules and Regulations for Boating Education |
| **Rule Number** | **Rule Title** |
| 1660-02-12-.01 | Boating Education Program |

Amendment

1660-02-12-.01 Boating Education Program is amended by adding "of more than 8.5 horsepower" to paragraph (1) and by deleting (2) (b) in its entirety and replacing it with "Pass an exam administered by an approved representative of TWRA."

(1) Any Tennessee resident born after January 1, 1989, who is operating a boat of more than 8.5 horsepower, must have onboard the TWRA-issued Boating Safety Education Certificate card.

(2) To receive the Boating Safety Education Certificate card a person must:

(a) Purchase the Type 600 Boating Safety Exam Permit from any business that sells hunting and fishing licenses.

(b) ~~Take a monitored TWRA administered boating safety examination.~~ Pass an exam administered by an approved representative of TWRA.

(3) To receive a replacement card, a person must purchase the Type 605 Boating Certification Card from any business that sells hunting and fishing licenses.

(4) Falsification of a document with intent that it will be taken as a genuine government record may be prosecuted pursuant to T.C.A. §39-16-504.

*Authority: T.C.A. §§69-9-226 and 70-1-206. Administrative History: Original rule filed May 15, 2007; effective July 29, 2007. Amendment filed _____; effective _____.*

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

| Board Member | Aye | No | Abstain | Absent | Signature (if required) |
|---|---|---|---|---|---|
| Chad Baker | | | | ✓ | |
| Jim Bledsoe | ✓ | | | | |
| Harold Cannon | ✓ | | | | |
| Jeff Cook | ✓ | | | | |
| Bill Cox | | | | ✓ | |
| Kurt Holbert | ✓ | | | | |
| Connie King | ✓ | | | | |
| Jeff McMillan | ✓ | | | | |
| Jim Ripley | ✓ | | | | |
| Bill Swan | ✓ | | | | |
| Trey Teague | | | | ✓ | |
| David Watson | ✓ | | | | |
| Jamie Woodson | | | | ✓ | |

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the Tennessee Fish and Wildlife Commission on 10/28/2016 (mm/dd/yyyy), 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: *08/29/2016*

Rulemaking Hearing(s) Conducted on: (add more dates). *10/28/2016*

LISA CRAWFORD
STATE OF TENNESSEE NOTARY PUBLIC
DAVIDSON COUNTY

Date: 11-8-16

Signature: Ed Carter

Name of Officer: Ed Carter

Title of Officer: Executive Director

Subscribed and sworn to before me on: 11-8-16

Notary Public Signature: Lisa Crawford

My commission expires on: 3-10-19

)

Tennessee Wildlife Resources Agency
Rule 1660-02-12-.01
Rules and Regulations for Boating Education
Boating Education Program

All rulemaking hearing rules provided for herein (Tennessee Wildlife Resources Agency Rule 1660-02-12) 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

3/6/2017
Date

**Department of State Use Only**

Filed with the Department of State on: 3/16/17

Effective on: 6/14/17

Tre Hargett
Secretary of State

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PUBLICATIONS

## G.O.C. STAFF RULE ABSTRACT

| | |
|---|---|
| DEPARTMENT: | Tennessee Wildlife Resources Agency |
| DIVISION: | Boating and Law Enforcement |
| SUBJECT: | Application and Issuance of Boating Certificates |
| STATUTORY AUTHORITY: | 33 CFR 173 Subparts B & D, 33 CFR 174 Subpart B relative to vessel numbering have a preemptive effect on state vessel numbering regulations. These regulations were amended effective January 1, 2017. Tennessee Code Annotated, Sections 69-9-206 and 69-9-207 establish guidelines for the rule. |
| EFFECTIVE DATES: | June 29, 2017 through June 30, 2018 |
| FISCAL IMPACT: | Minimal |
| STAFF RULE ABSTRACT: | This rulemaking hearing rule prescribes the process by which to apply for and display vessel registration. |

**Public Hearing Comments**

One copy of a document containing responses to comments made at the public hearing must accompany the filing pursuant to T.C.A. § 4-5-222. Agencies shall include only their responses to public hearing comments, which can be summarized. No letters of inquiry from parties questioning the rule will be accepted. When no comments are received at the public hearing, the agency need only draft a memorandum stating such and include it with the Rulemaking Hearing Rule filing. Minutes of the meeting will not be accepted. Transcripts are not acceptable.

RULE: 1660-02-01

| | |
|---|---|
| New | ____ |
| Amendment | __X__ |
| Repeal | ____ |

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[✓] There were no public comments to the above-described rule.

[ ] Attached hereto are the responses to public comments.

**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) 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, and/or directly benefit from the proposed rule;

There are no businesses, small or otherwise, that would bear the cost of or directly benefit from the proposed rule.

(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;

All recordkeeping and administrative costs are estimated to be minimal and would be borne by the Agency through existing staff.

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

The rule as proposed would have no effect on businesses or consumers.

(4) A 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;

The rule provides a minimal burden to small business.

(5) A comparison of the proposed rule with any federal or state counterparts; and

The rule follows the Federal guidelines for vessel numbering

(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.

Businesses, small or otherwise, will be minimally impacted. Boat dealers and boat manufacturers are required to meet the requirements for vessel registration as prescribed in this rule. These businesses cannot be exempted according to federal regulations.

**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)

Will passage of this rule have a projected financial impact on local governments?

Agency does not believe that the rule will have any impact on local governments.

Please describe the increase in expenditures or decrease in revenues:

The rule will neither increase expenditures, nor decrease revenues.

**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 rule prescribes the process to apply for and display vessel registration.

**(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;

33 CFR 173 Subparts B & D, 33 CFR 174 Subpart B relative to vessel numbering have a preemptive effect on state vessel numbering regulations. These regulations were amended effective January 1, 2017. T.C.A Sections 69-9-206 and 69-9-207 establish guidelines for the rule.

**(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;

Persons who operate recreational vessels principally in Tennessee.

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

No opinion of the attorney general or any judicial ruling that directly relates to the rule has been identified.

**(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 fiscal impact to state and local governments is minimal.

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

W. Glenn Moates, LT Colonel, Boating & Law Enforcement Division, 615-781-6684, Glenn.Moates@tn.gov

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

Chris Richardson, TWRA Special Assistant to the Director/Policy and Legislation, will explain the rule at the scheduled meeting of the Government Operations Committee.

**(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

Chris Richardson, TWRA, P.O. Box 40747, Ellington Agricultural Center, Nashville, TN 37204; 615-308-0477; Chris.Richardson@tn.gov

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

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Nashville, TN 37243
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**For Department of State Use Only**

Sequence Number: 03-35-17
Rule ID(s): 6503
File Date: 3/31/17
Effective Date: 6/29/17

# 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:** Tennessee Wildlife Resources Agency
**Division:** Boating and Law Enforcement Division
**Contact Person:** Lisa Crawford
**Address:** PO Box 40747, Nashville, TN
**Zip:** 37204
**Phone:** 615-781-6606
**Email:** Lisa.Crawford@tn.gov

**Revision Type (check all that apply):**
X 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** |
|---|---|
| 1660-02-01 | Rules and Regulations for Boating Certificates |
| **Rule Number** | **Rule Title** |
| 1660-02-01-.01 | Application for Certificate of Number |
| 1660-02-01-.02 | Issuance of Certificate of Number |

Amendment

1660-02-01-.01 Application for Certificate of Number is amended by replacing the rule in its entirety and replacing it with the following:

(1) All applications for a Certificate of Number shall include the following information and shall be submitted on forms furnished by the Wildlife Resources Agency.

(a) Name and address of owner, including zip code;

(b) ~~Citizenship of owner;~~ Owner identifier, which must be the owner's social security number, or date of birth together with driver's license number, or date of birth together with TWRA Identification Number.

(c) Present TN number (if any) on vessel;

(d) Hull materials ~~(wood, steel, aluminum, plastic, other);~~ Authorized terms are "aluminum," "fiberglass," "plastic," "rubber/vinyl/canvas," "steel," "wood," or "other";

(e) Type of propulsion ~~(outboard, inboard, sail, other);~~ Authorized terms are "air thrust," "manual," "propeller," "sail," "water jet," or "other."

(f) ~~Type of fuel (gas, diesel, other);~~ Fuel: Authorized terms are "electric," "diesel," "gas," or "other."

(g) Make and model ~~and year built (if known);~~ of vessel.

(h) Model year of vessel.

(i) Overall length of vessel (in feet and inches);

~~(j) A certification of ownership;~~

~~(i)~~(j) ~~Type of use (pleasure, livery, dealer, manufacturer, commercial, other);~~ Primary operation. Authorized terms are, "charter fishing," "commercial fishing," "commercial passenger carrying," "dealer or manufacturer demonstration," "other commercial operation," "pleasure," or "rent or lease."

(k) Signature of owner.

~~(l) Date of birth of owner;~~

(l) Vessel type: Authorized terms are "air boat," "auxiliary sail," "cabin motorboat," "houseboat," "inflatable boat," "open motorboat," "paddlecraft," "personal watercraft," "pontoon boat," "rowboat," "sail only," or "other."

(m) Engine drive type: Authorized terms are "inboard," "outboard," "pod drive," "sterndrive," or "other."

~~(m)~~(n) State ~~in which vessel is, or will be, used~~ of principal operation.

~~(n)~~(o) Indicate whether the application is for a new number, renewal of a number, or transfer of ownership.

~~(o)~~(p) Manufacturer's hull identification number (if any).

~~(p) Information certifying whether or not this vessel has an installed head and if so, that the marine sanitation device(s) on board is in compliance with the state marine sanitation law.~~

(2) All requirements of paragraph (1) shall apply to ~~livery (~~rentals~~)~~ boats, except that a description of motor, if any, and type of fuel need not be completed on the application in every case where the engines is not rented as part of the boat.

(3) Paragraph (1) shall apply for dealers' or manufacturers' vessels except a description of the vessel shall not be required since the number issued may be transferred from one vessel to another. In lieu of the description, the word "manufacturer" or "dealer" as appropriate will be plainly indicated on the application.

(a) Application for a dealer or manufacturer certificate must be accompanied by a notarized copy (copies) of the dealer/manufacturer license to conduct such business and the sale tax number issued to said business.

(b) A dealer and manufacturer certificate is to be used only for demonstration and or testing purposes and may be transferred from boat to boat. However, no certificate may be used to

operate more than one boat at the same time and each boat operated simultaneously requires a separate certificate.

1. ~~Persons who wish to conduct an on-the-water dealer or manufacturer show may, through an approved application for a Tennessee Wildlife Resources Agency marine permit, use a single dealer/ manufacturer certificate of number, followed by a numerical suffix for each boat used: Example: (TN 1234 AA – 1, TN 1234 AA – 2, etc.)~~

2. ~~The number of boats to utilize this format must be listed on the marine event application and the appropriate fee for each vessel must be remitted to the Tennessee Wildlife Resources Agency.~~

~~(c) If a registration card or a decal(s) is lost or destroyed, a duplicate registration may be obtained. The following must be submitted for replacement.~~

~~1. An application for boat certificate.~~

~~2. A notarized affidavit, signed by the dealer or manufacturer, stating the card or decal was lost or destroyed.~~

~~3. The appropriate fee.~~

~~(d) Duplicate registration cards cannot be ordered in multiples in conjunction with replacement or with the original application.~~

(4) Application for a duplicate certificate of Number containing the information as required by paragraph (1) of these regulations shall be made if the Certificate of Number is lost or destroyed. Such an application shall be made within fifteen (15) days of loss or destruction.

(5) The application for number by a new owner of a vessel bearing a Tennessee number shall, for purpose of fee, be regarded as an original application for number and the number issued shall be identical to the previous one, except where a lien holder requires title or lawful possession by virtue of his lien, in which case a new number shall be issued.

(6) Applications for a consignment vessel, certificate of number, shall adhere to the following guidelines:

(a) A consignment vessel is one which is owned by a vessel manufacturer or boat dealer, and is consigned to an individual or other entity for a period of time for demonstration or advertising use, and for which no sale has occurred.

(b) A consignment vessel certificate of number may only be issued to a vessel manufacturer or boat dealer, ~~whose manufacturing facility is~~ located in Tennessee, ~~and who has obtained a Manufacturer Identification Code issued by the United States Coast Guard.~~

(c) Applications for consignment vessels shall be made using the Tennessee Wildlife Resources Agency "application for boat certificate of number" (WR0292), and include all applicable information outlined in 1660-02-01-.02 (Issuance of Certificate of Number).

(d) Applications must be accompanied by proof of manufacturer's or dealer's status which shall include at least the company name, Manufacturer Identification Code, location of the company office, and United States tax identification number or tax number issued by the Tennessee Department of Revenue.

(e) The application fee shall be the same as any other vessel of the same length.

(f) Applications for consignment vessels may be made only with the Nashville office of the Tennessee Wildlife Resources Agency.

(g) The certificate of number shall be issued in the name of the manufacturer's or dealer's business name.

(h) If the vessel is sold at the end of the consignment period, it must be sold as a used vessel.

(i) The vessel number will remain unchanged at the time of sale unless the state of principal use changes or as outlined in 1660-02-01-.01(5), 1660-02-01-.02(8) or 1660-02-01-.02(9).

*Authority: T.C.A. §§69-9-209 and 70-1-206. Administrative History: Original rule certified May 8, 1974. Amendment filed April 16, 1993; effective May 31, 1993. Amendment filed October 16, 1996; effective December 28, 1996. Amendment filed April 3, 2008; effective June 17, 2008. Amendment filed _____; effective _____.*

Amendment

1660-02-01-.02 Issuance of Certificate of Number is amended by replacing the rule in its entirety and by replacing it with the following:

(1) All Certificates of number issued by the Wildlife Resources Agency shall be pocketsize, water resistant and available for examination on the vessel for which issued whenever the vessel is in use, and shall contain the following information:

(a) Name and address of owner, including zip code;

(b) Number issued to the vessel;

(c) Expiration date;

(d) Make and model ~~or type~~ of boat;

(e) Hull material: ~~(wood, steel, aluminum, plastic, other);~~ Authorized terms are "aluminum," "fiberglass," "plastic," "rubber/vinyl/canvas," "steel," "wood," or "other."

(f) Overall length of vessel (in feet and inches);

(g) Propulsion type: ~~(inboard, outboard, sail, other);~~ Authorized terms are "air thrust," "manual," "propeller," "sail," "water jet," or "other."

(h) Type of fuel: ~~(gas, diesel, other);~~ Authorized terms are "electric," "diesel," "gas," or "other."

(i) ~~Statement as to use (pleasure, dealer, manufacturer, commercial, other);~~ Primary operation: Authorized terms are "charter fishing," "commercial fishing," "commercial passenger carrying," "dealer or manufacturer demonstration," "other commercial operation," "pleasure," or "rent or lease."

(j) Engine drive type: Authorized terms are "inboard," "outboard," "pod drive," "sterndrive," or "other."

(k) Vessel type: Authorized terms are "air boat," "auxiliary sail," "cabin motorboat," "houseboat," "inflatable boat," "open motorboat," "paddlecraft," "personal watercraft," "pontoon boat," "rowboat," "sail only," or "other."

~~(j)~~(l) State of principal ~~use~~ operation;

~~(k)~~(m) Manufacturer's hull identification number (if any);

~~(l)~~(n) ~~Year vessel was manufactured~~. Model year of vessel.

(2) Certificates of Number issued to ~~livery~~ rental motorboats need not include the type of fuel or method propulsion if the motor is not rented as part of the boat, but shall be plainly marked with the word ~~"LIVERY"~~ "Rental."

(3) The Certificate of Number for vessels less than 26' in length and leased or rented to another for the latter's non-commercial use of less than twenty-four (24) hours may be retained on shore by the vessel's owner or his representative at the place from which the vessel departs or returns to the possession of the owner or his representative; provided, however, the operator shall have with him a copy of the lease or rental agreement signed by the owner or his authorized representative and by the person leasing or renting the vessel that contains the vessel's number than appears on the Certificate of Number and the period of time for which the vessel is leased or rented.

(4) Certificates of Number issued for a dealers' or manufacturers' vessel shall, in lieu of the description of the vessel, be plainly marked with the words 'MANUFACTURER' or "DEALER' as appropriate.

(5) Certificates of Number issued are valid for a period of three (3) years from date of issuance unless sooner cancelled. Certain causes for cancellation of certificates and voiding of numbers are:

(a) Surrender of certificate for cancellation;

(b) Issuance of a new number for the same vessel;

(c) Issuance of a marine document by the U. S. Bureau of Customs for the same vessel;

(d) False or fraudulent certification in an application for number.

(6) When an owner of a vessel numbered by Tennessee changes his address from that shown on the Certificate of Number, he shall notify in writing the Executive Director, Wildlife Resources Agency, Nashville, Tennessee, of his new address within fifteen (15) days from such change.

(7) When a vessel numbered by Tennessee is lost, stolen and/or recovered, destroyed, abandoned or transferred to another person, the Certificate of Number issued for the vessel shall be surrendered together with written notification of the change in status of the vessel to the Executive Director, within fifteen (15) days from such event. ~~If the change in status is transfer of ownership, the name and address of the new owner shall be included in such notification.~~

(8) The owner of a vessel must remove the number when the vessel is documented by the ~~bureau of customs of the United States,~~ United States Coast Guard, the Certificate of Number becomes invalid, or the vessel is no longer principally used in Tennessee.

(9) The certificate of number is invalid if the person whose name appears on the certificate loses his interest by legal process.

*Authority: T.C.A. §§69-9-209 and 70-1-206. Administrative History: Original rule filed May 8, 1975. Amendment filed March 2, 1978; effective April 1, 1978. Amendment filed April 3, 2008; effective June 17, 2008. Amendment filed _____; effective _____.*

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

| Board Member | Aye | No | Abstain | Absent | Signature (if required) |
|---|---|---|---|---|---|
| Chad Baker | | | | ✓ | |
| Jim Bledsoe | ✓ | | | | |
| Harold Cannon | ✓ | | | | |
| Jeff Cook | ✓ | | | | |
| Bill Cox | | | | ✓ | |
| Kurt Holbert | ✓ | | | | |
| Connie King | ✓ | | | | |
| Jeff McMillan | ✓ | | | | |
| Jim Ripley | ✓ | | | | |
| Bill Swan | ✓ | | | | |
| Trey Teague | | | | ✓ | |
| David Watson | ✓ | | | | |
| Jamie Woodson | | | | ✓ | |

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the Tennessee Fish & Wildlife Commission on 10/28/2016 (mm/dd/yyyy), 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: *08/29/2016*

Rulemaking Hearing(s) Conducted on: (add more dates). *10/28/2016*

Date: 11-8-16

Signature: Ed Carter

Name of Officer: Ed Carter

Title of Officer: Executive Director

Subscribed and sworn to before me on: 11-8-16

Notary Public Signature: Susi Crawford

My commission expires on: 03/10/2019

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All rulemaking hearing rules provided for herein (Tennessee Wildlife Resources Agency Rule 1660-02-01) 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

3/27/2017
Date

**Department of State Use Only**

Filed with the Department of State on: 3/31/17

Effective on: 6/29/17

Tre Hargett
Secretary of State

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PUBLICATIONS

## G.O.C. STAFF RULE ABSTRACT

| | |
|---|---|
| DEPARTMENT: | Tennessee Wildlife Resources Agency |
| DIVISION: | Boating and Law Enforcement |
| SUBJECT: | Identification Numbers for Vessels |
| STATUTORY AUTHORITY: | 33 CFR 173 Subparts B & D, 33 CFR 174 Subpart B relative to vessel numbering have a preemptive effect on state vessel numbering regulations. These regulations were amended effective January 1, 2017. Tennessee Code Annotated, Sections 69-9-206 and 69-9-207 establish guidelines for the rule. |
| EFFECTIVE DATES: | June 29, 2017 through June 30, 2018 |
| FISCAL IMPACT: | Minimal |
| STAFF RULE ABSTRACT: | This rulemaking hearing rule prescribes the process by which to display vessel numbers. |

**Public Hearing Comments**

One copy of a document containing responses to comments made at the public hearing must accompany the filing pursuant to T.C.A. § 4-5-222. Agencies shall include only their responses to public hearing comments, which can be summarized. No letters of inquiry from parties questioning the rule will be accepted. When no comments are received at the public hearing, the agency need only draft a memorandum stating such and include it with the Rulemaking Hearing Rule filing. Minutes of the meeting will not be accepted. Transcripts are not acceptable.

RULE: 1660-02-02-.02

| | |
|---|---|
| New | |
| Amendment | X |
| Repeal | |

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[✓] There were no public comments to the above-described rule.

[ ] Attached hereto are the responses to public comments.

**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) 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, and/or directly benefit from the proposed rule;

There are no businesses, small or otherwise, that would bear the cost of or directly benefit from the proposed rule.

(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;

All recordkeeping and administrative costs are estimated to be minimal and would be borne by the Agency through existing staff.

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

The rule as proposed would have no effect on businesses or consumers.

(4) A 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;

The rule puts a minimal burden on small business.

(5) A comparison of the proposed rule with any federal or state counterparts; and

The rule follows Federal guidelines for vessel numbering.

(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.

Businesses, small or otherwise, will not be impacted as there are no requirements placed on business.

**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)

Will passage of this rule have a projected financial impact on local governments?

The Agency does not believe that the rule will have any impact on local governments.

Please describe the increase in expenditures or decrease in revenues:

The rule will neither increase expenditures, nor decrease revenues.

**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 rule prescribes the process to display vessel registration.

**(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;

33 CFR 173 Subparts B & D, 33 CFR 174 Subpart B relative to vessel numbering have a preemptive effect on state vessel numbering regulations. These regulations were amended effective January 1, 2017. T.C.A Sections 69-9-206 and 69-9-207 establish guidelines for the rule.

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Persons who operate recreational vessels principally in Tennessee.

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

No opinion of the attorney general or any judicial ruling that directly relates to the rule has been identified.

**(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 fiscal impact to state and local governments is minimal.

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

W. Glenn Moates, LT Colonel, Boating & Law Enforcement Division, 615-781-6684, Glenn.Moates@tn.gov

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

Chris Richardson, TWRA Special Assistant to the Director/Policy and Legislation, will explain the rule at the scheduled meeting of the Government Operations Committee.

**(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

Chris Richardson, TWRA, P.O. Box 40747, Ellington Agricultural Center, Nashville, TN 37204; 615-308-0477; Chris.Richardson@tn.gov

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

**Department of State**
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Nashville, TN 37243
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Email: publications.information@tn.gov

**For Department of State Use Only**

Sequence Number: 03-36-17
Rule ID(s): 6504
File Date: 3/31/17
Effective Date: 6/29/17

# Rulemaking Hearing Rule(s) Filing Form

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**Agency/Board/Commission:** Tennessee Wildlife Resources Agency
**Division:** Boating and Law Enforcement Division
**Contact Person:** Lisa Crawford
**Address:** PO Box 40747, Nashville, TN
**Zip:** 37204
**Phone:** 615-781-6606
**Email:** Lisa.Crawford@tn.gov

**Revision Type (check all that apply):**
X 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** |
|---|---|
| 1660-02-02 | Rules and Regulations for Number |
| **Rule Number** | **Rule Title** |
| 1660-02-02-.02 | Display |

Amendment

1660-02-02-.02 Display of Number is amended by inserting a new paragraph (c) and renumbering the remaining paragraphs accordingly so that, as amended, the rule shall read:

(1) The identification number awarded to any vessel under the Tennessee numbering system shall be displayed thereon by being:

(a) Painted on, or attached to, each side of the bow (i.e., the forward half) of the vessel; read from left to right; and in such position to provide clear legibility for identification.

(b) In block characters of good proportion not less than three (3) inches in height and of a color which will contrast with the color of the background (i.e., dark numbers on a light

background, or light numbers on a dark background) and so maintained as to be clearly visible and legible. Vessels operated by manufacturers or dealers for demonstration purposes may have the number issued printed upon or attached to a removable sign or signs to be temporarily but firmly mounted upon or attached to the vessel being demonstrated or tested so long as the display meets the above requirements.

(c) On vessels so configured that a number on the hull or superstructure would not be easily visible, the number must be painted on or attached to a backing plate that is attached to the forward half of the vessel so that the number is visible from each side of the vessel.

~~(c)~~ (d) A validation decal must be affixed to the vessel on each side of the forward half of the vessel immediately preceding or following the TN identification number.

~~(d)~~ (e) Vessels with a valid document issued by the United States Coast Guard shall not be required to display a certificate of number but shall display a current vessel validation decal issued by the Tennessee Wildlife Resources Agency. The decal shall be located on each side of the vessel on the windows located nearest the main operator station, or if not equipped with windows, the decal shall be placed in the immediate vicinity of the operator so that the decal is clearly visible to enforcement officers. Sailboats, in lieu of that location, may place the decal on the bottom of the main mast, on both the port and starboard sides.

*Authority: T.C.A. §§69-9-209 and 70-1-206(3). Administrative History: Original rule certified May 8, 1974. Amendment filed May 7, 1985; effective June 6, 1985. Amendment filed April 3, 2008; effective June 17, 2008. Amendment filed _____; effective _____.*

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

| Board Member | Aye | No | Abstain | Absent | Signature (if required) |
|---|---|---|---|---|---|
| Chad Baker | | | | ✓ | |
| Jim Bledsoe | ✓ | | | | |
| Harold Cannon | ✓ | | | | |
| Jeff Cook | ✓ | | | | |
| Bill Cox | | | | ✓ | |
| Kurt Holbert | ✓ | | | | |
| Connie King | ✓ | | | | |
| Jeff McMillan | ✓ | | | | |
| Jim Ripley | ✓ | | | | |
| Bill Swan | ✓ | | | | |
| Trey Teague | | | | ✓ | |
| David Watson | ✓ | | | | |
| Jamie Woodson | | | | ✓ | |

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the Tennessee Fish and Wildlife Commission on 10/28/2016 (mm/dd/yyyy), 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: *08/29/2016*

Rulemaking Hearing(s) Conducted on: (add more dates). *10/28/2016*

Date: 11-7-16

Signature: Ed Carter

Name of Officer: Ed Carter

Title of Officer: Executive Director

LISA CRAWFORD STATE OF TENNESSEE NOTARY PUBLIC DAVIDSON COUNTY

Subscribed and sworn to before me on: 11-7-16

Notary Public Signature: Lisa Crawford

My commission expires on: 3-10-19

---

All rulemaking hearing rules provided for herein (Tennessee Wildlife Resources Agency Rule 1660-02-02) 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

Herbert H. Slatery III
Attorney General and Reporter

3/27/2017

Date

**Department of State Use Only**

Filed with the Department of State on: 3/31/17

Effective on: 6/29/17

Tre Hargett

Tre Hargett
Secretary of State

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PUBLICATIONS

## G.O.C. STAFF RULE ABSTRACT

| | |
|---|---|
| DEPARTMENT: | Tennessee Wildlife Resources Agency |
| DIVISION: | Boating and Law Enforcement |
| SUBJECT: | Classifications; Flotation Devices; Backfire Flame Control; Fire Extinguishers |
| STATUTORY AUTHORITY: | 33 CFR 175 Subpart B relative to personal flotation devices have a preemptive effect on state vessel regulations. Tennessee Code Annotated, Section 69-9-209 establishes guidelines for this rule. |
| EFFECTIVE DATES: | June 29, 2017 through June 30, 2018 |
| FISCAL IMPACT: | Minimal |
| STAFF RULE ABSTRACT: | This rulemaking hearing rule describes equipment to be carried on vessels and references to navigation rules. |

**Public Hearing Comments**

One copy of a document containing responses to comments made at the public hearing must accompany the filing pursuant to T.C.A. § 4-5-222. Agencies shall include only their responses to public hearing comments, which can be summarized. No letters of inquiry from parties questioning the rule will be accepted. When no comments are received at the public hearing, the agency need only draft a memorandum stating such and include it with the Rulemaking Hearing Rule filing. Minutes of the meeting will not be accepted. Transcripts are not acceptable.

RULE: 1660-02-03

| | |
|---|---|
| New | ____ |
| Amendment | X |
| Repeal | ____ |

---

[✓] There were no public comments to the above-described rule.

[ ] Attached hereto are the responses to public comments.

**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) 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, and/or directly benefit from the proposed rule;

There are no businesses, small or otherwise, that would bear the cost of or directly benefit from the proposed rule.

(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;

All recordkeeping and administrative costs are estimated to be minimal and would be borne by the Agency through existing staff.

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

The rule as proposed would have no effect on businesses or consumers.

(4) A 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;

The rule puts a minimal burden on small business.

(5) A comparison of the proposed rule with any federal or state counterparts; and

The rule follows Federal guidelines for vessel equipment.

(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.

Businesses, small or otherwise, will not be impacted as there are no requirements placed on business.

**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)

Will passage of this rule have a projected financial impact on local governments?

The Agency does not believe that the rule will have any impact on local governments.

Please describe the increase in expenditures or decrease in revenues:

The rule will neither increase expenditures, nor decrease revenues.

**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 rule describes equipment to be carried on vessels and reference to navigation 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;

33 CFR 175 Subpart B relative to personal flotation devices have a preemptive effect on state vessel regulations. T.C.A Section 69-9-209 establishes guideline for this rule.

**(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;

Persons who operate recreational vessels principally in Tennessee.

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

No opinion of the attorney general or any judicial ruling that directly relates to the rule has been identified.

**(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 fiscal impact to state and local governments is minimal.

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

W. Glenn Moates, LT Colonel, Boating & Law Enforcement Division, 615-781-6684, Glenn.Moates@tn.gov

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

Chris Richardson, TWRA Special Assistant to the Director/Policy and Legislation, will explain the rule at the scheduled meeting of the Government Operations Committee.

**(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

Chris Richardson, TWRA, P.O. Box 40747, Ellington Agricultural Center, Nashville, TN 37204; 615-308-0477; Chris.Richardson@tn.gov

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

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**Division of Publications**
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Nashville, TN 37243
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**For Department of State Use Only**

Sequence Number: 03-37-17
Rule ID(s): 6505
File Date: 3/31/17
Effective Date: 6/29/17

# 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:** | Tennessee Wildlife Resources Agency |
| **Division:** | Boating and Law Enforcement Division |
| **Contact Person:** | Lisa Crawford |
| **Address:** | PO Box 40747, Nashville, TN |
| **Zip:** | 37204 |
| **Phone:** | 615-781-6606 |
| **Email:** | Lisa.Crawford@tn.gov |

**Revision Type (check all that apply):**
X 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** |
|---|---|
| 1660-02-03 | Rules and Regulations Governing Classification of Vessels and Equipment and Lights Required |
| **Rule Number** | **Rule Title** |
| 1660-02-03-.01 | Classifications |
| 1660-02-03-.03 | Flotation Devices |
| 1660-02-03-.05 | Backfire Flame Control |
| 1660-02-03-.06 | Fire Extinguishers |

Amendment

1660-02-03 Rules and Regulations Governing Classification of Vessels and Equipment and Lights Required is amended by changing the title of the chapter to "Rules and Regulations Governing Equipment Required on Vessels and Navigation Rules."

Amendment

1660-02-03-.01 Classifications is amended by changing the title to "Applicability" and by deleting the rule in its

entirety and replacing it with the following:

1660-02-03-.01 Applicability ~~CLASSIFICATION. Vessels subject to the provisions of these regulations shall be classified into four classes as follows:~~

~~(1) Class A – Less than 16 feet in length;~~

~~(2) Class 1 – 16 feet or over, but less than 26 feet in length;~~

~~(3) Class 2 – 26 feet or over, but less than 40 feet in length;~~

~~(4) Class 3 – 40 feet or over, but not more than 65 feet in length.~~

This rule applies to all vessels that are propelled or controlled by machinery, sails, oars, paddles, poles, or another vessel.

*Authority: T.C.A. §§69-9-209 and 70-1-206. Administrative History: Original rule certified May 8, 1974. Amendment filed November 20, 1975; effective December 20, 1975. Amendment filed _____; effective _____.*

Amendment

1660-02-03-.03 Flotation Devices is amended by deleting the rule in its entirety and replacing it with the following:

1660-02-03-.03 Flotation Devices.

(1) The operator of a vessel, when carrying passengers for hire, shall provide a United States ~~Coat~~ Coast Gguard approved life jacket ~~preserver~~ for each person on board, and unless the service is such that children are never carried, with an additional number of approved life jackets ~~preservers~~ suitable for children equal to at least 10 percent of the total number of person carried.

~~(2) No person shall use a vessel (which is not carrying persons for hire) unless at least one Coast guard approved personal flotation device Type I, II, III, or V is carried for each person on board. Type V devices must meet the requirements listed in paragraph (6) "exemptions" section below.~~

~~(3) All vessels of Class 1, 2, or 3 (except canoes and kayaks) must carry at least one type IV floatation device on board.~~

(2) As used in this rule:

*Personal Flotation Device* or *PFD* means a device that is approved by the Commandant of the U.S. Coast Guard under 46 CFR part 160.

*Throwable PFD* means a PFD that is intended to be thrown to a person in the water. A PFD labeled as Type IV or Type V with Type IV performance is considered a throwable PFD. Unless specifically marked otherwise, a wearable PFD is not a throwable PFD.

*Wearable PFD* means a PFD that is intended to be worn or otherwise attached to the body. A PFD labeled as Type I, Type II, Type III, or Type V with Type (I, II or III) performance is considered a wearable PFD.

(3) (a) No person may use a recreational vessel unless—

1. At least one wearable PFD is on board for each person;

2. Each PFD is used in accordance with any requirements on the Approval label; and

new

3. Each PFD is used in accordance with any requirements in its owner's manual, if the approval label makes reference to such a manual.

(b) No person may use a recreational vessel 16 feet or more in length unless one throwable PFD is onboard in addition to the total number of wearable PFDs required in paragraph (a) of this section. Canoes and kayaks 16 feet or more in length are exempted from the requirements for carriage of the additional throwable PFD.

(4) All Personal Flotation devices ("PFD's") carried on board vessels operating within the state shall be in good and serviceable condition, and of an appropriate size for the persons who intend to wear them. Wearable PFD's shall be readily accessible and throwable devices shall be immediately available for use. All PFD's shall be legibly labeled with an approval number, as specified in 46 CFR part 160.

~~(5) Personal Floatation devices are classified and marked by "Type" according to their performance as indicated below. The marking label attached to the PFD must indicate a U.S. Coast guard approval number.~~

~~(a) Type I – a wearable device which has the greatest required buoyancy and is designed to turn most unconscious persons in the water from a face down position to a vertical and slightly backward position. The adult size provides a minimum buoyancy of 22 pounds and the child size provides a minimum buoyancy of 11 pounds.~~

~~(b) Type II – a wearable device which is designed to turn the wearer to a vertical and slightly backwards position in the water. The turning action is not as pronounced as with the Type I and the device will not turn many persons under the same conditions as the Type I. An adult size device provides a minimum buoyancy of 15 1/2 pounds and the child size provides a minimum buoyancy of 7 pounds.~~

~~(c) Type III – a wearable device designed so that the wearer can place himself or herself in a vertical and slightly backward position, and the device will maintain the wearer in that position and have no tendency to turn the wearer face down. A Type III device has the same buoyancy as the Type II PFD.~~

~~(d) Type IV – a throwable device designed to be grasped and held by the user until rescued. It can also be thrown to a person who has fallen overboard.~~

~~(e) Type V – A type V PFD is any PFD approved for restricted use and is acceptable only when used in the activity for which it was approved.~~

New

(5) A PFD is considered to be in serviceable condition only if the following conditions are met:

(a) No PFD may exhibit deterioration that could diminish the performance of the PFD, including—

1. Metal or plastic hardware used to secure the PFD on the wearer that is broken, deformed, or weakened by corrosion;

2. Webbings or straps used to secure the PFD on the wearer that are ripped, torn, or which have become separated from an attachment point on the PFD; or

3. Any other rotted or deteriorated structural component that fails when tugged.

(b) In addition to meeting the requirements of paragraph (a) of this section, no inherently buoyant PFD, including the inherently buoyant components of a hybrid inflatable PFD, may exhibit—

1. Rips, tears, or open seams in fabric or coatings, that are large enough to allow the loss of buoyant material;

2. Buoyant material that has become hardened, non-resilient, permanently compressed, waterlogged, oil-soaked, or which shows evidence of fungus or mildew; or

3. Loss of buoyant material or buoyant material that is not securely held in position.

(c) In addition to meeting the requirements of paragraph (a) of this section, an inflatable PFD, including the inflatable components of a hybrid inflatable PFD, must be equipped with—

New

1. Except as provided in paragraph (d) of this section, a properly armed inflation mechanism, complete with a full inflation medium cartridge and all status indicators showing that the inflation mechanism is properly armed;

2. Inflatable chambers that are all capable of holding air;

3. Oral inflation tubes that are not blocked, detached, or broken;

4. A manual inflation lanyard or lever that is not inaccessible, broken, or missing; and

5. Inflator status indicators that are not broken or otherwise non-functional.

(d) The inflation system of an inflatable PFD need not be armed when the PFD is worn inflated and otherwise meets the requirements of paragraphs (a) and (c) of this section.

(6) Exemptions:

(a) Racing shells, rowing sculls, and racing paddlecraft ~~canoes and racing kayaks~~ are exempted from the requirements for carriage of any Type PFD. ~~racing shell, rowing scull, racing canoe, and racing kayak means a manually propelled vessel that is recognized by national or international racing associations for use in competitive racing and one in which all occupants row, scull, or paddle, with the exception of a coxswain, if one is provided, and is not designed to carry and does not carry any equipment not solely for competitive racing.~~

New

This exemption only applies to racing shells, rowing sculls, and racing paddlecraft when competing in an organized or sanctioned race or training program approved by a national or international body, or by appropriate permit, and where adequate safety precautions are in place.

Paddlecraft means a vessel powered only by its occupants, using a single or double bladed paddle as a lever without the aid of a fulcrum provided by oarlocks, thole pins, crutches, or similar arrangements.

~~(b) A Type V PFD may be carried in lieu of any PFD required provided the approval label on the Type V PFD indicated that the device is approved:~~

~~1. For the activity in which the vessel is being used or as a substitute for a PFD of the Type required on the vessel in use.~~

~~2. The PFD is used in accordance with any requirements on the approval label.~~

~~3. The PFD is used in accordance with requirements in its owner's manual, if the approval label makes reference to such a manual.~~

~~(c)~~(b) Sailboards are exempted from the requirements for any carriage of any Type PFD. A sailboard means a sail propelled vessel with no freeboard and equipped with a swivel mounted mast not secured to a hull by guys or stays.

~~(d)~~(c) Vessels of the United States used by foreign competitors while practicing for or racing in competition are exempted from these carriage requirements provided the vessel carries one of the sponsoring foreign country's acceptable flotation devices for each foreign competitor on board.

*Authority: T.C.A. §§69-9-209, 69-9-502, and 70-1-206. Administrative History: Original rule certified May 8, 1974. Amendment filed March 2, 1978; effective April 1, 1978. Amendment filed May 19, 1980; effective July 3, 1980. Amendment filed May 27, 1983; effective June 27, 1983. Amendment filed September 26, 1996; effective December 10, 1996. Amendment filed _____; effective _____.*

Amendment

1660-02-03-.05(4) Backfire Flame Control is amended by correcting the word "file" to "fuel" in (4) (d).

(1) Except for compartments open to the atmosphere, a natural or power ventilation system must be provided for each compartment in a boat that—

(a) contains a permanently installed gasoline engine;

(b) has openings between it and a compartment that requires ventilation; except that an accommodation compartment above a compartment requiring ventilation by a deck or other structure does not have to comply;

(c) contains a permanently installed fuel tank where an electrical component is not ignition protected;

(d) contains a ~~file~~ fuel tank that vents into that compartment; or

(e) contains a non-metallic fuel tank with an aggregate permeability rate greater than the allowable standards established in CFR 183.620.

*Authority: T.C.A. §§69-9-209 and 70-1-206. Administrative History: Original rule certified May 8, 1974. Amendment filed June 11, 1981; effective July 27, 1981.*

Amendment

1660-02-03-.06(5) Fire Extinguishers is amended by removing vessel classes in paragraph (5) and replacing it with vessel lengths as follows:

(5) All motorboats shall carry at least the minimum number of hand portable fire extinguishers as set forth below, except that motorboats less than 26 feet in length, propelled by outboard motors and not carrying passengers for hire need not carry such portable fire extinguishers if the construction of such motorboat will not permit the entrapment of explosive or flammable gases or vapors.

Minimum Number of BI Hand Portable Fire Extinguishers Needed

| ~~Class~~ Length of Motrboat | No fixed fire Extinguishing system in machinery spaces | With fixed fire extinguishing system in machinery spaces |
|---|---|---|
| ~~A~~ Less than 16' | 1 | 0 |

| | | | |
|---|---|---|---|
| ~~1~~ | 16' to less than 26' | 1 | 0 |
| ~~2~~ | 26' to less than 40' | 2 or 1 BII | 1 |
| ~~3~~ | Greater than 40' | 3 or 1 BII | 2 or 1 BII and 1 BI |

Examples of minimum size graduations for some of the typical hand portable fire extinguishers are set forth below:

| Classification | | Foam (gallons) | Carbon dioxide (pounds) | Dry chemical (pounds) |
|---|---|---|---|---|
| Type | Size | | | |
| B | I | 1¼ | 4 | 2 |
| B | II | 2½ | 15 | 10 |
| B | III | 12 | 35 | 20 |

*Authority: T.C.A. §§69-9-209 and 70-1-206. Administrative History: Original rule certified May 8, 1974. Amendment filed June 11, 1981; effective July 27, 1981. Amendment filed _____; effective _____.*

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

| Board Member | Aye | No | Abstain | Absent | Signature (if required) |
|---|---|---|---|---|---|
| Chad Baker | | | | ✓ | |
| Jim Bledsoe | ✓ | | | | |
| Harold Cannon | ✓ | | | | |
| Jeff Cook | ✓ | | | | |
| Bill Cox | | | | ✓ | |
| Kurt Holbert | ✓ | | | | |
| Connie King | ✓ | | | | |
| Jeff McMillan | ✓ | | | | |
| Jim Ripley | ✓ | | | | |
| Bill Swan | ✓ | | | | |
| Trey Teague | | | | ✓ | |
| David Watson | ✓ | | | | |
| Jamie Woodson | | | | ✓ | |

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the Tennessee Fish and Game Commission on 10/28/2016 (mm/dd/yyyy), 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: *08/29/2016*

Rulemaking Hearing(s) Conducted on: (add more dates). *10/28/2016*

Date: 11-8-16

Signature: Ed Carter

Name of Officer: Ed Carter

Title of Officer: Executive Director

Subscribed and sworn to before me on: 11-8-16

Notary Public Signature: Lisa Crawford

My commission expires on: 3-10-2019

LISA CRAWFORD
STATE OF TENNESSEE NOTARY PUBLIC
DAVIDSON COUNTY

---

All rulemaking hearing rules provided for herein (Tennessee Wildlife Resources Agency Rule 1660-02-03) 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

3/27/2017
Date

**Department of State Use Only**

Filed with the Department of State on: 3/31/17

Effective on: 6/29/17

Tre Hargett
Secretary of State

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## G.O.C. STAFF RULE ABSTRACT

| | |
|---|---|
| DEPARTMENT: | Tennessee Wildlife Resources Agency |
| DIVISION: | Boating and Law Enforcement |
| SUBJECT: | Reporting Boating Accidents - Accident Report and Death |
| STATUTORY AUTHORITY: | 33 CFR 173 Subpart C and 33 CFR 174 Subpart C relative to accident reporting have a preemptive effect on state vessel accident reporting regulations. Tennessee Code Annotated, Section 69-9-210 establishes guidelines for this rule. |
| EFFECTIVE DATES: | June 29, 2017 through June 30, 2018 |
| FISCAL IMPACT: | Minimal |
| STAFF RULE ABSTRACT: | This rulemaking hearing rule prescribes the notification and reporting requirements for boating accidents. |

**Public Hearing Comments**

One copy of a document containing responses to comments made at the public hearing must accompany the filing pursuant to T.C.A. § 4-5-222. Agencies shall include only their responses to public hearing comments, which can be summarized. No letters of inquiry from parties questioning the rule will be accepted. When no comments are received at the public hearing, the agency need only draft a memorandum stating such and include it with the Rulemaking Hearing Rule filing. Minutes of the meeting will not be accepted. Transcripts are not acceptable.

RULE: 1660-02-04

| | |
|---|---|
| New | ____ |
| Amendment | X |
| Repeal | ____ |

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[✓] There were no public comments to the above-described rule.

[ ] Attached hereto are the responses to public comments.

**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) 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, and/or directly benefit from the proposed rule;

There are no businesses, small or otherwise, that would bear the cost of or directly benefit from the proposed rule.

(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;

All recordkeeping and administrative costs are estimated to be minimal and would be borne by the Agency through existing staff.

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

The rule as proposed would have no effect on businesses or consumers.

(4) A 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;

The rule puts a minimal burden on small business.

(5) A comparison of the proposed rule with any federal or state counterparts; and

The rule follows Federal guidelines for vessel accident reporting.

(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.

Businesses, small or otherwise, will not be impacted as there are no requirements placed on business.

**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)

Will passage of this rule have a projected financial impact on local governments?

The Agency does not believe that the rule will have any impact on local governments.

Please describe the increase in expenditures or decrease in revenues:

The rule will neither increase expenditures, nor decrease revenues.

**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 rule prescribes the notification and reporting requirements for boating accidents.

**(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;

33 CFR 173 Subpart C and 33 CFR 174 Subpart C relative to accident reporting have a preemptive effect on state vessel accident reporting regulations. T.C.A Section 69-9-210 establish guidelines for the rule.

**(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;

Persons who operate recreational vessels principally in Tennessee.

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

No opinion of the attorney general or any judicial ruling that directly relates to the rule has been identified.

**(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 fiscal impact to state and local governments is minimal.

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

W. Glenn Moates, LT Colonel, Boating & Law Enforcement Division, 615-781-6684, Glenn.Moates@tn.gov

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

Chris Richardson, TWRA Special Assistant to the Director/Policy and Legislation, will explain the rule at the scheduled meeting of the Government Operations Committee.

**(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

Chris Richardson, TWRA, P.O. Box 40747, Ellington Agricultural Center, Nashville, TN 37204; 615-308-0477; Chris.Richardson@tn.gov

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

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Sequence Number: 03-38-17
Rule ID(s): 6506
File Date: 3/31/17
Effective Date: 6/29/17

# 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:** | Tennessee Wildlife Resources Agency |
| **Division:** | Boating and Law Enforcement Division |
| **Contact Person:** | Lisa Crawford |
| **Address:** | PO Box 40747, Nashville, TN |
| **Zip:** | 37204 |
| **Phone:** | 615-781-6606 |
| **Email:** | Lisa.Crawford@tn.gov |

**Revision Type (check all that apply):**
X Amendment
___ New
X 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** |
|---|---|
| 1660-02-04 | Rules and Regulations Governing Reporting of Boating Accidents |
| **Rule Number** | **Rule Title** |
| 1660-02-04-.01 | Accident Report |
| 1660-02-04-.02 | Death |

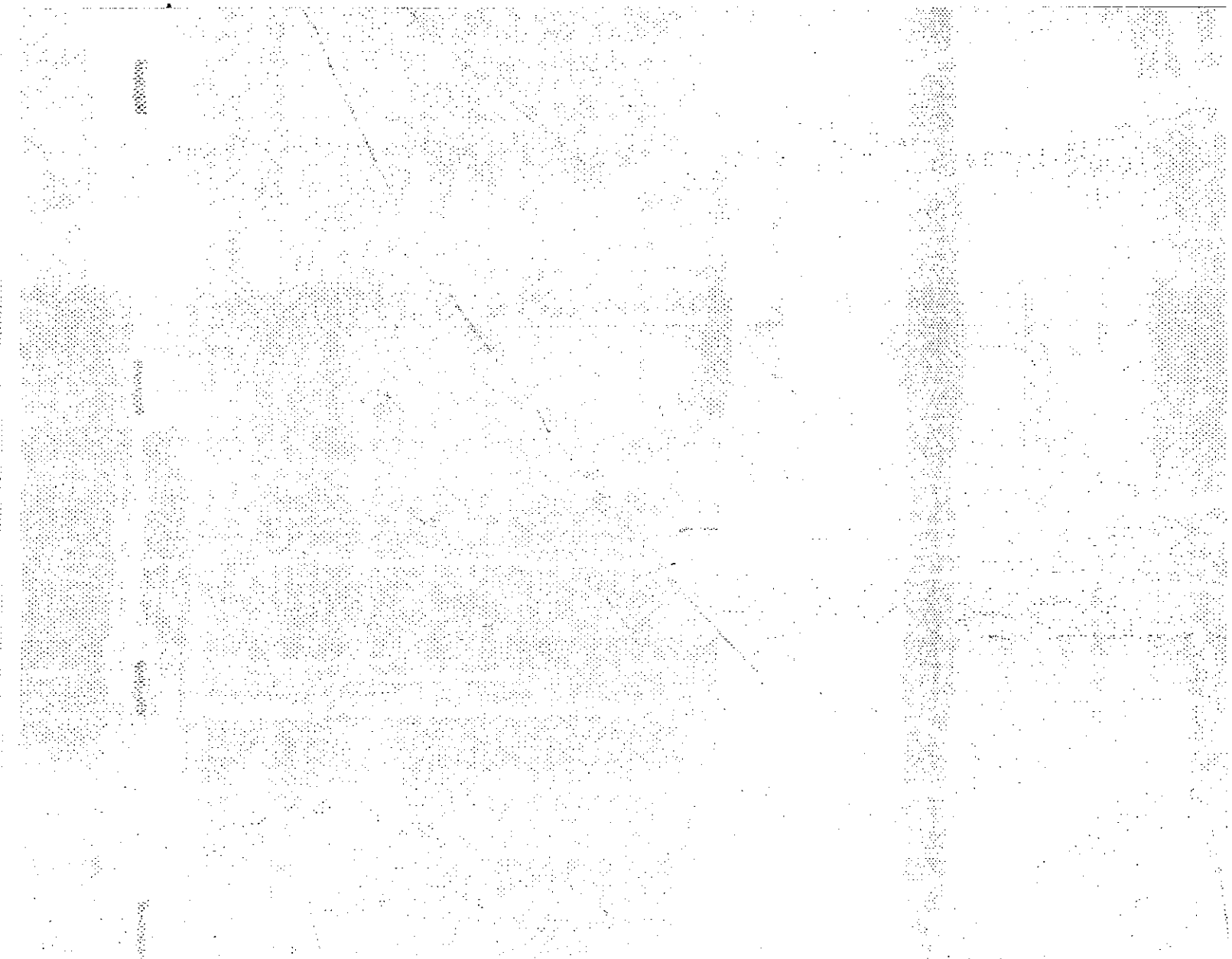
Amendment

1660-02-04-.01 Accident Report is amended by deleting the rule in its entirety and replacing it with the following:

(1) The operator of a vessel shall immediately notify the Tennessee Wildlife Resources Agency and~~,~~ ~~within the time period prescribed in Rule 1660-02-04-.01(2),~~ shall provide the information listed in Rule 1660-02-04-.01(2) to an officer of the Tennessee Wildlife Resources Agency upon request ~~submit the casualty or accident report~~ when, as a result of an occurrence that involved the vessel or its equipment –

(a) A person dies;





(b) A person is injured and receives, or should have received, medical treatment beyond first aid; ~~damage to the vessel or combination of vessels and other property damage totals more than $500; or~~

(c) Damage to the vessel or combination of vessels and other property damage totals more than ~~$500~~ $2000 or complete loss of vessel; or

~~(c)~~(d) A person disappears from the vessel under circumstances that indicate death or injury.

~~(2) A report required by this section must be made –~~

~~(a) Within 48 hours of the occurrence if a person dies within 24 hours of the occurrence;~~

~~(b) Within 48 hours of the occurrence if a person is injured and receives medical treatment beyond first aid; and~~

~~(c) Within 10 days of the occurrence if an earlier report is not required by this paragraph.~~

~~(3) When the operator of a vessel cannot submit the casualty or accident report required by paragraph (1) of this section, the owner shall submit the casualty or accident report~~

~~(4)~~(2) ~~Each report required by paragraphs (1), (2) and (3) above must be in writing, dated upon completion, and signed by the person who prepared it. must contain, if available, at least~~ The following information about the casualty or accident shall be provided as required by paragraph (1) of this rule to be included in the report filed by the Agency.

(a) The numbers and names of each vessel involved.

(b) The names and address of each owner of each vessel involved.

(c) The name of the nearest city or town, the county, the state, and the body of water.

(d) The time and date the casualty or accident occurred.

(e) The location on the water.

(f) The visibility, weather, and water conditions.

(g) The estimated air and water temperatures.

(h) The name, address, age, or date of birth, telephone number, vessel operating experience, and boating safety training of the operator making the report.

(i) The name and address of each operator of each vessel involved.

(j) The number of persons on board or towed on skis by each vessel.

(k) The name, address, and date of birth of each person injured or killed.

(l) The cause of each death.

(m) Weather forecasts available to, and weather reports used by, the operator before and during the use of the vessel;

(n) The name and address of each owner of property involved.

(o) The availability and use of personal flotation devices.

(p) The type and amount of each fire extinguisher used.

(q) The nature and extent of each injury

(r) A description of all property damage and vessel damage with an estimate of the cost of all repairs.

(s) A description of each equipment failure that caused or contributed to the cause of the casualty.

(t) A description of the vessel casualty or accident.

(u) The type of vessel operation (~~cruising, drafting, hunting, skiing, racing, or other~~), and the type of accident (~~capsizing, sinking, fire, or explosion or other~~).

(v) The opinion of the person making the report as to the cause of the casualty.

(w) The make, model, type (~~open, cabin, house, or other~~), beam width at widest point, length, ~~depth from transom to keel~~, horsepower, propulsion (~~outboard, inboard, inboard outdrive, sail, or other~~), engine drive type, fuel (~~gas, diesel, or other~~), ~~construction~~ hull material, (~~wood, steel, aluminum, plastic, fiberglass, or other~~), and ~~year built~~ (model year~~)~~, of the reporting operator's vessel.

(x) The name, address, and telephone number of each witness.

(y) The manufacturer's hull identification number, if any, of the reporting operator's vessel.

~~(z) The name, address, and telephone number of the person submitting the report.~~

*Authority: T.C.A. §§70-1-206, 69-9-209. Administrative History: Original rule certified May 8, 1974. Amendment filed May 27, 1983; effective June 27, 1983. Amendment filed August 3, 2006; effective October 17, 2006. Amendment filed _____; effective _____.*

Repeal

1660-02-04-.02 Death is repealed in its entirety.

~~(1) When, as a result of an occurrence that involves a vessel or its equipment, a person dies or disappears from a vessel, the operator shall, without delay, by the quickest means available, notify the Boating Division of this state of –~~

~~(a) The date, time and exact location of the occurrence;~~

~~(b) The name of each person who dies or disappears;~~

~~(c) The number and name of the vessel; and~~

~~(d) The names and addresses of the owner and operator.~~

~~(2) When the operator of a vessel cannot give the notice required by paragraph (1) of this section, each person on board the vessel shall notify the Boating Division of this state or determine that the notice has been given.~~

*Authority: T.C.A. §70-1-206. Administrative History: Original rule certified May 8, 1974.*

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

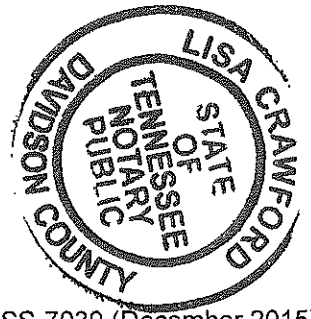
| Board Member | Aye | No | Abstain | Absent | Signature (if required) |
|---|---|---|---|---|---|
| Chad Baker | | | | ✓ | |
| Jim Bledsoe | ✓ | | | | |
| Harold Cannon | ✓ | | | | |
| Jeff Cook | ✓ | | | | |
| Bill Cox | | | | ✓ | |
| Kurt Holbert | ✓ | | | | |
| Connie King | ✓ | | | | |
| Jeff McMillan | ✓ | | | | |
| Jim Ripley | ✓ | | | | |
| Bill Swan | ✓ | | | | |
| Trey Teague | | | | ✓ | |
| David Watson | ✓ | | | | |
| Jamie Woodson | | | | ✓ | |

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the Tennessee Fish and Game Commission on 10/28/2016 (mm/dd/yyyy), 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: *08/29/2016*

Rulemaking Hearing(s) Conducted on: (add more dates). *10/28/2016*




Date: 11-8-16

Signature: Ed Carter

Name of Officer: Ed Carter

Title of Officer: Executive Director

Subscribed and sworn to before me on: 11-8-16

Notary Public Signature: Lisa Crawford

My commission expires on: 3-10-2019

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All rulemaking hearing rules provided for herein (Tennessee Wildlife Resources Agency Rule 1660-02-04) 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

3/27/2017
Date

**Department of State Use Only**

Filed with the Department of State on: 3/31/17

Effective on: 6/29/17

Tre Hargett
Secretary of State

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PUBLICATIONS

## G.O.C. STAFF RULE ABSTRACT

| | |
|---|---|
| DEPARTMENT: | Real Estate Commission |
| DIVISION: | Regulatory Boards |
| SUBJECT: | Rules of Conduct for Advertising |
| STATUTORY AUTHORITY: | Not Applicable |
| EFFECTIVE DATES: | June 22, 2017 through June 30, 2018 |
| FISCAL IMPACT: | Minimal |
| STAFF RULE ABSTRACT: | These rules amend the current advertising rule by:<br>• Eliminating the size requirement for firm telephone number.<br>• Clarifying the size requirement for firm name by removing the "prominent" requirement and instead stating that the firm name must simply be the same size or larger than the name of any licensee or team name.<br>• Eliminating the requirement that any licensees using a franchise trade name must use the phrase "each office is independently owned and operated."<br>• Adding a section on social media advertising, specifically the "one-click" rule, which requires a licensee to list the required information within one click from the social media posting. |

**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:

   This rule would provide a direct benefit to individuals licensed as affiliate brokers and brokers by removing and clarifying certain requirements with regards to the size of the firm name and telephone number on advertising. Additionally, this rule allows those individuals to advertise through social media by using the "one-click rule." The "one-click rule" allows a licensee to advertise on social media accounts without including all the required information, as long as that required information is one click away from the social media advertisement.

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:

   There are no projected administrative costs as a result of these amendments.

3. A statement of the probable effect on impacted small businesses and consumers:

   The effect will be that licensed affiliate brokers and brokers will be able to more clearly understand the requirements in the rule and will now be able to advertise through social media by using the "one-click rule." The "one-click rule" allows a licensee to advertise on social media accounts without including all the required information, as long as that required information is one click away from the social media advertisement. There is no probable effect of this rule on 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:

   The Commission knows of no other alternative method to achieve the goals exhibited by these rules.

5. A comparison of the proposed rule with any federal or state counterparts:

   With regards to the "one-click rule" the Commission knows that Alabama follows that standard. But the Commission knows of no other rules, federal or state, that compare.

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:

   An exemption for small businesses to this rule would not be beneficial.

**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)

The Real Estate Commission foresees no impact on any 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 rules amend the current advertising rule in the following ways:

- Eliminate the size requirement for firm telephone number,
- Clarify the size requirement for firm name, by removing the "prominent" requirement and instead stating that the firm name must simply be the same size or larger than the name of any licensee or team name.
- Eliminate the requirement that any licensees using a franchise trade name must in use the phrase "each office is independently owned and operated."
- Adds a section on social media advertising, specifically the "one-click" rule, which requires a licensee to list the required information within one click from the social media posting.

**(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 known federal or state law mandating promulgation of this rule.

**(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;

Licensed individuals who hold licenses as affiliate brokers and brokers will potentially be affected by this rule. It is anticipated that these individuals will urge adoption of this rule because it removes certain size requirements with regards to advertising and also adds a section focused on social media advertising, including the "one-click" rule.

**(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;

There are no known opinions of the Attorney General and Reporter or any judicial ruling that directly relates to this rule.

**(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;

This rule is not expected to create a probable increase or decrease state and local government revenues and expenditures.

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

Malcolm Young, Executive Director
500 James Robertson Parkway
Davy Crockett Tower, 4th Floor
Nashville, TN 37243
615-741-3321

Sarah Mathews, Assistant General Counsel
500 James Robertson Parkway
Davy Crockett Tower, 5th Floor
Nashville, TN 37243
615-532-6303

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

Malcolm Young, Executive Director, Real Estate Commission
Sarah Mathews, Assistant 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

Malcolm Young, Executive Director
500 James Robertson Parkway
Davy Crockett Tower, 4th Floor
Nashville, TN 37243
615-741-3321

Sarah Mathews, Assistant General Counsel
500 James Robertson Parkway
Davy Crockett Tower, 5th Floor
Nashville, TN 37243
615-532-6303

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

There is no known additional relevant information.

**Department of State**
**Division of Publications**
312 Rosa L. Parks Avenue, 8th Floor Snodgrass/TN Tower
Nashville, TN 37243
Phone: 615-741-2650
Email: publications.information@tn.gov

**For Department of State Use Only**

Sequence Number: 03-27-17
Rule ID(s): 6474
File Date: 3/24/17
Effective Date: 6/22/17

# Proposed Rule(s) Filing Form

*Proposed rules are submitted pursuant to Tenn. Code Ann. §§ 4-5-202, 4-5-207, and 4-5-229 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 ninety (90) days of 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 ten (10) persons who will be affected by the amendments, or submitted by a municipality which will be affected by the amendments, or an association of ten (10) or more members, or any standing committee of the General Assembly. The agency shall forward such petition to the Secretary of State.*

*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:** | TN Real Estate Commission |
| **Division:** | Regulatory Boards |
| **Contact Person:** | Sarah Mathews |
| **Address:** | 500 James Robertson Parkway, Nashville, TN |
| **Zip:** | 37243 |
| **Phone:** | 615-532-6303 |
| **Email:** | Sarah.Mathews@tn.gov |

**Revision Type (check all that apply):**
X 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** |
|---|---|
| 1260-02 | Rules of Conduct |
| **Rule Number** | **Rule Title** |
| 1260-02-.12 | Advertising |
| | |
| | |
| | |

**Redline – 2017 Proposed Rules**
**Tennessee Real Estate Commission**

Chapter 1260-02
Rules of Conduct
Amendments

Rule 1260-02-.12 has been amended and restated in its entirety so that it will now read as follows:

(1) All advertising, regardless of its nature and the medium in which it appears, which promotes either a licensee or the sale or lease of real property, shall conform to the requirements of this rule. The term "advertising," for purposes of this rule, in addition to traditional print, radio, and television advertising, also includes, but is not limited to, sources of communication available to the public such as signs, flyers, letterheads, e-mail signatures, websites, social media communications, and video or audio recordings transmitted through internet or broadcast streaming. Advertising does not include promotional materials that advertise a licensee such as hats, pens, notepads, t-shirts, name tags, business cards, and the sponsorship of charitable and community events.

(2) For purposes of this rule, the term "firm name" shall mean either of the following:

(a) The entire name of the real estate firm as licensed with the Commission; or

(b) The d/b/a name, if applicable, of the real estate firm as licensed with the Commission.

(3) General Principles

(a) No licensee shall advertise to sell, purchase, exchange, rent, or lease property in a manner indicating that the licensee is not engaged in the real estate business.

(b) All advertising shall be under the direct supervision of the principal broker and shall list the firm name and the firm telephone number as listed on file with the Commission. The firm name must appear in letters the same size or larger than those spelling out the name of a licensee or the name of any team, group or similar entity. ~~With regard to the size and visibility of the firm name and firm telephone number, all of the following shall apply:~~

~~1. The firm name must be the most prominent name featured within the advertising, whether it be by print or other media; and~~

~~2. The firm's telephone number shall be the same size or larger than the telephone number of any individual licensee or group of licensees.~~

(c) Any advertising which refers to an individual licensee must list that individual licensee's name as licensed with the Commission.

(d) No licensee shall post a sign in any location advertising property for sale, purchase, exchange, rent or lease, without written authorization from the owner of the advertised property or the owner's agent.

(e) No licensee shall advertise property listed by another licensee without written authorization from the property owner. Written authorization must be evidenced by a statement on the listing agreement or any other written statement signed by the owner.

(f) No licensee shall advertise in a false, misleading, or deceptive manner. False, misleading, and/or deceptive advertising includes, but is not limited to, the following:

1. Any licensee advertising that includes only the franchise name without including the firm

name;

2. Licensees who hold themselves out as a team, group, or similar entity within a firm who advertise themselves utilizing terms such as "Real Estate," "Real Estate Brokerage," "Realty," "Company," "Corporation," "LLC," "Corp.," "Inc.," "Associates," or other similar terms that would lead the public to believe that those licensees are offering real estate brokerage services independent of the firm and principal broker; or

3. Any webpage that contains a link to an unlicensed entity's website where said entity is engaged or appears to be engaged in activities which require licensure by the Commission.

(4) Advertising for Franchise or Cooperative Advertising Groups

(a) Any licensee using a franchise trade name or advertising as a member of a cooperative group shall clearly and unmistakably indicate in the advertisement his name, firm name and firm telephone number (all as registered with the Tennessee Real Estate Commission) adjacent to any specific properties advertised for sale or lease in any media.

~~(b) Any licensee using a franchise trade name or advertising as a member of a cooperative group, when advertising other than specific properties for sale or lease, shall cause the following legend to appear in the advertisement in a manner reasonably calculated to attract the attention of the public: "Each [Franchise Trade Name or Cooperative Group] Office is Independently Owned and Operated."~~

~~(c)~~(b) Any licensee using a franchise trade name on business cards, contracts, or other documents relating to real estate transactions shall clearly and unmistakably indicate ~~thereon: 1.~~ his name, firm name, and firm telephone number (all as registered with the Commission)~~, ; and~~

~~2. the fact that his office is independently owned and operated.~~

(5) Internet Advertising: In addition to all other advertising guidelines within this rule, the following requirements shall also apply with respect to internet advertising by licensees:~~, including, but not limited to, social media:~~

(a) The firm name and the firm telephone number listed on file with the Commission must conspicuously appear on each page of the website.

(b) Each page of a website which displays listings from an outside database of available properties must include a statement that some or all of the listings may not belong to the firm whose website is being visited.

(c) Listing information must be kept current and accurate. This requirement shall apply to "First Generation" advertising as it is placed by the licensee and does not refer to such advertising that may be syndicated or aggregated advertising of the original by third parties outside of the licensee's control and ability to monitor.

(6) Social Media Advertising

(a) For the purpose of this rule, "social media" means internet-based applications or platforms that allow the public to create and share content and information. Examples include, but are not limited to: Facebook, Twitter, Instagram and LinkedIn.

(b) With regards to social media advertising by licensees, the firm name and firm telephone number listed on file with the Commission must be no more than one click away from the viewable page.

(c) Listing information must be kept current and accurate. This requirement shall apply to "First Generation" advertising as it is placed by the licensee and does not refer to such advertising that may be syndicated or aggregated advertising of the original by third parties outside of the licensee's

control and ability to monitor.

~~(6)~~(7) Guarantees, Claims and Offers

(a) Unsubstantiated selling claims and misleading statements or inferences are strictly prohibited.

(b) Any offer, guaranty, warranty or the like, made to induce an individual to enter into an agency relationship or contract, must be made in writing and must disclose all pertinent details on the face of such offer or advertisement.

Authority: T.C.A. §§ 62-13-203, 62-13-301, 62-13-310(b), and 62-13-312 Administrative History: Original rule certified June 7, 1974. Repealed and refiled March 3, 1980; effective April 27, 1980. Amendment filed January 21, 1983; effective February 22, 1983. Amendment filed April 17, 1985; effective May 17, 1985. Amendment filed June 17, 1991; effective August 11, 1991. Amendment filed March 24, 1994; effective June 7, 1994. Amendment filed October 1, 1998; effective December 15, 1998. Amendment file July 31, 2006; effective October 14, 2006. Amendment filed March 16, 2010; effective June 14, 2010. Amendment filed July 20, 2015; effective October 18, 2015.

* 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) |
|---|---|---|---|---|---|
| John Griess | X | | | | |
| Diane Hills | X | | | | |
| Marcia Franks | X | | | | |
| Bobby Wood | X | | | | |
| Rick Douglas | X | | | | |
| Fontaine Taylor | X | | | | |
| Johnny Horne | X | | | | |
| Gary Blume | X | | | | |
| Austin McMullen | X | | | | |

I certify that this is an accurate and complete copy of proposed rules, lawfully promulgated and adopted by the Tennessee Real Estate Commission on 1/11/2017, 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 ninety (90) days of the filing of the proposed rule with the Secretary of State.

Date: 3/16/2017

Signature: Sarah M. Mathews

Name of Officer: SARAH M. MATHEWS

Title of Officer: ASSISTANT GENERAL COUNSEL

VANESSA HUNTSMAN STATE OF TENNESSEE NOTARY PUBLIC SUMNER COUNTY MY COMMISSION EXPIRES 11-21-2017

Subscribed and sworn to before me on: 3/16/2017

Notary Public Signature: Vanessa Huntsman

My commission expires on: 11/21/2017

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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.

Herbert H. Slatery III

Herbert H. Slatery III
Attorney General and Reporter

3/20/2017
Date

Rules of Tennessee Real Estate Commission
Chapter 1260-02 Rules of Conduct
Rule 1260-02-.12 Advertising

**Department of State Use Only**

Filed with the Department of State on: 3/24/17

Effective on: 6/22/17

Tre Hargett
Secretary of State

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PUBLICATIONS

## G.O.C. STAFF RULE ABSTRACT

| | |
|---|---|
| DEPARTMENT: | Labor and Workforce Development |
| DIVISION: | Bureau of Workers' Compensation |
| SUBJECT: | Case Management |
| STATUTORY AUTHORITY: | Not Applicable |
| EFFECTIVE DATES: | June 25, 2017 through June 30, 2018 |
| FISCAL IMPACT: | None |
| STAFF RULE ABSTRACT: | The change to the rule will correct a clerical mistake in the original rule. |

**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. 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: The rule will affect small employers that fall under the Tennessee Workers' Compensation Laws, which would be employers with at least five employees, or for those in the construction industry at least one employee. There should be no additional costs associated with these rule changes.

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: There is no additional record keeping requirement or administrative cost associated with these rule changes.

3. A statement of the probable effect on impacted small businesses and consumers: These rules should not have any impact on consumers or small businesses.

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 methods to achieve the purposes and objectives of these rules.

5. Comparison of the proposed rule with any federal or state counterparts: None.

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: None.

**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)

This proposed rule will have little, if any, impact on these entities.

**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 change to rule will correct a clerical mistake in the original rule.

**(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;

This change is made for the purpose of correcting a clerical error in the original rule. There is no law or regulation mandating the promulgation of this rule.

**(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;

Case managers and case manager assistants may be affected by penalties if they are in violation of case management rules. No entity has urged adoption or rejection of these rules.

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

None

**(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 effect of the rule change will be negligible.

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

Troy Haley, Director of Administrative Legal Services and Legislative Liaison

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

Troy Haley, Director of Administrative Legal Services and Legislative Liaison

**(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

Tennessee Bureau of Workers' Compensation
220 French Landing Drive
Floor 1-B
(615) 532-0179
troy.haley@tn.gov

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

None

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**For Department of State Use Only**

Sequence Number: 03-30-17
Rule ID(s): 6477
File Date: 3/27/17
Effective Date: 6/25/17

# 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 Labor and Workforce Development |
| **Division:** | Bureau of Workers' Compensation |
| **Contact Person:** | Troy Haley |
| **Address:** | 220 French Landing Drive Side 1-B, Nashville, Tennessee |
| **Zip:** | 37243 |
| **Phone:** | (615) 532-0179 |
| **Email:** | troy.haley@tn.gov |

**Revision Type (check all that apply):**
x 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** |
|---|---|
| 0800-02-07 | Case Management |
| **Rule Number** | **Rule Title** |
| 0800-02-07-.05 | Investigation of Complaints; Sanctions and Appeals of Agency Decisions |

(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)

Amendments

Chapter 0800-02-07
Case Management

Rule 0800-02-07-.05: Investigation of Complaints; Sanctions and Appeals of Agency Decisions is amended in subsection (2), as follows: the words "utilization review agent" should be deleted and replaced with the words "case manager or employing organization".

(2) Failure by a party to comply with any requirement in this Chapter 0800-02-07 shall subject such party to a penalty of not less than one hundred dollars ($100.00) nor more than one thousand dollars ($1,000.00) per violation at the discretion of the Administrator. The Bureau may also institute a temporary or permanent suspension of the right to perform case management services for workers' compensation claims, if the ~~utilization review agent~~ case manager or employing organization has established a pattern of violations.

Authority: T.C.A. §§ 4-5-314, 50-6-102, 50-6-118, 50-6-123 and 50-6-126. Administrative History: Original rule filed January 28, 1993; effective May 13, 1993. Amendment filed May 31, 2016; effective August 29, 2016.

* 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 (*board/commission/other authority*) on 8/1/16 (*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: August 1, 2016

Signature: Abbie Hudgens

Name of Officer: Abbie Hudgens

Title of Officer: Administrator, Bureau of Workers' Compensation

Subscribed and sworn to before me on: August 1, 2016

Notary Public Signature: Darlene Carver-McDowell

My commission expires on: May 8, 2017

DARLENE CARVER-MCDOWELL NOTARY PUBLIC STATE OF TENNESSEE DAVIDSON 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.

Herbert H. Slatery III

Herbert H. Slatery III
Attorney General and Reporter

3/22/2017
Date

**Department of State Use Only**

Filed with the Department of State on: 3/27/17

Effective on: 6/25/17

Tre Hargett
Secretary of State

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## G.O.C. STAFF RULE ABSTRACT

| | |
|---|---|
| DEPARTMENT: | Labor and Workforce Development |
| DIVISION: | Occupational Safety and Health |
| SUBJECT: | Recordkeeping Forms and Recording Criteria |
| STATUTORY AUTHORITY: | Tennessee Code Annotated, Section 50-3-201 and 29 U.S.C. § 667 |
| EFFECTIVE DATES: | June 21, 2017 through June 30, 2018 |
| FISCAL IMPACT: | None |
| STAFF RULE ABSTRACT: | Rule 0800-01-03-.03 is amended in order to adopt and reference the latest occupational record-keeping and reporting standards and exceptions, if any, in the applicable parts of Title 29, Code of Federal Regulations, when published in the Federal Register. |

**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.

An economic impact statement regarding the amendments in this rule proposal is not required under the provisions of the Regulatory Flexibility Act of 2007. As stated in Section 6 of Public Chapter 464, "This part shall not apply to rules that are adopted on an emergency or pubic necessity basis under Title 4, Chapter 5, Part 2, that are federally mandated, or that substantially codify existing state or federal law." Under the statutory authority of 29 U.S.C. § 667, Tennessee has an approved state plan that provides for the development and enforcement of occupational safety and health standards. In accordance with the Tennessee Occupational Safety and Health State Plan, when a federal occupational safety and health standard is promulgated under 29 U.S.C. § 655 Tennessee generally adopts the federal standard relating to the same issue. The plan specifies that the state of Tennessee will adopt the federal standards or an equivalent state requirement within six (6) months of the standard's promulgation by federal OSHA. In addition, T.C.A. §50-3-201 authorizes the Commissioner of Labor and Workforce Development to adopt either state or federal occupational safety and health standards.

**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)

This rule does not 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;

Rules 0800-01-03-.03 is amended in order to adopt and reference the latest occupational record-keeping and reporting standards and exceptions, if any, in the applicable parts of Title 29, Code of Federal Regulations when published in the Federal Register.

**(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;

Under the statutory authority of 29 U.S.C. § 667, Tennessee has an approved state plan that provides for the development and enforcement of occupational safety and health standards. In accordance with the plan, when a federal occupational safety and health standard is promulgated under 29 U.S.C. § 655 Tennessee generally adopts the federal standard relating to the same issue. When a federal standard is not adopted, it is referenced as an exception in the rules. The statutory authority for promulgation of the rules by the Commissioner of Labor and Workforce Development is T.C.A. § 50-3-201.

**(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;

All persons subject to T.C.A. §§ 50-3-101 et seq. are directly affected by the rules in Chapter 0800-01-03. These rules provide for the effective administration and enforcement of the occupational safety and health standards required by the state plan. Employees and employers including governmental entities in the state must comply with the rules promulgated pursuant to federal and state law. It appears that there are no objections to the proposed amendments to the rules since no inquiries have been made.

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

There have been no Attorney General opinions or judicial rulings relevant 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;

There are no anticipated increases or decreases in state and local government revenues and expenditures resulting from promulgation of the proposed rules and amendments to the existing rules.

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

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

Larry Hunt, Manager, Standards & Procedures, Division of Occupational Safety and Health, is the agency representative most knowledgeable about these rules.

**(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

| |
|---|
| Tennessee Department of Labor and Workforce Development<br>Division of Occupational Safety and Health<br>220 French Landing Drive<br>Nashville, TN 37243-1002<br>(615) 741-7036<br>email: larry.hunt@tn.gov |

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

| |
|---|
| |

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**For Department of State Use Only**

Sequence Number: 03-26-17
Rule ID(s): 6473
File Date: 3/23/17
Effective Date: 6/21/17

# 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 Labor and Workforce Development |
| **Division:** | Division of Occupational Safety and Health |
| **Contact Person:** | Larry Hunt |
| **Address:** | 220 French Landing Drive |
| **Zip:** | 37243-1002 |
| **Phone:** | (615) 741-7036 |
| **Email:** | Larry.Hunt@tn.gov |

**Revision Type (check all that apply):**
X 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** |
|---|---|
| 0800-01-03 | Occupational Safety and Health Standards Record-Keeping and Reporting |
| **Rule Number** | **Rule Title** |
| 0800-01-03-.03 | Recordkeeping Forms And Recording Criteria |
| | |

Proposed Amendments with Changes Red-Lined

Chapter 0800-01-03-.03

Rule 0800-01-03-.03 Amended

Paragraph (27)(b) of Rule 0800-01-03-.03 RECORDKEEPING FORMS AND RECORDING CRITERIA is amended by adding (27)(b)10 through (27)(b)10(iii) after (27)(b)9 so as amended the paragraph text will appear as follows.

Existing Rule:

9. If I have removed the employee's name, but still believe that the employee may be identified from the information on the forms, is there anything else that I can do to further protect the employee's privacy? Yes, if you have a reasonable basis to believe that information describing the privacy concern case may be personally identifiable even though the employee's name has been omitted, you may use discretion in describing the injury or illness on both the OSHA 300 and 301 forms. You must enter enough information to identify the cause of the incident and the general severity of the injury or illness, but you do not need to include details of an intimate or private nature. For example, a sexual assault case could be described as "injury from assault," or an injury to a reproductive organ could be described as "lower abdominal injury."

Proposed Amended Rule:

9. If I have removed the employee's name, but still believe that the employee may be identified from the information on the forms, is there anything else that I can do to further protect the employee's privacy? Yes, if you have a reasonable basis to believe that information describing the privacy concern case may be personally identifiable even though the employee's name has been omitted, you may use discretion in describing the injury or illness on both the OSHA 300 and 301 forms. You must enter enough information to identify the cause of the incident and the general severity of the injury or illness, but you do not need to include details of an intimate or private nature. For example, a sexual assault case could be described as "injury from assault," or an injury to a reproductive organ could be described as "lower abdominal injury."

10. What must I do to protect employee privacy if I wish to provide access to the OSHA Forms 300 and 301 to persons other than government representatives, employees, former employees or authorized representatives? If you decide to voluntarily disclose the Forms to persons other than government representatives, employees, former employees or authorized representatives (as required by Rule 0800-01-03-.04(6) and Rule 0800-01-03-.05(2)), you must remove or hide the employees' names and other personally identifying information, except for the following cases. You may disclose the Forms with personally identifying information only:

(i) to an auditor or consultant hired by the employer to evaluate the safety and health program;

(ii) to the extent necessary for processing a claim for workers' compensation or other insurance benefits; or

(ii) to a public health authority or law enforcement agency for uses and disclosures for which consent, an authorization, or opportunity to agree or object is not required under Department of Health and Human Services Standards for Privacy of Individually Identifiable Health Information, 45 CFR 164.512.

Authority: T.C.A. §§ 4-3-1411, 50-3-201, 50-3-701, 50-3-702, 50-3-910, 50-3-917.

* 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 (*board/commission/other authority*) on 3/2/17 (*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: 3/2/17

Signature: Burns P. Phillips

Name of Officer: Burns Phillips

Title of Officer: Commissioner of Labor and Workforce Development

DESIREE W FELTS
STATE OF TENNESSEE NOTARY PUBLIC
CHEATHAM COUNTY

Subscribed and sworn to before me on: 3-2-17

Notary Public Signature: Desiree W. Felts

My commission expires on: March 13, 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.

Herbert H. Slatery III
Attorney General and Reporter

3/20/2017
Date

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RULEMAKING

Filed with the Department of State on: 3/23/17

Effective on: 6/21/17

Tre Hargett
Secretary of State

## G.O.C. STAFF RULE ABSTRACT

| | |
|---|---|
| DEPARTMENT: | Wildlife Resources Agency |
| DIVISION: | Wildlife |
| SUBJECT: | Permit Requirements, Applications, and Drawings |
| STATUTORY AUTHORITY: | Tennessee Code Annotated, Section 70-1-206 grants authority to the Tennessee Wildlife Resources Commission (TWRC) to promulgate rules. |
| EFFECTIVE DATES: | June 14, 2017 through June 30, 2018 |
| FISCAL IMPACT: | Minimal |
| STAFF RULE ABSTRACT: | Rule 1660-01-08-.03 subparagraphs (3)(a)(b)(c) are amended by removing "Refuge" from "Paint Rock Refuge", and by adding the following lands: Beason Creek, Beech River, Chambers Creek, Col. Forrest V. Durand, Fort Ridge, Gray's Creek, Happy Hollow, Harts Mill, McGlothin-Largin, Perry Switch, Spring Creek, and Tull Bottom. Rule 1660-01-08-.03 subparagraphs (3)(a)(b) are amended by adding "Refuge" to Cypress Pond, and adding the following lands: Harp. Rule 1660-01-08-.03 subparagraph {3)(a) is amended by removing South Cherokee. Rule 1660-01-08-.05 is amended to change subparagraph (6)(k) and paragraph (8) to clarify language and age, license, and post-hunt requirements. |

**Public Hearing Comments**

One copy of a document containing responses to comments made at the public hearing must accompany the filing pursuant to T.C.A. § 4-5-222. Agencies shall include only their responses to public hearing comments, which can be summarized. No letters of inquiry from parties questioning the rule will be accepted. When no comments are received at the public hearing, the agency need only draft a memorandum stating such and include it with the Rulemaking Hearing Rule filing. Minutes of the meeting will not be accepted. Transcripts are not acceptable.

RULE: 1660-01-08

| | |
|---|---|
| New | ____ |
| Amendment | X |
| Repeal | ____ |

---

[✓] There were no public comments to the above-described rule.

[ ] Attached hereto are the responses to public comments.

**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) 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, and/or directly benefit from the proposed rule;

The Commission does not anticipate significant impact to small businesses in Tennessee.

(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 Commission anticipates no record keeping associated with this rule

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

The Commission anticipates no probable effect to small businesses.

(4) A 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;

The Commission is unaware of alternatives to the proposed rule and does not believe the rule as proposed would be burdensome to small businesses.

(5) A comparison of the proposed rule with any federal or state counterparts; and

The Commission is unaware of federal or state counterparts to this rule.

(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.

The Commission anticipates no probable effect to small businesses and exemptions to this rule would likely not be beneficial.

**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)

Will passage of this rule have a projected financial impact on local governments?

The Commission is not aware of any projected financial impacts on local governments.

Please describe the increase in expenditures or decrease in revenues:

n/a

**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;

Rule 1660-01-08-.03 subparagraphs (3)(a)(b)(c) are amended by removing "Refuge" from "Paint Rock Refuge", and by adding the following lands: Beason Creek, Beech River, Chambers Creek, Col. Forrest V. Durand, Fort Ridge, Gray's Creek, Happy Hollow, Harts Mill, McGlothin-Largin, Perry Switch, Spring Creek, and Tull Bottom. Rule 1660-01-08-.03 subparagraphs (3)(a)(b) are amended by adding "Refuge" to Cypress Pond, and adding the following lands: Harp. Rule 1660-01-08-.03 subparagraph (3)(a) is amended by removing South Cherokee. Rule 1660-01-08-.05 is amended to change subparagraph (6)(k) and paragraph (8) to clarify language and age, license, and post-hunt requirements.

**(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;

TCA §70-1-206 grants authority to the Tennessee Wildlife Resources Commission (TWRC) to promulgate rules and regulations.

**(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;

This rule affects recreational hunters and adoption is supported by these entities.

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

We are not aware of any opinions of the attorney general or any judicial ruling that directly relate to this rule.

**(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 impact to state government revenues and expenditures is minimal as a result of this rule amendment.

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

Joe Benedict, Assistant Chief of Wildlife and Forestry, (615)781-6617, Joe.Benedict@tn.gov

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

Chris Richardson, TWRA Special Assistant to the Director/Policy and Legislation, will explain the rule at the scheduled meeting of the Government Operations Committee.

**(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

Chris Richardson, Tennessee Wildlife Resources Agency, P.O. Box 40747, Nashville, TN 37204, (615) 837-6016, Chris.Richardson@tn.gov

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

n/a

**Department of State**
**Division of Publications**
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**For Department of State Use Only**

Sequence Number: 03-13-17
Rule ID(s): 6463
File Date: 3/16/17
Effective Date: 6/14/17

# 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:** | Tennessee Wildlife Resources Agency |
| **Division:** | Wildlife |
| **Contact Person:** | Lisa Crawford |
| **Address:** | PO Box 40747, Nashville, TN |
| **Zip:** | 37204 |
| **Phone:** | 615-781-6606 |
| **Email:** | Lisa.Crawford@tn.gov |

**Revision Type (check all that apply):**
X 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** |
|---|---|
| 1660-01-08 | Rules and Regulations Governing Hunts |
| **Rule Number** | **Rule Title** |
| 1660-01-08-.03 | Permit Requirements – Wildlife Management Areas, Refuges, and Other Agency Controlled Lands |
| 1660-01-08-.05 | Permit Applications and Drawings |

Chapter 1660-01-08
Rules and Regulations Governing Hunts

Amendment

1660-01-08-.03 Permit Requirements – Wildlife Management Areas, Refuges and Other Agency Controlled Lands, paragraph (3) subparagraph (a) is amended by removing "Refuge" from "Paint Rock Refuge", adding "Refuge" to Cypress Pond, removing South Cherokee, adding the following lands: Beason Creek, Beech River, Blackburn Fork, Chambers Creek, Col. Forrest V. Durand, Fort Ridge, Gray's Creek, Happy Hollow, Harp, Harts Mill, McGlothin-Largin, Perry Switch, Spring Creek, and Tull Bottom to the table, and adding Wolf River WMA to the paragraph below the table, so that, as amended, the rule shall read:

(a) A WMA Small Game permit is required on the following wildlife management areas and refuges:

| | | |
|---|---|---|
| AEDC | Foothills | Normandy |
| Alpine Mountain | Forks of the River | North Chickamauga Creek |
| Arnold Hollow | Fort Ridge | North Cumberland |
| Bark Camp Barrens | Gray's Creek | Oak Ridge |
| Barkley | Haley-Jaqueth | Obion River |
| Bean Switch Refuge | Happy Hollow | Old Hickory |
| Bear Hollow Mountain | Harmon Creek | Old Hickory Lock 5 Refuge |
| Beason Creek | Harp | Owl Hollow Mill |
| Beaver Dam Creek | Harts Mill | Paint Rock ~~Refuge~~ |
| Beech River | Haynes Bottom | Parker Branch |
| Big Sandy (including Gin Creek) | Headwaters | Pea Ridge |
| Blackburn Fork | Henderson Island Refuge | Percy Priest |
| Bogota | Hick Hill | Perry Switch |
| Bridgestone/Firestone | Hickory Flat | Perryville |
| Centennial Wilderness | Hiwassee Refuge | Prentice Cooper |
| Browntown | Hop-In Refuge | Rankin |
| Buffalo Ridge Refuge | Horns Bluff Refuge | Shelton Ferry |
| Buffalo Springs | Jackson Swamp | Skinner Mountain |
| Camden | Jarrell Switch Refuge | ~~South Cherokee~~ |
| Catoosa | John Tully | South Fork Refuge |
| Cedar Hill Swamp | Keyes-Harrison | Spring Creek |
| Chambers Creek | Kingston Refuge | Tellico Lake |
| Charlotte Ann Finnell Neal | Kyker Bottoms Refuge | Thorny Cypress |
| Cheatham | Kyles Ford | Tie Camp |
| Cheatham Lake | Laurel Hill | Tigrett |
| Chickamauga | Lick Creek | The Boils |
| Chuck Swan | Lick Creek Bottoms | Three Rivers |
| Col. Forrest V. Durand | Luper Mountain | Tull Bottom |
| Cordell Hull | Maness Swamp Refuge | Tumbleweed |
| Cordell Hull Refuge | Maple Springs | Watts Bar |
| Cove Creek | McGlothin-Largin | West Sandy |
| C. M. Gooch | Meeman-Shelby Forest | White Lake Refuge |
| Cummings Cove | Mingo Swamp | White Oak |
| Cypress Pond Refuge | Moss Island | Williamsport |
| Dry Creek | Mount Roosevelt | Wolf River |
| Eagle Creek | MTSU | Woods Reservoir Refuge |
| Eagle Lake Refuge | Natchez Trace | Yanahli |
| Ernest Rice Sr. | New Hope | Yuchi Refuge |
| Flintville Hatchery | Nolichucky | |

A WMA small game permit is required for individuals participating in dog training. A field trial permit is required on Percy Priest WMA, ~~and~~ Tellico Lake WMA and Wolf River WMA.

Amendment

1660-01-08-.03 Permit Requirements – Wildlife Management Areas, Refuges and Other Agency Controlled Lands, paragraph (3) subparagraph (b) is amended by removing "Refuge" from "Paint Rock Refuge", and by adding the following lands: Beason Creek, Beech River, Chambers Creek, Col. Forrest V. Durand, Fort Ridge, Gray's Creek, Happy Hollow, Harts Mill, McGlothin-Largin, Perry Switch, Spring Creek, and Tull Bottom to the table, so that, as amended, the rule shall read:

(b) A WMA Small Game and Waterfowl permit is required for hunting waterfowl on the following wildlife management areas and refuges:

| | | |
|---|---|---|
| AEDC | Happy Hollow | Obion River |
| Barkley | Harmon Creek | Old Hickory |
| Bean Switch Refuge | Harts Mill | Parker Branch |
| Beason Creek | Haynes Bottom | Percy Priest |
| Beech River | Headwaters | Perry Switch |
| Big Sandy (including Gin Creek) | Hiwassee Refuge | Shelton Ferry |
| Bogota | Horns Bluff Refuge | South Fork Refuge |
| C.M. Gooch | Jackson Swamp | Spring Creek |
| Camden | Jarrell Switch Refuge | The Boils |
| Cedar Hill Swamp | John Tully | Thorny Cypress |
| Chambers Creek | Moss Island | Three Rivers |
| Charlotte Ann Finnell Neal | Lick Creek | Tigrett |
| Cheatham Lake | Lick Creek Bottoms | Tumbleweed |
| Chickamauga | McGlothin-Largin | Tull Bottom |
| Col. Forrest V. Durand | Meeman-Shelby Forest | Watts Bar |
| Cordell Hull | Mingo Swamp | West Sandy |
| Cordell Hull Refuge | Moss Island | White Oak |
| Cypress Pond Refuge | New Hope | Wolf River |
| Eagle Lake Refuge | Nolichucky | Yanahli |
| Ernest Rice Sr. | North Chickamauga Creek | Yuchi Refuge |
| Fort Ridge | Paint Rock ~~Refuge~~ | |
| Gray's Creek | Oak Ridge | |

Amendment

1660-01-08-.03 Permit Requirements – Wildlife Management Areas, Refuges and Other Agency Controlled Lands, paragraph (3) subparagraph (c) is amended by removing "Refuge" from "Paint Rock Refuge", adding "Refuge" to Cypress Pond, and adding the following lands: Beason Creek, Beech River, Blackburn Fork, Chambers Creek, Col. Forrest V. Durand, Fort Ridge, Gray's Creek, Happy Hollow, Harp, Harts Mill, McGlothin-Largin, Perry Switch, Spring Creek, and Tull Bottom to the table, so that, as amended, the rule shall read:

(c) A WMA big game permit is required for hunting deer, bear, and turkey on the following wildlife management areas and refuges:

| | | |
|---|---|---|
| AEDC | Ernest Rice Sr. | McGlothin-Largin |
| Alpine Mountain | Fall Creek Falls State Park | Nolichucky |
| Arnold Hollow | Flintville Hatchery | Normandy |
| Bark Camp Barrens | Foothills | North Chickamauga Creek |
| Barkley | Forks of the River | North Cumberland |
| Beason Creek | Fort Ridge | Oak Ridge |
| Bean Switch Refuge | Gallatin Steam Plant | Obion River |
| Bear Hollow Mountain | Gray's Creek | Old Hickory |
| Beaver Dam Creek | Haley-Jaqueth | Old Hickory Lock 5 Refuge |
| Beech River | Happy Hollow | Owl Hollow Mill |
| Big Sandy (including Gin Creek) | Harmon Creek | Paint Rock ~~Refuge~~ |
| Bogota | Harp | Parker Branch |
| Blackburn Fork | Harts Mill | Pea Ridge |
| Bridgestone/Firestone | Haynes Bottom | Percy Priest |
| Centennial Wilderness | Headwaters | Perry Switch |
| Browntown | Henderson Island Refuge | Perryville |
| Buffalo Springs | Hick Hill | Prentice Cooper |
| Buffalo Ridge Refuge | Hickory Flat | President's Island |
| C. M. Gooch | Hiwassee Refuge | Rankin |
| Camden | Hop-In Refuge | Shelton Ferry |
| Catoosa | Horns Bluff Refuge | Skinner Mountain |
| Cedar Hill Swamp | Jackson Swamp | South Fork Refuge |
| Chambers Creek | Jarrell Switch Refuge | Spring Creek |
| Charlotte Ann Finnell Neal | John Tully | Tellico Lake |
| Cheatham | Keyes-Harrison | The Boils |
| Cheatham Lake | Kingston Refuge | Thorny Cypress |
| Cherokee | Kyles Ford | Three Rivers |
| Chickamauga | Laurel Hill | Tie Camp WMA |
| Chuck Swan | Lick Creek | Tigrett |
| Col. Forrest V. Durand | Lick Creek Bottoms | Tumbleweed |
| Cordell Hull | Luper Mountain | Tull Bottom |
| Cordell Hull Refuge | Maness Swamp Refuge | Watts Bar |
| Cove Creek | Maple Springs | West Sandy |

| | | |
|---|---|---|
| Cummings Cove | Meeman-Shelby Forest | White Lake Refuge |
| Cypress Pond Refuge | Mingo Swamp | White Oak |
| Dry Creek | Moss Island | Williamsport |
| Eagle Creek | Mount Roosevelt | Wolf River |
| Eagle Lake Refuge | MTSU | Woods Reservoir Refuge |
| Edgar Evins State Park | Natchez Trace | Yanahli |
| Enterprise South Park | New Hope | Yuchi Refuge |

Authority: T.C.A. §§70-1-206, 70-2-201, 70-4-107 and 70-5-101. Administrative History: Original rule certified May 8, 1974. Amendment filed July 18, 1974; effective August 18, 1974. Amendment filed December 23, 1974; effective January 23, 1975. Amendment filed June 25, 1975; effective July 25, 1975. Amendment filed October 8, 1975; effective November 7, 1975. Amendment filed July 19, 1976; effective August 18, 1976. Amendment filed October 22, 1976; effective November 22, 1976. Amendment filed June 8, 1977; effective July 8, 1977. Amendment filed March 2, 1978; effective April 1, 1978. Amendment filed June 9, 1978; effective July 10, 1978. Amendment filed May 17, 1979; effective July 2, 1979. Amendment filed August 2, 1982; effective August 31, 1982. Amendment filed January 24, 1984; effective February 23, 1984. Amendment filed June 27, 1985; effective July 27, 1985. Amendment filed June 9, 1986; effective July 9, 1986. Amendment filed July 25, 1986; effective September 8, 1986. Amendment filed July 8, 1987; effective August 22, 1987. Amendment filed April 20, 1988; effective June 4, 1988. Amendment filed October 26, 1988; effective December 10, 1988. Amendment filed June 8, 1989; effective July 23, 1989. Amendment filed May 11, 1990; effective June 25, 1990. Amendment filed November 6, 1991; effective December 21, 1991. Amendment filed December 14, 1992; effective January 19, 1993. Amendment filed September 26, 1996; effective December 10, 1996. Amendments filed August 16, 1999; effective October 30, 1999. Amendment filed July 1, 2000; effective September 23, 2000. Amendment filed July 19, 2001; effective October 2, 2001. Amendment filed April 23, 2003; effective July 7, 2003. Amendment filed July 29, 2004; effective October 12, 2004. Amendment filed July 12, 2005; effective September 25, 2005. Amendment filed October 25, 2005; effective January 8, 2006. Amendment filed June 22, 2006; effective September 5, 2006. Amendment filed September 29, 2006; effective December 13, 2006. Amendment filed June 25, 2008; effective September 8, 2008. Amendment filed April 4, 2012; effective July 3, 2012. Amendment filed December 9, 2014; effective March 9, 2015. Amendment filed _____, 2016, effective _____, 2017.

Amendment

Rule 1660-01-08-.05 Permit Applications and Drawings is amended by amending paragraph (6), subparagraph (k) and paragraph (8) to clarify language, age, license, and post-hunt requirements so that, as amended, the rules shall read:

(6) Elk Hunt Quota Permits

(k) Successful applicants may be subject to hunting in specialized elk ~~compartments~~ zones as designated by the TWRA.

(8) Sandhill Crane Quota Permit ~~Computer Drawing and Handheld~~ Allocation Procedures.

(a) Permits will be issued by handheld drawing(s) on-site or near hunt zone(s) and/or by a computer drawing to determine successful applicants.

(b) Each individual desiring to participate in a quota permit drawing must submit an application during the application period specified and per the instructions supplied by the Tennessee Wildlife Resources Agency (hereafter "Agency").

(c) Applicants may submit one application per year. If more than one application is received per hunter, that individual's applications will be rejected. Each applicant must be at least thirteen (13) years of age to compete in the drawing.

(d) All information requested at the time of application must be completed; failure to provide all information will result in the application being rejected.

(e) If a handheld drawing is conducted, a current Hunting & Fishing license and Waterfowl license (or equivalents) are required to apply ~~for the permit~~. If a computerized drawing is conducted, each application must be accompanied by a non-refundable handling fee, except Sportsman License holders, Lifetime Sportsman License holders and persons possessing an Annual Senior Citizen Permit (type 167). Landowners may either have the required license(s) as described above, or if their property is within an area open to sandhill crane hunting, they may claim landowner license exemption by providing a completed, signed Landowner Exemption Statement, available in the Hunting and Trapping Guide.

(f) If a computerized drawing is conducted, priority drawings and procedures for qualifying with priority status will be established as indicated on the application.

(g) When permits remain following the drawing(s), leftover permits will be available on a first-come, first-serve basis either at Regional Offices and other locations designated by the Agency or on the Agency web site. If obtaining leftover permits in person at a Regional office or other location designated by the Agency, a~~A~~n individual may obtain permits for up to 5 other individuals if they provide proof that the individuals they are representing meet the minimum licensing requirements (as outlined in (e)). Individuals wishing to obtain permits for others may obtain one permit at a time and only by returning to the end of the line ~~(at handheld drawings)~~ for each additional permit they wish to obtain.

(h) Successful applicants must possess appropriate licenses and permits in order to participate in the hunt(s).

(i) Successful applicants may be required to pass a bird identification test; specific requirements will be outlined by the Agency ~~in the Sandhill Crane quota Permit Application~~.

(j) Each Sandhill Crane Quota Permit holder is required to complete and submit a Sandhill Crane Post-Hunt Report by the required deadline even if they did not participate in the hunt. Failure to submit a completed report by the deadline will disqualify them from entering the following season's drawing.

Authority: T.C.A. §§ 70-1-206, 70-2-219, 70-4-107. Administrative History: Original rule filed July 19, 1976; effective August 18, 1976. Amendment filed June 8, 1977; effective July 8, 1977. Amendment filed June 9, 1978; effective July 10, 1978. Amendment filed May 17, 1979; effective July 2, 1979. Amendment filed August 28, 1979; effective October 12, 1979. Amendment filed May 19, 1980; effective July 3, 1980. Amendment filed February 6, 1981; effective March 23, 1981. Amendment filed August 12, 1982; effective August 31, 1982. Amendment filed June 27, 1984; effective July 27, 1984. Amendment filed June 27, 1985; effective July 27, 1985. Amendment filed June 9, 1986; effective July 9, 1986. Amendment filed April 22, 1988; effective June 6, 1988. Amendment filed September 1, 1988; effective October 16, 1988. Amendment filed June 8, 1989; effective July 23, 1989. Amendment filed May 11, 1990; effective June 25, 1990. Amendment filed June 11, 1992; effective July 26, 1992. Amendment filed February 12, 1996; effective April 27, 1996. Amendment filed July 26, 1996; effective October 7, 1996. Amendment filed September 26, 1996; effective December 10, 1996. Amendment filed March 4, 1998; effective May 18, 1998. Amendment filed May 20, 1998; effective August 3, 1998. Amendments filed September 17, 1998; effective December 1, 1998. Amendment filed July 13, 1999; effective September 26, 1999. Amendment filed May 19, 2000; effective August 2, 2000. Amendment filed October 2, 2000; effective December 16, 2000. Amendment filed December 1, 2000; effective February 14, 2001. Amendment filed July 19, 2001; effective October 2, 2001. Amendment filed April 23, 2003; effective July 7, 2003. Amendments filed July 12, 2005; effective September 25, 2005. Amendments filed October 25, 2005; effective January 8, 2006. Amendment filed June 20, 2006; effective September 3, 2006. Amendment filed

September 29, 2006; effective December 13, 2006. Amendment filed June 26, 2007; effective September 9, 2007. Amendment filed May 5, 2008; withdrawn June 5, 2008. Amendment filed June 11, 2008; effective August 25, 2008. Amendments filed January 5, 2009; effective March 21, 2009. Amendment filed April 1, 2009; effective June 15, 2009. Amendment filed June 16, 2010; effective September 14, 2010. Amendments filed November 17, 2010; effective February 15, 2011. Amendments filed April 4, 2012; effective July 3, 2012. Amendment filed December 9, 2014; effective March 9, 2015. Amendment filed _____, 2016, effective _____, 2017.

*2007. Amendment filed May 5, 2008; withdrawn June 5, 2008. Amendment filed June 11, 2008; effective August 25, 2008. Amendments filed January 5, 2009; effective March 21, 2009. Amendment filed April 1, 2009; effective June 15, 2009. Amendment filed June 16, 2010; effective September 14, 2010. Amendments filed November 17, 2010; effective February 15, 2011. Amendments filed April 4, 2012; effective July 3, 2012. Amendment filed December 9, 2014; effective March 9, 2015. Amendment filed _____, 2016, effective _____, 2017.*

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

| Board Member | Aye | No | Abstain | Absent |
|---|---|---|---|---|
| Chad Baker | | | | ✓ |
| Jim Bledsoe | ✓ | | | |
| Harold Cannon | ✓ | | | |
| Jeff Cook | ✓ | | | |
| Bill Cox | | | | ✓ |
| Kurt Holbert | ✓ | | | |
| Connie King | ✓ | | | |
| Jeff McMillan | ✓ | | | |
| Jim Ripley | ✓ | | | |
| Bill Swan | ✓ | | | |
| Trey Teague | | | | ✓ |
| David Watson | ✓ | | | |
| Jamie Woodson | ✓ | | | |

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the Tennessee Fish & Wildlife Commission on 10/28/2016, 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: *08/29/2016*

Rulemaking Hearing(s) Conducted on: (add more dates): *10/28/2016*

Date: 11-7-16

Signature: Ed Carter

Name of Officer: Ed Carter

Title of Officer: Executive Director

LISA CRAWFORD STATE OF TENNESSEE NOTARY PUBLIC DAVIDSON COUNTY

Subscribed and sworn to before me on: 11-7-16

Notary Public Signature: Lisa Crawford

My commission expires on: 3-10-19

Tennessee Wildlife Resources Agency
Rule 1660-01-08-.03 and -.05
Rules and Regulations Governing Hunts
Permit Requirements – Wildlife Management Areas, Refuges, and Other Agency Controlled Lands
Permit Applications and Drawings

All rulemaking hearing rules provided for herein (Tennessee Wildlife Resources Agency Rule 1660-01-08) 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

3/6/2017
Date

**Department of State Use Only**

Filed with the Department of State on: 3/16/17

Effective on: 6/14/17

Tre Hargett
Secretary of State

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## G.O.C. STAFF RULE ABSTRACT

| | |
|---|---|
| DEPARTMENT: | Children's Services |
| DIVISION: | Legal |
| SUBJECT: | Minimum Standards for Juvenile Detention Centers and Temporary Holding Resources |
| STATUTORY AUTHORITY: | T.C.A. § 37-5-502(a)(1) requires the Department of Children's Services to license any entity operating as a Juvenile Detention Center or Temporary Holding Resource in the State of Tennessee. T.C.A. § 37-5-502(a)(2) gives the Department explicit rulemaking authority to promulgate licensing standards. |
| EFFECTIVE DATES: | June 15, 2017 through June 30, 2018 |
| FISCAL IMPACT: | The Department of Children's Services does not expect these rules to have a financial impact on local governments. |
| STAFF RULE ABSTRACT: | These rules establish minimum standards for Temporary Holding Resources and Juvenile Detention Centers in Tennessee, which are licensed by the Department of Children's Services. These rules pertain to general requirements; administration and management; personnel; service provision to youth; medical services available to youth; supervision of youth; physical plant of a facility; sanitation, maintenance, and life safety; security; seclusion and restraint; and transportation.<br><br>Note: This rule includes all new language and was not underlined in the red line copy. |

**Public Hearing Comments**

One copy of a document containing responses to comments made at the public hearing must accompany the filing pursuant to T.C.A. § 4-5-222. Agencies shall include only their responses to public hearing comments, which can be summarized. No letters of inquiry from parties questioning the rule will be accepted. When no comments are received at the public hearing, the agency need only draft a memorandum stating such and include it with the Rulemaking Hearing Rule filing. Minutes of the meeting will not be accepted. Transcripts are not acceptable

On December 13, 2016, DCS held a public hearing regarding the proposed Minimum Standards for Juvenile Detention Centers and Temporary Holding Resources Rules, 0250-04-08. We invited attendees to comment on each provision in the proposed rules. We also received three (3) written comments.

We received no comments on proposed rules 0250-04-08-.01, 0250-04-08-.02, 0250-04-08-.03, 0250-04-08-.06, 0250-04-08-.07, 0250-04-08-.08, 0250-04-08-.09, 0250-04-08-.10, and 0250-04-08-.12. In the following section we will address each comment in the order of the Rule it addresses.

Comment regarding 0250-04-08-.04(6)-Staff Development

Commenting Person or Entity: Tim Claflin, Cumberland County Sheriff's Office Temporary Holding Resource

Comment Summary: Mr. Claflin noted his concern with the forty-hour pre-service training and forty-hour annual training requirement for staff. Mr. Claflin noted that the staff at the Cumberland County Temporary Holding Resource are all on-call, part time employees, often with full-time jobs not associated with the Sheriff's Office. Mr. Claflin noted this level of training was not contained within the yearly budget of the Temporary Holding Resource and would result in full-time employees taking time off of their jobs to attend training.

Department's Response: New training standards were developed for Temporary Holding Resources. Temporary Holding Resources will now be required to provide sixteen (16) hours of pre-service training and an additional twenty (20) hours annually.

Comment regarding 0250-04-08-.05(a)(1)

Commenting Person or Entity: Gordon Bonnyman, Tennessee Justice Center

Comment Summary: Mr. Bonnyman is aware that the Department is working through a pilot program for education in Juvenile Detention Centers, that there is anticipated legislation which will facilitate the transfer of BEP funds to assist with educational services in Juvenile Detention Centers, and that education in Detention Centers is undergoing change. However, Mr. Bonnyman urged more specificity and would like the Department to add a more concrete set of requirements conforming to the *Doe* case. Mr. Bonnyman suggested that any specific requirements have an effective date of July 1, 2017 when potential legislation may take effect.

Department's Response: We are currently working on a pilot project with one Juvenile Detention Center and the Department of Education. The purpose of this pilot is to identify problem areas and work through any issues that arise. Additionally, the Department believes adding requirements based on potential legislation which may be amended later in session is too speculative. The Department plans on evaluating the results of the pilot program as well as any potential legislation and then assessing the need to amend these Rules to provide for more specific direction to Juvenile Detention Centers regarding provision of educational services.

Comments regarding 0250-04-08-.11(1)-Physical Restraints

Commenting Person or Entity: Sherry A. Wilds, Disability Rights Tennessee

Comment Summary: Ms. Wilds noted that Disability Rights Tennessee supported Mr. Bonnyman's comments made at the public hearing. Ms. Wilds recommended a section specifically prohibiting the use of prone restraints due to the potential harm to youth and noted that youth with disabilities can be vulnerable to harm from this technique.

Department's Response: We will be monitoring the use of physical restraints via incident reports that must be filled out by the facility after a physical restraint is used. We believe monitoring physical restraints through incident reports provides a sufficient safeguard against potential harm.

Comment regarding 0250-04-08-.11(2)-Chemical Defense Agents

Commenting Person or Entity: Gordon Bonnyman, Tennessee Justice Center and Sherry A. Wilds, Disability Rights Tennessee

Comment Summary: Mr. Bonnyman stated that it is good the proposed Rules would limit chemical defense agents to only oleoresin capsium (OC) and pepper spray. Mr. Bonnyman was concerned that the requirement in paragraph (g) for a youth to receive medical treatment only when actually injured does not go far enough. Mr. Bonnyman noted that OC and pepper spray are known to cause upper respiratory inflammation and may cause issues for youth with respiratory problems. Mr. Bonnyman suggested that any child exposed to a chemical agent should be evaluated by medical personnel. Ms. Wilds noted Disability Rights Tennessee is concerned about the potential health hazards in the use of chemical agents for youth with respiratory illnesses. Disability Rights Tennessee requested that clinical staff always evaluate youth after its use.

Department's Response: The Department has added wording to this Rule requiring another staff member to monitor the use of the chemical agent, requiring the children affected be moved immediately to an area with fresh air and be given a shower, requiring continuous monitoring of any affected children by a qualified staff member, and requiring immediate medical attention for children showing anything other than minor symptoms. These additions can be found at 0250-04-08-.11(2)(c)(3), 0250-04-08-.11(2)(f)(1), 0250-04-08-.11(2)(f)(2), and 0250-04-08-.11(2)(f)(4)

Comments regarding 0250-04-08-.11(3)-Mechanical Restraints

Commenting Person or Entity: Gordon Bonnyman, Tennessee Justice Center

Comment Summary: Mr. Bonnyman noted that in the current proposed version of these Rules, restraint chairs are prohibited beginning July 1, 2018. Mr. Bonnyman suggested that this prohibition begin no later than July 1, 2017. Mr. Bonnyman also noted paragraph (e) currently reads, in relevant part, "Possession or use of such equipment by facility staff shall result in immediate adverse licensing action up to suspension of the agency's license." Mr. Bonnyman suggested adding "up to and including".

Department's Response: We have received input from many juvenile detention centers that this is a resource they still feel is necessary and its immediate removal would impair their functioning. We believe the prohibition date of July 1, 2018, is reasonable given the substantial other changes Juvenile Detention Centers will have to undertake to comply with other rule revisions. With respect to paragraph (e), the Department agrees with Mr. Bonnyman's comment and wording will be added to reflect such a change.

Commenting Person or Entity: Steve Petty, Tennessee Commission on Children and Youth

Comment Summary: Mr. Petty noted that there was no corresponding definition for mechanical restraints in Rule 0250-04-08-.01 and that it was not clear which restraints are allowed or clearly prohibited.

Department's Response: We believe that the term "Mechanical Restraints" is self-defined and well-understood. The Department believes that the rule is sufficiently clear as to inform facilities when mechanical restraints are allowed and when they are prohibited.

Comments regarding 0250-04-08-.11(5)-Seclusion

Commenting Person or Entity: Gordon Bonnyman, Tennessee Justice Center

Comment Summary: Mr. Bonnyman first noted that he applauds the Department for its progress in this area and supported the prohibition of seclusion for punitive purposes. With respect to 0250-04-08-.11(5)(b)(3), regarding voluntary time out by the youth, Mr. Bonnyman stated that we are dealing with facilities that are inherently coercive in their nature and we should be aware of the imbalance in the authority and power. Mr. Bonnyman state it is important to include in regulation a provision that says if the separation by youth purports to be voluntary, staff should be required to regularly prompt the youth of their right to leave and such prompting should be done hourly. Ms. Wilds from Disability Rights Tennessee agreed and joined in with Mr. Bonnyman's suggestion of regular prompts to the youth that he or she can end the seclusion at any time.

Department's Response: We also note that it may be equally disruptive for youth to be reminded on a regular basis that they are allowed to leave their room, especially when a youth has voluntarily elected to separate from the general population.

Commenting Person or Entity: Gordon Bonnyman, Tennessee Justice Center and Steve Petty, Tennessee Commission on Children and Youth

Comment Summary: Mr. Bonnyman noted his concern that Rule 0250-04-08-.11(5)(f) allows for a child to be secluded for up to 72 hours in a 14-day period. Mr. Bonnyman stated there is evidence that seclusion is quite adverse and strongly recommends the Department revisit the length of time for seclusion and set a time limit which conforms to national evolving standards. Mr. Petty echoed Mr. Bonnyman's concerns.

Department's Response: There are several competing standards around seclusion. For example, for accreditation purposes the American Correctional Association (ACA) currently allows for seclusion of juveniles up to 5 days. The Department believes that allowing seclusion for up to 72 hours in a 14-day period represents a reasonable compromise among the many available standards.

Commenting Person or Entity: Gordon Bonnyman, Tennessee Justice Center and Sherry A. Wilds, Disability Rights Tennessee

Comment Summary: Mr. Bonnyman noted that in Rule 0250-04-08-.11(5)(f)(6) youth may be placed in their room for a one hour "cooling off period." Mr. Bonnyman noted nothing prevents a Juvenile Detention Center from stacking these one hour periods to seclude youth for a lengthy amount of time. Ms. Wilds also recommended wording prohibiting stacking of "cooling off" periods.

Department's Response: Language has been added in the proposed Rule to prohibit stacking of more than two "cooling off" periods.

Commenting Person or Entity: Steve Petty, Tennessee Commission on Children and Youth; Gordon Bonnyman, Tennessee Justice Centers; and Sherry A. Wilds, Disability Rights Tennessee

Comment Summary: Mr. Petty commented that he believes the language authorizing seclusion for 24 hours prior to review should be tightened to require review every 12 hours. Mr. Bonnyman agreed with Mr. Petty's comments about medical intervention and review every 12 hours. Ms. Wilds also agreed that seclusion should be reviewed every 12 hours by clinical personnel to evaluate the youth's mental health status and conformity with national best practice standards. Mr. Petty also discussed the difference between seclusion and solitary confinement and stated he would like to see some guidelines for solitary confinement.

Department's Response: We believe that a review every 24 hours is suffices to ensure the youth is adequately protected and conforms with evolving standards.

Commenting Person or Entity: Lynn Duke, Rutherford County Juvenile Detention Center

Comment Summary: Ms. Duke noted in her written comment that a previous draft version of Rule 0250-04-08-.11 allowed for seclusion when a youth was persistently disrupting programmatic activities. Ms. Duke stated she believes there are times when it becomes necessary to remove a young person from the rest of the population to maintain or regain order and to continue to provide quality services to other young people. Ms. Duke also noted that persistent programmatic disruption can pose a safety hazard for staff or other young people. Ms. Duke requested that the Department amend the Rule to allow for seclusion of youth who persistently disrupt programmatic activities.

Department's Response: While we understand Ms. Duke's concern, we do not feel that secluding a youth for persistently disrupting program activities is an appropriate use of seclusion and that there are other ways to deal with program disruption in a manner that are safe for all youth and staff.

**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.

**Regulatory Flexibility Addendum**

The agency shall consider, but not be limited to, each of the following methods of reducing the impact of the proposed rule on small businesses while remaining consistent with health, safety, and well-being:

(1) The extent to which the rule may overlap, duplicate, or conflict with other federal, state, and local governmental rules.

The proposed rules align with Tennessee and federal law and do not conflict with other federal, state, or local governmental rule. T.C.A. § 37-5-501, et. seq. is explicit that juvenile detention centers and temporary holding resources in the state of Tennessee are to be licensed and monitored by the Tennessee Department of Children's Services.

(2) Clarity, conciseness, and lack of ambiguity in the rule.

The proposed rules are clear, concise, and unambiguous.

(3) The establishment of flexible compliance and reporting requirements for small businesses.

The proposed rules do not establish separate flexible compliance or reporting requirements for small businesses since one of the tenants of licensure is to ensure the safety, welfare, and best interests of the children in the care of the agency. *See* T.C.A. 37-5-502(3)(A). However, these proposed rules were consciously written not to be overly burdensome to licensed juvenile detention centers and temporary holding resources. Additionally, Department licensing staff have been vetting these proposed rules with providers since mid-2014 and have consistently been available to address questions and concerns.

(4) The consolidation of friendly schedules or deadlines for compliance and reporting requirements for small business.

The proposed rules do not establish separate flexible compliance or reporting requirements for small businesses since one of the tenants of licensure is to ensure the safety, welfare, and best interests of the children in the care of the agency. *See* T.C.A. 37-5-502(3)(A). However, these proposed rules were written to acknowledge the everyday business obligations of licensed juvenile detention centers and temporary holding resources. Additionally, Department licensing staff have been vetting these proposed rules with providers since mid-2014 and have consistently been available to address questions and concerns.

(5) The consolidation or simplification of compliance or reporting requirements for small businesses.

The proposed rules are written to be clear, simple, and easy to read by all juvenile detention centers and temporary holding resources, including those which may qualify as small businesses.

(6) The establishment of performance standards for small businesses as opposed to design or operational standards required in the proposed rule.

To the extent these Rules require operational standards instead of performance standards; the Department would assert the operational standards are necessary to effectuate the legislative intent of T.C.A. §§ 37-5-501, et. seq.

(7) The unnecessary creation of entry barriers or other effects that stifle entrepreneurial activity, curb innovation, or increase costs.

The proposed rules do not unnecessarily create any entry barriers or other effects that stifle entrepreneurial activity or curb innovation.

**Economic Impact Statement**

(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.

These proposed rules would apply to all Juvenile Detention Centers and Temporary Holding Resources operating in Tennessee. We have identified three privately owned Juvenile Detention Centers, of which two appear to qualify as a small business.

(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 proposed rules require more thorough reporting, recordkeeping, and the development of internal policies. However, the Department does not feel that these new requirements are overly burdensome or will impose a significant financial impact on the small businesses. The Department is required pursuant to T.C.A. § 37-5-516 to convene a licensing standards committee to serve in an advisory capacity. One of the small business owners was a member of the licensing standards committee.

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

The proposed rules will have a minimal impact on small businesses and 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.

The Department believes that these proposed rules are the least intrusive and least costly means of instituting minimal standards for Juvenile Detention Centers and Temporary Holding Resources that conform to evolving best practice standards in Juvenile Justice.

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

Federal: The Department is unaware of any analogous federal rules.

State: There are no state counterparts with which to compare these proposed rules.

(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.

Exemption of small business from the proposed rules would result in different standards of care for affected juveniles. By requiring all Juvenile Detention Centers and Temporary Holding Resources to function under the same standards, the State ensures that a vulnerable population is receiving effective, efficient, and standardized services.

**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)

Throughout the drafting process the Department consulted with representatives of many Juvenile Detention Centers and Temporary Holding Resources which are operated by local governments. Based on feedback and the local governments' participation in the drafting process, the Department does not expect these rules to have a significant financial 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;

These rules establish minimum standards for Temporary Holding Resources and Juvenile Detention Centers in Tennessee, which are licensed by the Department of Children's Services. These rules set out general requirements; administration and management; personnel; service provision to youth; medical services available to youth; supervision of youth; physical plant of a facility; sanitation, maintenance, and life safety; security; seclusion and restraint; and transportation.

**(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. § 37-5-502(a)(1) requires the Department of Children's Services to license any entity operating as a Juvenile Detention Center or Temporary Holding Resource in the State of Tennessee. T.C.A. § 37-5-502(a)(2) gives the Department explicit rulemaking authority to promulgate licensing standards.

**(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;

Drafts of the proposed rules were sent to every Juvenile Detention Center and Temporary Holding Resource director. The directors were given the opportunity to review the proposed rules and offer any feedback they felt was appropriate. Several meetings and conference calls were set up to allow the directors to have input. No director has urged rejection of the Rule.

**(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

**(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 Department of Children's Services does not expect these rules to have a financial impact on local governments.

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

Mark Anderson, Department of Children's Services, Director of Child Welfare Licensing,

Douglas Earl Dimond, Department of Children's Services, General Counsel

Helen Rodgers, Department of Children's Services, Assistant General Counsel

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

Mark Anderson, Department of Children's Services, Director of Child Welfare Licensing

Douglas Earl Dimond, Department of Children's Services, General Counsel

Helen Rodgers, Department of Children's Services, Assistant 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

Mark Anderson
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2600 Western Avenue
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**(I)** Any additional information relevant to the rule proposed for continuation that the committee requests.

None

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**For Department of State Use Only**

Sequence Number: 03-19-17
Rule ID(s): 6469
File Date: 3/17/17
Effective Date: 6/15/17

# 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:** | Department of Children's Services |
| **Division:** | Legal |
| **Contact Person:** | Helen Rodgers |
| **Address:** | 315 Deaderick Street<br>UBS Tower, 7th Floor<br>Nashville, Tennessee |
| **Zip:** | 37243 |
| **Phone:** | 615-741-1404 |
| **Email:** | Helen.Rodgers@tn.gov |

**Revision Type (check all that apply):**

___ Amendment
_X_ 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** |
|---|---|
| 0250-04-08 | Minimum Standards for Juvenile Detention Centers and Temporary Holding Resources |
| **Rule Number** | **Rule Title** |
| 0250-04-08-.01 | Definitions |
| 0250-04-08-.02 | General Requirements |
| 0250-04-08-.03 | Administration and Management |
| 0250-04-08-.04 | Personnel |
| 0250-04-08-.05 | Service Provision |
| 0250-04-08-.06 | Medical Services |
| 0250-04-08-.07 | Supervision of Youth |
| 0250-04-08-.08 | Physical Plant |
| 0250-04-08-.09 | Sanitation, Maintenance, and Life Safety |
| 0250-04-08-.10 | Security |
| 0250-04-08-.11 | Seclusion and Restraint |
| 0250-04-08-.12 | Transportation |

Chapter 0250-04-08
Minimum Standards for Juvenile Detention Centers and Temporary Holding Resources

0250-04-08-.01 Definitions
0250-04-08-.02 General Requirements
0250-04-08-.03 Administration and Management
0250-04-08-.04 Personnel
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0250-04-08-.07 Supervision of Youth
0250-04-08-.08 Physical Plant
0250-04-08-.09 Sanitation, Maintenance, and Life Safety
0250-04-08-.10 Security
0250-04-08-.11 Seclusion and Restraint
0250-04-08-.12 Transportation

0250-04-08-.01 Definitions

(1) "Administrator" means the director of the Temporary Holding Resource or the Juvenile Detention Center.

(2) "Chemical Defense Agent" means any product which is dispensed by means of an aerosol spray to control an individual's combative and/or restrictive behavior.

(3) "Department" or "DCS" means the Tennessee Department of Children's Services.

(4) "Facility" means a Temporary Holding Resource or Juvenile Detention Center unless the context requires otherwise.

(5) "High School Diploma or Equivalent" means a document recognizing graduation from a legally approved public or private institution, based upon the issuing state's required number of academic credits. This may include a GED diploma or HiSET equivalent. A special education diploma, statement of attendance, honorary diploma or correspondence or video course is not considered an equivalent alternative.

(6) "LEA" means Local Education Agency.

(7) "Licensing Office" means the Department of Children's Services Child Welfare Licensing Office.

(8) "Physical Restraint" means the use of body contact by staff upon a youth to restrict the youth's freedom of movement or normal access to their body.

(9) "Qualified Medical Professional" means a physician or other qualified health care professional who is an individual qualified by education, training, licensure/regulation (when applicable), and facility privileging (when applicable) who performs a professional service within his/her scope of practice and independently reports that professional service.

(10) "Qualified Mental Health Professional" means a person with professional training, experience and demonstrated competence in the treatment of mental illness, who shall be a physician, psychologist, social worker, mental health counselor, nurse or other qualified person.

(11) "Seclusion" means the intentional, involuntary segregation of an individual from the rest of the resident population for the purposes of preventing harm by the youth to themselves or others; preventing harm to the youth by others; aiding in de-escalation of violent behavior; or serving clinically defined reasons.

(12) "Sentinel event" means any unanticipated event resulting in death or serious physical or psychological injury to a youth in the care of the facility.

(13) "Sight contact" means clear visual contact between incarcerated adults and juveniles offenders within close proximity to each other.

(14) "Sound contact" means direct oral communication between incarcerated adults and juvenile offenders.

(15) "Staff" means full time and part time employees of a juvenile detention center or temporary holding resource.

(16) "Volunteer" means any person providing assistance to the agency without pay, who may have direct and ongoing contact with youth equal to or greater than twenty (20) hours per week.

(17) "Youth" means a person under eighteen (18) years of age or a person under nineteen (19) years of age in custody of the Department of Children's Services or remaining under the jurisdiction of the juvenile court.

Authority: T.C.A. §§ 37-5-105; 37-5-106; and 37-5-501, et. seq.

0250-04-08-.02 General Requirements

(1) The issuance and maintenance of a license to operate a juvenile detention center or temporary holding resource shall depend upon adherence to these standards.

(2) All public or private agencies operating juvenile detention centers or temporary holding resources shall be specifically licensed by the Department.

(3) The initial and continued licensing of a juvenile detention center or a temporary holding resource shall be based upon the following criteria:

(a) The safety, welfare and best interests of the youth in the care of the facility;

(b) The capability, training and character of the persons providing or supervising the care of youth;

(c) The quality of the methods of care and instruction provided to the youth;

(d) The suitability of the facilities provided for the care of the youth;

(e) The adequacy of the methods of administration and the management of the facility, the facility's personnel policies, and the financial integrity of the facility; and

(f) The present need for the juvenile detention center or temporary holding resource.

(4) Juvenile detention centers and temporary holding resources shall be appropriately approved, licensed, permitted or credentialed by all appropriate agencies, including the Tennessee Department of Health and the state or local fire marshal's office, before residents may be admitted.

(5) Juvenile detention centers and temporary holding resources shall be classified according to the date operations commenced. Facilities which begin operation as a juvenile detention facility or temporary holding resource after July 1, 2017, shall be considered new, while facilities operating prior to that date shall be considered existing facilities.

(6) Facilities shall provide their services in an ethical and professional manner at all times. This includes:

(a) Strict adherence to the practice of confidentiality; and

(b) Acting at all times in the best interest of the youth insofar as this does not violate the social responsibility of the facility for the protection of the community.

(7) The facility shall consider and respect the ethnic, religious, racial, and cultural background of all youth and make reasonable accommodations to meet any related needs.

(8) A facility shall not engage in practices which exploit the rights of youth in care. Youth shall not be individually identified in connection with fund raising activities or publicity for the facility without written permission from the youth and either the parent or the legal guardian.

(9) Provisions Specific to Temporary Holding Resources:

(a) A temporary holding resource shall not house more than eight (8) children, and is designed to operate primarily as a staff secure facility with a maximum of two (2) hardware secure rooms. At least half of the rooms in the facility shall be non-secure.

(b) A temporary holding resource is designed to house children who are:

1. In need of legal temporary placement;

2. Awaiting a pending adjudication; or

3. Awaiting judicial disposition.

(c) Youth shall be detained in a temporary holding resource in accordance with T.C.A. §§ 37-1-114 and 37-1-116 (2016 and as amended):

1. A youth's placement in a temporary holding resource shall be less than seventy-two (72) hours;

2. Youth who are alleged to be delinquent and meet the criteria for secure detention may be placed in secure custody in a temporary holding resource for up to a seventy-two (72) hour maximum length of stay; and

3. Youth who are alleged to be status offenders shall not be placed in secure custody in a temporary holding resource for more than twenty-four (24) hours unless there is probable cause to believe the youth has violated a valid court order.

(d) Dependent and neglected youth shall not be detained in secure rooms unless those rooms are rendered "non-secure" for the duration of the placement.

(10) A youth shall not be detained in any secure facility or secure portion of any facility unless the criteria established in T.C.A. §§ 37-1-114 and 37-1-116 (2016 and as amended) are met.

(11) For youth with special needs, provisions shall be made to address special needs for those youth who exhibit or who have documented physical or intellectual disabilities or impairments, limited English proficiency (LEP), and/or mental or emotional health issues.

(12) Informed Consent

(a) Rules in subparagraphs (b)-(d) may not be applicable if family contact is determined to be contraindicated by the administrator due to safety concerns concerning the youth or the facility. Such determination shall be documented by the facility administrator or designee.

(b) At admission, staff shall request the name and contact information of an adult family member or guardian who can provide information about a youth's health and mental health history, Medicaid and health insurance information, and consent to medical treatment for the youth, if necessary.

(c) Any medical and/or mental health examinations and/or services provided to detained youth by medical or mental health professionals shall conform to state laws for informed consent and the right to refuse treatment.

(d) Facility staff shall obtain informed consent using a language that is understandable to the youth and his or her parent or legal guardian.

(13) Family Engagement

(a) Rules in subparagraphs (b)-(e) may not be applicable if family contact is determined to be contraindicated by the administrator due to safety concerns concerning the youth or the facility. Such determination shall be documented by the facility administrator or designee.

(b) Facility administrators shall provide means for parents and legal guardians, including individuals who have limited English proficiency, to ask questions about the facility and its programs and ensure that those questions are answered.

(c) The facility shall provide parents and guardians contact information for a staff member who they can contact to obtain information about their youth and his or her adjustment to the facility. The facility shall make appropriate arrangements to communicate with parents or guardians who have limited English proficiency.

(d) Facility staff shall encourage contact between youth and family members through mail, telephone, visitation and other means.

(e) Parents, guardians and other family members shall be able to register complaints about the treatment of youth. Facility administrators shall promptly reply to such complaints in writing. The

facility shall make appropriate arrangements to receive complaints from parents or guardians who have limited English proficiency.

(14) All licensed agencies shall ensure freedom from discrimination or harassment on the basis of race, color, religion, sex, age, disability, marital status, citizenship, genetic information, or any other characteristic protected by law. This applies to youth, families, clients and employees.

Authority: T.C.A. §§ 37-5-105; 37-5-106; and 37-5-501, et. seq.

0250-04-08-.03 Administration and Management

(1) Each facility shall develop a mission statement and written policies and procedures governing the facility's operations. These policies and procedures shall be reviewed and updated annually and shall be accessible to all staff at all times. Staff shall be trained on these policies during pre-service and during their annual in-service training.

(2) There shall be written plans, developed in advance, for dealing with emergencies such as escape, medical emergencies, quarantine, disturbances, assaults on staff, hostage taking, and emergency evacuation. These written plans shall be incorporated into the facility's operations manual. Each staff member shall be trained on these plans; documentation shall be noted in individual employee training records.

(3) The facility administrator shall approve a list of articles and materials that shall be allowed in the living area. This list shall be made available to all youth upon admission.

(4) Facility administrators shall regularly review logbooks, special incident reports, records of use of physical force or restraints, grievances, and recreation records. Facility administrators shall provide positive feedback to staff on exemplary performance. Facility administrators shall advise staff of any areas of concern and take appropriate action with respect to particular staff members such as re-training, discipline, and termination, as appropriate.

(5) An intake process shall be completed for every youth admitted to the facility and shall contain the following information, as available:

(a) Date and time of admission;

(b) Name and aliases of youth;

(c) Last known address;

(d) Specific charge(s);

(e) Gender;

(f) Age;

(g) Date of birth;

(h) Place of birth;

(i) Race;

(j) Employment information;

(k) Educational information, including name of originating school system (LEA);

(l) Name, relationship and contact information for next of kin;

(m) Other key contact person(s) and addresses to notify in case of emergency, including legal representation and/or assigned juvenile case manager;

(n) Name of legal guardian;

(o) Driver's license and social security number;

(p) Status: pre/post adjudication;

(q) Notation of cash and property;

(r) Bonding company;

(s) Amount of bond;

(t) Court date and time;

(u) Room assignment;

(v) Presenting medical and mental health information, including suicide risk, prescribed medications, open wounds, pregnancy, current and/or history of physical and sexual abuse, allergies, and intoxication (drugs or alcohol); and

(w) Information regarding the youth's custodial status (DCS custody).

(6) The admitting staff member shall ensure that each youth received is committed under proper legal authority.

(7) At the time of a youth's admission to the facility, a diligent attempt shall be made to notify the youth's parents or guardians. This, and all future attempts, shall be documented in case records.

(8) Cash and personal property shall be secured from the youth upon admission, listed on a receipt form in duplicate, and securely stored pending the youth's release. The receipt shall be signed by the receiving staff member and the youth, the duplicate given to the youth, and the original kept for the record. If the youth is unable or unwilling to participate in the process, there shall be at least one (1) witness to verify this refusal and the youth's refusal shall be documented.

(9) Written policy and procedure shall ensure that records on youth are current and accurate.

(10) Written policy and procedure shall ensure that youth's records shall be maintained confidentially.

(11) Written policy shall govern the management of youth records including, at a minimum, the following areas:

(a) The establishment, use and content of youth records;

(b) Right to privacy;

(c) Secure storage and preservation of records; and

(d) Established schedule for disposal of inactive records.

(12) All youth records shall be retained a minimum of one (1) year from the date of discharge. All medical records shall be retained until a youth's nineteenth (19) birthday. The facility's policy shall adhere to state and federal guidelines regarding the retention of all special education records.

(13) Written policy and procedure shall specify that the person receiving a youth at discharge shall be an approved parent or legal guardian and shall present appropriate identification. Positive identification of a youth shall be made by the releasing staff member before discharge or release.

(14) All youth released from the facility shall sign a receipt for property, medications, valuables and cash returned to the youth, parent, or legal guardian at the time of release. All items shall be carefully inventoried on the receipt and witnessed by the releasing staff member. The receipt shall be kept in the permanent records of the facility. If the youth is unable or unwilling to sign a receipt, there shall be at least one (1) witness to verify this refusal, and the youth's refusal shall be documented.

(15) There shall be a system for youth and staff to communicate with one another at all times.

(16) Facility staff shall cooperate promptly with requests from juvenile courts, LEAs, law enforcement and Departmental representatives.

(17) Written policy and procedure shall provide that youth be allowed to have confidential access to attorneys and/or their authorized legal staff and/or court appointed representatives at any reasonable hour. The facility shall establish the hours during which attorneys may visit.

(18) Records shall be kept noting a youth's access to the courts, visitation or access to the public, disciplinary actions and outcomes, medical or behavioral conditions, and/or any other pertinent information. Such records shall be retained per facility policy, statutory requirement and/or administrative rules and regulations.

(19) Any significant incident involving a youth shall be documented in a written incident report and retained in the youth's individual file. The incident report shall include date, time, location, and witnesses. Every incident report shall also clearly document the youth's involvement and behavior, and staff actions or reactions (e.g., verbal and physical interventions and follow-up actions) resulting from the incident. Incident reports completed by the facility to fulfill contractual requirements issued by the department shall be considered acceptable in meeting compliance with this provision. The incident shall be reviewed by the facility administrator or the facility administrator's designee prior to the conclusion of the shift and reported as designated by the department and the local jurisdiction. All incident reports shall be made available for review by licensing personnel. Significant incidents include, but need not be limited to, the following:

(a) Aggressive behavior, e.g., threats, fights and assaults;

(b) Attempted and completed escapes;

(c) Suicidal threats and attempts;

(d) Any incident involving use of physical force by staff;

(e) Use of isolation;

(f) Use of mechanical restraints for reasons other than transportation; and

(g) Sentinel events, including death or serious illness/injury.

(20) The facility shall cooperate fully with the Tennessee Commission on Children and Youth in monitoring Juvenile Justice and Delinquency Prevention core requirements and any other appropriate monitoring entity. The facility may contact the licensing office to confirm the monitoring entity's authority if questions arise.

(21) Each juvenile detention center shall maintain census information for all youth detained at the juvenile detention center. The census shall reflect the following for each youth:

(a) First and last name;

(b) Date of birth and age;

(c) Sex;

(d) County of original jurisdiction;

(e) Date of admission;

(f) Date of discharge (when applicable);

(g) Length of stay;

(h) Custodial disposition; and

(i) Reason for detention.

(22) Reports shall be submitted to the Department as follows:

(a) Each juvenile detention center shall, on a monthly basis and on a form provided by the Department, provide the Department an aggregate report detailing the following information:

1. Physical capacity of the facility;

2. Demographic information, including monthly discharges by age and gender;

3. Monthly discharge information, including custodial status and length of stay; and

4. Any other information required by the Department.

(b) Any proposed change in the facility's location shall be reported to the licensing office a minimum of ninety (90) days prior to the proposed move date to facilitate licensure of the new location. Any facility that changes location without obtaining the appropriate license for the new location shall be considered to be operating as an unlicensed program and shall be subject to any related legal, civil or regulatory penalties.

(c) Any sentinel event shall be reported immediately to the youth's parent or legal guardian and the Department's licensing office.

(d) Any known or suspected incidents of brutality, abuse, neglect, or child sexual abuse shall be reported immediately to both the child abuse hotline at 1-877-237-0004 and the Department's licensing office.

(e) A succession roster for reporting any significant emergency situations affecting or potentially affecting the safety and welfare of the youth served by a facility, including sentinel events, shall be developed and included in policy accessible to all staff. The Department's licensing office shall be included as a point of contact on any such succession roster.

Authority: T.C.A. §§ 37-5-105; 37-5-106; and 37-5-501, et. seq.

0250-04-08-.04 Personnel

(1) Written policy shall indicate that there is a hiring plan consistent with the facility's Affirmative Action obligations to include, at a minimum, a clear commitment to recognize and develop the abilities of all minorities, women, and handicapped persons in compliance with Title VI of the Civil Rights Act of 1964, Title IX of the Education Amendments of 1972, and the Americans with Disabilities Act (P.L. 101-336) of 1990.

(2) Written policy shall indicate a clear commitment to recognizing diversity in hiring.

(3) Written policy shall provide that, except in temporary, exigent situations approved by the facility administrator, there shall be a separation of youth care and adult care staff, including management, security, recreational, educational and counseling and other direct care staff. Specialized service staff, such as cooks, bookkeepers and medical professionals who are not normally in contact with detainees or whose infrequent contacts occur under conditions of separation of youth and adults are excluded from this requirement.

(4) Written personnel policies shall be provided to each staff member prior to or at time of employment. These shall include but are not limited to:

(a) A job description for each position covering the position's responsibilities, academic qualifications and required level of experience;

(b) Annual salary schedule and performance review requirements;

(c) Physical examination policy, which shall include a required physical examination and tuberculin screening for all staff members having contact with youth. The examination shall be no older than twelve (12) months prior to hire date or shall be completed within ninety (90) days of employment;

(d) Training requirements and documentation of completion;

(e) Vacation policy that clearly defines allowable time and payment plan;

(f) Sick leave policy;

(g) Policies regarding Social Security, insurance, retirement plans, and other fringe benefits;

(h) Facility grievance procedure;

(i) Grounds for dismissal; and

(j) Confidentiality of youth information.

(5) Specific Qualifications for Staff:

(a) The facility administrator shall have a high school diploma and at least two (2) years experience in juvenile justice or child welfare.

(b) All facility staff shall have a high school diploma or its equivalent. Staff who do not meet this requirement at the time of the effective date of these standards are permitted to remain in their positions; however, any staff hired after the effective date are required to have a high school diploma or its equivalent.

(6) Staff Development:

(a) Juvenile Detention Centers

1. Each juvenile detention center shall be required to provide personnel forty (40) hours of pre-service training before a staff member assumes individual job responsibilities. All staff members who have not received this forty (40) hours of training shall be accompanied at all times by a staff member who has received such training. There shall be documentation of topics covered and dates covered and class roster. Topics shall include but are not limited to:

(i) Hostage policy;

(ii) Crisis Management/Emergency Contingency Plan;

(iii) Use of force, including approved manual restraint techniques, chemical agents and mechanical restraint;

(iv) Admission and release;

(v) Security procedures;

(vi) Proper administration of CPR, first aid and medications;

(vii) Indicators of mental illness and potential for suicide;

(viii) Professional ethics and standards of conduct;

(ix) Cultural diversity;

(x) The purpose and operating policies and procedures of the facility;

(xi) Rights of detainees;

(xii) Behavioral observation and recording;

(xiii) Confidentiality;

(xiv) Sexual abuse and sexual harassment prevention, detection and response. Curriculum and/or other training materials used in compliance with federal PREA guidelines shall fulfill this requirement;

(xv) Verbal de-escalation techniques;

(xvi) Universal Safety Precautions and infectious diseases;

(xvii) Medical and mental health needs of youth; and

(xviii) Federal mandates, including PREA and Title VI.

2. All juvenile detention center staff whose duties include the supervision, custody, or treatment of youth shall be required to complete an annual in-service program designed to instruct them in specific skill areas of operations. This annual in-service shall consist of forty (40) hours to be approved and monitored by the Department. During the staff member's first year, these forty (40) hours of in-service shall be in addition to the required forty (40) hours of pre-service.

3. As part of the training requirements in part 2. and 3. of this Rule, direct care staff and supervisory staff assigned to work at the facility shall be trained annually in First Aid and CPR. Approved First Aid and CPR training shall meet the following provisions:

(i) The curriculum shall conform to current American Heart Association or American Red Cross guidelines;

(ii) The curriculum shall require hands-on, skill-based instruction, as well as written and practical testing. Training and certification that is provided solely "on-line" shall not be accepted; and

(iii) The instructor shall be qualified and authorized to teach the curriculum and shall be certified by a nationally recognized organization.

4. Medical-related training shall also cover:

(i) Skills development for response in emergency situations;

(ii) Transfer to appropriate medical provider;

(iii) Recognition of symptoms of illness most common to youth;

(iv) Medication administration;

(v) Confidentiality of medical records and information (HIPAA); and

(vi) Universal precautions.

5. All juvenile detention center staff members who are authorized to use chemical defensive agents and mechanical restraints shall receive basic and ongoing annual in-service training in their use. All such training shall be recorded with the dates completed and kept in the staff member's personnel training file.

6. All juvenile detention center staff members who directly supervise youth shall have specific training on proper techniques and implements to be used in removing a youth from a hanging situation. This training shall be provided in the staff member's pre-service array and on an annual basis.

7. Each juvenile detention center shall maintain records on the specific training, including credit hours, completed by each juvenile detention center staff member.

8. Each juvenile detention center shall ensure that there is written policy that requires individuals who work with both youth and adult inmates in collocated facilities to be specifically trained and approved to work with youth.

(b) Temporary Holding Resources

1. Each temporary holding resource shall be required to provide full and part-time staff sixteen (16) hours of pre-service training pertaining to security, facility operations and interacting with youth before a staff member assumes unsupervised individual job

responsibilities. All staff members who have not received this sixteen (16) hours of training shall be accompanied at all times by a fully trained staff member until these training requirements are met. Each full and part-time staff member shall receive an additional nine (9) hours of instruction over the course of the first year of employment. This training can be provided during the course of the employee's routine execution of job responsibilities wherever necessary. However, there shall be documentation of all topics and dates covered. All full and part-time staff members shall subsequently receive twenty (20) hours of instruction annually. Topics shall include but are not limited to:

(i) Hostage Policy

(ii) Crisis Management/Emergency Contingency Plan;

(iii) Use of force, including approved manual restraint techniques and mechanical restraint;

(iv) Admission and release;

(v) Security procedures;

(vi) Proper administration of CPR, first aid and medications;

(vii) Indicators of mental illness and potential for suicide;

(viii) Professional ethics and standards of conduct;

(ix) Cultural diversity;

(x) The purpose and operating policies and procedures of the facility;

(xi) Rights of detainees;

(xii) Behavioral observation and recording;

(xiii) Confidentiality;

(xiv) Sexual abuse and sexual harassment prevention, detection and response. Curriculum and/or other training materials used in compliance with federal PREA guidelines shall fulfill this requirement;

(xv) Verbal de-escalation techniques;

(xvi) Universal Safety Precautions and infectious diseases; and

(xvii) Medical and mental health needs of youth

2. The administrator, as well as each full-time child care staff who directly supervises children, must receive after the first year of employment, forty (40) hours of in-service training related to the administration and operation of a temporary holding resource. Training received through other curriculum such as law enforcement, PREA compliance and other, similar fields can be used to meet these requirements.

3. All staff members who directly supervise youth shall have specific training on proper techniques and implements to be used in removing a youth from a hanging situation. This training shall be provided in the staff member's pre-service array and on an annual basis.

4. Each temporary holding resource shall maintain records on the specific training, including credit hours, completed by each temporary holding resource staff member.

5. Each temporary holding resource shall ensure that there is written policy that requires individuals who work with both youth and adult inmates in collocated facilities to be specifically trained and approved to work with youth.

(7) Volunteers

(a) The facility shall establish an application and screening process in order to ensure that all prospective volunteers are of sufficient character and competence as to meet the facility's needs.

(b) The facility shall provide an ongoing training program and orientation to the philosophies and practices specific to the facility to each volunteer within the facility. Within two (2) weeks of being admitted to the facility's program as a volunteer, the new volunteer shall receive orientation and instructions related specifically to child abuse detection, reporting, and prevention and confidentiality. This training shall be documented in the individual's volunteer file.

(c) Paid staff members shall adequately supervise all volunteers.

(d) The facility shall maintain an individual file, including the application to participate as a volunteer; the results of the screening process; documentation of orientation and training, including child abuse prevention training; a declaration of good health; and three (3) letters of reference shall be obtained by the facility prior to allowing the volunteer to have direct contact with youth. The facility shall maintain this documentation in the facility records.

(e) Faith and community-based organizations providing volunteer services to the youth of less than twenty (20) hours per week shall meet requirements established by the facility administrator. Only those individuals who have been properly vetted pursuant to procedure required in 0250-07-08-.04(8) for prior criminal behavior, either through the organization or by the facility, may have direct access to the youth.

(8) The facility shall ensure that all prospective and current employees, volunteers and other persons having access to youth in care shall be appropriately screened for prior criminal behavior and/or abuse history. All background checks shall be conducted and documented according to requirements developed by the Department.

Authority: T.C.A. §§ 37-5-105; 37-5-106; and 37-5-501, et. seq.

0250-04-08-.05 Service Provision

(1) Hygiene

(a) The standard clothing issue for both males and females held in the facility longer than twenty-four (24) hours shall include the following:

1. Clean socks;

2. Clean undergarments, including safety approved bras for females;

3. Clean outer garments; and

4. Clean footwear.

(b) Clean personal clothing, if available, may be substituted for facility clothing at the discretion of the facility administrator.

(c) Provisions shall be made so that youth can regularly obtain the following hygiene items supplied by the facility:

1. Soap and shampoo;

2. Toothbrush;

3. Toothpaste;

4. Comb or brush;

5. Toilet paper;

6. Feminine hygiene materials; and

7. Deodorant.

(d) Haircuts for youth who request them shall be made available at a minimum on a monthly basis.

(e) Youth shall be permitted to brush their teeth and take a hot shower daily on a schedule established by the facility between the hours of 5:00 AM and 11:00 PM. Youth shall be allowed at least five (5) minutes to shower and shall be provided privacy to shower in single-occupancy stalls with shower curtains or shower doors.

(f) Each youth who remains placed in the facility overnight shall be provided the following:

1. One (1) clean fire-retardant mattress in good repair;

2. One (1) clean mattress cover;

3. One (1) clean fire-retardant pillow in good repair with pillow case. Mattresses with incorporated pillows are acceptable and an additional pillow does not need to be provided;

4. Sufficient clean blankets to provide comfort under existing temperature conditions;

5. One (1) clean bath-size towel; and

6. One (1) clean washcloth.

(g) An adequate supply of bedding and towels shall be maintained. Bedding shall be cleaned as follows:

1. Sheets, pillowcases, mattress covers, and towels shall be changed and washed at least once a week.

2. Bedding shall be disinfected after use by each youth.

3. Blankets shall be laundered or otherwise sterilized before re-issue.

(h) Clothing, whether personal or institutional, shall be exchanged and cleaned at least twice weekly unless work, climatic conditions or illness necessitate more frequent change. Undergarments shall be exchanged daily.

(2) Programs and activities

(a) Basic services shall be available to all youth as soon as they are admitted. Programmatic offerings shall be made available to all youth in juvenile detention centers within twenty-four (24) hours of their admittance to the facility. The facility shall provide or make available the following minimum services and programs to all adjudicated and pre-adjudicated youth:

1. Educational Services

(i) Youth who are certified for special education upon admission are referred to the Director of Special Education of the school system in which the Juvenile Detention Center is located; and

(ii) Each Juvenile Detention Center shall work with the appropriate LEA where the Juvenile Detention Center is located in order to ensure general education services are provided to the youth. This may include entering into an agreement between the juvenile detention center, appropriate school districts, Tennessee Department of Education, and DCS.

2. Access to mental health counseling, substance abuse counseling and crisis intervention services as needed;

3. Medical services;

4. Food services;

5. A recreation and leisure-time plan that includes at least one (1) hour per day of physical exercise and large muscle activity outside the room and one (1) hour per day of structured leisure-time activities. Restrictions may apply if the resident poses a risk to themselves or others;

6. Culturally diverse and approved reading material approved by the facility; and

7. The facility shall allow for youth to voluntarily participate in religious activity at least once a week so long as security is not compromised.

(b) Every youth shall have unrestricted and confidential access to the courts, legal representation, assigned caseworkers, child abuse hotlines and law enforcement. Youth shall have the right to present any issue before a court of law or governmental agency.

(c) Youth shall not be permitted to perform any work prohibited by state and federal regulations and statutes pertaining to child labor or perform duties normally done by staff members due to inadequate staffing.

(d) Work assignments shall not conflict with the education program.

(e) Youth eighteen (18) years of age shall not be housed in the same sleeping areas (bedrooms) as youth under the age of eighteen (18). Programmatic segregation of eighteen (18) year-old youth in other areas and activities shall be at the discretion of the facility administrator.

(f) The Facility administrators shall have discretion in making appropriate arrangements, either upon admission, or in response to circumstances within the milieu, for the protection of vulnerable youth. This may include temporary protective measures in both sleeping arrangements and common activities. Such arrangements shall be short-term and noted in writing by the facility administrator.

(3) Mail, Telephone Access, and Visitation

(a) Written policy shall outline the facility's procedures governing youth's mail, including the censoring of mail. Any regulation for censorship shall meet the following criteria:

1. The regulation shall further an important and substantial security interest unrelated to the suppression of expression (e.g., detecting escape plans which constitute a threat to the safety or well-being of staff or other youth); and

2. The limitation shall be no greater than is necessary to the protection of the particular security interest involved.

(b) Incoming mail shall be inspected for contraband items prior to delivery. Mail received from the courts, attorney of record, or public officials shall be delivered unopened in the presence of the youth.

(c) Outgoing mail shall be collected and incoming mail shall be delivered without unnecessary delay.

(d) A youth shall be notified if a letter is rejected, whether it is written by or addressed to the youth. Only correspondence to or from those persons on contact lists approved by the administrator or their designee shall be allowed.

(e) When a letter is rejected, policy and procedure shall provide an opportunity for the youth to appeal that decision to the facility administrator.

(f) Written policy and procedure shall provide that the facility permits postage for at least two (2) free personal letters per week for youth. Youth shall also receive free postage for all legal correspondence or case-related mail.

(g) Written policy shall define the facility's visitation policies, which shall include, at a minimum:

1. A schedule of visitation times and length of visitation allowed;

2. The maintenance of a visitors log;

3. Provision that all visitors shall register before admission and may be denied admission for refusal to register, for refusal to consent to search, or for any violation of posted facility rules; and

4. Notification of the possibility of visitor searches.

(h) Juvenile Detention Centers shall have written policy which provide that the Juvenile Detention Centers shall allow a minimum of one (1) hour of visitation each week for each youth with their parent, legal guardian, or other approved family members unless specifically prohibited by the juvenile court judge or their designee; this does not preclude visitation by other approved persons at the discretion of the Juvenile Detention Center. Restrictions may be imposed if the youth is determined to pose a risk to themselves or others.

(i) Temporary Holding Resources shall have written policy that provides that the Temporary Holding Resources shall allow each youth to visit with their parents or guardian at least once a day between 12:00 noon until 6:00 p.m. unless visitation is specifically prohibited by the juvenile court judge or their designee. Other visitors or hours of visitation shall be approved by the Temporary Holding Resource administrator or juvenile court judge.

(j) Juvenile Detention Centers shall have written policy and procedure which requires the Juvenile Detention Centers to provide reasonable telephone access that, at a minimum, shall consist of one (1) personal phone call per week. Additionally, each youth shall be afforded at least ten (10) minutes of phone conversation per week. Such procedure, including any limitations imposed by the program, shall be in writing and posted so as to be conspicuous to youth. The procedure shall include, at a minimum:

1. The hours during which such access shall generally be provided; and

2. A statement regarding the privacy of telephone communication.

(k) Temporary Holding Resources shall have written policy which provides that each youth shall be allowed to receive up to two (2) telephone calls a day from their parents or legal guardian during the hours of 8:00 a.m. and 9:00 p.m. unless specifically prohibited by the juvenile court judge or their designee.

(4) Food Services

(a) Current food service guidelines and a menu approved by a registered dietician or nutritionist shall be used in all meal preparation whether meals are prepared on or off-site.

(b) Three (3) meals and a substantial evening snack shall be provided daily with no more than a fourteen (14) hour span between the evening meal and breakfast on the following day. At least two (2) of these meals shall be hot.

(c) All meals prepared onsite shall be under the direct supervision of agency staff. Any meals prepared off-site and delivered to the facility shall be served expeditiously to maintain safe serving temperature and palatability.

(d) Written policy and procedure shall require that accurate records are maintained on the number of meals served per day, the actual food served and the scheduled meal times.

(e) Food shall not be used as punishment. Such action is grounds for adverse licensing action. Food may only be used as a reward when offered in addition to the minimum requirements established in 0250-04-08-.05(3)(b).

(f) All medically modified diets of youth shall be prepared and offered as prescribed by a physician, nurse practitioner and/or recommended by a registered dietician or nutritionist. Special provisions shall be made to accommodate religious diets requiring modification and shall be documented for review by licensing staff.

(g) The preparation or storage of food shall not be permissible in any residential areas of the facility. All food preparation and storage shall meet current Tennessee Department of Health guidelines.

(h) Proper storage of food shall assure that there shall be no contamination of the food from any source. Insecticide, cleaning agents and poisonous substances shall be stored away from food and plainly labeled. Airtight containers or wrappings shall be used in the storage of frozen, refrigerated, and perishable items. The facility shall utilize "first in/first out" rotation in the storage of all food products.

(i) The temperature of potentially hazardous food shall be 41°F or below or 135°F or above at all times except as otherwise provided in the current edition of the ServSafe Manager Book.

(j) All refrigerators and freezers shall be clean and contain a thermometer. The temperature shall be maintained at 41°F or below in all refrigeration units. The temperature shall be maintained at 0°F for all freezer units. Fluctuation in temperatures from incidental use shall not be considered noncompliant. The temperature for the dry storage area should be between 50°F to 70°F.

(k) No medication of any kind shall be stored in refrigerators containing food products.

(l) All food products shall be stored at least six (6) inches off the floor on shelves or in shatterproof containers with tight fitting lids.

(m) Stoves shall be equipped with operable hooded exhaust systems and the filters shall be kept clean. Hoods shall be inspected twice yearly and inspections documented for licensing review.

(n) A system for the control of all sharps and chemicals shall be documented in policy and observable in practice.

(5) Disciplinary Hearings and Appeals in Juvenile Detention Centers

(a) The Facility's written policies shall provide for disciplinary hearings to be held in cases of alleged violations of youth conduct rules within seven (7) days of the write-up if the youth is still in the Facility, excluding holidays, weekends, and emergencies. These hearings shall include the following administrative guarantees:

1. Youth shall receive written notice in their language of charges and time of hearing at least twenty-four (24) hours prior to hearing. The youth shall be allowed to prepare for the appearance before an impartial officer or board.

2. A youth has the right to call and cross-examine witnesses and present evidence in their own defense, when permitting them to do so shall not be unduly hazardous to institutional safety or correctional goals.

3. The reasons for any limitations placed on testimony or witnesses shall be stated in writing by the hearing chairperson.

4. There shall be a written statement by the fact finders as to evidence relied on and reasons for the disciplinary action.

5. An appeals process shall be established if the youth disagrees with the decision of the board or impartial officer or board, and the youth shall be given notice of their right to appeal.

6. A youth has a right to waive hearing or appeal.

(b) The youth shall receive a copy of the disciplinary decision.

(c) The facility administrator may provide, at their discretion, written notification of major disciplinary actions involving the youth to the youth's parent, legal guardian, or custodian.

(d) Documentation of major disciplinary action shall be maintained in the youth's record and facility's record and made available for review by a youth's parent, custodian, legal guardian, legal counsel, or other appropriate party in the event of an inquiry.

(e) Written policy and procedure shall provide that the relevant disciplinary reports are removed from all files of any youth found not guilty of an alleged violation.

(6) Grievance Procedures in Juvenile Detention Centers

(a) The facility shall provide more than one method to report abuse, neglect, harassment and retaliation by other youth or staff within the facility.

(b) The facility shall provide avenues for youth to report abuse, neglect, harassment, or retaliation to a public or private entity or office that is not part of the agency that operates the facility, such as these entities: the public defender's office, attorneys, the courts, the child abuse hotline, local law enforcement, child welfare agencies and the Office of Child Welfare Licensing. These entities shall be able to receive and immediately forward youth reports of sexual abuse and sexual harassment to administrative officials within the facility and to allow the youth to remain anonymous upon request.

(c) The facility's opportunities for reporting abuse, neglect, harassment and retaliation shall include ways to report orally, in writing, anonymously and by third parties.

(d) Staff shall provide all youth with access to a grievance procedure that provides an opportunity for a fair consideration and resolution of complaints about any aspect of the facility, including medical and mental health services.

(e) Staff shall ensure that youth understand how to use the grievance process and can obtain and submit grievance forms confidentially. Staff shall provide youth with writing implements to fill out the forms.

(f) The facility's grievance system shall be accessible to all youth, including youth with limited literacy, youth who have limited English proficiency and youth with intellectual or developmental disabilities. Staff shall ensure that:

1. Youth with intellectual disabilities, developmental disabilities, or limited literacy or limited English proficiency receive oral explanations of the grievance process that they can understand;

2. Grievance forms shall use easy-to-understand language and shall be simple in their design;

3. Youth shall be able to report grievances orally and in writing; and

4. Youth with intellectual disabilities, developmental disabilities, or limited literacy or English proficiency receive assistance in using the grievance process.

(g) Once submitted by youth, grievances shall be forwarded to the facility administrator or designee. Grievances shall be handled by an individual who can independently investigate the issues raised in the grievance and recommend corrective action to the administrator. Youth shall be permitted to submit a grievance without submitting it to a staff member who is the subject of the complaint.

(h) The facility shall offer an emergency grievance procedure for youth who are at risk of imminent harm. The emergency grievance procedure shall allow for rapid response to needs identified through emergency grievances.

(i) The facility shall not impose time limits on when youth can file grievances.

(j) Staff shall not discipline youth for filing a grievance, even if an investigation does not establish sufficient evidence to substantiate the complaint. Discipline does not include appropriate legal action taken by the facility administration to address false allegations of abuse or similarly harmful activity.

(k) The facility shall permit interested third parties, including family members, attorneys and outside advocates, to file grievances on behalf of youth.

(l) The facility shall provide information to third parties on how to submit grievances on behalf of youth.

(m) Facility staff, administrators, ombudspersons, or other personnel will fully investigate all grievances, including interviewing the youth who filed the grievance and any youth or staff members mentioned by the youth. Staff alleged to be involved in the grievance shall not conduct the investigation.

(n) Youth shall receive responses to their grievances that are respectful, legible and responsive.

(o) Staff shall provide youth with an opportunity to appeal the decision regarding the grievance. Facility administrators charged with handling appeals shall respond to appeals promptly and fairly.

(p) If staff finds a grievance to be valid, facility administrators shall take appropriate action and when staff actions are involved, provide for counseling, retraining, reprimand, discipline, or termination of the employee and, in an appropriate case, for the filing of child abuse or criminal charges.

(q) Facility staff, administrators or other personnel shall fully document all grievances and the results of grievance investigations.

(r) Facility administrators shall regularly gather and review data on grievances (granted and denied) by race, ethnicity, gender, developmental and intellectual disability, mental illness, special education status and limited English proficiency status for patterns or trends.

Authority: T.C.A. §§ 37-5-105; 37-5-106; and 37-5-501, et. seq.

0250-04-08-.06 Medical Services

(1) When a youth requires medical care, the facility staff shall transport or arrange for transportation of the youth to a medical facility. If a youth is in need of urgent or emergency care, the facility staff shall transport them to the nearest or designated urgent care clinic or hospital emergency department as soon as possible. Diligent efforts shall be made to immediately notify the youth's parent or guardian. Medical complaints, diagnoses, treatment received, diligent efforts, and parental notification shall all be documented.

(2) First aid kits shall be available to and fully accessible by staff. A licensed medical professional shall approve the number and contents of such kits. Documentation of such approval shall be in the facility's permanent records or attached to the kit itself and shall be renewed annually. Outdated medications, including topical ointments, shall be removed and replaced.

(3) Wellness/Health screenings shall be performed on all youth, in a confidential environment, upon admission to a Juvenile Detention Center and before their placement in the general housing area. The findings shall be recorded on a printed or electronic screening form. The juvenile detention center staff member performing this duty shall inquire and check for evidence or appearance of:

(a) A serious illness or communicable disease or condition;

(b) Open wounds;

(c) Prescribed medications;

(d) Intoxication – alcohol or drug use;

(e) Pregnancy (last menstrual cycle);

(f) Physical or sexual abuse;

(g) Allergies;

(h) Past or current suicidal ideations and/or attempts;

(i) Mental health issues, including any prior mental health treatment;

(j) Recent significant loss, including but not limited to, the death of a family member or close friend;

(k) History of mental health diagnosis or suicidal behavior by family members and/or close friends; and

(l) Suicidal issues or mental health diagnosis during any prior confinement.

(4) A physical/health history examination shall be completed on all youth admitted to a Juvenile Detention Center within fourteen (14) days of their initial admission date unless documentation of such an examination dated within six (6) months prior to admission is available. A physician, nurse practitioner or registered nurse shall perform this examination. This examination shall include:

(a) Monitoring of vital signs;

(b) Height and weight;

(c) Review of systems;

(d) Medical history; and

(e) Diagnoses and treatment recommendations as necessary.

(5) Sick call, conducted by a physician or other person designated by a physician as capable of performing such duty, shall be available to each youth admitted to a Juvenile Detention Center according to written triage procedure for the center. All sick call requests shall be documented and logged for review. These logs should reflect the date and time of the sick call request and any subsequent follow up. The youth shall be informed of these procedures upon admission. Triage policy and procedure, including documentation of access to emergency health services, shall be made available for review by licensing staff.

(6) Dental treatment shall be provided when the health of the youth would otherwise be adversely affected during confinement as determined by a physician or dentist.

(7) Youth on prescription medications shall, whenever possible, have their medications continued without interruption unless a qualified medical professional determines that continuing the medication is clinically inappropriate. Medication continuity decisions are made through a same-day evaluation by a physician, nurse practitioner or psychiatrist or appropriate phone consultation between a nurse and a physician or psychiatrist, or sooner if medically necessary. The facility shall not administer any medications that are expired or not in original containers.

(8) There shall be strict control of medications to be issued to youth. All medications shall be prescribed by a physician or nurse practitioner at the time of use. Over the counter medications can be administered by written medical protocol approved by a licensed medical provider. A trained staff member shall be responsible to see that medication is administered as prescribed.

(9) All medication shall be double-locked within the medical area of the facility or other area approved by DCS Licensing. A medication receipt, log, and administration system shall be established. A running count of all prescribed medications shall be documented on an approved Medication Administration Record (MAR) including controlled medications and prescribed medications. A continuous inventory shall be maintained for syringes and other sharps. All used syringes and other contaminated material shall be disposed of in compliance with guidelines for disposal of bio-hazardous waste. All medication, including topical ointments, shall be checked monthly for expiration dates and expired medication shall be disposed of immediately.

(10) Medical records shall be maintained on each youth's physical condition upon admission, during confinement, and at discharge. The medical record shall include all medical orders issued by the physician and any other medical personnel who are responsible for rendering health care services. These records shall be retained until the youth's nineteenth (19th) birthday.

(11) In case of medical or mental health emergencies, specific resource information shall be readily accessible to all staff members including, but not limited to, local hospital emergency department, local physician's office, crisis intervention services, 911 or local emergency response, and poison control numbers. Contact information for parent, guardian, or family member of each youth shall also be readily available in case of emergency.

(12) Staff shall immediately place youth identified as needing further evaluation for suicide risk or other acute mental health conditions on constant observation until they can be formally assessed by a qualified mental health professional such as, but not limited to, a mobile crisis response unit. Staff shall promptly contact a qualified mental health professional in order to develop an emergency intervention plan for such youth. The qualified mental health professional shall conduct an assessment of the youth within twenty-four (24) hours. Only a qualified mental health professional may remove a youth from constant observation.

(13) Youth who are identified as requiring additional medical or mental health follow-up for reasons other than significant medical or mental health needs or suicide risk shall be immediately referred for an assessment by a qualified medical or qualified mental health professional, as appropriate.

(14) Youth who are identified upon initial screening, or at a later date, as having experienced prior sexual victimization or who previously perpetrated sexual abuse shall be offered a meeting with a qualified mental health professional within seventy-two (72) hours of either admission to the facility or request by the youth.

(15) The facility shall develop and implement written policies, procedures and practices, in conjunction with the health authority, that ensure sufficient supervision of youth identified with potential medical problems (e.g., diabetes, asthma) until the youth receives a full health assessments.

(16) Provisions for appropriate medical and neonatal care shall be made for pregnant youth.

(17) For youth in the custody of the Department, if health or behavioral health services are not provided directly by the facility, but received by the child through community clinicians, the facility shall complete CS-0689, Health Services Confirmation and Follow up Notification to the community provider. The Health Services Confirmation provides information about the service that was received and notes any follow-up services needed.

Authority: T.C.A. §§ 37-5-105; 37-5-106; and 37-5-501, et. seq.

0250-04-08-.07 Supervision of Youth

(1) Staff shall provide direct supervision of all youth in placement, including at a minimum the following levels of visual contact:

(a) All youth confined in their rooms due to seclusion or medical requirements shall be observed every fifteen (15) minutes.

(b) Youth who are actively violent or intoxicated shall be observed every five (5) minutes.

(c) Youth exhibiting or expressing suicidal behavior or ideation shall be under constant direct observation and the following procedures shall be followed:

1. Referral to appropriate and pre-designated mental health practitioner or mobile crisis unit shall be immediately made and documented;

2. Reasons for removal from the general population shall be documented;

3. Behavior of youth during this period shall be clearly documented every fifteen (15) minutes; and

4. Written authorization for release from constant supervision shall be made by a licensed and designated mental health professional or in accordance with internal local protocol.

(d) All youth shall be monitored every fifteen (15) minutes for the first twenty-four (24) hours of their detention and at least every thirty (30) minutes thereafter until release. Monitoring intervals do not pertain to routine direct line-of-sight supervision; however all such supervision shall be denoted as such.

(2) The time of all supervision checks shall be logged and the behavior of the youth shall be documented.

(3) The facility shall visually count youth and record the results at the beginning and end of each shift change.

(4) Incidents which involve or endanger the lives or physical welfare of facility staff or youth or which involve escape or attempted escape shall be documented and such documentation retained.

(5) A female facility staff member or law enforcement officer shall be available when there are female youth in the facility to conduct and document:

(a) Searches;

(b) Supervision of showers;

(c) Health checks; and

(d) Constant periodic observations as defined in paragraph 1 of this Rule.

(6) Policies governing supervision of female youth by male staff and male youth by female staff shall be based on privacy needs and accepted legal standards. Except in emergencies, facility staff shall not observe residents of the opposite sex in toilet and shower areas, including such areas maintained in individual living units. Reasonable accommodation of privacy needs shall be consistently observed, and departure from these standards shall be documented for review by the Department's licensing office.

(7) Youth shall not supervise, control, assume or exert authority over other youth.

(8) There shall be at least one (1) direct care staff for every eight (8) youth during waking hours and at least one (1) direct care staff for every sixteen (16) youth during sleeping hours or other staffing plan approved by the Department's licensing office. At a minimum, there shall never be less than 2 direct care staff on duty.

Authority: T.C.A. §§ 37-5-105; 37-5-106; and 37-5-501, et. seq.

0250-04-08-.08 Physical Plant

(1) No facility constructed or developed after January 1, 1995, shall be located in the same building or directly connected to any adult jail or prison facility complex.

(2) Existing facilities located under the same roof or on the same grounds as an adult jail shall meet the criteria for physical separation, outlined in T.C.A. § 37-1-116(i)(2016 and as amended).

(3) The following minimum provisions shall be made by each facility:

(a) Sleeping areas shall be free from hazardous conditions that would facilitate suicide attempts or self-harm.

(b) In new and existing facilities, all sleeping and activity areas shall have lighting of at least twenty (20) foot-candles to be measured three (3) feet off the floor. These measurements shall be taken and documented by an independent source, such as the state or local fire marshal, and shall be retested at least every three (3) years.

(c) New and existing facilities shall have forced air ventilation in all sleeping and activity areas.

(d) Facilities constructed or beginning operation after January 1991 shall have access to natural light in sleeping areas.

(e) New and existing facilities shall maintain a temperature between sixty-five (65) degrees Fahrenheit and eighty (80) degrees Fahrenheit in sleeping and activity areas.

(4) For new facilities, the minimum size of a single sleeping room shall be fifty (50) square feet of unencumbered floor space with a ceiling height of not less than eight (8) feet. All dimensions of room length and width for both single and multiple-occupancy room shall allow for a reasonable amount of useable floor space for any in-room activities of youth and one wall measurement shall be at least 7 feet. Any issues pertaining to sufficiency of room dimensions shall be determined by the Department's licensing office. Each room shall contain a bunk, a toilet and a lavatory.

(5) Multiple sleeping rooms in new Juvenile Detention Centers shall not be designed to accommodate more than eight (8) youth. A minimum of thirty-five (35) square feet of unencumbered floor space for each youth shall be provided in such sleeping areas, with a ceiling height of not less than eight (8) feet. One wall measurement shall be at least seven (7) feet.

(6) Juvenile Detention Centers with ten (10) or fewer permanent bed spaces shall not house in excess of their number of permanent bed spaces by more than two (2) youth at any time. Juvenile Detention Centers with eleven (11) or more permanent bed spaces shall not, except in exigent situations, exceed their number of permanent bed spaces by more than two (2) youth, or ten percent (10%) of the permanent bed space, whichever is greater, at any time. Any exception to compliance with this rule shall be noted in writing, shall include the administrator's signature to verify administrative review and shall not exceed seventy-two (72) hours in duration.

(7) New Juvenile Detention Centers shall have a dayroom for each cluster of rooms. The dayroom shall offer a minimum of thirty-five (35) square feet of floor space per youth. Existing facilities are not required to provide dayrooms.

(8) All facilities shall provide operable toilets and washbasins to youth held in the facility at a ratio of at least one (1) toilet and washbasin to every eight (8) youth and one (1) toilet and washbasin accessible to occupants of any single-occupancy room without their having to leave their room.

(9) Facilities shall have at least one (1) operable shower for every sixteen (16) detained youth, which shall be accessible to youth without having to leave their designated area.

(10) New Juvenile Detention Centers shall provide space inside the security perimeter, separate from living areas and administrative offices, for processing of youth as they are received and discharged from the facility. This space shall have the following components:

(a) Pedestrian sally port;

(b) Telephone facilities for detained youth to use;

(c) Temporary holding rooms which have fixed benches to seat youth; and

(d) A shower, toilet, and washbasin.

(11) Existing facilities shall provide space where youth are received, searched, showered, and issued clothing, if provided by the facility, prior to assignment to the living quarters.

(12) Provision shall be made for visitation areas.

(13) Provision shall be made for a private room to allow for discussions between clergy, attorneys and others authorized by the juvenile court.

(14) Each new Juvenile Detention Center shall have at least one (1) multi-purpose room for education, recreation and other activities.

(15) Each new facility shall provide a secure outdoor recreation area with dimensions of at least thirty (30) feet by thirty (30) feet or an indoor recreation area of the same dimensions which has access to natural light.

(16) Space shall be provided where a health care professional may conduct sick call, examine patients in privacy and provide medical treatment.

(17) Every Juvenile Detention Center shall have a secure control center, staffed continuously, through which telephone and other communications are channeled. The location of the control center shall provide line of sight visibility or be equipped with a monitoring device. The control center shall monitor the operation of security and life safety systems.

(18) Drinking fountains with potable water shall be located in all sleeping and activity areas of new facilities. In existing facilities, if the water from washbasins is potable, it shall not be necessary to add drinking fountains but sanitary drinking cups shall be available.

(19) An emergency power source shall be available to activate at times of power failure. This emergency power source shall have sufficient capacity to operate security and evacuation electrical devices and

equipment and to provide minimum lighting within the facility and its perimeter. The power source shall be checked for functional readiness quarterly and the dates logged.

(20) Facilities using electric locks shall also ensure that those locks may also be opened manually.

(21) Each facility shall have exit signs at each exit which are distinctly marked and continuously illuminated. Exits shall be kept clear and in usable condition.

(22) Each facility shall be inspected and approved annually by the designated Fire Safety Authority and by representatives from the Tennessee Department of Health. The facility shall be in compliance with the applicable regulations and standards of these authorities, including the current Life Safety Code applicable to the facilities regulated hereunder in order to obtain or retain a license or approval to operate.

(23) All kitchens, dining rooms and toilet areas shall contain operable floor drains.

(24) There shall be rooms to accommodate each Juvenile Detention Facility's classification plan. Facilities that house both males and females shall have provisions to separate accordingly.

(25) Plans for any new facility construction or renovation shall be in compliance with minimum standards recorded herein and be submitted to the Department and the State Fire Marshal's office for review prior to the start of construction.

(26) Plans for any new facility construction or renovation shall include provisions for handicapped persons to have access to all facilities and services.

(27) The use of padlocks and chains to secure housing areas is prohibited.

(28) Any facility changing classification (e.g., Temporary Holding Resource changing to Juvenile Detention Center, etc.) shall meet all requirements of the new classification.

(29) All glass in the facility (windows, vision panels, etc.) shall be safety glass. All new construction, after January 1, 1991, shall have all windows, vision panels, etc., made of a mar-resistant poly carbonate laminate.

(30) The maintenance of hardware-secure rooms in Temporary Holding Resources shall be optional, with a maximum of two (2) occupants. At least half of the rooms in the facility shall be non-secure.

Authority: T.C.A. §§ 37-5-105; 37-5-106; and 37-5-501, et. seq.

0250-04-08-.09 Sanitation, Maintenance, and Life Safety

(1) Floors, walls and ceilings throughout the facility shall be kept clean, dry, and free of any hazardous materials or substance. All plumbing fixtures shall be clean and sanitary.

(2) A member of the staff shall be assigned to make daily sanitation and safety inspections. Times of inspections shall be documented and conditions noted.

(3) The facility shall provide for regularly scheduled disposal of waste and trash in accordance with local or state health regulations.

(4) The facility shall provide for control of vermin and pests and shall remove youth from treated areas if there is a risk of illness.

(5) The facility shall be kept free of pictures, graffiti, gang signs, or objects which are determined by staff to provide hiding places for vermin or create a fire hazard.

(6) Written policy and procedure shall provide for each shift at a facility to have announced and unannounced fire drills at a minimum of every six (6) months. The date of these fire drills as wells as participating staff and results shall be documented.

(7) The facility shall have a written and graphic evacuation plan posted in the living area, as well as any other specified locations.

(8) Written policy shall outline appropriate infection control procedures and the use of universal precautions.

(9) Facilities shall maintain Material Safety Data Sheets (MSDS) in all areas where harmful chemicals are stored. A MSDS shall be maintained for every chemical onsite whose original container contains precautionary wording in case of exposure or ingestion.

(10) All toxic or caustic chemicals with a hazardous rating of two (2) or above shall be maintained in locked cabinets and inventoried weekly. All flammables shall be maintained in fire-resistant cabinets and inventoried weekly.

(11) All toxic or caustic chemicals maintained at full strength shall be stored in their original containers. Diluted chemicals may be maintained in spray bottles or other containers but the contents shall be legibly annotated on the bottle.

(12) A Facility shall remain in compliance with Life Safety Codes as determined by the State Fire Marshal or other approved authority.

Authority: T.C.A. §§ 37-5-105; 37-5-106; and 37-5-501, et. seq.

0250-04-08-.10 Security

(1) Procedure shall differentiate between the types of searches allowed (cavity, pat, or strip) and identify when these shall occur and by whom such searches may be made. All body cavity searches shall be executed by medical personnel. Youth shall be searched by facility staff of the same sex, except in emergency situations involving an immediate threat to life, limb or property. All searches shall be documented.

(2) Protocols around key control shall be established and the operator of the control center shall log, track, and document all keys issued for use, including duplicate keys. All temporarily issued keys shall be logged by ring and a separate log shall be maintained for all permanently issued keys. All day-to-day operations shall be centralized and controlled through the admissions/control center.

(3) There shall be one (1) full set of well-identified keys, other than those in use, secured in a place accessible only to facility staff for use in the event of an emergency.

(4) There shall be an observable and effective method to open individual cell doors in the event of an emergency and/or failure of electronically operating systems. Emergency systems shall be tested on a monthly basis and these test shall be documented in the facility's records.

(5) Written policy and procedure shall require that all other related security and emergency equipment is inventoried and tested at least quarterly to determine its condition and expiration dates. This shall include regular inspection of smoke detectors and other detection and suppression systems, and monthly visual inspections of ABC type fire extinguishers with documentation of these checks maintained in the facility's records.

(6) All tools and other potentially dangerous supplies and equipment shall be stored in a locked fire-resistant cabinet located outside the secure perimeter of confinement areas.

(7) Written policy and procedure shall provide for routine inspection and maintenance of all locks.

(8) There shall be a written plan providing for continuing operations in the event of a work stoppage or other job action. Copies of this plan shall be distributed to all supervisory personnel, who are required to familiarize themselves with it.

(9) Accused or adjudicated delinquent offenders, status offenders, and non-offenders cannot have contact with adult inmates, including adult inmate trustees. Contact is defined to include any physical or sustained sight and/or sound contact.

Authority: T.C.A. §§ 37-5-105; 37-5-106; and 37-5-501, et. seq.

0250-04-08-.11 Seclusion and Restraint

(1) Physical Restraint

(a) Physical restraint is a restrictive intervention and one that poses a risk to the physical and/or psychological well-being of a youth and the safety of staff members. Physical restraint shall only be used in an emergency safety situation when the youth, due to current behavior, poses an imminent risk of harm to himself or herself or others. This applies to all youth in DCS licensed facilities regardless of adjudication. Physical restraint shall not be used as a means of punishment, discipline, coercion, convenience or retaliation or to compensate for lack of staff presence or competency.

(b) The following are not considered physical restraint and are acceptable:

1. Physical touch associated with prompting, comforting or assisting that does not prevent the youth's freedom of movement or normal access to his or her body;

2. Physical or temporary touching or holding of the hand(s), wrist(s), arm(s), shoulder(s) or back for the purpose of inducing the youth to walk to a safe location; or

3. Physical intervention for the temporary holding of the hand(s), wrist(s), arm(s), shoulder(s), or leg(s) which does not otherwise restrict freedom of movement or access to one's body, for the purpose of terminating unsafe behavior.

(c) Use of physical restraint should be restricted as follows:

1. Physical restraint is an emergency safety intervention, not a therapeutic technique, and shall be implemented in a manner designed to protect the youth's safety, dignity and emotional well-being.

2. There shall be sufficient staffing to ensure appropriate supervision of all other youth while trained staff devote full time and attention to all uses and phases of physical restraint.

3. The use of physical restraint is allowed only in the case of an emergency, when the youth is at imminent danger of self-harm or of harming others and no other option exists to protect the safety of the youth and staff members.

4. In a facility setting, physical restraint may also be justified to prevent a clear and immediate escape attempt.

5. Clothing shall not be removed from a youth in conjunction with the use of physical restraint or seclusion, other than that which is determined to place the youth or others at risk.

(d) Training Requirements

1. All staff who use physical restraint shall be trained prior to performing these interventions and annually thereafter by a certified trainer in a nationally recognized crisis intervention program.

2. The training shall involve a post-test and the observation of staff in practice to ensure competency.

3. Records of staff completion of training shall be maintained and made available to DCS licensing upon request.

4. Training shall address prevention of the use of restrictive behavior management techniques through a curriculum that includes the following:

(i) Recognizing aggressive and out-of-control behavior, psychosocial issues, medical conditions, and other contributing factors that may lead to crisis;

(ii) Understanding how staff behavior can influence the behavior of youth;

(iii) Understanding the limitations of restrictive behavior management techniques such as physical restraint or seclusion;

(iv) Listening and communication techniques such as negotiation and mediation;

(v) Involving the youth in regaining control and encouraging self-calming behaviors;

(vi) Separation of individuals involved in an altercation;

(vii) Voluntarily escorting the youth to a safe location;

(viii) Voluntary time out to allow the youth to calm down; and

(ix) Other non-restrictive methods to de-escalate and reduce episodes of aggressive and out-of-control behavior.

5. At the conclusion of training, staff shall demonstrate an understanding of:

(i) When it is appropriate to use a restrictive intervention such as physical restraint or seclusion;

(ii) Safe use of physical restraint and seclusion, including time limits;

(iii) Safe methods for escorting youth;

(iv) The experience of being placed in a physical restraint or in seclusion;

(v) Signs of distress;

(vi) Response techniques to prevent and reduce injury;

(vii) Negative effects that can result from misuse of restrictive interventions;

(viii) Physical and mental status of the youth, including signs of physical distress;

(ix) Nutritional and hydration needs of the youth;

(x) Readiness to discontinue use of the physical restraint or seclusion; and

(xi) Recognizing when medical or other emergency personnel are needed.

(e) Authorization and Initiation of Physical Restraint

1. The staff member initiating the physical restraint shall contact the facility administrator or their qualified designee to authorize the intervention either prior to the intervention, or if prior permission is impracticable due to the emergent nature of the situation, immediately following the intervention. While it is best practice to obtain this authorization prior to the intervention, this is not always possible when handling the types of emergencies requiring the use of physical restraint.

2. Authorization of intervention: Staff members may authorize physical restraint or seclusion only if they are supervisory level staff who have completed all training requirements in compliance with this part prior to authorizing physical restraint or seclusion and have been designated as having authority to make such decisions in an emergency setting by the facility administrator. In a Juvenile Detention Center this shall be a shift supervisor or higher ranking personnel.

3. A new authorization is required if there is a change in the intervention utilized. If the use of physical restraint has been discontinued, it may be used again only with a new authorization, even if a previously authorized time limit has not expired.

4. Authorizations for the use of physical restraint are time-limited up to fifteen (15) minutes for youth age nine (9) years and under and up to thirty (30) minutes for youth ages ten (10) years and over. Physical restraints lasting longer than the allowed time frames require clinical justification, which shall be obtained through direct evaluation of the youth by mobile crisis staff or other qualified clinical personnel for continuation and require a new authorization.

5. The re-authorization of interventions that exceed the initial time limits shall be from mobile crisis staff or other qualified clinical personnel. Physical restraint can be authorized for up to an additional thirty (30) minutes.

6. Time- limited authorizations do not mean that the use of restrictive behavior management interventions shall be applied for the entire length of time for which the authorization is written. Physical restraint and seclusion shall be used only for the minimum amount of time necessary.

(f) Monitoring and Assessment

1. A youth in a physical restraint shall be assessed and monitored continuously by a properly trained staff member not involved in the restraint. If a second staff member is not present at the moment the restraint is initiated, staff shall immediately call for help so that another staff member may begin monitoring.

2. Physical restraints shall be monitored by direct visual observation and staff shall remain in the immediate physical presence of and in the same room as the youth. Video monitoring does not meet this requirement.

3. In addition to monitoring the youth on a continuous, face-to-face basis, staff shall assess the child/youth every 15 minutes for:

(i) Any harmful health effects or signs of any injury associated with the intervention;

(ii) Emotional status and comfort;

(iii) Need for food, water, and use of bathroom facilities;

(iv) Readiness to discontinue the intervention; and

(v) Difficulty breathing and any other physical complaints that may signal the need to discontinue the intervention.

(g) Termination of Restraint and Follow-Up Assessment

1. A physical restraint shall only be used for the minimum time possible. These interventions shall be terminated when the behavior justifying their use no longer exists or if the face-to-face assessments required by this rule do not occur. Immediate release shall occur if there is any threat to the youth's physical or emotional well-being.

2. Within one (1) hour of the initiation of the use of physical restraint, the staff member authorizing the seclusion or restraint, in accordance with 0250-07-08-.11(5)(b), shall assess the youth's condition and shall make a determination whether to continue the restraint. This assessment shall be conducted regardless of the length of time the youth is in the physical restraint.

(h) Whenever a youth is injured as a result of the use of physical restraint, staff shall immediately obtain medical treatment for that youth.

(i) The youth and staff shall participate in a debriefing about the physical restraint episode as soon as possible, but no longer than twenty-four (24) hours after the intervention occurred. The debriefing shall occur in a safe, confidential setting. The debriefing with the youth and staff is used to:

1. Ascertain that the youth's physical well-being, emotional comfort, and right to privacy were addressed;

2. Identify any trauma that may have resulted from the incident and identify services to address the trauma;

3. Identify what led to the emergency safety situation and what could have been handled differently;

4. Facilitate the youth's reentry into routine activities;

5. Discuss what precipitating events led to the intervention, how the incident was handled, and discuss any necessary changes to procedures or training to avoid future incidents; and

6. When deemed necessary, a debriefing shall take place with any youth or other individuals who witnessed the incident, with an emphasis placed on returning the environment to pre-incident condition and resuming the normal program routine.

(j) Notification and Documentation

1. Documentation shall include the following:

(i) A clear description of the events and behavior leading to the initiation of the physical restraint, including the specific risk of harm presented by the youth;

(ii) A description of attempts by staff to prevent and de-escalate the youth prior to utilizing physical restraint;

(iii) Names of the youth and staff members involved;

(iv) Duration of intervention;

(v) Verification of continuous observation and fifteen (15) minute checks;

(vi) A description of all injuries that occurred because of the intervention; and

(vii) A note that debriefing occurred.

2. Whenever possible, the youth's parents or legal guardian shall be notified of the occurrence of any physical restraint or seclusion.

(k) Internal Review

1. The facility shall engage in ongoing performance improvement activities that focus on the reduction of the use of physical restraint. Information obtained through the review processes shall be considered, at least quarterly, in the identification of specific performance improvement activities and in the evaluation of the effectiveness of performance improvement activities.

2. Facilities shall review data throughout the year to identify trends in use of restrictive behavior management techniques in order to reduce the use of physical restraint.

3. The facility shall ensure that a routine process is in place to address the use of crisis intervention and physical restraint in individual and/or group supervision with all direct service and clinical staff. Such supervision shall focus on analyzing individual interventions as well as patterns of intervention to identify ways to increase the effective use of prevention methods and further reduce the use of physical restraint.

(2) Chemical Defense Agents

(a) Facilities shall have written policy and procedure which govern the availability, control and use of chemical defense agents. The policies shall include specific guidelines that determine the level of authority needed to access and use chemical defense agents and the procedures required to authorize their use. The policy should also include medical and/or decontamination procedures that will be followed in all instances involving the use of a chemical defense agent.

(b) The use of chemical defense agents in all Temporary Holding Resources is prohibited except by law enforcement personnel.

(c) Use of chemical defense agents should be restricted as follows:

1. Use of chemical defense agents is an emergency intervention and every effort will be made to protect the youth's safety, dignity and emotional well-being during its use.

2. There will be sufficient staffing to ensure appropriate supervision of all other youth while trained staff devote time and attention to use of chemical defense agents.

3. If a second staff member is not present at the moment the intervention is initiated, staff shall immediately call for assistance so that another staff member may being monitoring.

4. The use of chemical defense agents is allowed only in the case of an emergency, when the youth is at imminent danger of self-harm or of harming others and no other option exists to protect the safety of the youth and staff members.

5. Only those staff designated by the administrator and trained in their use shall be authorized to deploy chemical defense agents.

(d) Training Requirements

1. All staff who use chemical defense agents must be trained prior to performing these interventions and annually thereafter by a certified trainer in a nationally recognized crisis intervention program. Training through local law enforcement resources is acceptable.

2. The training must involve a post-test and the observation of staff in practice to ensure competency.

3. Records of staff completion of training will be maintained and made available to DCS licensing upon request.

(e) Authorization for Intervention Involving Chemical Defense Agents

1. The staff member initiating the use of chemical defense agents will contact the facility administrator or their qualified designee to authorize the intervention either prior to the intervention, or if prior permission is impracticable due to the emergent nature of the situation, immediately following the intervention. While it is best practice to obtain this authorization prior to the intervention, it is noted that this is not always possible when handling emergencies requiring the use of chemical defense agents.

2. Authorization of intervention: Staff members may authorize the use of chemical defense agents only if they are supervisory level staff who have completed all training requirements in compliance with this part prior to authorizing intervention, and have been designated as having authority to make such decisions in an emergency setting by the facility administrator. In a Juvenile Detention Center this will be a shift supervisor or higher ranking personnel.

3 Once the use of chemical defense agents has been discontinued, it may be used again only with a new authorization.

4. A list of all staff members issued chemical defense agents or authorized in their use must be maintained and updated upon change of authorization status or employment.

(f) Treatment, Assessment, and Monitoring

1. Following the use of chemical defense agents, decontamination procedures and any necessary medical treatment shall be administered immediately. Staff shall arrange for a youth to be moved to an area offering fresh air and given a shower and change of clothing. All body parts exposed to Oleoresin Capsicum (OC) spray will be thoroughly rinsed with water. Staff shall assist youth in flushing eyes.

2. The affected youth shall be assessed and monitored continuously by a properly trained staff member not directly involved in the deployment of chemical defense agents. Monitoring shall continue until symptoms disappear to ensure medical attention is administered when necessary. Physical effects of exposure to OC sprays include: tearing, involuntary closing of eyes, redness of skin, coughing, gagging, shortness of breath or loss of motor skills or coordination.

3. In addition to monitoring the youth on a continuous, face-to-face basis, staff shall assess the youth every fifteen (15) minutes for:

   (i) Any harmful health effects or signs of any injury associated with the intervention;

   (ii) Emotional status and comfort of the youth;

   (iii) The youth's need for food, water, and use of bathroom facilities; and

   (iv) Difficulty breathing and any other physical complaints that may signal the need for medical treatment.

4. Medical treatment shall immediately be obtained for a youth if:

   (i) The youth shows symptoms for more than thirty (30) minutes after decontamination;

   (ii) More than a slight reddening of the youth's skin occurs following exposure;

   (iii) The youth complains of inordinate pain or requests medical care following decontamination; or

   (iv) The youth has a known history of respiratory illness, allergies, or asthma.

5. The affected youth shall be monitored by direct visual observation and staff will remain in the immediate physical presence of and in the same room as the youth. Video monitoring shall not be used to meet this requirement.

(g) The youth and staff will participate in a debriefing about the episode as soon as possible, but no longer than twenty-four (24) hours after the intervention occurred. The debriefing will occur in a safe, confidential setting. The debriefing with the youth and staff is used to:

1. Ascertain that the youth's physical well-being was appropriately addressed;

2. Identify any trauma that may have resulted from the incident and identify services to address the trauma;

3. Identify what led to the emergency safety situation and what could have been handled differently;

4. Facilitate the youth's reentry into routine activities;

5. Discuss what precipitating events led to the intervention, how the incident was handled, and discuss any necessary changes to procedures or training to avoid future incidents; and

6. When deemed necessary, a debriefing will take place with any youth or other individuals who witnessed the incident, with an emphasis placed on returning the environment to pre-incident condition and resuming the normal program routine.

(h) Notification and Documentation

1. A written incident report shall be submitted to the facility administrator by the end of the shift when a chemical defense agent is used that includes the following:

   (i) A clear description of the events and behavior leading to the initiation of the intervention, including the specific risk of harm presented by the youth;

   (ii) A description of attempts by staff to prevent and de-escalate the youth prior to utilizing chemical defense agents;

   (iii) Names of the youth and staff members involved;

(iv) Time and duration of intervention; including decontamination;

(v) Verification of continuous observation and fifteen (15) minute checks;

(vi) A description of all injuries that occurred because of the intervention; and

(vii) A note that debriefing occurred.

2. Whenever possible, the youth's parents or legal guardian will be notified of the occurrence of any use of chemical defense agents.

(i) Internal Review

1. The facility shall engage in ongoing performance improvement activities that focus on the reduction of the use of chemical defense agents. Information obtained through the review processes will be considered, at least quarterly, in the identification of specific performance improvement activities and in the evaluation of the effectiveness of performance improvement activities.

2. Facilities shall review data throughout the year to identify trends in use of restrictive behavior management techniques in order to reduce the use of chemical defense agents.

3. The facility will ensure that a routine process is in place to address the use of crisis intervention and use of chemical defense agents in individual and/or group supervision with all direct service and clinical staff. Such supervision will focus on analyzing individual interventions as well as patterns of intervention to identify ways to increase the effective use of prevention methods and further reduce the use of chemical defense agents.

(j) Chemical defense agents maintained and used by facility staff are limited to OC sprays and may not contain Mace.

(k) Reasonable efforts must be made to remove a youth with documented or known respiratory conditions (including asthma, bronchitis, etc.) prior to the chemical defense agents being dispersed in any area in which the youth may be affected.

(l) Only the minimum amount of chemical defense agent will be used to control the youth's behavior. All canisters containing chemical defense agents will be weighed monthly and immediately following each use. Documentation of both routine inspection and incidental use will be documented for administrative review by the licensing staff or facility administrator.

(m) Written policy and procedure shall require that chemical defense agents are inventoried monthly and tested at least quarterly to determine their condition and expiration dates.

(n) Chemical defense agents will be stored in a locked cabinet inaccessible to youth when not issued or in use.

(o) Any intentional time lapse between the administering of chemical defense agents and subsequent appropriate decontamination or medical attention for punitive purposes is prohibited.

(p) Psychotropic medication shall not be used for the purposes of chemical restraint in any Juvenile Detention Center or Temporary Holding Resource.

(3) Mechanical Restraints

(a) Mechanical restraints, e.g. handcuffs and shackles, shall only be used to restrain youth who are alleged to be delinquent and meet the criteria for secure detention listed in T.C.A. § 37-1-114 (2016 and as amended). Staff shall maintain visual contact at all times with youth in mechanical restraints.

(b) Mechanical restraints may only be used for such time as it takes to place the child in a secure cell, or for transportation. Waist belts are permitted for transportation only.

(c) Body wraps and restraint beds are strictly prohibited. Use of restraint chairs shall be prohibited effective July 1, 2018. Use of mechanical restraints on pregnant youth shall be limited to wrist restraints only. Temporary, short-term use of security benches or mechanical restraints during classification or preparation for transport is permitted.

(d) The facility shall have written policy and procedure which outline the specifics of non-routine use of mechanical restraints and include language that requires the authorization of the shift supervisor before the mechanical restraint may be used.

(e) With the exception of law enforcement personnel, the possession/use of tasers and related "less lethal" designated equipment (such as Nova stun shields) is prohibited in any facility. Possession or use of such equipment by facility staff shall result in immediate adverse licensing action up to suspension of the agency's license.

(f) Mechanical restraints shall never be used as punishment.

(g) Whenever mechanical restraints are used for reasons other than transportation, the facility's written policy, procedure and practice shall provide that prior approval shall be obtained from the facility administrator, or designee. When a youth is mechanically restrained for reasons other than transportation, the following minimum procedures shall be followed:

1. Continuous, direct visual observation by staff;

2. Safety and wellness checks shall be conducted and documented every ten (10) minutes, to ensure the safety and well-being of the youth; and

3. Use of mechanical restraints shall be fully documented as to time, duration, reasons, authority and witnesses and reported to the facility administrator or designee.

(4) With the exception of use by law enforcement personnel, the following restraint techniques shall not be used within any facility licensed by the Department:

(a) Restricting respiration in any way, such as applying a chokehold or pressure to a youth's back or chest or placing a youth in a position that is capable of causing positional asphyxia;

(b) Using any method that is capable of causing loss of consciousness or harm to the neck;

(c) Pinning down with knees to torso, head, and/or neck;

(d) Using pressure point, pain compliance, and joint manipulation techniques, other than an approved method for release of a chokehold, bite, or hair pull;

(e) Modifying restraint equipment or applying any cuffing technique that connects handcuffs behind the back to ankle restraints;

(f) Lifting a youth's arms behind the back, while in mechanical restraints, in a manner that is capable of causing injury to the shoulder;

(g) Using other youth or untrained staff to assist with the restraint;

(h) Securing a youth to another youth; and

(i) Administering a drug for controlling acute episodic behavior as a means of physical restraint, except when the youth's behavior is attributable to mental illness and the drug is authorized by a licensed physician and administered by a licensed medical professional.

(5) Seclusion

(a) Seclusion is often associated with physical restraint in that physical restraint is regularly used to transport youth to a seclusion environment. However, seclusion may occur without employing physical restraint. All precedent used by staff in avoiding the need for restraint should also be employed to avoid the need for seclusion.

(b) Seclusion does not include:

1. The segregation of a youth for the purpose of managing biological contagion consistent with the Centers for Disease Control Guidelines.

2. Confinement to a locked unit or ward where other youth are present. Seclusion is not solely confinement of a youth to an area, but separation of the youth from other persons.

3. Voluntary time-out involving the voluntary separation of an individual youth from others. The youth is allowed to end the separation at will.

4. Seclusion in a facility setting does not include temporarily securing youth in their rooms during regularly scheduled times (such as periods set aside for sleep or regularly scheduled down time) that are universally applicable to the entire population or within the youth's assigned living area.

(c) Seclusion may be provided only in a clean, dry, temperate location that is free of potentially hazardous conditions which might harm the youth or others. Rooms used for seclusion shall allow staff full view of the youth in all areas of the room. The room shall have the following qualities:

1. The room is lighted and well ventilated;

2. Light fixtures are screened or recessed, interior doorknobs are removed, and hinges are recessed;

3. The room is at a minimum fifty (50) square feet in area;

4. The room is unfurnished and may have padding that is designed specifically for use in psychiatric or similar settings and approved by the local health and fire authorities;

5. The room contains an observation window the dimensions of which permit a youth to be in view regardless of where he/she is positioned in the room;

6. The room is inspected and approved under regulations adopted by the State Fire Marshal prior to usage; and

7. Youth in seclusion have reasonable access to water, toilet facilities and hygiene supplies.

(d) Monitoring of seclusion shall be by direct in-person (face-to-face) visual observation through the seclusion room window or in the room itself every fifteen (15) minutes.

(e) Seclusion of youth for suicidal behavior/ideation or other clinical reasons shall be conducted as provided in 0250-04-08-.07(1).

(f) All other referrals for seclusion shall adhere to the following guidelines:

1. Seclusion shall only be used when necessary to prevent imminent harm to themselves, another person, prevent damage to property, or prevent the youth from escaping.

2. Staff shall never use seclusion for discipline, punishment, administrative convenience, retaliation, staffing shortages, or reasons other than a temporary response to behavior that threatens immediate harm to a youth or others.

3. Prior to using seclusion, staff shall use less restrictive techniques, including talking with youth to de-escalate the situation. Prior to using seclusion or immediately after placing a youth in seclusion, staff shall explain to the youth the reasons for the seclusion and the fact that he or she shall be released upon regaining self-control. Once the youth no longer presents a risk of imminent harm to themselves or others at the facility, the seclusion shall be terminated and the youth shall be returned to the general population.

4. Seclusion lasting over twenty-four (24) hours shall be reviewed and approved at the twenty-four (24) hour mark and every subsequent twenty-four (24) hour period by the facility administrator. Youth may not be secluded for more than seventy-two (72) total hours within any fourteen (14) day period. Large muscle group exercise must be provided

a minimum of one (1) hour daily for those juveniles in seclusion longer than twenty-four (24) hours.

5. A hearing shall be held within twenty-four (24) hours of initial confinement for any seclusion lasting more than one (1) hour. Any seclusion lasting longer than twenty-four (24) hours requires an additional administrative hearing in which the youth may appeal continued confinement prior to the extension of confinement. The hearing shall be conducted by the administrator or his established hearing officer and all proceedings shall be documented. A written copy of this documentation shall be provided to the youth and the youth's parent or legal guardian.

6. An incident report shall be completed within twenty-four (24) hours for any youth referred for seclusion. Youth may be placed in their room for a "cooling off" period not to exceed one (1) hour without need for incident report. Staff may allow the "cooling off" period to extend an additional hour, for a total of two (2) hours, however if the youth's placement in their room under this part extends for longer than two (2) hours the youth shall be considered secluded and an incident report must be completed. Such action, including the precipitating behavior/event, shall be documented.

7. Youth placed in seclusion shall be offered reasonable access to services and shall be engaged in regularly scheduled programming unless they are an immediate threat to others.

Authority: T.C.A. §§ 37-5-105; 37-5-106; and 37-5-501, et. seq.

0250-04-08-.12 Transportation

(1) All transportation shall be provided by approved facility staff or law enforcement.

(2) Each person providing transportation shall provide documentation of a valid Class D Tennessee driver license in accordance with T.C.A. § 55-50-102 (2016 and as amended).

(3) Each person providing transportation shall provide documentation of automobile liability insurance for any private vehicle used in transporting youth in temporary holding resources or drive a government vehicle covered by liability insurance.

(4) Each transportation provider shall be oriented to the behavior of detained youth during transportation, be aware of required documentation necessary for transportation to a detention center, and be able to communicate emergency information to proper authorities.

(5) Any vehicles used for transportation shall be well-maintained and operated in accordance with state law.

(6) Driver and all passengers shall wear seat belts.

(7) With the exception of bonded or law-enforcement personnel, female youth requiring transportation shall be accompanied by a female staff member/officer. Allowances may be made in extenuating circumstances and shall be documented in facility logs.

Authority: T.C.A. §§ 37-5-105; 37-5-106; and 37-5-501, et. seq.

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

| Board Member | Aye | No | Abstain | Absent | Signature (if required) |
|---|---|---|---|---|---|
| Not Applicable | | | | | |

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the Department of Children's Services (board/commission/ other authority) on 01/25/2017 (mm/dd/yyyy), 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: 09/30/16

Rulemaking Hearing(s) Conducted on: (add more dates). 12/13/16

Date: 01/30/17

Signature:

Name of Officer: Douglas Earl Dimond

Title of Officer: General Counsel

KELLEY BELL-HAZELETT STATE OF TENNESSEE NOTARY PUBLIC COUNTY OF DAVIDSON

Subscribed and sworn to before me on: January 30, 2017

Notary Public Signature:

My commission expires on: 8/21/17

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

3/10/2017
Date

**Department of State Use Only**

RECEIVED 2017 MAR 17 PM 1:16 OFFICE OF THE SECRETARY OF STATE

Filed with the Department of State on: 3/17/17

Effective on: 6/15/17

Tre Hargett
Secretary of State

## G.O.C. STAFF RULE ABSTRACT

| | |
|---|---|
| DEPARTMENT: | Real Estate Commission |
| DIVISION: | Regulatory Boards |
| SUBJECT: | Licensing |
| STATUTORY AUTHORITY: | Not Applicable |
| EFFECTIVE DATES: | June 8, 2017 through June 30, 2018 |
| FISCAL IMPACT: | Minimal |
| STAFF RULE ABSTRACT: | This proposed rule puts into form a longstanding process used by the Commission to carry out the requirements of T.C.A. § 62-13-303(a)(1) and also limits it to convictions and disciplinary actions occurring within the past ten (10) years. It requires any applicant with any type of felony conviction or a misdemeanor conviction involving theft of services, money, or property to submit official court records showing the disposition of the case and a personal statement regarding the conviction(s). Applicants who have prior disciplinary action by a federal, state, or local regulatory agency must disclose that fact on the application for licensure and submit supporting documentation. The rule also requires the applicant and their potential principal broker to appear at a meeting of the Commission to present their case as to why the Commission should allow the individual to move forward with the licensure 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;

   This rule will affect individuals who seek to obtain a license and affiliate as an independent contractor with a licensed real estate firm who have criminal convictions that are felonies or are misdemeanors involving theft of services, money or property or prior disciplinary action by any federal, state or local government regulatory agency that have occurred within the last ten (10) years. While it is difficult to predict the number of applicants who will fall into this category, this rule will reduce the number of applicants that have to appear before the Commission.

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 Real Estate Broker Act requires a TBI/FBI report generated by a set of fingerprints submitted by the applicant. Applicants are required to disclose on the license application if they have had prior disciplinary action by a federal, state, or local government regulatory agency. This report/disclosure, along with the supporting documentation requested by the Commission, are reviewed by program staff and maintained as part of the applicant's file. This is the current practice used by the Commission to carry out T.C.A. § 62-13-303(a)(1) and, thus, no additional reporting, recordkeeping administrative costs will result from the implementation of this process in rule form.

3. A statement of the probable effect on impacted small businesses and consumers:

   The affect will be that the process currently used by the Commission to ensure applicants meet the requirements of T.C.A. § 62-13-303(a)(1) will be clearly outlined in the law and accessible to applicants and their potential Principal Brokers. The Commission foresees no effect on 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:

   The Commission knows of no other alternative method to achieve the goals exhibited by these rules.

5. A comparison of the proposed rule with any federal or state counterparts:

   Other state real estate commissions are expected to, in many cases, have similar laws and rules regarding applicants with criminal convictions. For instance, Georgia Code Annotated § 43-40-15 is substantially similar to T.C.A. § 62-13-303(a)(1). The corresponding rule requires the applicant to provide a certified copy of the citation, accusation, or indictment and a certified copy of the sentence/final disposition of any conviction other than a single DUI as well as a detailed statement; and/or a certified copy of the final order from the licensing agency and a detailed statement for prior disciplinary action taken on a license. The Commission then makes a determination as to whether the individual should be allowed to obtain a license and, if denied, the applicant can request a hearing. Kentucky Code Annotated § 324.045 also has a provision substantially similar to. T.C.A. § 62-13-303(a)(1). The corresponding rule requires the Commission to scrutinize applicants whose criminal history report reveals any felony conviction regardless of when it took place or any misdemeanor conviction in the past five years. The Commission then determines whether to approve the individual for licensure or have a hearing to determine the same.

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:

An exemption for small businesses to this rule would not be beneficial as it is essential to screen the criminal history of applicants in order to comply with T.C.A. § 62-13-303(a)(1).

**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)

The Real Estate Commission foresees no impact on any 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;

This rule puts into rule form a longstanding process used by the Commission to carry out the requirements of T.C.A. § 62-13-303(a)(1) and also limits it to convictions and disciplinary actions occurring within the past ten (10) years. It requires any applicant with any type of felony conviction or a misdemeanor conviction involving theft of services, money, or property to submit official court records showing the disposition of the case and a personal statement regarding the conviction(s). Applicants who have prior disciplinary action by a federal, state, or local regulatory agency must disclose that fact on the application for licensure and submit supporting documentation. The rule also requires the applicant and their potential principal broker to appear at a meeting of the Commission to present their case as to why the Commission should allow the individual to move forward with the licensure process.

**(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 known federal or state law mandating promulgation of this rule.

**(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;

Any applicant or potential applicant for licensure with criminal history or prior disciplinary action from a regulatory agency within the past ten (10) years, as well as principal brokers who wish to affiliate such applicants with their firm, will be affected by this rule. There are no known objections to the amended rule. The rule codifies the current applicant screening process used by the Commission and also limits it to convictions and disciplinary actions occurring within the past ten (10) years.

**(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;

There are no known opinions of the Attorney General and Reporter or any judicial ruling that directly relates to this rule.

**(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;

This rule is not expected to create a probable increase or decrease state and local government revenues and expenditures.

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

Malcolm Young, Executive Director
500 James Robertson Parkway
Davy Crockett Tower, 4th Floor
Nashville, TN 37243
615-741-3321

Sarah Mathews, Assistant General Counsel
500 James Robertson Parkway
Davy Crockett Tower, 5th Floor
Nashville, TN 37243
615-741-3072

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

Malcolm Young, Executive Director, Real Estate Commission
Sarah Mathews, Assistant 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

Malcolm Young, Executive Director
500 James Robertson Parkway
Davy Crockett Tower, 4th Floor
Nashville, TN 37243
615-741-3321
Malcolm.young@tn.gov

Sarah Mathews, Assistant General Counsel
500 James Robertson Parkway
Davy Crockett Tower, 5th Floor
Nashville, TN 37243
615-741-3072
Sarah.Mathews@tn.gov

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

There is no known additional relevant information.

**Department of State**
**Division of Publications**
312 Rosa L. Parks Avenue, 8th Floor Snodgrass/TN Tower
Nashville, TN 37243
Phone: 615-741-2650
Email: publications.information@tn.gov

**For Department of State Use Only**

Sequence Number: 03-10-17
Rule ID(s): 6461
File Date: 3/10/17
Effective Date: 6/8/17

# Proposed Rule(s) Filing Form

*Proposed rules are submitted pursuant to Tenn. Code Ann. §§ 4-5-202, 4-5-207, and 4-5-229 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 ninety (90) days of 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 ten (10) persons who will be affected by the amendments, or submitted by a municipality which will be affected by the amendments, or an association of ten (10) or more members, or any standing committee of the General Assembly. The agency shall forward such petition to the Secretary of State.*

*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:** | Real Estate Commission |
| **Division:** | Regulatory Boards |
| **Contact Person:** | Sarah Mathews |
| **Address:** | 500 James Robertson Parkway |
| **Zip:** | 37243 |
| **Phone:** | 615-532-6303 |
| **Email:** | Sarah.Mathews@tn.gov |

**Revision Type (check all that apply):**
X 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** |
|---|---|
| 1260-01 | Licensing |
| **Rule Number** | **Rule Title** |
| .01 | Applications for Examination |
| | |
| | |
| | |

Redline
Chapter 1260-01
Licensing
Amendments

Rule 1260-01-.01 [Applications for Examination] is amended by adding a new paragraph (6) which shall read as follows:

(6) If within the past ten (10) years, an applicant has been convicted of or pled nolo contendere or guilty to any felony or a misdemeanor involving the theft of services, money or property, or had disciplinary sanctions imposed on them by any local, state or federal occupational licensing body, the applicant shall:

(a) Complete and submit a form prescribed by the Commission containing information relevant to the conviction, plea or disciplinary sanction.

(b) Submit certified copies of the court disposition or other document acceptable to the Commission for each conviction, plea of guilty or nolo contendere or a copy of the order or other document which shows the disciplinary action taken by the local, state or federal agency and the factual and legal basis for the action, whichever is applicable.

1. If the background check produced pursuant to T.C.A. § 62-13-303(l) does not reveal the disposition of any arrest or charge related to a felony or a misdemeanor involving theft of services, money or property and the charge has been dismissed, nolle prosequi or otherwise disposed of without conviction or a plea of guilty or nolo contendere, the applicant shall submit certified copies of the court disposition or other document acceptable to the Commission for each such arrest or charge.

2. If the court has no record of the arrest, charge, or conviction due to age of the record or any other reason, the applicant shall submit a letter from the court clerk stating the absence of the record(s).

(c) Appear before the Commission for the purpose of determining if the conviction, plea or disciplinary sanction constitutes grounds for denial of a license and, if so, whether or not the applicant may move forward with the licensing process. The applicant shall ensure the presence of his or her principal broker (or intended principal broker) in accordance with Tenn. Comp. R. & Regs. 1260-01-.19.

Authority: T.C.A. §§ 62-13-112, 62-13-203, 62-13-301, 62-13-303, 62-13-312, and 40-29-207.

* 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) |
|---|---|---|---|---|---|
| John Griess | x | | | | |
| Diane Hills | x | | | | |
| Marcia Franks | x | | | | |
| Bobby Wood | x | | | | |
| Fontaine Taylor | x | | | | |
| Johnny Horne | x | | | | |
| Gary Blume | x | | | | |
| Austin McMullen | x | | | | |
| Rick Douglass | | | | x | |

I certify that this is an accurate and complete copy of proposed rules, lawfully promulgated and adopted by the Tennessee Real Estate Commission on 12/12/2016, 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 ninety (90) days of the filing of the proposed rule with the Secretary of State.

Date: 2/24/2017

Signature: Sarah M. Mathews

Name of Officer: SARAH M MATHEWS

Title of Officer: ASSISTANT GENERAL COUNSEL

VANESSA HUNTSMAN STATE OF TENNESSEE NOTARY PUBLIC SUMNER COUNTY MY COMMISSION EXPIRES 11-21-2017

Subscribed and sworn to before me on: 02/24/2017

Notary Public Signature: Vanessa Huntsman

My commission expires on: 11/21/2017

---

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.

Herbert H. Slatery III

Herbert H. Slatery III
Attorney General and Reporter

3/6/2017

Date

Rules of Tennessee Real Estate Commission
Chapter 1260-01 Licensing
Rule 1260-01-.01 Applications for Examination

**Department of State Use Only**

Filed with the Department of State on: 3/10/17

Effective on: 6/8/17

Tre Hargett
Secretary of State

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## G.O.C. STAFF RULE ABSTRACT

| | |
|---|---|
| DEPARTMENT: | Labor and Workforce Development |
| DIVISION: | Bureau of Workers' Compensation |
| SUBJECT: | Procedures for Penalty Assessments and Hearing Contested Cases; Uninsured Employers Fund |
| STATUTORY AUTHORITY: | Tennessee Code Annotated, Sections 50-6-118 and 4-5-219 |
| EFFECTIVE DATES: | June 27, 2017 through June 30, 2018 |
| FISCAL IMPACT: | Minimal |
| STAFF RULE ABSTRACT: | The rules of the Bureau of Workers' Compensation relating to processes in the assessment of penalties and providing contested case hearings are being amended to conform to and accommodate relevant statutory changes as follows:<br>• The Penalty Program rules and the Uninsured Employer's Fund rules are being replaced by the Procedures for Penalty Assessments and Hearing Contested Cases rules using the chapter formerly called Penalty Program.<br>• All penalties in each program of the Bureau of Workers' Compensation will now follow a single base procedure.<br>• The statutory changes modify the procedures by which the bureau provides a required contested case hearing, and the procedures are an adaptation of the Secretary of State rules as set forth in Tenn. Code Ann. § 4-5-219. |

**Public Hearing Comments**

Comment: There should be a time limit or statute of limitations on reporting noncompliance or a violation of the workers' compensation law or rules.

Response: The bureau disagrees with the comment. There is no statutory authority for a statute of limitations on penalties for violation of the Tennessee Workers' Compensation law, and the bureau does not have statutory authority to promulgate a rule regarding statutes of limitations. Further, the Uninsured Employer Fund is already limited in collection time frames by Tenn. Code Ann. Section 50-6-412.

Comment: There should be a definition of "compliance" or "noncompliance".

Response: The bureau neither agrees nor disagrees with the comment, but due to the various penalties associated with violations of the Tennessee Workers' Compensation law and rules, it would be impractical to define "compliance" or "noncompliance" for all current and future examples of failure to act in accordance with those directives. Ultimately, an administrative law judge will have the authority to determine on a case-by-case basis whether there was compliance with the law and rules.

**Regulatory Flexibility Addendum**

Pursuant to T.C.A. §§ 4-5-401 through 4-5-404, prior to initiating the rulemaking 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. 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: The amended rules will affect small employers that fall under the Tennessee Workers' Compensation Laws, which would be employers with at least five employees, or for those in the construction industry at least one employee. It is noted that the workers' compensation statutes provide some exemptions, such as fewer than 5 employees, agricultural workers, etc.). There should be no additional costs associated with these rule changes.

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: There is no additional record keeping requirement or administrative cost associated with these rule changes.

3. A statement of the probable effect on impacted small businesses and consumers: These rules should not have any impact on consumers or small businesses.

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 methods to achieve the purposes and objectives of these rules.

5. Comparison of the proposed rule with any federal or state counterparts: None.

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: Exempting small businesses could frustrate the small business owners' access to the services provided by the Bureau of Workers' Compensation and timely medical treatment for injured workers, which would be counter-productive.

**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)

These proposed rules will have little, if any, 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;

The rules of the bureau of workers' compensation relating to processes in the assessment of penalties and providing contested case hearings are being amended to conform to and accommodate relevant statutory changes as follows:

- The Penalty Program rules and the Uninsured Employer's Fund rules are being replaced by the Procedures for Penalty Assessments and Hearing Contested Cases rules using the chapter formerly called Penalty Program.
- Now all penalties in each program of the bureau of worker' compensation will follow a single base procedure.
- The statutory changes modify the procedures by which the bureau provides a required contested case hearing, and the procedures are an adaptation of the Secretary of State rules as set forth in Tenn. Code Ann. § 4-5-219.

**(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;

See Tenn. Code Ann. § 50-6-118 and Tenn. Code Ann. § 4-5-219.

**(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;

All parties to a workers' compensation claim who are subject to a penalty assessment under the Tennessee workers' compensation law will be affected by adoption or rejection of these rules.

**(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

**(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 overall effect will have little fiscal impact upon state or local government.

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

Troy Haley, Legislative Liaison and Director of Administrative Legal Services

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

Troy Haley, Legislative Liaison and Director of Administrative Legal Services

**(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

Bureau of Workers' Compensation
220 French Landing Drive
Floor 1-B
Nashville, TN 37243
(615) 532-0179
troy.haley@tn.gov

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

None

**Department of State**
**Division of Publications**
312 Rosa L. Parks, 8th Floor Snodgrass/TN Tower
Nashville, TN 37243
Phone: 615.741.2650
Email: publications.information@tn.gov

**For Department of State Use Only**

Sequence Number: 03-31-17
Rule ID(s): 6478-6479
File Date: 3/29/17
Effective Date: 6/27/17

# Rulemaking Hearing Rule 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:** | Tennessee Department of Labor and Workforce Development |
| **Division:** | Bureau of Workers' Compensation |
| **Contact Person:** | Troy Haley |
| **Address:** | 220 French Landing Drive, 1-B, Nashville, TN 37243 |
| **Phone:** | 615-532-0179 |
| **Email:** | troy.haley@tn.gov |

**Revision Type (check all that apply):**
X Amendment
___ New
___ Repeal

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

| **Chapter Number** | **Chapter Title** |
|---|---|
| 0800-02-13 | Procedures for Penalty Assessments and Hearing Contested Cases |
| **Rule Number** | **Rule Title** |
| 0800-02-13-.01 | Scope |
| 0800-02-13-.02 | Definitions |
| 0800-02-13-.03 | Receipt of Information and Investigation |
| 0800-02-13-.04 | Notification |
| 0800-02-13-.05 | Settlement |
| 0800-02-13-.06 | Initial Agency Decision |
| 0800-02-13-.07 | Filing and Service of Pleadings and Other Materials |
| 0800-02-13-.08 | Time |
| 0800-02-13-.09 | Appeal of an Initial Agency Decision |
| 0800-02-13-.10 | Commencement of Contested Case Proceedings |
| 0800-02-13-.11 | Service of Notice of Hearing |
| 0800-02-13-.12 | Representation by Counsel |
| 0800-02-13-.13 | Prehearing Motions |
| 0800-02-13-.14 | Continuances |
| 0800-02-13-.15 | Discovery |

| | |
|---|---|
| 0800-02-13-.16 | Intervention |
| 0800-02-13-.17 | Subpoena |
| 0800-02-13-.18 | Default and Uncontested Proceedings |
| 0800-02-13-.19 | Evidence in Hearings |
| 0800-02-13-.20 | Clerical Mistakes |
| 0800-02-13-.21 | Code of Judicial Conduct |

| **Chapter Number** | **Chapter Title** |
|---|---|
| 0800-02-15 | Uninsured Employers Fund |
| **Rule Number** | **Rule Title** |
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# RULES
# OF
# TENNESSEE DEPARTMENT OF LABOR AND WORKFORCE DEVELOPMENT
# DIVISION OF WORKERS' COMPENSATION

## CHAPTER 0800-02-13
## PENALTY PROGRAM

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~~**0800-02-13-.01 DEFINITIONS.** The following definitions are for the purposes of this chapter only.~~

~~(1) "Administrative Appeal" means after notice and an opportunity for a hearing, a contested hearing to review an Agency Decision wherein the Division has assessed a civil penalty.~~

~~(2) "Administrator" means the Administrator of the Workers' Compensation Division of the Tennessee Department of Labor and Workforce Development.~~

~~(3) "Agency Decision" means a ruling which disposes of a petition, contested case hearing, appeal, or other request for the Division to review the legitimacy of issuing a penalty.~~

~~(4) "Commissioner" means the Commissioner of the Tennessee Department of Labor and Workforce Development, the Commissioner's Designee, or any other agency member appointed by the Commissioner to hear a contested case under the Tennessee Uniform Administrative Procedures Act.~~

~~(5) "Commissioner's Designee" or "Designee" means any person whom the Commissioner indicates, selects, appoints, nominates, or sets apart for a purpose or duty.~~

~~(6) "Department" means the Tennessee Department of Labor and Workforce Development.~~

~~(7) "Division" means the Workers' Compensation Division of the Tennessee Department of Labor and Workforce Development.~~

~~(8) "Employee" shall have the same meaning as set forth in T.C.A. Section 50-6-102.~~

~~(9) "Employer" shall have the same meaning as set forth in T.C.A. Section 50-6-102.~~

~~(10) "Insurer" means an employer's workers' compensation insurance carrier and additionally shall include any entity claiming, operating, or attempting to operate as a self-insured employer, self-insured pool, or self-insured trust pursuant to the requirements of T.C.A. Section 50-6-405 of Chapter 0780-1-54, Self-Insured Pools, of the Rules of the Department of Commerce and Insurance, Insurance Division.~~

(Rule 0800-02-13-.01, continued)

(11) "Judicial Review" means a petition to Davidson County Chancery Court to review a Final Order issued by the Commissioner.

(12) "Records of the Department" or "Department Records" means any data, including electronic, computer-generated, telephonic, or on paper, used in the business of the Department and obtained by any employee of the Department:

(a) from within the Department

(b) through an investigation; or

(c) from any other lawful source.

(13) "Worker" means an employee or injured worker.

(14) "Workers' Compensation Law" means the Workers' Compensation Act as currently enacted by the Tennessee General Assembly, specifically including any future enactments by the Tennessee General Assembly involving amendments, deletions, additions, repeals, or any other modification, in any form of the Workers' Compensation Act.

(15) "Workers' Compensation Specialist" or "Specialist" shall mean a departmental employee who provides information and communication services regarding workers' compensation for employees and employers and who may assess penalties for failure to timely pay workers' compensation benefits or other violations of the Workers' Compensation Law or the General Rules of the Workers' Compensation Division of Tennessee.

***Authority:*** *T.C.A. §§ 50-6-118, 50-6-125, 50-6-128, 50-6-205, 50-6-233, 50-6-237, 50-6-244, and Public Chapter 962 (2004).* ***Administrative History:*** *Original rule filed October 13, 2004; effective February 28, 2005.*

**0800-02-13-.02 INVESTIGATION OF UNPAID OR UNTIMELY PAID WORKERS' COMPENSATION BENEFITS.**

(1) When investigating whether to assess a civil penalty for unpaid or untimely paid benefits, a Specialist may inquire into instances where an Employer or Insurer:

(a) reasonably appears to be subject to the Workers' Compensation Law; and

(b) has or may have failed to pay, or has or may have failed to timely pay, workers' compensation benefits to an employee as required by the Workers' Compensation Law.

(2) When an investigation reasonably indicates that an employer is subject to the Workers' Compensation Law and that the employer or insurer has failed to pay or timely pay all workers' compensation benefits due to an employee as required by the Workers' Compensation Law, the Department shall so notify the employer or the insurer.

(3) The notice shall advise the employer or insurer of the potential civil penalty which may be assessed against the employer or insurer if it is determined that the employer or insurer has failed to pay or timely pay all workers' compensation benefits due to an employee as required by the Workers' Compensation Law.

(4) The employer or insurer shall have seven (7) days, excluding Saturdays, Sundays and holidays, from the date of the notice to respond and provide to the Department:

(Rule 0800-02-13-.02, continued)

(a) documented proof that the employer or insurer timely paid all workers' compensation benefits to which an employee is or was entitled under the Workers' Compensation Law; or

(b) a verified sworn affidavit, with supporting documentation, that either:

1. no workers' compensation benefits are or were owed to an employee under the Workers' Compensation Law; or

2. all workers' compensation benefits owed to an employee under the Workers' Compensation Law have been and continue to be timely paid to the employee; or

3. the employer or insurer has acted diligently, as determined by the Commissioner or Commissioner's Designee, to obtain necessary information to process the claim and has not been able to obtain it.

(5) In deciding whether a benefit is unpaid or untimely paid, compensation shall be deemed promptly paid if the first payment is made fifteen (15) calendar days after the employer has knowledge of the injury and every subsequent payment is made within consecutive fifteen (15) calendar day increments, until all temporary benefits have been paid. A benefit is paid on the date the employer or insurer places the benefits into the mail for delivery to the injured employee. After twenty (20) calendar days from the date of the employer's knowledge of any disability that would qualify for benefits, the twenty-five percent (25%) penalty will attach to all payments unpaid or untimely paid.

***Authority:*** *T.C.A. §§ 50-6-118, 50-6-125, 50-6-128, 50-6-205, 50-6-233, 50-6-237, 50-6-238, 50-6-244, 50-6-412, 50-6-801, and Public Chapter 962 (2004).* ***Administrative History:*** *Original rule filed October 13, 2004; effective February 28, 2005. Amendments filed April 26, 2006; effective July 10, 2006.*

**0800-02-13-.03 DEPARTMENTAL ACTIONS.**

(1) The Division shall:

(a) not issue a civil penalty if either:

1. the employer or insurer had at all relevant times timely paid to the employee all workers' compensation benefits required by the Workers' Compensation Law; or

2. the employer or insurer does not owe any workers' compensation benefits under the Workers' Compensation Law; or

3. in the sole discretion of the Commissioner or the Commissioner's Designee, the Commissioner or Commissioner's Designee finds that the employer or insurer has acted diligently to obtain necessary information to process the claim and has not been able to obtain it.

(b) issue an Agency Decision assessing a civil penalty to be paid by the employer or insurer equal to twenty-five percent (25%) of the unpaid or untimely paid benefits owed to the employee under the Workers' Compensation Law if:

1. the employer is subject to the Workers' Compensation Law; and

2. the employer or insurer is liable to pay workers' compensation benefits to an employee for a compensable work-related injury under the Workers' Compensation Law; and

(Rule 0800-02-13-.03, continued)

3. the employer or insurer has failed for any relevant period of time to timely pay all workers' compensation benefits as required by the Workers' Compensation Law.

(2) If the Division issues an Agency Decision assessing a civil penalty to be paid by the employer or insurer equal to twenty-five percent (25%) of the unpaid or untimely paid benefits owed to the employee under the Workers' Compensation Law, the Agency Decision shall require that the civil penalty be made payable by the employer or insurer directly to the employee to whom the workers' compensation benefits are owed.

(3) The Commissioner, or the Commissioner's Designee, shall have the sole discretion not to issue a penalty even if the technical requirements of subparagraph (1)(b) are satisfied.

***Authority:*** *T.C.A. §§ 50-6-118, 50-6-125, 50-6-128, 50-6-205, 50-6-233, 50-6-237, 50-6-238, 50-6-244, 50-6-412, 50-6-801, and Public Chapter 962 (2004).* ***Administrative History:*** *Original rule filed October 13, 2004; effective February 28, 2005. Amendments filed April 26, 2006; effective July 10, 2006.*

**0800-02-13-.04 ADMINISTRATIVE APPEAL OF AN AGENCY DECISION ASSESSING A CIVIL PENALTY FOR UNPAID OR UNTIMELY PAID WORKERS' COMPENSATION BENEFITS.**

(1) An employer or insurer assessed a civil penalty for unpaid or untimely paid worker's compensation benefits has the right to file, in writing, with a copy to the employee or their representative, a petition for informal reconsideration by the Commissioner or Commissioner's Designee, other than the specialist who issued the Agency Decision, to determine if the civil penalty should have been assessed. However, the filing of the petition shall not be a prerequisite for requesting a contested case hearing, and the fifteen calendar day period for a party to request a contested case hearing shall not be tolled by the filing of a petition for informal reconsideration. The petition for informal reconsideration shall be made in writing by an employer or insurer which has been assessed a civil penalty for unpaid or untimely paid workers' compensation benefits and shall be filed with the Designee who issued the Agency Decision assessing the civil penalty within seven (7) calendar days of the date upon which the Agency Decision was issued.

(2) An employer or insurer assessed a civil penalty for unpaid or untimely paid workers' compensation benefits has the right to request a contested case hearing to determine if the civil penalty should have been assessed.

(3) The request for a hearing shall be made in writing by an employer or insurer which has been assessed a civil penalty for unpaid or untimely paid worker' compensation benefits.

(4) Any request for a hearing shall be filed with the Designee who issued the Agency Decision assessing the penalty within fifteen (15) calendar days of the date upon which the Agency Decision was issued. Failure to file a request for a hearing within fifteen (15) calendar days of the date of entry of the agency decision shall result in the Agency Decision becoming a Final Order not subject to further review.

(5) The Commissioner, Commissioner's Designee, or an agency member appointed by the Commissioner shall have the authority to hear the matter as a contested case and determine if the civil penalty assessed for unpaid or untimely paid workers' compensation benefits should have been assessed.

(6) Upon receipt of a timely filed request for a hearing, the Commissioner shall issue a Notice of Hearing to the employer or insurer.

***Authority:*** *T.C.A. §§ 50-6-118, 50-6-125, 50-6-128, 50-6-205, 50-6-233, 50-6-237, 50-6-238, 50-6-244, 50-6-412, 50-6-801, and Public Chapter 962 (2004).* ***Administrative History:*** *Original rule filed October 13, 2004; effective February 28, 2005. Amendment filed April 26, 2006; effective July 10, 2006.*

**0800-02-13-.05 NOTICE OF HEARING.**

(1) The Notice of Hearing shall specify:

(a) the time, place, and nature of the hearing;

(b) the right of the parties to be represented by counsel;

(c) the legal authority and jurisdiction under which the hearing is to be held;

(d) civil penalties subject to the requested hearing; and

(e) a short and plain statement of the matters asserted.

(2) The Notice of Hearing shall be sent to the employer's and/or insurer's last known address, according to department records.

(3) The Division shall schedule the hearing in a timely manner, not to exceed thirty (30) business days from the date on which the employer or insurer filed the request for a hearing.

***Authority:*** *T.C.A. §§ 4-5-307, 50-6-118, 50-6-125, 50-6-128, 50-6-205, 50-6-233, 50-6-237, 50-6-244, and Public Chapter 962 (2004).* ***Administrative History:*** *Original rule filed October 13, 2004; effective February 28, 2005.*

**0800-02-13-.06 DISCOVERY.**

(1) Any party to a contested case shall have the right to reasonable discovery pursuant to T.C.A. §4-5-311.

***Authority:*** *T.C.A. §§ 4-5-311, 50-6-118, 50-6-125, 50-6-128, 50-6-205, 50-6-233, 50-6-237, 50-6-244, and Public Chapter 962 (2004).* ***Administrative History:*** *Original rule filed October 13, 2004; effective February 28, 2005.*

**0800-02-13-.07 CONTINUANCES.**

(1) The Commissioner shall strongly discourage the continuance of a hearing.

(2) All requests for continuances shall be made in writing as soon as reasonably and practicably possible prior to the scheduled date of the hearing. Such requests may only be granted at the discretion of the Commissioner and only for good cause shown. In addition, the Commissioner may grant a continuance during the course of a hearing in order to secure all of the evidence which the Commissioner deems necessary for a fair hearing to all parties of interest or at any time for other good cause shown.

***Authority:*** *T.C.A. §§ 50-6-118, 50-6-125, 50-6-128, 50-6-205, 50-6-233, 50-6-237, 50-6-244, and Public Chapter 962 (2004).* ***Administrative History:*** *Original rule filed October 13, 2004; effective February 28, 2005.*

**0800-02-13-.08 EFFECT OF EMPLOYER'S FAILURE TO APPEAR AT HEARING.**

(1) Failure of an employer or insurer to appear at a scheduled hearing before the Commissioner after due notice thereof may result in a Default Judgment being entered against such employer or insurer.

(2) In such cases as described in paragraph (1), the Commissioner shall render a decision on the basis of whatever evidence is submitted by the Division.

(Rule 0800-02-13-.08, continued)

~~***Authority:*** *T.C.A. §§ 4-5-309, 50-6-118, 50-6-125, 50-6-128, 50-6-205, 50-6-233, 50-6-237, 50-6-244, and Public Chapter 962 (2004).* ***Administrative History:*** *Original rule filed October 13, 2004; effective February 28, 2005.*~~

~~**0800-02-13-.09 REPRESENTATION AT THE HEARING.**~~

~~(1) Each individual or entity may be represented at the hearing as follows:~~

~~(a) Any individual receiving due notice to appear at a hearing may appear at the hearing in his or her own behalf or may be represented at the hearing by an attorney at law duly licensed and admitted to practice by the highest court of the state of Tennessee.~~

~~(b) Any general partnership receiving due notice to appear at a hearing may appear at the hearing by any of its partners with written authority from all other partners or may be represented at the hearing by an attorney at law duly licensed and admitted to practice by the highest court of the state of Tennessee.~~

~~(c) Any corporation, limited partnership, limited liability company, state-certified business entity, or any other entity not specifically referenced in this rule 0800-02-13-.09 which received due notice to appear at a hearing shall appear at the hearing only by an attorney at law duly licensed and admitted to practice by the highest court of the state of Tennessee.~~

~~(2) The Commissioner, in his or her discretion, may refuse to allow any person to continue representation or participation in any proceeding before the Commissioner if the Commissioner finds said person guilty of disorderly, disruptive, or unethical conduct during the course of the hearing.~~

~~(a) Any attorney seeking to appear for or to represent a party to any proceeding before the Commissioner or any other person seeking to assist in the appearance of a party to such proceeding shall cause to be filed, not later than the date of the hearing, a written notice of appearance. Such written notice of appearance shall specify sufficient information necessary to identify the particular proceeding involved and which must include, at least:~~

~~1. the name and address of the employer or insurer; and~~

~~2. the name, address, telephone and facsimile numbers, and BPR number of the attorney or other person filing the notice of appearance.~~

~~(3) All notices of appearance shall be delivered to the Commissioner or mailed to:~~

~~Tennessee Department of Labor and Workforce Development~~
~~Division of Workers' Compensation~~
~~Penalty Program~~
~~Andrew Johnson Tower, Second Floor~~
~~710 James Robertson Parkway~~
~~Nashville, TN 37243-0661~~

~~(4) Any notice of appearance received by the Commissioner shall be deemed as having been filed for the purpose of any further proceeding in the same matter before the Commissioner.~~

~~(a) After the expiration of three (3) days from the date of receipt of a notice of appearance, any notice of hearing, decision, or other hearing-related documentation subsequently~~

(Rule 0800-02-13-.09, continued)

mailed by the Commissioner shall be mailed to the attorney or other person who has on file a properly executed notice of appearance.

(5) Any requests for copies of other documents in any pending matter before the Commissioner shall be subject to a reasonable copy fee.

***Authority:*** *T.C.A. §§ 50-6-118, 50-6-125, 50-6-128, 50-6-205, 50-6-233, 50-6-237, 50-6-244, and Public Chapter 962 (2004).* ***Administrative History:*** *Original rule filed October 13, 2004; effective February 28, 2005.*

**0800-02-13-.10 PRE-HEARING MATTERS.**

(1) The names and addresses of all witnesses who may be called at a hearing and a list of all proposed exhibits shall be both filed with the Commissioner and served on opposing counsel at least seven (7) calendar days prior to the date of the hearing.

(2) Copies of affidavits which may be used at a hearing shall be furnished to opposing counsel at least ten (10) calendar days prior to the date of the hearing.

(3) Copies of all exhibits which are proposed to be offered shall be made available for viewing by opposing counsel upon request made no less than five (5) calendar days prior to the date of the hearing.

(4) Either the employer/employer's attorney, insurer/insurer's attorney, or a staff attorney from the Department may request a pre-hearing conference by telephone or in person with the Commissioner. A request for a pre-hearing conference shall be made at least seven (7) calendar days prior to the date of hearing. The Commissioner may, in his or her discretion, grant or decline to grant a request for a pre-hearing conference, limit or expand the matters to be discussed at a pre-hearing conference, or otherwise discuss how to facilitate the orderly process of the hearing. The party requesting the conference shall be responsible for arranging the conference and coordinating the conference with opposing counsel. All discussions with the Commissioner at the pre-hearing conference shall include both the employer/employer's attorney, or the insurer/insurer's attorney and a staff attorney from the Department. The Commissioner may, on his or her own initiative, schedule a pre-hearing conference by telephone or in person with the employer/employer's attorney, or the insurer/insurer's attorney, and the staff attorney from the Department.

***Authority:*** *T.C.A. §§ 50-6-118, 50-6-125, 50-6-128, 50-6-208, 50-6-233, 50-6-237, 50-6-244, and Public Chapter 962 (2004).* ***Administrative History:*** *Original rule filed October 13, 2004; effective February 28, 2005.*

**0800-02-13-.11 ORDER OF PROCEEDINGS AT THE HEARING.**

(1) The agency shall admit and give probative effect to evidence admissible in a Court and may also admit evidence which preserves probative value commonly accepted by reasonably prudent men in the conduct of their affairs. The agency shall give effect to the rules of privilege recognized by law and shall exclude evidence which in its judgment is irrelevant, immaterial, or unduly repetitious.

(2) Documentary evidence otherwise admissible may be received in the form of copies or excerpts, or by incorporation by reference to material already on file with the agency.

(3) Notice may be taken of judicially cognizable facts. In addition, notice may be taken of generally recognized technical or scientific facts within the agency's specialized knowledge.

(Rule 0800-02-13-.11, continued)

(4) Every party shall have the right to present evidence, to make arguments, and to confront and cross-examine witnesses.

***Authority:*** *T.C.A. §§ 50-6-118, 50-6-125, 50-6-128, 50-6-205, 50-6-233, 50-6-237, 50-6-244, and Public Chapter 962 (2004).* ***Administrative History:*** *Original rule filed October 13, 2004; effective February 28, 2005.*

**0800-02-13-.12 SCOPE OF EXAMINATION AND RULES OF EVIDENCE.**

(1) In any hearing before the Commissioner, witnesses may be examined regarding any matter, not privileged, which is relevant and material to the issues to be determined at such hearing. The rules of evidence applicable at such hearing shall be as provided for in T.C.A. Section 4-5-313.

(2) The Commissioner may rule on and decide any question concerning the admissibility of evidence or procedural questions of law.

(a) It shall not be grounds for objection that testimony will be inadmissible at the hearing if, in the discretion of the Commissioner, the testimony sought appears reasonably calculated to lead to the discovery of admissible evidence;

(b) It shall not be grounds for objection that hearsay testimony will be inadmissible at the hearing if, in the discretion of the Commissioner, the testimony is of a type commonly relied upon by reasonably prudent men in the conduct of their affairs.

(3) If an objection to proffered evidence is sustained by the Commissioner, the examining party or attorney may make a specific offer of what the examining party or attorney expects to prove by that evidence.

***Authority:*** *T.C.A. §§ 50-6-118, 50-6-125, 50-6-128, 50-6-205, 50-6-233, 50-6-237, 50-6-244, and Public Chapter 962 (2004).* ***Administrative History:*** *Original rule filed October 13, 2004; effective February 28, 2005.*

**0800-02-13-.13 BURDEN OF PROOF.**

(1) The burden of proof at the hearing shall be on the employer or insurer, to prove, by a preponderance of the evidence, that the employer and/or insurer is either not subject to the Workers' Compensation laws or has timely paid all workers' compensation benefits due to an employee.

***Authority:*** *T.C.A. §§ 50-6-118, 50-6-125, 50-6-128, 50-6-205, 50-6-233, 50-6-237, 50-6-244, and Public Chapter 962 (2004).* ***Administrative History:*** *Original rule filed October 13, 2004; effective February 28, 2005.*

**0800-02-13-.14 DETERMINATIONS PURSUANT TO THE HEARING.**

(1) If the Commissioner determines that the employer is not subject to the Workers' Compensation Law and has not been subject to the Workers' Compensation Law at any relevant times, then the Commissioner shall issue an Initial Order that all civil penalties assessed against the employer or insurer are void.

(2) If the Commissioner determines that the employer or insurer either does not owe to an employee any workers' compensation benefits or has timely paid all workers' compensation benefits owed to an employee as required by the Workers' Compensation Law, then the Commissioner shall issue an Initial Order that all civil penalties assessed against the employer or insurer are void.

(Rule 0800-02-13-.14, continued)

(3) If the Commissioner determines that the employer or insurer has either not paid or not timely paid all workers' compensation benefits due to an employee as required by the Workers' Compensation Law, then the Commissioner shall issue an Initial Order that a civil penalty equal to twenty-five percent (25%) of the unpaid or untimely paid benefits due to the employee under the Workers' Compensation Law be paid by the employer or insurer directly to the employee to whom the unpaid or untimely paid benefits are/were owed.

***Authority:*** *T.C.A. §§ 50-6-118, 50-6-125, 50-6-128, 50-6-205, 50-6-233, 50-6-237, 50-6-244, and Public Chapter 962 (2004).* ***Administrative History:*** *Original rule filed October 13, 2004; effective February 28, 2005.*

**0800-02-13-.15 REVIEW OF INITIAL ORDER.**

(1) The employer or insurer shall have the right to file a petition for the Commissioner to review the Initial Order, pursuant to the Tennessee Uniform Administrative Procedures Act.

(2) Any petition to review the Initial Order must be filed in writing within fifteen (15) calendar days of the date of entry of the Initial Order. Failure to file a petition to review the Initial Order within fifteen (15) calendar days of the date of entry of the Initial Order shall result in the Initial Order becoming a Final Order not subject to further review.

(3) Any petition to review the Initial Order must state its basis and clearly identify the issue(s) to be reviewed.

(4) The Commissioner shall conduct said review by considering the parties' review briefs, the contested hearing transcript, and the record as a whole. The Commissioner will not hear oral argument unless specifically requested by the Commissioner. A party may submit new evidence only if such new evidence did not exist or was not available at the time of the contested hearing.

(5) If no action is taken by the Commissioner within twenty (20) calendar days of filing of the petition for review, the petition is deemed denied and the Initial Order shall become the Final Order. Otherwise, the Commissioner shall consider the petition for review of the Initial Order and enter a Final Order or remand the matter for further proceedings at the contested hearing level with instruction.

***Authority:*** *T.C.A. §§ 4-5-317, 50-6-118, 50-6-125, 50-6-128, 50-6-205, 50-6-233, 50-6-237, 50-6-244, and Public Chapter 962 (2004).* ***Administrative History:*** *Original rule filed October 13, 2004; effective February 28, 2005. Amendment filed March 25, 2013; effective June 23, 2013.*

**0800-02-13-.16 JUDICIAL REVIEW.**

(1) The employer or insurer has sixty (60) calendar days to file notice of appeal in the Davidson County Chancery Court for judicial review of a Final Order issued by the Commissioner.

***Authority:*** *T.C.A. §§ 4-5-322, 50-6-118, 50-6-125, 50-6-128, 50-6-205, 50-6-233, 50-6-237, 50-6-244, and Public Chapter 962 (2004).* ***Administrative History:*** *Original rule filed October 13, 2004; effective February 28, 2005.*

**0800-02-13-.17 PROCEDURE IN OTHER DIVISIONAL PENALTY ASSESSMENTS.**

(1) The procedures contained in these Rules are applicable to other civil penalty assessments provided for in Title 50, Chapter 6 and the General Rules of the Workers' Compensation Division of Tennessee. These procedures include, but are not limited to, notice to the alleged violator of the alleged violation and the potential civil penalty(s), right to a contested case

(Rule 0800-02-13-.17, continued)

~~hearing, right to petition to review an Initial Order, and the appeal of a Final Order to Davidson County Chancery Court.~~

~~(2) Whenever the Division is assessing a civil penalty, the Division has the authority to hear any dispute as to the assessment of the civil penalty as a contested case and the authority to issue Agency Decisions, Initial Orders, and Final Orders assessing civil penalties and/or deciding reviews or appeals of the assessment of civil penalties.~~

~~(3) Whenever the Division is assessing a civil penalty pursuant to the Workers' Compensation statutes or General Rules of the Workers' Compensation Division of Tennessee, the potential violator shall have the burden of proving by a preponderance of the evidence that the civil penalty should not have been assessed.~~

~~(4) When assessing civil penalties pursuant to, but not limited to, T.C.A. §§50-6-118, 50-6-125, 50-6-128, 50-6-205, 50-6-233, 50-6-237, and 50-6-244 and any penalties provided for in the General Rules of the Workers' Compensation Division of Tennessee, the Division may follow the procedures outlined in paragraph (1), has the authority outlined in paragraph (2), and the violator has the burden of proof outlined in paragraph (3).~~

~~***Authority:*** *T.C.A. §§ 50-6-118, 50-6-125, 50-6-128, 50-6-205, 50-6-233, 50-6-237, 50-6-244, and Public Chapter 962 (2004).* ***Administrative History:*** *Original rule filed October 13, 2004; effective February 28, 2005.*~~

# RULES
# OF
# TENNESSEE DEPARTMENT OF LABOR AND WORKFORCE DEVELOPMENT
# DIVISION OF WORKERS' COMPENSATION

## CHAPTER 0800-02-15
## UNINSURED EMPLOYERS FUND

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~~**0800-02-15-.01 DEFINITIONS.** The following definitions are for the purposes of this chapter only:~~

~~(1) "Administrator" means the Administrator of the Workers' Compensation Division of the Tennessee Department of Labor and Workforce Development.~~

~~(2) "Commissioner" means the Commissioner of the Tennessee Department of Labor and Workforce Development or the Commissioner's designee.~~

~~(3) "Department" means the Tennessee Department of Labor and Workforce Development.~~

~~(4) "Designee" means any person whom the Commissioner indicates, selects, appoints, nominates, or sets apart for a purpose or duty.~~

~~(5) "Employer" shall have the same meaning as set forth in TCA Section 50-6-102 and additionally shall include an individual, firm, business, corporation, partnership, limited liability company, association, or any other entity which an employee of the Department reasonably believes may be an Employer as defined in TCA Section 50-6-102.~~

~~(6) "Fund" means the Uninsured Employers Fund.~~

~~(7) "Inspection" means any inspection of an Employer's factory, plant, establishment, construction site or other area, workplace, or environment where work is performed by at least one person who is or may be an employee of an employer.~~

~~(8) "Investigation" means reasonable efforts made by a Department employee to find out relevant information or information reasonably calculated to lead to the discovery of relevant information necessary to determine whether an employer is subject to the Workers' Compensation Law, to determine whether an employer has secured payment of compensation pursuant to the Workers' Compensation Law, or to determine the amount of any monetary penalty which may be assessed against an employer for failure to secure payment of compensation pursuant to the Workers' Compensation Law. The reasonable efforts used may include the use of a computer, sending and receiving electronic mail, making and reviewing records, both computer-generated and on paper, including reviewing other records of the Department, from other governmental entities and agencies, or from any other lawful source, making and receiving telephone calls, sending and receiving facsimile transmissions, writing and receiving correspondence, completing written reports, filling out~~

(Rule 0800-02-15-.01, continued)

and receiving forms, serving subpoenas and reviewing items identified by subpoenas, and making inspections, re-inspections, or follow-up inspections.

(9) "Investigator" or "Workers' Compensation Investigator" means a person authorized by the Commissioner to conduct investigations.

(10) "Records of the Department" or "Department Records" means any data, including electronic, computer-generated, telephonic, or on paper, used in the business of the Department and obtained by any employee of the Department:

(a) from within the Department;

(b) from other governmental entities or agencies;

(c) through an investigation; or

(d) from any other lawful source.

(11) "Secure payment of compensation" shall mean complete compliance with all coverage requirements of Tenn. Code Ann. § 50-6-405 at all times required by the Workers' Compensation Law.

(12) "Worker" means an employee or injured worker.

(13) "Workers' Compensation Law" means the Workers' Compensation Act as currently enacted by the Tennessee General Assembly.

***Authority:*** *T.C.A. §§ 4-5-202, 50-6-102, 50-6-118, 50-6-233, 50-6-405 and 50-6-412.* ***Administrative History:*** *Original rule filed March 11, 2002; effective July 29, 2002. Amendment filed May 21, 2007; effective September 28, 2007.*

**0800-02-15-.02 INVESTIGATION OF NON-COMPLIANCE.**

(1) Investigators may conduct an investigation or inquire into instances where an employer:

(a) reasonably appears to be subject to the Workers' Compensation Law; and

(b) has or may have failed to secure payment of compensation as required by the Workers' Compensation Law

(2) When the records of the Department reasonably indicate, or when the Department's investigation of an Employer reasonably indicates, that an employer is subject to the Workers' Compensation Law and has failed to secure payment of compensation as required by the Workers' Compensation Law, the Department shall notify the employer by certified letter, return receipt requested.

(3) The certified letter shall:

(a) advise the employer of the monetary penalties which may be assessed against the employer if it is determined by the Commissioner or Commissioner's designee that the employer has failed to secure payment of compensation as required by the Workers' Compensation Law; and

(b) advise the employer of the criminal penalties to which the employer may be subject for failure to secure payment of compensation as required by the Workers' Compensation Law.

(Rule 0800-02-15-.02, continued)

(4) The employer shall have ten (10) days, excluding Saturdays, Sundays and holidays, from the receipt of the certified letter to respond to and to provide to the Department:

(a) documented proof that the employer has secured, prior to the receipt of the certified letter, payment of compensation as required by the Workers' Compensation Law; or

(b) a verifiable sworn affidavit, with supporting documentation, that the employer is exempt from the Workers' Compensation Law.

(5) Investigators may conduct an investigation to verify the accuracy of the statements made or the facts set forth:

(a) in an affidavit provided by an employer;

(b) in documentation supporting an affidavit provided by an employer; or

(c) in any other method of proof provided by an employer.

***Authority:*** *T.C.A. §§ 50-6-412, 50-6-118, 50-6-233, and 50-6-801.* ***Administrative History:*** *Original rule filed March 11, 2002; effective July 29, 2002.*

**0800-02-15-.03 DEPARTMENTAL ACTIONS.**

(1) The Commissioner or Commissioner's designee shall:

(a) issue no monetary penalty if the Commissioner or Commissioner's designee determines either:

1. that the employer had at all relevant times secured payment of compensation as required by the Workers' Compensation Law before receiving the certified letter; or

2. that the employer is exempt from the Workers' Compensation Law and has been exempt from the Workers' Compensation Law at all relevant times;

(b) issue a monetary penalty to the employer equal to one and one-half times the average yearly workers' compensation premium, or a prorated amount subject to the provisions of Rule 0800-02-15-.04(2) and (3), if the Commissioner or Commissioner's designee determines:

1. that the employer is subject to the Workers' Compensation Law;

2. that the employer has failed for any relevant period of time to secure payment of compensation as required by the Workers' Compensation Law; and

3. that the employer has secured payment of compensation since the date of receipt of the certified letter described in Rule 0800-02-15-.02; or

(c) issue a "Show Cause Order and Notice of Hearing" if either:

1. the employer does not timely respond to the certified letter; or

2. investigators or employees of the Department cannot verify the accuracy of the statements made or the facts set forth in the sworn affidavit provided by the

(Rule 0800-02-15-.03, continued)

employer, in documentation supporting an affidavit provided by an employer, or in any other method of proof provided by an employer.

(2) If the Commissioner or Commissioner's designee issues a "Show Cause Order and Notice of Hearing", the Commissioner or Commissioner's designee shall:

(a) assess against the employer a first monetary penalty equal to one and one half times the employer's average yearly workers' compensation premium, or a prorated amount subject to the provisions of Rule 0800-02-15-.04(2) and (3); and

(b) assess against the employer a second monetary penalty equal to the employer's average yearly workers' compensation premium, or a prorated amount subject to the provisions of Rule 0800-02-15-.04(2) and (3).

***Authority:*** *T.C.A. §§50-6-412, 50-6-118, 50-6-233, and 50-6-801.* ***Administrative History:*** *Original rule filed March 11, 2002; effective July 29, 2002.*

**0800-02-15-.04 MONETARY PENALTIES.**

(1) All monetary penalties assessed against an employer by the Commissioner or Commissioner's designee which are based on the average yearly workers' compensation premium shall be calculated by utilizing the appropriate assigned risk plan advisory prospective loss cost and multiplier for an employer in the business in which the employer is employed as of the date as determined by the Commissioner or Commissioner's designee when the employer is or has been subject to the Workers' Compensation Law and has failed to secure payment of compensation for any period of time required by the Workers' Compensation Law.

(2) If the Commissioner or Commissioner's designee determines the period of noncompliance with the Workers' Compensation Law is less than one (1) year, any assessed monetary penalty shall be prorated.

(3) Any prorated monetary penalty assessed against an employer by the Commissioner or Commissioner's designee shall not be less than an amount equal to one (1) month's premium of the average yearly workers' compensation premium for such an employer based on the appropriate assigned risk plan advisory prospective loss cost and multiplier.

(4) If any monetary penalty assessed against an employer is held in abeyance, the period of abeyance shall be two (2) years.

(a) Any abated penalty becomes void upon the expiration of the two (2) year period, provided the employer remained subject to the Workers' Compensation Law during the two (2) year period and continuously secured payment of compensation as required by law.

(b) Any abated penalty becomes voidable, if within the two (2) year period, the employer provides notice to the Commissioner that the employer is no longer subject to the Workers' Compensation Law. Upon concurrence of the Commissioner or the Commissioner's designee that the employer is no longer subject to the Workers' Compensation Law, the abated penalty shall become void.

(c) Any abated penalty shall become due and payable immediately if, within the two (2) year period, the employer:

1. continues to be subject to the Workers' Compensation Law; and

(Rule 0800-02-15-.04, continued)

2. fails to secure payment of compensation for any period of time as required by the Workers' Compensation Law.

***Authority:*** *T.C.A. §§ 50-6-412, 50-6-118, 50-6-233, and 50-6-801.* ***Administrative History:*** *Original rule filed March 11, 2002; effective July 29, 2002.*

**0800-02-15-.05 NOTICE OF HEARING.**

(1) The "Show Cause Order and Notice of Hearing" shall specify:

(a) the time, place, and nature of the hearing;

(b) the right of the parties to be represented by counsel;

(c) the legal authority and jurisdiction under which the hearing is to be held;

(d) all monetary penalties which have been assessed against the employer;

(e) the criminal penalties to which the employer may be subject; and

(f) a short and plain statement of the matters asserted

(2) The "Show Cause Order and Notice of Hearing" shall be sent to the employer by certified mail, return receipt requested, to the employer's last known address, according to department records.

(3) The Department shall schedule the show cause hearing in a timely manner, not to exceed sixty (60) days from the date of the employer's receipt of the first certified letter pursuant to Rule 0800-02-15-.02(2).

***Authority:*** *T.C.A. §§ 50-6-412, 50-6-118, 50-6-233, and 50-6-801.* ***Administrative History:*** *Original rule filed March 11, 2002; effective July 29, 2002.*

**0800-02-15-.06 DISCOVERY.**

(1) Prior to the scheduled date and time of the show cause hearing before the Commissioner or the Commissioner's designee, interested parties of record to such hearing, or their attorneys, may make written application for, and shall then be supplied with, information from the records of the Department of Labor and Workforce Development which is not privileged and which is directly related to the issues therein contested at such hearing, subject to the provisions of the Workers' Compensation Law and the laws of the State of Tennessee.

***Authority:*** *T.C.A. §§ 50-6-412, 50-6-118, 50-6-233, and 50-6-801.* ***Administrative History:*** *Original rule filed March 11, 2002; effective July 29, 2002.*

**0800-02-15-.07 ISSUANCE OF SUBPOENAS.**

(1) The Commissioner or Commissioner's designee may, where necessary, issue subpoenas to compel the production of books, records, papers, documents or other tangible things which may be relevant to or reasonably calculated to lead to the discovery of relevant information necessary to determine:

(a) whether an employer is subject to the Workers' Compensation Law;

(b) whether an employer has secured payment of compensation pursuant to the Workers' Compensation Law; or

(Rule 0800-02-15-.07, continued)

(c) the amount of any monetary penalty which is required to be assessed against an employer for failure to secure payment of compensation pursuant to the Workers' Compensation Law.

(2) Such subpoenas may be served in person or by certified mail, return receipt requested, or in any manner prescribed by law for the service of subpoenas in a civil action.

(3) In case of non-compliance with any subpoena issued and served under this section, the Commissioner or Commissioner's designee may apply to the Chancery Court of Davidson County, Tennessee, for an order to compel compliance with the subpoena and to request any appropriate sanctions deemed reasonable by the Court.

***Authority:*** *T.C.A. §§ 50-6-412, 50-6-118, 50-6-233, and 50-6-801.* ***Administrative History:*** *Original rule filed March 11, 2002; effective July 29, 2002.*

**0800-02-15-.08 CONTINUANCES.**

(1) Continuances of show cause hearings shall be strongly discouraged by the Commissioner or Commissioner's designee.

(2) All requests for continuances shall be made in writing as soon as reasonably and practicably possible prior to the scheduled date of the show cause hearing. Such requests may be granted at the discretion of the Commissioner or Commissioner's designee. In addition, the Commissioner or Commissioner's designee may grant a continuance during the course of a hearing in order to secure all of the evidence which the Commissioner or Commissioner's designee deems necessary for a fair hearing to all parties of interest or at any time for other good cause shown.

***Authority:*** *T.C.A. §§ 50-6-412, 50-6-118, 50-6-233, and 50-6-801.* ***Administrative History:*** *Original rule filed March 11, 2002; effective July 29, 2002.*

**0800-02-15-.09 EFFECT OF EMPLOYER'S FAILURE TO APPEAR AT HEARING.**

(1) Failure of an employer to appear at a scheduled show cause hearing before the Commissioner or Commissioner's designee after due notice thereof may result in a decision being automatically rendered against such employer.

(2) If a party fails or refuses to appear at the time a hearing is scheduled after due notice thereof, or within fifteen (15) minutes thereafter, the Commissioner or Commissioner's designee shall proceed with the show cause hearing.

(3) In such cases as described in subparagraph (2), the Commissioner or Commissioner's designee shall render a decision on the basis of whatever evidence is properly before the Commissioner or Commissioner's designee.

***Authority:*** *T.C.A. §§ 50-6-412, 50-6-118, 50-6-233, and 50-6-801.* ***Administrative History:*** *Original rule filed March 11, 2002; effective July 29, 2002.*

**0800-02-15-.10 REPRESENTATION AT SHOW CAUSE HEARING.**

(1) Representation at a show cause hearing shall be in accordance with the following:

(a) Any individual receiving due notice to appear at a show cause hearing may appear at the hearing in his or her own behalf or may be represented at the hearing by an

(Rule 0800-02-15-.10, continued)

attorney at law duly licensed and admitted to practice by the highest court of the State of Tennessee.

(b) Any general partnership receiving due notice to appear at a show cause hearing may appear at the hearing by any of its partners with written authority from all other partners or may be represented at the hearing by an attorney at law duly licensed and admitted to practice by the highest court of the State of Tennessee.

(c) Any corporation, limited partnership, limited liability company, or any other business entity not specifically referenced in this rule 0800-02-15-.10 which receives due notice to appear at a show cause hearing shall appear at the hearing by an attorney at law duly licensed and admitted to practice by the highest court of the State of Tennessee.

(2) The Commissioner or Commissioner's designee, in his/her discretion, may refuse to allow any attorney or any other person to continue in the representation or assistance of another in any proceeding before the Commissioner or Commissioner's designee if the Commissioner or Commissioner's designee finds said attorney or other person guilty of disorderly, disruptive, or unethical conduct during the course of a show cause hearing.

(a) Any attorney seeking to appear for or to represent a party to any proceeding before the Commissioner or Commissioner's designee or any other person seeking to assist in the appearance of a party to such a proceeding shall cause to be filed, not later than the date of the hearing, a written notice of appearance. Such written notice of appearance should specify sufficient information necessary to identify the particular proceeding involved and which must include, at least:

1. the name and address of the employer; and

2. the name and address of the attorney or other person filing the notice of appearance.

(3) All notices of appearance shall be delivered to the Commissioner or Commissioner's designee or mailed to:

Tennessee Department of Labor and Workforce Development
Division of Workers' Compensation
Uninsured Employers Fund
220 French Landing Drive
Nashville, TN 37243-1002

(4) Any notice of appearance received by the Commissioner or Commissioner's designee shall be deemed as having been filed for the purpose of any further proceeding in the same matter before the Commissioner or Commissioner's designee.

(a) After the expiration of three (3) days from the date of receipt of a notice of appearance, any notice of hearing or decision subsequently mailed to a party by the Commissioner or Commissioner's designee shall also be mailed to the attorney or other person who has on file a properly executed notice of appearance.

(5) Any requests for copies of other documents in any pending matter before the Commissioner or Commissioner's designee shall be subject to a reasonable copy fee.

***Authority:*** *T.C.A. §§ 50-6-118, 50-6-233, 50-6-412, and 50-6-801.* ***Administrative History:*** *Original rule filed March 11, 2002; effective July 29, 2002. Amendment filed September 13, 2002; effective January 28, 2003. Amendment filed March 25, 2013; effective June 23, 2013*

**0800-02-15-.11 PRE-HEARING MATTERS.**

(1) The names and addresses of all witnesses who may be called at a show cause hearing and a list of all proposed exhibits shall be both filed with the Commissioner or Commissioner's designee and served on opposing counsel at least seven (7) days, excluding Saturdays, Sundays, and holidays, prior to the date of the show cause hearing.

(2) Copies of affidavits which may be used at a show cause hearing shall be furnished to opposing party or its counsel at least ten (10) days, excluding Saturdays, Sundays, and holidays, prior to the date of the show cause hearing.

(3) Copies of all exhibits which are proposed to be offered shall be made available for viewing by opposing party or its counsel upon request made no less than five (5) days, excluding Saturdays, Sundays, and holidays, prior to the date of the show cause hearing.

(4) Either the employer/employer's attorney or the fund/fund's attorney may request a pre-hearing conference by telephone or in person with the Commissioner or Commissioner's designee. A request for a pre-hearing conference shall be made at least fifteen (15) days, excluding Saturdays, Sundays, and holidays, prior to the date of the show cause hearing. The Commissioner or Commissioner's designee may, in his/her discretion, grant or decline to grant a request for a pre-hearing conference, limit or expand the matters to be discussed at a pre-hearing conference, or otherwise discuss how to facilitate the orderly process of the show cause hearing. The party requesting the conference shall be responsible for arranging the conference and coordinating the conference with opposing party or its counsel. All discussions with the Commissioner or Commissioner's designee at the pre-hearing conference shall include both the employer/employer's attorney and the fund/fund's attorney. The Commissioner or Commissioner's designee may, on his/her own initiative, schedule a pre-hearing conference by telephone or in person with the employer/employer's attorney and the fund/fund's attorney.

***Authority:*** *T.C.A. §§ 50-6-412, 50-6-118, 50-6-233, and 50-6-801.* ***Administrative History:*** *Original rule filed March 11, 2002; effective July 29, 2002.*

**0800-02-15-.12 ORDER OF PROCEEDINGS OF SHOW CAUSE HEARINGS.**

(1) In show cause hearings before the Commissioner or Commissioner's designee, the order of proceedings is as follows:

(a) The Commissioner or Commissioner's designee may confer with the parties prior to a show cause hearing to explain the order of proceedings, admissibility of evidence, number and order of witnesses and other preliminary matters.

(b) The Commissioner or Commissioner's designee calls the show cause hearing to order and turns on the mechanical recording device. Instead of using a mechanical recording device, the parties may employ the services of a court reporter to transcribe the proceedings.

(2) The Commissioner or Commissioner's designee introduces self and gives a very brief statement of the nature of the proceedings. This statement includes a statement that the hearing will be fair and impartial and that the Commissioner or Commissioner's designee will be the sole determiner of the facts.

(3) The Commissioner or Commissioner's designee then calls, respectively, on the staff attorney representing the fund and on the employer or the employer's attorney. If the employer is represented by counsel, the counsel is introduced and the counsel's presence noted for the

(Rule 0800-02-15-.12, continued)

~~record. Witnesses for the fund and for the employer are introduced and their presence noted at this time.~~

~~(4) The Commissioner or Commissioner's designee identifies the issues as set out in the notice of hearing and gives references to the sections of the Workers' Compensation Law involved.~~

~~(5) If either the staff attorney representing the fund or the employer notes exceptions to the issues as outlined by the Commissioner or Commissioner's designee, appropriate time is allowed for discussion, and necessary changes may be made to the satisfaction of the parties.~~

~~(6) The Commissioner or Commissioner's designee swears all parties and witnesses that are to be called upon to testify at the hearing; however, a solemn affirmation may be accepted in lieu of oath.~~

~~(7) Upon request by either the fund or the employer, all witnesses who are not to testify immediately are excluded from the hearing room so that no witness may hear the other testimony. Sequestration shall be effective before opening statements if requested. No person shall disclose by any means to excluded witnesses any live hearing testimony or exhibits created in the hearing room by a witness. This rule does not authorize exclusion of the following:~~

~~(a) a party who is a natural person;~~

~~(b) an officer or employee of a party which is not a natural person designated as its representative by its attorney; or~~

~~(c) a person whose presence is shown by a party to be essential to the presentation of the party's cause.~~

~~(8) Any preliminary motions or stipulations are entertained. By agreement, the parties to the show cause hearing may stipulate the facts involved in writing. The Commissioner or Commissioner's designee may then:~~

~~(a) limit the parties to oral argument;~~

~~(b) limit the parties to the filing of written argument within ten (10) days; or~~

~~(c) in the discretion of the Commissioner or Commissioner's designee, may proceed with the show cause hearing and take such further evidence as the Commissioner or Commissioner's designee deems necessary to fully enable the Commissioner or Commissioner's designee to determine the issues.~~

~~(9) Opening statements are allowed by both the employer and the fund respectively.~~

~~(10) Employer calls the employer's witnesses and the questioning proceeds as follows:~~

~~(a) Employer questions.~~

~~(b) Fund cross-examines.~~

~~(c) The Commissioner or Commissioner's designee questions.~~

~~(11) The fund calls the fund's witnesses and the questioning proceeds as follows:~~

~~(a) Fund questions.~~

(Rule 0800-02-15-.12, continued)

(b) Employer cross-examines.

(c) The Commissioner or Commissioner's designee questions.

(12) The employer and the fund may call appropriate rebuttal and rejoinder witnesses after sufficient showing of the need therefor to the Commissioner or Commissioner's designee.

(13) Closing arguments are allowed by both the employer and the fund respectively.

(14) If at any time during the show cause hearing, a party fails or refuses to comply with any lawful order of the Commissioner or Commissioner's designee necessary to maintain the orderly conduct of such hearing, the Commissioner or Commissioner's designee may conclude the hearing. In such cases, the Commissioner or Commissioner's designee shall render a decision on the basis of whatever evidence is properly before the Commissioner or Commissioner's designee.

(15) The Commissioner or Commissioner's designee advises all parties of the procedures used in reaching a decision. The Commissioner or Commissioner's designee further advises that copies of such decision shall be mailed to all interested parties.

(16) Subparagraphs (1) through (15) of this rule are intended to be merely a general outline as to the conduct of a show cause hearing before the Commissioner or Commissioner's designee. A departure from the literal form or substance of this outline, in order to expedite or insure the fairness of proceedings, would not be in violation of this rule.

*Authority: T.C.A. §§50-6-412, 50-6-118, 50-6-233, and 50-6-801. Administrative History: Original rule filed March 11, 2002; effective July 29, 2002.*

**0800-02-15-.13 SCOPE OF EXAMINATION AND RULES OF EVIDENCE.**

(1) In any show cause hearing before the Commissioner or Commissioner's designee, witnesses may be examined regarding any matter, not privileged, which is relevant and material to the issues to be determined at such hearing. The rules of evidence applicable at such hearing shall be as provided for in T.C.A. Section 4-5-313.

(2) The Commissioner or Commissioner's designee may rule on and decide any question concerning the admissibility of evidence or procedural questions of law.

(a) It shall not be ground for objection that testimony will be inadmissible at the show cause hearing if, in the discretion of the Commissioner or Commissioner's designee, the testimony sought appears reasonably calculated to lead to the discovery of admissible evidence.

(3) If an objection to proffered evidence is sustained by the Commissioner or Commissioner's designee, the examining party or attorney may make a specific offer of what the examining party or attorney expects to prove by that evidence.

*Authority: T.C.A. §§ 50-6-412, 50-6-118, 50-6-233, and 50-6-801. Administrative History: Original rule filed March 11, 2002; effective July 29, 2002.*

**0800-02-15-.14 BURDEN OF PROOF.**

(1) The burden of proof at a show cause hearing shall be on the employer to produce documentary evidence that the employer is not subject to the Workers' Compensation Law or

(Rule 0800-02-15-.14, continued)

that the employer was in compliance with the Workers' Compensation Law at all relevant times.

***Authority:*** *T.C.A. §§ 50-6-412, 50-6-118, 50-6-233, and 50-6-801.* ***Administrative History:*** *Original rule filed March 11, 2002; effective July 29, 2002.*

**0800-02-15-.15 DETERMINATIONS PURSUANT TO SHOW CAUSE HEARING.**

(1) If the Commissioner or Commissioner's designee determines pursuant to a show cause hearing that the employer is not subject to the Workers' Compensation Law and has not been subject to the Workers' Compensation Law at any relevant times, then the Commissioner or Commissioner's designee shall determine that all monetary penalties assessed against the employer shall be void.

(2) If the Commissioner or Commissioner's designee determines pursuant to a show cause hearing that the employer had secured payment of compensation at all relevant times prior to the date of receipt of the first certified letter and has continued to secure payment of compensation at all relevant times as required by the Workers' Compensation Law, then the Commissioner or Commissioner's designee shall determine that all monetary penalties assessed against the employer shall be void.

(3) If the Commissioner or Commissioner's designee determines pursuant to a show cause hearing that the employer had secured payment of compensation as required by the Workers' Compensation Law after the date of receipt of the first certified letter but before the date of the show cause hearing, then the Commissioner or Commissioner's designee shall order:

(a) that the first monetary penalty assessed against the employer equal to one and one-half times the employer's average yearly workers' compensation insurance premium, or a prorated amount subject to the provisions of Rule 0800-02-15-.04(2) and (3), shall be due; and

(b) that the second monetary penalty assessed against the employer equal to the employer's average yearly workers' compensation insurance premium, or a prorated amount subject to the provisions of Rule 0800-02-15-.04(2) and (3), shall be held in abeyance.

(4) If the Commissioner or Commissioner's designee determines pursuant to a show cause hearing that the employer has secured payment of compensation as required by the Workers' Compensation Law but failed at any relevant time to secure payment of compensation as required by the Workers' Compensation Law, then the Commissioner or Commissioner's designee shall order:

(a) that the first monetary penalty assessed against the employer equal to one and one-half times the employer's average yearly workers' compensation insurance premium, or a prorated amount subject to the provisions of Rule 0800-02-15-.04(2) and (3), shall be due; and

(b) that the second monetary penalty assessed against the employer equal to the employer's average yearly workers' compensation insurance premium, or a prorated amount subject to the provisions of Rule 0800-02-15-.04(2) and (3), shall be held in abeyance.

(5) If the Commissioner or Commissioner's designee determines pursuant to a show cause hearing that the employer continues to fail to secure payment of compensation as required by the Workers' Compensation Law, then:

(Rule 0800-02-15-.15, continued)

(a) the Commissioner or Commissioner's designee shall issue an order against the employer ordering the employer:

1. to procure workers' compensation insurance coverage; and

2. to provide to the Department proof of coverage, with supporting documentation, within five (5) days, excluding Saturdays, Sundays, and holidays, from the date of issuance of the order.

(b) If the employer obtains workers' compensation insurance coverage and provides the Department with proof of coverage as ordered by the Commissioner or Commissioner's designee, then:

1. the first monetary penalty assessed against the employer equal to one and one-half times the employer's average yearly workers' compensation premium, or a prorated amount subject to the provisions of Rule 0800-02-15-.04(2) and (3), shall be due; and

2. the second monetary penalty assessed against the employer equal to the employer's average yearly workers' compensation premium, or a prorated amount subject to the provisions of Rule 0800-02-15-.04(2) and (3), shall be held in abeyance.

(c) If the employer fails to obtain workers' compensation insurance coverage as ordered by the Commissioner or Commissioner's designee within the required time period, then all monetary penalties, totaling two and one-half times the average yearly workers' compensation premium, or a prorated amount subject to the provisions of Rule 0800-02-15-.04(2) and (3), shall be immediately due and payable.

***Authority:*** *T.C.A. §§ 50-6-412, 50-6-118, 50-6-233, and 50-6-801.* ***Administrative History:*** *Original rule filed March 11, 2002; effective July 29, 2002.*

**0800-02-15-.16 COLLECTION OF PENALTIES.**

(1) To collect from employers any unpaid monetary penalties which are due and have been ordered by the Commissioner or Commissioner's designee pursuant to a final order, the Commissioner or Commissioner's designee may seek monetary judgments in the Chancery Court of Davidson County, Tennessee.

(2) To collect from employers any unpaid monetary penalties which are due and have been ordered pursuant to a final monetary judgment of the Chancery Court of Davidson County, Tennessee, the Commissioner or Commissioner's designee may:

(a) refer cases to the Attorney General; or

(b) utilize the services of a collection agency.

***Authority:*** *T.C.A. §§ 50-6-412, 50-6-118, 50-6-233, and 50-6-801.* ***Administrative History:*** *Original rule filed March 11, 2002; effective July 29, 2002.*

**0800-02-15-.17 INJUNCTIONS.**

(1) The Commissioner or Commissioner's designee may seek an injunction in the Chancery Court of Davidson County, Tennessee to prohibit an employer from operating its business in

(Rule 0800-02-15-.17, continued)

any way until the employer has complied with an order by the Commissioner or Commissioner's designee to obtain workers' compensation insurance coverage.

(2) In the event an employer shall fail to comply with the requirements of the Workers' Compensation Law by failing to secure payment of compensation on a second or subsequent occasion, the Commissioner or Commissioner's designee may seek an injunction in the Chancery Court of Davidson County, Tennessee to prohibit the employer from operating its business in any way until the employer provides proof, with accompanying documentation, that it has complied with the Workers' Compensation Law by securing payment of compensation.

***Authority:*** *T.C.A. §§ 50-6-412, 50-6-118, 50-6-233, and 50-6-801.* ***Administrative History:*** *Original rule filed March 11, 2002; effective July 29, 2002.*

**0800-02-15-.18 APPEAL.**

(1) The employer shall have the right to appeal, pursuant to the Tennessee Administrative Procedures Act, any decision made by or order issued by the Commissioner or Commissioner's designee.

***Authority:*** *T.C.A. §§ 50-6-412, 50-6-118, 50-6-233, and 50-6-801.* ***Administrative History:*** *Original rule filed March 11, 2002; effective July 29, 2002.*

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

| Board Member | Aye | No | Abstain | Absent | Signature (if required) |
|---|---|---|---|---|---|
| | | | | | |

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the Bureau of Workers' Compensation (board/commission/ other authority) on 1/25/17 (mm/dd/yyyy), 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: 10/21/16

Rulemaking Hearing(s) Conducted on: (add more dates). 12/16/16

Date: 1/25/17

Signature: Abbie Hudgens

Name of Officer: Abbie Hudgens

Title of Officer: Administrator

SHARA HAMLETT STATE OF TENNESSEE NOTARY PUBLIC WILLIAMSON COUNTY

Subscribed and sworn to before me on: January 25, 2017

Notary Public Signature: Shara Hamlett

My commission expires on: 2/19/20

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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

Herbert H. Slatery III
Attorney General and Reporter

3/27/2017

Date

**Department of State Use Only**

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Filed with the Department of State on: 3/29/17

Effective on: 6/27/17

Tre Hargett

Tre Hargett
Secretary of State

## G.O.C. STAFF RULE ABSTRACT

| | |
|---|---|
| DEPARTMENT: | Health |
| DIVISION: | Applied Behavior Analyst Licensing Committee |
| SUBJECT: | General Rules Governing Practice |
| STATUTORY AUTHORITY: | Tennessee Code Annotated, Section 63-11-301, et seq. |
| EFFECTIVE DATES: | June 21, 2017 through June 30, 2018 |
| FISCAL IMPACT: | Minimal |
| STAFF RULE ABSTRACT: | These rules are the initial rules for the Applied Behavior Analyst Licensing Committee.<br><br>NOTE: This rule includes all new language that was not underlined in the redline copy. |

**Public Hearing Comments**

One copy of a document containing responses to comments made at the public hearing must accompany the filing pursuant to T.C.A. § 4-5-222. Agencies shall include only their responses to public hearing comments, which can be summarized. No letters of inquiry from parties questioning the rule will be accepted. When no comments are received at the public hearing, the agency need only draft a memorandum stating such and include it with the Rulemaking Hearing Rule filing. Minutes of the meeting will not be accepted. Transcripts are not acceptable.

Applied Behavior Analyst Rulemaking Hearing Comments

1. Terri Flynn- Tennessee Association of Audiologists and Speech Language Pathologists (TAASLP):
   Rule 1180-02-.02 should be amended by expressly excluding activities which constitute the practice of speech language pathology as defined in T.C.A. §63-17-103(5). Although speech language pathologists and behavior analysts often provide care to the same clients, their education, training, and scope of practice is different. The suggested amendment will help preserve the distinction.

2. Yvette Hatchel, Legislative Chair- Tennessee Occupational Therapy Association (TOTA):
   Rule 1180-02-.02 should be amended by expressly excluding activities which constitute the practice of occupational therapy as defined in T.C.A. §63-13-103(9)(A). Although occupational therapists and behavior analysts often provide care to the same clients, their education, training, and scope of practice is different. The suggested amendment will help preserve the distinction.

3. John Williams, Esq. -Represents the TAASLP and TOTA:
   The Committee should use language to make it clear that the behavior analyst's scope of practice does not include occupational therapy or speech language pathology.

Committee Responses to Ms. Flynn, Ms. Hatchel, and Mr. Williams

Tammy Davis, Committee Member:

I appreciate the importance to distinguish between the professions and the techniques and services that they provide. Maybe we can include a statement when referrals would be appropriate. The heart of the concern is to ensure that the professions are conferring. To explicitly name everything that a behavior analyst cannot do can become lengthy and counterproductive. Making referrals when appropriate is ethically sound.

Dr. Annette Little, Committee Chair:

The Behavior Analyst Certification Board's (B.A.C.B.) Ethical Code specifies that behavior analysts should make referrals and engage in collaborative practices, and the statute requires behavior analysts to abide by the B.A.C.B.'s Ethical Code.

Dr. Melissa Switzer, Committee Member:

Further narrowing the scope of practice to completely exclude the use of augmentative communication and teaching self-care in all circumstances would not be appropriate.

Michael Tonos, Committee Member:

Our goal is to protect the most vulnerable Tennesseans. Any harm that is taking place in any profession should be brought to the attention of the appropriate licensing Board or Committee. The B.A.C.B.'s Ethical Code specifically lists the things that a behavior analyst should be doing, and the committee has adopted those ethical standards as the standards that will govern

practitioners here in Tennessee. These ethical standards provide a clearer line of demarcation between the roles of a behavior analyst and other professionals.

The Committee voted not to include the proposed language from TAASLP or TOTA. Therefore, the scope of practice will remain as written.

4. Allison Crawford – Tennessee Association for Behavior Analysis

In Rule 1180-05-.10(1)(b) and 1180-05-.10(2)(a), "behavioral" should be changed to "behavior."

What is the procedure to file a complaint?

Paetria Morgan, the Committee's attorney, responded.

The Committee voted to adopt the proposed changes.

5. Beth Urbanczyk- Private BACB

When working on the legislation, we pulled the scope of practice specifically from our national association. I am also a speech language pathologist with a retired license. This Committee does not need to navigate through the issues between these professions, but there is some work that needs to be done between associations and professions.

6. Shiloh Beene- Board Certified Behavior Analyst

Is the cultural diversity requirement per cycle? Also, BCABA should be changed to BCaBA.

Committee Response

Dr. Little:

Yes, it is per renewal cycle.

7(a). Dr. Frank Edwards –Tennessee Psychological Association (TPA) Liaison to the Board of Examiners in Psychology

T.C.A. §63-11-301

The rules should explicitly state that Committee actions must be approved by the Board of Examiners in Psychology prior to implementation.

T.C.A. §63-11-302

The statutory language in section 9(A) is broad, and there are other practitioners that utilize these behavioral principles. The statutory language in section 9(B) does properly articulate the basis for intervention; however, other practitioners also utilize these behavioral principles. Additionally, TPA recommended that an enabling clause permitting Health Service Provider Psychologists and Senior Psychological Examiners to both employ and supervise licensed behavior analyst assistants be added to T.C.A. §63-11-302, T.C.A. §63-11-308, or the in the rules and regulations governing the practice of Psychologists and Senior Psychological Examiners.

T.C.A. §63-11-303(h)

The term "administrative matters" should be defined.

T.C.A. §63-11-304(2)

Since the Committee falls under the Board of Examiners in Psychology, the American Psychological Association's (APA) Code of Ethics should be added to this statute.

T.C.A. §63-11-305

There are no recommendations.

T.C.A. §63-11-306

The language in section one (1) lacks specificity. To add clarity, the Committee rules should use language from the Licensed Alcohol and Drug Counselors regulations.

T.C.A. §63-11-307

Behavior analysts should adhere to the same continuing education requirements as other psychology practitioners: forty continuing education credits every two year cycle; three hours of diversity training; three hours on ethics and the latest rules and regulations of the Board of Examiners in Psychology; and the Type I, II, and III opportunities. The TPA suggests that this statutory section be amended to include this section.

T.C.A. §63-11-308

Health Service Provider Psychologists and Senior Psychological Examiners should be permitted to both employ and supervise licensed behavior analyst assistants.

T.C.A. §63-11-309

The Committee rules should include a clause that all sanctions approved by the Committee must also be approved by the Board of Examiners in Psychology.

T.C.A. §63-11-310

Section (a) should include adherence to the APA's Ethical Code.

T.C.A. §63-11-311

There are no recommendations.

Paetria Morgan- Committee's attorney

The Committee cannot make changes to the statute.

Tyler Overstreet – TPA Member

The clarifications that the TPA would like for the Committee to entertain are listed under the statutory headings.

Committee Response

Dr. Little

In response to the recommendation that the rules should explicitly state that Committee actions must be approved by the Board of Examiners in Psychology prior to implementation, Dr. Little asked the Committee's attorney if the Applied Behavior Analyst statute included language that the actions of the Committee must be approved by the Board of Examiners in Psychology. The Committee's attorney answered in the affirmative. Dr. Little asks Dr. Edwards if he would like to take some time to separate TPA's suggestions for statutory amendments from TPA's suggestions for rule amendments.

7(b). Dr. Edwards

The TPA is happy to have the behavior analyst practitioners. We just want to make sure things are explicit as opposed to being implicit. One of the things that we would ask you to specifically

consider is the continuing education requirements. It would be easier if everyone had the same requirements. Additionally, we would like the behavior analysts to adhere to the American Psychological Association's (APA) Code of Ethics as well as the code of ethics from their national certifying body. Also, three hours of cultural diversity should be required.

Committee Response

Dr. Little

Based on a compare and contrast analysis of the two ethical codes, the codes are very similar. Therefore, it would be redundant to require behavior analysts to adhere to both ethical codes. We are mandated to meet the requirements of the B.A.C.B.'s Ethical Code, so it makes since to solely adhere to that code. The Committee voted not to add adherence to the APA's code of ethics to behavior analyst rules.

During this hearing, the Committee voted to change the required cultural diversity hours from one to three.

Mr. Tonos

When speaking of the supervision requirement for the licensed assistant behavior analysts, there are two distinct supervision contexts. First, there is an administrative supervisor that stems directly from a company. Second, there is a clinical supervisor that is required to maintain certification and licensure. In order to maintain certification and licensure, licensed assistant behavior analysts must be supervised by a Board Certified Behavior Analyst or a Board Certified Behavior Analyst-Doctoral. Anyone can supervise a licensed assistant behavior analyst; however, the licensed assistant behavior analyst must also have a clinical supervisor.

**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 extent to which the rule or rules may overlap, duplicate, or conflict with other federal, state, and local governmental rules.**

These rules do not overlap, duplicate, or conflict with other federal, state, and local government rules.

**(2) Clarity, conciseness, and lack of ambiguity in the rule or rules.**

These rules establish clarity, conciseness, and lack ambiguity.

**(3) The establishment of flexible compliance and/or reporting requirements for small businesses.**

These rules do not contain compliance or reporting requirements for small businesses.

**(4) The establishment of friendly schedules or deadlines for compliance and/or reporting requirements for small businesses.**

These rules do not contain compliance or reporting requirements for small businesses.

**(5) The consolidation or simplification of compliance or reporting requirements for small businesses.**

These rules do not contain compliance or reporting requirements for small businesses.

**(6) The establishment of performance standards for small businesses as opposed to design or operational standards required in the proposed rule.**

These rules do not establish performance, design or operational standards for small businesses.

**(7) The unnecessary creation of entry barriers or other effects that stifle entrepreneurial activity, curb innovation, or increase costs.**

These rules do not create unnecessary barriers or other effects that stifle entrepreneurial activity, curb innovation, or increase costs.

STATEMENT OF ECONOMIC IMPACT TO SMALL BUSINESSES

**Name of Board, Committee or Council:** Applied Behavior Analyst Licensing Committee

**Rulemaking hearing date:** 01/25/2016

1. **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, and/or directly benefit from the proposed rule:**

   These rules will affect all individuals who practice applied behavior analysis in Tennessee. These rules will benefit small businesses that provide behavior analysis services.

2. **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 administrative costs required for small businesses to comply with these rules should be minimal.

3. **Statement of the probable effect on impacted small businesses and consumers:**

   These rules should not have any significant impact on small businesses.

4. **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:**

   These rules are required by law (2014 Public Chapter 918).

5. **Comparison of the proposed rule with any federal or state counterparts:**

   **Federal:** N/A

   **State:** The Committee's proposed rules are similar to the regulation of applied behavior analysts in other states. The Tennessee General Assembly, by creating the Applied Behavior Analyst Licensing Committee, has found that the practice of behavior analysis in Tennessee affects the public health, safety, and welfare of citizens in Tennessee.

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.**

   There are no exemptions for small businesses included in these rules.

**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)

The proposed rules should not have a financial 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;

These rules are the initial rules for the Applied Behavior Analyst Licensing Committee.

**(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. 63-11-301, et seq., established the Applied Behavior Analyst Licensing Committee and required the committee to license and to regulate the practice of applied behavior analysis 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;

These rules will affect individuals who practice applied behavior analysis in Tennessee.

**(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.

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

These rules should not result in any increase or decrease in state or local government revenues or expenditures.

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

Paetria Morgan, Assistant General Counsel, Office of General Counsel, Department of Health.

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

Paetria Morgan, Assistant General Counsel, Office of General Counsel, Department of Health.

**(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, 665 Mainstream Drive, Nashville, Tennessee 37243, (615) 741-1611, Paetria.Morgan@tn.gov.

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

None.

**Department of State**
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**For Department of State Use Only**

Sequence Number: 03-25-17
Rule ID(s): 6472
File Date: 3/23/17
Effective Date: 6/21/17

# 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:** | Applied Behavior Analyst Licensing Committee |
| **Division:** | Department of Health |
| **Contact Person:** | Paetria Morgan |
| **Address:** | 665 Mainstream Drive, Nashville, TN |
| **Zip:** | 37243 |
| **Phone:** | (615)741-1611 |
| **Email:** | Paetria.Morgan@tn.gov |

**Revision Type (check all that apply):**

___ Amendment
X 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** |
|---|---|
| 1180-05 | General Rules Governing the Practice of Licensed Behavior Analysts and Licensed Assistant Behavior Analysts |
| **Rule Number** | **Rule Title** |
| 1180-05-.01 | Definitions |
| 1180-05-.02 | Scope of Practice |
| 1180-05-.03 | Necessity of Licensure |
| 1180-05-.04 | Qualifications of Licensure |
| 1180-05-.05 | Procedures for Licensure |
| 1180-05-.06 | Fees |
| 1180-05-.07 | Application Review, Approval, Denial and Interviews |
| 1180-05-.08 | Renewal of License |
| 1180-05-.09 | Retirement and Reactivation |
| 1180-05-.10 | Client Records |
| 1180-05-.11 | Mandatory Release of Client Records |
| 1180-05-.12 | Continuing Education |
| 1180-05-.13 | Professional Ethics |
| 1180-05-.14 | Actions, Civil Penalties and Settlements |
| 1180-05-.15 | Display and Replacement of License |

| | |
|---|---|
| 1180-05-.16 | Change of Address and/or Name |
| 1180-05-.17 | Committee Meetings, Officers, Consultants, Records, Declaratory Orders, and Screening Panels |
| 1180-05-.18 | Advertising and Other Public Statements |

(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 http://sos.tn.gov/sites/default/files/forms/Rulemaking_Guidelines_August2014.pdf)

Chapter 1180-05-.01
General Rules Governing the Practice of Licensed Behavior Analysts and Licensed Assistant Behavior Analysts

New Chapter

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1180-05-.02 Scope of Practice
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1180-05-.16 Change of Address and/or Name
1180-05-.17 Committee Meetings, Officers, Consultants, Records, Declaratory Orders, and Screening Panels
1180-05-.18 Advertising and Other Public Statements


1180-05-.01 Definitions. As used in these rules, the following terms and acronyms shall have the following meaning ascribed to them:

(1) Advertising - Informational communication to the public in any manner to attract public attention to the practice of Behavior Analysts. Such communication includes, but is not limited to, business solicitation, with or without limiting qualifications, in a card, sign or device issued to a person; in a sign or marking in or on any building; or, in any newspaper, magazine, directory or other printed matter. Advertising also includes business solicitations communicated by individuals or radio, video or television broadcasting, or other means designed to secure public attention.

(2) Applicant - Any individual seeking licensure by the Committee who has submitted an official application and paid the application fee.

(3) Applied Behavior Analysis - The design, implementation, and evaluation of environmental modifications by a behavior analyst to produce socially significant improvements in human behavior. It includes the empirical identification of functional relations between behavior and environmental factors, known as functional assessment and analysis.

(4) B.A.C.B - Behavior Analyst Certification Board.

(5) BCaBA - Board Certified Assistant Behavior Analyst.

(6) BCBA - Board Certified Behavior Analyst.

(7) BCBA-D - Board Certified Behavior Analyst-Doctoral.

(8) Board - Tennessee Board of Examiners in Psychology.

(9) Certifying entity - Nationally accredited behavior analyst certification board or its successor.

(10) Commissioner - The Commissioner of the Department of Health or his/her designee.

(11) Committee - The Applied Behavior Analyst Licensing Committee.

(12) Committee Administrative Office - The office of the administrator assigned to the Committee located at 665 Mainstream Drive, Nashville, TN 37243.

(13) Committee Designee/Consultant - Any person who has received a delegation of authority from the Committee to perform Committee functions subject to review and ratification by the Committee and Board where provided by these rules.

(14) Department - Tennessee Department of Health.

(15) Division - Division of Health Related Boards, Tennessee Department of Health, from which the Committee receives administrative support.

(16) Fee - Money, gifts, services or anything of value offered or received as compensation in return for rendering services; this also includes the required application fees.

(17) Good Moral Character - The quality of being well regarded in professional ethics.

(18) Health Related Boards ("HRB") - The Division of Health Related Boards, Tennessee Department of Health, from which the Board receives administrative support.

(19) He/she, him/her - When "he" appears in the text of these rules, the word represents both the feminine and masculine genders.

(20) LBA and LABA - Licensed Behavior Analyst and Licensed Assistant Behavior Analyst.

(21) License - The document issued by the Committee to an applicant who has successfully completed the licensure process.

(22) Licensee - Any person, who holds a current, lawfully issued license to practice as a Licensed Assistant Behavior Analyst or Licensed Behavior Analyst.

(23) Retirement - Voluntary deactivation of the Committee-issued license.

1180-05-.02 Scope of Practice.

(1) A person who holds a license in accordance with T.C.A. § 63-11-305 may provide applied behavior analysis as defined in T.C.A. § 63-11-302(9).

(2) The practice of applied behavior analysis expressly excludes psychological testing, neuropsychology, psychotherapy, cognitive therapy, sex therapy, psychoanalysis, hypnotherapy and long-term counseling as treatment modalities.

(3) Nothing in this chapter shall be construed as permitting an individual licensed as a Behavior Analyst or Assistant Behavior Analyst to administer, dispense, or prescribe drugs or in any manner engage in the practice of medicine as defined by Tennessee law.

Authority: T.C.A §§ 4-5-202, 4-5-204, 63-11-303, 63-11-304, 63-11-305, 63-11-307, 63-11-311, 63-11-212, and Public Acts of 2001, Chapter 123.

1180-05-.03 Necessity of Licensure.

(1) Prior to the engagement of the practice as a licensed behavior analyst or licensed assistant behavior analyst in Tennessee, a person must hold a current Tennessee license unless exempted from licensure pursuant to T.C.A. § 63-11-306.

(2) It is unlawful for any person who is not licensed in the manner prescribed in T.C.A. §§ 63-11-301, *et seq.* to represent himself as a licensed behavior analyst or licensed assistant behavior analyst or to hold himself out to the public as being licensed by means of using a title on signs, mailboxes, address plates, stationery, announcements, telephone listings, calling cards, or other instruments of professional identification.

(3) Use of Titles - Any person who possesses a valid, unsuspended and unrevoked behavior analyst license issued by the Committee has the right to use the title "Licensed Behavior Analyst" and to practice applied behavior analysis, as defined in T.C.A. § 63-11-302. Any person who possesses a valid, unsuspended and unrevoked assistant behavior analyst license issued by the Committee has the right to use the title "Licensed Assistant Behavior Analyst" as applicable, and to practice applied behavior analysis under supervision, as defined in T.C.A. § 63-11-302.

Authority: T.C.A §§ 4-5-202, 4-5-204, 63-1-145, 63-1-146, 63-11-303, 63-11-304, 63-11-307, 63-11-310, and 63-11-215.

1180-05-.04 Qualifications for Licensure.

(1) Pursuant to T.C.A. § 63-11-304 and T.C.A. § 63-11-307, the Committee and the Board shall license no person as a behavior analyst unless at the time of application:

(a) The applicant is a board certified behavior analyst (BCBA) or a board certified behavior analyst-doctoral (BCBA-D) who is credentialed through the nationally accredited behavior analyst certification entity; and

(b) The applicant is not the subject of any disciplinary actions by the certifying entity at the time of application; or

(c) The applicant is qualified by the department of intellectual and developmental disabilities (DIDD) to provide behavior analysis services prior to July 12, 2012 and the requirements of T.C.A. § 63-11-307(c) are met.

(2) Pursuant to T.C.A. § 63-11-304, the Committee and the Board shall license no person as an assistant behavior analyst unless:

(a) The applicant is a board certified assistant behavior analyst (BCaBA) who is credentialed through the nationally accredited behavior analyst certification entity; and

(b) The applicant is not the subject of any disciplinary actions by the certifying entity at the time of application; and

(c) The applicant provides proof of ongoing supervision by a licensed behavior analyst (LBA) who is certified as a BCBA or BCBA-D under the certifying entity's requirements for supervision; or

(d) The applicant is qualified by the department of intellectual and developmental disabilities (DIDD) to provide behavior analysis services prior to July 12, 2012 and the requirements listed in T.C.A. § 63-11-307(c) are met.

Authority: T.C.A §§ 4-5-202, 4-5-204, 63-11-301, 63-11-304, and 63-11-307.

1180-05-.05 Procedures for Licensure. To become a licensed behavior analyst or licensed assistant behavior analyst in Tennessee, a person must comply with the following procedures and requirements:

(1) Behavior Analyst - Licensure by Criteria

(a) An application packet shall be requested from the Committee's administrative office or downloaded from the Committee's website.

(b) An applicant shall respond truthfully and completely to every question or request for information contained in the application form. The completed application form and all fees required by the

form and these rules shall be submitted to the Committee's administrative office.

(c) An applicant shall submit with the application a passport style photograph taken within the preceding twelve (12) months.

(d) An applicant shall submit a certified copy of his birth certificate which indicates that the applicant is at least twenty-one (21) years of age at the time of application.

(e) An applicant shall request that proof of certification be submitted directly from the certifying entity to the Committee's administrative office. The information received must confirm that the applicant is in good standing and is board certified by the national certifying entity as a BCBA or BCBA-D.

(f) An applicant shall submit evidence of good moral character. Such evidence shall consist of two (2) recent original letters from applied behavior analyst professionals or professionals in a related field attesting to the applicant's personal character and professional ethics on the signatory's letterhead and dated within the preceding twelve (12) months.

(g) An applicant shall disclose the circumstances surrounding any of the following:

1. Conviction of any criminal violation of any country, state or municipality, except minor traffic violations.

2. The denial of licensure application by any other state or the discipline of licensure by any state or any licensing or certifying entity.

3. Revocation or restriction of licensure or certification by any licensing or certifying entity.

4. Any civil suit judgment or civil suit settlement in which the applicant was a party defendant including, without limitation, actions involving malpractice, breach of contract, antitrust activity, or any other civil action remedy recognized under the country's or state's statutory, common or case law.

(h) An applicant shall cause to be submitted to the Committee's administrative office directly from the vendor identified in the Committee's application materials, the result of a criminal background check.

(i) An applicant who holds or has ever held a license or certificate to practice applied behavior analysis in another state, regardless of the type or level of licensure or certification, shall cause to be submitted a verification of license from the authorizing regulatory agency which indicates the applicant holds or held an active license or certificate and whether it is in good standing presently or was at the time it became inactive.

(j) When necessary, all required documents shall be translated into English and the translation and original document certified as to authenticity by the issuing source. Both versions must be submitted to the Committee's administrative office.

(k) An applicant shall submit the application fee as provided in rule 1180-05-.06.

(l) Application review and licensure decisions shall be governed by rule 1180-05-.07.

(m) All documents submitted for qualification of licensure become the property of the State of Tennessee and will not be returned.

(n) All applications shall be sworn to and signed by the applicant and notarized.

(o) All applicants shall certify that they have read and understand T.C.A. §63-11-301 and all subsequent parts as well as the Applied Behavior Analyst Licensing Committee Rules.

(2) Assistant Behavior Analyst - Licensure by Criteria

(a) An application packet shall be requested from the Committee's administrative office or downloaded from the Committee's website.

(b) An applicant shall respond truthfully and completely to every question or request for information contained in the application form. The completed application form and all fees required by the form and these rules shall be submitted to the Committee's administrative office.

(c) An applicant shall submit with the application a passport style photograph taken within the preceding twelve (12) months.

(d) An applicant shall submit a certified copy of his birth certificate which indicates that the applicant is at least twenty-one (21) years of age at the time of application.

(e) An applicant shall request that proof of certification be submitted directly from the certifying entity to the Committee's administrative office. The information received must confirm that the applicant is in good standing and is board certified by the national certifying entity as a BCaBA.

(f) Proof of ongoing supervision by a licensed behavior analyst who is currently certified as a BCBA or BCBA-D.

(g) An applicant shall submit evidence of good moral character. Such evidence shall consist of two (2) recent original letters from applied behavior analyst professionals or professionals in a related field attesting to the applicant's personal character and professional ethics on the signatory's letterhead and dated within the preceding twelve (12) months.

(h) An applicant shall disclose the circumstances surrounding any of the following:

1. Conviction of any criminal violation of any country, state or municipality, except minor traffic violations.

2. The denial of licensure application by any other state or the discipline of licensure by any state or licensing or certifying entity.

3. Revocation or restriction of licensure or certification by any licensing or certifying entity.

4. Any civil suit judgment or civil suit settlement in which the applicant was a party defendant including, without limitation, actions involving malpractice, breach of contract, antitrust activity, or any other civil action remedy recognized under the country's or state's statutory, common or case law.

(i) An applicant shall cause to be submitted to the Committee's administrative office directly from the vendor identified in the Committee's application materials, the result of a criminal background check.

(j) If an applicant holds or has ever held a license or certificate to practice behavior analysis in another state, regardless of the type or level of licensure or certification, the applicant shall cause to be submitted a verification of license from the authorizing regulatory agency which indicates the applicant holds or held an active license or certificate and whether it is in good standing presently or was at the time it became inactive.

(k) When necessary, all required documents shall be translated into English and the translation and original document certified as to authenticity by the issuing source. Both versions must be submitted to the Committee's administrative office.

(l) An applicant shall submit the Application Fee as provided in rule 1180-05-.06.

(m) Application review and licensure decisions shall be governed by rule 1180-05-.07.

(n) All documents submitted for qualification of licensure become the property of the State of Tennessee and will not be returned.

(o) All applications shall be sworn to and signed by the applicant and notarized.

(p) All applicants shall certify that they have read and understand T.C.A. §63-11-301 and all subsequent parts as well as the Applied Behavior Analyst Licensing Committee Rules.

(3) Reciprocity- An applicant must comply with the procedures and requirements set forth in rule 1180-05-.05, with the exception of 1180-05-.05(1)(f) and 1180-05-.05(2)(g).

Authority: T.C.A §§ 63-11-304, 63-11-307, 63-11-308, and 63-11-311.

1180-05-.06 Fees.

| (1) | Fee Schedule: Licensed Behavior Analysts: | | Amount |
|---|---|---|---|
| | (a) | Application | $250.00 |
| | (b) | License | $100.00 |
| | (c) | License Renewal (biennial) | $300.00 |
| | (d) | Late Renewal | $100.00 |
| | (e) | Reinstatement fee | $100.00 |
| | (f) | Replacement License | $ 25.00 |
| | (g) | State Regulatory Fee | $ 10.00 |

| (2) | Fee Schedule: Licensed Assistant Behavior Analysts: | | Amount |
|---|---|---|---|
| | (a) | Application | $150.00 |
| | (b) | License | $100.00 |
| | (c) | License Renewal (biennial) | $200.00 |
| | (d) | Late Renewal | $100.00 |
| | (e) | Reinstatement fee | $100.00 |
| | (f) | Replacement License | $ 25.00 |
| | (g) | State Regulatory Fee | $ 10.00 |

(3) The fees set by the Committee for obtaining and maintaining licensure are defined as follows:

(a) Application Fee - A fee paid by all applicants for licensure including those seeking licensure by reciprocity.

(b) License Fee - A fee to be paid at the time of application prior to the issuance of the initial license.

(c) Biennial License Renewal Fee - A non-refundable fee to be paid biennially by all license holders to maintain the license. This fee also applies to individuals who reactivate a license that has been retired.

(d) Late Renewal Fee - A non-refundable fee to be paid when an individual fails to timely renew a license.

(e) Replacement License or Certificate Fee - A non-refundable fee to be paid when an individual requests a replacement for a lost or destroyed license or certificate.

(f) Reinstatement Fee - A non-refundable fee to be paid by all individuals each time a reinstatement application is filed.

(g) State Regulatory Fee - A fee to be paid by all individuals at the time of application and with all renewal applications.

(4) Fees must be paid by money order or certified, personal, or corporate check and must be submitted to the Committee's administrative office and made payable to the Applied Behavior Analysts Licensing Committee.

(5) A license fee may be refunded upon withdrawal of an application. Requests for refunds must be made in writing to the Committee's administrator and accompanied by a copy of the cancelled check or other documentation of payment. The application fee shall not be refunded.

Authority: T.C.A §§ 4-5-202, 4-5-204, 63-11-301, and 63-11-303.

1180-05-.07 Application Review, Approval, Denial and Interviews.

(1) Review of all submitted applications to determine application file completeness may be delegated to the Committee's designee, provided that approval of all applications is made and ratified by the Committee and the Board.

(2) If an applicant has requested one level of licensure and subsequent to Committee review, wishes to change that application to a different level of licensure, a new application and fee must be submitted. An applicant may not simultaneously have an active application file for two (2) different levels of licensure. If, subsequent to the initial application, an applicant initiates a new application for a different level of licensure, the original application file will be closed.

(3) A temporary authorization to practice, pursuant to T.C.A. § 63-1-142, may be issued to an applicant following an initial determination by a Committee designee that the completed file evidences that the applicant has met all of the requirements for licensure, renewal or reinstatement. The temporary authorization is valid until the Committee and the Board review and make a final decision on the application, and is effective for a period of no more than six months.

(4) If a completed application has been denied and ratified as such by the Board, the action shall become final and the following shall occur:

(a) A notification of the denial shall be sent by the Board's administrative office by certified mail return receipt requested. Specific reasons for denial will be stated, such as incomplete information, unofficial records, examination failure, or other matters judged insufficient for licensure, and such notification shall contain all the specific statutory or rule authorities for the denial.

(b) The notification, when appropriate, shall also contain a statement of the applicant's right to request a contested case hearing under the Tennessee Administrative Procedures Act (T.C.A. §§ 4-5-301, et seq.) to contest the denial and the procedure necessary to accomplish that action.

(c) An applicant has a right to a contested case hearing if the licensure denial was based on subjective or discretionary criteria.

(d) An applicant may be granted a contested case hearing if licensure denial is based on objective, clearly defined criteria. If after review and attempted resolution by the Board's administrative staff, the licensure application cannot be approved and the reasons for continued denial present a genuine issue of fact and/or law which is appropriate for appeal, an appeal may be requested.

Such request must be made in writing to the Board within thirty (30) days of the receipt of the notice of denial.

(5) The Committee or its designee may delay a decision on licensure for any applicant from whom the Committee wishes additional information for the purpose of clarifying information previously submitted. The applicant's response must be made and received at the Committee's administrative office within sixty (60) days from the date of receipt of the notice by the applicant or the application will be closed.

(6) If a license has been issued in error, the Committee will give written notice by certified mail of its intent to revoke the license or certificate. The notice will allow the applicant the opportunity to meet the requirements of licensure within thirty (30) days from the date of receipt of the notification.

(7) Abandonment of application.

(a) An application shall be deemed abandoned and closed if it has not been completed by the applicant within sixty (60) days after it was initially submitted and reviewed or if the applicant does not submit the additional requested information within sixty (60) days from the date of receipt of the notice from the Committee's administrative office.

(b) Once a file has been closed, no further Committee action will take place until a new application is submitted. Failure to complete all forms, provide requested information, submit all fees, take or retake required examinations within the specified time frame will be just cause for the application file to be closed. This action may be made by the Committee's administrative office.

(c) An application submitted subsequent to abandonment and closure of a prior application shall be treated as a new application.

Authority: T.C.A §§ 4-5-202, 4-5-204, 63-11-301, *et seq.*

1180-05-.08 Renewal of License.

(1) Renewal application.

(a) The due date for license renewal is the expiration date indicated on the licensee's initial license.

(b) Method of Renewal - License holders will have a renewal application form mailed to them at the last address provided by them to the Committee. Failure to receive such notification does not relieve the individual of the responsibility of timely meeting all requirements for renewal.

(c) A license issued pursuant to these rules is renewable by the expiration date. To be eligible for renewal the licensee must submit the following to the Division on or before the expiration date of the license:

1. A completed and signed renewal application form;

2. The renewal fee and state regulatory fee as provided in rule 1180-05-.06; and

3. Proof of current national certification by B.A.C.B.

(d) Licensees who fail to comply with the requirements of this rule shall have their licenses processed pursuant to rule 1200-10-1-.10.

(2) Reinstatement of an Expired License.

(a) Licenses that have expired may be reinstated upon meeting the following conditions:

1. Payment of all past due renewal fees, not to exceed the amount assessed for two (2) renewal cycles;

2. Payment of the late renewal, reinstatement, and state regulatory fees as provided in rule

1180-05-.06; and

3. Proof of current national certification by B.A.C.B.

(b) Renewal application decisions pursuant to this rule may be made administratively, upon review by the Committee Administrator.

(c) Anyone submitting a signed renewal form or letter which is found to be false may be subjected to disciplinary action as provided in T.C.A. § 63-11-303 and rule 1180-01-.14.

Authority: T.C.A §§ 4-5-202, 4-5-204, and 63-11-301, *et seq.*

1180-05-.09 Retirement and Reactivation of License.

(1) A person who holds a current license and does not intend to practice as a Licensed Behavior Analyst or Licensed Assistant Behavior Analyst may apply to convert an active license to retired status. An individual who holds a retired license is not required to pay the renewal fee.

(2) A licensee may apply for retired status by filing a completed affidavit of retirement form and any required documentation with the Committee's administrative office.

(3) A person whose license has been retired and who has not been out of clinical practice or an educational setting an excess of two (2) years, or a person whose Tennessee license has been retired and who has been licensed in good standing and in continuous practice in another state, may re-enter active status provided they currently hold B.A.C.B. national certification, and there are no criminal or practice act violations which would prohibit initial licensure, by submitting to the Committee's administrative office a reinstatement application for licensure reactivation and the license renewal fee.

(4) A person whose license has been retired and who has not practiced in a clinical or educational setting for over two (2) years may re-enter active status provided they currently hold B.A.C.B. national certification, and there are no criminal or practice act violations which would prohibit initial licensure, by submitting to the Committee's administrative office a reinstatement application for licensure reactivation, the license renewal fee, and by obtaining six (6) months of clinical supervision by a licensed behavior analyst who has a BACB or BACB-D certification.

Authority: 4-5-202, 4-5-204, and 63-11-301, *et seq.*

1180-05-.10 Client Records.

(1) Purposes – The purposes of these rules are:

(a) To recognize that client records are an integral part of the practice of applied behavior analysis as defined in T.C.A. § 63-11-310 and the respective certifying entity's Ethical Code.

(b) To give licensed behavior analysts and licensed assistant behavior analysts, their professional and non-professional staff, and the public direction about the content, transfer, retention, and destruction of those records.

(2) Client Records –

(a) Duty to Create and Maintain Client Records – As a component of the standard of care and of minimal competency a licensed behavior analyst and licensed assistant behavior analyst must cause to be created and cause to be maintained a record for every client for whom he or she, and/or any of his or her professionally certified supervisees, performs services or provides professional consultation.

(b) Content – All client records, or summaries thereof, produced in the course of the practice of applied behavior analysis for all clients shall include information that is necessary to ensure that a subsequent reviewing or treating licensed behavior analyst or licensed assistant behavior analyst can both ascertain the assessment and analysis and provide continuity of care for the client.

(c) Transfer –

1. Records of Licensed Behavior Analysts and Licensed Assistant Behavior Analysts Upon Death or Retirement - When a licensed behavior analyst or licensed assistant behavior analyst retires or dies while in practice, clients seen during the immediately preceding eighteen (18) months shall be notified by the licensee's authorized representative and be informed that upon authorization, copies of the records will be transferred to the new provider chosen by the client. This notification requirement shall not apply to a client when there have been fewer than two (2) client encounters within the immediately preceding eighteen (18) months.

2. Records of Licensed Behavior Analysts and Licensed Assistant Behavior Analysts upon Departure from a Group - The responsibility for notifying clients of a licensed behavior analyst or licensed assistant behavior analyst who leaves a group practice whether by death, retirement or departure shall be governed by the employment contract of the licensed behavior analyst or licensed assistant behavior analyst.

   (i) The individual who is responsible for the employment contract must notify clients seen by the licensed behavior analyst or licensed assistant behavior analyst during the immediately preceding eighteen (18) months of his/her departure, except that this notification requirement shall not apply to a client when there have been fewer than two (2) client encounters within the immediately preceding eighteen (18) months.

   (ii) Except where otherwise governed by provisions of the employment contract, those clients shall also be notified of the practitioner's new address and offered the opportunity to have copies of their records forwarded to the departing licensed behavior analyst or licensed assistant behavior analyst at his or her new practice. Provided however, a group shall not withhold the records of any client who has authorized their transfer to the departing licensed behavior analyst or licensed assistant behavior analyst or any other practitioner.

   (iii) The choice of practitioner in every case should be left to the client, and the client should be informed that upon authorization his/her records will be sent to the licensed behavior analyst or licensed assistant behavior analyst of the client's choice.

3. Sale of an Applied Behavior Analyst Practice - A licensed behavior analyst or licensed assistant behavior analyst or the estate of a deceased licensed behavior analyst or licensed assistant behavior analyst may sell the elements that comprise his/her practice, one of which is its goodwill, i.e., the opportunity to take over the clients of the seller by purchasing the client records. Therefore, the transfer of records of clients is subject to the following:

   (i) The licensed behavior analyst or licensed assistant behavior analyst (or the estate) must ensure that all client records are transferred to a licensed behavior analyst or licensed assistant behavior analyst.

   (ii) Clients seen by the licensed behavior analyst or licensed assistant behavior analyst during the immediately preceding eighteen (18) months shall be notified that the licensed behavior analyst or licensed assistant behavior analyst (or the estate) is transferring the practice to another practitioner or entity who will retain custody of their records and that at their written request the copies of their records will be sent to another practitioner or entity of their choice. This notification requirement shall not apply to a client when there have been fewer than two (2) client encounters within the immediately preceding eighteen (18) months.

4. Abandonment of Records – For purposes of this section of the rules, death of a licensed

behavior analyst or licensed assistant behavior analyst shall not be considered as abandonment. It shall be a prima facie violation of T.C.A. § 63-11-310(2)(D) for a licensed behavior analyst or licensed assistant behavior analyst to abandon his practice without making provision for the maintenance, security, and access to client records.

(d) Retention of Client Records – Client records shall be retained for a period of not less than seven (7) years from the last clinical contact between the client and the licensed behavior analyst or licensed assistant behavior analyst, except for the following:

1. Records for incompetent clients shall be retained indefinitely.

2. Records of minors shall be retained for a period of not less than one (1) year after the minor reaches the age of majority or seven (7) years from the date of the last clinical contact with the client, whichever is longer.

3. Notwithstanding the foregoing, no client record involving services which are currently under dispute shall be destroyed until the dispute is resolved.

(e) Destruction of Client Records -

1. No client record shall be singled out for destruction other than in accordance with established office operating procedures.

2. Records shall be destroyed only in the ordinary course of business according to established office operating procedures that are consistent with these rules.

3. Records may be destroyed by burning, shredding, or other effective methods in keeping with the confidential nature of the records.

4. When records are destroyed, the time, date and circumstances of the destruction shall be recorded and maintained for future reference.

(5) Violations – Violation of any provision of these rules is grounds for disciplinary action pursuant to T.C.A. § 63-11-310(2)(D).

Authority: 4-5-202, 4-5-204, and 63-11-301, *et seq.*

1180-05-.11 Mandatory Release of Client Records.

(1) Within ten (10) working days of receipt of a written request from a client or the client's authorized representative, an individual licensed by this Committee shall provide a complete copy of the client's records, or summary of such records which were maintained by the provider.

(2) A licensee shall be entitled to charge reasonable costs not to exceed ten dollars ($10.00) for reports twenty (20) pages or less in length and twenty-five cents (25¢) per page for each page copied after the first twenty (20) pages for copying and mailing client records.

Authority: T.C.A. §§ 4-5-202, 4-5-204, 63-2-101, 63-2-102, and 63-11-104.

1180-05-.12 Continuing Education.

(1) It is the responsibility of every licensee to maintain his or her national certification and comply with all continuing education requirements of the credentialing entity, regardless of whether he or she receives direct reminders to do so. Licensees who are not certified through the B.A.C.B. must accrue continuing education hours commensurate with their level of licensing in alignment with the standards set by B.A.C.B. certification. No deadlines or fees related to late renewals or reinstatement will be waived based upon failure to receive reminders, ignorance of the requirements to maintain certification, or failure to keep track of important dates.

(2) Along with the application for renewal, all licensees shall submit to the Committee's administrative office

proof of completing three (3) continuing education hours on cultural diversity as specifically noted in the title, description of objectives, or curriculum of the presentation, symposium, workshop, seminar, course or activity. Cultural diversity includes aspects of identity stemming from age, disability, gender, race/ethnicity, religious/spiritual orientation, sexual orientation, socioeconomic status, and other cultural dimensions. The topic of the presentation, symposium, workshop, seminar, course or activity need not be on cultural diversity, but one of the objectives or descriptions of the topics covered, shall clearly indicate attention to cultural diversity.

Authority: 4-5-202, 4-5-204, and 63-11-301, *et seq.*

1180-05-.13 Professional Ethics.

(1) The Committee adopts, as if fully set out herein and to the extent that it does not conflict with state law, rules or Committee Position Statements, as its ethical standards the B.A.C.B's Ethical Code.

(2) In the case of a conflict, the state law rules or position statements shall govern. Violation of the Committee's Ethical Code shall be grounds for disciplinary action pursuant to T.C.A. § 63-11-310(a).

(3) A copy of B.A.C.B.'s Ethical Code may be obtained from the B.A.C.B at 8051 Shaffer Parkway Littleton, CO 80127 or by phone at (720) 438-4321, or on the B.A.C.B website.

Authority: 4-5-202, 4-5-204, and 63-11-301, *et seq.*

1180-05-.14 Actions, Civil Penalties and Settlements.

(1) Upon a finding by the Committee and the Board that a licensed behavior analyst or licensed assistant behavior analyst has violated any provision of the Applied Behavior Analyst Practice Act (T.C.A. §§ 63-11-301, *et seq.*) or the rules promulgated pursuant thereto, the Committee and the Board may take any of the following actions separately or in any combination which is deemed appropriate to the offense:

(a) Formal Censure or Reprimand. This is a written action issued for a single occurrence and less severe violations. It is a formal disciplinary action.

(b) Probation. This is a formal disciplinary action which places a licensed behavior analyst or licensed assistant behavior analyst on close scrutiny for a fixed period of time. This action may be combined with conditions which must be met before probation will be lifted and/or which restrict the individual's activities during the probationary period.

(c) Suspension. This is a formal disciplinary action which suspends the right to practice for a fixed period of time. It contemplates re-entry into practice under the license previously issued.

(d) Revocation. This is the most severe form of disciplinary action which removes an individual from the practice of the profession and terminates the license previously issued. No new application for licensure from a person whose license or certificate was revoked shall be considered prior to the expiration of at least one (1) year from the date of entry of the order unless otherwise stated in the Committee's revocation order.

(e) Conditions. Any action deemed appropriate by the Committee and the Board to be required of a disciplined licensee in any of the following circumstances:

1. During any period of probation or suspension; or

2. Prior to new application following any revocation order; or

3. As a prerequisite to the lifting of probation or suspension; or

4. As a stand-alone requirement(s) in any disciplinary order.

(f) Civil Penalty. A monetary disciplinary action assessed by the Committee and the Board pursuant to paragraph four (4) of this rule.

(g) Assessment of costs in disciplinary hearings shall be set forth in T.C.A. §§ 63-1-144 and 63-11-303.

(h) Once ordered, probation, suspension, assessment of a civil penalty, or any other condition of any type of disciplinary action may not be lifted unless and until the licensee petitions, pursuant to paragraph two (2) of this rule, and appears before the Committee after the period of initial probation, suspension, or other conditioning has run and all conditions placed on the probation, suspension, have been met, and after any civil penalties and costs assessed have been paid.

(2) Order of Compliance - This procedure is a necessary adjunct to each previously issued disciplinary order containing probation, suspension or other condition limiting the licensee's ability to practice. An order of compliance is available only when a petitioner has completely complied with the conditions of a previously issued disciplinary order, including payment of civil penalties, completion of continuing education courses, or payment of administrative costs. If all conditions of the ordered discipline have been satisfied, or if no conditions have been placed on the license in addition to probation or suspension, the Board may consider a petition at its last meeting before the expiration of any such discipline. The Board, at its discretion, may require the petitioner to appear before granting such order. No discipline issued by the Board shall be lifted until the licensee petitions for and receives such order from the Board, which shall only be effective the original date the discipline was to expire, and in no event effective earlier than the date of petition, pursuant to this paragraph.

(a) The Committee and the Board will entertain petitions for an Order of Compliance as a supplement to a previously issued order upon strict compliance with the procedures set forth in subparagraph (b) in only the following two (2) circumstances:

1. When the petitioner can prove compliance with all the terms of the previously issued order and is seeking to have an order issued reflecting that compliance; or

2. When the petitioner can prove compliance with all the terms of the previously issued order and is seeking to have an order issued lifting a previously ordered suspension or probation.

(b) Procedures

1. The petitioner shall submit a Petition for Order of Compliance, as contained in subparagraph (c), to the Disciplinary Coordinator that shall contain all of the following:

(i) A copy of the previously issued order; and

(ii) A statement of which provision of subparagraph (a) the petitioner is relying upon as a basis for the requested order; and

(iii) A copy of all documents that prove compliance with all the terms or conditions of the previously issued order. If proof of compliance requires testimony of an individual(s), including that of the petitioner, the petitioner must submit signed statements from every individual the petitioner intends to rely upon attesting, under oath, to the compliance. The Committee's consultant and legal staff, in their discretion, may require such signed statements to be notarized. No documentation or testimony other than that submitted will be considered in making an initial determination on or a final order in response to, the petition.

2. The Committee authorizes its consultant and legal staff to make an initial determination on the petition and take one of the following actions:

(i) Certify compliance and have the matter scheduled for presentation to the Committee and the Board as an uncontested matter; or

(ii) Deny the petition, after consultation with legal staff, if compliance with all of the provisions of the previous order is not proven and notify the petitioner of what

provisions remain to be fulfilled and/or what proof of compliance was either not sufficient or not submitted.

3. If the petition is presented to the Committee and the Board, the petitioner may not submit any additional documentation or testimony other than that contained in the petition as originally submitted.

4. If the Committee and the Board finds that the petitioner has complied with all the terms of the previous order, an Order of Compliance shall be issued.

5. If the petition is denied either initially by staff or after presentation to the Committee or the Board and the petitioner believes compliance with the order has been sufficiently proven the petitioner may, as authorized by law, file a petition for a declaratory order pursuant to the provisions of T.C.A. § 4-5-223 and rule 1200-10-1-.11.

(c) Form Petition

Petition for Order of Compliance
Applied Behavior Analyst Licensing Committee

Petitioner's Name: _____
Petitioner's Mailing Address: _____
_____
_____
Petitioner's E-Mail Address: _____
Telephone Number: _____

Attorney for Petitioner: _____
Attorney's Mailing Address: _____
_____
_____
Attorney's E-Mail Address: _____
Telephone Number: _____

The petitioner respectfully represents, as substantiated by the attached documentation that all provisions of the attached disciplinary order have been complied with and I am respectfully requesting: (circle one)

1. An order issued reflecting that compliance; or

2. An order issued reflecting that compliance and lifting a previously ordered suspension or probation; or

Note - You must enclose all documents necessary to prove your request including a copy of the original order. If any of the proof you are relying upon to show compliance is the testimony of any individual, including yourself, you must enclose signed statements from every individual you intend to rely upon attesting, under oath, to the compliance. The Committee's consultant, the Disciplinary Coordinator, and legal staff, in their discretion, may require such signed statements to be notarized. No documentation or testimony other than that submitted will be considered in making an initial determination on, or a final order in response to, this petition.

Respectfully submitted this the _ day of _____, 20_____.

_____
Petitioner's Signature

(3) Order Modifications. This procedure is not intended to allow anyone under a previously issued disciplinary order, including an unlicensed or uncertified practice civil penalty order, to modify any findings of fact, conclusions of law, or the reasons for the decision contained in the order. It is also not intended to allow

a petition for a lesser disciplinary action, or civil penalty other than the one(s) previously ordered. All such provisions of Committee and Board orders were subject to reconsideration and appeal under the provisions of the Uniform Administrative Procedures Act (T.C.A. §§ 4-5-301, *et seq.*). This procedure is not available as a substitute for reconsideration and/or appeal and is only available after all reconsideration and appeal rights have been either exhausted or not timely pursued. It is also not available for those who have accepted and been issued a reprimand.

(a) The Committee and the Board will entertain petitions for modification of the disciplinary portion of previously issued orders upon strict compliance with the procedures set forth in subparagraph (b) only when the petitioner can prove that compliance with any one or more of the conditions or terms of the discipline previously ordered is impossible. For purposes of this rule the term "impossible" does not mean that compliance is inconvenient or impractical for personal, financial, scheduling or other reasons.

(b) Procedures

1. The petitioner shall submit a written and signed Petition for Order Modification on the form contained in subparagraph (c) to the Committee's legal staff that shall contain all of the following:

   (i) A copy of the previously issued order; and

   (ii) A statement of why the petitioner believes it is impossible to comply with the order as issued; and

   (iii) A copy of all documents that proves that compliance is impossible. If proof of impossibility of compliance requires testimony of an individual(s), including that of the petitioner, the petitioner must submit signed and notarized statements from every individual the petitioner intends to rely upon attesting, under oath, to the reasons why compliance is impossible. No documentation or testimony other than that submitted will be considered in making an initial determination on or a final order in response to, the petition.

2. The Committee authorizes its consultant and legal staff to make an initial determination on the petition and take one of the following actions:

   (i) Certify impossibility of compliance and forward the petition to the Office of General Counsel for presentation to the Committee and the Board as an uncontested matter; or

   (ii) Deny the petition, after consultation with legal staff, if impossibility of compliance with the provisions of the previous order is not proven and notify the petitioner of what proof of impossibility of compliance was either not sufficient or not submitted.

3. If the petition is presented to the Committee and the Board, the petitioner may not submit any additional documentation or testimony other than that contained in the petition as originally submitted.

4. If the petition is granted, a new order shall be issued reflecting the modifications authorized by the Committee and the Board that it deemed appropriate and necessary in relation to the violations found in the previous order.

5. If the petition is denied either initially by staff or after presentation to the Committee or the Board and the petitioner believes impossibility of compliance with the order has been sufficiently proven, the petitioner may, as authorized by law, file a petition for a declaratory order pursuant to the provisions of T.C.A. § 4-5-223 and rule 1200-10-1-.11.

(c) Form Petition

Petition for Order Modification
Applied Behavior Analyst Licensing Committee

Petitioner's Name: _____
Petitioner's Mailing Address: _____
_____
_____

Petitioner's E-Mail Address: _____
Telephone Number: _____

Attorney for Petitioner: _____
Attorney's Mailing Address: _____
_____
_____

Attorney's E-Mail Address: _____
Telephone Number: _____

The petitioner respectfully represents that for the following reasons, as substantiated by the attached documentation, the identified provisions of the attached disciplinary order are impossible for me to comply with:

_____
_____
_____
_____
_____
_____
_____

Note - You must enclose all documents necessary to prove your request including a copy of the original order. If any of the proof you are relying upon to show impossibility is the testimony of any individual, including yourself, you must enclose signed and notarized statements from every individual you intend to rely upon attesting, under oath, to the reasons why compliance is impossible. No documentation or testimony other than that submitted will be considered in making an initial determination on, or a final order in response to, this petition.

Respectfully submitted this the _____ day of _____, 20_____.

_____
Petitioner's Signature

(4) Civil penalties.

(a) Purpose. The purpose of this paragraph is to set out a schedule designating the minimum and maximum civil penalties which may be assessed pursuant to T.C.A. § 63-1-134.

(b) Schedule of civil penalties.

1. A "Type A" civil penalty may be imposed whenever the Committee finds the person required to be licensed by the Committee is guilty of a willful and knowing violation of the Applied Behavior Analyst Practice Act or rules promulgated pursuant thereto, to such an extent that there is, or is likely to be, an imminent, substantial threat to the health, safety and welfare of an individual client or the public. For purposes of this paragraph, willfully and knowingly practicing as a licensed behavior analyst or licensed assistant behavior analyst without a license or other authorization from the Committee is one of the violations of the Applied Behavior Analyst Practice Act for which a "Type A" civil penalty is assessable.

2. A "Type B" civil penalty may be imposed whenever the Committee finds the person required to be licensed or authorized by the Committee is guilty of a violation of the Applied Behavior Analyst Practice Act or rules promulgated pursuant thereto in such a manner as to impact directly on the care of clients or the public.

3. A "Type C" civil penalty may be imposed whenever the Committee finds the person required to be licensed or authorized by the Committee is guilty of a violation of the Applied Behavior Analyst Practice Act or rules promulgated pursuant thereto, which are neither directly detrimental to the clients or the public, nor directly impact their care, but have only an indirect relationship to client care or the public.

(c) Amount of civil penalties.

1. "Type A" civil penalties shall be assessed in the amount of not less than five hundred dollars ($500) nor more than one thousand dollars ($1000).

2. "Type B" civil penalties may be assessed in the amount of not less than one hundred dollars ($100) nor more than five hundred dollars ($500).

3. "Type C" civil penalties may be assessed in the amount of not less than fifty dollars ($50) nor more than one hundred dollars ($100).

(d) Procedures for assessing civil penalties.

1. Civil penalties may be initiated and assessed by the Committee during consideration of any Notice of Charges. In addition, the Committee may, upon good cause shown, assess a type and amount of civil penalty which was not recommended by the Division.

2. In assessing the civil penalties pursuant to these rules, the Committee may consider the following factors:

(i) Whether the amount imposed will be a substantial economic deterrent to the violator;

(ii) The circumstances leading to the violation;

(iii) The severity of the violation and the risk of harm to the public;

(iv) The economic benefits gained by the violator as a result of non-compliance; and

(v) The interest of the public.

3. All proceedings for the assessment of civil penalties shall be governed by the Administrative Procedures Act, T.C.A. §§ 4-5-301, *et seq.*

Authority: T.C.A. §§ 4-5-105, 4-5-202, 4-5-204, 4-5-217, 4-5-223, 63-1-122, 63-1-134, 63-1-138, 63-11-104, 63-11-201, and 63-11-215 through 63-11-217, and 63-11-310.

1180-05-.15 Display and Replacement of License.

(1) Display of License. Every person licensed by the Committee shall display the license or certificate in a conspicuous place in his or her office and, whenever required, exhibit such license to the Committee or its authorized representatives.

(2) Replacement License. Requests for duplicate or replacement licenses must be made in writing to the Committee's administrative office and be accompanied by the fee provided in rule 1150-05-.06.

Authority: T.C.A. §§ 4-5-202, 4-5-204, 63-1-106, 63-1-109, 63-11-104, 63-11-201, and 63-11-212.

1180-05-.16 Change of Address and/or Name.

(1) Change of address. Each person holding a license who has had a change of address or place of employment shall file in writing with the Committee his or her current address, giving both old and new addresses. Notifications shall be received in the Committee's administrative office no later than thirty (30) days after the change is effective and must reference the individual's name, profession and license or certificate number.

(2) Change of name. An individual licensed by the Committee shall notify the Committee in writing within thirty (30) days of a name change and will provide both the old and new names. A notice of name change must also include a copy of the legal document which implements the name change and reference the individual's profession, Committee and license or certificate number.

Authority: T.C.A. §§ 4-5-202, 4-5-204, 63-1-106, 63-1-108, 63-11-104, 63-11-201, and 63-11-310.

1180-05-.17 Committee Meetings, Officers, Consultants, Records and Declaratory Orders and Screening Panels.

(1) The Committee shall at its first meeting after July 1 of each year elect from its members the following officers:

(a) Chairperson - who shall preside at all meetings of the Committee.

(b) The Chairperson of the Committee shall be an ex officio voting member of the Board of Examiners in Psychology.

(2) The Committee has the authority to select a Committee consultant who shall serve as a consultant to the Division and who is vested with the authority to do the following acts:

(a) Review complaints with the Committee attorney and recommend whether and what type disciplinary actions should be instituted as the result of complaints received or investigations conducted by the Division.

(b) Recommend whether and upon what terms a complaint, case or disciplinary action might be settled. Any matter proposed for settlement must be subsequently reviewed, evaluated and ratified by the full Committee and the full Board of Examiners in Psychology before it becomes effective.

(c) Undertake any other matter authorized by a majority vote of the Committee or the Board of Examiners in Psychology.

(3) Records and complaints.

(a) All requests, applications, notices, other communications and correspondence shall be directed to the Committee's administrative office. Any requests or inquiries requiring a Committee decision or official Committee action, except documents relating to disciplinary actions or hearing requests, must be received fourteen (14) days prior to a scheduled meeting. Requests not timely received may be set over to the next Committee meeting.

(b) All records of the Committee, except those made confidential by law, are open for inspection and examination under the supervision of an employee of the Division at the Committee's administrative office during normal business hours.

(c) Copies of public records shall be provided to any person upon payment of reasonable costs as permitted under T.C.A. § 10-7-506(c).

(d) Minutes of the Committee meetings and all records, documents, applications and correspondence will be maintained in the Committee's administrative office.

(e) All complaints should be directed to the Office of Investigations of the Health Related Boards.

(4) The Committee members or the consultant are individually vested with the authority to do the following

acts:

(a) Review and make determination on licensure, renewal and reactivation of licensure applications subject to the rules governing those respective applications and subject to the subsequent ratification by the Committee and the Board.

(b) Serve as consultant to the Division to decide the following:

1. Whether and what type disciplinary actions should be instituted upon complaints received or investigations conducted by the Division.

2. Whether and under what terms a complaint, case or disciplinary action might be settled. Any proposed settlement must be subsequently ratified by the Committee and the Board.

(5) The Committee authorizes the member who chaired the Committee for a contested case to make the decisions authorized pursuant to rule 1360-05-01.18 regarding petitions for reconsiderations and stays in that case.

(6) Requests for verification of licensure for licensed behavior analysts and licensed assistant behavior analysts desiring to practice in another state must be made in writing to the Committee's administrative office.

(7) Declaratory orders - The Committee adopts, as if fully set out herein, rule 1200-10-1-.11, of the Division of Health Related Boards and as it may from time to time be amended, as its rule governing the declaratory order process. All declaratory order petitions involving statutes, rules or orders within the jurisdiction of the Committee shall be addressed by the Committee pursuant to that rule and not by the Division. Declaratory order petition forms can be obtained from the Committee's administrative office.

(8) Screening panels- The Committee adopts, as if fully set out herein, rule 1200-10-01.13, of the Division of Health Related Boards and as it may from time to time be amended, as its rule governing the screening panel process.

Authority: T.C.A. §§ 4-5-202, 4-5-204, 63-2-102, 63-11-101, 63-11-104, 63-11-215, 63-11-216, 63-11-303, and 63-11-310.

1180-05-.18 Advertising and Other Public Statements.

(1) Definition of public statements. Public statements relate to professional services, products, or publications or to the field of applied behavior analysis. Public statements include but are not limited to paid or unpaid advertising, brochures, printed matter, directory listings, personal resumes or curricula vitae, interviews or comments for use in media, statements in legal proceedings, lectures and public oral presentations, and published materials.

(2) Avoidance of false or deceptive statements. Licensees do not make public statements that are false, deceptive, misleading or fraudulent, either because of what they state, convey, or suggest or because of what they omit, concerning their research, practice or other work activities or those of persons or organizations with which they are affiliated. As examples (and not in limitation) of this standard, licensees do not make false or deceptive statements concerning (1) their training, experience, or competence; (2) their academic degrees; (3) their credentials; (4) their institutional or association affiliations; (5) their services; (6) the scientific or clinical basis for, or results or degrees of success of their services; (7) their fees; or (8) their publications or research findings.

Authority: T.C.A. § 63-11-215.

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

| Committee Member | Aye | No | Abstain | Absent | Signature (if required) |
|---|---|---|---|---|---|
| Mary Annette Little, Ph.D, BCBA-D | X | | | | |
| Melissa Switzer, Ph.D, BCBA-D | X | | | | |
| Michael S. Tonos,M.S., BCBA | X | | | | |
| Tammy L. Davis, BCaBA | | | | X | |
| Vacant | | | | | |

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the Applied Behavior Analyst Licensing Committee (board/commission/ other authority) on 02/13/2017 (mm/dd/yyyy), and is in compliance with the provisions of T.C.A. § 4-5-222.

| Board Member | Aye | No | Abstain | Absent | Signature (if required) |
|---|---|---|---|---|---|
| Janice Pazer, Ph.D. | X | | | | |
| Timothy A. Urbin, Ph.D. | X | | | | |
| H.R. Anderson | X | | | | |
| David C. Mathis, Ed.D. | X | | | | |
| Rebecca Joslin, Ed.D, Ph.D. | X | | | | |
| Annette Little, Ph.D. | X | | | | |
| Hugh D. Moore, Ph.D. | X | | | | |
| Jennifer K. Winfree | | | | X | |
| Connie Mazza | | | | X | |
| John Alden, Ph.D. | X | | | | |

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the Board of Examiners in Psychology (board/commission/ other authority) on 03/16/2017 (mm/dd/yyyy), 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: *11/23/15 (mm/dd/yy)*

Rulemaking Hearing(s) Conducted on: (add more dates). *01/25/16, 03/17/16, 02/13/17, and 03/16/17 (mm/dd/yy)*

Date: March 21, 2017

Signature: Paetria Morgan

Name of Officer: Paetria Morgan

Title of Officer: Assistant General Counsel

Applied Behavior Analyst Licensing Committee
New Rule Chapter 1180-05
General Rules Governing the Practice of Licensed
Behavioral Analysts and Licensed Assistant Behavior Analysts

Subscribed and sworn to before me on: 3-21-17

Notary Public Signature:

My commission expires on: My Commission Expires January 26, 2021

SUZANNE MECHKOWSKI NOTARY PUBLIC STATE Tennessee SUMNER COUNTY

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

5/22/2017
Date

**Department of State Use Only**

Filed with the Department of State on: 3/23/17

Effective on: 6/21/17

Tre Hargett
Secretary of State

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## G.O.C. STAFF RULE ABSTRACT

| | |
|---|---|
| DEPARTMENT: | Treasury |
| DIVISION: | Claims Administration |
| SUBJECT: | Criminal Injuries Compensation Program |
| STATUTORY AUTHORITY: | T.C.A. § 29-13-106(h) requires the State Treasurer to make an adjustment in Tennessee maximum award limit for its Criminal Injuries Compensation Program. |
| EFFECTIVE DATES: | June 11, 2017 through June 30, 2018 |
| FISCAL IMPACT: | For fiscal year 2016, approximately seventy-five (75) claims were paid by the Department's Criminal Injuries Compensation Program that met the maximum award amount of thirty thousand dollars ($30,000.00). For fiscal year 2017 to date, approximately twenty-five (25) claims were paid that met the maximum award amount of thirty-one thousand nine hundred dollars ($31,900.00). It is difficult to anticipate the number of claims that will meet the maximum award limit contained in these proposed rules in fiscal year 2018. If we assume that a maximum of seventy-five (75) claims will be paid at the maximum amount for 2017 as were paid for fiscal year 2016 and we also assume that the same number of clams meet the maximum award threshold limitation in fiscal year 2017-2018 that met the threshold in fiscal years 2016 and 2017, and the fiscal year 2018 claims are paid at the increased maximum award limit of thirty-two thousand dollars ($32,000.00), then it is anticipated that there will be an increase in annual expenditures in the amount of seven thousand five hundred dollars ($7,500.00) to ten thousand dollars ($10,000.00). |
| STAFF RULE ABSTRACT: | T.C.A. § 29-13-106(h) provides that no later than October 1st of each year, the State Treasurer shall compare the maximum award limit for the Criminal Injuries Compensation Program with the average maximum award limits from other states' Criminal Injuries Compensation Programs. In the process of making this comparison, if the State Treasurer determines that the maximum award limit |

for Tennessee Criminal Injuries Compensation Program is less than one hundred five percent (105%) of the national average, then the State Treasurer shall adjust Tennessee's maximum award amount to an amount equal to one hundred five percent (105%) of the national average; provided, that the maximum award shall be rounded up to the nearest one hundred dollars ($100.00). The adjustment shall be effective on July 1st of the next fiscal year and shall apply to claims filed for crimes occurring on or after July 1st of the next fiscal year. Applicable law also provides that the adjustment shall be made by promulgating rules in accordance with the Uniform Administrative Procedures Act.

In or around September, 2016, Department of Treasury Staff engaged in a nationwide comparison of maximum compensation limits. Department Staff's comparison yielded the following data: $31,900 is Tennessee's maximum award limit for fiscal year 2016-2017; $30,418 is the average maximum award nationally; $31,939 is the indexed figure of one hundred five percent (105%) of the national average; Tennessee's maximum award limit is less than the index figure; $32,000 is the adjustment required to Tennessee's maximum award limit pursuant to T.C.A. § 29-13-106.

**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.

Not applicable.

**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)

It is not anticipated that the proposed rules will impact 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;

T.C.A. §29-13-106(h) provides that no later than October 1st of each year, the State Treasurer shall compare the maximum award limit for the Criminal Injuries Compensation Program with the average maximum award limits from other states' Criminal Injuries Compensation Programs. In the process of making this comparison, if the State Treasurer determines that the maximum award limit for Tennessee Criminal Injuries Compensation Program is less than one hundred five percent (105%) of the national average, then the State Treasurer shall adjust Tennessee's maximum award amount to an amount equal to one hundred five percent (105%) of the national average; provided, that the maximum award shall be rounded up to the nearest one hundred dollars ($100.00). The adjustment shall be effective on July 1st of the next fiscal year and shall apply to claims filed for crimes occurring on or after July 1st of the next fiscal year. Applicable law also provides that the adjustment shall be made by promulgating rules in accordance with the Uniform Administrative Procedures Act.

In or around September, 2016, Department of Treasury Staff engaged in a nationwide comparison of maximum compensation limits. Department Staff's comparison yielded the following data: $31,900 is Tennessee maximum award limit for fiscal year 2016-2017; $30,418 is the average maximum award nationally; $31,939 is the indexed figure of one hundred five percent (105%) of the national average; Tennessee's maximum award limit is less than the index figure; $32,000 is the adjustment required to Tennessee's maximum award limit pursuant to T.C.A. §29-13-106.

**(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. §29-13-106(h) requires the State Treasurer to make an adjustment in Tennessee maximum award limit for its Criminal Injuries Compensation Program

**(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 persons affected by this rule are claimants filing a claim with the Criminal Injuries Compensation Fund as provided in T.C.A. §29-13-101, et seq.

**(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;

The Department is unaware of any Attorney General opinions or any judicial rulings that directly relates to this rule.

**(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;

For fiscal year 2016, approximately seventy-five (75) claims were paid by the Department's Criminal Injuries Compensation Program that met the maximum award amount of thirty thousand dollars ($30,000.00). For fiscal year 2017 to date, approximately twenty-five (25) claims were paid that met the maximum award amount of thirty-one thousand nine hundred dollars ($31,900.00). It is difficult to anticipate the number of claims that will meet the maximum award limit contained in these proposed rules in fiscal year 2018. If we assume that a maximum of seventy-five (75) claims will be paid at the maximum amount for 2017 as were paid for fiscal year 2016 and we also assume that the same number of claims meet the maximum award threshold limitation in fiscal year 2017-2018 that met the threshold in fiscal years 2016 and 2017, and the fiscal year 2018 claims are paid at the increased maximum award limit of thirty-two thousand dollars ($32,000.00), then it is anticipated that

there will be an increase in annual expenditures in the amount of seven thousand five hundred dollars ($7,500.00) to ten thousand dollars ($10,000.00).

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

Rodney Escobar, Director for the Division of Claims Administration; 502 Deaderick Street, Andrew Jackson Building, 15th Floor; Nashville, Tennessee 37243; (615) 741-9957; Rodney.Escobar@tn.gov and Alison Cleaves, Assistant General Counsel; 502 Deaderick Street, Andrew Jackson Building, 15th Floor; Nashville, Tennessee 37243; (615) 253-6150; Alison.Cleaves@tn.gov.

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

Rodney Escobar, Director for the Division of Claims Administration; 502 Deaderick Street, Andrew Jackson Building, 15th Floor; Nashville, Tennessee 37243; (615) 741-9957; Rodney.Escobar@tn.gov and Alison Cleaves, Assistant General Counsel; 502 Deaderick Street, Andrew Jackson Building, 15th Floor; Nashville, Tennessee 37243; (615) 253-6150; Alison.Cleaves@tn.gov.

**(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

Rodney Escobar, Director for the Division of Claims Administration; 502 Deaderick Street, Andrew Jackson Building, 15th Floor; Nashville, Tennessee 37243; (615) 741-9957; Rodney.Escobar@tn.gov and Alison Cleaves, Assistant General Counsel; 502 Deaderick Street, Andrew Jackson Building, 15th Floor; Nashville, Tennessee 37243; (615) 253-6150; Alison.Cleaves@tn.gov.

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

Any additional information requested by the committee relevant to the proposed rules will be provided promptly upon request.

**Department of State**
**Division of Publications**
312 Rosa L. Parks Avenue, 8th Floor Snodgrass/TN Tower
Nashville, TN 37243
Phone: 615-741-2650
Email: publications.information@tn.gov

**For Department of State Use Only**

Sequence Number: 03-11-17
Rule ID(s): 6462
File Date: 3/13/17
Effective Date: 6/11/17

# Proposed Rule(s) Filing Form

*Proposed rules are submitted pursuant to Tenn. Code Ann. §§ 4-5-202, 4-5-207, and 4-5-229 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 ninety (90) days of 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 ten (10) persons who will be affected by the amendments, or submitted by a municipality which will be affected by the amendments, or an association of ten (10) or more members, or any standing committee of the General Assembly. The agency shall forward such petition to the Secretary of State.*

*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:** | Department of Treasury |
| **Division:** | Division of Claims Administration |
| **Contact Person:** | Rodney Escobar, Director for the Division of Claims Administration |
| **Address:** | 502 Deaderick Street, Andrew Jackson Building, 15th Floor, Nashville, Tennessee |
| **Zip:** | 37243 |
| **Phone:** | (615) 741-9957 |
| **Email:** | Rodney.Escobar@tn.gov |

**Revision Type (check all that apply):**
X 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** |
|---|---|
| 0300-02 | Criminal Injuries Compensation Program |
| **Rule Number** | **Rule Title** |
| 0300-02-.07 | Maximum Award Limit |

**RULES**

**OF**

**BOARDS OF CLAIMS**

**CHAPTER 0300-02**

**CRIMINAL INJURIES COMPENSATION PROGRAM**

**TABLE OF CONTENTS**

0300-02-.01 through 0300-02-.06 Repealed

0300-02-.07 Maximum Award Limit

**0300-02-.01 REPEALED.**

***Authority:*** *T.C.A. §§ 9-8-108(a)(10), and 29-13-101, et. seq.* ***Administrative History:*** *Original rule filed April 18, 1978; effective May 18, 1978. Amendment filed May 30, 1979; effective August 31, 1979. Repeal filed October 26, 1999; effective February 28, 2000.*

**0300-02-.02 REPEALED.**

***Authority:*** *T.C.A. §§ 9-8-108(a)(10), and 29-13-101, et. seq.* ***Administrative History:*** *Original rule filed April 18, 1978; effective May 18, 1978. Repeal filed October 26, 1999; effective February 28, 2000.*

**0300-02-.03 REPEALED.**

***Authority:*** *T.C.A. §§ 9-8-108(a)(10), and 29-13-101, et. seq.* ***Administrative History:*** *Original rule filed April 18, 1978; effective May 18, 1978. Repeal filed October 26, 1999; effective February 28, 2000.*

**0300-02-.04 REPEALED.**

***Authority:*** *T.C.A. §§ 9-8-108(a)(10), and 29-13-101, et. seq.* ***Administrative History:*** *Original rule filed April 18, 1978; effective May 18, 1978. Repeal filed October 26, 1999; effective February 28, 2000.*

**0300-02-.05 REPEALED.**

***Authority:*** *T.C.A. §§ 9-8-108(a)(10), and 29-13-101, et. seq.* ***Administrative History:*** *Original rule filed April 18, 1978; effective May 18, 1978. Repeal filed October 26, 1999; effective February 28, 2000.*



Redline

**0300-02-.06 REPEALED.**

***Authority:*** *T.C.A. §§ 9-8-108(a)(10), and 29-13-101, et. seq.* ***Administrative History:*** *Original rule filed April 18, 1978; effective May 18, 1978. Repeal filed October 26, 1999; effective February 28, 2000.*

**0300-02-.07 MAXIMUM AWARD LIMIT.**

(1) Purpose. The purpose of this rule is to adjust the maximum compensation award for a claim or claims filed pursuant to title 29, chapter 13, part 1.

(2) Award Limit and Requirements. For a claim or claims filed with the division requesting compensation for a crime committed against a victim, the maximum compensation award shall not exceed thirty-two thousand dollars ($32,000.00) ~~thirty-one thousand nine hundred dollars ($31,900.00)~~; this maximum compensation award shall be effective on July 1, 2017 and shall apply to all claims filed for crimes occurring on or after such date. For a claim or claims filed with the division requesting compensation for a crime occurring between July 1, 2016 and June 30, 2017, the maximum compensation award shall not exceed thirty-one thousand nine hundred dollars ($31,900.00).~~.~~ M~~The m~~aximum compensation award~~s~~ apply~~ies~~ to the aggregate of all claims filed arising from a single crime against a victim. ~~The maximum compensation award shall be effective on July 1, 2016, and shall apply to all claims filed for crimes occurring on or after such date.~~

***Authority:*** *T.C.A. § 29-13-106(h).* ***Administrative History:*** *Original rule filed February 8, 2016; effective May 8, 2016.*

* 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 State Treasurer on 02/01/2017, 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 ninety (90) days of the filing of the proposed rule with the Secretary of State.

Date: February 6, 2017

Signature: [signature]

Name of Officer: David H. Lillard, Jr.

Title of Officer: State Treasurer

HEATHER SCZEPCZENSKI
STATE OF TENNESSEE NOTARY PUBLIC
COUNTY OF DAVIDSON
MY COMM. EXP. MARCH 10, 2019

Subscribed and sworn to before me on: February 1, 2017

Notary Public Signature: Heather Sczepczenski

My commission expires on: March 10, 2019

---

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.

Herbert H. Slatery III
Attorney General and Reporter

2/8/2017
Date

**Department of State Use Only**

Filed with the Department of State on: 3/13/17

Effective on: 6/11/17

Tre Hargett
Secretary of State

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## G.O.C. STAFF RULE ABSTRACT

| | |
|---|---|
| DEPARTMENT: | Mental Health and Substance Abuse Services |
| DIVISION: | Substance Abuse Services |
| SUBJECT: | Controlled Substances |
| STATUTORY AUTHORITY: | 21 U.S.C. 812: Establishes schedules of controlled substances.<br><br>21 C.F.R. 1308: Contains schedules of controlled substances set forth by the U.S. Department of Justice Drug Enforcement Administration.<br><br>T.C.A. § 4-4-103: Empowers the Commissioner of each department to prescribe regulations.<br><br>T.C.A. § 33-1-302: Empowers the Department to make and enforce rules necessary for the efficient financial management and lawful operation of facilities and services.<br><br>T.C.A. § 33-1-303: Defines powers of the Commissioner including rulemaking authority.<br><br>T.C.A. § 33-1-305: Empowers the Commissioner of the Department of Mental Health and Substance Abuse Services to adopt rules to fulfill the Department's responsibilities.<br><br>T.C.A. § 33-1-309: Requires the Department to adopt all rules in accordance with the Uniform Administrative Procedures Act.<br><br>T.C.A. § 39-17-403: Requires the Commissioner of the Department of Mental Health and Substance Abuse Services, upon agreement of the Commissioner of the Department of Health, to control substances according to certain guidelines. |
| EFFECTIVE DATES: | June 19, 2017 through June 30, 2018 |

FISCAL IMPACT: It is estimated that these rules will not have a fiscal impact on state and local government revenues and expenditures.

STAFF RULE ABSTRACT: The lists of controlled substances for all schedules were revised to ensure consistency with Part 1308 of Title 21 of the Code of Federal Regulations (C.F.R.) and T.C.A. §§ 39-17-406, 39-17-408, 39-17-410, 39-17-412, 39-17-414, and 39-17-416.

0940-06-01-.01 names controlled substances within Schedule I including opiates, opium derivatives, hallucinogenic substances, depressants, and stimulants. Etizolam, although not federally scheduled, has been scheduled as a Schedule I controlled substance in this rule (see TDMHSAS Findings on p. 29 of this document).

0940-06-01-.02 names controlled substances within Schedule II including opium and opiates, substances produced by extraction from vegetable origin or chemical synthesis, opiates, stimulants, depressants, hallucinogenic substances, immediate precursors to amphetamine and methamphetamine, and PCP.

0940-06-01-.03 names controlled substances within Schedule III including stimulants, depressants, nalorphine, narcotic drugs, anabolic steroids, and hallucinogenic substances.

0940-06-01-.04 names controlled substances within Schedule IV including narcotic drugs, depressants, fenfluramine, and stimulants.

0940-06-01-.05 names controlled substances within Schedule V including narcotic drugs containing non-narcotic active medicinal ingredients, stimulants, and depressants.

0940-06-01-.06 names controlled substances within Schedule VI including marijuana and tetrahydrocannabinols.

0940-06-01-.07 names controlled substances within Schedule VII including butyl nitrite and any isomer or butyl nitrite.

0940-06-01-.08 incorporates by reference exclusions for non-narcotic substances listed in the most current edition of 21 C.F.R. 1308.22 including those sold lawfully over the counter without a prescription.

0940-06-01-.09 names chemical preparations excluded from controlled substances.

0940-06-01-.10 names veterinary anabolic steroid implant products excluded from controlled substances.

0940-06-01-.11 names prescription products excluded from controlled substances.

0940-06-01-.12 names anabolic steroid products excluded from controlled substances.

0940-06-01-.13 names certain cannabis plant material, and product made therefrom, excluded from controlled substances.

**Public Hearing Comments**

One copy of a document containing responses to comments made at the public hearing must accompany the filing pursuant to T.C.A. § 4-5-222. Agencies shall include only their responses to public hearing comments, which can be summarized. No letters of inquiry from parties questioning the rule will be accepted. When no comments are received at the public hearing, the agency need only draft a memorandum stating such and include it with the Rulemaking Hearing Rule filing. Minutes of the meeting will not be accepted. Transcripts are not acceptable

TDMHSAS Responses to Comments about
Rules Chapter 0940-06-01
Consideration of Chapter 0940-06-01 Controlled Substances
Rulemaking Hearing Held on January 4, 2017

**The Department has attempted to present the following comments in a form that is both easy to read and accurate to the intent of the commenter. In rare cases, the Department made technical edits to increase the readability of a comment. Please forgive any typographical errors in both the comments and responses.*

**JIMMY MUSICE, SENIOR POLICY ADVISOR AND ATTORNEY, TENNESSEE BUREAU OF INVESTIGATION:** I'm here to let you know what our stance was and that was to recommend that etizolam be added to Schedule I in the rules. And I'm going to let Glenn Everitt give you an overview as to why we feel that way.

**GLENN EVERITT, SUPERVISING SPECIAL AGENT FORENSIC SCIENTIST, TENNESSEE BUREAU OF INVESTIGATION:** We've been monitoring etizolam for the past few years and it's exponentially grown over the years. We started out seeing it in 2014 and saw a few cases and then it grew from there. In 2015 we saw 29 cases and so far this year we've seen 94 cases. A lot of times we see etizolam in combination with Fentanyl and not that we don't see it as a powder by itself but we general see it in the fake Xanax tablets that mimic Alprazolam. There are different stamps they make for the tablets – the Xanax IIs or the GG2-49s. We've being seeing those and as far as I know the FDA does not have any use for that. I know that it has been used in other countries as a benzodiazepine but to my knowledge the FDA has not regulated that.

**Mr. Musice:** I would like to add that states surrounding Tennessee have scheduled it as a Schedule I – Alabama, Arkansas, Mississippi, Virginia and Florida. Most of those states did so in 2014 when they first began to see it. We've seen it used as a date-rape drug in the field. Glenn talked about some of the lab results going from 3 to 29 then to 94 but we've also see an increase on the toxicology side and that's when someone is pulled over for DUI and they may do a blood draw on them. In 2015 state-wide, 18 results contained etizolam and that was only used in the Middle District lab so it wasn't state-wide. But so far in 2016 state-wide it's up to 34. So, not only have we seen the increase through our drug agents purchasing and going after organizations but we're seeing it in the blood results of drivers, driving intoxicated on Tennessee roads.

*Kurt Hippel: So you see an abuse potential for this substance?*

**Mr. Musice:** Absolutely.

**Mr. Everitt:** Yes, definitely. As it stands now because our analogue law etizolam does not fit the legal definition of an analogue in the T.C.A. the way it's currently written it won't even though if you are asking me as a scientist is it an analogue, yes. Does it have the same affects as a benzodiazepine, yes. But as our law is currently written for the analogue, you can't make that jump to say that it's legally an analogue. So really there's no recourse to prosecute it. So therefore we're seeing it increasing every year.

*Kurt Hippel: Dr. Geminn, do you have any questions?*

*Dr. Geminn: My question would be, with your agents in the field, what is the source? Because it's not approved for use in the United States so I assume it can't legally be imported.*

**Mr. Musice:** Without getting too specific, there are ways throughout the Internet to obtain this substance and get it here, and get it here in bulk. I don't mean it's coming over in sandwich bags but full kilos being shipped here to Tennessee. What they do, they'll take that product add a binder and usually… (to **Glenn Everitt**) what else will they add to it when they're going to stamp the pill?

*Dr. Geminn: Starch.*

**Mr. Everitt**: Polymeric acid, uric acid, vositol, a number of things they can do.

**Mr. Musice:** But mainly, because right now etizolam is approved for use in Japan, India and Italy, we see more of Asian markets that are creating the etizolam. And like other drugs sometimes the Asians use the Mexican cartels as their distribution resource and a way to get it into the United States. But I didn't want to say that's the only way because like I said, you can order it off the Internet on certain websites.

*Dr. Geminn: I don't know if you've researched it at all, but Georgia made it a Schedule IV which is with the other benzodiazepines. Do you have any idea why maybe that state made it a Schedule IV? Are there arguments for making it in any another Schedule than a Schedule I?*

**Mr. Musice:** My assumption would be is that because it acts and mimics a benzodiazepine that they placed it in Schedule IV with all the other benzodiazepines. But our position would be that because the United States does not have a recognized reason for etizolam then that would put it in Schedule I with the others.

*Dr. Geminn: That's all the questions I have.*

*Kurt Hippel: Great. Dr. Loyd?*

*Dr. Loyd: I want to follow up on Dr. Geminn's question. So, is this similar to what's happening with fentanyl right now?*

**Mr. Everitt:** Yes, it can be. And we're often seeing it mixed with the fentanyl when creating counterfeit opioids.

*Dr. Loyd: Okay, Thank you.*

*Kurt Hippel: Thank you. Does anyone else on the Department panel have a question for the TBI? Thank you Gentlemen, we will take these comments and recommendations under full consideration. That is the end of my list of people who would want to make comments today. I will look through the room one last time to make sure no one else wants to say anything.*

*Dr. Geminn: One more question for the TBI, I'll repeat their answer if they can't hear. Have there been any deaths associated with etizolam? Any like post mortem drug….*

**Mr. Everitt:** Yes and No. Yes, because the deaths that we've seen, fentanyl or heroin...

*Dr. Geminn: It's "with"…*

**Mr. Everitt ...** or any combination with etizolam. I'm sorry. I'm not sure...

*Dr. Geminn: You can't say what the causative agent is but it's been associated in those screens for deceased individuals*?

**Mr. Everitt:** Right. I don't know if etizolam acts like an antagonist to enhance the effects of the heroin or fentanyl. I'm not exactly sure as to why they are putting that in with heroin or fentanyl.

*Kurt Hippel: But it is present in lab tests where someone has died?*

**Mr. Everitt:** Correct

*Dr. Geminn: Has overdosed?*

**Mr. Everitt:** Yes.

*Dr. Loyd: I think we make the assumption that it's a benzodiazepine or very close. So it potentiates the effect of the fentanyl. That's generally the cause. It's got a little bit different chemical structure; its half-life is a little longer too. Theoretically that makes it have a less potential for abuse, but I don't think that's what we are looking at here. We're looking at it as there being no medical valid reason to be used in the*

*United States, not FDA approved. And then also the potential toxicity.*

**TDMHSAS Response: After considering the information provided by the Tennessee Bureau of Investigation and pursuant to T.C.A. 39-17-403(a) & (b), the substance etizolam, also known as Etilaam, Etizola, Sedekopan, Pasaden, Depas, will be scheduled as a Schedule 1 controlled substance in this rule (TDMHSAS Rule Chapter 0940-06-01 Controlled Substances). The findings, as set out by T.C.A. 39-17-403(a), regarding the scheduling of etizolam as a Schedule 1 controlled substance are as follows:**

**1. The actual or relative potential for abuse:**
Etizolam is a thienodiazepine which has a chemically related structure to a class of substances known as benzodiazepines. Benzodiazepines are widely prescribed drugs with a known abuse potential while etizolam currently does not have an accepted medical use in the United States.[1] While etizolam does have a medically accepted use in a few international countries, it typically requires a prescription and is usually considered a controlled substance only when considering benzodiazepines as a whole. Due to etizolam being a benzodiazepine analog, it does have anxiolytic effects, but has a short duration of action which may lead to dependence.[2]

**2. The scientific evidence of its pharmacological effect, if known:**
Since etizolam is a benzodiazepine analog, it possesses anxiolytic, anticonvulsant, sedative-hypnotic, and muscle relaxant effects similar to other benzodiazepines.

**3. The state of current scientific knowledge regarding the substance:**
Etizolam was developed in Japan and is registered as a medicine in at least 3 countries: Japan, Italy, and India. The majority of current scientific knowledge regarding etizolam is due to the study of benzodiazepines as a whole.[3]

**4. The history and current pattern of abuse:**
Etizolam has a limited history of abuse due to lack of specific tracking through drug screens. According to the Tennessee Bureau of Investigation, drug screens showing positive for etizolam have been increasing, with 29 cases in 2015 and 94 cases in 2016.

**5. The scope, duration and significance of abuse:**
Etizolam is a benzodiazepine analog and has a generally similar pharmacological profile to the benzodiazepine class. Approximately 30% of the 1,045 deaths in 2015 caused by opioid overdose also involved benzodiazepine use in Tennessee. Tennessee's prescription drug overdose rate is 26% above the national average and Tennessee leads the nation in the number of controlled substance prescriptions per capita.

**6. The risk to the public health:**
Benzodiazepines and analogs such as etizolam may be abused or may be used in combination with other drugs of abuse to produce additive results. Etizolam is also not currently classified as a controlled substance, which poses a threat to public safety since prosecutors are unable to prosecute anyone with possession or intention for distribution of this compound.

**7. The potential of the substance to produce psychic or physiological dependence liability:**
In animal experiments, etizolam has been shown to be approximately 10 times more potent than diazepam (Valium®). Dependence may develop with regular use of benzodiazepines, which may precipitate withdrawal syndrome when the drug is discontinued.

**8. Whether the substance is an immediate precursor of a substance already controlled under this section:**
This substance is not an immediate precursor of a substance already controlled in Tennessee. Although this is an analog, the chemical structure of etizolam does not put it under our previous actions for controlling analogs and precursors to controlled substances.

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[1] *Drug and Chemical Evaluation Section:* Etizolam. (Oct 2014). Office of Diversion Control, Drug Enforcement Administration, Retrieved January 5, 2017 from https://www.deadiversion.usdoj.gov/drug_chem_info/etizolam.pdf

[2,3] Gupta, S., & Garg, B. (2014). A case of etizolam dependence. Indian Journal of Pharmacology, 46(6), 655–656. http://doi.org/10.4103/0253-7613.144943

**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.

These rules will not affect small businesses. Although, some pharmacies qualify as small businesses, the changes to the controlled substances schedules promulgated by these rules should not change the daily operations of those pharmacies.

**Economic Impact Statement**

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.

   These rules will not affect small businesses.

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.

   These rules will not affect reporting, recordkeeping, or other administrative costs of small businesses.

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

   These rules will not affect small businesses.

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

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

   These rules compare favorably with the federal controlled substances schedules as T.C.A. § 39-17-403 requires the Tennessee Department of Mental Health and Substance Abuse Services (TDMHSAS) to schedule substances if those substances have been designated as controlled substances by federal regulations promulgated by the U.S. Department of Justice Drug Enforcement Administration (DEA), unless TDMHSAS, upon agreement with the Tennessee Department of Health (TDH), decides otherwise.

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.

   These rules will not affect small businesses.

**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)

TDMHSAS estimates that these rules will not have a projected financial 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;

The lists of controlled substances for all schedules were revised to ensure consistency with Part 1308 of Title 21 of the Code of Federal Regulations (C.F.R.) and T.C.A. §§ 39-17-406, 39-17-408, 39-17-410, 39-17-412, 39-17-414, and 39-17-416.
0940-06-01-.01 names controlled substances within Schedule I including opiates, opium derivatives, hallucinogenic substances, depressants, and stimulants. Etizolam, although not federally scheduled, has been scheduled as a Schedule I controlled substance in this rule (see TDMHSAS Findings on p. 29 of this document).
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0940-06-01-.12 names anabolic steroid products excluded from controlled substances.
0940-06-01-.13 names certain cannabis plant material, and product made therefrom, excluded from controlled substances.

**(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;

21 U.S.C. 812: Establishes schedules of controlled substances.
21 C.F.R. 1308: Contains schedules of controlled substances set forth by the U.S. Department of Justice Drug Enforcement Administration.
T.C.A. § 4-4-103: Empowers the Commissioner of each department to prescribe regulations.
T.C.A. § 33-1-302: Empowers the Department to make and enforce rules necessary for the efficient financial management and lawful operation of facilities and services.
T.C.A. § 33-1-303: Defines powers of the Commissioner including rulemaking authority.
T.C.A. § 33-1-305: Empowers the Commissioner of the Department of Mental Health and Substance Abuse Services to adopt rules to fulfill the Department's responsibilities.
T.C.A. § 33-1-309: Requires the Department to adopt all rules in accordance with the Uniform Administrative Procedures Act.
T.C.A. § 39-17-403: Requires the Commissioner of the Department of Mental Health and Substance Abuse Services, upon agreement of the Commissioner of the Department of Health, to control substances according to certain guidelines.

**(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;

This rule affects healthcare professionals and pharmacies; as well as the TN Boards of Nursing, Medical Examiners, and Pharmacy; the TennCare Inspector General and the TN Bureau of Investigation. The Department received comments from the TN Bureau of Investigation regarding this rule during the rulemaking

hearing held for this rule on January 4th, 2017. These were the only comments received regarding this rule and TDMHSAS adopted the action proposed by the comments from the TN Bureau of Investigation.

**(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;

There are no opinions of the Attorney General and Reporter that directly relate 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;

It is estimated that these rules will not have a fiscal impact on state and local government revenues and expenditures.

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

Wesley Geminn, Chief Pharmacist, TDMHSAS
Kurt Hippel, Director of Legislation, Rules & Privacy, TDMHSAS

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

Wesley Geminn, Chief Pharmacist, TDMHSAS
Kurt Hippel, Director of Legislation, Rules & Privacy, TDMHSAS

**(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

Wesley Geminn, Chief Pharmacist
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615-532-9439

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

N/A

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**For Department of State Use Only**

Sequence Number: 03-20-17
Rule ID(s): 6470
File Date: 3/21/17
Effective Date: 6/19/17

# 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:** | Tennessee Department of Mental Health and Substance Abuse Services |
| **Division:** | Division of Substance Abuse Services |
| **Contact Person:** | Kurt Hippel, Office of Legislation, Rules & Privacy |
| **Address:** | 500 Deaderick Street, 5th Floor, Andrew Jackson Building |
| **Zip:** | 37243 |
| **Phone:** | 615-532-6520 |
| **Email:** | Kurt.Hippel@tn.gov |

**Revision Type (check all that apply):**

___ Amendment
_X_ New
_X_ 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** |
|---|---|
| 0940-06-01 | Controlled Substances |
| **Rule Number** | **Rule Title** |
| 0940-06-01-.01 | Controlled Substances in Schedule I |
| 0940-06-01-.02 | Controlled Substances in Schedule II |
| 0940-06-01-.03 | Controlled Substances in Schedule III |
| 0940-06-01-.04 | Controlled Substances in Schedule IV |
| 0940-06-01-.05 | Controlled Substances in Schedule V |
| 0940-06-01-.06 | Controlled Substances in Schedule VI |
| 0940-06-01-.07 | Controlled Substances in Schedule VII |
| 0940-06-01-.08 | Non-Narcotic Substances Excluded from Controlled Substances |
| 0940-06-01-.09 | Chemical preparations excluded from Controlled Substances |
| 0940-06-01-.10 | Veterinary anabolic steroid implant products excluded from Controlled Substances |
| 0940-06-01-.11 | Prescription products excluded from Controlled Substances |
| 0940-06-01-.12 | Anabolic steroid products excluded from Controlled Substances |
| 0940-06-01-.13 | Certain cannabis plant material, and products made therefrom, excluded from Controlled Substances |

(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 http://sos.tn.gov/sites/default/files/forms/Rulemaking_Guidelines_August2014.pdf)

Chapter 0940-06-01
Controlled Substances

Chapter 0940-06-01 Controlled Substances is being repealed and rewritten including its table of contents.

Authority: T.C.A. §§ 4-4-103, 33-1-302, 33-1-303, 33-1-305, 33-1-309, and 39-17-403.

Chapter 0940-06-01
Controlled Substances

New Rule

0940-06-01-.01 Controlled Substances in Schedule I.

(1) Schedule I consists of the drugs and other substances, by whatever official name, common or usual name, chemical name, or brand name designated, listed in this rule. Each drug or substance bears the federal controlled substance code number assigned to it by the Drug Enforcement Administration.

(2) Opiates. Unless specifically excepted or unless listed in another schedule, any of the following opiates, including their isomers, esters, ethers, salts and salts of isomers, esters, and ethers, whenever the existence of such isomers, esters, ethers, salts is possible within the specific chemical designation. For the purposes of subparagraph (ll) 3-Methylfentanyl, only, the term isomer includes the optical and geometric isomers.

(a) Acetyl-alpha-methylfentanyl (N-[1-(1-methyl-2-phenethyl)-4-piperidnyl]-N-phenyl-acetamide)..... 9815

(b) Acetylfentanyl (N-(1-phenethylpiperidin-4-yl)-N-phenylacetamide)..... 9821

(c) Acetylmethadol..... 9601

(d) Allylprodine..... 9602

(e) Alphacetylmethadol (except levo-alphacetylmethadol also known as levo-alpha-acetylmethadol, levomethadyl acetate; or LAAM)..... 9603

(f) Alphameprodine..... 9604

(g) Alphamethadol..... 9605

(h) Alpha-methylfentanyl (N-[1-(alpha-methyl-beta-phenyl)ethyl-4-piperidyl]propionanilide; 1-(1-methyl-2-phenylethyl)-4-(N-propanilido)piperidine)..... 9814

(i) Alpha-methylthiofentanyl (N-[1-methyl-2-(2-thienyl)ethyl-4-piperidinyl]-N-phenylpropanamide)..... 9832

(j) Benzethidine..... 9606

(k) Betacetylmethadol..... 9607

(l) Beta-hydroxyfentanyl (N-[1-(2-hydroxy-2-phenethyl)-4-piperidinyl]-N-phenylpropanamide)..... 9830

RED

(m) Beta-hydroxythiofentanyl..... 9836
Other name: N-[1-[2-hydroxy-2-(thiophen-2-yl)ethyl]piperidin-4-yl]-N-phenylpropionamide, N-[1-[2-hydroxy-2-(2-thienyl)ethyl]-4-piperidinyl]-N-phenylpropanamide

(nm) Beta-hydroxy-3-methylfentanyl ..... 9831
Other name: N-[1-(2-hydroxy-2-phenethyl)-3-methyl-4-piperidinyl]-N-phenylpropanamide

(on) Betameprodine..... 9608

(pe) Betamethadol..... 9609

(qp) Betaprodine..... 9611

(r) Butyryl Fentanyl..... 9822
Other name: N-(1-phenethylpiperidin-4-yl)-N-phenylbutyramide, N-(1-phenethylpiperidin-4-yl)-N-phenylbutanamide

(sq) Clonitazene..... 9612

(tr) Dextromoramide..... 9613

(us) Diampromide..... 9615

(vt) Diethylthiambutene..... 9616

(wu) Difenoxin..... 9168

(xv) Dimenoxadol..... 9617

(yw) Dimepheptanol..... 9618

(zx) Dimethylthiambutene..... 9619

(aay) Dioxaphetyl butyrate..... 9621

(bbz) Dipipanone..... 9622

(ccaa) Ethylmethylthiambutene..... 9623

(ddbb) Etonitazene..... 9624

(eecc) Etoxeridine..... 9625

(ffdd) Furethidine..... 9626

(gg) Furanyl Fentanyl..... 9834

(hhee) Hydroxypethidine..... 9627

(iiff) Ketobemidone..... 9628

(jjgg) Levomoramide..... 9629

(kkhh) Levophenacylmorphan..... 9631

(llii) 3-Methylfentanyl (N-[3-methyl-1-(2-phenylethyl)-4-piperidyl]-N-phenylpropanamide)..... 9813

REVISED

(mmjj) 3-Methylthiofentanyl (N-[(3-methyl-1-(2-thienyl)ethyl-4-piperidinyl]-N-phenylpropanamide)..... 9833

(nnkk) Morpheridine..... 9632

(oolł) MPPP (1-methyl-4-phenyl-4-propionoxypiperidine)..... 9661

(ppmm) Noracymethadol..... 9633

(qqnn) Norlevorphanol..... 9634

(rroo) Normethadone..... 9635

(sspp) Norpipanone..... 9636

(ttqq) Para-fluorofentanyl (N-(4-fluorophenyl)-N-[1-(2-phenethyl)-4-piperidinyl] propanamide) ..... 9812

(uurr) PEPAP (1-(2-phenylethyl)-4-phenyl-4-acetoxypiperidine)..... 9663

(vvss) Phenadoxone..... 9637

(wwtt) Phenampromide..... 9638

(xxuu) Phenomorphan..... 9647

(yyvv) Phenoperidine..... 9641

(zzww) Piritramide..... 9642

(aaaxx) Proheptazine..... 9643

(bbbyy) Properidine..... 9644

(ccczz) Propiram..... 9649

(dddaaa)
oramide..... Racem 9645

(eeebbb)
tanyl (N-phenyl-N-[1-(2-thienyl)ethyl-4-piperidinyl]-propanamide)..... Thiofen 9835

(fffccc) Tilidine..... 9750

(gggddd)Trimeperidine..... 9646

(hhh) U-47700 (3,4-dichloro-N-[2-(dimethylamino)cyclohexyl]-N-methylbenzamide..... 9547

(3) Opium derivatives. Unless specifically excepted or unless listed in another schedule, any of the following opium derivatives, its salts, isomers, and salts of isomers, whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation:

(a) Acetorphine..... 9319

(b) Acetyldihydrocodeine..... 9051

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(c) Benzylmorphine..... 9052

(d) Codeine methylbromide..... 9070

(e) Codeine-N-Oxide..... 9053

(f) Cyprenorphine..... 9054

(g) Desomorphine..... 9055

(h) Dihydromorphine..... 9145

(i) Drotebanol..... 9335

(j) Etorphine (except hydrochloride salt)..... 9056

(k) Heroin..... 9200

(l) Hydromorphinol..... 9301

(m) Methyldesorphine..... 9302

(n) Methyldihydromorphine..... 9304

(o) Morphine methylbromide..... 9305

(p) Morphine methylsulfonate..... 9306

(q) Morphine-N-Oxide..... 9307

(r) Myrophine..... 9308

(s) Nicocodeine..... 9309

(t) Nicomorphine..... 9312

(u) Normorphine..... 9313

(v) Pholcodine..... 9314

(w) Thebacon..... 9315

(4) Hallucinogenic substances. Unless specifically excepted or unless listed in another schedule, any material, compound mixture, or preparation, which contains any quantity of the following hallucinogenic substances, or which contains any of its salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers, is possible within the specified chemical designation (for purposes of this paragraph only, the term "isomer" includes the optical, position and geometric isomers):

(a) Alpha-ethyltryptamine..... 7249
Other names: etryptamine; Monase; [alpha]-ethyl-1H-indole-3-ethanamine; 3-(2-aminobutyl) indole; [alpha]-ET; and AET; ET; Trip

(b) Alpha-methyltryptamine..... 7432
Other name: AMT

(c) 4-Bromo-2,5-dimethoxyamphetamine..... 7391
Other names: 4-Bromo-2,5-dimethoxy-[alpha]-methylphenethylamine; 4-bromo-2,5-DMA

(d) 4-Bromo-2,5-dimethoxyphenethylamine..... 7392

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Other names: 2-(4-bromo-2,5-dimethoxyphenyl)-1-aminoethane; alpha-desmethyl DOB; 2C-B; Nexus

(e) 2-(4-Bromo-2,5-dimethoxyphenyl)-N-(2-methoxybenzyl)ethanamine..... 7536
Other names: 25B-NBOMe; 2C-B-NBOMe; 25B; Cimbi-36

(f) Bufotenine..... 7433
Other names: 3-([beta]-Dimethylaminoethyl)-5-hydroxyindole; 3-(2-dimethylaminoethyl)-5-indolol; N,N-dimethylserotonin; 5-hydroxy-N,N-dimethyltryptamine; mappine

(g) 2-(4-Chloro-2,5-dimethoxyphenyl)-N-(2-methoxybenzyl)ethanamine..... 7537
Other names: 25C-NBOMe; 2C-C-NBOMe; 25C; Cimbi-82

(h) Diethyltryptamine..... 7434
Other names: N,N-Diethyltryptamine; DET

(i) 2,5-Dimethoxyamphetamine..... 7396
Other names: 2,5-Dimethoxy-[alpha]-methylphenethylamine; 2,5-DMA

(j) 2, 5-Dimethoxy-4-ethylamphetamine..... 7399
Other name: DOET

(k) 2, 5 Dimethoxy-4-(n)-propylthiophenethylamine..... 7348
Other name: 2C-T-7

(l) Dimethyltryptamine..... 7435
Other name: DMT

(m) Ethylamine analog of phencyclidine..... 7455
Other names: N-Ethyl-1-phenylcyclohexylamine; (1-phenylcyclohexyl)ethylamine; N-(1-phenylcyclohexyl)ethylamine; cyclohexamine; PCE

(n) Ibogaine..... 7260
Other names: 7-Ethyl-6,6[beta],7,8,9,10,12,13-octahydro-2-methoxy-6,9-methano-5H-pyrido [1',2':1,2]azepino[5,4-b]indole; Tabenanthe iboga.

(o) 2-(4-iodo-2,5-dimethoxyphenyl)-N-(2-methoxybenzyl)ethanamine..... 7538
Other names: 25I-NBOMe; 2C-I-NBOMe; 25I; Cimbi-5

(p) Lysergic acid diethylamide..... 7315
Other name: LSD

(q) Mescaline..... 7381
Other name: Constituent of "Peyote" cacti

(r) 4-Methoxyamphetamine..... 7411
Other names: 4-methoxy-[alpha]-methylphenethylamine; paramethoxyamphetamine; PMA

(s) 5-Methoxy-3,4-methylenedioxyamphetamine..... 7401

(t) 5-Methoxy-N,N-diisopropyltryptamine..... 7439
Other name: 5-MeO-DIPT

(u) 5-methoxy-N,N-dimethyltryptamine ..... 7431
Other names: 5-methoxy-3-[2-(dimethylamino)ethyl]indole; 5-MeO-DMT

(v) 4-Methyl-2, 5-dimethoxyamphetamine..... 7395
Other names: 4-methyl-2,5-dimethoxy-[alpha]-methylphenethylamine; DOM; STP

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(w) 3,4-Methylenedioxyamphetamine..... 7400

(x) 3,4-Methylenedioxymethamphetamine..... 7405
Other name: MDMA

(y) 3,4-Methylenedioxy-N-ethylamphetamine..... 7404
Other names: N-ethyl-alpha-methyl-3,4(methylenedioxy)phenethylamine; N-ethyl MDA; MDE; MDEA

(z) 3,4-Methylenedioxy-N-methylcathinone..... 7540
Other names: Methylone

(aa) N-Ethyl-3-piperidyl benzilate..... 7482

(bb) N-Hydroxy-3,4-methylenedioxyamphetamine..... 7402
Other names: N-hydroxy-alpha-methyl-3,4(methylenedioxy)phenethylamine; N-hydroxy MDA

(cc) N-methyl-3-piperidyl benzilate..... 7484

(dd) Parahexyl..... 7374
Other names: 3-Hexyl-1-hydroxy-7,8,9,10-tetrahydro-6,6,9-trimethyl-6H-dibenzo[b, d]pyran; Synhexyl

(ee) Peyote..... 7415
Meaning all parts of the plant presently classified botanically as Lophophora williamsii Lamaire, whether growing or not, the seeds thereof, any extract from any part of such plant, and every compound, manufacture, salts, derivative, mixture, or preparation of such plant its seeds or extracts. (Interprets 21 USC 812 (c), Schedule 1 (c) (12)(o))

(ff) Psilocybin (constituent of magic mushrooms)..... 7437

(gg) Psilocyn (constituent of magic mushrooms)..... 7438

(hh) Pyrrolidine analog of phencyclidine (1-(1-phenylcyclohexyl)-pyrrolidine)..... 7458
Other names: PCPy; PHP

(ii) 1-[1-(2-Thienyl)cyclohexyl]pyrrolidine..... 7473
Other names: TCPy

(jj) 4- Methylmethcathinone..... 1248
Other names: mephedrone; methpadrone; 4-MMC

(kk) 3,4-Methylenedioxypyrovalerone..... 7535
Other names: MDPV

(ll) 2-(2,5-Dimethoxy-4-ethylphenyl)ethanamine (2C-E)..... 7509

(mm) 2-(2,5-Dimethoxy-4-methylphenyl)ethanamine (2C-D)..... 7508

(nn) 2-(4-Chloro-2,5-dimethoxyphenyl)ethanamine (2C-C)..... 7519

(oo) 2-(4-Iodo-2,5-dimethoxyphenyl)ethanamine (2C-I)..... 7518

(pp) 2-[4-Ethylthio-2,5-dimethoxyphenyl]ethanamine (2C-T-2)..... 7385

(qq) 2-[4-(Isopropylthio)-2,5-dimethoxyphenyl]ethanamine (2C-T-4)..... 7532

(rr) 2-(2,5-Dimethoxyphenyl)ethanamine (2C-H)..... 7517

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(ss) 2-(2,5-Dimethoxy-4-nitro-phenyl)ethanamine (2C-N) ..... 7521

(tt) 2-(2,5-Dimethoxy-4-(n)-propylphenyl)ethanamine (2C-P) ..... 7524

(uu) Thiophene analog of phencyclidine..... 7470
Other names: 1-[1-(2-thienyl)cyclohexyl]piperidine; 2-thienylanalog of phencyclidine; TPCP; TCP

(vv) 3,4,5-Trimethoxyamphetamine..... 7390

(ww) (1-Pentyl-1H-indol-3-yl)(2,2,3,3-tetramethylcyclopropyl)methanone ..... 7144
Other names: UR-144; 1-pentyl-3-(2,2,3,3-tetramethylcyclopropoyl)indole

(xx) 1-(5-Fluoro-pentyl)-1H-indol-3-yl](2,2,3,3-tetramethylcyclopropyl)methanone ..... 7011
Other names: 5-fluoro-UR-144; 5-F-UR-144; XLR11; 1-(5-fluoro-pentyl)-3-(2,2,3,3-tetramethylcyclopropoyl)indole

(5) Depressants. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a depressant effect on the central nervous system, including its salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specified chemical designation:

(a) Etizolam
Other names: Etilaam, Etizola, Sedekopan, Pasaden, Depas

(ba) Gamma-hydroxybutyric acid..... 2010
Other names: GHB; gamma-hydroxybutyrate; 4-hydroxybutyrate; 4-hydroxybutanoic acid; sodium oxybate; sodium oxybutyrate

(cb) Mecloqualone..... 2572

(dc) Methaqualone..... 2565

(6) Stimulants. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a stimulant effect on the central nervous system, including its salts, isomers, and salts of isomers:

(a) Alpha-pyrrolidinobutiophenone..... 7546
Other names: [alpha]-PBP; 1-phenyl-2-(pyrrolidin-1-yl)butan-1-one

(b) Alpha-pyrrolidinopentiophenone..... 7545
Other names: [alpha]-PVP; [alpha]-pyrrolidinovalerophenone; 1-phenyl-2-(pyrrolidin-1-yl)pentan-1-one

(c) Aminorex..... 1585
Other names: aminoxophen; 2-amino-5-phenyl-2-oxazoline; or 4,5-dihydro-5-phenyl-2-oxazolamine

(d) Butylone..... 7541
Other names: bk-MBDB; 1-(1,3-benzodioxol-5-yl)-2-(methylamino)butan-1-one

(e) Cathinone..... 1235
Other names: 2-amino-1-phenyl-1-propanone; alpha-aminopropiophenone; 2-aminopropiophenone; norphedrone; constituent of *catha edulis or* "Khat" plant

(f) 3-Fluoro-N-methylcathinone..... 1233
Other names: 3-FMC; 1-(3-fluorophenyl)-2-(methylamino)propan-1-one

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(g) 4-Fluoro-N-methylcathinone..... 1238
Other names: 4-FMC; flephedrone; 1-(4-fluorophenyl)-2-(methylamino)propan-1-one

(h) Fenethylline..... 1503

(i) Methcathinone..... 1237
Other names: 2-(methylamino)-propiophenone; alpha-(methylamino) propiophenone; 2-(methylamino)-1-phenylpropan-1-one; alpha-N-methylaminopropiophenone; monomethylpropion; ephedrone; N-methylcathinone; methylcathinone; AL-464; AL-422; AL-463; and UR1432;

(j) (+/-) *cis*-4-Methylaminorex (cis isomer)..... 1590
Other name: (+/-)cis-4,5 dihydro-4-methyl-5-phenyl-2-oxazolamine

(k) 4-Methyl-N-ethylcathinone..... 1249
Other names: 4-MEC; 2-(ethylamino)-1-(4-methylphenyl)propan-1-one

(l) 4-Methyl-alpha-pyrrolidinopropiophenone..... 7498
Other names: 4-MePPP; MePPP; 4-methyl-[alpha]-pyrrolidinopropiophenone; 1-(4-methylphenyl)-2-(pyrrolidin-1-yl)-propan-1-one

(m) Naphyrone..... 1258
Other names: naphthylpyrovalerone; 1-(naphthalen-2-yl)-2-(pyrrolidin-1-yl)pentan-1-one

(n) N-Benzylpiperazine..... 7493
Other names: BZP; 1-benzylpiperazine

(o) N-Ethylamphetamine..... 1475

(p) N,N-Dimethylamphetamine..... 1480
Other names: N,N-alpha-trimethyl-benzeneethanamine; N,N-alpha-trimethylphenethylamine

(q) Pentedrone..... 1246
Other names: [alpha]-methylaminovalerophenone; 2-(methylamino)-1-phenylpentan-1-one

(r) Pentylone..... 7542
Other names: bk-MBDP; 1-(1,3-benzodioxol-5-yl)-2-(methylamino)pentan-1-one

(7) Cannabimimetic agents. Unless specifically exempted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances, or which contains their salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation:

(a) 5-(1,1-Dimethylheptyl)-2-[(1R,3S)-3-hydroxycyclohexyl]-phenol (CP-47,497) ..... 7297

(b) 5-(1,1-Dimethyloctyl)-2-[(1R,3S)-3-hydroxycyclohexyl]-phenol (cannabicyclohexanol or CP-47,497 C8-homolog) ..... 7298

(c) 1-Pentyl-3-(1-naphthoyl)indole (JWH-018 and AM678) ..... 7118

(d) 1-Butyl-3-(1-naphthoyl)indole (JWH-073) ..... 7173

(e) 1-Hexyl-3-(1-naphthoyl)indole (JWH-019) ..... 7019

(f) 1-[2-(4-Morpholinyl)ethyl]-3-(1-naphthoyl)indole (JWH-200) ..... 7200

(g) 1-Pentyl-3-(2-methoxyphenylacetyl)indole (JWH-250) ..... 6250

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(h) 1-Pentyl-3-[1-(4-methoxynaphthoyl)]indole (JWH-081) ..... 7081

(i) 1-Pentyl-3-(4-methyl-1-naphthoyl)indole (JWH-122) ..... 7122

(j) 1-Pentyl-3-(4-chloro-1-naphthoyl)indole (JWH-398) ..... 7398

(k) (1-(5-fluoropentyl)-1H-indazol-3-yl)(naphthalen-1-yl)methanone (THJ-2201)..... 7024

(l) 1-(5-Fluoropentyl)-3-(1-naphthoyl)indole (AM2201).....7201

(m) 1-(5-Fluoropentyl)-3-(2-iodobenzoyl)indole (AM694)..... 7694

(n) 1-Pentyl-3-[(4-methoxy)-benzoyl]indole (SR-19 and RCS-4).....7104

(o) 1-Cyclohexylethyl-3-(2-methoxyphenylacetyl)indole (SR-18 and RCS-8) ..... 7008

(p) 1-Pentyl-3-(2-chlorophenylacetyl)indole (JWH-203) .....7203

(q) N-(1-adamantyl)-1-pentyl-1H-indazole-3-carboxamide..... 7048
Other names: APINACA; AKB48

(r) N-(1-amino-3-methyl-1-oxobutan-2-yl)-1-(4-fluorobenzyl)-1H-indazole-3-carboxamide..... 7012
Other names: AB-FUBINACA

(s) N-(1-amino-3-methyl-1-oxobutan-2-yl)-1(cyclohexylmethyl)-1H-indazole-3-carboxamide.....7031
Other names: AB-CHMINACA

(t) N-(1-amino-3,3-dimethyl-1-oxobutan-2-yl)-1-pentyl-1H-indazole-3-carboxamide .. 7035
Other names: ADB-PINACA

(u) N-(1-amino-3-methyl-1-oxobutan-2-yl)-1-pentyl-1H-indazole-3-carboxamide.....7023
Other names: AB-PINACA

(v) Quinolin-8-yl 1-(5-fluoropentyl)-1H-indole-3-carboxylate .....7225
Other names: 5-fluoro-PB-22; 5F-PB-22

(w) Quinolin-8-yl 1-pentyl-1H-indole-3-carboxylate .....7222
Other names: PB-22; QUPIC

Authority: T.C.A. §§ 4-4-103, 33-1-302, 33-1-303, 33-1-305, 33-1-309, and 39-17-403.

0940-06-01-.02 Controlled Substances in Schedule II.

(1) Schedule II consists of the drugs and other substances, by whatever official name, common or usual name, chemical name, or brand name designated, listed in this rule. Each drug or substance bears the federal controlled substance code number assigned to it by the Drug Enforcement Administration.

(2) Substances, vegetable origin or chemical synthesis. Unless specifically excepted or unless listed in another schedule, any of the following substances whether produced directly or indirectly by extraction from substances of vegetable origin, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis:

(a) Opium and opiate, and any salt, compound, derivative, or preparation of opium or opiate, excluding apomorphine, dextrorphan, thebaine-derived butorphanol, nalmefene, nalbuphine, naloxone, and naltrexone, and their respective salts, but including the following:

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1. Codeine..... 9050

2. Dihydroetorphine..... 9334

3. Ethylmorphine..... 9190

4. Etorphine hydrochloride..... 9059

5. Granulated opium..... 9640

6. Hydrocodone..... 9193

7. Hydromorphone..... 9150

8. Metopon..... 9260

9. Morphine..... 9300

10. Opium extracts..... 9610

11. Opium fluid..... 9620

12. Oripavine..... 9330

13. Oxycodone..... 9143

14. Oxymorphone..... 9652

15. Powdered opium..... 9639

16. Raw opium..... 9600

17. Thebaine..... 9333

18. Tincture of opium..... 9630

(b) Any salt, compound, derivative, or preparation thereof which is chemically equivalent or identical with any of the substances referred to in paragraph (2)(a) of this rule, except that these substances shall not include the isoquinoline alkaloids of opium.

(c) Opium poppy and poppy straw.

(d) Coca leaves (9040) and any salt, compound, derivative or preparation of coca leaves (including cocaine (9041) and ecgonine (9180) and their salts, isomers, derivatives and salts of isomers and derivatives), and any salt, compound, derivative, or preparation thereof which is chemically equivalent or identical with any of these substances, except that the substances shall not include decocainized coca leaves or extraction of coca leaves, which extractions do not contain cocaine or ecgonine.

(e) Concentrate of poppy straw (the crude extract of poppy straw in either liquid, solid or powder form which contains the phenanthrene alkaloids of the opium poppy)..... 9670

(3) Opiates. Unless specifically excepted or unless in another schedule any of the following opiates, including its isomers, esters, ethers, salts and salts of isomers, esters and ethers whenever the existence of such isomers, esters, ethers, and salts is possible within the specific chemical designation, dextrorphan and levopropoxyphene excepted:

(a) Alfentanil..... 9737

(b) Alphaprodine..... 9010

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(c) Anileridine.....9020

(d) Bezitramide.....9800

(e) Carfentanil.....9743

(f) Dextropropoxyphene (bulk, non dosage forms).....9273

(g) Dihydrocodeine.....9120

(h) Diphenoxylate.....9170

(i) Fentanyl.....9801

(j) Isomethadone.....9226

(k) Levo-alphacetylmethadol.....9648
Other names: levo-alpha-acetylmethadol; levomethadyl acetate; LAAM

(l) Levomethorphan.....9210

(m) Levorphanol.....9220

(n) Metazocine.....9240

(o) Methadone.....9250

(p) Methadone-Intermediate; 4-cyano-2-dimethylamino-4,4-diphenyl butane.....9254

(q) Moramide-Intermediate; 2-methyl-3-morpholino-1,1-diphenylpropane-caboxylic acid.....9802

(r) Pethidine (meperidine).....9230

(s) Pethidine-Intermediate-A; 4-cyano-1-methyl-4-phenylpiperidine.....9232

(t) Pethidine-Intermediate-B; ethyl-4-phenylpiperidine-4-carboxylate.....9233

(u) Pethidine-Intermediate-C; 1-methyl-4-phenylpiperidine-4-carboxylic acid.....9234

(v) Phenazocine.....9715

(w) Piminodine.....9730

(x) Racemethorphan.....9732

(y) Racemorphan.....9733

(z) Remifentanil.....9739

(aa) Sufentanil.....9740

(bb) Tapentadol.....9780

(cc) Thiafentanil.....9729

(4) Stimulants. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a stimulant effect on the central nervous system:

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(a) Amphetamine, its salts, optical isomers, and salts of its optical isomers..... 1100

(b) Methamphetamine, its salts, isomers, and salts of its isomers..... 1105

(c) Phenmetrazine and its salts..... 1631

(d) Methylphenidate..... 1724

(e) Lisdexamfetamine, its salts, isomers, and salts of its isomers..... 1205

(5) Depressants. Unless specifically excepted or unless listed in another schedule any material, compound, mixture, or preparation which contains any quantity of the following substances having a depressant effect on the central nervous system, including its salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation:

(a) Amobarbital..... 2125

(b) Glutethimide..... 2550

(c) Pentobarbital..... 2270

(d) Phencyclidine..... 7471

(e) Secobarbital..... 2315

(6) Hallucinogenic substances.

(a) Nabilone..... 7379
Other names: (+/-)-trans-3-(1,1-dimethylheptyl)-6,6a,7,8,10,10a-hexahydro-1-hydroxy-6, 6-dimethyl-9H-dibenzo[b,d]pyran-9-one.

(7) Immediate precursors. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture or preparation which contains any quantity of the following substances:

(a) Immediate precursor to amphetamine and methamphetamine:

1. Phenylacetone..... 8501

Other names: phenyl-2-propanone; P2P; benzyl methyl ketone; methyl benzyl ketone;

(b) Immediate precursors to phencyclidine (PCP):

1. 1-phenylcyclohexylamine..... 7460

2. 1-piperidinocyclohexanecarbonitrile(PCC)..... 8603

(c) Immediate precursor to fentanyl:

1. 4-anilino-N-phenethyl-4-piperidine (ANPP)..... 8333

Authority: T.C.A. §§ 4-4-103, 33-1-302, 33-1-303, 33-1-305, 33-1-309, and 39-17-403.

0940-06-01-.03 Controlled Substances in Schedule III.

(1) Schedule III consists of the drugs and other substances by whatever official name, common or usual name, chemical name, or brand name designated, listed in this rule. Each drug or

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substance bears the federal controlled substance code number assigned to it by the Drug Enforcement Administration.

(2) Stimulants. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a stimulant effect on the central nervous system, including its salts, isomers (whether optical, position or geometric), and salts of such isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation:

(a) Those compounds, mixtures, or preparations in dosage unit form containing any stimulant substances listed in Schedule II which compounds, mixtures, or preparations were listed on August 25, 1971, as excepted compounds under 21 C.F.R. 1308.32, and any other drug of the quantitative composition shown in that list for those drugs or which is the same except that it contains a lesser quantity of controlled substances..... 1405

(b) Benzphetamine..... 1228

(c) Clorphentermine..... 1645

(d) Clortermine..... 1647

(e) Phendimetrazine..... 1615

(3) Depressants. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a depressant effect in the central nervous system:

(a) Any compound, mixture, or preparation containing:

1. Amobarbital..... 2126
2. Secobarbital..... 2316
3. Pentobarbital..... 2271

Or any salt thereof and one or more other active medicinal ingredients which are not listed in any schedule.

(b) Any suppository dosage form containing:

1. Amobarbital..... 2126
2. Secobarbital..... 2316
3. Pentobarbital..... 2271

Or any salt of these drugs and approved by the Food and Drug Administration for marketing only as a suppository.

(c) Any substance which contains any quantity of a derivative of barbituric acid or any salt thereof. Examples include the following drugs:..... 2100

1. Aprobarbital..... 2100
2. Butabarbital (secbutabarbital)..... 2100
3. Butalbital..... 2100
4. Butobarbital (butethal)..... 2100
5. Talbutal..... 2100

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6. Thiamylal..... 2100

7. Thiopental..... 2100

8. Vinbarbital..... 2100

(d) Chlorhexadol..... 2510

(e) Embutramide..... 2020

(f) Gamma hydroxybutyric acid preparations. Any drug product containing gamma hydroxybutyric acid, including its salts, isomers, and salts of isomers, for which an application is approved under § 505 of the federal Food, Drug, and Cosmetic Act, codified in 21 U.S.C. §_301, et seq..... 2012

(g) Ketamine, its salts, isomers, and salts of isomers..... 7285
Other name: (±)-2-(2-chlorophenyl)-2-(methylamino)-cyclohexanone

(h) Lysergic acid..... 7300

(i) Lysergic acid amide..... 7310

(j) Methyprylon..... 2575

(k) Perampanel, and its salts, isomers, and salts of isomers..... 2261

(l) Sulfondiethylmethane..... 2600

(m) Sulfonethylmethane..... 2605

(n) Sulfonmethane..... 2610

(o) Tiletamine and zolazepam or any salt of tiletamine or zolazepam..... 7295

1. Other name for a tiletamine-zolazepam combination product: Telazol®;

2. Other name for tiletamine: 2-(ethylamino)-2-(2-thienyl)-cyclohexanone.

3. Other names for zolazepam: 4-(2-fluorophenyl)-6,8-dihydro-1,3,8-trimethylpyrazolo[3,4-e],[1,4]-diazepin-7(1H)-one; flupyrazapon

(4) Nalorphine..... 9400

(5) Narcotic Drugs.

(a) Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation containing any of the following narcotic drugs, or their salts calculated as the free anhydrous base or alkaloid, in limited quantities as set forth below:

1. Not more than 1.8 grams of codeine per 100 milliliters or not more than 90 milligrams per dosage unit, with an equal or greater quantity of an isoquinoline alkaloid of opium..... 9803

2. Not more than 1.8 grams of codeine per 100 milliliters or not more than 90 milligrams per dosage unit, with one or more active, non-narcotic ingredients in recognized therapeutic amounts..... 9804

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3. Not more than 1.8 grams of dihydrocodeine per 100 milliliters or not more than 90 milligrams per dosage unit with one or more active non-narcotic ingredients in recognized therapeutic amount.....9807

4. Not more than 300 milligrams of ethylmorphine per 100 milliliters or not more than 15 milligrams per dosage unit with one or more active non-narcotic ingredients in recognized therapeutic amounts.....9808

5. Not more than 500 milligrams of opium per 100 milliliters or per 100 grams or not more than 25 milligrams per dosage unit, with one or more active, non-narcotic ingredients in recognized therapeutic amounts.....9809

6. Not more than 50 milligrams of morphine per 100 milliliters or per 100 grams, with one or more active, non-narcotic ingredients in recognized therapeutic amounts.....9810

(b) Any material, compound, mixture, or preparation containing any of the following narcotic drugs or their salts:

1. Buprenorphine.....9064

(6) Anabolic steroids. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation containing any quantity of the following substances, including its salts, esters and ethers:

(a) Anabolic steroids..... 4000

1. 3[alpha],17[beta]-dihydroxy-5a-androstane

2. 17[alpha]-methyl-3[alpha],17[beta]-dihydroxy-5a-androstane

3. 17[alpha]-methyl-3[beta],17[beta]-dihydroxy-5a-androstane

4. 17[alpha]-methyl-3[beta],17[beta]-dihydroxyandrost-4-ene

5. 17[alpha]-methyl-[delta]1-dihydrotestosterone(17[beta]-hydroxy-17[alpha]-methyl-5[alpha]-androst-1-en-3-one
Other Names: 17-[alpha]-methyl-1-testosterone

6. 17[alpha]-methyl-4-hydroxynandrolone(17[alpha]-methyl-4-hydroxy-17[beta]-hydroxyestr-4-en-3-one)

7. 1-Androstenediol (3[alpha],17[beta]-dihydroxy-5[alpha]-androst-1-ene)

8. 1-Androstenediol (3[beta],17[beta]-dihydroxy-5[alpha]-androst-1-ene)

9. 4-Androstenediol (3[beta],17[beta]-dihydroxy-androst-4-ene)

10. 5-Androstenediol (3[beta],17[beta]-dihydroxy-androst-5-ene)

11. 1-Androstenedione (5[alpha]-androst-1-en-3,17-dione)

12. 4-Androstenedione (androst-4-en-3,17-dione)

13. 5-Androstenedione (androst-5-en-3,17-dione)

14. 3[Beta],17[Beta]-dihydroxy-5a-androstane

15. 13[Beta]-ethyl-17[beta]-hydroxygon-4-en-3-one

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16. Androstanedione (5[alpha]-androstan-3,17-dione)

17. Bolasterone (7[alpha],17[alpha]-dimethyl-17[beta]-hydroxyandrost-4-en-3-one)

18. Boldenone (17[beta]-hydroxyandrost-1,4-diene-3-one)

19. Boldione (androsta-1,4-diene-3,17-dione)

20. Calusterone (7[beta],17[alpha]-dimethyl-17[beta]-hydroxyandrost-4-en-3-one)

21. Clostebol (4-chloro-17[beta]-hydroxyandrost-4-en-3-one)
Other Names: 4-Chlorotestosterone

22. Dehydrochloromethyltestosterone (4-chloro-17[beta]-hydroxy-17[alpha]-methylandrost-1,4-dien-3-one)

23. [Delta]1-dihydrotestosterone (a.k.a.'1-testosterone') (17[Beta]-hydroxy-5[alpha]-androst-1-en-3-one)

24. Desoxymethyltestosterone (17[alpha]-methyl-5[alpha]-androst-2-en-17[Beta]-ol)
Other name: madol

25. 4-Dihydrotestosterone (17[beta]-hydroxyandrostan-3-one)

26. Drostanolone (17[beta]-hydroxy-2[alpha]-methyl-5[alpha]-androstan-3-one)

27. Ethylestrenol (17[alpha]-ethyl-17[beta]-hydroxyestr-4-ene)

28. Fluoxymesterone (9-fluoro-17[alpha]-methyl-11[beta],17[beta]-dihydroxyandrost-4-en-3-one)

29. Formebolone (2-formyl-17[alpha]-methyl-11[alpha],17[beta]-dihydroxyandrost-1,4-dien-3-one)

30. Furazabol (17[alpha]-methyl-17[beta]-hydroxyandrostano[2,3-c]-furazan)

31. 4-Hydroxy-19-nortestosterone (4,17[beta]-dihydroxyestr-4-en-3-one)

32. 4-Hydroxytestosterone (4,17[beta]-dihydroxyandrost- 4-en-3-one)

33. Mestanolone (17[alpha]-methyl-17[beta]-hydroxy-5[alpha]-androstan-3-one)

34. Mesterolone (1[alpha]-methyl-17[beta]-hydroxy-5[alpha]-androstan-3-one)

35. Methandienone (17[alpha]-methyl-17[beta]-hydroxyandrost-1,4-diene-3-one)

36. Methandranone

37. Methandriol (17[alpha]-methyl-3[beta],17[beta]-dihydroxyandrost-5-ene)

38. Methandrostenolone

39. Methasterone (2[alpha],17[alpha]-dimethyl-5[alpha]-androstan-17[beta]-ol-3-one)

40. Methenolone (1-methyl-17[beta]-hydroxy-5[alpha]-androst-1-en-3-one)

41. Methyldienolone (17[alpha]-methyl-17[beta]-hydroxyestra-4,9(10)-dien-3-one)

42. Methyltestosterone (17[alpha]-methyl-17[beta]-hydroxyandrost-4-en-3-one)

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43. Methyltrienolone (17[alpha]-methyl-17[beta]-hydroxyestra-4, 9,11-trien-3-one)

44. Mibolerone (7[alpha],17[alpha]-dimethyl-17[beta]-hydroxyestr-4-en-3-one)

45. Nandrolone (17[beta]-hydroxyestr-4-en-3-one)

46. 19-Nor-4,9(10)-androstadienedione (estra-4,9(10)-diene-3,17-dione)

47. 19-Nor-4-androstenediol (3[alpha],17[beta]-dihydroxyestr-4-ene)

48. 19-Nor-4-androstenediol (3[beta],17[beta]-dihydroxyestr-4-ene)

49. 19-Nor-5-androstenediol (3[alpha],17[beta]-dihydroxyestr-5-ene)

50. 19-Nor-5-androstenediol (3[beta],17[beta]-dihydroxyestr-5-ene)

51. 19-Nor-4-androstenedione (estr-4-en-3,17-dione)

52. 19-Nor-5-androstenedione (estr-5-en-3,17-dione)

53. Norbolethone (13[beta],17[alpha]-diethyl-17[beta]-hydroxygon-4-en-3-one)

54. Norclostebol (4-chloro-17[beta]-hydroxyestr-4-en-3-one)

55. Norethandrolone (17[alpha]-ethyl-17[beta]-hydroxyestr-4-en-3-one)

56. Normethandrolone (17[alpha]-methyl-17[beta]-hydroxyestr-4-en-3-one)

57. Oxandrolone (17[alpha]-methyl-17[beta]-hydroxy-2-oxa-5[alpha]-androstan-3-one)

58. Oxymesterone (17[alpha]-methyl-4,17[beta]-dihydroxyandrost-4-en-3-one)

59. Oxymetholone (17[alpha]-methyl-2-hydroxymethylene-17[beta]-hydroxy-[5[alpha]]-androstan-3-one)

60. Prostanozol (17[beta]-hydroxy-5[alpha]-androstano[3,2-c]pryazole)

61. Stanolone (17[beta]-Hydroxy-5alpha-Androstan-3-One)

62. Stanozolol (17[alpha]-methyl-17[beta]-hydroxy-[5[alpha]]-androst-2-eno[3,2-c]-pyrazole)

63. Stenbolone (17[beta]-hydroxy-2-methyl-[5[alpha]]-androst-1-en-3-one)

64. Testolactone (13-hydroxy-3-oxo-13,17-secoandrosta-1, 4-dien-17-oic acid lactone)

65. Testosterone (17[beta]-hydroxyandrost-4-en-3-one)

66. Tetrahydrogestrinone (13[beta],17[alpha]-diethyl-17[beta]-hydroxygon-4, 9,11-trien-3-one)

67. Trenbolone (17[beta]-hydroxyestr-4,9,11-trien-3-one)

(b) Any salt, ester, or isomer of a drug or substance described or listed in subparagraph (a), if such salt, ester, or isomer promotes muscle growth.

(c) Anabolic steroids intended for administration to cattle or other non-human species are

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exempt from this rule unless such steroids are prescribed, dispensed, or distributed for human use.

(d) Anabolic steroids with a combination of estrogens intended for administration to hormone deficient women are exempt from this rule unless such steroids are prescribed, dispensed, or distributed to women who are not hormone deficient.

(7) Hallucinogenic Substances

(a) Dronabinol (synthetic) in sesame oil and encapsulated in a soft gelatin capsule in a United States food and drug administration approved drug product..... 7369
Other names: (6aR-trans)-6a,7,8,10a-tetrahydro-6,6,9-trimethyl-3-pentyl-6H-dibenzo [b,d]pyran-1-ol or (-)-delta-9-(trans)-tetrahydrocannabinol

Authority: T.C.A. §§ 4-4-103, 33-1-302, 33-1-303, 33-1-305, 33-1-309, and 39-17-403.

0940-06-01-.04 Controlled Substances in Schedule IV.

(1) Schedule IV consists of the drugs and other substances, by whatever official name, common or usual name, chemical name, or brand name designated, listed in this rule. Each drug or substance bears the federal controlled substance code number assigned to it by the Drug Enforcement Administration.

(2) Narcotic drugs. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture or preparation containing any of the following narcotic drugs, or their salts calculated as the free anhydrous base or alkaloid, in limited quantities as set forth below:

(a) Not more than 1 milligram of difenoxin and not less than 25 micrograms of atropine sulfate per dosage unit.....9167

(b) Dextropropoxyphene dosage forms (alpha-(+)-4-dimethylamino-1,2-diphenyl-3-methyl-2-propionoxybutane)..... 9278

(3) Depressants. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substance, including its salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation:

(a) Alfaxalone .....2731

(b) Alprazolam..... 2882

(c) Barbital.....2145

(d) Bromazepam.....2748

(e) Camazepam.....2749

(f) Carisoprodol..... 8192
Other name: Soma®

(g) Chloral betaine..... 2460

(h) Chloral hydrate..... 2465

(i) Chlordiazepoxide..... 2744

(j) Clobazam..... 2751

(k) Clonazepam.....2737

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(l) Clorazepate....2768
(m) Clotiazepam....2752
(n) Cloxazolam....2753
(o) Delorazepam....2754
(p) Diazepam....2765
(q) Dichloralphenazone....2467
(r) Estazolam....2756
(s) Eszopiclone....N/A
(t) Ethchlorvynol....2540
(u) Ethinamate....2545
(v) Ethyl Loflazepate....2758
(w) Fludiazepam....2759
(x) Flunitrazepam....2763
(y) Flurazepam....2767
(z) Fospropofol....2138
(aa) Halazepam....2762
(bb) Haloxazolam....2771
(cc) Ketazolam....2772
(dd) Loprazolam....2773
(ee) Lorazepam....2885
(ff) Lormetazepam....2774
(gg) Mebutamate....2800
(hh) Medazepam....2836
(ii) Meprobamate....2820
(jj) Methohexital....2264
(kk) Methylphenobarbital (mephobarbital)....2250
(ll) Midazolam....2884
(mm) Nimetazepam....2837
(nn) Nitrazepam....2834
(oo) Nordiazepam....2838

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(pp) Oxazepam..... 2835

(qq) Oxazolam..... 2839

(rr) Paraldehyde..... 2585

(ss) Petrichloral..... 2591

(tt) Phenobarbital..... 2285

(uu) Pinazepam..... 2883

(vv) Prazepam..... 2764

(ww) Quazepam..... 2881

(xx) Suvorexant..... 2223

(yy) Temazepam..... 2925

(zz) Tetrazepam..... 2886

(aaa) Tramadol..... 9752
Other names: Ultram® and Ultracet®

(bbb) Triazolam..... 2887

(ccc) Zaleplon..... 2781

(ddd) Zolpidem..... 2783

(eee) Zopiclone..... 2784

(4) Fenfluramine. Any material, compound, mixture, or preparation which contains any quantity of the following substances including its salts, isomers (whether optical, positional, or geometric), and salts of isomers, whenever the existence of such salts, isomers, and salts of isomers is possible:

(a) Fenfluramine..... 1670

(b) Dexfenfluramine..... 1670

(5) Lorcaserin. Any material, compound, mixture, or preparation which contains any quantity of the following substances, including its salts, isomers, and salts of such isomers, whenever the existence of such salts, isomers, and salts of isomers is possible:

(a) Lorcaserin..... 1625

(6) Stimulants. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a stimulant effect on the central nervous system, including its salts, isomers and salts of isomers:

(a) Cathine ((+)-norpseudoephedrine)..... 1230

(b) Diethylpropion..... 1610

(c) Fencamfamin..... 1760

(d) Fenproporex..... 1575

PRELIM

(e) Mazindol..... 1605

(f) Mefenorex..... 1580

(g) Modafinil..... 1680

(h) Pemoline (including organometallic complexes and chelates thereof)..... 1530

(i) Phentermine..... 1640

(j) Pipradol..... 1750

(k) Sibutramine..... 1675

(l) SPA ((-)-1-dimethylamino-1,2-diphenylethane)..... 1635

(7) Other substances. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances, including its salts:

(a) Pentazocine..... 9709

(b) Butorphanol (including its optical isomers)..... 9720

(c) Eluxadoline (5-[[[(2S)-2-amino-3-[4-aminocarbonyl)-2,6-dimethylphenyl]-1-oxopropyl][(1S)-1-(4-phenyl-1H-imidazol-2-yl)ethyl]amino]methyl]-2-methoxybenzoic acid) (including its optical isomers) and its salts, isomers, and salts of isomers..... 9725

Authority: T.C.A. §§ 4-4-103, 33-1-302, 33-1-303, 33-1-305, 33-1-309, and 39-17-403.

0940-06-01-.05 Controlled Substances in Schedule V.

(1) Schedule V consists of the drugs and other substances, by whatever official name, common or usual name, chemical name, or brand name designated, listed in this rule. Each drug or substance bears the federal controlled substance code number assigned to it by the Drug Enforcement Administration.

(2) Narcotic drugs containing non-narcotic active medicinal ingredients. Any compound, mixture, or preparation containing any of the following narcotic drugs, or their salts calculated as the free anhydrous base or alkaloid, in limited quantities as set forth below, which shall include one or more non-narcotic active medicinal ingredients in sufficient proportion to confer upon the compound, mixture, or preparation valuable medicinal qualities other than those possessed by narcotic drugs alone:

(a) Not more than 200 milligrams of codeine per 100 milliliters or per 100 grams.

(b) Not more than 100 milligrams of dihydrocodeine per 100 milliliters or per 100 grams.

(c) Not more than 100 milligrams of ethylmorphine per 100 milliliters or per 100 grams.

(d) Not more than 2.5 milligrams of diphenoxylate and not less than 25 micrograms of atropine sulfate per dosage unit.

(e) Not more than 100 milligrams of opium per 100 milliliters or per 100 grams.

(f) Not more than 0.5 milligrams of difenoxin and not less than 25 micrograms of atropine sulfate per dosage unit.

(3) Stimulants. Unless specifically exempted or excluded, or unless listed in another schedule, any material, compound, mixture or preparation that contains any quantity of the following substances having a stimulant effect on the central nervous system, including its salts, isomers, and salts of the isomers:

(a) Pyrovalerone..... 1485

(4) Depressants. Unless specifically exempted or excluded or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances have a depressant effect on the central nervous system, including its salts:

(a) Brivaracetam ((2S)-2-[(4R)-2-oxo-4- propylpyrrolidin-1-yl] butanamide).....2710

(ba) Ezogabine [N-[2-amino-4-(4-fluorobenzylamino)-phenyl]-carbamic acid ethyl ester]..... 2779

(cb) Lacosamide [(*R*)-2-acetoamido-*N*-benzyl-3-methoxy-propionamide]..... 2746

(dc) Pregabalin [(S)-3-(aminomethyl)-5-methylhexonoic acid]..... 2782

Authority: T.C.A. §§ 4-4-103, 33-1-302, 33-1-303, 33-1-305, 33-1-309, and 39-17-403.

0940-06-01-.06 Controlled Substances in Schedule VI.

(1) Marijuana.....7360

(2) Tetrahydrocannabinols.....7370

(3) Unless specifically excepted or unless listed in another schedule, synthetic equivalents of the substances contained in the plant, or in the resinous extractives of Cannabis, sp. and/or synthetic substances, derivatives, and their isomers with similar chemical structure and pharmacological activity. Examples include the following drugs or their compounds regardless of numerical designation of atomic positions covered:

(a) 1 cis or trans tetrahydrocannabinol, and its optical isomers.

(b) 6 cis or trans tetrahydrocannabinol, and its optical isomers.

(c) 3, 4 cis or trans tetrahydrocannabinol, and its optical isomers.

Authority: T.C.A. §§ 4-4-103, 33-1-302, 33-1-303, 33-1-305, 33-1-309, and 39-17-403.

0940-06-01-.07 Controlled Substances in Schedule VII.

(1) Butyl nitrite and any isomer of butyl nitrite

Authority: T.C.A. §§ 4-4-103, 33-1-302, 33-1-303, 33-1-305, 33-1-309, and 39-17-403.

0940-06-01-.08 Non-narcotic Substances Excluded from Controlled Substances

(1) Non-narcotic substances listed in the most current edition of 21 C.F.R. 1308.22, are excluded from all schedules.

Authority: T.C.A. §§ 4-4-103, 33-1-302, 33-1-303, 33-1-305, 33-1-309, and 39-17-403.

0940-06-01-.09 Chemical preparations excluded from Controlled Substances

(1) Chemical preparations listed in the most current edition of 21 C.F.R. 1308.24, are excluded from all schedules.

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Authority: T.C.A. §§ 4-4-103, 33-1-302, 33-1-303, 33-1-305, 33-1-309, and 39-17-403.

0940-06-01-.10 Veterinary anabolic steroid implant products excluded from Controlled Substances.

(1) Veterinary anabolic steroid implant products listed in the most current edition of 21 C.F.R. 1308.26, are excluded from all schedules.

Authority: T.C.A. §§ 4-4-103, 33-1-302, 33-1-303, 33-1-305, 33-1-309, and 39-17-403.

0940-06-01-.11 Prescription products excluded from Controlled Substances

(1) Prescription products listed in the most current edition of 21 C.F.R. 1308.32, are excluded from all schedules.

Authority: T.C.A. §§ 4-4-103, 33-1-302, 33-1-303, 33-1-305, 33-1-309, and 39-17-403.

0940-06-01-.12 Anabolic steroid products excluded from Controlled Substances

(1) Anabolic steroid products listed in the most current edition of 21 C.F.R. 1308.34, are excluded from all schedules.

Authority: T.C.A. §§ 4-4-103, 33-1-302, 33-1-303, 33-1-305, 33-1-309, and 39-17-403.

0940-06-01-.13 Certain cannabis plant material, and products made therefrom, excluded from Controlled Substances

(1) Certain cannabis plant material, and products made therefrom, that contain tetrahydrocannabinols listed in the most current edition of 21 C.F.R. 1308.35, are excluded from all schedules.

Authority: Authority: T.C.A. §§ 4-4-103, 33-1-302, 33-1-303, 33-1-305, 33-1-309, and 39-17-403.

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

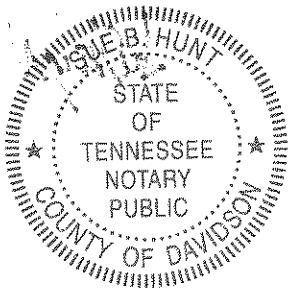
| Board Member | Aye | No | Abstain | Absent | Signature (if required) |
|---|---|---|---|---|---|
| | | | | | |

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the Tennessee Department of Mental Health and Substance Abuse Services (board/commission/other authority) on 02/02/2017 (mm/dd/yyyy), 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: *(11/04/16)*

Rulemaking Hearing(s) Conducted on: (add more dates). *(01/04/17)*




Date: 2.2.17

Signature:

Name of Officer: Marie Williams

Title of Officer: Commissioner, Tennessee Department of Mental Health and Substance Abuse Services

Subscribed and sworn to before me on: February 2, 2017

Notary Public Signature: Sue B. Hunt

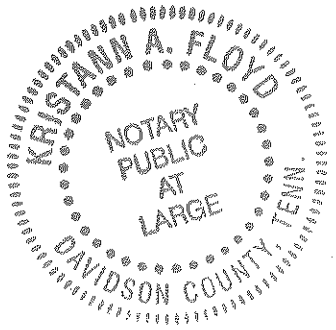
My commission expires on: My Commission Expires May 6, 2017

Date: 6 Feb 2017

Signature:

Name of Officer: John J. Dreyzehner, MD, MPH

Title of Officer: Commissioner, Tennessee Department of Health




Subscribed and sworn to before me on: Feb 6, 2017

Notary Public Signature: Kristann A. Floyd

My commission expires on: 3/31/2020

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

3/13/2017
Date

**Department of State Use Only**

Filed with the Department of State on: 3/21/17

Effective on: 6/19/17

Tre Hargett
Secretary of State

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My Commission Expires
May 8, 2017

KRISTIANN A. FLOYD
NOTARY PUBLIC AT LARGE
DAVIDSON CO.

## G.O.C. STAFF RULE ABSTRACT

| | |
|---|---|
| DEPARTMENT: | Agriculture |
| DIVISION: | Consumer & Industry Services |
| SUBJECT: | Administrative Action; Payments (Imposes $30.00 Handling Charge for Worthless Checks); Animal Health Diagnostic Laboratory Fees (Increases Certain Laboratory Fees); Dairy Licensure; Food; Food Manufacturers and Warehouses; Meat and Poultry Processors; Commercial Feed; Seed; Commercial Fertilizer; Agricultural Liming Materials; Plant Certification; Plant Sales and Distribution; Weights and Measures; Certified Public Weighers; Public Weighmasters; Servicepersons and Serviceperson Agencies; Repeal of Chapter 0080-06-23 Gypsy Moth Quarantine. |
| STATUTORY AUTHORITY: | Tenn. Comp. R. & Regs. 1360-04-01-.06 establishes parameters for valid service of notice in a contested case hearing. TCA 47-29-102 establishes authority for payees to assess handling charges against issuers of bad checks. All other guidelines are cited within the authorizing statutes identified in the rule. After 2020, TCA 43-1-704 prohibits the adjustment of individual fees more than once every five years. |
| EFFECTIVE DATES: | June 28, 2017 through June 30, 2018 |
| FISCAL IMPACT: | The estimated increase in departmental revenues and expenditures resulting from this rule is minimal. |
| STAFF RULE ABSTRACT: | This rulemaking hearing rule creates a presumption of valid service for contested case hearings when notices are sent to the address of record with the department. Prior to this rule, the department had separate equivalent rules in place for various of its licensee categories. This rule makes the presumption applicable against any licensee and standardizes the notice process unless otherwise addressed in law.<br><br>This rule authorizes assessment of a $30 handling charge against the issuer of any bad check to the department. |

This is consistent with the authority extended under TCA 47-29-102.

This rule adjusts animal health diagnostic laboratory fees to better account for departmental resources used in conducting laboratory analyses.

This rule designates reporting periods for dairy and agricultural input licensees on the calendar year instead of the licensure year. Prior to this rule, the reporting periods for these licenses were set on the licensure year. The effect of this existing regulation was to require such businesses, upon renewal, to gather and report all of the previous year's data within two weeks of the licensure year ending or face assessment of a late charge for renewal of the license. By designating the reporting period on the calendar year, firms will have six months in which to gather and report the previous year's data and may better avoid assessment of late charges on their license renewals.

This rule decreased plant dealer license fees and provides broader exemptions in calculation of commercial feed license fees.

This rule designates weights and measures licenses as annual licenses, where previously they had been biennial licenses.

**Public Hearing Comments**

The Department of Agriculture held a public hearing on March 14, 2017. David Waddell served as hearing officer for the Rulemaking Hearing concerning 0080-01-02 Administrative Action; 0080-01-04 Payments; 0080-02-07 Animal Health Diagnostic Laboratory Fees; 0080-03-08 Dairy Licensure; 0080-04-13 Food Manufacturers and Warehouses; 0080-04-14 Meat and Poultry Processors; 0080-05-05 Commercial Feed; 0080-05-06 Seed; 0080-05-10 Commercial Fertilizer; 0080-05-15 Agricultural Liming Materials; 0080-06-01 Plant Sales and Distribution; 0080-06-23 Gypsy Moth Quarantine; 0080-08-02 Certified Public Weighers; 0080-08-03 Public Weighmasters; and 0080-08-04 Servicepersons and Serviceperson Agencies. No questions or comments from the public were presented at the hearing.

**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) 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:

Businesses subject to the proposed rule include: for purposes of contested case notices and handling charges of worthless checks, all firms regulated under department of agriculture programs; and specifically for substantive changes in existing requirements, veterinarians, law enforcement authorities, and animal owners who submit animals for testing through the department's animal health diagnostic laboratory, dairy plants, trade product plants, frozen dessert manufacturers, milk samplers and testers, food manufacturers and warehouses, meat and poultry processors, commercial feed distributors, seed distributors, commercial fertilizer distributors, distributors of agricultural liming materials, plant dealers, certified turfgrass dealers, certified public weighers, public weighmasters, and servicepersons and serviceperson agencies.

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

Approximately 60,000 firms are licensed by the department and potentially subject to a contested case action. Other substantive changes in this proposed rule potentially affect, approximately 600 firms submitting animals for testing at the department's animal health diagnostic laboratory; 24 dairy product and trade product plants; 6 frozen dessert manufacturers; 210 milk samplers and testers; 1324 food manufacturers; 545 food warehouses; 135 meat and poultry processors; 1278 commercial feed distributors; 206 seed distributors; 428 commercial fertilizer distributors; 54 distributors of agricultural liming materials; 1953 plant dealers; 2 certified turfgrass licensees; and 1768 certified public weighers, public weighmasters, servicepersons, or serviceperson agencies.

(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:

Administrative costs for firms affected by this rule may increase slightly where: firms report to the department more regularly any changes to their contact information; firms incur additional handling charges for issuance of bad checks to the department; and certified public weighers, public weighmasters, and servicepersons obtain annual, not biennial, licenses from the department. However, it is anticipated that administrative costs of licensees in the dairy and agricultural inputs sections will be reduced where reporting periods for license fee calculations have been designated on the calendar year instead of the licensure year.

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

The effect of these rules on small businesses is to create a presumption of valid service for contested case hearings when notices are sent to the licensees address of record with the department; to assess a $30 handling charge against the issuer of a bad check to the department; to adjust animal health diagnostic laboratory fees to better account for departmental resources used in conducting laboratory analyses; to designate reporting periods for dairy and agricultural input licensees on the calendar year instead of the licensure year; and to designate weights and measures licenses as annual licenses, not biennial licenses.

With respect to designation of reporting periods for dairy and agricultural input licenses, reporting periods for these licenses are currently set on the licensure year. The effect of this existing regulation is to require such businesses, upon renewal, to gather and report all of the previous year's data within two weeks of their license expiring or face assessment of a late charge for renewal of the license. By designating the reporting period on the calendar year, firms will have six months in which to gather and report the previous year's data and may better avoid assessment of late charges on their license renewals.

(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:

No less burdensome methods for achieving this purpose are possible.

These rules are promulgated to implement Public Chapter 485 of 2015, which expanded the Agricultural Regulatory Fund to include all fee-generated revenue collected by the department. As part of the legislation, all fee amounts charged by the department were removed from the Code, and the commissioner of agriculture was authorized to set the fee amounts by regulation. The intent of the legislation is to allow the department to adjust fees and to improve the percentage of cost recovery for its programs through fee collection rather than relying as heavily on revenue from the general fund.

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

These rules entail the administrative functions of the department. Other than the authorizing statutes identified in the rule, there are no known, material federal or state counterparts.

(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.

Exemption of small businesses from this rule will compromise the intent to grade fee schedules according to resources expended for oversight of regulatory programs.

**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)

No impact is expected 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;

This rule creates a presumption of valid service for contested case hearings when notices are sent to the address of record with the department. Prior to this rule, the department had separate equivalent rules in place for various of its licensee categories. This rule makes the presumption applicable against any licensee and standardizes the notice process unless otherwise addressed in law.

This rule authorizes assessment of a $30 handling charge against the issuer of any bad check to the department. This is consistent with the authority extended under TCA 47-29-102.

This rule adjusts animal health diagnostic laboratory fees to better account for departmental resources used in conducting laboratory analyses.

This rule designates reporting periods for dairy and agricultural input licensees on the calendar year instead of the licensure year. Prior to this rule, the reporting periods for these licenses were set on the licensure year. The effect of this existing regulation was to require such businesses, upon renewal, to gather and report all of the previous year's data within two weeks of the licensure year ending or face assessment of a late charge for renewal of the license. By designating the reporting period on the calendar year, firms will have six months in which to gather and report the previous year's data and may better avoid assessment of late charges on their license renewals.

This rule decreases plant dealer license fees and provides broader exemptions in calculation of commercial feed license fees.

This rule designates weights and measures licenses as annual licenses, where previously they had been biennial licenses.

**(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;

Tenn. Comp. R. & Regs. 1360-04-01-.06 establishes parameters for valid service of notice in a contested case hearing. TCA 47-29-102 establishes authority for payees to assess handling charges against issuers of bad checks. All other guidelines are cited within the authorizing statutes identified in the rule. After 2020, TCA 43-1-704 prohibits the adjustment of individual fees more than once every five years.

**(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 rule is expected to affect veterinarians, law enforcement authorities, and animal owners who submit animals for testing through the department's animal health diagnostic laboratory, dairy plants, trade product plants, frozen dessert manufacturers, milk samplers and testers, food manufacturers and warehouses, meat and poultry processors, commercial feed distributors, seed distributors, commercial fertilizer distributors, distributors of agricultural liming materials, plant dealers, certified turfgrass dealers, certified public weighers, public weighmasters, and servicepersons and serviceperson agencies.

No public comments have been received urging adoption or rejection of this rule. No public comments have been received that would indicate the rules are not easily understood; unnecessary to the public health, safety, and welfare; arbitrary or unreasonable; or adverse to business or individuals.

**(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;

*Estrin v. Moss*, 430 S.W.2d 345 (Tenn. 1968)

**(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 estimated increase in departmental revenues and expenditures resulting from this rule is minimal.

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

David Waddell, Administrative Manager, Tennessee Department of Agriculture, Division of Consumer & Industry Services

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

David Waddell, Administrative Manager, Tennessee Department of Agriculture, Division of Consumer & Industry Services

**(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

436 Hogan Road, Nashville, Tennessee 37220; (615) 837-5331; david.waddell@tn.gov

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

**Department of State**
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**For Department of State Use Only**

Sequence Number: 03-33-17
Rule ID(s): 6488- 6502
File Date: 3/30/17
Effective Date: 6/28/17

# 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:** | Department of Agriculture |
| **Division:** | Consumer & Industry Services |
| **Contact Person:** | Jay Miller |
| **Address:** | Post Office Box 40627, Nashville, Tennessee |
| **Zip:** | 37204 |
| **Phone:** | (615) 837-5341 |
| **Email:** | jay.miller@tn.gov |

**Revision Type (check all that apply):**

x Amendment
x New
x 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** |
|---|---|
| 0080-01-02 | Administrative Action |
| **Rule Number** | **Rule Title** |
| 0080-01-02-.01 | Notice |

| **Chapter Number** | **Chapter Title** |
|---|---|
| 0080-01-04 | Payments |
| **Rule Number** | **Rule Title** |
| 0080-01-04-.01 | Worthless Checks |

| **Chapter Number** | **Chapter Title** |
|---|---|
| 0080-02-07 | Animal Health Diagnostic Laboratory Fees |
| **Rule Number** | **Rule Title** |
| 0080-02-07-.01 | Bacteriology and Parasitology |
| 0080-02-07-.02 | Virology and Immunology |
| 0080-02-07-.05 | Miscellaneous Charges |

| Chapter Number | Chapter Title |
|---|---|
| 0080-03-08 | Dairy Licensure |
| **Rule Number** | **Rule Title** |
| 0080-03-08-.01 | Dairy Manufacturers |
| 0080-03-08-.02 | Frozen Dessert Manufacturers |

| Chapter Number | Chapter Title |
|---|---|
| 0080-04 | Food |

| Chapter Number | Chapter Title |
|---|---|
| 0080-04-13 | Food Manufacturers and Warehouses |
| **Rule Number** | **Rule Title** |
| 0080-04-13-.07 | Repealed |

| Chapter Number | Chapter Title |
|---|---|
| 0080-04-14 | Meat and Poultry Processors |
| **Rule Number** | **Rule Title** |
| 0080-04-14-.06 | Repealed |

| Chapter Number | Chapter Title |
|---|---|
| 0080-05-05 | Commercial Feed |
| **Rule Number** | **Rule Title** |
| 0080-05-05-.02 | Label Format |
| 0080-05-05-.19 | License Fees and Tonnage Reports |

| Chapter Number | Chapter Title |
|---|---|
| 0080-05-06 | Seed |
| **Rule Number** | **Rule Title** |
| 0080-05-06-.14 | License Fees and Seed Unit Reports |

| Chapter Number | Chapter Title |
|---|---|
| 0080-05-10 | Commercial Fertilizer |
| **Rule Number** | **Rule Title** |
| 0080-05-10-.09 | License Fees and Tonnage Reports |

| Chapter Number | Chapter Title |
|---|---|
| 0080-05-15 | Agricultural Liming Materials |
| **Rule Number** | **Rule Title** |
| 0080-05-15-.07 | License Fees and Tonnage Reports |

| Chapter Number | Chapter Title |
|---|---|
| 0080-06 | Plant Certification |

| Chapter Number | Chapter Title |
|---|---|
| 0080-06-01 | Plant Sales and Distribution |
| **Rule Number** | **Rule Title** |
| 0080-06-01-.04 | License Application and Fees |

| Chapter Number | Chapter Title |
|---|---|
| 0080-06-23 | Repealed |

| Chapter Number | Chapter Title |
|---|---|
| 0080-08 | Weights and Measures |

| Chapter Number | Chapter Title |
|---|---|
| 0080-08-02 | Certified Public Weighers |
| **Rule Number** | **Rule Title** |
| 0080-08-02-.01 | License Application and Fees |

| Chapter Number | Chapter Title |
|---|---|
| 0080-08-03 | Public Weighmasters |
| **Rule Number** | **Rule Title** |
| 0080-08-03-.01 | License Application and Fees |
| 0080-08-03-.02 | Repealed |

| Chapter Number | Chapter Title |
|---|---|
| 0080-08-04 | Servicepersons and Serviceperson Agencies |
| **Rule Number** | **Rule Title** |
| 0080-08-04-.01 | Registration Application and Fees |
| 0080-08-04-.02 | Repealed |

New

Chapter 0080-01-02
Administrative Actions

0080-01-02-.01 Notice.

Notice of an enforcement action, including but not limited to assessment of a civil penalty and conduct of an administrative hearing, against any person licensed by the department shall be presumed properly served upon mailing of notice to the person's address of record with the department.

Authority: T.C.A. §4-3-203.

Chapter 0080-01-04
Payments

0080-01-04-.01 Worthless Checks.

(1) When any check, draft, or order is issued to the department as partial or complete satisfaction of a fee, late charge, civil penalty, copy cost, or administrative cost, and the check, draft, or order is refused for payment because the drawer did not have an account with sufficient funds on deposit with the financial institution or the instrument has an incorrect or insufficient signature, the department may assess a handling charge of $30 in accordance with T.C.A. §47-29-102.

(2) Handling charges assessed under this rule shall be made in addition to, and not in lieu of, any other lawful disciplinary action including but not limited to assessment of late charges, institution of contested case proceedings, and pursuit of recovery for a worthless check under T.C.A. §39-14-121.

(3) Nonpayment of any handling charge assessed under this rule shall result in denial of any application for a permit or for renewal of a permit pursuant to T.C.A. §43-1-703(d).

Authority: T.C.A. §§ 4-3-203 and 43-1-703.

Amendments

Chapter 0080-02-07 Diagnostic Fees is amended by re-titling the chapter "Animal Health Diagnostic Laboratory Fees".

Authority: T.C.A. §4-3-203.

## Chapter 0080-02-07
## Animal Health Diagnostic Laboratory Fees

Rule 0080-02-07-.01 Bacteriology and Parasitology is amended by deleting the rule in its entirety and substituting instead the following language:

0080-02-07-.01 Bacteriology and Parasitology.

(1) Fees for the following shall be assessed per test or procedure, unless otherwise noted, and in accordance with T.C.A. §43-1-703(f).

| | | |
|---|---|---|
| | (a) Aerobic culture and antibiotic sensitivity | ~~$15.00~~ Tier 1 fee per swab, tissue, site, ~~or~~ sample, or isolate tested and not per test or procedure |
| ~~(2)~~ | ~~Antibiotic sensitivity~~ | ~~$10.00 per isolate~~ |
| ~~(3)~~ | (b) Dermatophyte culture | ~~$15.00~~Tier 1 fee |
| ~~(4)~~ | (c) Anaerobic culture | ~~$15.00~~Tier 1 fee |
| ~~(5)~~ | ~~Stain, gram, acid fast~~ | ~~$5.00~~ |
| ~~(6)~~ | (d) Ectoparasite identification | ~~$15.00 per parasite~~Tier 1 fee |
| ~~(7)~~ | (e) Fecal flotation examination | ~~$15.00~~Tier 1 fee |
| | (f) Milk culture and susceptibility testing | Tier 1 fee per test type per submission and not per test or procedure |

Authority: T.C.A. §§ 4-3-203, 43-1-703, and 44-7-403.

Rule 0080-02-07-.02 Virology and Immunology is amended by deleting the rule in its entirety and substituting instead the following language:

0080-02-07-.02 Virology and Immunology.

(1) Fees for the following shall be assessed per test or procedure, unless otherwise noted, and in accordance with T.C.A. §43-1-703(f).

| | | |
|---|---|---|
| | (a) Antibody testing | ~~$18.00 each~~Tier 1 fee per test type per submission and not per test or procedure |
| ~~(2)~~ | (b) Polymerase chain reaction testing | ~~$38.00 each~~Tier 2 fee |

Authority: T.C.A. §§ 4-3-203, 43-1-703, and 44-7-403.

Rule 0080-02-07-.05 Miscellaneous Charges is amended by deleting the rule in its entirety and substituting instead the following language:

0080-02-07-.05 Miscellaneous Charges.

(1) Fees for the following shall be assessed in accordance with T.C.A. §43-1-703(f).

| | | |
|---|---|---|
| | (a) Save remains ~~or save ashes~~for retrieval following procedure | ~~$50.00~~Tier 2 fee |
| ~~(2)~~ | (b) Disposal ~~(animals or parts)~~of remains following procedure | ~~$25.00~~Tier 1 fee per ~~500~~250 pounds |
| ~~(3)~~ | ~~Leaky package/biohazard handling~~ | ~~$15.00~~ |
| ~~(4)~~ | (c) Shipping and ~~H~~handling | ~~$20.00~~Tier 1 fee |
| | (d) Handling of leaky package or biohazard | Tier 1 fee |
| ~~(5)~~ | ~~Packaging fee~~ | ~~$5.00~~ |
| ~~(6)~~ | ~~Accessioning fee~~ | ~~$2.00~~ |
| ~~(7)~~ | ~~Faxing~~ | ~~$2.00~~ |
| ~~(8)~~ | ~~Sample supplies~~ | ~~Cost plus $10%~~ |
| ~~(9)~~ | ~~Past due accounts~~ | ~~5% per month~~ |

Authority: T.C.A. §§ 4-3-203, 43-1-703, and 44-7-403.

## Chapter 0080-03-08
## Dairy Licensure

Paragraph 0080-03-08-.01(1) is amended by deleting the language "licensure year (July 1 – June 30)" from the second sentence of the paragraph and substituting instead the following language "calendar year (January 1 – December 31)".

(1) Plants receiving fluid milk or cream. Every dairy products plant or trade products plant that receives primarily milk or cream for manufacturing, processing, or packaging of its products shall pay an annual license fee based on the plant's period of operation and combined weight of milk and cream received during the previous ~~licensure year (July 1 – June 30)~~calendar year (January 1 – December 31). The fee shall be determined under T.C.A. §43-1-703(f) according to the following schedule.

Authority: T.C.A. §§ 4-3-203, 43-1-703, and 53-3-106.

Paragraph 0080-03-08-.01(2) is amended by deleting the language "licensure year (July 1 – June 30)" from the second sentence of the paragraph and substituting instead the following language "calendar year (January 1 – December 31)".

(2) Plants not receiving milk or cream. Every dairy products plant or trade products plant that does not receive primarily milk or cream for manufacturing, processing, or packaging of its products shall pay an annual license fee based on the plant's output of dairy and trade products during the previous ~~licensure year (July 1 – June 30)~~calendar year (January 1 – December 31). The fee shall be determined under T.C.A. §43-1-703(f) according to the following schedule.

Authority: T.C.A. §§ 4-3-203, 43-1-703, and 53-3-106.

Paragraph 0080-03-08-.01(3) is amended by deleting the paragraph in its entirety and substituting instead the

following language:

(3) For any applicant who was not in business for the full duration of the previous ~~licensure year (July 1 – June 30)~~calendar year (January 1 – December 31), the annual license fee shall be determined under the appropriate schedule based on the plant's expected operating period, milk and cream receipts, and dairy and trade product outputs ~~during the licensure year for which application is made~~for the following licensure year (July 1 – June 30).

Authority: T.C.A. §§ 4-3-203, 43-1-703, and 53-3-106.

Paragraph 0080-03-08-.02(1) is amended by deleting the language "licensure year (July 1 – June 30)" from the first sentence of the paragraph and substituting instead the following language "calendar year (January 1 – December 31)".

(1) Every frozen dessert manufacturer shall pay an annual license fee based on the manufacturer's period of operation and volume of mix used during the previous ~~licensure year (July 1 – June 30)~~calendar year (January 1 – December 31). The fee shall be determined under T.C.A. §43-1-703(f) according to the following schedule.

Authority: T.C.A. §§ 4-3-203, 43-1-703, and 53-3-106.

Paragraph 0080-03-08-.02(2) is amended by deleting the paragraph in its entirety and substituting instead the following language:

(2) For any applicant who was not in business for the full duration of the previous ~~licensure year (July 1 – June 30)~~calendar year (January 1 – December 31), the annual license fee shall be determined under the appropriate schedule based on the manufacturer's expected operating period and mix usage ~~during the licensure year for which application is made~~for the following licensure year (July 1 – June 30).

Authority: T.C.A. §§ 4-3-203, 43-1-703, and 53-3-106.

Division 0080-04 Consumer and Industry Services is amended by re-titling the division "~~Consumer and Industry Services~~Food".

Authority: T.C.A. §4-3-203.

Chapter 0080-04-13
Food Manufacturers~~, Processor,~~ and Warehouses~~, and Distributor Regulations~~

Chapter 0080-04-13 Food Manufacturer, Processor, Warehouse, and Distributor Regulations is amended by re-titling the chapter "Food Manufacturers~~, Processor,~~ and Warehouses~~, and Distributor Regulations~~".

Authority: T.C.A. §§ 4-3-203 and 53-1-207.

Chapter 0080-04-14
Meat and Poultry Processors ~~Regulations~~

Chapter 0080-04-14 Meat and Poultry Processor Regulations is amended by re-titling the chapter "Meat and Poultry Processors ~~Regulations~~".

Authority: T.C.A. §§ 4-3-203 and 53-7-213.

Chapter 0080-05-05
~~Regulations Pertaining to Tennessee~~ Commercial Feed ~~Law~~

Chapter 0080-05-05 Regulations Pertaining to Tennessee Commercial Feed Law is amended by re-titling the chapter "~~Regulations Pertaining to Tennessee~~ Commercial Feed ~~Law~~".

Authority: T.C.A. §§ 4-3-203 and 44-6-110.

Part 0080-05-05-.02(1)(d)3 is amended by deleting the word "fiber" from the part and substituting instead the word "fat".

3. Minimum percentage of crude ~~fiber~~fat.

Authority: T.C.A. §§ 4-3-203 and 44-6-110.

Rule 0080-05-05-.19 License Fees and Tonnage Reports is amended by deleting the rule in its entirety and substituting instead the following language:

0080-05-05-.19 License Fees and Tonnage Reports.

(1) ~~License fee. Every manufacturer, distributor, or guarantor of commercial feed shall pay an annual license fee based on the weight of the feed distributed in the state during the previous licensure year (July 1 – June 30). The fee shall be determined by dividing the total tons of feed distributed by 350 tons and multiplying the dividend by a Tier 2 fee under T.C.A. §43-1-703(f). In no event shall any manufacturer, distributor, or guarantor pay less than a Tier 2 fee under T.C.A. §43-1-703(f) for an annual license under this chapter.~~

~~(2)~~ Annual statement. Every ~~manufacturer, distributor, or guarantor required to pay an annual license fee under this chapter~~person required to have a commercial feed license shall file with the department on or before July 1 an annual statement indicating the number of net tons of commercial feed the person distributed in the state during the previous ~~licensure~~calendar year (January 1 – December 31), with the following exemptions.

(a) Feed may not be reported in the annual statement if:

1. The feed has been previously reported to the department and calculated in the annual license fee of a manufacturer, distributor, or guarantor in good standing;

2. ~~The feed is used as an ingredient in the manufacture of a registered commercial feed; or,~~The feed is a customer-formula feed and all the commercial feed used as ingredients has been previously reported to the department and calculated in the annual license fee of a manufacturer, distributor, or guarantor in good standing; or,

3. The annual statement is that of a contract feeder.

(b) ~~Customer-formula feed need not be reported in the annual statement if all the commercial feed used as ingredients in the customer-formula feed has been previously reported to the department and calculated in the annual license fee of a manufacturer, distributor, or guarantor in good standing~~If distillery wet grains or by-products are distributed as feed containing more than 75% moisture, only 10% of their weight shall be reported in the annual statement.

~~(c) The department may credit payment of annual license fees that have been paid based on reporting of feed exempt from these annual statement reporting requirements.~~

(2) License fee. Every person required to have a commercial feed license shall pay an annual license fee based on the weight of feed distributed in the state during the previous calendar year (January 1 – December 31), as reported in the annual statement. The fee shall be determined by dividing the total tons of feed distributed by 350 tons and multiplying the dividend by a Tier 2 fee under T.C.A. §43-1-703(f). In no event shall any person pay less than a Tier 2 fee under T.C.A. §43-1-703(f) for an annual license under this chapter. The department may credit payment of annual license fees that have been paid based on feed that was exempt from reporting requirements.

Authority: T.C.A. §§ 4-3-203, 43-1-703, 44-6-104, and 44-6-110.

## Chapter 0080-05-06
## Seed ~~Regulations~~

Chapter 0080-05-06 Seed Regulations is amended by re-titling the chapter "Seed ~~Regulations~~".

Authority: T.C.A. §§ 4-3-203, 43-10-114.

Rule 0080-05-06-.14 License Fees and Seed Unit Reports is amended by deleting the rule in its entirety and substituting instead the following language:

0080-05-06-.14 License Fees and Seed Unit Reports.

(1) ~~License fee. Every seed seller—whose name appears on the analysis label affixed to the bag, on the bulk container, or shipping invoice at the time of sale of seeds to a non-labeler—shall pay an annual license fee based on the quantity of seed units sold in the state during the previous licensure year (July 1 – June 30). The fee shall be determined by subtracting 3,000 seed units from the total number of seed units sold; dividing the difference by 600 seed units; and multiplying the dividend by a Tier 1 fee under T.C.A. §43-1-703(f). In no event shall any seed seller pay less than a Tier 3 fee under T.C.A. §43-1-703(f) for an annual license under this chapter.~~

~~(2)~~ For purposes of this rule, seed unit means:

(a) A container of seed six lbs. to 100 lbs.;

(b) A hundredweight of seed sold in bulk;

(c) A package of tobacco seed two ounces or less; or

(d) A case of seed in packages of less than five pounds.

~~(3)~~(2) Annual statement. Every ~~seed seller required to pay an annual license fee under this chapter~~person required to have a seed license—including any person whose name appears on the analysis label affixed to the bag, on the bulk container, or shipping invoice at the time of sale of seeds to a non-labeler—shall file with the department on or before July 1 an annual statement indicating the number of seed units the ~~seed seller~~person sold in the state during the previous ~~licensure~~calendar year (January 1 – December 31), provided that ~~no~~ seed units need not be reported in the annual statement if the seed units have been previously reported to the department and calculated in the annual license fee of a seed seller in good standing.

(3) License fee. Every person required to have a seed license—including any person whose name appears on the analysis label affixed to the bag, on the bulk container, or shipping invoice at the time of sale of seeds to a non-labeler—shall pay an annual license fee based on the quantity of seed units sold in the state during the previous calendar year (January 1 – December 31), as reported in the annual statement.

The fee shall be determined by subtracting 3,000 seed units from the total number of seed units sold; dividing the difference by 600 seed units; and multiplying the dividend by a Tier 1 fee under T.C.A. §43-1-703(f). In no event shall any seed seller pay less than a Tier 3 fee under T.C.A. §43-1-703(f) for an annual license under this chapter.

Authority: T.C.A. §§ 4-3-203, 43-1-703, 43-10-114, and 43-10-118.

## Chapter 0080-05-10
## Commercial Fertilizers ~~Regulations~~

Chapter 0080-05-10 Commercial Fertilizers Regulations is amended by re-titling the chapter "Commercial Fertilizers ~~Regulations~~".

Authority: T.C.A. §§ 4-3-203 and 43-11-113.

Rule 0080-05-10-.09 License Fees and Tonnage Reports is amended by deleting the rule in its entirety and substituting instead the following language:

0080-05-10-.09 License Fees and Tonnage Reports.

(1) Annual statement. Every person required to have a commercial fertilizer license shall file with the department on or before July 1 an annual statement indicating the number of net tons and number of commercial fertilizer products the person distributed in the state during the previous calendar year (January 1 – December 31).

(2) License fee. Every person ~~who distributes commercial fertilizer in the state~~required to have a commercial fertilizer license shall pay an annual license fee based on the weight and number of ~~brands of~~commercial fertilizer products distributed in the state during the previous ~~licensure year (July 1 – June 30)~~calendar year (January 1 – December 31), as reported in the annual statement.

(a) Weight. The weight component of the license fee shall be determined by dividing the total number of tons of commercial fertilizer distributed by 1,000 tons and multiplying the dividend by a Tier 5 fee under T.C.A. §43-1-703(f). In no event shall any person pay less than a Tier 3 fee under T.C.A. §43-1-703(f) for the weight component of an annual license fee under this chapter.

(b) ~~Brands~~Products. The ~~brands~~products component of the license fee shall be determined by subtracting 10 ~~brands~~products from the total number of ~~brands of~~commercial fertilizer products distributed~~; dividing the difference by five brands;~~ and multiplying the ~~dividend~~difference by a Tier ~~6~~2 fee under T.C.A. §43-1-703(f). The ~~brands~~products component shall not apply to any person who distributed 10 ~~brands of~~commercial fertilizer products or less during the previous ~~licensure~~calendar year.

(c) The annual fee for a commercial fertilizer license shall be the sum of the weight component and ~~brands~~products component calculated under this rule.

~~(2) Annual statement. Every person required to pay an annual license fee under this chapter shall file with the department on or before July 1 an annual statement indicating the number of net tons and number of brands of commercial fertilizer the person distributed in the state during the previous licensure year.~~

Authority: T.C.A. §§ 4-3-203, 43-1-703, 43-11-104, and 43-11-113.

## Chapter 0080-05-15
## Agricultural Liming Materials

Rule 0080-05-15-.07 License Fees and Tonnage Reports is amended by deleting the rule in its entirety and substituting instead the following language:

0080-05-15-.07 License Fees and Tonnage Reports.

(1) Annual statement. Every person required to have an agricultural liming material license shall file with the department on or before July 1 an annual statement indicating the number of net tons of agricultural liming materials the person distributed in the state during the previous calendar year (January 1 – December 31).

(2) License fee. Every ~~manufacturer of agricultural liming materials~~person required to have an agricultural liming material license shall pay an annual license fee based on the weight of the materials distributed in the state during the previous ~~licensure year (July 1 – June 30)~~calendar year (January 1 – December 31), as reported in the annual statement. The fee shall be determined by dividing the total tons of liming materials distributed by 1,000 tons and multiplying the dividend by a Tier 3 fee under T.C.A. §43-1-703(f). In no event shall any manufacturer pay less than a Tier 3 fee under T.C.A. §43-1-703(f) for an annual license under this chapter.

~~(2) Annual statement. Every manufacturer required to pay an annual license fee under this chapter shall file with the department on or before July 1 an annual statement indicating the number of net tons of agricultural liming materials the person distributed in the state during the previous licensure year.~~

Authority: T.C.A. §§ 4-3-203, 43-1-703, 43-11-405, 43-11-410.

Division 0080-06 Division of Plant Certification is amended by re-titling the division "~~Division of~~ Plant Certification".

Authority: T.C.A. §4-3-203.

Chapter 0080-06-01
Plant Sales and Distribution

Subparagraph 0080-06-01-.04(4)(c) Plant Dealer License is amended by deleting the subparagraph in its entirety and substituting instead the following language:

(c) Plant Dealer License. A plant dealer license is required for each location where a person who is not the original grower of nursery stock or annual plants sells, offers for sale, distributes, or holds the plants for distribution on a commercial basis. The annual fee for a plant dealer license is assessed under T.C.A. §43-1-703(f) and is determined according to the size of the area where plants are sold, offered for sale, distributed, or held for distribution, as follows:

1. Less than ~~100~~101 square feet: Tier 2 fee;

2. ~~100~~101 to ~~1,000~~4,000 square feet: Tier ~~7~~6 fee;

3. 4,001 to 20,000 square feet: Tier 7 fee;

4. 20,001 to 32,500 square feet: Tier 9 fee;

~~3.~~5. More than ~~1,000~~32,500 square feet: Tier 10 fee.

Authority: T.C.A. §§ 4-3-203, 43-6-104, 43-6-106, and 43-6-113.

Subparagraph 0080-06-01-.04(4)(h) Turfgrass License is amended by inserting the word "certified" between the words "distribution" and "turfgrass" in the second sentence of the subparagraph.

(h) Turfgrass License. A turfgrass license is required for any person who sells, offers for sale, distributes, or holds for distribution certified turfgrass sod on a commercial basis. A turfgrass license issued under this part shall serve as departmental certification that turfgrass sod sold or held by the licensee is apparently free of pests, pest plants, disease, weeds, and other grasses. The fee for a turfgrass license is a Tier 5 annual fee under T.C.A. §43-1-703(f).

Authority: T.C.A. §§ 4-3-203, 43-6-104, 43-6-106, and 43-6-113.

Division 0080-08 Division of Weights and Measures is amended by re-titling the division "Division of Weights and Measures".

Authority: T.C.A. §4-3-203.

Chapter 0080-08-02
Certified Public Weighers Regulations

Chapter 0080-08-02 Certified Public Weigher Regulations is amended by re-titling the chapter "Certified Public Weighers Regulations".

Authority: T.C.A. §4-3-203.

Paragraph 0080-08-02-.01(3) is amended by deleting the language "Tier 2 biennial" from the paragraph and substituting instead the following language "Tier 1 annual".

(3) The fee for a certified public weigher license is a Tier 2 biennialTier 1 annual fee under T.C.A. §43-1-703(f).

Authority: T.C.A. §§ 4-3-203, 43-1-703, 47-26-805, and 47-26-806.

Paragraph 0080-08-02-.01(4) is amended by deleting the paragraph in its entirety and substituting instead the following language:

(4) An applicant for licensure under this chapter shall remit its application and biennial registrationannual license fee to the department on or before July 1 of the licensure periodeach year. AnyAll licenses issued under this chapter shall expire on June 30, 24 months following itstheir issuance. If an applicant for renewal fails to pay the registration fee by the followingremit payment of the license fee on or before July 16 of the licensure year for which renewal is sought, the applicant shall also be required to pay a late charge assessed under T.C.A. §43-1-703 prior to renewal of the applicant's license.

Authority: T.C.A. §§ 4-3-203, 43-1-703, 47-26-805, and 47-26-806.

Chapter 0080-08-03
Public Weighmasters Regulations

Chapter 0080-08-03 Public Weighmaster Regulations is amended by re-titling the chapter "Public Weighmasters Regulations".

Authority: T.C.A. §§ 4-3-203 and 47-26-1003.

Paragraph 0080-08-03-.01(3) is amended by deleting the paragraph in its entirety and substituting instead the following language:

(3) The fee for a public weighmaster license is a Tier ~~2 biennial~~1 annual fee under T.C.A. §43-1-703(f), provided that the license fee shall be waived for any applicant holding licensure from the department as a milk sampler or tester and any applicant who is employed exclusively by a licensed dairy products plant, trade products plant, or frozen dessert manufacturer regulated under the Dairy Law of the State of Tennessee.

Authority: T.C.A. §§ 4-3-203, 43-1-703, 47-26-1003, and 47-26-1008.

Paragraph 0080-08-03-.01(4) is amended by deleting the paragraph in its entirety and substituting instead the following language:

(4) An applicant for licensure under this chapter shall remit its application and ~~biennial~~annual license fee to the department on or before July 1 of ~~the licensure period~~each year. Unless issued under an alternative method pursuant to T.C.A. §47-26-1010, all~~Any~~ licenses issued under this chapter shall expire on June 30~~, 24 months~~ following ~~its~~their issuance. If an applicant for renewal fails to ~~pay the license fee by the following~~remit payment of the license fee on or before July 31 of the licensure year for which renewal is sought, and no later than 30 days following expiration of the license if issued under an alternative method, the applicant shall also be required to pay a $25 late charge prior to renewal of the applicant's license.

Authority: T.C.A. §§ 4-3-203, 47-26-1003, and 47-26-1010.

## Chapter 0080-08-04
## Servicepersons ~~Regulations~~and Serviceperson Agencies

Chapter 0080-08-04 Serviceperson Regulations is amended by re-titling the chapter "Servicepersons ~~Regulations~~and Serviceperson Agencies".

Authority: T.C.A. §§ 4-3-203 and 47-26-1117.

Paragraph 0080-08-04-.01(3) is amended by deleting the language "Tier 2 biennial" from the paragraph and substituting instead the following language "Tier 1 annual".

(3) The fee for a serviceperson registration is a ~~Tier 2 biennial~~Tier 1 annual fee under T.C.A. §43-1-703(f).

Authority: T.C.A. §§ 4-3-203, 43-1-703, 47-26-1110, and 47-26-1117.

Paragraph 0080-08-04-.01(4) is amended by deleting the language "Tier 3 biennial" from the paragraph and substituting instead the following language "Tier 2 annual".

(4) The fee for a service agency registration is a ~~Tier 3 biennial~~Tier 2 annual fee under T.C.A. §43-1-703(f).

Authority: T.C.A. §§ 4-3-203, 43-1-703, 47-26-1110, and 47-26-1117.

Paragraph 0080-08-04-.01(5) is amended by deleting the paragraph in its entirety and substituting instead the following language:

(5) ~~An applicant for registration under this chapter shall remit its application and biennial registration fee to~~

~~the department on or before July 1 of the registration period. Any~~ Certificates of registration issued under this chapter shall expire on June 30, 24 months following ~~its~~their issuance. Annual fees for serviceperson or service agency registrations shall be paid to the department on or before July 1 of each year. ~~If an applicant fails to pay the registration fee~~Failure to pay annual fees for a registration by the following July 16~~, the applicant shall also be required to pay~~ shall result in assessment of a late charge under T.C.A. §43-1-703 ~~prior to renewal of the applicant's registration~~. If an applicant for renewal incurs a late charge following expiration of his registration, the applicant shall not be eligible for renewal of his registration until all annual fees and late charges are satisfied to the department. If a current certificate holder incurs a late charge during his current registration period, the holder shall remit payment of all annual fees and late charges to the department on or before the following August 30 or be subject to revocation of his registration for good cause under T.C.A. §47-26-1112.

Authority: T.C.A. §§ 4-3-203, 43-1-703, and 47-26-1117.

Repeal

Chapter 0080-04-13
Food Manufacturers and Warehouses

Rule 0080-04-13-.07 Notice of Enforcement Action Against Licensee is repealed in its entirety.

~~0080-04-13-.07 Notice of Enforcement Action Against Licensee.~~

~~Notice of an enforcement action against a licensee, including but not limited to assessment of a civil penalty and conduct of an administrative hearing, shall be presumed properly served upon mailing of notice to licensee's address of record with the department.~~

Authority: T.C.A. §§ 4-3-203 and 53-1-207.

Chapter 0080-04-14
Meat and Poultry Processors

Rule 0080-04-14-.06 Notice of Enforcement Action Against Licensee is repealed in its entirety.

~~0080-04-14-.06 Notice of Enforcement Action Against Licensee.~~

~~Notice of an enforcement action against a licensee, including but not limited to assessment of a civil penalty and conduct of an administrative hearing, shall be presume properly servied upon mailing of notice to licensee's address of record with the department.~~

Authority: T.C.A. §§ 4-3-203 and 53-7-213.

Chapter 0080-06-23
Gypsy Moth Quarantine

Chapter 0080-06-23 Gypsy Moth Quarantine is repealed in its entirety.

~~0080-06-23-.01 Establishment and Purpose of Quarantine.~~

~~(1) The destructive insect pest known as the gpysy moth Lymantria dispar (Linnaeus) has been found in Tennessee, as well as in other states. This pest can be extremely injurious to Tennessee forests and shade trees; therefore, it would be in the best interest of man, agriculture and silviculture in Tennessee that a quarantine be established against this pest.~~

(2) A quarantine against the above defined pest is hereby established to regulate the movement of certain articles capable of transporting the highly destructive insect known as the gypsy moth, Lymantria dispar (L.), into uninfested or unregulated areas of the State, unless such articles comply with the conditions specified herein.

(3) Gypsy moth has infested a portion of Grainger County in Tennessee. The purpose of this quarantine is to prevent the artificial spread of gypsy moth into uninfested areas of the state by regulating the movement of those articles that pose a significant threat of spreading gypsy moth.

0080-06-23-.02 Definitions.

For the purpose of this quarantine and regulations, the following shall mean:

(1) Associated Equipment: Articles associated and moved with mobile homes and recreational vehicles such as, but not limited to, awnings, tents, outdoor furniture, L.P. gas containers, trailer blocks and trailer skirts.

(2) Certificates: Certificates of inspection. Documents issued by the Commissioner of the Tennessee Department of Agriculture, to allow the movement of regulated articles to any destination. Such certificates of inspection shall be in complete compliance with the restriction noted in this quarantine.

(3) Commissioner: The Commissioner of the Tennessee Department of Agriculture, or the Commissioner's authorized agent.

(4) Compliance Agreements: A written agreement between a person or concern engaged in growing, dealing in moving regulated articles and the Tennessee Department of Agriculture, Division of Plant Industries, United States Department of Agriculture, or both, wherein the former agrees to comply with conditions specified in agreement to prevent the dissemination of the gypsy moth.

(5) Infestation: The presence of the gypsy moth in any of its life stages where it is reasonably sure the pest may exist.

(6) Inspector: Any duly designated employee, agent or representative of the Commissioner of the Tennessee Department of Agriculture authorized to enforce the provisions of this quarantine.

(7) Limited Permit: A document issued by an inspector in accordance with a compliance agreement authorizing the movement of regulated articles to a specific destination for limited handling, utilization, processing, or treatment.

(8) Log Yards: Locations near or in close proximity to a railroad siding, barge landing, or highway, either within or outside of the quarantined area, where any wood products with bark intact that have been cut within the quarantined area and transported to such location to await transportation to a wood-processing plant outside the quarantined area have been placed.

(9) Mobile Home: Any vehicle, other than a recreational vehicle, designed to serve, when parked, as a dwelling or place of business.

(10) Outdoor Household Articles: Articles associated with a household that have been kept outside the home including, but not limited to, outdoor furniture, barbecue grills, dog houses, boats, hauling trailers, garden tools, tents, awnings, firewood and recreational vehicles and associated equipment.

(11) Outdoor Household Article Gypsy Moth Inspection Report: Also known as OHA Document. A document used to certify outdoor household articles as having been inspected and found to be free of gypsy moth life stages. Information recorded on the document includes the location from which the outdoor household articles were moved, their destination, and a list of the articles inspected.

(12) Person: Any corporation, partnership, firm, company, society, association, or business entity in any form, as well as any individual.

(13) Pest: Gypsy moth in any life stage (egg, larvae, pupa, adult).

(14) Recreational Vehicles: Highway vehicles including, but not limited to, pick-up truck campers, one-piece motor homes and camping or travel trailers designed to serve as temporary places of dwelling.

(15) Regulated Area: Any county, other minor civil division, farm or other premises, or part thereof designated as a regulated area by this quarantine.

(16) Regulated Articles: Gypsy moth, means of conveyance, and other products and articles of any character whatsoever the movement of which is regulated by this quarantine.

0080-06-23-.03 Regulated Areas.

(1) Any area in which the gypsy moth is known to exist which is regulated by the U.S. Department of Agriculture Gypsy Moth Quarantine (7 C.F.R. 301.45), the Tennessee Department of Agriculture Gypsy Moth Quarantine, or a gypsy moth quarantine or related legislation enacted by another state.

(2) In Tennessee, that portion of Grainger County starting at the intersection of U.S. Highway 11W and U.S. Highway 25E, then north along U.S. Highway 25E to Clinch River (Norris Lakes), then west along Clinch River (Norris Lake) to the east end of Dutch Vallery Road, then west on Dutch Valley Road to Hogskin Road, then west on Hogskin Road to Union County line, then south along Union County/Grainger County line to the Knox County/Grainger County line, then south along Knox County/Grainger County line to Holston River, then east along Holston River to Highway 92, then north along Highway 92 to the intersection with U.S. Highway I IW, then east on U.S. Highway I I W to the intersection U.S. Highway 25E north.

0080-06-23-.04 Regulated Articles.

The following pests and articles shall be regulated by this quarantine:

(1) Gypsy moth, Lymantria dispar (L.), in any life stage;

(2) Trees without roots (e.g. cut Christmas trees) and both trees and shrubs with roots and persistent woody stems, except if greenhouse grown throughout the year;

(3) Logs and pulpwood, except if moved to a mill operating under a compliance agreement;

(4) All logging equipment;

(5) Log yards;

(6) Mobile homes and associated equipment;

(7) Outdoor household articles;

(8) Recreational vehicles; and

(9) Any other products, articles or means of conveyance of any character whatsoever, when it is determined by an inspector that a gypsy moth in any life stage is in proximity to such articles and the articles present a threat of artificial spread of gypsy moth infestations, and the person in possession thereof has received written notification of the inspector's determination.

0080-06-23-.05 Conditions Governing the Movement of Regulated Articles.

(1) Regulated articles may not be moved from a regulated area to an unregulated area of the state unless a certificate, limited permit, or outdoor household article gypsy moth inspection report (OHA document) has been issued and attached to the regulated article in accordance with the provisions set forth in these regulations.

(2) Regulated articles originating outside a regulated area may be moved directly through a regulated area without a certificate, limited permit, or OHA document if the point of origin is clearly indicated on the shipping document accompanying the regulated articles.

0080-06-23-.06 Attachment of Certificates, Limited Permits and ORA Documents.

(1) Every single article and/or every container of regulated articles, is required to have a certificate, limited permit or OHA document securely attached to the outside thereof when being moved, or offered for movement from a regulated area to an unregulated area of the state. When regulated articles are adequately described on the certificate, limited permit, it, or OHA document attached to the invoice or waybill accompanying the article(s), the attachment of a certificate, limited permit or OHA document to each container of the articles or to the article itself will not be required. Certificates, limited permits, or OHA documents attached to the invoice or waybill shall be given by the carrier to the consignee at the destination of the shipment and/or to an inspector when requested.

(2) A copy of the OHA document must by forwarded to Tennessee Department of Agriculture, Division of Plant Industries, Ellington Agricultural Center, Box 40627, Melrose Station, Nashville, TN 37204-0627 within two weeks of the date of the actual move.

0080-06-23-.07 Issuance of Certificates, Limited Permits, OHA Documents and Compliance Agreements.

(1) CERTIFICATES -- Certificates may be issued by an inspector for the movement of the regulated articles designated in this quarantine under any of the following conditions:

(a) When in the judgment of the inspector, they have not been exposed to gypsy moth infestation;

(b) When they have been examined by the inspector and found to be free of infestation;

(c) When they have been treated to destroy gypsy moths under the supervision of the inspector and in accordance with methods selected by him from procedures authorized by the Director of the Division of Plant Industries and known to be effective under conditions in which applied; or

(d) When grown, produced, manufactured, stored, or handled in such a manner that, in the judgment of the inspector, no gypsy moths would by transmitted thereby.

(2) Limited Permits – Limited permits may be issued by an inspector for the movement of non-certified regulated articles to specific destinations under conditions which specify the limited handling, utilization, processing or treatment of the articles, when the inspector determines that such movement will not result in the spread of gypsy moth because the life stage(s) of the insect will be destroyed by such specified handling, utilization, processing or treatment.

(3) Outdoor household article gypsy moth inspection report -- OHA documents may be issued by the person moving outdoor household articles from a regulated area to an unregulated area in Tennessee if such person has inspected the outdoor articles and has found them to be free of any life stage of gypsy moth.

(4) Compliance agreement -- Any person engaged in the business of growing, purchasing, assembling, exchanging, handling, processing, utilizing, treating or moving regulated articles may be required to sign a compliance agreement as a condition for the issuance of certificates or permits. The agreement shall specify safeguards that will be maintained to prevent the establishment and spread of the gypsy moth. The person must comply with all conditions set forth in the agreement, such as the maintenance of identity, handling, and subsequent movement of the regulated articles, and the cleaning and treatment of

means of conveyance and containers.

0080-06-23-.08 Cancellation of Certificates, Limited Permits, OHA Documents, or Compliance Agreements.

(1) Any certificate, limited permit, OHA document, or compliance agreement which has been issued or authorized may be canceled or withdrawn by an inspector, who is supervising the enforcement of this quarantine, whenever the inspector determines that the holder of the document has failed to comply with any conditions set forth for the use of the certificate, limited permit, OHA document, or compliance agreement.

0080-06-23-.09 Protecting Certified Articles.

(1) After certification, regulated articles must be loaded, hauled, handled, and shipped under such protection and safeguards as required by the inspector to prevent the spread of gypsy moths.

0080-06-23-.10 Movement of Regulated Articles within the Regulated Areas.

Regulated articles within regulated areas may be freely moved unless:

(1) The articles originate on infested properties;

(2) The Commissioner has determined that a hazard of a spread of infestation exists, and

(3) The owner of the article has been so notified. An owner so notified may move the specified regulated articles within the regulated areas only under conditions approved by the Commissioner.

0080-06-23-.11 Assembly of Articles for Inspection.

(a) Any person desiring to move any regulated articles from a regulated area to an unregulated area shall submit an application to an inspector prior to the move, indicating the location of articles to be moved and the destination of such movement. The person shall then assemble such articles at such points and in such manner as the inspector shall direct to facilitate inspection. If on inspection, such movement does not represent an element of risk of a spread of infestation, a certificate will be issued. If cleaning or treatment is necessary then such procedure will be outlined by the inspector and carried out under his supervision, and certificates issued on satisfactory completion of such procedures or treatments.

0080-06-23-.12 Inspection and Disposal of Regulated Articles and Pests.

(1) The Commissioner and others authorized to perform official duties in connection with the gypsy moth quarantine are hereby authorized and empowered, upon probable cause and after displaying proper identification, to stop and search, without warrant, any person, and/or any means of conveyance moving into, within, or from the State of Tennessee, and/or any regulated article or container being moved or offered for movement by and/or upon such person and/or by or within such conveyance, for gypsy moth infestation. The Commissioner and/or other authorized persons are hereby further authorized and empowered to seize, sto sale, treat, require to be treated under state supervision, destroy, order returned to the point of origin at the owners expens, or otherwise dispose of articles found to be moving or offered for movement in violation of the gypsy moth quarantine. All chemicals used for treatment under this quarantine must be registered with both the state and federal government, and the same must be applied according to state and federal guidelines.

Authority: T.C.A. §§ 4-3-203, 43-6-104, and 43-6-106.

## Chapter 0080-08-03
## Public Weighmasters

Rule 0080-08-03-.02 Notice of Enforcement Action Against Licensee is repealed in its entirety.

~~0080-08-03-.02 Notice of Enforcement Action Against Licensee.~~

~~Notice of an enforcement action against a licensee, including but not limited to assessment of a civil penalty and conduct of an administrative hearing, shall be presumed properly served upon mailing of notice to licensee's address of record with the department.~~

Authority: T.C.A. §§ 4-3-203 and 47-26-1003.

## Chapter 0080-08-04
## Servicepersons and Serviceperson Agencies

Rule 0080-08-04-.02 Notice of Enforcement Action Against Registrant is repealed in its entirety.

~~0080-08-04-.02 Notice of Enforcement Action Against Registrant.~~

~~Notice of an enforcement action against a registrant, including but not limited to assessment of a civil penalty and conduct of an administrative hearing, shall be presumed properly served upon mailing of notice to registrant's address of record with the department.~~

Authority: T.C.A. §§ 4-3-203 and 47-26-1117.

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

| Board Member | Aye | No | Abstain | Absent | Signature (if required) |
|---|---|---|---|---|---|
| | | | | | |

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the TN Dept of Agriculture board/commission/ other authority) on 03/15/2017 (mm/dd/yyyy), 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: 01/20/17

Rulemaking Hearing(s) Conducted on: (add more dates). 03/14/17

Date: March 15, 2017

Signature: Jai Templeton

Name of Officer: Jai Templeton

Title of Officer: Commissioner

Subscribed and sworn to before me on: March 15, 2017

Notary Public Signature: Joyce M. Jackson

My commission expires on: 09/14/2017

JOYCE M. JACKSON NOTARY PUBLIC STATE OF TENNESSEE DAVIDSON COUNTY

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

3/29/2017
Date

**Department of State Use Only**

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PUBLICATIONS

Filed with the Department of State on: 3/30/17

Effective on: 6/28/17

Tre Hargett
Secretary of State

## G.O.C. STAFF RULE ABSTRACT

| | |
|---|---|
| DEPARTMENT: | Agriculture |
| DIVISION: | Consumer & Industry Services |
| SUBJECT: | Civil Penalties; Health Requirements for Admission and Transportation of Livestock and Poultry; Livestock Dealers (Requires Licensure and an Annual License Fee); Livestock Markets (Requires Licensure and an Annual License Fee); Retail Food Store Sanitation; Food Manufacturer, Processor, Warehouse, and Distributor Regulations; Meat and Poultry Processor Regulations; Plant Sales and Distribution |
| STATUTORY AUTHORITY: | T.C.A. § 43-1-701, et seq. requires the commissioner of agriculture to establish by rule fees for the proper administration of the Tennessee Livestock Dealer Act and title 44, chapter 11 relative to livestock sales. T.C.A. § 4-3-204 requires the department establish by rule a schedule designating the minimum and maximum penalty that may be assessed for violation of each statute, rule, or order over which it has regulatory control. |
| EFFECTIVE DATES: | June 28, 2017 through June 30, 2018 |
| FISCAL IMPACT: | The estimated increase in departmental revenues and expenditures resulting from this rule is minimal. |
| STAFF RULE ABSTRACT: | This rulemaking hearing rule is intended to promulgate rules consistent with previously standing orders of the state veterinarian's office for various disease testing of imported animals. The rule creates a new fee and licensing structure for the Animal Health program pursuant to amendment of T.C.A. §§ 43-1-703; 44-10-203; and 44-11-104. The rule amends late charge deadlines for retail food and food manufacturing licenses consistent with T.C.A. § 43-1-703. The rule updates specification of the Department's general authority to issue civil penalties. The rule amends definitions of terms under regulations of the Tennessee Plant Pest Act. |

**Public Hearing Comments**

The Department of Agriculture held a public hearing on September 13, 2016. David Waddell served as hearing officer for the Rulemaking Hearing concerning 0080-01-03 Civil Penalties; 0080-02-01 Health Requirements for Admission and Transportation of Livestock and Poultry; 0080-02-08 Livestock Dealers; 0080-02-09 Livestock Markets; 0080-04-09 Retail Food Store Sanitation; 0080-04-13 Food Manufacturer, Processor, Warehouse and Distributor Regulations; 0080-04-14 Meat and Poultry Processor Regulations; 0080-05-05 Regulations Pertaining to Tennessee Commercial Feed Law; 0080-05-10 Commercial Fertilizer Regulations; 0080-06-01 Plant Sales and Distribution; and 0080-08-03 Public Weighmaster Regulations. No questions or comments from the public were presented at the hearing.

**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) 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:

Businesses subject to the proposed rule include: for purposes of general civil penalty authority, all firms regulated under department of agriculture programs; and specifically for substantive changes in existing requirements, livestock dealers, livestock markets, retail food stores, food manufacturers and warehouses, meat and poultry processors, and greenhouses.

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

Approximately 60,000 firms are licensed by the department and potentially subject to civil penalty authority updates proposed in this rule. Other substantive changes in this proposed rule potentially affect, approximately, 106 livestock dealers, 45 livestock markets, 9319 retail food stores, 1324 food manufacturers, 545 food warehouses, 135 meat and poultry processors, and 289 greenhouses.

(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:

Predominantly, the proposed rule changes are not projected to increase administrative costs of affected firms from the cost levels incurred under previous versions of the rules. However, livestock dealer administrative costs may increase where the period for record retention is increased from two years to five years, consistent with other retention periods of departmental records.

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

The effect of these rules on small businesses is to adjust fees for livestock markets and livestock dealers in an effort to better grade the department's fee schedule among small and large business licensees according to departmental expenditures in administering its regulatory programs.

(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:

No less burdensome methods for achieving this purpose are possible.

These rules are promulgated to implement Public Chapter 485 of 2015, which expanded the Agricultural Regulatory Fund to include all fee-generated revenue collected by the department. As part of the legislation, all fee amounts charged by the department were removed from the Code, and the commissioner of agriculture was authorized to set the fee amounts by regulation. The intent of the legislation is to allow the department to adjust fees and to improve the percentage of cost recovery for its programs through fee collection rather than relying as heavily on revenue from the general fund.

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

Proposed rules for animal health are consistent with both federal requirements and most other states' requirements for import and movement of the subject species.

(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.

Exemption of small businesses from this rule may expose the state to greater risks associated with importation of diseased animals and will compromise the intent to grade fee schedules according to resources expended for oversight of regulatory programs.

**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)

No impact is expected 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;

This rule is intended to promulgate rules consistent with previously standing orders of the state veterinarian's office for various disease testing of imported animals. The rule creates a new fee and licensing structure for the Animal Health program pursuant to amendment of T.C.A. §§ 43-1-703; 44-10-203; and 44-11-104. The rule amends late charge deadlines for retail food and food manufacturing licenses consistent with T.C.A. §43-1-703. The rule updates specification of the Department's general authority to issue civil penalties. The rule amends definitions of terms under regulations of the Tennessee Plant Pest Act.

**(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. §43-1-701, et seq. requires the commissioner of agriculture to establish by rule fees for the proper administration of the Tennessee Livestock Dealer Act and title 44, chapter 11 relative to livestock sales. T.C.A. §4-3-204 requires the department establish by rule a schedule designating the minimum and maximum penalty that may be assessed for violation of each statute, rule, or order over which it has regulatory control.

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

These rules are expected to impact primarily 106 livestock dealers and 45 livestock markets. Other persons implicated by the rule include 9319 retail food stores, 1324 food manufacturers, 545 food warehouses, 135 meat and poultry processors, and 289 greenhouses; however, changes in these areas are made for clarity or to update existing authority with changes in rule or law, and are not anticipated to materially affect those businesses beyond existing regulation. No public comments have been received urging adoption or rejection of this rule. No public comments have been received that would indicate the rules are not easily understood; unnecessary to the public health, safety, and welfare; arbitrary or unreasonable; or adverse to business or individuals.

**(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;

There are no known attorney general opinions or court decisions in this state that directly relate to the rule.

**(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 estimated increase in departmental revenues and expenditures resulting from this rule is minimal.

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

David Waddell, Administrative Manager, Tennessee Department of Agriculture, Division of Consumer & Industry Services

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

David Waddell, Administrative Manager, Tennessee Department of Agriculture, Division of Consumer & Industry Services

**(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

436 Hogan Road, Nashville, Tennessee 37220; (615) 837-5331; david.waddell@tn.gov

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

**Department of State**
**Division of Publications**
312 Rosa L. Parks Avenue, 8th Floor Snodgrass/TN Tower
Nashville, TN 37243
Phone: 615-741-2650
Email: publications.information@tn.gov

**For Department of State Use Only**

Sequence Number: 03-32-17
Rule ID(s): 6480-6487
File Date: 3/30/17
Effective Date: 6/28/17

# 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:** | Department of Agriculture |
| **Division:** | Consumer & Industry Services |
| **Contact Person:** | Jay Miller |
| **Address:** | Post Office Box 40627, Nashville, Tennessee |
| **Zip:** | 37204 |
| **Phone:** | (615) 837-5341 |
| **Email:** | jay.miller@tn.gov |

**Revision Type (check all that apply):**

x Amendment
x 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** |
|---|---|
| 0080-01-03 | Civil Penalties |
| **Rule Number** | **Rule Title** |
| 0080-01-03-.01 | Civil Penalties |

| **Chapter Number** | **Chapter Title** |
|---|---|
| 0080-02-01 | Health Requirements for Admission and Transportation of Livestock and Poultry |
| **Rule Number** | **Rule Title** |
| 0080-02-01-.05 | Cattle |
| 0080-02-01-.07 | Swine |
| 0080-02-01-.08 | Sheep |
| 0080-02-01-.09 | Goats |
| 0080-02-01-.10 | Poultry |
| 0080-02-01-.12 | Cervidae |
| 0080-02-01-.18 | Primates |

| Chapter Number | Chapter Title |
|---|---|
| 0080-02-08 | Livestock Dealers |
| **Rule Number** | **Rule Title** |
| 0080-02-08-.02 | Length of Time Records to be Maintained |
| 0080-02-08-.08 | Scope |
| 0080-02-08-.09 | Definitions |
| 0080-02-08-.10 | License Application and Fees |

| Chapter Number | Chapter Title |
|---|---|
| 0080-02-09 | Livestock Markets |
| **Rule Number** | **Rule Title** |
| 0080-02-09-.01 | Scope |
| 0080-02-09-.02 | Definitions |
| 0080-02-09-.03 | License Application and Fees |

| Chapter Number | Chapter Title |
|---|---|
| 0080-04-09 | Retail Food Store Sanitation |
| **Rule Number** | **Rule Title** |
| 0080-04-09-.08 | Compliance and Enforcement |

| Chapter Number | Chapter Title |
|---|---|
| 0080-04-13 | Food Manufacturer, Processor, Warehouse, and Distributor Regulations |
| **Rule Number** | **Rule Title** |
| 0080-04-13-.03 | License Application and Fees |

| Chapter Number | Chapter Title |
|---|---|
| 0080-04-14 | Meat and Poultry Processor Regulations |
| **Rule Number** | **Rule Title** |
| 0080-04-14-.03 | License Application and Fees |

| Chapter Number | Chapter Title |
|---|---|
| 0080-06-01 | Plant Sales and Distribution |
| **Rule Number** | **Rule Title** |
| 0080-06-01-.02 | Definitions |

New

Chapter 0080-02-01
Health Requirements for Admission and Transportation of Livestock and Poultry

0080-02-01-.18 Primates.

(1) Any person in possession of a primate being imported or moved within the state shall have in their immediate possession the following:

(a) A Certificate of Veterinary Inspection (CVI) for the primate, issued by an accredited veterinarian within ten days prior to the primate's import or movement. The CVI shall include a statement from the issuing veterinarian, indicating that the veterinarian carefully examined the oral mucosa of the primate and found no evidence of disease lesions or inflammatory processes;

(b) Proof of negative official tuberculosis testing conducted within the United States or its territories within 30 days prior to the primate's import or movement; and,

(c) Proof of the primate's individual identification by means of microchip implantation.

Authority: T.C.A. §§ 4-3-203; 44-2-102.

Chapter 0080-02-08
~~Regulations Concerning~~ Livestock Dealer's ~~Business Record Requirements~~

0080-02-08-.08 Scope.

(1) This chapter applies to any person who buys, receives, or assembles livestock for resale—on that person's account or for the account of another person—more than nine times in any consecutive three-month period.

(2) Persons licensed under this chapter shall be responsible for permitted operations until the applicable license expires or the department receives written notification from the licensee desiring to terminate the license. The department shall not refund fees for early termination of any license under this chapter.

(3) Licenses issued under this chapter are not transferable from person to person.

Authority: T.C.A. §§ 4-3-203; 44-10-204.

0080-02-08-.09 Definitions.

(1) Terms in this chapter share those meanings of terms set forth in the Tennessee Livestock Dealer Act, T.C.A. §44-10-201, et seq.

(2) When used in this chapter, unless the context requires otherwise:

(a) Act means the Tennessee Livestock Dealer Act, compiled at T.C.A. §44-10-201, et seq.;

(b) Buys, receives, or assembles livestock means the constructive acquisition of livestock, which includes but is not limited to placement of a winning bid for livestock at public auction;

(c) For resale means the acquisition of livestock, where the acquirer or purchaser retains the animals for less than 60 days;

(d) Public auction means the presentation of livestock, open to the public, where offers are solicited and competitive bidding is undertaken for sale of the livestock, with or without reservation;

(e) Times in any consecutive three-month period means the number of times livestock is bought, received, or assembled for resale within a 90 day period. The term refers to the number of transactions conducted and not the number of animals acquired.

Authority: T.C.A. §§ 4-3-203; 44-10-204.

0080-02-08-.10 License Application and Fees.

(1) All persons to whom these rules apply shall obtain a license in accordance with this chapter.

(2) Application for a livestock dealer license shall be made on forms provided by the department, which shall be completed in full and shall include:

(a) Name of the applicant;

(b) Date of birth for any applicant who is an individual or a partner in a general partnership;

(c) Proof of one of the following for any applicant that is not an individual or a partner in a general partnership:

1. Applicant's registration in its state of incorporation;

2. Applicant's registration with the Tennessee Department of Revenue; or,

3. Applicant's business license issued by a local governmental authority;

(d) For any applicant that is not an individual, name and date of birth of the applicant's agent(s) who are authorized to buy, receive, or assemble livestock on the applicant's behalf.

(e) Contact information for applicant, to include name of person legally responsible for applicant's operations, telephone number, email address, and address of the principal place of business;

(f) Name and address of applicant's registered agent for service of process, if any.

(3) Licensees shall notify the department of any changes to the information or contents of an application within 30 days after the change takes place.

(4) The fee for a livestock dealer license is a Tier 3 annual fee under T.C.A. §43-1-703(f). However, for any person holding dual licensure from the department as a livestock market, no fee shall be required for a livestock dealer license.

(5) An applicant for licensure under this chapter shall remit its application and annual license fee to the department on or before July 1 of each year. All licenses issued under this chapter shall expire on June 30 following their issuance. If an applicant for renewal fails to remit payment of the license fee on or before July 16 of the licensure year for which renewal is sought, the applicant shall also be required to pay a late charge assessed under T.C.A. §43-1-703 prior to renewal of the applicant's license.

(6) The department may deny any application for licensure that is not completed in accordance with this rule.

Authority: T.C.A. §§ 4-3-203; 43-1-703; 44-10-203; 44-10-204.

## Chapter 0080-02-09
## Livestock Markets

0080-02-09-.01 Scope.

(1) This chapter applies to any person who on a commercial basis assembles, or causes to be assembled, livestock that is sold at public auction during regularly scheduled or special sales for compensation of the livestock's owner or the operator of the auction.

(2) Persons licensed under this chapter shall be responsible for permitted operations until the applicable license expires or the department receives written notification from the licensee desiring to terminate the license. The department shall not refund fees for early termination of any license under this chapter.

(3) Licenses issued under this chapter are not transferable from person to person.

Authority: T.C.A. §§ 4-3-203; 44-11-112.

0080-02-09-.02 Definitions.

(1) Terms in this chapter share those meanings of terms set forth in T.C.A. §44-11-101.

(2) When used in this chapter, unless the context requires otherwise:

(a) Act means T.C.A. §44-11-101, et seq.;

(b) Public auction means the presentation of livestock, open to the public, where offers are solicited and competitive bidding is undertaken for sale of the livestock, with or without reservation;

(c) Property and fire insurance means insurance in an amount reasonably necessary to compensate persons for physical injuries to themselves or losses to their livestock while participating at any public auction;

(d) Regularly scheduled sales mean three or more public auctions held at the same location within the same calendar year;

(e) Sold at public auction means the conclusion of competitive bidding for any animal presented at public auction, typically signified by the fall of an auction hammer;

(f) Special sales mean any public auction where thirty or more head of livestock are presented.

Authority: T.C.A. §§ 4-3-203; 44-11-112.

0080-02-09-.03 License Application and Fees.

(1) All persons to whom these rules apply shall obtain a license in accordance with this chapter.

(2) Application for a livestock market license shall be made on forms provided by the department, completed in accordance with the Act, and shall include:

(a) Name of the applicant;

(b) Date of birth for any applicant who is an individual or a partner in a general partnership;

(c) Proof of one of the following for any applicant that is not an individual or a partner in a general partnership:

1. Applicant's registration in its state of incorporation;

2. Applicant's registration with the Tennessee Department of Revenue; or,

3. Applicant's business license issued by a local governmental authority;

(d) Contact information for applicant, to include name of person legally responsible for applicant's operations, telephone number, email address, and address of the principal place of business;

(e) Name and address of applicant's registered agent for service of process, if any.

(3) Licensees shall notify the department of any changes to the information or contents of an application within 30 days after the change takes place.

(4) Prior to approval of any application under this chapter, an applicant must undergo departmental inspection and demonstrate capacity to practice proper sanitation measures for the control of animal disease and to provide adequate yarding, housing, holding, and feeding of livestock.

(5) The fee for a livestock market license is a Tier 5 annual fee under T.C.A. §43-1-703(f).

(6) An applicant for licensure under this chapter shall remit its application and annual license fee to the department on or before July 1 of each year. All licenses issued under this chapter shall expire on June 30 following their issuance. If an applicant for renewal fails to remit payment of the license fee on or before July 16 of the licensure year for which renewal is sought, the applicant shall also be required to pay a late charge assessed under T.C.A. §43-1-703 prior to renewal of the applicant's license.

(7) The department may deny any application for licensure that is not completed in accordance with this rule.

Authority: T.C.A. §§ 4-3-203; 43-1-703; 44-11-102; 44-11-104; 44-11-112.

Amendments

Chapter 0080-01-03
Civil Penalties

Rule 0080-01-03-.01 Civil Penalties is amended by deleting the rule in its entirety and substituting instead the following language so that as amended the rule shall read:

0080-01-03-.01 Civil Penalties.

(1) The Ddepartment, or any Bboard or Ccommission attached to the Ddepartment, may, in a lawful proceeding respecting licensing, as defined in the Uniform Administrative Procedures Act, in addition to or in lieu of any other lawful disciplinary action, assess a civil penalty under T.C.A. §4-3-204 of not more than five hundred dollars ($500) for each violation of statute, rule, or order enforceable by the Ddepartment, Bboard, or Ccommission in accordance with the following schedule:

*Agriculture and Horticulture – Title 43*
*Pest Control – (Chapter 6)*
*Plant Pest Act – (Part 1)*

| Violations | Penalties |
|---|---|
| 43-6-106 | 0-500 |
| 43-6-109 | 0-500 |
| 43-6-110 | 0-500 |
| 43-6-111 | 0-500 |
| 43-6-112 | 0-500 |

(a) Plant Pest Act.

1. T.C.A. §43-6-106. Minimum penalty $0. Maximum penalty $500.

2. T.C.A. §43-6-109. Minimum penalty $0. Maximum penalty $500.

3. T.C.A. §43-6-110. Minimum penalty $0. Maximum penalty $500.

4. T.C.A. §43-6-112. Minimum penalty $0. Maximum penalty $500.

5. Tenn. Comp. R. & Regs. 0080-06-01-.03. Minimum penalty $0. Maximum penalty $500.

6. Tenn. Comp. R. & Regs. 0080-06-01-.04. Minimum penalty $0. Maximum penalty $500.

7. Tenn. Comp. R. & Regs. 0080-06-01-.05. Minimum penalty $0. Maximum penalty $500.

8. Tenn. Comp. R. & Regs. 0080-06-01-.07. Minimum penalty $0. Maximum penalty $500.

9. Tenn. Comp. R. & Regs. 0080-06-03-.01. Minimum penalty $0. Maximum penalty $500.

10. Tenn. Comp. R. & Regs. 0080-06-03-.02. Minimum penalty $0. Maximum penalty $500.

11. Tenn. Comp. R. & Regs. 0080-06-03-.03. Minimum penalty $0. Maximum penalty $500.

12. Tenn. Comp. R. & Regs. 0080-06-03-.04. Minimum penalty $0. Maximum penalty $500.

13. Tenn. Comp. R. & Regs. 0080-06-03-.05. Minimum penalty $0. Maximum penalty $500.

14. Tenn. Comp. R. & Regs. 0080-06-03-.06. Minimum penalty $0. Maximum penalty $500.

15. Tenn. Comp. R. & Regs. 0080-06-03-.07. Minimum penalty $0. Maximum penalty $500.

16. Tenn. Comp. R. & Regs. 0080-06-03-.08. Minimum penalty $0. Maximum penalty $500.

17. Tenn. Comp. R. & Regs. 0080-06-03-.09. Minimum penalty $0. Maximum penalty $500.

18. Tenn. Comp. R. & Regs. 0080-06-04-.01. Minimum penalty $0. Maximum penalty $500.

19. Tenn. Comp. R. & Regs. 0080-06-04-.02. Minimum penalty $0. Maximum penalty $500.

20. Tenn. Comp. R. & Regs. 0080-06-04-.03. Minimum penalty $0. Maximum penalty $500.

21. Tenn. Comp. R. & Regs. 0080-06-04-.04. Minimum penalty $0. Maximum penalty $500.

22. Tenn. Comp. R. & Regs. 0080-06-06-.04. Minimum penalty $0. Maximum penalty $500.

23. Tenn. Comp. R. & Regs. 0080-06-06-.05. Minimum penalty $0. Maximum penalty $500.

24. Tenn. Comp. R. & Regs. 0080-06-06-.06. Minimum penalty $0. Maximum penalty $500.

25. Tenn. Comp. R. & Regs. 0080-06-10-.01. Minimum penalty $0. Maximum penalty $500.

26. Tenn. Comp. R. & Regs. 0080-06-10-.05. Minimum penalty $0. Maximum penalty $500.

27. Tenn. Comp. R. & Regs. 0080-06-10-.07. Minimum penalty $0. Maximum penalty $500.

28. Tenn. Comp. R. & Regs. 0080-06-10-.09. Minimum penalty $0. Maximum penalty $500.

29. Tenn. Comp. R. & Regs. 0080-06-11-.01. Minimum penalty $0. Maximum penalty $500.

30. Tenn. Comp. R. & Regs. 0080-06-11-.06. Minimum penalty $0. Maximum penalty $500.

31. Tenn. Comp. R. & Regs. 0080-06-11-.07. Minimum penalty $0. Maximum penalty $500.

32. Tenn. Comp. R. & Regs. 0080-06-11-.11. Minimum penalty $0. Maximum penalty $500.

33. Tenn. Comp. R. & Regs. 0080-06-11-.12. Minimum penalty $0. Maximum penalty $500.

34. Tenn. Comp. R. & Regs. 0080-06-12-.04. Minimum penalty $0. Maximum penalty $500.

35. Tenn. Comp. R. & Regs. 0080-06-12-.05. Minimum penalty $0. Maximum penalty $500.

36. Tenn. Comp. R. & Regs. 0080-06-17-.02. Minimum penalty $0. Maximum penalty $500.

37. Tenn. Comp. R. & Regs. 0080-06-17-.03. Minimum penalty $0. Maximum penalty $500.

38. Tenn. Comp. R. & Regs. 0080-06-17-.04. Minimum penalty $0. Maximum penalty $500.

39. Tenn. Comp. R. & Regs. 0080-06-17-.05. Minimum penalty $0. Maximum penalty $500.

40. Tenn. Comp. R. & Regs. 0080-06-17-.06. Minimum penalty $0. Maximum penalty $500.

41. Tenn. Comp. R. & Regs. 0080-06-17-.07. Minimum penalty $0. Maximum penalty $500.

42. Tenn. Comp. R. & Regs. 0080-06-17-.08. Minimum penalty $0. Maximum penalty $500.

43. Tenn. Comp. R. & Regs. 0080-06-17-.09. Minimum penalty $0. Maximum penalty $500.

44. Tenn. Comp. R. & Regs. 0080-06-17-.10. Minimum penalty $0. Maximum penalty $500.

45. Tenn. Comp. R. & Regs. 0080-06-17-.11. Minimum penalty $0. Maximum penalty $500.

46. Tenn. Comp. R. & Regs. 0080-06-17-.12. Minimum penalty $0. Maximum penalty $500.

47. Tenn. Comp. R. & Regs. 0080-06-17-.13. Minimum penalty $0. Maximum penalty $500.

48. Tenn. Comp. R. & Regs. 0080-06-19-.01. Minimum penalty $0. Maximum penalty $500.

49. Tenn. Comp. R. & Regs. 0080-06-19-.05. Minimum penalty $0. Maximum penalty $500.

50. Tenn. Comp. R. & Regs. 0080-06-19-.06. Minimum penalty $0. Maximum penalty $500.

51. Tenn. Comp. R. & Regs. 0080-06-19-.08. Minimum penalty $0. Maximum penalty $500.

52. Tenn. Comp. R. & Regs. 0080-06-19-.09. Minimum penalty $0. Maximum penalty $500.

53. Tenn. Comp. R. & Regs. 0080-06-20-.01. Minimum penalty $0. Maximum penalty $500.

54. Tenn. Comp. R. & Regs. 0080-06-20-.05. Minimum penalty $0. Maximum penalty $500.

55. Tenn. Comp. R. & Regs. 0080-06-20-.06. Minimum penalty $0. Maximum penalty $500.

56. Tenn. Comp. R. & Regs. 0080-06-20-.08. Minimum penalty $0. Maximum penalty $500.

57. Tenn. Comp. R. & Regs. 0080-06-20-.09. Minimum penalty $0. Maximum penalty $500.

58. Tenn. Comp. R. & Regs. 0080-06-20-.12. Minimum penalty $0. Maximum penalty $500.

59. Tenn. Comp. R. & Regs. 0080-06-23-.01. Minimum penalty $0. Maximum penalty $500.

60. Tenn. Comp. R. & Regs. 0080-06-23-.05. Minimum penalty $0. Maximum penalty $500.

61. Tenn. Comp. R. & Regs. 0080-06-23-.06. Minimum penalty $0. Maximum penalty $500.

62. Tenn. Comp. R. & Regs. 0080-06-23-.09. Minimum penalty $0. Maximum penalty $500.

63. Tenn. Comp. R. & Regs. 0080-06-23-.10. Minimum penalty $0. Maximum penalty $500.

64. Tenn. Comp. R. & Regs. 0080-06-23-.11. Minimum penalty $0. Maximum penalty $500.

65. Tenn. Comp. R. & Regs. 0080-06-24-.02. Minimum penalty $0. Maximum penalty $500.

66. Tenn. Comp. R. & Regs. 0080-06-24-.03. Minimum penalty $0. Maximum penalty $500.

67. Tenn. Comp. R. & Regs. 0080-06-26-.01. Minimum penalty $0. Maximum penalty $500.

68. Tenn. Comp. R. & Regs. 0080-06-26-.03. Minimum penalty $0. Maximum penalty $500.

69. Tenn. Comp. R. & Regs. 0080-06-26-.05. Minimum penalty $0. Maximum penalty $500.

70. Tenn. Comp. R. & Regs. 0080-06-26-.08. Minimum penalty $0. Maximum penalty $500.

71. Tenn. Comp. R. & Regs. 0080-06-26-.09. Minimum penalty $0. Maximum penalty $500.

72. Tenn. Comp. R. & Regs. 0080-06-26-.11. Minimum penalty $0. Maximum penalty $500.

(b) Eradication of Johnson Grass.

1. T.C.A. §43-6-205. Minimum penalty $0. Maximum penalty $500.

2. T.C.A. §43-6-207. Minimum penalty $0. Maximum penalty $500.

(c) Eradication of the Cotton Boll Weevil.

1. T.C.A. §43-6-404. Minimum penalty $0. Maximum penalty $500.

2. T.C.A. §43-6-405. Minimum penalty $0. Maximum penalty $500.

3. T.C.A. §43-6-410. Minimum penalty $0. Maximum penalty $500.

4. T.C.A. §43-6-426. Minimum penalty $0. Maximum penalty $500.

5. Tenn. Comp. R. & Regs. 0080-06-22-.07. Minimum penalty $0. Maximum penalty $500.

6. Tenn. Comp. R. & Regs. 0080-06-22-.08. Minimum penalty $0. Maximum penalty $500.

7. Tenn. Comp. R. & Regs. 0080-06-22-.10. Minimum penalty $0. Maximum penalty $500.

8. Tenn. Comp. R. & Regs. 0080-06-22-.11. Minimum penalty $0. Maximum penalty $500.

9. Tenn. Comp. R. & Regs. 0080-06-22-.12. Minimum penalty $0. Maximum penalty $500.

10. Tenn. Comp. R. & Regs. 0080-06-22-.14. Minimum penalty $0. Maximum penalty $500.

(d) Tennessee Insecticide, Fungicide, and Rodenticide Act.

1. T.C.A. §43-8-103. Minimum penalty $0. Maximum penalty $500.

2. T.C.A. §43-8-104. Minimum penalty $0. Maximum penalty $500.

3. T.C.A. §43-8-105. Minimum penalty $0. Maximum penalty $500.

4. T.C.A. §43-8-107. Minimum penalty $0. Maximum penalty $500.

5. T.C.A. §43-8-108. Minimum penalty $0. Maximum penalty $500.

6. T.C.A. §43-8-110. Minimum penalty $0. Maximum penalty $500.

7. T.C.A. §43-8-111. Minimum penalty $0. Maximum penalty $500.

8. T.C.A. §43-8-116. Minimum penalty $0. Maximum penalty $500.

9. T.C.A. §43-8-201. Minimum penalty $0. Maximum penalty $500.

10. T.C.A. §43-8-205. Minimum penalty $0. Maximum penalty $500.

11. T.C.A. §43-8-206. Minimum penalty $0. Maximum penalty $500.

12. T.C.A. §43-8-304. Minimum penalty $0. Maximum penalty $500.

13. T.C.A. §43-8-306. Minimum penalty $0. Maximum penalty $500.

14. T.C.A. §43-8-311. Minimum penalty $0. Maximum penalty $500.

15. T.C.A. §43-8-312. Minimum penalty $0. Maximum penalty $500.

16. T.C.A. §43-8-313. Minimum penalty $0. Maximum penalty $500.

17. T.C.A. §43-8-314. Minimum penalty $0. Maximum penalty $500.

18. Tenn. Comp. R. & Regs. 0080-09-02-.01. Minimum penalty $0. Maximum penalty $500.

19. Tenn. Comp. R. & Regs. 0080-09-02-.03. Minimum penalty $0. Maximum penalty $500.

20. Tenn. Comp. R. & Regs. 0080-09-02-.04. Minimum penalty $0. Maximum penalty $500.

21. Tenn. Comp. R. & Regs. 0080-09-02-.06. Minimum penalty $0. Maximum penalty $500.

22. Tenn. Comp. R. & Regs. 0080-09-02-.07. Minimum penalty $0. Maximum penalty $500.

23. Tenn. Comp. R. & Regs. 0080-09-02-.08. Minimum penalty $0. Maximum penalty $500.

24. Tenn. Comp. R. & Regs. 0080-09-02-.10. Minimum penalty $0. Maximum penalty $500.

25. Tenn. Comp. R. & Regs. 0080-09-02-.11. Minimum penalty $0. Maximum penalty $500.

26. Tenn. Comp. R. & Regs. 0080-09-03-.01. Minimum penalty $0. Maximum penalty $500.

~~*Agriculture and Horticulture – Title 43*~~
~~*Agricultural Seeds – (Chapter 10)*~~
~~*Seed Law (Part 1)*~~
~~*Violations*~~

| ~~Violations~~ | ~~Penalties~~ |
|---|---|
| ~~43-10-104~~ | ~~0-500~~ |
| ~~43-10-105~~ | ~~0-500~~ |
| ~~43-10-106~~ | ~~0-500~~ |
| ~~43-10-108~~ | ~~0-500~~ |
| ~~43-10-109(1)~~ | ~~0-500~~ |
| ~~43-10-109(2)~~ | ~~0-500~~ |
| ~~43-10-109(3)~~ | ~~0-500~~ |
| ~~43-10-109(4)~~ | ~~0-500~~ |
| ~~43-10-109(5)~~ | ~~0-500~~ |
| ~~43-10-109(6)~~ | ~~0-500~~ |
| ~~43-10-109(7)~~ | ~~0-500~~ |
| ~~43-10-109(8)~~ | ~~0-500~~ |
| ~~43-10-109(9)~~ | ~~0-500~~ |
| ~~43-10-109(10)~~ | ~~0-500~~ |
| ~~43-10-109(11)~~ | ~~0-500~~ |
| ~~43-10-109(12)~~ | ~~0-500~~ |
| ~~43-10-111~~ | ~~0-500~~ |
| ~~43-10-118(a)~~ | ~~0-500~~ |
| ~~43-10-118(b)~~ | ~~0-500~~ |
| ~~43-10-118(c)~~ | ~~0-500~~ |
| ~~43-10-118(c)~~ | ~~0-500~~ |

(e) Tennessee Seed Law of 1986.

1. T.C.A. §43-10-104. Minimum penalty $0. Maximum penalty $500.

2. T.C.A. §43-10-105. Minimum penalty $0. Maximum penalty $500.

3. T.C.A. §43-10-106. Minimum penalty $0. Maximum penalty $500.

4. T.C.A. §43-10-107. Minimum penalty $0. Maximum penalty $500.

5. T.C.A. §43-10-108. Minimum penalty $0. Maximum penalty $500.

6. T.C.A. §43-10-109. Minimum penalty $0. Maximum penalty $500.

7. T.C.A. §43-10-111. Minimum penalty $0. Maximum penalty $500.

8. T.C.A. §43-10-112. Minimum penalty $0. Maximum penalty $500.

9. T.C.A. §43-10-118. Minimum penalty $0. Maximum penalty $500.

10. Tenn. Comp. R. & Regs. 0080-05-06-.02. Minimum penalty $0. Maximum penalty $500.

11. Tenn. Comp. R. & Regs. 0080-05-06-.03. Minimum penalty $0. Maximum penalty $500.

12. Tenn. Comp. R. & Regs. 0080-05-06-.04. Minimum penalty $0. Maximum penalty $500.

13. Tenn. Comp. R. & Regs. 0080-05-06-.06. Minimum penalty $0. Maximum penalty $500.

14. Tenn. Comp. R. & Regs. 0080-05-06-.07. Minimum penalty $0. Maximum penalty $500.

15. Tenn. Comp. R. & Regs. 0080-05-06-.08. Minimum penalty $0. Maximum penalty $500.

16. Tenn. Comp. R. & Regs. 0080-05-06-.09. Minimum penalty $0. Maximum penalty $500.

17. Tenn. Comp. R. & Regs. 0080-05-06-.10. Minimum penalty $0. Maximum penalty $500.

18. Tenn. Comp. R. & Regs. 0080-05-06-.12. Minimum penalty $0. Maximum penalty $500.

19. Tenn. Comp. R. & Regs. 0080-05-06-.13. Minimum penalty $0. Maximum penalty $500.

20. Tenn. Comp. R. & Regs. 0080-05-06-.14. Minimum penalty $0. Maximum penalty $500.

21. Tenn. Comp. R. & Regs. 0080-05-06-.16. Minimum penalty $0. Maximum penalty $500.

22. Tenn. Comp. R. & Regs. 0080-05-06-.17. Minimum penalty $0. Maximum penalty $500.

~~*Fertilizers and Liming Materials (Chapter 11)*~~
~~*Commercial Fertilizers (Part 1)*~~

| ~~Violations~~ | ~~Penalties~~ |
|---|---|
| ~~43-10-104(a)~~ | ~~0-500~~ |
| ~~43-10-105(a)~~ | ~~0-500~~ |
| ~~43-10-105(b)~~ | ~~0-500~~ |
| ~~43-10-105(c)~~ | ~~0-500~~ |
| ~~43-10-106(a)~~ | ~~0-500~~ |
| ~~43-10-106(b)~~ | ~~0-500~~ |
| ~~43-10-107(a)~~ | ~~0-500~~ |
| ~~43-10-107(b)~~ | ~~0-500~~ |
| ~~43-10-109~~ | ~~0-500~~ |
| ~~43-10-111~~ | ~~0-500~~ |
| ~~43-10-112~~ | ~~0-500~~ |
| ~~43-10-114~~ | ~~0-500~~ |
| ~~43-10-115~~ | ~~0-500~~ |
| ~~43-10-124~~ | ~~0-500~~ |

(f) Tennessee Commercial Fertilizer Law of 1969.

1. T.C.A. §43-11-104. Minimum penalty $0. Maximum penalty $500.

2. T.C.A. §43-11-105. Minimum penalty $0. Maximum penalty $500.

3. T.C.A. §43-11-109. Minimum penalty $0. Maximum penalty $500.

4. T.C.A. §43-11-111. Minimum penalty $0. Maximum penalty $500.

5. T.C.A. §43-11-112. Minimum penalty $0. Maximum penalty $500.

6. T.C.A. §43-11-114. Minimum penalty $0. Maximum penalty $500.

7. T.C.A. §43-11-124. Minimum penalty $0. Maximum penalty $500.

8. Tenn. Comp. R. & Regs. 0080-05-10-.02. Minimum penalty $0. Maximum penalty $500.

9. Tenn. Comp. R. & Regs. 0080-05-10-.03. Minimum penalty $0. Maximum penalty $500.

10. Tenn. Comp. R. & Regs. 0080-05-10-.04. Minimum penalty $0. Maximum penalty $500.

11. Tenn. Comp. R. & Regs. 0080-05-10-.05. Minimum penalty $0. Maximum penalty $500.

12. Tenn. Comp. R. & Regs. 0080-05-10-.06. Minimum penalty $0. Maximum penalty $500.

13. Tenn. Comp. R. & Regs. 0080-05-10-.07. Minimum penalty $0. Maximum penalty $500.

14. Tenn. Comp. R. & Regs. 0080-05-10-.09. Minimum penalty $0. Maximum penalty $500.

~~*Fertilizers and Liming Materials (Chapter 11)*~~
~~*Liming Materials (Part 2)*~~

| ~~Violations~~ | ~~Penalties~~ |
|---|---|
| ~~43-11-203~~ | ~~0-500~~ |
| ~~43-11-204~~ | ~~0-500~~ |
| ~~43-11-205~~ | ~~0-500~~ |
| ~~43-11-206~~ | ~~0-500~~ |

~~*Fertilizers and Liming Materials (Chapter 11)*~~
~~*Anhydrous Ammonia (Part 3)*~~

| ~~Violations~~ | ~~Penalties~~ |
|---|---|
| ~~43-11-302~~ | ~~0-500~~ |
| ~~43-11-304(a)~~ | ~~0-500~~ |
| ~~43-11-304(b)~~ | ~~0-500~~ |
| ~~43-11-304(c)~~ | ~~0-500~~ |
| ~~43-11-304(d)~~ | ~~0-500~~ |

(g) Anhydrous Ammonia Storage and Equipment Law of Tennessee.

1. T.C.A. §43-11-304. Minimum penalty $0. Maximum penalty $500.

2. Tenn. Comp. R. & Regs. 0080-05-07-.03. Minimum penalty $0. Maximum penalty $500.

3. Tenn. Comp. R. & Regs. 0080-05-07-.04. Minimum penalty $0. Maximum penalty $500.

4. Tenn. Comp. R. & Regs. 0080-05-07-.05. Minimum penalty $0. Maximum penalty $500.

5. Tenn. Comp. R. & Regs. 0080-05-07-.06. Minimum penalty $0. Maximum penalty $500.

6. Tenn. Comp. R. & Regs. 0080-05-07-.07. Minimum penalty $0. Maximum penalty $500.

7. Tenn. Comp. R. & Regs. 0080-05-07-.08. Minimum penalty $0. Maximum penalty $500.

(h) Tennessee Agricultural Liming Materials Act.

1. T.C.A. §43-11-403. Minimum penalty $0. Maximum penalty $500.

2. T.C.A. §43-11-404. Minimum penalty $0. Maximum penalty $500.

3. T.C.A. §43-11-405. Minimum penalty $0. Maximum penalty $500.

4. Tenn. Comp. R. & Regs. 0080-05-15-.01. Minimum penalty $0. Maximum penalty $500.

5. Tenn. Comp. R. & Regs. 0080-05-15-.02. Minimum penalty $0. Maximum penalty $500.

6. Tenn. Comp. R. & Regs. 0080-05-15-.04. Minimum penalty $0. Maximum penalty $500.

7. Tenn. Comp. R. & Regs. 0080-05-15-.05. Minimum penalty $0. Maximum penalty $500.

8. Tenn. Comp. R. & Regs. 0080-05-15-.07. Minimum penalty $0. Maximum penalty $500.

~~*Tobacco Sales (Chapter 19)*~~
~~*Tobacco Inspectors – Inspections – Violations (Part 2)*~~

| ~~Violations~~ | ~~Penalties~~ |
|---|---|
| ~~43-19-205~~ | ~~0-500~~ |
| ~~43-19-206~~ | ~~0-500~~ |
| ~~43-19-207~~ | ~~0-500~~ |
| ~~43-19-209~~ | ~~0-500~~ |
| ~~43-19-212~~ | ~~0-500~~ |
| ~~43-19-213~~ | ~~0-500~~ |
| ~~43-19-214~~ | ~~0-500~~ |

~~*Sale of Tobacco (Part 3)*~~

| ~~Violations~~ | ~~Penalties~~ |
|---|---|
| ~~43-19-302~~ | ~~0-500~~ |
| ~~43-19-304~~ | ~~0-500~~ |

~~*Schedule of Fees (Part 4)*~~

| ~~Violations~~ | ~~Penalties~~ |
|---|---|
| ~~43-19-207~~ | ~~0-500~~ |
| ~~43-19-209~~ | ~~0-500~~ |
| ~~43-19-212~~ | ~~0-500~~ |
| ~~43-19-213~~ | ~~0-500~~ |
| ~~43-19-214~~ | ~~0-500~~ |

(i) Sale of Tobacco.

1. T.C.A. §43-19-302. Minimum penalty $0. Maximum penalty $500.

2. T.C.A. §43-19-303. Minimum penalty $0. Maximum penalty $500.

3. T.C.A. §43-19-304. Minimum penalty $0. Maximum penalty $500.

4. Tenn. Comp. R. & Regs. 0080-05-02-.01. Minimum penalty $0. Maximum penalty $500.

5. Tenn. Comp. R. & Regs. 0080-05-02-.02. Minimum penalty $0. Maximum penalty $500.

6. Tenn. Comp. R. & Regs. 0080-05-02-.03. Minimum penalty $0. Maximum penalty $500.

(j) Tennessee Right to Farm Act.

1. T.C.A. §43-26-103. Minimum penalty $0. Maximum penalty $500.

2. Tenn. Comp. R. & Regs. 0080-06-28-.02. Minimum penalty $0. Maximum penalty $500.

3. Tenn. Comp. R. & Regs. 0080-06-28-.03. Minimum penalty $0. Maximum penalty $500.

4. Tenn. Comp. R. & Regs. 0080-06-28-.04. Minimum penalty $0. Maximum penalty $500.

5. Tenn. Comp. R. & Regs. 0080-06-28-.05. Minimum penalty $0. Maximum penalty $500.

(k) Agriculture Commodities Promotion Act.

1. T.C.A. §43-29-109. Minimum penalty $0. Maximum penalty $500.

2. T.C.A. §43-29-110. Minimum penalty $0. Maximum penalty $500.

3. T.C.A. §43-29-116. Minimum penalty $0. Maximum penalty $500.

(l) Tennessee Commodity Dealer and Warehouse Law and Tennessee Commodity Producer Indemnity Law.

1. T.C.A. §43-32-103. Minimum penalty $0. Maximum penalty $500.

2. T.C.A. §43-32-104. Minimum penalty $0. Maximum penalty $500.

3. T.C.A. §43-32-105. Minimum penalty $0. Maximum penalty $500.

4. T.C.A. §43-32-106. Minimum penalty $0. Maximum penalty $500.

5. T.C.A. §43-32-108. Minimum penalty $0. Maximum penalty $500.

6. T.C.A. §43-32-109. Minimum penalty $0. Maximum penalty $500.

7. T.C.A. §43-32-206. Minimum penalty $0. Maximum penalty $500.

8. T.C.A. §43-32-212. Minimum penalty $0. Maximum penalty $500.

9. Tenn. Comp. R. & Regs. 0080-05-13-.02. Minimum penalty $0. Maximum penalty $500.

10. Tenn. Comp. R. & Regs. 0080-05-13-.03. Minimum penalty $0. Maximum penalty $500.

11. Tenn. Comp. R. & Regs. 0080-05-13-.04. Minimum penalty $0. Maximum penalty $500.

12. Tenn. Comp. R. & Regs. 0080-05-13-.07. Minimum penalty $0. Maximum penalty $500.

13. Tenn. Comp. R. & Regs. 0080-05-13-.08. Minimum penalty $0. Maximum penalty $500.

14. Tenn. Comp. R. & Regs. 0080-05-13-.09. Minimum penalty $0. Maximum penalty $500.

15. Tenn. Comp. R. & Regs. 0080-05-13-.10. Minimum penalty $0. Maximum penalty $500.

16. Tenn. Comp. R. & Regs. 0080-05-14-.02. Minimum penalty $0. Maximum penalty $500.

17. Tenn. Comp. R. & Regs. 0080-05-14-.03. Minimum penalty $0. Maximum penalty $500.

(m) Biobased Products for Farmers and Rural Development Act of 2000.

T.C.A. §43-37-103. Minimum penalty $0. Maximum penalty $500.

~~*Animals and Animal Husbandry- Title 44*~~
~~*Prevention and Treatment of Diseases- Chapter 2*~~
~~*General Provisions (Part 1)*~~

| ~~Violations~~ | ~~Penalties~~ |
|---|---|
| ~~44-2-101~~ | ~~0-500~~ |
| ~~44-2-102~~ | ~~0-500~~ |
| ~~44-2-103~~ | ~~0-500~~ |
| ~~44-2-104~~ | ~~0-500~~ |
| ~~44-2-105~~ | ~~0-500~~ |
| ~~44-2-106~~ | ~~0-500~~ |
| ~~44-2-109~~ | ~~0-500~~ |
| ~~44-2-110~~ | ~~0-500~~ |
| ~~44-2-112~~ | ~~0-500~~ |
| ~~44-2-113~~ | ~~0-500~~ |
| ~~44-2-115~~ | ~~0-500~~ |
| ~~44-2-117~~ | ~~0-500~~ |
| ~~44-2-119~~ | ~~0-500~~ |
| ~~44-2-122~~ | ~~0-500~~ |

~~*Prevention and Treatment of Disease- Chapter 2*~~
~~*Import Restrictions (Part 2)*~~

| ~~Violations~~ | ~~Penalties~~ |
|---|---|
| ~~44-2-201~~ | ~~0-500~~ |
| ~~44-2-202~~ | ~~0-500~~ |
| ~~44-2-203~~ | ~~0-500~~ |

~~*Disease Control- (Chapter 2)*~~
~~*Serums (Part 3)*~~

| ~~Violations~~ | ~~Penalties~~ |
|---|---|
| ~~44-2-301~~ | ~~0-500~~ |

~~*Disease Control- (Chapter 2)*~~
~~*Feeding Garbage to Swine (Part 4)*~~

| ~~Violations~~ | ~~Penalties~~ |
|---|---|
| ~~44-2-404~~ | ~~0-500~~ |
| ~~44-2-406~~ | ~~0-500~~ |

~~*Disease Control- (Chapter 2)*~~
~~*Brucellosis (Part 10)*~~

| ~~Violations~~ | ~~Penalties~~ |
|---|---|
| ~~44-2-1006~~ | ~~0-500~~ |
| ~~44-2-1007~~ | ~~0-500~~ |
| ~~44-2-1008~~ | ~~0-500~~ |

~~44-2-1009 0-500~~
~~44-2-1010 0-500~~
~~44-2-1013 0-500~~

~~*Disease Control- (Chapter 2)*~~
~~*Hog Cholera (Part 2)*~~

| ~~Violations~~ | ~~Penalties~~ |
|---|---|
| ~~44-2-1102~~ | ~~0-500~~ |
| ~~44-2-1103(a)~~ | ~~0-500~~ |
| ~~44-2-1103(b)~~ | ~~0-500~~ |
| ~~44-2-1103(c)~~ | ~~0-500~~ |
| ~~44-2-1105~~ | ~~0-500~~ |

~~*Disease Control- (Chapter 2)*~~
~~*Tuberculosis (Part 2)*~~

| ~~Violations~~ | ~~Penalties~~ |
|---|---|
| ~~44-2-1206~~ | ~~0-500~~ |
| ~~44-2-1207~~ | ~~0-500~~ |
| ~~44-2-1208~~ | ~~0-500~~ |
| ~~44-2-1215~~ | ~~0-500~~ |
| ~~44-2-1217~~ | ~~0-500~~ |

(n) Prevention and Treatment of Animal Diseases; Tennessee Garbage Feeding Law; Registration of Cattle Brands; Tennessee Livestock Dealer Act; and Livestock Sales.

1. T.C.A. §44-2-103. Minimum penalty $0. Maximum penalty $500.

2. T.C.A. §44-2-404. Minimum penalty $0. Maximum penalty $500.

3. T.C.A. §44-7-206. Minimum penalty $0. Maximum penalty $500.

4. T.C.A. §44-7-208. Minimum penalty $0. Maximum penalty $500.

5. T.C.A. §44-7-403. Minimum penalty $0. Maximum penalty $500.

6. T.C.A. §44-10-203. Minimum penalty $0. Maximum penalty $500.

7. T.C.A. §44-10-206. Minimum penalty $0. Maximum penalty $500.

8. T.C.A. §44-11-102. Minimum penalty $0. Maximum penalty $500.

9. T.C.A. §44-11-105. Minimum penalty $0. Maximum penalty $500.

10. T.C.A. §44-11-106. Minimum penalty $0. Maximum penalty $500.

11. T.C.A. §44-11-107. Minimum penalty $0. Maximum penalty $500.

12. T.C.A. §44-11-108. Minimum penalty $0. Maximum penalty $500.

13. T.C.A. §44-11-109. Minimum penalty $0. Maximum penalty $500.

14. Tenn. Comp. R. & Regs. 0080-02-01-.02. Minimum penalty $0. Maximum penalty $500.

15. Tenn. Comp. R. & Regs. 0080-02-01-.03. Minimum penalty $0. Maximum penalty $500.

16. Tenn. Comp. R. & Regs. 0080-02-01-.04. Minimum penalty $0. Maximum penalty $500.

17. Tenn. Comp. R. & Regs. 0080-02-01-.05. Minimum penalty $0. Maximum penalty $500.

18. Tenn. Comp. R. & Regs. 0080-02-01-.06. Minimum penalty $0. Maximum penalty $500.

19. Tenn. Comp. R. & Regs. 0080-02-01-.07. Minimum penalty $0. Maximum penalty $500.

20. Tenn. Comp. R. & Regs. 0080-02-01-.08. Minimum penalty $0. Maximum penalty $500.

21. Tenn. Comp. R. & Regs. 0080-02-01-.09. Minimum penalty $0. Maximum penalty $500.

22. Tenn. Comp. R. & Regs. 0080-02-01-.10. Minimum penalty $0. Maximum penalty $500.

23. Tenn. Comp. R. & Regs. 0080-02-01-.11. Minimum penalty $0. Maximum penalty $500.

24. Tenn. Comp. R. & Regs. 0080-02-01-.12. Minimum penalty $0. Maximum penalty $500.

25. Tenn. Comp. R. & Regs. 0080-02-01-.14. Minimum penalty $0. Maximum penalty $500.

26. Tenn. Comp. R. & Regs. 0080-02-01-.17. Minimum penalty $0. Maximum penalty $500.

27. Tenn. Comp. R. & Regs. 0080-02-01-.18. Minimum penalty $0. Maximum penalty $500.

28. Tenn. Comp. R. & Regs. 0080-02-03-.01. Minimum penalty $0. Maximum penalty $500.

29. Tenn. Comp. R. & Regs. 0080-02-03-.03. Minimum penalty $0. Maximum penalty $500.

30. Tenn. Comp. R. & Regs. 0080-02-03-.04. Minimum penalty $0. Maximum penalty $500.

31. Tenn. Comp. R. & Regs. 0080-02-03-.05. Minimum penalty $0. Maximum penalty $500.

32. Tenn. Comp. R. & Regs. 0080-02-03-.06. Minimum penalty $0. Maximum penalty $500.

33. Tenn. Comp. R. & Regs. 0080-02-03-.07. Minimum penalty $0. Maximum penalty $500.

34. Tenn. Comp. R. & Regs. 0080-02-03-.08. Minimum penalty $0. Maximum penalty $500.

35. Tenn. Comp. R. & Regs. 0080-02-03-.09. Minimum penalty $0. Maximum penalty $500.

36. Tenn. Comp. R. & Regs. 0080-02-03-.10. Minimum penalty $0. Maximum penalty $500.

37. Tenn. Comp. R. & Regs. 0080-02-03-.11. Minimum penalty $0. Maximum penalty $500.

38. Tenn. Comp. R. & Regs. 0080-02-04-.02. Minimum penalty $0. Maximum penalty $500.

39. Tenn. Comp. R. & Regs. 0080-02-05-.03. Minimum penalty $0. Maximum penalty $500.

40. Tenn. Comp. R. & Regs. 0080-02-05-.04. Minimum penalty $0. Maximum penalty $500.

41. Tenn. Comp. R. & Regs. 0080-02-05-.05. Minimum penalty $0. Maximum penalty $500.

42. Tenn. Comp. R. & Regs. 0080-02-05-.06. Minimum penalty $0. Maximum penalty $500.

43. Tenn. Comp. R. & Regs. 0080-02-05-.07. Minimum penalty $0. Maximum penalty $500.

44. Tenn. Comp. R. & Regs. 0080-02-05-.08. Minimum penalty $0. Maximum penalty $500.

45. Tenn. Comp. R. & Regs. 0080-02-05-.09. Minimum penalty $0. Maximum penalty $500.

46. Tenn. Comp. R. & Regs. 0080-02-05-.10. Minimum penalty $0. Maximum penalty $500.

47. Tenn. Comp. R. & Regs. 0080-02-05-.12. Minimum penalty $0. Maximum penalty $500.

48. Tenn. Comp. R. & Regs. 0080-02-06-.01. Minimum penalty $0. Maximum penalty $500.

49. Tenn. Comp. R. & Regs. 0080-02-08-.01. Minimum penalty $0. Maximum penalty $500.

50. Tenn. Comp. R. & Regs. 0080-02-08-.02. Minimum penalty $0. Maximum penalty $500.

51. Tenn. Comp. R. & Regs. 0080-02-08-.03. Minimum penalty $0. Maximum penalty $500.

52. Tenn. Comp. R. & Regs. 0080-02-08-.04. Minimum penalty $0. Maximum penalty $500.

53. Tenn. Comp. R. & Regs. 0080-02-08-.05. Minimum penalty $0. Maximum penalty $500.

54. Tenn. Comp. R. & Regs. 0080-02-08-.07. Minimum penalty $0. Maximum penalty $500.

55. Tenn. Comp. R. & Regs. 0080-02-08-.10. Minimum penalty $0. Maximum penalty $500.

56. Tenn. Comp. R. & Regs. 0080-02-09-.03. Minimum penalty $0. Maximum penalty $500.

57. Tenn. Comp. R. & Regs. 0080-02-10-.01. Minimum penalty $0. Maximum penalty $500.

58. Tenn. Comp. R. & Regs. 0080-02-10-.02. Minimum penalty $0. Maximum penalty $500.

59. Tenn. Comp. R. & Regs. 0080-02-10-.03. Minimum penalty $0. Maximum penalty $500.

60. Tenn. Comp. R. & Regs. 0080-02-10-.04. Minimum penalty $0. Maximum penalty $500.

61. Tenn. Comp. R. & Regs. 0080-02-11-.01. Minimum penalty $0. Maximum penalty $500.

62. Tenn. Comp. R. & Regs. 0080-02-13-.01. Minimum penalty $0. Maximum penalty $500.

63. Tenn. Comp. R. & Regs. 0080-02-14-.02. Minimum penalty $0. Maximum penalty $500.

64. Tenn. Comp. R. & Regs. 0080-02-14-.04. Minimum penalty $0. Maximum penalty $500.

65. Standing orders of the state veterinarian. Minimum penalty $0. Maximum penalty $500.

~~*Commercial Feed Law (Chapter 6)*~~

| ~~Violations~~ | ~~Penalties~~ |
|---|---|
| ~~44-6-104~~ | ~~0-500~~ |
| ~~44-6-105~~ | ~~0-500~~ |
| ~~44-6-106(1)~~ | ~~0-500~~ |
| ~~44-6-106(2)~~ | ~~0-500~~ |
| ~~44-6-106(3)~~ | ~~0-500~~ |
| ~~44-6-106(4)~~ | ~~0-500~~ |
| ~~44-6-106(5)~~ | ~~0-500~~ |
| ~~44-6-107(1)~~ | ~~0-500~~ |
| ~~44-6-107(2)~~ | ~~0-500~~ |
| ~~44-6-107(3)~~ | ~~0-500~~ |
| ~~44-6-107(4)~~ | ~~0-500~~ |
| ~~44-6-107(5)~~ | ~~0-500~~ |
| ~~44-6-108(1)~~ | ~~0-500~~ |
| ~~44-6-108(2)~~ | ~~0-500~~ |
| ~~44-6-108(3)~~ | ~~0-500~~ |
| ~~44-6-108(4)~~ | ~~0-500~~ |
| ~~44-6-108(5)~~ | ~~0-500~~ |

| | |
|---|---|
| 44-6-108(6) | 0-500 |
| 44-6-109(a) | 0-500 |
| 44-6-109(b) | 0-500 |
| 44-6-109(c) | 0-500 |
| 44-6-111(c) | 0-500 |
| 44-6-112(a) | 0-500 |
| 44-6-112(b) | 0-500 |

*Dealers and Purchasers of Poultry, Livestock, and Hides (Chapter 10) General Provision (Part 1)*

| Violations | Penalties |
|---|---|
| 44-10-101 | 0-500 |
| 44-10-103 | 0-500 |
| 44-10-106 | 0-500 |
| 44-10-108 | 0-500 |

*Livestock Dealers (Part 2)*

| Violations | Penalties |
|---|---|
| 44-10-203 | 0-500 |
| 44-10-206(1) | 0-500 |
| 44-10-206(2) | 0-500 |
| 44-10-206(3) | 0-500 |
| 44-10-206(4) | 0-500 |
| 44-10-206(5) | 0-500 |

*Livestock Sales (Chapter 11)*

| Violations | Penalties |
|---|---|
| 44-11-102 | 0-500 |
| 44-11-103 | 0-500 |
| 44-11-105 | 0-500 |
| 44-11-106(a) | 0-500 |
| 44-11-107 | 0-500 |
| 44-11-108 | 0-500 |
| 44-11-109 | 0-500 |
| 44-11-113 | 0-500 |

*Public Livestock Market Chapters (Chapter 12)*

| Violations | Penalties |
|---|---|
| 44-12-103 | 0-500 |
| 44-12-108 | 0-500 |

(o) Tennessee Commercial Feed Law of 1972.

1. T.C.A. §44-6-104. Minimum penalty $0. Maximum penalty $500.

2. T.C.A. §44-6-105. Minimum penalty $0. Maximum penalty $500.

3. T.C.A. §44-6-108. Minimum penalty $0. Maximum penalty $500.

4. T.C.A. §44-6-113. Minimum penalty $0. Maximum penalty $500.

5. Tenn. Comp. R. & Regs. 0080-05-05-.02. Minimum penalty $0. Maximum penalty $500.

6. Tenn. Comp. R. & Regs. 0080-05-05-.03. Minimum penalty $0. Maximum penalty $500.

7. Tenn. Comp. R. & Regs. 0080-05-05-.04. Minimum penalty $0. Maximum penalty $500.

8. Tenn. Comp. R. & Regs. 0080-05-05-.05. Minimum penalty $0. Maximum penalty $500.

9. Tenn. Comp. R. & Regs. 0080-05-05-.06. Minimum penalty $0. Maximum penalty $500.

10. Tenn. Comp. R. & Regs. 0080-05-05-.07. Minimum penalty $0. Maximum penalty $500.

11. Tenn. Comp. R. & Regs. 0080-05-05-.08. Minimum penalty $0. Maximum penalty $500.

12. Tenn. Comp. R. & Regs. 0080-05-05-.09. Minimum penalty $0. Maximum penalty $500.

13. Tenn. Comp. R. & Regs. 0080-05-05-.10. Minimum penalty $0. Maximum penalty $500.

14. Tenn. Comp. R. & Regs. 0080-05-05-.11. Minimum penalty $0. Maximum penalty $500.

15. Tenn. Comp. R. & Regs. 0080-05-05-.13. Minimum penalty $0. Maximum penalty $500.

16. Tenn. Comp. R. & Regs. 0080-05-05-.14. Minimum penalty $0. Maximum penalty $500.

17. Tenn. Comp. R. & Regs. 0080-05-05-.15. Minimum penalty $0. Maximum penalty $500.

18. Tenn. Comp. R. & Regs. 0080-05-05-.16. Minimum penalty $0. Maximum penalty $500.

19. Tenn. Comp. R. & Regs. 0080-05-05-.18. Minimum penalty $0. Maximum penalty $500.

20. Tenn. Comp. R. & Regs. 0080-05-05-.19. Minimum penalty $0. Maximum penalty $500.

~~*Apiaries Law (Chapter 15)*~~

| ~~Violations~~ | ~~Penalties~~ |
|---|---|
| ~~44-15-106~~ | ~~0-500~~ |
| ~~44-15-107~~ | ~~0-500~~ |
| ~~44-15-108~~ | ~~0-500~~ |
| ~~44-15-109~~ | ~~0-500~~ |
| ~~44-15-110~~ | ~~0-500~~ |
| ~~44-15-112~~ | ~~0-500~~ |
| ~~44-15-113~~ | ~~0-500~~ |
| ~~44-15-115~~ | ~~0-500~~ |

(p) Tennessee Apiary Act of 1995.

1. T.C.A. §44-15-105. Minimum penalty $0. Maximum penalty $500.

2. T.C.A. §44-15-106. Minimum penalty $0. Maximum penalty $500.

3. T.C.A. §44-15-108. Minimum penalty $0. Maximum penalty $500.

4. T.C.A. §44-15-109. Minimum penalty $0. Maximum penalty $500.

5. T.C.A. §44-15-110. Minimum penalty $0. Maximum penalty $500.

6. T.C.A. §44-15-112. Minimum penalty $0. Maximum penalty $500.

7. T.C.A. §44-15-113. Minimum penalty $0. Maximum penalty $500.

8. T.C.A. §44-15-114. Minimum penalty $0. Maximum penalty $500.

9. T.C.A. §44-15-119. Minimum penalty $0. Maximum penalty $500.

10. T.C.A. §44-15-120. Minimum penalty $0. Maximum penalty $500.

~~*Baby Chicks (Chapter 16)*~~

| ~~Violations~~ | ~~Penalties~~ |
|---|---|
| ~~44-16-201~~ | ~~0-500~~ |
| ~~44-16-203(1)~~ | ~~0-500~~ |
| ~~44-16-203(2)~~ | ~~0-500~~ |
| ~~44-16-203(3)~~ | ~~0-500~~ |
| ~~44-16-203(4)~~ | ~~0-500~~ |
| ~~44-16-204~~ | ~~0-500~~ |

(q) Baby Chicks.

1. T.C.A. §44-16-201. Minimum penalty $0. Maximum penalty $500.

2. T.C.A. §44-16-203. Minimum penalty $0. Maximum penalty $500.

3. Tenn. Comp. R. & Regs. 0080-02-02-.01. Minimum penalty $0. Maximum penalty $500.

4. Tenn. Comp. R. & Regs. 0080-05-03-.01. Minimum penalty $0. Maximum penalty $500.

~~*Dogs and Cats (Chapter 17)*~~
~~*Dog and Cat Dealers (Part 1)*~~

| ~~Violations~~ | ~~Penalties~~ |
|---|---|
| ~~44-17-104~~ | ~~0-500~~ |
| ~~44-17-107(1)~~ | ~~0-500~~ |
| ~~44-17-107(2)~~ | ~~0-500~~ |
| ~~44-17-107(3)~~ | ~~0-500~~ |
| ~~44-17-107(4)~~ | ~~0-500~~ |
| ~~44-17-108~~ | ~~0-500~~ |
| ~~44-17-109~~ | ~~0-500~~ |
| ~~44-17-110~~ | ~~0-500~~ |
| ~~44-17-111~~ | ~~0-500~~ |
| ~~44-17-112~~ | ~~0-500~~ |
| ~~44-17-113~~ | ~~0-500~~ |
| ~~44-17-114~~ | ~~0-500~~ |
| ~~44-17-115~~ | ~~0-500~~ |
| ~~44-17-117~~ | ~~0-500~~ |
| ~~44-17-118~~ | ~~0-500~~ |

~~*Dogs and Cats Humane Death Act (Part 3)*~~

| ~~Violations~~ | ~~Penalties~~ |
|---|---|
| ~~44-17-303~~ | ~~0-500~~ |
| ~~44-17-304~~ | ~~0-500~~ |

(r) Dogs and Cats.

1. T.C.A. §44-17-104. Minimum penalty $0. Maximum penalty $500.

2. T.C.A. §44-17-107. Minimum penalty $0. Maximum penalty $500.

3. T.C.A. §44-17-108. Minimum penalty $0. Maximum penalty $500.

4. T.C.A. §44-17-109. Minimum penalty $0. Maximum penalty $500.

5. T.C.A. §44-17-110. Minimum penalty $0. Maximum penalty $500.

6. T.C.A. §44-17-111. Minimum penalty $0. Maximum penalty $500.

7. T.C.A. §44-17-112. Minimum penalty $0. Maximum penalty $500.

8. T.C.A. §44-17-113. Minimum penalty $0. Maximum penalty $500.

9. T.C.A. §44-17-114. Minimum penalty $0. Maximum penalty $500.

10. T.C.A. §44-17-115. Minimum penalty $0. Maximum penalty $500.

11. T.C.A. §44-17-117. Minimum penalty $0. Maximum penalty $500.

12. T.C.A. §44-17-118. Minimum penalty $0. Maximum penalty $500.

(s) Dairy Industry Promotion Act.

1. T.C.A. §44-19-113. Minimum penalty $0. Maximum penalty $500.

2. T.C.A. §44-19-119. Minimum penalty $0. Maximum penalty $500.

3. T.C.A. §44-19-121. Minimum penalty $0. Maximum penalty $500.

(t) Kerosene and Motor Fuels Quality Inspection Act of 1989.

1. T.C.A. §47-18-1304. Minimum penalty $0. Maximum penalty $500.

2. T.C.A. §47-18-1306. Minimum penalty $0. Maximum penalty $500.

3. T.C.A. §47-18-1307. Minimum penalty $0. Maximum penalty $500.

4. Tenn. Comp. R. & Regs. 0080-05-12-.02. Minimum penalty $0. Maximum penalty $500.

5. Tenn. Comp. R. & Regs. 0080-05-12-.03. Minimum penalty $0. Maximum penalty $500.

6. Tenn. Comp. R. & Regs. 0080-05-12-.04. Minimum penalty $0. Maximum penalty $500.

7. Tenn. Comp. R. & Regs. 0080-05-12-.05. Minimum penalty $0. Maximum penalty $500.

8. Tenn. Comp. R. & Regs. 0080-05-12-.06. Minimum penalty $0. Maximum penalty $500.

9. Tenn. Comp. R. & Regs. 0080-05-12-.08. Minimum penalty $0. Maximum penalty $500.

~~*Commercial Instruments and Transactions – Title 47*~~
~~*Weights and Measures (Chapter 26)*~~
~~*Testing and Sealing – Use of Weights and Measures (Part 2)*~~

| ~~*Violations*~~ | ~~*Penalties*~~ |
|---|---|
| ~~47-26-211(c)~~ | ~~0-500~~ |
| ~~47-26-212(c)~~ | ~~0-500~~ |
| ~~47-26-221(a)~~ | ~~0-500~~ |
| ~~47-26-221(b)~~ | ~~0-500~~ |
| ~~47-26-221(c)~~ | ~~0-500~~ |

~~47-26-223(b) 0-500~~
~~47-26-224 0-500~~
~~47-26-225 0-500~~
~~47-26-226 0-500~~
~~47-26-227 0-500~~
~~47-26-228 0-500~~
~~47-26-229 0-500~~
~~47-26-230 0-500~~
~~47-26-232(a) 0-500~~
~~47-26-232(b) 0-500~~
~~47-26-233(a) 0-500~~
~~47-26-233(c) 0-500~~
~~47-26-236 0-500~~

~~*Testing and Sealing—Use of Weights and Measures (Part 2), continued*~~

~~*Violations* *Penalties*~~

~~47-26-238(b)(1) 0-500~~
~~47-26-238(b)(2) 0-500~~
~~47-26-238(b)(3) 0-500~~
~~47-26-238(b)(4) 0-500~~
~~47-26-238(b)(5) 0-500~~
~~47-26-238(b)(6) 0-500~~
~~47-26-238(b)(7) 0-500~~
~~47-26-238(b)(8) 0-500~~
~~47-26-238(b)(9) 0-500~~

(u) Moisture-Measuring Devices.

1. T.C.A. §47-26-704. Minimum penalty $0. Maximum penalty $500.

2. T.C.A. §47-26-705. Minimum penalty $0. Maximum penalty $500.

3. T.C.A. §47-26-706. Minimum penalty $0. Maximum penalty $500.

4. T.C.A. §47-26-707. Minimum penalty $0. Maximum penalty $500.

(v) Testing and Sealing – Use of Weights and Measures.

1. T.C.A. §47-26-909. Minimum penalty $0. Maximum penalty $500.

2. T.C.A. §47-26-910. Minimum penalty $0. Maximum penalty $500.

3. T.C.A. §47-26-912. Minimum penalty $0. Maximum penalty $500.

4. T.C.A. §47-26-913. Minimum penalty $0. Maximum penalty $500.

5. T.C.A. §47-26-914. Minimum penalty $0. Maximum penalty $500.

6. T.C.A. §47-26-915. Minimum penalty $0. Maximum penalty $500.

7. T.C.A. §47-26-916. Minimum penalty $0. Maximum penalty $500.

8. T.C.A. §47-26-917. Minimum penalty $0. Maximum penalty $500.

9. T.C.A. §47-26-918. Minimum penalty $0. Maximum penalty $500.

10. T.C.A. §47-26-919. Minimum penalty $0. Maximum penalty $500.

11. T.C.A. §47-26-920. Minimum penalty $0. Maximum penalty $500.

12. T.C.A. §47-26-921. Minimum penalty $0. Maximum penalty $500.

13. Tenn. Comp. R. & Regs. 0080-08-01-.01. Minimum penalty $0. Maximum penalty $500.

14. Tenn. Comp. R. & Regs. 0080-08-01-.02. Minimum penalty $0. Maximum penalty $500.

~~*Weighmasters (Part 4)*~~

| ~~*Violations*~~ | ~~*Penalties*~~ |
|---|---|
| ~~47-26-408~~ | ~~0-500~~ |
| ~~47-26-413~~ | ~~0-500~~ |
| ~~47-26-414(a)~~ | ~~0-500~~ |
| ~~47-26-414(b)~~ | ~~0-500~~ |
| ~~47-26-414(c)~~ | ~~0-500~~ |
| ~~47-26-414(d)~~ | ~~0-500~~ |
| ~~47-26-415~~ | ~~0-500~~ |
| ~~47-26-416(a)~~ | ~~0-500~~ |
| ~~47-26-416(b)~~ | ~~0-500~~ |
| ~~47-26-416(c)~~ | ~~0-500~~ |
| ~~47-26-417~~ | ~~0-500~~ |
| ~~47-26-418~~ | ~~0-500~~ |
| ~~47-26-420~~ | ~~0-500~~ |
| ~~47-26-422~~ | ~~0-500~~ |
| ~~47-26-423~~ | ~~0-500~~ |

(w) Public Weighmaster.

1. T.C.A. §47-26-1004. Minimum penalty $0. Maximum penalty $500.

2. T.C.A. §47-26-1005. Minimum penalty $0. Maximum penalty $500.

3. T.C.A. §47-26-1010. Minimum penalty $0. Maximum penalty $500.

4. T.C.A. §47-26-1011. Minimum penalty $0. Maximum penalty $500.

5. T.C.A. §47-26-1013. Minimum penalty $0. Maximum penalty $500.

6. T.C.A. §47-26-1015. Minimum penalty $0. Maximum penalty $500.

7. T.C.A. §47-26-1016. Minimum penalty $0. Maximum penalty $500.

8. T.C.A. §47-26-1017. Minimum penalty $0. Maximum penalty $500.

9. T.C.A. §47-26-1018. Minimum penalty $0. Maximum penalty $500.

10. T.C.A. §47-26-1021. Minimum penalty $0. Maximum penalty $500.

11. Tenn. Comp. R. & Regs. 0080-08-03-.01. Minimum penalty $0. Maximum penalty $500.

~~*Scale Repairmen (Part 5)*~~

| ~~*Violations*~~ | ~~*Penalties*~~ |
|---|---|
| ~~47-26-502~~ | ~~0-500~~ |
| ~~47-26-508~~ | ~~0-500~~ |
| ~~47-26-509~~ | ~~0-500~~ |

~~*Moisture – Measuring Devices (Part 7)*~~

~~*Violations* — *Penalties*~~

~~47-26-704 — 0-500~~
~~47-26-705(a) — 0-500~~
~~47-26-705(b) — 0-500~~
~~47-26-706 — 0-500~~
~~47-26-707 — 0-500~~

(x) Serviceperson Registration.

1. T.C.A. §47-26-1104. Minimum penalty $0. Maximum penalty $500.

2. T.C.A. §47-26-1105. Minimum penalty $0. Maximum penalty $500.

3. T.C.A. §47-26-1106. Minimum penalty $0. Maximum penalty $500.

4. T.C.A. §47-26-1107. Minimum penalty $0. Maximum penalty $500.

5. T.C.A. §47-26-1108. Minimum penalty $0. Maximum penalty $500.

6. T.C.A. §47-26-1110. Minimum penalty $0. Maximum penalty $500.

7. T.C.A. §47-26-1112. Minimum penalty $0. Maximum penalty $500.

8. Tenn. Comp. R. & Regs. 0080-08-04-.01. Minimum penalty $0. Maximum penalty $500.

(y) Tennessee Food, Drug and Cosmetic Act; Refrigerated Locker Plants; and Vending Machines and Commissaries.

1. T.C.A. §53-1-103. Minimum penalty $0. Maximum penalty $500.

2. T.C.A. §53-1-110. Minimum penalty $0. Maximum penalty $500.

3. T.C.A. §53-1-115. Minimum penalty $0. Maximum penalty $500.

4. T.C.A. §53-1-116. Minimum penalty $0. Maximum penalty $500.

5. T.C.A. §53-1-202. Minimum penalty $0. Maximum penalty $500.

6. T.C.A. §53-1-206. Minimum penalty $0. Maximum penalty $500.

7. T.C.A. §53-1-207. Minimum penalty $0. Maximum penalty $500.

8. T.C.A. §53-1-208. Minimum penalty $0. Maximum penalty $500.

9. T.C.A. §53-1-209. Minimum penalty $0. Maximum penalty $500.

10. T.C.A. §53-9-102. Minimum penalty $0. Maximum penalty $500.

11. T.C.A. §53-9-103. Minimum penalty $0. Maximum penalty $500.

12. T.C.A. §53-9-104. Minimum penalty $0. Maximum penalty $500.

13. T.C.A. §53-9-105. Minimum penalty $0. Maximum penalty $500.

14. T.C.A. §53-9-106. Minimum penalty $0. Maximum penalty $500.

15. T.C.A. §53-9-107. Minimum penalty $0. Maximum penalty $500.

16. T.C.A. §53-9-108. Minimum penalty $0. Maximum penalty $500.

17. T.C.A. §53-9-109. Minimum penalty $0. Maximum penalty $500.

18. T.C.A. §53-9-110. Minimum penalty $0. Maximum penalty $500.

19. T.C.A. §53-12-102. Minimum penalty $0. Maximum penalty $500.

20. T.C.A. §53-12-103. Minimum penalty $0. Maximum penalty $500.

21. T.C.A. §53-12-104. Minimum penalty $0. Maximum penalty $500.

22. T.C.A. §53-12-107. Minimum penalty $0. Maximum penalty $500.

23. T.C.A. §53-16-101. Minimum penalty $0. Maximum penalty $500.

24. Tenn. Comp. R. & Regs. 0080-04-04-.01. Minimum penalty $0. Maximum penalty $500.

25. Tenn. Comp. R. & Regs. 0080-04-04-.02. Minimum penalty $0. Maximum penalty $500.

26. Tenn. Comp. R. & Regs. 0080-04-05-.01. Minimum penalty $0. Maximum penalty $500.

27. Tenn. Comp. R. & Regs. 0080-04-05-.02. Minimum penalty $0. Maximum penalty $500.

28. Tenn. Comp. R. & Regs. 0080-04-08-.04. Minimum penalty $0. Maximum penalty $500.

29. Tenn. Comp. R. & Regs. 0080-04-08-.07. Minimum penalty $0. Maximum penalty $500.

30. Tenn. Comp. R. & Regs. 0080-04-12-.03. Minimum penalty $0. Maximum penalty $500.

31. Tenn. Comp. R. & Regs. 0080-04-12-.04. Minimum penalty $0. Maximum penalty $500.

32. Tenn. Comp. R. & Regs. 0080-04-13-.03. Minimum penalty $0. Maximum penalty $500.

33. Tenn. Comp. R. & Regs. 0080-04-13-.05. Minimum penalty $0. Maximum penalty $500.

(z) Tennessee Egg Law.

1. T.C.A. §53-2-103. Minimum penalty $0. Maximum penalty $500.

2. T.C.A. §53-2-104. Minimum penalty $0. Maximum penalty $500.

3. T.C.A. §53-2-106. Minimum penalty $0. Maximum penalty $500.

4. T.C.A. §53-2-107. Minimum penalty $0. Maximum penalty $500.

5. T.C.A. §53-2-108. Minimum penalty $0. Maximum penalty $500.

6. T.C.A. §53-2-109. Minimum penalty $0. Maximum penalty $500.

7. T.C.A. §53-2-110. Minimum penalty $0. Maximum penalty $500.

8. Tenn. Comp. R. & Regs. 0080-05-04-.01. Minimum penalty $0. Maximum penalty $500.

9. Tenn. Comp. R. & Regs. 0080-05-04-.02. Minimum penalty $0. Maximum penalty $500.

10. Tenn. Comp. R. & Regs. 0080-05-04-.04. Minimum penalty $0. Maximum penalty $500.

11. Tenn. Comp. R. & Regs. 0080-05-04-.08. Minimum penalty $0. Maximum penalty $500.

12. Tenn. Comp. R. & Regs. 0080-05-04-.10. Minimum penalty $0. Maximum penalty $500.

13. Tenn. Comp. R. & Regs. 0080-05-04-.11. Minimum penalty $0. Maximum penalty $500.

14. Tenn. Comp. R. & Regs. 0080-05-04-.12. Minimum penalty $0. Maximum penalty $500.

15. Tenn. Comp. R. & Regs. 0080-05-04-.13. Minimum penalty $0. Maximum penalty $500.

16. Tenn. Comp. R. & Regs. 0080-05-04-.15. Minimum penalty $0. Maximum penalty $500.

17. Tenn. Comp. R. & Regs. 0080-05-04-.17. Minimum penalty $0. Maximum penalty $500.

18. Tenn. Comp. R. & Regs. 0080-05-04-.20. Minimum penalty $0. Maximum penalty $500.

19. Tenn. Comp. R. & Regs. 0080-05-04-.21. Minimum penalty $0. Maximum penalty $500.

~~*Dairy Law – (Chapter 3)*~~
~~*General Provisions (Part 1)*~~

| ~~*Violations*~~ | ~~*Penalties*~~ |
|---|---|
| ~~53-3-105(a)~~ | ~~0-500~~ |
| ~~53-3-105(a)~~ | ~~0-500~~ |
| ~~53-3-106(a)~~ | ~~0-500~~ |
| ~~53-3-106(b)~~ | ~~0-500~~ |
| ~~53-3-107(a)~~ | ~~0-500~~ |
| ~~53-3-107(b)~~ | ~~0-500~~ |
| ~~53-3-107(c)~~ | ~~0-500~~ |
| ~~53-3-107(d)~~ | ~~0-500~~ |
| ~~53-3-109~~ | ~~0-500~~ |
| ~~53-3-110~~ | ~~0-500~~ |
| ~~53-3-112~~ | ~~0-500~~ |
| ~~53-3-114~~ | ~~0-500~~ |

~~*Unfair Trade Practices (Part 2)*~~

| ~~*Violations*~~ | ~~*Penalties*~~ |
|---|---|
| ~~53-3-202(a)(1)~~ | ~~0-500~~ |
| ~~53-3-202(a)(2)~~ | ~~0-500~~ |
| ~~53-3-202(a)(3)~~ | ~~0-500~~ |
| ~~53-3-202(a)(4)~~ | ~~0-500~~ |
| ~~53-3-202(a)(5)~~ | ~~0-500~~ |
| ~~53-3-202(a)(6)~~ | ~~0-500~~ |
| ~~53-3-202(b)(1)~~ | ~~0-500~~ |
| ~~53-3-202(b)(2)~~ | ~~0-500~~ |
| ~~53-3-202(b)3)~~ | ~~0-500~~ |
| ~~53-3-202(b)(4)~~ | ~~0-500~~ |
| ~~53-3-202(c)~~ | ~~0-500~~ |
| ~~53-3-202(d)~~ | ~~0-500~~ |

~~*Frozen Desserts (Part 3)*~~

| ~~*Violations*~~ | ~~*Penalties*~~ |
|---|---|
| ~~53-3-304(1)~~ | ~~0-500~~ |
| ~~53-3-304(2)~~ | ~~0-500~~ |
| ~~53-3-304(3)~~ | ~~0-500~~ |
| ~~53-3-304(4)~~ | ~~0-500~~ |
| ~~53-3-304(5)~~ | ~~0-500~~ |

~~53-3-304(6) 0-500~~
~~53-3-304(7) 0-500~~
~~53-3-304(8) 0-500~~

(aa) Dairy Law of the State of Tennessee and Dairy Farmers Prosperity Act.

1. T.C.A. §53-3-104. Minimum penalty $0. Maximum penalty $500.

2. T.C.A. §53-3-105. Minimum penalty $0. Maximum penalty $500.

3. T.C.A. §53-3-106. Minimum penalty $0. Maximum penalty $500.

4. T.C.A. §53-3-109. Minimum penalty $0. Maximum penalty $500.

5. T.C.A. §53-3-110. Minimum penalty $0. Maximum penalty $500.

6. T.C.A. §53-3-112. Minimum penalty $0. Maximum penalty $500.

7. T.C.A. §53-3-113. Minimum penalty $0. Maximum penalty $500.

8. T.C.A. §53-3-114. Minimum penalty $0. Maximum penalty $500.

9. T.C.A. §53-3-118. Minimum penalty $0. Maximum penalty $500.

10. T.C.A. §53-3-202. Minimum penalty $0. Maximum penalty $500.

11. T.C.A. §53-3-305. Minimum penalty $0. Maximum penalty $500.

12. T.C.A. §53-3-306. Minimum penalty $0. Maximum penalty $500.

13. T.C.A. §53-3-307. Minimum penalty $0. Maximum penalty $500.

14. T.C.A. §53-3-308. Minimum penalty $0. Maximum penalty $500.

15. Tenn. Comp. R. & Regs. 0080-03-01-.02. Minimum penalty $0. Maximum penalty $500.

16. Tenn. Comp. R. & Regs. 0080-03-01-.03. Minimum penalty $0. Maximum penalty $500.

17. Tenn. Comp. R. & Regs. 0080-03-01-.04. Minimum penalty $0. Maximum penalty $500.

18. Tenn. Comp. R. & Regs. 0080-03-01-.05. Minimum penalty $0. Maximum penalty $500.

19. Tenn. Comp. R. & Regs. 0080-03-01-.06. Minimum penalty $0. Maximum penalty $500.

20. Tenn. Comp. R. & Regs. 0080-03-01-.07. Minimum penalty $0. Maximum penalty $500.

21. Tenn. Comp. R. & Regs. 0080-03-01-.09. Minimum penalty $0. Maximum penalty $500.

22. Tenn. Comp. R. & Regs. 0080-03-02-.02. Minimum penalty $0. Maximum penalty $500.

23. Tenn. Comp. R. & Regs. 0080-03-02-.03. Minimum penalty $0. Maximum penalty $500.

24. Tenn. Comp. R. & Regs. 0080-03-02-.04. Minimum penalty $0. Maximum penalty $500.

25. Tenn. Comp. R. & Regs. 0080-03-02-.05. Minimum penalty $0. Maximum penalty $500.

26. Tenn. Comp. R. & Regs. 0080-03-02-.06. Minimum penalty $0. Maximum penalty $500.

27. Tenn. Comp. R. & Regs. 0080-03-02-.07. Minimum penalty $0. Maximum penalty $500.

28. Tenn. Comp. R. & Regs. 0080-03-02-.08. Minimum penalty $0. Maximum penalty $500.

29. Tenn. Comp. R. & Regs. 0080-03-02-.09. Minimum penalty $0. Maximum penalty $500.

30. Tenn. Comp. R. & Regs. 0080-03-02-.10. Minimum penalty $0. Maximum penalty $500.

31. Tenn. Comp. R. & Regs. 0080-03-02-.11. Minimum penalty $0. Maximum penalty $500.

32. Tenn. Comp. R. & Regs. 0080-03-02-.12. Minimum penalty $0. Maximum penalty $500.

33. Tenn. Comp. R. & Regs. 0080-03-02-.13. Minimum penalty $0. Maximum penalty $500.

34. Tenn. Comp. R. & Regs. 0080-03-02-.14. Minimum penalty $0. Maximum penalty $500.

35. Tenn. Comp. R. & Regs. 0080-03-02-.15. Minimum penalty $0. Maximum penalty $500.

36. Tenn. Comp. R. & Regs. 0080-03-02-.16. Minimum penalty $0. Maximum penalty $500

37. Tenn. Comp. R. & Regs. 0080-03-02-.17. Minimum penalty $0. Maximum penalty $500.

38. Tenn. Comp. R. & Regs. 0080-03-02-.18. Minimum penalty $0. Maximum penalty $500.

39. Tenn. Comp. R. & Regs. 0080-03-03-.02. Minimum penalty $0. Maximum penalty $500.

40. Tenn. Comp. R. & Regs. 0080-03-03-.03. Minimum penalty $0. Maximum penalty $500.

41. Tenn. Comp. R. & Regs. 0080-03-03-.04. Minimum penalty $0. Maximum penalty $500.

42. Tenn. Comp. R. & Regs. 0080-03-03-.05. Minimum penalty $0. Maximum penalty $500.

43. Tenn. Comp. R. & Regs. 0080-03-04-.01. Minimum penalty $0. Maximum penalty $500.

44. Tenn. Comp. R. & Regs. 0080-03-04-.03. Minimum penalty $0. Maximum penalty $500.

45. Tenn. Comp. R. & Regs. 0080-03-08-.01. Minimum penalty $0. Maximum penalty $500.

46. Tenn. Comp. R. & Regs. 0080-03-08-.02. Minimum penalty $0. Maximum penalty $500.

47. Tenn. Comp. R. & Regs. 0080-03-08-.03. Minimum penalty $0. Maximum penalty $500.

48. Tenn. Comp. R. & Regs. 0080-03-08-.04. Minimum penalty $0. Maximum penalty $500.

~~*Meat Inspection and Regulations (Chapter 7)*~~
~~*Horsemeat (Part 1)*~~

| ~~*Violations*~~ | ~~*Penalties*~~ |
|---|---|
| ~~53-7-101~~ | ~~0-500~~ |

(bb) Horsemeat.

T.C.A. §53-7-101. Minimum penalty $0. Maximum penalty $500.

~~*Meat and Poultry Inspection (Part 2)*~~

| ~~*Violations*~~ | ~~*Penalties*~~ |
|---|---|
| ~~53-7-204(a)~~ | ~~0-500~~ |
| ~~53-7-204(b)~~ | ~~0-500~~ |
| ~~53-7-204(c)~~ | ~~0-500~~ |

| | |
|---|---|
| 53-7-204(d) | 0-500 |
| 53-7-205(a) | 0-500 |
| 53-7-205(c) | 0-500 |
| 53-7-206(1) | 0-500 |
| 53-7-206(2) | 0-500 |
| 53-7-206(3) | 0-500 |
| 53-7-206(4) | 0-500 |
| 53-7-206(5) | 0-500 |
| 53-7-206(6) | 0-500 |

Meat and Poultry Inspection (Part 2), continued

| *Violations* | *Penalties* |
|---|---|
| 53-7-206(7) | 0-500 |
| 53-7-206(8) | 0-500 |
| 53-7-206(9) | 0-500 |
| 53-7-206(10) | 0-500 |
| 53-7-206(11) | 0-500 |
| 53-7-206(12) | 0-500 |
| 53-7-206(13) | 0-500 |
| 53-7-206(14) | 0-500 |
| 53-7-206(15) | 0-500 |
| 53-7-206(16) | 0-500 |
| 53-7-206(17) | 0-500 |
| 53-7-207 | 0-500 |
| 53-7-208 | 0-500 |
| 53-7-212 | 0-500 |
| 53-7-216 | 0-500 |
| 53-7-219(a) | 0-500 |
| 53-7-220 | 0-500 |

(cc) Tennessee Meat and Poultry Inspection Act.

1. T.C.A. §53-7-203. Minimum penalty $0. Maximum penalty $500.

2. T.C.A. §53-7-204. Minimum penalty $0. Maximum penalty $500.

3. T.C.A. §53-7-205. Minimum penalty $0. Maximum penalty $500.

4. T.C.A. §53-7-206. Minimum penalty $0. Maximum penalty $500.

5. T.C.A. §53-7-207. Minimum penalty $0. Maximum penalty $500.

6. T.C.A. §53-7-208. Minimum penalty $0. Maximum penalty $500.

7. T.C.A. §53-7-216. Minimum penalty $0. Maximum penalty $500.

8. T.C.A. §53-7-220. Minimum penalty $0. Maximum penalty $500.

9. Tenn. Comp. R. & Regs. 0080-04-14-.03. Minimum penalty $0. Maximum penalty $500.

10. Tenn. Comp. R. & Regs. 0080-04-14-.04. Minimum penalty $0. Maximum penalty $500.

*Biological Residue (Part 3)*

| *Violations* | *Penalties* |
|---|---|
| 53-7-304 | 0-500 |

(dd) Tennessee Biological Residue Act of 1972.

T.C.A. §53-7-303. Minimum penalty $0. Maximum penalty $500.

(ee) Health and Sanitation.

1. T.C.A. §53-8-102. Minimum penalty $0. Maximum penalty $500.

2. T.C.A. §53-8-103. Minimum penalty $0. Maximum penalty $500.

3. T.C.A. §53-8-104. Minimum penalty $0. Maximum penalty $500.

4. T.C.A. §53-8-105. Minimum penalty $0. Maximum penalty $500.

5. T.C.A. §53-8-106. Minimum penalty $0. Maximum penalty $500.

6. T.C.A. §53-8-107. Minimum penalty $0. Maximum penalty $500.

7. T.C.A. §53-8-108. Minimum penalty $0. Maximum penalty $500.

8. T.C.A. §53-8-109. Minimum penalty $0. Maximum penalty $500.

9. T.C.A. §53-8-110. Minimum penalty $0. Maximum penalty $500.

10. T.C.A. §53-8-111. Minimum penalty $0. Maximum penalty $500.

11. T.C.A. §53-8-112. Minimum penalty $0. Maximum penalty $500.

12. T.C.A. §53-8-114. Minimum penalty $0. Maximum penalty $500.

13. T.C.A. §53-8-115. Minimum penalty $0. Maximum penalty $500.

14. T.C.A. §53-8-116. Minimum penalty $0. Maximum penalty $500.

15. T.C.A. §53-8-117. Minimum penalty $0. Maximum penalty $500.

16. Tenn. Comp. R. & Regs. 0080-04-11-.03. Minimum penalty $0. Maximum penalty $500.

17. Tenn. Comp. R. & Regs. 0080-04-11-.04. Minimum penalty $0. Maximum penalty $500.

18. Tenn. Comp. R. & Regs. 0080-04-11-.05. Minimum penalty $0. Maximum penalty $500.

19. Tenn. Comp. R. & Regs. 0080-04-11-.06. Minimum penalty $0. Maximum penalty $500.

20. Tenn. Comp. R. & Regs. 0080-04-11-.07. Minimum penalty $0. Maximum penalty $500.

~~*Food Establishments (Chapter 8)*~~
~~*Retail Food Store Inspections (Part 2)*~~

| ~~*Violations*~~ | ~~*Penalties*~~ |
|---|---|
| ~~53-8-207(a)~~ | ~~0-500~~ |
| ~~53-8-207(b)~~ | ~~0-500~~ |
| ~~53-8-207(d)~~ | ~~0-500~~ |
| ~~53-8-207(e)~~ | ~~0-500~~ |
| ~~53-8-208(a)~~ | ~~0-500~~ |
| ~~53-8-210(b)~~ | ~~0-500~~ |
| ~~53-8-214~~ | ~~0-500~~ |
| ~~53-8-216~~ | ~~0-500~~ |
| ~~53-8-217(a)~~ | ~~0-500~~ |

~~53-8-217(c) 0-500~~
~~53-8-218 0-500~~
~~53-8-219 0-500~~
~~53-8-220 0-500~~

~~*Vending Machines and Commissaries (Chapter 12)*~~

| ~~*Violations*~~ | ~~*Penalties*~~ |
|---|---|
| ~~53-12-102(d)~~ | ~~0-500~~ |
| ~~53-12-103(a)~~ | ~~0-500~~ |
| ~~53-12-103(b)~~ | ~~0-500~~ |
| ~~53-12-104(a)~~ | ~~0-500~~ |
| ~~53-12-104(b)~~ | ~~0-500~~ |
| ~~53-12-104(c)~~ | ~~0-500~~ |
| ~~53-12-104(d)~~ | ~~0-500~~ |

(ff) Tennessee Retail Food Safety Act.

1. T.C.A. §53-8-206. Minimum penalty $0. Maximum penalty $500.

2. T.C.A. §53-8-207. Minimum penalty $0. Maximum penalty $500.

3. T.C.A. §53-8-208. Minimum penalty $0. Maximum penalty $500.

4. T.C.A. §53-8-214. Minimum penalty $0. Maximum penalty $500.

5. T.C.A. §53-8-215. Minimum penalty $0. Maximum penalty $500.

6. T.C.A. §53-8-216. Minimum penalty $0. Maximum penalty $500.

7. T.C.A. §53-8-217. Minimum penalty $0. Maximum penalty $500.

8. T.C.A. §53-8-218. Minimum penalty $0. Maximum penalty $500.

9. T.C.A. §53-8-219. Minimum penalty $0. Maximum penalty $500.

10. Tenn. Comp. R. & Regs. 0080-04-09-.02. Minimum penalty $0. Maximum penalty $500.

11. Tenn. Comp. R. & Regs. 0080-04-09-.03. Minimum penalty $0. Maximum penalty $500.

12. Tenn. Comp. R. & Regs. 0080-04-09-.04. Minimum penalty $0. Maximum penalty $500.

13. Tenn. Comp. R. & Regs. 0080-04-09-.05. Minimum penalty $0. Maximum penalty $500.

14. Tenn. Comp. R. & Regs. 0080-04-09-.06. Minimum penalty $0. Maximum penalty $500.

15. Tenn. Comp. R. & Regs. 0080-04-09-.07. Minimum penalty $0. Maximum penalty $500.

16. Tenn. Comp. R. & Regs. 0080-04-09-.08. Minimum penalty $0. Maximum penalty $500.

(gg) Tennessee Application of Pesticides Act of 1978.

1. T.C.A. §62-21-103. Minimum penalty $0. Maximum penalty $500.

2. T.C.A. §62-21-106. Minimum penalty $0. Maximum penalty $500.

3. T.C.A. §62-21-107. Minimum penalty $0. Maximum penalty $500.

4. T.C.A. §62-21-108. Minimum penalty $0. Maximum penalty $500.

5. T.C.A. §62-21-109. Minimum penalty $0. Maximum penalty $500.

6. T.C.A. §62-21-110. Minimum penalty $0. Maximum penalty $500.

7. T.C.A. §62-21-112. Minimum penalty $0. Maximum penalty $500.

8. T.C.A. §62-21-114. Minimum penalty $0. Maximum penalty $500.

9. T.C.A. §62-21-115. Minimum penalty $0. Maximum penalty $500.

10. T.C.A. §62-21-116. Minimum penalty $0. Maximum penalty $500.

11. T.C.A. §62-21-117. Minimum penalty $0. Maximum penalty $500.

12. T.C.A. §62-21-119. Minimum penalty $0. Maximum penalty $500.

13. T.C.A. §62-21-120. Minimum penalty $0. Maximum penalty $500.

14. T.C.A. §62-21-123. Minimum penalty $0. Maximum penalty $500.

15. T.C.A. §62-21-124. Minimum penalty $0. Maximum penalty $500.

16. T.C.A. §62-21-130. Minimum penalty $0. Maximum penalty $500.

17. T.C.A. §62-21-131. Minimum penalty $0. Maximum penalty $500.

18. T.C.A. §62-21-201. Minimum penalty $0. Maximum penalty $500.

19. T.C.A. §62-21-202. Minimum penalty $0. Maximum penalty $500.

20. T.C.A. §62-21-205. Minimum penalty $0. Maximum penalty $500.

21. Tenn. Comp. R. & Regs. 0080-09-04-.06. Minimum penalty $0. Maximum penalty $500.

22. Tenn. Comp. R. & Regs. 0080-09-04-.07. Minimum penalty $0. Maximum penalty $500.

23. Tenn. Comp. R. & Regs. 0080-09-04-.08. Minimum penalty $0. Maximum penalty $500.

24. Tenn. Comp. R. & Regs. 0080-09-04-.09. Minimum penalty $0. Maximum penalty $500.

25. Tenn. Comp. R. & Regs. 0080-09-04-.10. Minimum penalty $0. Maximum penalty $500.

26. Tenn. Comp. R. & Regs. 0080-09-04-.11. Minimum penalty $0. Maximum penalty $500.

~~*Safety and Health – Title 68*~~
~~*Hazardous Substances Act (Chapter 27) (Part 1)*~~

| ~~*Violations*~~ | ~~*Penalties*~~ |
|---|---|
| ~~68-27-104(1)~~ | ~~0-500~~ |
| ~~68-27-104(2)~~ | ~~0-500~~ |
| ~~68-27-104(3)~~ | ~~0-500~~ |
| ~~68-27-104(4)~~ | ~~0-500~~ |
| ~~68-27-104(5)~~ | ~~0-500~~ |
| ~~68-27-104(6)~~ | ~~0-500~~ |
| ~~68-27-104(7)~~ | ~~0-500~~ |
| ~~68-27-104(8)~~ | ~~0-500~~ |
| ~~68-27-107(a)~~ | ~~0-500~~ |
| ~~68-27-110~~ | ~~0-500~~ |

~~68-27-111 0-500~~

(hh) Tennessee Hazardous Substances Act.

1. T.C.A. §68-131-103. Minimum penalty $0. Maximum penalty $500.

2. T.C.A. §68-131-104. Minimum penalty $0. Maximum penalty $500.

3. T.C.A. §68-131-107. Minimum penalty $0. Maximum penalty $500.

4. T.C.A. §68-131-111. Minimum penalty $0. Maximum penalty $500.

5. T.C.A. §68-131-113. Minimum penalty $0. Maximum penalty $500.

6. Tenn. Comp. R. & Regs. 0080-04-05-.02. Minimum penalty $0. Maximum penalty $500.

7. Tenn. Comp. R. & Regs. 0080-04-08-.04. Minimum penalty $0. Maximum penalty $500.

(ii) Toxic Art Supplies Labeling Act of Tennessee.

1. T.C.A. §68-131-304. Minimum penalty $0. Maximum penalty $500.

2. T.C.A. §68-131-305. Minimum penalty $0. Maximum penalty $500.

(2) Civil penalty determination.

(a) In determining the amount of ~~any~~a civil penalty ~~to be~~assessed ~~pursuant to this rule~~for violation of a rule or statute under the department's authority, the ~~D~~department~~, any board or commission~~ may consider ~~such factors as~~any factor, including but not limited to the following:

~~(a) Willfulness or wantoness of the violation. (b) Repetitions of the violations. (c) Magnitude of the risk or harm caused by the violation.~~

1. Negligence, gross negligence, recklessness, willfulness, or wantonness of the violator;

2. History of violations assessed against or committed by the violator;

3. Risk of potential injury to persons or property arising out of the violation;

4. Magnitude of actual harm caused by the violation; and,

5. Corrective actions taken by the violator to prevent future violations.

(b) The department may reduce or eliminate any portion of an assessed penalty for good cause shown.

Authority: T.C.A. §§ 4-3-203; 4-3-204.

Division 0080-02 ~~Division of Animal Industries~~ is amended by re-titling the division "Animal Health".

Authority: T.C.A. §4-3-203.

Chapter 0080-02-01
Health Requirements for Admission and Transportation of Livestock and Poultry

Rule 0080-02-01-.05 Cattle is amended by adding the following new paragraph (4):

(4) Bulls. The following requirements shall apply for all cattle bulls imported or moved within the state, and shall not apply to any bison bull.

(a) Definitions.

1. Breeding bull means any intact bull that is not a virgin bull;

2. Herd means a group of like-species animals that are under common ownership or have been in physical contact with each other within the preceding 12 months;

3. History of trichomoniasis means having given rise to any positive test result for trichomoniasis under any culture test or PCR test ordered by an accredited veterinarian or a state or federal animal health official within the previous two years.

4. Infected bull means any bull from which a specimen is collected by an accredited veterinarian or a state or federal animal health official and that specimen shows positive for trichomoniasis under any official PCR test, or any official culture test that is not contradicted by two consecutive negative official PCR tests from samples of the bull collected seven to ten days apart.

5. Official culture test or testing means a test performed by a laboratory approved by the state veterinarian for culture, growth, and identification of a particular bacteria or protozoan, such as Trichomonas foetus.

6. Official Polymerase Chain Reaction (PCR) test or testing means a test performed by a laboratory approved by the state veterinarian for determination of a particular DNA sequencing and diagnosis of trichomoniasis.

7. Trichomoniasis means a cattle disease caused by the protozoan parasite Trichomonas foetus that can result in infertility, open cows, and medically necessary abortions in cows and heifers.

8. Virgin bull means a bull less than 18 months of age, as evidenced by dentition or breed registry papers, that has not been comingled with a breeding bull, cow, or heifer within the past six months.

(b) Bull import requirements. Persons importing breeding bulls or virgin bulls into the state shall have in their possession the following documentation for each bull imported.

1. Breeding bulls from herds with no history of trichomoniasis shall be accompanied by a certificate of veterinary inspection containing the breeding bull's official permanent identification and proof of one valid, negative official PCR test from a specimen of the bull collected as follows.

(i) If the bull was held separate from cows and heifers for at least 60 days prior to its import, its negative official PCR test must result from a specimen of the bull collected within those 60 days. The negative official PCR test result shall remain valid for 60 days following collection of the bull's test specimen.

(ii) If the bull was commingled with cows or heifers within 60 days prior to its import, its negative official PCR test must result from a specimen of the bull collected within 30 days prior to its import. The negative official PCR test result shall remain valid for 30 days following collection of the bull's test specimen.

2. Breeding bulls from herds with a history of trichomoniasis shall be accompanied by a certificate of veterinary inspection containing the breeding bull's official permanent identification and proof of two consecutive negative official PCR tests from specimens of the bull taken seven to ten days apart and collected within 30 days prior to its import.

3. Breeding bulls import exemptions. Import requirements for breeding bulls under this paragraph shall not apply if all of the bulls in the imported lot are:

(i) Consigned directly to slaughter, or

(ii) Destined to exhibition or rodeo in the state, provided that:

(I) The bulls are in the state temporarily;

(II) The bulls are in the state for the sole purpose of attending the event;

(III) The bulls leave the state directly after the event; and,

(IV) The bulls are not commingled with breeding bulls, cows, or heifers while in the state.

4. Virgin bulls. Virgin bulls shall be accompanied by a certificate of veterinary inspection containing the virgin bull's official permanent identification.

(c) Sampling, testing, reporting, and movement requirements.

1. All samples for trichomoniasis testing under this rule shall be collected by either an accredited veterinarian approved by the state veterinarian or a state or federal animal health official.

2. Virgin bulls are exempt from trichomoniasis testing requirements under this rule. However, importers or owners of any bull in the state that entered without required documentation shall upon order of the state veterinarian either immediately export the bull to its origin or immediately quarantine the bull and submit it to official trichomoniasis testing.

3. Trichomoniasis positive bulls. Importers or owners of a bull in the state that has tested positive for trichomoniasis—under either an official PCR test or an official culture test—shall:

(i) Cause the positive test result to be reported to the state veterinarian by the animal's accredited veterinarian or the approved testing laboratory within 24 hours after receiving the test results; and,

(ii) Separate and quarantine the tested bull from other cattle.

(I) If the positive test result is from an official PCR test, the bull shall be considered infected and ordered to slaughter.

(II) If the positive test result is from an official culture test, the importer or owner may request within five days of receiving the culture test results, confirmation by conduct of two official PCR tests conducted seven to ten days apart.

I. If each of the official PCR tests shows negative for trichomoniasis, the bull shall be considered negative for the disease and its quarantine may be lifted.

II. If either of the official PCR tests shows positive for trichomoniasis, or if official PCR testing is not requested within five days of the positive official culture test result, the bull shall be considered infected and ordered to slaughter.

4. Cattle comingled with infected bulls. Importers or owners of a breeding bull in the state that has been comingled with an infected bull—or comingled with a female that has been

comingled with an infected bull—for any period since six months prior to the infected bull's last trichomoniasis positive test result shall:

(i) Immediately separate and quarantine the breeding bull from other cattle; and,

(ii) Cause the quarantined bull to undergo either three official culture tests conducted one to three weeks apart or two official PCR tests conducted seven to ten days apart. Test samples shall not be pooled.

(I) If each of the test results shows negative for trichomoniasis, the bull shall be considered negative for the disease and its quarantine may be lifted.

(II) If any official culture test shows positive for trichomonisasis, the importer or owner may request within five days of receiving the culture test results, confirmation by conduct of two official PCR tests conducted seven to ten days apart.

(III) If any official PCR test shows positive, or if official PCR testing is not requested within five days of a positive culture test result, the bull shall be considered infected and ordered to slaughter.

5. Movement of infected bulls. Importers or owners of an infected bull in the state shall cause the animal to be slaughtered and sanitarily disposed within 30 days of being determined infected. Importers or owners of an infected bull shall not move the animal except under authorization of a USDA Veterinary Services 1-27 permit issued by the state veterinarian for movement of the bull directly to slaughter or sale directly for slaughter through a licensed livestock market.

Authority: T.C.A. §§ 4-3-203; 44-2-102.

Paragraph 0080-02-01-.07(6) Feral or Wild Swine is amended by deleting the paragraph in its entirety and substituting instead the following language so that, as amended, the paragraph shall read:

(6) ~~Feral or Wild Swine. No feral or wild swine are allowed to enter the state of Tennessee.~~Wild appearing swine.

(a) Wild appearing swine means swine that in their adult stage are typically two to three feet in height and three and one-half to five feet in length, with some or all of the following characteristics in comparison to domestic swine:

1. Larger heads;

2. Smaller, more pointed, and more heavily furred ears;

3. Heavier shoulders and smaller hips, producing a silhouette similar to that of an American bison;

4. Longer, thinner snouts;

5. Straighter tails more tufted at the tip;

6. Upper tusks that curl up and out, rubbing a knifelike edge against the lower tusks.

(b) Import. Any person in possession of wild appearing swine being imported into the state shall, prior to import, identify each animal with USDA-approved metal tags or other identification approved by the state veterinarian and have in their possession the following for each animal:

1. A certificate of veterinary inspection from a USDA accredited veterinarian; and,

2. Proof of negative testing for Pseudorabies and Brucellosis, conducted within 30 days prior to the animal's import or proof that the animal originated from a herd that is both Validated Brucellosis-Free, as considered under 9 C.F.R. §78.1, and Qualified Pseudorabies-Negative, as considered under 9 C.F.R. §85.1;

(c) Movement. Any person in possession of wild appearing swine being moved within the state shall, prior to movement, identify each animal with USDA-approved metal tags or other identification approved by the state veterinarian and have in their possession at least one of the following for each animal:

1. A certificate of veterinary inspection from a USDA accredited veterinarian;

2. Proof of negative testing for Pseudorabies and Brucellosis, conducted within 90 days prior to the animals' movement within the state;

3. Proof that the animal originated from a herd that is both Validated Brucellosis-Free, as considered under 9 C.F.R. §78.1, and Qualified Pseudorabies-Negative, as considered under 9 C.F.R. §85.1; or,

4. Movement authorization from the state veterinarian's office, issued in the discretion of the department for movement of the animals to a slaughter facility or market.

(d) Exemptions. This rule shall not apply to any wild appearing swine if the entire lot of swine is consigned directly to slaughter or immediately for sale at an approved livestock market, provided that each swine is identified with USDA-approved metal tags or other identification approved by the state veterinarian.

Authority: T.C.A. §§ 4-3-203; 44-2-102.

Rule 0080-02-01-.08 is amended by deleting the rule in its entirety and substituting instead the following language so that, as amended, the rule shall read:

0080-02-01-.08 Sheep.

(1) ~~All sheep imported into or through Tennessee shall be accompanied by an official health certificate and be in compliance with 0080-02-01-.02, and Title 9, Code of Federal Regulations, Part 79.1 through 79.4.~~Import. Any person in possession of sheep being imported into the state shall, prior to import:

(a) Permanently and individually identify the sheep by a method approved under 9 C.F.R. Parts 54 and 79 such that the animal may be traced to its flock of origin;

(b) Have in his possession an official certificate of veterinary inspection (CVI) for the sheep. However, no CVI shall be required for any sheep if its entire imported lot is consigned directly to slaughter; and,

(c) Comply with 0080-02-01-.02.

(2) ~~Sheep that move within the state, with the exception of wethers under the age of 18 months that are produced for slaughter only, including for change of ownership, shows, fairs, exhibitions or slaughter, shall be permanently, individually identified by a method approved in 9 C.F.R. 79.1-79.4.~~Movement. Any person in possession of sheep being moved within the state shall, prior to movement:

(a) Permanently and individually identify the sheep by a method approved under 9 C.F.R. Parts 54 and 79 such that the animal may be traced to its flock of origin; and,

(b) Comply with 0080-02-01-.02.

Authority: T.C.A. §§ 4-3-203; 44-2-102.

Rule 0080-02-01-.09 Goats is amended by deleting the rule in its entirety and substituting instead the following language so that, as amended, the rule shall read:

0080-02-01-.09 Goats.

(1) ~~Goats imported into or through Tennessee shall be accompanied by an official certificate of veterinary inspection and be in compliance with 0080-02-01-.02 and 9 C.F.R. 79.1-79.4.~~Import. Any person in possession of a goat being imported into the state shall, prior to import:

(a) Permanently and individually identify the goat by a method approved under 9 C.F.R. Parts 54 and 79 such that the animal may be traced to its flock of origin;

(b) Have in his possession an official certificate of veterinary inspection (CVI) for the goat. However, no CVI shall be required for any goat if its entire imported lot is consigned directly to slaughter; and,

(c) Comply with 0080-02-01-.02.

(2) ~~Goats imported into Tennessee to an approved slaughter establishment for immediate slaughter or to an approved livestock market for sale to a slaughter establishment shall only be required to have a transportation document and be in compliance with 9 C.F.R. 79.1-79.4.~~Movement. Any person in possession of a goat being moved within the state shall, prior to movement:

(a) Permanently and individually identify the goat by a method approved under 9 C.F.R. Parts 54 and 79 such that the animal may be traced to its flock of origin; and,

(b) Comply with 0080-02-01-.02.

~~(3) All registered breeding goats, goats that have been commingled with sheep, goats for exhibition and dairy goats that move within the state, including for change of ownership, shows, fairs, exhibitions or slaughter shall be permanently, individually identified by a method approved in 9 C.F.R. 79.1-79.4.~~

Authority: T.C.A. §§ 4-3-203; 44-2-102.

Rule 0080-02-01-.10 Poultry is amended by deleting the rule in its entirety and substituting instead the following language so that, as amended, the rule shall read:

0080-02-01-.10 Poultry.

(1) ~~Live~~ Poultry~~.~~. ~~Except for poultry directly consigned to slaughter, live poultry entering Tennessee shall:~~Any person who possesses poultry being imported into the state shall have in his possession the following proof of the poultry's apparent good health.

(a) ~~Be in apparent good health and have originated from a Pullorum-Typhoid clean flock or the equivalent, as determined by that flock's participation in the National Poultry Improvement Plan or equivalent disease program, and be accompanied by proof of such participation; or~~NPIP flocks of origin. All live poultry entering the state from a flock of origin participating in the National Poultry Improvement Plan (NPIP) shall be accompanied by a VS 9-3 Form classifying the flock of origin as Pullorum-Typhoid Clean and either Avian Influenza Clean or Avian Influenza Monitored Flock.

(b) ~~Be in apparent good health and accompanied by proof that such poultry tested negative on a blood agglutination test for Pullorum-Typhoid disease that was conducted within ninety (90) days prior to entering the state.~~Non-NPIP flocks of origin. All live poultry entering the state from a flock of origin not participating in NPIP shall be accompanied by a certificate of veterinary inspection

and proof of negative testing for Pullorum-Typhoid and Avian Influenza last conducted on the imported birds. The Pullorum-Typhoid testing shall have been conducted within 90 days prior to import of the poultry. The Avian Influenza testing shall have been conducted by negative antigen detection or serological test within 21 days prior to import of the poultry.

(2) Hatching eggs ~~shall have originated from a Pullorum-Typhoid clean flock or the equivalent, as determined by theat flock's participation in the National Poultry Improvement Plan or equivalent disease control program, and be accompanied by proof of such participation~~. Any person who possesses hatching eggs being imported into the state shall have in his possession the following proof of the eggs' apparent good health.

(a) NPIP flocks of origin. All hatching eggs entering the state from a flock of origin participating in the National Poultry Improvement Plan (NPIP) shall be accompanied by a VS 9-3 Form classifying the flock of origin as Pullorum-Typhoid Clean and either Avian Influenza Clean or Avian Influenza Monitored Flock.

(b) Non-NPIP flocks of origin. All hatching eggs entering the state from a flock of origin not participating in NPIP shall be accompanied by a certificate of veterinary inspection and proof of negative testing for Pullorum-Typhoid and Avian Influenza. The Pullorum-Typhoid testing shall have been conducted on all birds in the flock of origin within 90 days prior to import of the eggs. The Avian Influenza testing shall have been conducted by negative antigen detection or serological test on the lesser of all birds in the flock or 30 birds of the flock, within 21 days prior to the eggs' import.

(3) ~~Upon order of the state veterinarian, poultry or poultry products entering Tennessee shall be tested for avian influenza, Exotic Newcastle Disease or other diseases.~~Import requirements under this rule shall not apply to any poultry or hatching eggs if their entire imported lot is consigned directly to slaughter.

Authority: T.C.A. §§ 4-3-203; 44-2-102.

Paragraph 0080-02-01-.12(3) Other Requirements for Captive, Chronic Wasting Disease-Susceptible Cervidae is amended by deleting the paragraph in its entirety and substituting instead the following language so that, as amended, the paragraph shall read:

(3) Other Requirements for Captive, Chronic Wasting Disease Susceptible Cervidae.

(a) Definitions.

1. Certified status herd means a cervidae herd enrolled in a CWD surveillance program, approved by a state or federal animal health agency, for a period of five years during which the agency identified no evidence of CWD or trace back or trace forward concerns for the herd. Certified status is contingent on continued compliance of the herd with annual inspections and the surveillance program standards.

2. CWD means Chronic Wasting Disease, a transmissible spongiform encephalopathy of cervidae that causes weight loss and death in infected animals.

3. CWD susceptible cervidae means any member of the following species: Rocky Mountain Elk (Cervus canadensis); Red Deer (Cervus elaphus); Mule Deer or Black-tailed Deer (Odocoileus hemionus); Sika Deer (Cervus nippon); or Moose (Alces alces); or any species determined by USDA to be CWD susceptible.

(b) Import Requirements.

1. No ~~cervidae shall be imported~~person shall import CWD susceptible cervidae from an area where ~~Chronic Wasting Disease (~~CWD~~)~~ has ever been diagnosed in wildlife. The control zone around such area shall be ~~as defined by the Tennessee~~25 miles in radius, unless otherwise ordered by the state veterinarian for good cause shown.

~~(b) Chronic Wasting Disease-susceptible cervidae entering Tennessee shall have~~

2. No person shall import CWD susceptible cervidae into the state unless,

(i) The cervidae originated from a certified status herd that has ~~participated in an approved CWD surveillance program, has never been diagnosed with CWD, and has never been identified as a traceback or trace-forward herd. The herd shall have enrolled in such program at least five (5) years prior to shipment, and have~~ had no loss or reduction in status during ~~the~~its program enrollment ~~period~~; and,

(ii) The person importing the cervidae has in his possession a certificate of veterinary inspection, completed in full—including signature of the owner/agent section—and a prior entry permit for the cervidae obtained by the issuing veterinarian from the state veterinarian's office.

~~(c) A prior entry permit shall be obtained by the issuing veterinarian from the office of the Tennessee state veterinarian during regular office hours.~~

~~(d) The following statement must be on the certificate of veterinary inspection: "To the best of my knowledge, the animals listed herein are in compliance with the Tennessee CWD import rules for cervidae."~~

~~(e) The owner/agent section of the certificate of veterinary inspection must be signed.~~

Authority: T.C.A. §§ 4-3-203; 44-2-102.

Chapter 0080-02-08 ~~Regulations Concerning Livestock Dealer's Business Record Requirements~~ is amended by re-titling the chapter "Livestock Dealers".

Authority: T.C.A. §4-3-203.

Chapter 0080-02-08
~~Regulations Concerning~~ Livestock Dealer's ~~Business Record Requirements~~

Rule 0080-02-08-.02 Length of Time Records to be Maintained is amended by deleting the language "two (2) years" and substituting instead the following language "five years".

Records required by the Commissioner shall be maintained and preserved for a period of ~~two (2)~~five years.

Authority: T.C.A. §§ 4-3-203; 44-10-204.

Chapter 0080-04-09
Retail Food Store Sanitation

Subparagraph 0080-04-09-.08(3)(b) is amended by deleting the language "July 15" from the fifth sentence of the subparagraph and substituting instead the following language "July 16".

(b) Submission 30 Calendar Days Before Proposed Opening. An applicant shall submit an application for a permit at least 30 calendar days before the date planned for opening a food establishment or the expiration date of the current permit for an existing facility. An applicant for licensure under this chapter shall remit its application and annual license fee to the department on or before July 1 of each year. All licenses issued under this chapter shall expire on June 30 following their issuance. If an applicant for renewal fails to remit payment of the license fee on or

before July ~~15~~16 of the licensure year for which renewal is sought, the applicant shall also be required to pay a late charge assessed under T.C.A. §43-1-703 prior to renewal of the applicant's license.

Authority: T.C.A. §§ 4-3-203; 53-8-204.

## Chapter 0080-04-13
## Food Manufacturer, Processor, Warehouse, and Distributor Regulations

Paragraph 0080-04-13-.03(5) is amended by deleting the language "July 15" from the third sentence of the paragraph and substituting instead the following language "July 16".

(5) An applicant for licensure under this chapter shall remit its application and annual license fee to the department on or before July 1 of each year. All licenses issued under this chapter shall expire on June 30 following their issuance. If an applicant for renewal fails to remit payment of the license fee on or before July ~~15~~16 of the licensure year for which renewal is sought, the applicant shall also be required to pay a late charge assessed under T.C.A. §43-1-703 prior to renewal of the applicant's license.

Authority: T.C.A. §§ 4-3-203; 43-1-703; 53-1-207; 53-1-208.

## Chapter 0080-04-14
## Meat and Poultry Processor Regulations

Paragraph 0080-04-14-.03(5) is amended by deleting the language "July 15" from the third sentence of the paragraph and substituting instead the following language "July 16".

(5) An applicant for licensure under this chapter shall remit its application and annual license fee to the department on or before July 1 of each year. All licenses issued under this chapter shall expire on June 30 following their issuance. If an applicant for renewal fails to remit payment of the license fee on or before July ~~15~~16 of the licensure year for which renewal is sought, the applicant shall also be required to pay a late charge assessed under T.C.A. §43-1-703 prior to renewal of the applicant's license.

Authority: T.C.A. §§ 4-3-203; 43-1-703; 53-7-213; 53-7-216.

## Chapter 0080-06-01
## Plant Sales and Distribution

Paragraph 0080-06-01-.02(2) is amended by deleting the paragraph in its entirety and substituting instead the following language so that, as amended, the paragraph shall read:

(2) When used in this chapter, unless the context requires otherwise:

(a) Act means the Tennessee Plant Pest Act, compiled at T.C.A. §43-6-101, et seq.;

(b) Annual plants mean plants or parts of plants that perform their entire life cycle from seed to flower to seed within a single growing season. All roots, stems, and leaves of annual plants die annually, and only their dormant seed bridges the gap between one generation of annual plants and the next;

(c) Certificate and certification mean a document prepared by a duly authorized federal or state regulatory official that affirms a plant or regulated article meets regulatory requirements. Certificates are known by the purpose for which they are issued, e.g. Phytosanitary Certificate, for the purpose of verifying compliance with phytosanitary requirements, etc.;

(d) Compliance agreement means a voluntary agreement between the department and a person regarding certification of plants or regulated articles for their lawful movement to a particular state or location;

(e) Glass house, screen house, or other structure, as contemplated within the definition of "greenhouse" under the Act, means a structure containing or connected to a permanent heat source or other resource capable of controlling temperature or humidity within the structure;

~~(e)~~(f) Infested means contaminated with pest or infected with disease or so exposed to pest or disease that contamination or infection can reasonably be expected to occur;

~~(f)~~(g) Landscaper means any person who on a commercial basis moves and installs plants or who advertises or solicits business for the movement and installation of plants in the state;

~~(g)~~(h) Move, distribute, ship, transport, or words of similar import mean to relocate, or to offer to relocate, in any manner an item from one real property to another;

~~(h)~~(i) Not primarily engaged in the business of producing and selling plants or seedlings means that revenue received in the previous calendar year for the sale or production of plants does not exceed 15% of gross revenue from farm operations during that period, as shown on applicable federal tax return documents;

~~(i)~~(j) Person means an individual, partnership, corporation, or any other form of legal entity;

~~(j)~~(k) Pest or disease means any biotic agent that is injurious to agriculture or the environment. Pest or disease includes insect pests and plant diseases as defined under the Act and may also include any form of animal or plant life; any infectious plant disease; or any plant disorder that manifests symptoms or behavior determined by any federal or state pest prevention agency to be characteristic of infectious disease;

~~(k)~~(l) Pest plant means any plant that is injurious to the agricultural, horticultural, silvicultural, or other interests of the state;

~~(l)~~(m) Plant means nursery stock, annual plants, wild plants, or any part of nursery stock, annual plants, or wild plants. Exceptions: the definition of plant does not include any harvested fruit, nut, or vegetable; cut flower; or non-rooted part of a plant that is incapable of propagation; however, such parts of a plant may be determined by the department to be regulated articles under certain circumstances;

~~(m)~~(n) Quarantine means the restriction of movement of infested plants, pest plants, or regulated articles by a duly authorized federal or state regulatory official for the purpose of mitigating risks associated with pests, pest plants, or disease;

~~(n)~~(o) Regulated article means any item or material, biological or otherwise, that is determined by the department to support or to be capable of supporting the dissemination of any pest, pest plant, or disease;

~~(o)~~(p) Stop movement order means a written directive issued by a duly authorized federal or state regulatory official to prohibit or limit the movement of plants or regulated articles;

~~(p)~~(q) Wild plants mean uncultivated, feral plants or parts of plants that are gathered from the environment and are capable of propagation. A wild plant that is cultivated for at least one growing season shall be considered nursery stock and not a wild plant.

Authority: T.C.A. §§ 4-3-203, 43-6-104, and 43-6-106.

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

| Board Member | Aye | No | Abstain | Absent | Signature (if required) |
|---|---|---|---|---|---|
| | | | | | |

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the Department of Agriculture (board/commission/ other authority) on 03/06/2017 (mm/dd/yyyy), 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: 07/19/16

Rulemaking Hearing(s) Conducted on: (add more dates). 09/13/16

Date: March 6, 2017

Signature:

Name of Officer: Jai Templeton

Title of Officer: Commissioner

JOYCE M. JACKSON NOTARY PUBLIC STATE OF TENNESSEE DAVIDSON COUNTY

Subscribed and sworn to before me on: March 6, 2017

Notary Public Signature: Joyce M. Jackson

My commission expires on: 09/11/2017

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

Herbert H. Slatery III
Attorney General and Reporter

3/29/2017
Date

**Department of State Use Only**

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Filed with the Department of State on: 3/30/17

Effective on: 6/28/17

Tre Hargett

Tre Hargett
Secretary of State

## G.O.C. STAFF RULE ABSTRACT

| | |
|---|---|
| DEPARTMENT: | Commerce and Insurance/Athletic Commission |
| DIVISION: | Regulatory Boards |
| SUBJECT: | Kickboxing and Mixed Martial Arts |
| STATUTORY AUTHORITY: | Tennessee Code Annotated, Section 68-115-501(c) |
| EFFECTIVE DATES: | June 15, 2017 through June 30, 2018 |
| FISCAL IMPACT: | Not Applicable |
| STAFF RULE ABSTRACT: | Unified Rules and Scoring Criteria: These rule changes would make Tennessee's MMA rules regarding fouls and scoring identical to those proposed by the Association of Boxing Commissions (ABC). This amendatory language will allow the rules to adapt to changes promulgated by the ABC and should result in greater standardization of the regulation of mixed martial arts amongst the states.<br><br>Gloves: This rule change will result in a requirement that all gloves have padding over the knuckles. This rule clarifies the prohibition against bare knuckle boxing in the state of Tennessee. |

**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.

These rules will only affect mixed martial arts events and contests. There were approximately 16 mixed martial arts events that the Tennessee Athletic Commission issued permits for in 2016.

The promoters, referees, combatants and judges for these events and contests will benefit from these uniform rules because it will eliminate any confusion these parties have when working across state lines. Promoters and Vendors will receive an additional benefit due to the ability to attract more mixed martial arts events and contests.

The requirement that gloves have padding over the knuckle clarifies the prohibition of bare knuckle boxing which is known to place combatants at greater risk of physical injury.

Compliance with these rules is not expected to have any additional cost to small businesses.

(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.

There are no expected reporting, recordkeeping or other administrative costs expected in order to remain in compliance with these rule changes. Uniform standards are the majority rules amongst the states. The uniform rules are commonly known and used by promoters, referees, judges and combatants across the United States.

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

The promoters operating in Tennessee often hold contests and events in neighboring states. The judges and referees for mixed martial arts events and contests are specially trained are must often be flown in from other parts of the country, meaning they can sometimes be unfamiliar with the particulars of the Tennessee Athletic Commission's rules and laws. The probable effect of these rules is positive in that all parties will be familiar with our rules thereby reducing confusion and the potential for rule violations. Additionally, if Tennessee allows it rules to become materially different from those promulgated by the Association of Boxing Commissions, then the state will place itself at a disadvantage when trying to attract larger events and contests. Small businesses will be positively affected by an increase in event and contest revenue and consumers will benefit from more opportunities to enjoy the events.

(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.

The Commission believes that these changes are not burdensome, intrusive or costly and – as such – there do not appear to be any alternatives that would reasonably be expected to be less burdensome.

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

The Tennessee Athletic Commission is directed, by T.C.A. § 68-115-501 to be a member of the Association of Boxing Commissions (ABC). The statute directs the Tennessee Athletic Commission use ABC's unified mixed martial arts rules as a regulatory guideline for the promulgation of mixed martial arts rules. Most other states have also adopted ABC's unified rules for mixed martial arts purposes and, as such, these rules are comparable to the rules of those states.

(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.

Exemption from these rules would not be expected to be beneficial for small businesses because adoption of these rules should have a net positive benefit for all Tennessee Athletic Commission licensees in the state.

**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)

This rule may have a projected positive impact on local governments due to an increase in revenues tied to municipalities hosting additional mixed martial arts events and contests.

**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;

Unified Rules and Scoring Criteria: These rule changes would serve to make Tennessee's MMA rules regarding fouls and scoring identical to those proposed by the Association of Boxing Commissions (ABC). This amendatory language will allow the rules to adapt to changes promulgated by ABC and should result in greater standardization of the regulation of mixed martial arts amongst the states.

Gloves: This rule change will results in a requirement that all gloves have padding over the knuckles. This rule clarifies the prohibition against bare knuckle boxing in the state of Tennessee.

**(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. § 68-115-501(c) directs the Tennessee Athletic Commission to use the MMA unified rules as the regulatory guideline to promulgate rules for the regulation of MMA.

**(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;

Licensed promoters, judges, referees and combatants are the most likely to be affected by these rules. All would be expected to urge for the adoption of the rules in order to gain clarity about the regulatory standards the state wishes to enforce and to put the state on even competitive footing when attracting national events and contests. There are no current licensees in the state engaging in bare knuckle boxing, however the Tennessee Athletic Commission has received inquiries from an individual named Nathan Shook who is interested in holding such a contest or event. Those wishing to bring bare knuckle boxing to Tennessee would likely urge rejection of the rules pertaining to glove requirements.

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

There are no known attorney general opinions or judicial rulings that directly relate to this rule.

**(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;

This rule is estimated to have a probable increase in state and local government revenue due to an increase in mixed martial arts events and contests.

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

Matthew Reddish – Assistant General Counsel
TN Department of Commerce and Insurance

Roxana Gumucio – Executive Director
TN Athletic Commission
TN Department of Commerce and Insurance

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

Matthew Reddish – Assistant General Counsel
TN Department of Commerce and Insurance

Roxana Gumucio – Executive Director
TN Athletic Commission
TN Department of Commerce and Insurance

**(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

Matthew Reddish
500 James Robertson Parkway
Nashville, TN 37243
615-770-0089
Matthew.e.reddish@tn.gov

Roxana Gumucio
500 James Robertson Parkway
Nashville, TN 37243
615-741-1310
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**(I)** Any additional information relevant to the rule proposed for continuation that the committee requests.

None.

**Department of State**
**Division of Publications**
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Phone: 615-741-2650
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Sequence Number: 03-18-17
Rule ID(s): 6468
File Date: 3/17/17
Effective Date: 6/15/17

# Proposed Rule(s) Filing Form

*Proposed rules are submitted pursuant to Tenn. Code Ann. §§ 4-5-202, 4-5-207, and 4-5-229 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 ninety (90) days of 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 ten (10) persons who will be affected by the amendments, or submitted by a municipality which will be affected by the amendments, or an association of ten (10) or more members, or any standing committee of the General Assembly. The agency shall forward such petition to the Secretary of State.*

*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:** | Tennessee Athletic Commission |
| **Division:** | Department of Commerce and Insurance Regulatory Boards Division |
| **Contact Person:** | Matthew Reddish |
| **Address:** | 500 James Robertson Parkway, Nashville, TN |
| **Zip:** | 37243 |
| **Phone:** | 615-770-0089 |
| **Email:** | Matthew.E.Reddish@tn.gov |

**Revision Type (check all that apply):**
X 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** |
|---|---|
| 0145-03 | Kickboxing and Mixed Martial Arts |
| **Rule Number** | **Rule Title** |
| 0145-03-.04 | Fouls |
| 0145-03-.10 | Scoring |
| 0145-03-.15 | Gloves |

0145-03-.04 FOULS.

(1) The following tactics are fouls in ~~both~~ kickboxing ~~and mixed martial arts~~ and shall result in a warning and loss of points as determined by the referee:

(a) headbutting;

(b) striking downward using point of the elbow;

(c) openhand attacks to the eyes or throat or eye gouging;

(d) striking at that part of the body over the kidney or spine or chopping or striking the back of the neck or head;

(e) biting, spitting or, in the referee's discretion, slapping;

(f) the use of abusive language in the ring;

(g) any unsportsmanlike conduct or action that causes injury to an opponent or referee;

(h) attacking an opponent on or during a break;

(i) attacking after the bell or gong has sounded to end the round, or when the opponent is out of the ring;

(j) intentionally pushing, shoving or wrestling an opponent out of the ring with any part of the body;

(k) linear kicks to the front or side of the knees;

(l) intentionally delaying the contest due to improper equipment, or by intentionally dropping or spitting out the mouthpiece;

(m) intentional evasion of contact;

(n) hair pulling;

(o) attacking or obstructing the trachea;

(p) clawing, pinching or twisting the flesh or grabbing the clavicle;

(q) pulling or holding the uniform below the hipline;

(r) holding the ropes or fence;

(s) small joint manipulation, including but not limited to twisting of fingers or toes;

(t) groin techniques/attacks of any kind, including but not limited to grabbing or striking;

(u) fish hooking;

(v) biting;

(w) flagrant disregard of the referee's instructions;

(x) finger strikes or rakes to any part of the body;

(y) knuckle gouging to the face or any part of the body, including into the throat;

(z) stomping a grounded opponent;

(aa) kicks to the head of a grounded opponent;

(bb) kneeing to the head of a grounded opponent;

(cc) lifting, pushing, throwing, or otherwise forcing an opponent out of the ring or cage;

(dd) attacking an opponent who is under the care of the referee or other ring official;

(ee) interference by a combatant's manager or second;

(ff) trainer ring rope or cage grabbing;

(gg) holding the shorts or gloves of an opponent;

(hh) spiking which occurs when a combatant purposely drives an opponent straight to the ring floor on his head or neck from an upright and vertical position; ~~and~~

(ii) putting a finger into any orifice or into any cut or laceration of an opponent~~.~~;

(jj) arm bars;

(kk) grabbing or holding onto an opponent's leg or foot, and grabbing or holding onto any other part of the body;

(ll) punching or kicking a combatant when the combatant touches down. A combatant is down when any part of the combatant's body, other than combatant's feet, touch the floor. The combatant's opponent may continue to attack until the combatant has touched the floor with any part of the body other than the feet;

(mm) leg checking, which occurs when a combatant extends the leg to check an opponent's leg or to prevent the opponent from kicking;

(nn) purposely going down without being hit;

(oo) any use of throws or any takedowns;

(pp) holding and hitting;

(qq) hitting or slapping with an open glove; and

(rr) using the heel of the palm of the hand to deliver a blow to the face.

(2) For the purposes of mixed martial arts, tactics, fouls, the definitions of fouls, and the definitions of tactics, shall be as provided in the Association of Boxing Commissions' (ABC) Unified Rules of MMA. These ~~following~~ tactics are fouls ~~in kickboxing~~ and shall result in a warning and loss of points as determined by the referee~~.~~:

~~(a) arm bars;~~

~~(b) grabbing or holding onto an opponent's leg or foot, and grabbing or holding onto any other part of the body;~~

~~(c) punching or kicking a combatant when the combatant is down. A combatant is down when any part of the combatant's body, other than combatant's feet, touch the floor. The combatant's opponent may continue to attack until the combatant has touched the floor with any part of the body other than the feet.~~

~~(d) leg checking, which occurs when a combatant extends the leg to check an opponent's leg or to prevent the opponent from kicking;~~

~~(e) purposely going down without being hit;~~

~~(f) any use of throws or any takedowns;~~

~~(g) holding and hitting;~~

~~(h) hitting or slapping with an open glove; and~~

~~(i) using the heel of the palm of the hand to deliver a blow to the face.~~

Authority: Chapter 1149 of the Public Acts of 2008, § 2 and T.C.A. § 68-115-201.

0145-03-.10 SCORING.

(1) During mixed martial arts contests, referees and judges shall use the Association of Boxing Commissions' (ABC) MMA Judging Criteria/Scoring guidelines when scoring the contests.

(~~1~~2) During kickboxing contests, ~~R~~referees and judges shall score all contests and determine the winner through the use of the ten-point must system. In this system, the winner of each round receives ten (10) points and the opponent a proportionately less number. If the round is even, each combatant receives ten (10) points. No fraction of points shall be given.

(~~2~~3) At the termination of the professional contest or amateur event, or the termination of each round, as determined by the Commission's representative present at the contest or event, the cards of the judges shall be picked up by the referee and delivered to the Commission's representative assigned to check the totals. The majority opinion shall be conclusive and if there is no majority then the decision shall be a draw. When the Commission's representative has completed verifying the score, the ring announcer shall be informed of the decision and shall announce the decision.

Authority: Chapter 1149 of the Public Acts of 2008, § 2 and T.C.A. § 68-115-201.

0145-03-.15 GLOVES.

(5) All gloves shall have padding over the knuckles.

Authority: Chapter 1149 of the Public Acts of 2008, § 2 and T.C.A. § 68-115-201.

* 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) |
|---|---|---|---|---|---|
| Steve Hannah | X | | | | |
| Chad Chilcutt | X | | | | |
| Donald Wynn | X | | | | |
| Tracy Davis | X | | | | |

I certify that this is an accurate and complete copy of proposed rules, lawfully promulgated and adopted by the Tennessee Athletic Commission on December 5, 2016 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 ninety (90) days of the filing of the proposed rule with the Secretary of State.

Date: 2/23/17

Signature: Matthew Reddish

Name of Officer: Matthew Reddish

Title of Officer: Assistant General Counsel

VANESSA HUNTSMAN STATE OF TENNESSEE NOTARY PUBLIC SUMNER COUNTY MY COMMISSION EXPIRES 11-21-2017

Subscribed and sworn to before me on: 2/23/17

Notary Public Signature: Vanessa Huntsman

My commission expires on: 11/21/2017

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Rules of the Tennessee Athletic Commission
0145-03-.04 Fouls
0145-03-.10 Scoring
0145-03-.15 Gloves

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.

Herbert H. Slatery III

Herbert H. Slatery III
Attorney General and Reporter

3/6/2017
Date

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**Department of State Use Only**

Filed with the Department of State on: 3/17/17

Effective on: 6/15/17

Tre Hargett

Tre Hargett
Secretary of State

## G.O.C. STAFF RULE ABSTRACT

DEPARTMENT: Commerce and Insurance

DIVISION: Fire Prevention

SUBJECT: Electrical Installations (Inspection Fee Increase)

STATUTORY AUTHORITY: Not applicable

EFFECTIVE DATES: June 21, 2017 through June 30, 2018

FISCAL IMPACT: Increasing the permit fees to $35.00 will result in an increase in revenue. There were approximately 163,000 electrical permits purchased from July 2015 through July 2016, costing $27.00. Using these figures, the total estimated return was approximately $4,401,000 (163,000 x 27). Increasing the fee to $35.00 would result in a total return of approximately $5,705,000 (163,000 x 35). The difference in the totals is $1,304,000.

Electrical inspectors retain 85%, and the department retains the remaining 15% of permit fees. The estimated percentage paid to inspectors based on $27.00 permits was approximately $3,740,850 ($4,401,000 x .85). At $35.00, the amount would increase to $4,849,250 ($5,705,000 x .85). The difference in those totals is $1,108,400.

The Department retained an estimated $660,150 based on $27.00 permits ($4,401,000 x .15). At $35.00, the return would increase to $855,750. The difference is $195,600.

STAFF RULE ABSTRACT: In 0780-02-01-.02 Adoption by Reference, the proposed rules update the current minimum statewide electrical standards for buildings and structures in Tennessee. Specifically, the 2008 National Electrical Code (NEC) is replaced with the 2014 edition. The reference to the 2008 edition is amended throughout the chapter to reflect adoption of the 2014 edition. The changes include one section of the NEC which will be considered optional. Section 110.24, Available Fault Current, requires certain service equipment to be marked with the maximum

available fault current and for the maximum available fault current to be verified and recalculated as necessary to ensure service equipment ratings are sufficient at the line terminals of the equipment. This was not previously required in the 2008 edition of the NEC. This provision should be optional as the maximum available fault current changes constantly based on the weather, number of persons using electricity in the building, etc. Requiring owners or managers of commercial installations to recalculate repeatedly the available current is not considered a practical requirement.

In 0780-02-01-.04 Inspections, the proposed rules include edits to citations and terminology. The substantive changes will allow deputy fire marshals to perform electrical inspections where the need arises, so long as they are properly certified. Furthermore, the amendments provide that an inspection will be required on the re-connections of electrical power to a building. Additionally, supplying of electrical power for final inspections will be required in residential and commercial buildings in which the electrical power has been disconnected. The amendments also add the requirement that all signs receiving electrical power shall be inspected.

In 0780-02-01-.05 Permits, the proposed rules clarify that the permit application fee of five dollars ($5.00) is in addition to all other required inspection fees. Another change will delete language related to the electrician registration program which is no longer in effect through the Division of Fire Prevention. This responsibility is currently handled by the Tennessee Board for Licensing Contractors.

In 0780-02-01-.07 Special Occupancies, the proposed rules replace the 2008 edition of the NEC with the 2014 edition. The substance of the rule has not been changed.

In 0780-02-01-.11 Dwelling Units, the amendment deletes the specifications for lighting in clothes closets, which are addressed in the 2014 edition of the NEC. Moreover, the proposed amendment, related to smoke alarms, reflects the statutory changes made in TN Public Chapter No. 120 (2015). The primary changes clarify that the statute is applicable to newly constructed homes and changes the term smoke detector to smoke alarm, which is more commonly used in the industry. Additionally, installations of smoke alarms must be in accordance with building standards adopted by the state fire marshal pursuant to Tenn. Code Ann. § 68-120-101 rather than the 2003 International Residential Code. The most substantive

statutory change to the smoke alarm section is the removal of the previous exemption which exempted a one family dwelling unit built and occupied by the family from the smoke alarm requirements. Additional language clarifies that light fixtures in crawl spaces of dwelling units shall have guarded covers and is identical to the requirement for the installation of HVAC units in Tenn. Comp. R. & Regs. 0780-02-01-.13. The amendment also deletes the language permitting arc-fault circuit interrupters to be optional in all rooms other than bedrooms and increases the maximum amount of electrical outlets that are permissible on fifteen (15) and twenty (20) amp circuits. Furthermore, the proposed rules delete the language in the last two sections permitting weather resistant receptacles to be optional.

In 0780-02-01-.15 Used Manufactured Homes, the proposed rules replace the 2008 edition of the NEC with the 2014 edition. The substance of the rule has not been changed.

In 0780-02-01-.20 Local Government Authorization to Perform Electrical Inspections, the proposed rules replace the 2008 edition of the NEC with the 2014 edition. The substance of the rule has not been changed.

In 0780-02-01-.21 Inspection Fees, the proposed rules increase the fees for final inspections on 0-200 ampere capacity installations from twenty-seven ($27.00) to thirty-five ($35.00). Additionally, the fee for rough-in inspections based on a rejection of 0-1,000 ampere capacity, re-inspections on 0-1,000 ampere capacity installations, and inspections of HVAC units are all increased to thirty five ($35.00).

In 0780-02-01-.22 Boat Docks and Marinas, the proposed rules clarify the appropriate section of the NEC to be used when the time of the installation cannot be determined. Additionally, the rules add language permitting voltage in yard and pier distributions systems to exceed the maximum voltage specified in the NEC if written documentation is submitted from a licensed engineer.

**Public Hearing Comments**

One copy of a document containing responses to comments made at the public hearing must accompany the filing pursuant to T.C.A. § 4-5-222. Agencies shall include only their responses to public hearing comments, which can be summarized. No letters of inquiry from parties questioning the rule will be accepted. When no comments are received at the public hearing, the agency need only draft a memorandum stating such and include it with the Rulemaking Hearing Rule filing. Minutes of the meeting will not be accepted. Transcripts are not acceptable.

Deputy Electrical Inspectors Ronnie Gray and Bill Harrington commented in support of the proposed increase in electrical permit fees, especially in relation to pay increases for electrical inspectors who are independent contractors who are paid for inspections performed. Mr. Gray specifically asked why it has been so long since the fees have changed.

Gary Farley, Director of the Electrical, Residential and Marina Inspection Section, and Joseph Underwood, Chief Counsel, for the Division of Fire Prevention ("Division"), responded on behalf of the Division by providing a summary of the rulemaking process, and explained that previously any electrical permit fee change had to be approved directly by the General Assembly because the fees were established in statute (TCA 68-102-143) until the enactment of Public Chapter 150 (2013). The last electrical permit fee increase by the General Assembly was implemented in 2005. Mr. Farley explained that this rulemaking hearing is the Division's first opportunity to increase electrical permit fees through the rulemaking process.

Electrical Inspector Doug Turnbull commented in support of updating the state electrical standards and adopting the 2011 edition of the National Electrical Code ("NEC") published by the National Fire Protection Association ("NFPA").

Mr. Farley on behalf of the Division acknowledged and agreed with his comments.

Mr. Andy Lee, a professional mortgage and construction lender who is also associated with the Phoenix Society for Burn Survivors, spoke against the proposed rules in particular the section which requires arc fault circuit interrupters ("AFCIs") to be installed in bedrooms only. Mr. Lee offered comments that AFCIs are required by nearly every other state and that they stop electrical fires from occurring. Mr. Lee spoke personally as a burn survivor about his losses suffered from fire and also from his own perspective as a mortgage lending professional. Mr. Lee spoke in favor of adopting the 2017 edition of the NEC instead of the proposal to adopt the 2011 NEC with amendments regarding AFCIs. Mr. Lee commented that people moving to Tennessee want to know and be reassured that the new homes they are purchasing meet current electrical standards. He also stated that Tennessee should adopt current standards and not be satisfied with being 3 to 6 years behind every other state. Mr. Lee stated that all new homes need to be built safe utilizing current technology. Mr. Lee stated that he wants new construction to be competitively priced but safe, too. Mr. Lee stated that at a cost of $300 for an average 2200 square foot home, AFCIs can be installed at less than $0.15 a square foot on homes that are selling for $100 per square foot to over $200 per square foot in some neighborhoods. Mr. Lee also stated that as electrical fires are among the top 3 causes of fire fatalities in Tennessee, the Division needs to adopt the latest edition of a NEC to reduce the likelihood and causes of electrical fires. Mr. Lee stated that it will reduces the causes of fires by requiring AFCIs in all newly built homes, along with other fire safety devices. Mr. Lee stated that if proven technologies exist to stop these fires from starting, then they need to be required and not allowed to be optional. Mr. Lee requested that the Division ensure the protection of the citizens of Tennessee by adopting the most updated electrical code requirements and require and expand the use of arc fault interrupters beyond what is provided in the proposed amendments.

Mr. Farley responded on behalf of the Division by thanking Mr. Lee for his comments and stated that all comments received by the Division would be considered and reviewed after the hearing.

Mr. Jeff Sargent, regional electrical code specialist with the NFPA, spoke in regards to the proposed rules and adoption of the 2011 NEC. Mr. Sargent explained that the NFPA publishes new revised electrical codes every 3 years and the 2011 is several editions old. He urged the Division to consider adopting the 2014 or 2017 NEC, if possible, as these editions are more recently published and include the latest in safety technology for the electrical industry. Mr. Sargent also spoke against the proposed amendments for weather resistant receptacles, tamper resistant receptacles and AFCIs. Mr. Sargent states that new technology has made the weather resistant receptacle more robust and more resilient to various environmental conditions such as: dampness, wetness,

ultraviolet exposure, etc. Mr. Sargent stated that ground fault circuit interrupters ("GFCIs") are another critical piece to home safety for people plugging into these receptacles. He stated that GFCIs keep people alive and that we don't want GFCIs to fail prematurely. He urged the Division not to amend that part of the adopted code as the requirements for weather resistant receptacles are considered to be the minimal standard. He also questioned why the Division would seek to lessen the minimum standard. Mr. Sargent also spoke against the proposed amendment to allow tamper resistant receptacles to be optional in dwelling units. Mr. Sargent stated that tamper resistant receptacles protect one of our most vulnerable population segments, i.e. young children. He stated that there are thousands of documented cases of children receiving burns from inserting something into open standard receptacles and tamper resistant receptacles were created and designed to prevent this type of injury. Mr. Sargent again asked why the Division would seek to lessen the minimum standard. He stated that tamper resistant receptacles should be mandatory as they are an inexpensive solution to this real problem. Mr. Sargent concluded his statements by stating his opposition to the proposed amendment for AFCIs and professing the need for AFCIs throughout a dwelling unit and not just in bedrooms. He stated that fires do not just start in bedrooms and that AFCIs were first introduced in the electrical code in 1999. He stated that the requirements for AFCIs have been incrementally expanded as the code changed in new editions over the years to verify that these devices were working effectively. He stated that there was no good reason for not expanding the use of AFCIs throughout a dwelling unit and making them a mandatory requirement as they are a fire protection device. He concluded his comments by stating that AFCIs are an important safety device and asked why the state would want to reduce the level of safety in a dwelling unit.

Mr. Farley responded on behalf of the Division by thanking Mr. Sargent for his comments and stated that again all comments received by the Division would be considered and reviewed after the hearing.

Mr. Carl Peas, Fire Marshal for the city of Murfreesboro and current member (and past president) of the board of directors for the Tennessee Fire Safety Inspectors Association, spoke in opposition to the proposed amendment which requires AFCIs only in the bedrooms of dwelling units. Mr. Peas stated that the purpose of the Tennessee Fire Safety Inspectors' Association is to oversee fire safety inspectors and encourage the highest professional standards and conduct as well as to improve inspection procedures and educate the general public about the importance of fire prevention and suppression efforts. Mr. Peas stated that his association formally opposes an electrical safety code amendment that will restrict use of arc fault interrupters to the 2005 NEC levels by confining these devices to bedrooms only and making them optional instead of required in other areas of a home. Mr. Peas stated that the 2017 NEC requires these devices throughout the homes including kitchens and laundry areas where many fires start and that it defies explanation why the Division would not adopt those requirements. He stated that AFCIs are proven and tested safety devices which have been required in the NEC since 1999, and that if the Division adopts the optional requirements for AFCIs except for bedrooms then Tennessee will be at the 2005 safety level instead of the 2011, 2014, or 2017 levels. Mr. Peas concluded that he would like to see the state advance by making fire prevention technology a requirement versus allowing it to be optional.

Mr. Farley responded on behalf of the Division by thanking Mr. Peas for his comments and agreeing that the State Fire Marshal's Office is also concerned with safety for the citizens of Tennessee. Mr. Farley stated that the proposed amendments contain the same provisions for AFCIs which were adopted when the current rules were last amended in 2010.

Chief David Windrow, Assistant Chief of Operations for Brentwood Fire and Rescue, appeared representing the Tennessee Fire Chiefs' Association and its more than 500 members. Chief Windrow stated that the Chiefs' Association opposed the amendment which allows the use of AFCIs in bedrooms only. He stated that this amendment, if adopted, would keep Tennessee at the safety level of the 2005 NEC; meaning that Tennessee would be lagging at least 12 years behind the new 2017 NEC requirements. He stated that most other states currently require AFCIs throughout a home, including kitchens and laundry rooms, and asked why would Tennessee in trying to reduce fire deaths adopt such a standard. Chief Windrow asked why Tennessee would do otherwise when other states are making progress and moving forward to require AFCIs throughout homes. He stated that the chiefs' are only interested in life safety and that their goal was to reduce the loss of life and property damage due to fires. Chief Windrow stated that AFCIs are a minimally priced proactive fire safety device that stops a fire before it starts, unlike a sprinkler system which is reactive to a fire after it begins. He stated that, as of this date in 2015, Tennessee had recorded 55 structural fire fatalities, but as of today, September 27, 2016, there were 64 fatalities. He also reiterated that just a few weeks ago in Memphis, 10 people died including 7 children, due to a malfunctioning electrical cord in an air conditioning unit. He stated that if an AFCI had been installed then it possibly could have prevented that tragedy from happening. Chief Windrow stated that the state had an obligation to adopt strong fire protection laws and electrical codes, and that by dismissing the AFCI requirements, or making it optional, will put people's lives at risk of injury and death due to electrical fires. He

stated that the Fire Chiefs' Association cannot support a policy that weakens the state's fire safety codes. He stated that electrical issues were the 3rd leading cause of fires in Tennessee behind cooking and appliances. He stated that appliances are not usually located in bedrooms so the installation of the AFCIs in laundry rooms, kitchens, bonus rooms where all of these electrical appliances are installed could potentially have a significant impact in improving safety.

Mr. Farley responded on behalf of the Division by thanking Chief Windrow for his comments.

Mr. Brian Holland with the National Electrical Manufacturers Association ("NEMA") commented in support of many of the previously made statements and expressed his concern with the Division adopting an electrical standard developed over 7 years ago and is now 2 code cycles old. Mr. Holland explained that technology had been developed and advanced so as to be compatible with the safety requirements of the newer code editions. He also detailed the many available training opportunities on the more recent code editions and that training on the 2011 edition would likely be difficult. Mr. Holland also stressed the importance of adopting the code requirements without amendments for: AFCIs; marking available fault currents on service equipment; weather resistant type receptacles; and child tamper resistant receptacles. He stressed that over the last 2 years, Tennessee averaged 11 deaths per 1,000 fires, which is approximately twice the national average of 5.5 deaths per 1,000 fires during the same period. With 77.4% of the fire deaths in Tennessee occurring in residential structures, Mr. Holland believes that requiring AFCIs will reduce those losses by preventing fires before they can begin. He also noted that the proposed change in terminology from "single bulb holder" to "fixtures" is antiquated and no longer sufficient to describe lighting equipment. Mr. Holland suggested the use of "luminaires" instead of "fixtures," consistent with the national standard. He also opined that in addition to the proposed changes, the current language throughout the remainder of the section is outdated by noting that the rule identifies "incandescent" or "florescent" light sources but neglects the most rapidly growing technology, "light-emitting diodes" (LED's).

Mr. Farley responded on behalf of the Division by thanking Mr. Holland for his comments and that they will be taken under advisement.

Mr. Randy Safer, Southern Regional Director for the National Fire Protection Association ("NFPA"), commented on the inclusion of the rapid shutoff requirement for the photovoltaic systems which appears in the 2014 NEC. This requirement allows firefighters, during pre-fire planning, to document the location of the shut off so that if a fire event occurs; then, the firefighters, upon arriving on the scene, can shut the power off quickly and make the electrical conditions safer for the firefighters to occupy the roof of the building. Mr. Safer also spoke in support of the code requirements without amendments for installing AFCIs and child tamper resistant receptacles in newly constructed homes. He also stated that the NFPA offers free training and other support to state inspectors, fire marshals, and fire inspectors. Mr. Safer stated that Tennesseans deserved to live in buildings that are built to the latest codes and standards. He strongly encouraged the Division to consider adopting the most recent published electrical code (the 2017 NEC), but if not, the 2014 NEC should be adopted.

Mr. Farley responded on behalf of the Division by thanking Mr. Safer for his comments.

Ms. Susan Newman Scearce spoke as a member of the International Association of Electrical Inspectors ("IAEI") and as a member of the code making panel for the NEC. She requested the Division to consider carefully the information presented at the hearing by the participating professionals and leaders in the electrical industry. She reiterated that the Division has been supplied statistics and testimony of the value of the minimum code and the proven safety of the contained requirements, and that by adopting amendments, the state is placing citizens in harm's way. Ms. Scearce stated that there are training resources available to make the improvements required and that Tennessee needs to be a safer place to work and live.

Mr. Farley responded on behalf of the Division by thanking Ms. Scearce for her comments.

Deputy Electrical Inspector Bob Lane commented against the amendment for child tamper resistant receptacles. He spoke about the issues that existed with the old devices but that the newer devices are much improved. He stressed the importance in these devices in protecting children from burns or electrical shock.

Mr. Farley responded on behalf of the Division by thanking Mr. Lane for his comments and stated that he understood there were many complaints about the use of these devices by elderly citizens when the amendment was originally put in the rules in 2010. Mr. Underwood responded by stating the Division may consider revisiting this issue since the technology in manufacturing has improved the functionality of these devices over the past several years.

The Division announced that the comment period would remain open for two (2) additional weeks until October 11, 2016, so that written comments could be submitted to the Division for consideration in the adoption of the proposed rules.

The Division received seven (7) written comments on the proposed rules and amendments.

Ms. Michelle Frost from Clarksville wrote an email as a mother of a firefighter who received and survived burns from an electrical fire in 2007. She spoke in support of adopting the 2014 NEC and requiring AFCIs in all rooms.

Mr. Michael Belitzky submitted an email on behalf of NEMA against the proposed amendments requiring AFCIs only in bedrooms. He emphasized the critical need for AFCIs to be installed throughout residential structures since electrical fires were the 3rd leading cause of fires in Tennessee in 2015. He reiterated that AFCIs are essential safety devices which save lives and prevent property damage due to fire.

Ms. Barbara Frei from Knoxville submitted an email sharing the stories of her two daughters surviving separate fires with one of her daughters living as a burn survivor. She asked the Division to adopt the most up to date standards which require the installation of AFCIs throughout houses. She also reiterated the responsibility of the Division to protect, promote, and improve the health and safety of the citizens of Tennessee.

Ms. Emily Frei from Knoxville, a burn survivor who at age 18 suffered 3rd degree burns on 86% of her body, sent an email urging the Division to adopt the 2014 NEC and all contained requirements for AFCIs in residential structures. She states that AFCIs are safety devices utilized in 48 other states that help prevent fire before they start and that these devices should not be restricted in their use due to costs.

Ms. Sandra Fletchall, Manager of the Burn Rehabilitation/Firefighters' Burn Center in Memphis, submitted an email requesting the Division to expand the uses of AFCIs similar to the requirements of 48 other states with many of the states expanding the use of AFCIs in residential structures. She urged the Division to adopt the 2014 NEC and not remain at the 2005 safety level for the use of AFCIs.

Ms. Amy Acton, registered nurse and Executive Director of the Phoenix Society for Burn Survivors, sent an email opposing the proposed amendment for AFCIs to be required only in bedrooms. She stated that this bad policy would jeopardize thousands of Tennessee lives and put them at risk of potential electrical fires in all new homebuilding. She, as a burn survivor herself and on behalf of nearly 200 other survivors in Tennessee, understands the suffering and devastation caused by fire and how it is to live with the lifelong impact of burn injuries and pain. Ms. Acton strongly urged the Division to adopt the 2017 NEC with its requirements to have AFCIs installed throughout new homes.

Mr. James Pauley, NFPA President and CEO, submitted a letter encouraging the Division to adopt the 2017 edition of the NEC rather than the 2011, as there have been significant improvements made and new innovative technology incorporated into electrical equipment since the 2011 edition was developed. Mr. Pauley wrote against any provision or rule which allows fire and shock protection equipment (such as: AFCIs; weather resistant receptacles; and child tamper resistant receptacles) to be listed as optional rather than required. Mr. Pauley wrote that fire and shock protection equipment should not be optional, no more than seat belts and airbags are. He also emphasized that each edition of the NEC provides better materials and methods to make electrical installations safe; and contrary to popular notion that new codes drive up the cost of construction, there are significant cost savings that can be derived from using the requirements contained in the 2017 edition, even when compared to the 2014 edition. He offered the NFPA readiness to assist Tennessee by providing free training on the 2017 NEC to the state's code enforcement community.

Mr. Farley responded on behalf of the Division by sending emails to the commentators thanking them for their comments.

**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. Types and estimated number of small businesses directly affected:

   Small businesses involved in electrical installations as well as the building and construction industry will be affected by the promulgation of these rules. Additionally, all small businesses will need to ensure that electrical installations comply with the minimum electrical standards.

2. Projected reporting, recordkeeping, and other administrative costs:

   There is no foreseeable alteration in the existing reporting or recordkeeping utilized by small businesses that will result from the promulgation of these rules.

3. Probable effect on small businesses:

   Small businesses involved in electrical installations as well as the building and construction industry will be affected by the promulgation of these rules.

4. Less burdensome, intrusive, or costly alternative methods:

   The amended rules are not anticipated to impact small businesses more than the current rules provide. There has not been a less burdensome, intrusive or costly alternative method identified or recommended for use.

5. Comparison with federal and state counterparts:

   There are no federal counterparts to these rules.

6. Effect of possible exemption of small businesses:

   There are no possible exemptions for small businesses to the requirements contained in these rules.

**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)

The amended rules will impact local governments which operate electrical inspection programs in their respective jurisdictions.

**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;

In 0780-02-01-.02 Adoption by Reference, the proposed rules update the current minimum statewide electrical standards for buildings and structures in Tennessee. Specifically, the 2008 National Electrical Code (NEC) is replaced with the 2014 edition. The reference to the 2008 edition is amended throughout the chapter to reflect adoption of the 2014 edition. The changes include one section of the NEC which will be considered optional. Section 110.24, Available Fault Current, requires certain service equipment to be marked with the maximum available fault current and for the maximum available fault current to be verified and recalculated as necessary to ensure service equipment ratings are sufficient at the line terminals of the equipment. This was not previously required in the 2008 edition of the NEC. This provision should be optional as the maximum available fault current changes constantly based on the weather, number of persons using electricity in the building, etc. Requiring owners or managers of commercial installations to recalculate repeatedly the available current is not considered a practical requirement. In 0780-02-01-.04 Inspections, the proposed rules include edits to citations and terminology. The substantive changes will allow deputy fire marshals to perform electrical inspections where the need arises, so long as they are properly certified. Furthermore, the amendments provide that an inspection will be required on the re-connections of electrical power to a building. Additionally, supplying of electrical power for final inspections will be required in residential and commercial buildings in which the electrical power has been disconnected. The amendments also add the requirement that all signs receiving electrical power shall be inspected. In 0780-02-01-.05 Permits, the proposed rules clarify that the permit application fee of five dollars ($5.00) is in addition to all other required inspection fees. Another change will delete language related to the electrician registration program which is no longer in effect through the Division of Fire Prevention. This responsibility is currently handled by the Tennessee Board for Licensing Contractors. In 0780-02-01-.07 Special Occupancies, the proposed rules replace the 2008 edition of the NEC with the 2014 edition. The substance of the rule has not been changed. In 0780-02-01-.11 Dwelling Units, the amendment deletes the specifications for lighting in clothes closets, which are addressed in the 2014 edition of the NEC. Moreover, the proposed amendment, related to smoke alarms, reflects the statutory changes made in TN Public Chapter No. 120 (2015). The primary changes clarify that the statute is applicable to newly constructed homes and changes the term smoke detector to smoke alarm, which is more commonly used in the industry. Additionally, installations of smoke alarms must be in accordance with building standards adopted by the state fire marshal pursuant to Tenn. Code Ann. § 68-120-101 rather than the 2003 International Residential Code. The most substantive statutory change to the smoke alarm section is the removal of the previous exemption which exempted a one family dwelling unit built and occupied by the family from the smoke alarm requirements. Additional language clarifies that light fixtures in crawl spaces of dwelling units shall have guarded covers and is identical to the requirement for the installation of HVAC units in Tenn. Comp. R. & Regs. 0780-02-01-.13.The amendment also deletes the language permitting arc-fault circuit interrupters to be optional in all rooms other than bedrooms and increases the maximum amount of electrical outlets that are permissible on fifteen (15) and twenty (20) amp circuits. Furthermore, the proposed rules delete the language in the last two sections permitting weather-resistant receptacles to be optional. In 0780-02-01-.15 Used Manufactured Homes, the proposed rules replace the 2008 edition of the NEC with the 2014 edition. The substance of the rule has not been changed. In 0780-02-01-.20 Local Government Authorization to Perform Electrical Inspections, the proposed rules replace the 2008 edition of the NEC with the 2014 edition. The substance of the rule has not been changed. In, 0780-02-01-.21 Inspection Fees, the proposed rules increase the fees for final inspections on 0-200 ampere capacity installations from twenty-seven ($27.00) to thirty five ($35.00). Additionally, the fee for rough-in inspections based on a rejection of 0-1,000 ampere capacity, re-inspections on 0-1,000 ampere capacity installations, and inspections of HVAC units are all increased to thirty five ($35.00). In 0780-02-01-.22 Boat Docks and Marinas, the proposed rules clarify the appropriate section of the NEC to be used when the time of the installation cannot be determined. Additionally, the rules add language permitting voltage in yard and pier distributions systems to exceed the maximum voltage specified in the NEC if written documentation is submitted from a licensed engineer.

**(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;

Not applicable.

**(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;

Home Builders, Building Officials, Deputy Electrical Inspectors, Fire Safety and Building Inspectors, municipal and county governments and citizens will be affected by this rule. National Electrical Manufacturers Association (NEMA), National Fire Protection Association (NFPA), and the Phoenix Society for Burn Survivors, the Tennessee Fire Chiefs Association, the Fire Safety Inspectors Association, and the International Association of Electrical Inspectors (IAEI) are in support of the proposed amendments. These entities as well as the Tennessee Building Officials Association (TBOA) and the Tennessee Home Builders Association were notified of the rulemaking hearing and open comment period.

**(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;

The Division of Fire Prevention is unaware of any opinion of the attorney general or any judicial ruling that directly relates to these rules.

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

Increasing the permit fees to $35.00 will result in an increase in revenue. There were approximately 163,000 electrical permits purchased from July 2015 through July 2016, costing $27.00. Using these figures, the total estimated return was approximately $4,401,000 (163,000 x 27). Increasing the fee to $35.00 would result in a total return of approximately $5,705,000 (163,000 x 35). The difference in the totals is $1,304,000.

Electrical inspectors retain 85%, and the department retains the remaining 15% of permit fees. The estimated percentage paid to inspectors based on $27.00 permits was approximately $3,740,850 ($4,401,000 x .85). At $35.00, the amount would increase to $4,849,250 ($5,705,000 x .85). The difference in those totals is $1,108,400.

The Department retained an estimated $660,150 based on $27.00 permits ($4,401,000 x .15). At $35.00, the return would increase to $855,750. The difference is $195,600.

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

Joseph Underwood, Chief Counsel for Fire Prevention and Law Enforcement, Department of Commerce and Insurance, and Gary Farley, Director of Electrical, Residential and Marina Inspections, Department of Commerce and Insurance.

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

Joseph Underwood, Chief Counsel for Fire Prevention and Law Enforcement, Department of Commerce and Insurance and Gary Farley, Director of Electrical, Residential and Marina Inspections, Department of Commerce and Insurance.

**(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

Joseph Underwood, 500 James Robertson Pkwy, Davy Crockett Tower, 8th Floor, Nashville, TN 37243, (615) 741-3899 Joseph.Underwood@tn.gov; Gary Farley, 500 James Robertson Pkwy, Davy Crockett Tower, 9th Floor, Nashville, TN 37243, (615) 741-7170 gary.farley@tn.gov.

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

None.

**Department of State**
**Division of Publications**
312 Rosa L. Parks Avenue, 8th Floor Snodgrass/TN Tower
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Phone: 615-741-2650
Email: publications.information@tn.gov

**For Department of State Use Only**

Sequence Number: 03-24-17
Rule ID(s): 6471
File Date: 3/23/17
Effective Date: 6/21/17

# 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:** | Department of Commerce and Insurance |
| **Division:** | Division of Fire Prevention |
| **Contact Person:** | Joseph Underwood |
| **Address:** | 500 James Robertson Parkway |
| **Zip:** | 37243 |
| **Phone:** | 615-741-3899 |
| **Email:** | Joseph.Underwood@tn.gov |

**Revision Type (check all that apply):**

X 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** |
|---|---|
| 0780-02-01 | Electrical Installations |
| **Rule Number** | **Rule Title** |
| 0780-02-01-.02 | Adoption by Reference |
| 0780-02-01-.04 | Inspections |
| 0780-02-01-.05 | Permits |
| 0780-02-01-.07 | Special Occupancies |
| 0780-02-01-.11 | Dwelling Units |
| 0780-02-01-.15 | Used Manufactured Homes |
| 0780-02-01-.20 | Local Government Authorization to Perform Electrical Inspections |
| 0780-02-01-.21 | Inspection Fees |
| 0780-02-01-.22 | Boat Docks and Marinas |

# RULES
# OF
# DEPARTMENT OF COMMERCE AND INSURANCE
# DIVISION OF FIRE PREVENTION

## CHAPTER 0780-02-01
## ELECTRICAL INSTALLATIONS

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| 0780-02-01-.22 | Boat Docks and Marinas |


**0780-02-01-.01 SCOPE.**

(1) The provisions of this chapter shall apply to:

(a) Installation of electrical conductors and equipment within or on public and private buildings or other structures, including manufactured homes, modular building units and recreational vehicles not otherwise exempt under the provisions of Tenn. Code Ann. Title 68, Chapters 102 and 126; and floating buildings and other premises such as yards, carnivals, parking and other lots; and industrial substations.

(b) Installation of conductors that connect to the supply of electricity.

(c) Installations of other outside conductors on the premises.

Authority: T.C.A. §§ 68-102-113, 68-102-143, and 68-102-150.

**0780-02-01-.02 ADOPTION BY REFERENCE.** ~~Unless otherwise provided by applicable law or the provisions of this chapter, the required minimum standards for materials, installations, use of facilities, equipment, devices and appliances conducting, conveying, consuming or using electrical energy in, or in connection with, any building, structure, or any premises located in this state shall be those prescribed in the National Electrical Code, 2008 edition, published by the National Fire Protection Association, 1 Batterymarch Park, Quincy, Massachusetts 02169.~~

(1) Unless otherwise provided by applicable law or the provisions of this chapter, the required minimum standards for materials, installations, use of facilities, equipment, devices and appliances conducting, conveying, consuming or using electrical energy in, or in connection with, any building, structure, or any premises located in this state shall be those prescribed in the National Electrical Code (NEC), 2014 edition, published by the National Fire Protection Association (NFPA), 1 Batterymarch Park, Quincy, Massachusetts 02169 except for:

(a) Section 110.24, Available Fault Current which shall be optional.

Authority: T.C.A. §§ 68-102-113 and 68-102-143.

TÜV SÜD America, Inc.
10 Centennial Drive
Peabody, Massachusetts 01960

Underwriters Laboratories, Inc.
333 Pfingsten Road
Northbrook, Illinois 60062

or,

2. Are certified by another independent testing agency or laboratory to meet a standard which, in the Commissioner's, or designee's, judgment, provides an adequate level of safety by being:

(i) recognized nationally as an electrical product safety standard;

(ii) revised periodically to accommodate the latest developments in electrical products and installations; and

(iii) developed by the publisher in a manner which affords adequate opportunity for presentation and consideration of views of industry groups, experts, users, consumers, governmental authorities, and others having broad experience in the field involved.

(b) Any standard which is accepted by the American National Standards Institute (ANSI) shall be deemed to satisfy the requirements of part 2 of subparagraph (a) above.

(c) Where there is no published standard for a product under consideration which meets the requirements of part 2 of subparagraph (a) above, the testing agency or laboratory must identify, and justify the adequacy of, the standard or specifications on which its certification is based.

(d) Components of certified products must be evaluated for compliance with applicable safety standards, and determined to be suitable for use in such products.

(2) In lieu of evaluation by a testing agency or laboratory in accordance with paragraph (1)(a) above, the Commissioner of Commerce and Insurance, or designee, may consider other satisfactory evidence that a product meets safe and proper standards

Authority: T.C.A. §§ 68-102-113, 68-102-143, and 68-102-150.

**0780-02-01-.04 INSPECTIONS.**

(1) Inspections of electrical installations ~~will~~may be conducted by deputy inspectors appointed under contract with the Commissioner of Commerce and Insurance pursuant to T.C.A. § 68-102-143. In circumstances where the need arises as determined by the Commissioner of Commerce and Insurance, or designee, ~~supervisors of deputy inspectors~~deputy fire marshals are authorized to conduct inspections of electrical installations.

(a) Fees for such inspections for services, including all circuits connected thereto, based on total ascertainable ampere capacity, are specified in ~~rule~~Tenn. Comp. R. & Regs. 0780-02-01-.21. If the total ampere capacity is not ascertainable, the inspector may negotiate the fee based on the estimated number of required inspections; however, any such fee shall be subject to review and approval by the Commissioner of Commerce and Insurance, or designee, prior to issuance of a permit.

(b) Fees charged for additional inspections including inspections necessitated by rejections and inspections for circuits not previously connected to the service, shall be based on the ascertainable ampere capacity of the service or ascertainable ampere capacity of the previously unconnected circuit, and shall not exceed the maximum amounts specified in ~~rule~~Tenn. Comp. R. & Regs. 0780-02-01-.21.

(c) Inspectors may not charge mileage in excess of the standard travel reimbursement rate, as determined by the Tennessee Department of Finance and Administration, per mile each way for any special trip(s) requested by a property owner or contractor. This mileage charge must be approved in advance by the Commissioner of Commerce and Insurance, or designee.

(2) (a) Inspections ~~are~~shall be required on:

1. Complete new installations~~.~~;

2. HVAC equipment~~.~~;

3. New services, re-connections, or changes in services to existing installations~~.~~;

4. Additions to existing installations, such as swimming pools, water well pumps to the wellhead, motor installations, additional rooms or spaces to existing buildings, grain drying equipment and out buildings~~.~~;

5. Heat cable installations before being concealed by plaster, sheet rock, or other methods~~.~~;

6. Conduit or raceways in or under masonry before covering with concrete or other permanent materials~~.~~;

7. Conductors or raceways installed in all structures. This inspection is required prior to the concealing of such conductors or raceways by wall covering materials or by insulation~~.~~;

8. Temporary services~~.~~; and

9. Electrical signs.

(b) A minimum of two (2) inspections shall be required on wiring installed within or on public and private buildings or other structures. The installer shall notify the electrical inspector in writing whenever any part of a wiring installation is to be hidden from view by insulation or the permanent placement of part of the building. No wiring or raceways shall be concealed until it has been inspected and approved by the inspector. A final inspection shall be requested upon completion of the entire electrical installation.

(3) When the initial ("rough-in") inspection is conducted:

(a) All applicable circuit conductors and outlet boxes ~~must~~shall be installed;

(b) All joints shall be made; and

(c) All grounding connections ~~must~~shall be in compliance with Section 300.10 of the 20~~08~~14 National Electrical Code except as set forth in the exceptions enumerated in this subparagraph.

1. Exception No. 1: Where that portion of an installation which constitutes service conductors and equipment is changed or modified.

2. Exception No. 2: Where all wiring or raceway is exposed.

3. Exception No. 3: The requirements of (a) above shall not apply where inspection is performed on raceway systems only.

(4) The electrical contractor, ~~or~~the ~~M~~mechanical ~~C~~contractor, or the permit holder ~~is~~shall be responsible for making sure the inspector has access to the job to be inspected.

(5) The ~~installer~~ permit holder shall notify the inspector when the electrical installation is ready for inspection.

(6) Except as provided in ~~rule~~Tenn. Comp. R. & Regs. 0780-02-01-.05(2) and for installers licensed in accordance with T.C.A. Title 69, Chapter 10, the inspector shall not issue a final certificate of approval on an installation performed by any person, firm, corporation or legal entity not duly licensed in accordance with T.C.A. Title 62, Chapter 6.

(7) It is not intended that electric service to an existing installation be disrupted pending inspection of additions or changes to such service; however, an inspection ~~is~~shall be required within seven (7) days of re-connection by the Power Supplier.

~~(8) Whenever service equipment has been changed out or upgraded on any existing structures, a safety inspection will be conducted pursuant to *Tenn. Code Ann. §68-102-143(5).*~~

(~~9~~8) Inspections ~~are~~shall not be required on:

(a) Minor repair work, such as replacement of lamps or connection of portable devices to suitable receptacles which have been permanently installed~~.~~; and

(b) Installation, alteration, or repair of electric wiring or equipment installed by an electrical distribution agency for use in the generation, transmission, distribution, or metering of electrical energy.

(~~10~~9) The inspector shall not issue a final certificate of approval on an installation if a building permit has not been obtained, if required, plans have not been reviewed and approved by the Department of Commerce and Insurance, if required, or all inspections have not been performed pursuant to ~~rule~~Tenn. Comp. R. & Regs. 0780-02-23-.07.

(10) For residential and commercial buildings, electrical power shall be supplied to the building in order for inspector to perform final inspection.

**Authority:** T.C.A. §§ 68-102-113, 68-102-143, and 68-102-150.

**0780-02-01-.05 PERMITS.**

(1) No electrical wiring on which an inspection is required by this chapter shall be installed without securing an electrical permit from the power distributor, local building official, Commissioner, or designee, or other issuing agent authorized by the Commissioner, or designee. The permit ~~must~~shall be secured in the area where the work is to be performed; unless, the permit is secured from the Commissioner, or designee. Issuing agents may charge a fee of no more than five dollars ($5.00) for the issuing of a permit. This fee is in addition to all applicable inspection fees in Tenn. Comp. R. & Regs. 0780-02-01-.21.

(2) Residential and Non-residential Property Owner's Permits

(a) Any person may perform electrical work (for which an inspection is required) upon his/her own residence provided he/she first applies for and obtains a residential property owner's electrical permit. This permit shall only extend to the applicant and the immediate members of the applicant's family. The permit shall not authorize assistance by any other person not duly licensed in accordance with T.C.A. Title 62, Chapter 6. A residential property owner's permit shall automatically expire upon completion of the work for which the permit was issued. All work done under such permit shall be subject to regular inspection requirements and fees and other applicable laws and regulations. Only one (1) property owner's permit may be obtained within a twelve (12) month period unless the property owner can establish loss of his/her home by fire, windstorm, etc.; and,

(b) Any non-residential property owner may obtain a permit for electrical work to be performed on his/her property by an employee(s) licensed pursuant to T.C.A. Title 62, Chapter 6, or T.C.A. Title 69, Chapter 10, who will be performing the work in accordance with his/her, duties as an employee(s) of the property owner. A non-residential property owner's permit shall be limited to the specific property listed on the permit and shall automatically expire upon completion of the work for which the permit was issued. All work done under such permit shall be subject to regular inspection requirements and fees and other applicable laws and regulations.

(3) No permit ~~will~~shall be required for installation of electrical systems by manufacturers of factory-manufactured structures, recreational vehicles, or modular building units~~;~~. ~~however, such manufacturers shall register with the Division of Fire Prevention of the Department of Commerce and Insurance, as required by *Tenn.Code Ann. §68-102-150.*~~ This rule in no way exempts owners of any manufactured home, recreational vehicle or modular building unit from the required installation permit and inspection governed by this chapter.

(4) When applying for a permit, an applicant shall present:

(a) A check or money order in the amount of the permit fee for inspection(s), payable to the Department of Commerce and Insurance of the State of Tennessee; and

(b) Except for a residential property owner's permit, proof of licensure pursuant to T.C.A. Title 62, Chapter 6 or T.C.A. Title 69, Chapter 10. For a non-residential property owner's permit, the license number of the employee(s) to perform the work and certification that the employee(s) licensed pursuant to T.C.A. Title 62, Chapter 6 or T.C.A. Title 69, Chapter 10, will be performing the work in accordance with his/her duties as an employee(s) of the property owner.

(5) All electrical permits are non-transferable.

(6) In the event of rejection of an electrical installation by the inspector, a new electrical permit must be applied for and obtained.

(7) Every electrical permit shall expire two (2) years from the date of issue unless:

(a) the inspector determines that substantial progress has been made in the work authorized by the permit; and

(b) the permit holder is granted an exception after submitting a written request to the Director of the Electrical Section of the Division of Fire Prevention.

No electrical work for which a permit is required shall be commenced in any building or premises until a permit to perform such work is obtained.

(8) A copy of the permit shall be placed in the service equipment enclosure as soon as such enclosure is installed.

(9) If a refund for a permit fee for inspection is requested, eighty-five (85%) percent of the permit fee, the fee that would have been paid to the inspector for the inspection, will be refunded. The remaining fifteen (15%) percent of the permit fee is non-refundable to cover administrative and processing costs. Requests for refunds ~~must~~shall be made to the Division of Fire Prevention on the applicable form, completed in full, and ~~must be~~ made prior to an inspection being performed.

(10) A returned check will result in the revocation of an issued permit.

Authority: T.C.A. §§ 68-102-113, 68-102-143, and 68-102-150.

**0780-02-01-.06 EMERGENCY SITUATIONS.**

(1) Power suppliers may energize services under emergency conditions resulting from windstorm, earthquakes or other catastrophic occurrences.

(2) Connections for emergency or delayed inspections shall not be made unless a permit has been obtained.

Authority: T.C.A. §§ 68-102-113 and 68-102-150.

**0780-02-01-.07 SPECIAL OCCUPANCIES.**

(1) All lighting fixtures in barns and other outbuildings shall be of the non-conductor type directly fastened to the outlet box. Drop lights shall not be installed in barns or other buildings, unless specifically approved for the purpose used. All convenience receptacles in outbuildings shall be at least three (3) feet above floor level. Wiring in hay mows shall be installed in conduit or otherwise protected against mechanical injury.

(2) Conductors serving swimming pools which originate at a dwelling unit service equipment or sub-panel located on the interior of the dwelling unit may be installed utilizing the appropriate wiring methods contained in Chapter 3 of the 20~~08~~14 National Electrical Code. The wiring method shall comply with Article 680, 20~~08~~14 National Electrical Code regarding that portion of the installation on the exterior of the dwelling unit.

Authority: T.C.A. §§ 68-102-113, 68-102-143, and 68-102-150.

**0780-02-01-.08 METER LOCATION.**

(1) The power supplier will determine the physical location of the meter base.

(2) For multi-occupancy structures, metering equipment shall be identified to indicate the occupancy serviced.

Authority: T.C.A. §§ 68-102-113, 68-102-143, and 68-102-150.

**0780-02-01-.09 INSTALLATIONS SERVICED BY MULTIPLE SOURCES.** Transfer equipment associated with installations served by alternate sources of supply shall be equipped with the necessary equipment to prevent backfeed of power onto the power supplier's system when the power supplier's local system is not energized by its own source of power. Protective equipment and installation of equipment to prevent backfeed shall be approved by the power supplier.

Authority: T.C.A. §§ 68-102-113 and 68-102-150.

**0780-02-01-.10 SERVICE ENTRANCE CONDUCTORS.** Service entrance conductors shall be installed in conduit where such conductors serve a structure with exterior walls of brick, stone, masonry, metal or metal-clad.

Authority: T.C.A. §§ 68-102-113 and 68-102-150.

**0780-02-01-.11 DWELLING UNITS.**

(1) Where installed as separate units, ovens and cooktop units shall be served by individual circuits.

(2) Light fixtures in clothes closets twenty-eight (28") inches or less in depth shall be mounted on the ceiling or wall above the door. These fixtures shall be so located that the fixture is within four (4") inches of the intersection of the ceiling and entrance wall. Such fixtures shall be thermally protected and either incandescent recessed with solid lens or fluorescent ~~with single bulb holder~~fixtures. Fixtures installed in closets of larger dimensions shall comply with the 20~~08~~14 edition of the National Electrical Code.

(3) Only designated circuits shall be energized following a "service ~~entrance~~release" inspection. Such an inspection shall only be valid for a period of forty-five (45) days from the date of inspection.

(4) All electrical connection, including HVAC equipment, ~~will~~shall be completed and inspected prior to final approval pursuant to ~~Tenn. Code Ann.~~ §§ 68-102-143(c) and (e), except as defined in paragraph (3) of this section.

(5) ~~Except as provided in Tenn. Code Ann. § 68-120-111(b), n~~No newly constructed one-and-two family dwelling~~s~~ shall be approved for connection of ~~new~~ electric service on a permanent basis under T.C.A. § 68-102-143, unless ~~such~~the dwelling is equipped with ~~at least one (1)~~ a smoke ~~detector~~alarm ~~which, when activated, initiates an alarm audible in every sleeping room. The detector or detectors shall be~~that has been:

(a) Listed in accordance with the standards of Underwriters' Laboratories, or another testing agency or laboratory accepted by the state fire marshal; and

(b) Installed in accordance with the ~~2003 International Residential Code, published by the International Code Council, Inc.,~~ building construction safety standards adopted pursuant to T.C.A. § 68-120-101 and in accordance with the manufacturer's directions, unless those directions conflict with applicable ~~codes that are~~ standards adopted by the state fire marshal. Notwithstanding the ~~provisions of the 2003 International Residential Code~~ building construction safety standards adopted pursuant to T.C.A. § 68-120-101, battery operated smoke ~~detectors~~alarms shall be permitted when installed in buildings without commercial power.

(6) Service equipment shall have only one (1) main means of disconnecting services of two hundred twenty-five (225) amps or below.

(7) The installation of receptacles for island counter spaces and peninsular counter spaces below the countertop shall be optional.

(8) Receptacles ~~are~~shall not be required in the wall space behind doors which may be opened fully against a wall surface. Wall space measurement shall begin at the edge of the door when fully opened.

(9) Light fixtures in crawl spaces shall have guarded covers.

(~~9~~10) Occupancy of a dwelling ~~is~~shall be prohibited before final inspection has been completed and approved.

(10~~1~~) ~~In Article 210.12(B) of the 2008 edition of the National Electrical Code, arc-fault circuit interrupters, combination type, shall be required for all bedrooms and in all other rooms shall be optional.~~ There shall be a maximum of no more than ~~ten~~thirteen (~~10~~13) outlets on a fifteen (15) ampere circuit or no more than ~~twelve~~fifteen (~~12~~15) outlets on a twenty (20) ampere circuit. Smoke alarm outlets are exempt from the count.

(11~~2~~) In Article 334.15(C) of the 20~~08~~14 edition of the National Electrical Code, Nonmetallic-Sheathed Cable shall not be required to be run through bored holes in unfinished basements and crawl spaces with less than four (4') feet and six (6") inches of clearance.

~~(12) In Article 406.8(B) of the 2008 edition of the National Electrical Code, the installation of listed weather-resistant type receptacles shall be optional.~~

Authority: T.C.A. §§ 68-102-113, 68-102-143, 68-102-150 and 68-120-111.

**0780-02-01-.12 OVERCURRENT PROTECTION.** Circuit breakers used as overcurrent protection for circuits serving devices not requiring a grounded (neutral) conductor, such as a 240V water heater, shall be multipole breakers. Single pole circuit breakers with tie handles shall not be approved for this purpose.

Authority: T.C.A. §§ 68-102-113 and 68-102-150.

**0780-02-01-.13 WORK SPACE ABOUT HVAC EQUIPMENT.**

(1) Installation in attic spaces.

(a) Entrance way providing access to equipment shall not be less than the largest piece of equipment to be replaced.

(b) There shall be a vertical clearance of at least four (4) feet and six (6) inches for use by those conducting necessary examination. In addition there shall be a walkway not less than twenty-four (24) inches wide on the ceiling joist running from the attic opening to the equipment, without an obstruction.

(2) Installation in crawl spaces underneath buildings.

(a) Entrance way providing access to equipment shall not be less than the largest piece of equipment to be replaced.

(b) There shall be a vertical clearance of at least four (4') feet and six (6") inches unobstructed crawl space to the unit.

(c) If four (4') feet and six (6") inches of clearance cannot be maintained, the unit shall be located no more than twelve (12') feet from the entrance opening and a clear unobstructed crawl space not less than thirty (30") inches in height and twenty-four (24") inches in width shall be maintained.

(d) Light fixtures in crawl spaces shall have guarded covers.

Authority: T.C.A. §§ 68-102-113, 68-102-143, and 68-102-150.

**0780-02-01-.14 REPEALED.**

Authority: T.C.A. §§ 68-102-113 and 68-102-150. Administrative History: Original rule certified June 10, 1974. Amendment filed October 24, 1974; effective January 17, 1975. Amendment filed April 20, 1978; effective May 22, 1978. Repeal and new rule filed October 27, 1981; effective December 11, 1981. Repeal and new rule filed June 28, 1984; effective July 28, 1984. Repeal and new rule filed March 12, 1987; effective April 26, 1987. Repeal filed June 27, 1990; effective August 11, 1990.

**0780-02-01-.15 USED MANUFACTURED HOMES.**

(1) Manufactured homes shall have listed, enclosed-type service-entrance equipment located inside the manufactured home, with proper rated overcurrent protection for each branch circuit. Overcurrent protection for circuits of twenty (20) amperes or less may be either circuit breakers, or plug fuses and fuse holders of Type "S", and shall be of the time-delay type. The manufactured home disconnecting means located inside shall be fed from an outside location with a feeder from the main service entrance for such manufactured home. If the supply or feeder from the main service to the disconnecting means located inside does not have a grounding conductor as required by Article 550 of the 2008~~14~~ edition of the National Electrical Code, one shall be installed.

(2) Inspection shall be both visual and mechanical; switch and receptacle plates and light fixtures will be removed to check conductor connections, insulation of splices, boxes, and general code requirements.

(3) After the mechanical test and visual inspections have been made, a safety inspection certificate may be issued as determined by the inspector.

Authority: T.C.A. §§ 68-102-113, 68-102-143, 68-102-147, and 68-102-150.

**0780-02-01-.16 REPEALED.**

Authority: T.C.A. §68-102-113. Administrative History: Original rule filed June 27, 1990; effective August 11, 1990. Repeal filed July 15, 2003; effective September 28, 2003.

**0780-02-01-.17 LOCAL ORDINANCES.**

No city, county, town, municipal corporation, metropolitan government or political subdivision of this state shall adopt or enforce any ordinance prescribing less stringent electrical standards than those established hereunder as determined by the Division.

Authority: T.C.A. §§ 68-102-113, 68-102-143, and 68-102-150.

(Rule 0780-02-01-.18, continued)

**0780-02-01-.18 PERMIT ISSUING AGENTS.**

(1) All individuals, including all business entities, municipalities, and cooperatives, who undertake to issue electrical permits under this chapter must hold a current contract with the Department of Commerce and Insurance, as administered through the Electrical Section of the Division of Fire Prevention.

(2) State deputy electrical inspectors and their immediate families are ineligible to become issuing agents. Additionally, without prior approval from the Department, no individual or business entity in any way related to or financially associated with any Department official will be allowed to become an issuing agent.

Authority: T.C.A. §§ 68-102-113 and 68-102-143.

**0780-02-01-.19 REPEALED.**

Authority: T.C.A. §68-102-113. Administrative History: Original rule filed October 15, 1999; effective December 29, 1999. Repeal filed July 15, 2003; effective September 28, 2003.

**0780-02-01-.20 LOCAL GOVERNMENT AUTHORIZATION TO PERFORM ELECTRICAL INSPECTIONS.**

(1)

(a) Pursuant to T.C.A. § 68-102-143(b)(1), the Commissioner of Commerce and Insurance may authorize a local government to conduct electrical inspections through the local government's appointed deputy inspectors. This inspection authority shall cover all types of electrical installations in accordance with the law, except for state owned or leased properties ~~and Electric Vehicle Supply Equipment (EVSE)~~ which remain under the jurisdiction of the Commissioner. ~~However, authorized local jurisdictions that have adopted the 200814 NEC National Electrical Code or a subsequent code edition and have been trained on the installation of EVSEs by the Division of Fire Prevention of the Department of Commerce and Insurance will be allowed to inspect such installations.~~

(b) Deputy inspectors appointed in such a manner are authorized to inspect electrical installations upon receipt of a request from the owner of the property or from any person, association or corporation supplying electrical energy to the installations, or from municipal governing bodies, or from the county legislative body of the county in which the installations are located and the inspectors for their compensation are authorized to charge for and received a fee for each inspection.

(c) If a conflict arises between the state fire marshal and the local government relative to the application or interpretation of the same or substantially identical electrical safety standards, then the determination of the state fire marshal shall supersede the conflicting application or interpretation by the local government.

(d) This rule sets forth the criteria by which local governments may seek authorization to perform electrical inspections and procedures by which the Commissioner, or designee, may review such authorization.

(2) Initial Authorization.

(a) Prior to being authorized to perform electrical inspections, the local government, through the county executive, the county commission, the mayor or the city council, shall make a written request to the state fire marshal.

(b) The request shall be completed on a form approved by the state fire marshal and shall contain the following information:

1. The title(s) and edition(s) of the code(s) that will be adopted and enforced;

2. The number and types of inspections of each installation (final, rough-in, temporary, HVAC, service release, re-inspect) that will be conducted;

3. A detailed description of the permit issuance and record-keeping process for all inspection activities;

4. The names of all persons who are employed by the local government to perform electrical inspections and who have successfully completed the respective certification examinations of the International Association of Electrical Inspectors (IAEI- 1 & 2 Family and Electrical General or Electrical Commercial), the International Code Council (ICC- Residential Electrical Inspector and Commercial Electrical Inspector), or any other certification designations approved by the Commissioner, or designee. All necessary certifications shall be obtained prior to performing electrical inspections.

(c) After receipt of the information required in paragraph (2)(b) of this rule, the state fire marshal will schedule a pre-authorization review to take place at the applying local government's office. During this review, the state fire marshal may review any and all records related to the local government's proposed electrical inspection program, including the certification records of persons employed to perform electrical inspections.

(d) If after consideration of the information required in paragraph (2)(b) of this rule and after the pre-authorization review the state fire marshal determines that the local government can adequately enforce electrical codes and conduct electrical inspections, the state fire marshal may authorize the local government to conduct electrical inspections.

(3) The local government's adopted electrical code publication shall be current within seven (7) years of the date of the latest edition thereof, unless otherwise approved by the state fire marshal.

(4) Review of Local Government Authorization.

(a) For any local government that was authorized to conduct electrical inspections before January 1, 2005, the state fire marshal will conduct a review as soon as practicable of the local government's authorization to conduct electrical inspections to determine whether the local government is adequately enforcing the adopted electrical codes and is properly performing inspections.

(b) For any local government that is authorized to conduct electrical inspections on or after January 1, 2005, the state fire marshal will conduct a review of the local government's authorization to conduct electrical inspections to determine whether the local government is adequately enforcing the adopted electrical codes, is properly performing inspections and is otherwise in compliance with the information originally submitted to the state fire marshal for purposes of gaining authorization to perform

electrical inspections. The review provided by this paragraph shall take place at least once every three (3) years.

(c) Each local government that is reviewed pursuant to this paragraph will be notified of the review in writing. When a local government is subject to the review provided by this paragraph, the local government shall submit the information required for initial authorization by paragraph (2)(b) of this rule on a form provided by the state fire marshal within thirty (30) days of its receipt of the form.

(d) As part of the review, the state fire marshal may also conduct an on-site visit to the local government to review the electrical permit and inspection process.

(e) The state fire marshal may request any other documentation it deems necessary for the local government to evidence compliance with the requirements for initial authorization set forth in paragraph (2)(b) of this rule.

(f) Report of Review.

1. After conclusion of the review, the state fire marshal will notify the local government in writing whether there are any area(s) in which the local government is not adequately enforcing the adopted electrical codes or properly performing inspections.

2. If the local government is not adequately enforcing the adopted electrical codes or properly performing inspections, the notification will contain recommended corrective action, and the local government will be directed to submit a plan of corrective action to the state fire marshal within thirty (30) days after its receipt of the notification. The plan of corrective action shall be sufficiently detailed so as to ensure compliance with all requirements for initial authorization.

3. Within thirty (30) days after receipt of the local government's plan of corrective action, the state fire marshal shall either approve or disapprove the plan. If the plan is approved, the state fire marshal may conduct periodic follow-up reviews to ensure continued compliance with the plan. If the plan is not approved, the state fire marshal may remove the local government's authorization to conduct electrical inspections.

Authority: T.C.A. §§ 68-102-113 and 68-102-143(b)(1).

**0780-02-01-.21 INSPECTION FEES.**

The inspection fee for each inspection for services shall not exceed the following:

| | Fee |
|---|---|
| Final Inspection | |
| 0-200 ampere capacity | ~~$27~~35.00 |
| 201-400 ampere capacity | $40.00 |
| 401-600 ampere capacity | $50.00 |
| 601-1000 ampere capacity | $90.00 |
| 1,001 ampere capacity and above ("Nonstandard permit") | Fee is negotiable; however, any such fee shall be subject to review and approval by the commissioner, or designee. |

| | |
|---|---|
| Rough-in Inspection | |
| 0-1,000 ampere capacity | ~~$27~~35.00 |
| 1,001 ampere capacity and above | $35.00 |
| Re-inspection | |
| Based on rejection of 0-1,000 ampere capacity | ~~$27~~35.00 |
| Based on rejection of 1,001 ampere capacity and above | $35.00 |
| Inspection of a dwelling unit's heating and/or cooling system (e.g. HVAC) | ~~$27~~35.00 |
| Consultation Inspection (optional/available upon request) | $50.00 |
| Service Release Inspection (valid for 45 days) | Fee is based on ampere capacity of service. |
| Inspection of Boat Docks and Marinas | Fee is negotiable based upon the number of subpanels, panels and the ampere capacity of service; however, any such fee shall be subject to review and approval by the commissioner, or designee. |

Authority: T.C.A. §§ 68-102-113, 68-102-143(b)(2) 68-102-602, and 68-102-603.

**0780-02-01-.22 BOAT DOCKS AND MARINAS.**

(1) Safety inspections of boat docks and marinas shall include, but are not limited to, a review of all sources of electrical supply, including ship-to-shore power pedestals, submergible pumps, and sewage pump-out facilities, that could result in unsafe electrical current in the water for the purpose of ensuring compliance with the standards for maintenance of electrical wiring and equipment that were applicable to the marina at the time of installation.

(2) (a) In the event that a deficiency is found during a safety inspection, any subsequent inspection required for the inspection of repairs made to address such deficiency shall be conducted by a deputy electrical inspector commissioned under T.C.A. § 68-102-143, and in accordance with T.C.A. § 68-102-143 and Tenn. Comp. R. & Regs. 0780-02-01.

(b) The permit fee for inspection of boat docks and marinas are negotiable based upon the number of subpanels, panels and the ampere capacity of service; however, any such fee shall be subject to review and approval by the Commissioner of Commerce and Insurance, or designee.

(3) Any main overcurrent protective device, installed or replaced on or after April 1, 2015, that feeds a marina shall have ground-fault protection not exceeding one hundred milliamperes (100 mA). Ground-fault protection not exceeding one hundred milliamperes (100 mA) of each individual branch or feeder circuit shall be permitted as a suitable alternative. Each marina operator may determine the devices that it will utilize to achieve the one hundred milliamperes (100 mA) limit that is required herein, including, but not limited to, the use of equipment leakage circuit interrupters or ground fault circuit interrupters.

(4) Inspections shall be performed in accordance with the adopted electrical code edition effective at the time of installation. If the time of installation cannot be determined, the installation ~~will~~shall be inspected in accordance with the pertinent section related to Marinas and Boatyards, Article 555 in the edition of the National Electrical Code adopted in ~~rule~~Tenn. Comp. R. & Regs. 0780-02-01-.02, unless otherwise authorized by the Commissioner of Commerce and Insurance, or designee.

(5) The regulation regarding a maximum of one thousand (1000) volts phase to phase being permitted in yard and pier distribution systems as specified in Article 555.4, Distribution System of the edition of the National Electrical Code adopted in Tenn. Comp. R. & Regs. 0780-02-01-.02 may be exceeded if written documentation is submitted from an engineer licensed in the State of Tennessee approving the additional voltage.

Authority: T.C.A. §§ 68-102-113, 68-102-143(b)(2), 68-102-602, and 68-102-603.

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

| Board Member | Aye | No | Abstain | Absent | Signature (if required) |
|---|---|---|---|---|---|
| | | | | | |

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the Commissioner of CDI (board/commission/ other authority) on 01/18/2017 (mm/dd/yyyy), 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: 07/28/16

Rulemaking Hearing(s) Conducted on: (add more dates). 09/27/16

Date: 1/18/17

Signature: Julie Mix McPeak

Name of Officer: Julie Mix McPeak

Title of Officer: Commissioner of the Department of Commerce and Insurance

DENISE M. LEWIS
STATE OF TENNESSEE
NOTARY PUBLIC
WILSON COUNTY
My Commission Expires

Subscribed and sworn to before me on: 1/18/17

Notary Public Signature: Denise M Lewis

My commission expires on: 1/15/20

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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

3/6/2017
Date

**Department of State Use Only**

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PUBLICATIONS

Filed with the Department of State on: 3/23/17

Effective on: 6/21/17

Tre Hargett
Secretary of State

## G.O.C. STAFF RULE ABSTRACT

| | |
|---|---|
| DEPARTMENT: | Commerce and Insurance |
| DIVISION: | Insurance |
| SUBJECT: | Medicare Supplement Insurance Minimum Standards |
| STATUTORY AUTHORITY: | Tennessee Code Annotated §§ 56-1-701, 56-2-301, 56-6-112, 56-6-124(a), 56-7-1501 et seq., 56-7-1503, 56-7-1504, 56-7-1505, 56-7-1507, and 56-32-118(a), and Omnibus Budget Reconciliation Act of 1990, Pub. L. No. 101-508, (1990), Genetic Information Non Discrimination Act, Pub. L. No.: 110-233 (2008), and Medicare Improvements for Patients and Providers Act, Pub. L. No.: 110-275 (2008) authorize the Commissioner to promulgate rules to regulate the rate structures for Medicare supplement policies or certificates. |
| EFFECTIVE DATES: | June 14, 2017 through June 30, 2018 |
| FISCAL IMPACT: | None |
| STAFF RULE ABSTRACT: | These rulemaking hearing rules establish authority within the Commissioner to approve attained age rate structures for Medicare supplement policies or certificates based upon a determination that the benefits provided in the policy are reasonable in relation to the premium charged using the supporting documentation that insurers are required to file for all rate approvals. |

**Public Hearing Comments**

One copy of a document containing responses to comments made at the public hearing must accompany the filing pursuant to T.C.A. § 4-5-222. Agencies shall include only their responses to public hearing comments, which can be summarized. No letters of inquiry from parties questioning the rule will be accepted. When no comments are received at the public hearing, the agency need only draft a memorandum stating such and include it with the Rulemaking Hearing Rule filing. Minutes of the meeting will not be accepted. Transcripts are not acceptable.

**There were no comments received during the public comment period.**

**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.

The Department of Commerce and Insurance has considered whether the proposed rules in these Rulemaking Hearing Rules are such that they will have an economic impact on small businesses (businesses with fifty (50) or fewer employees). The proposed rules are not anticipated to have a significant impact on small businesses. Tenn. Code Ann. §§ 56-1-701, 56-2-301, 56-6-112, 56-6-124(a), 56-7-1501 et seq., 56-7-1503, 56-7-1504, 56-7-1505, 56-7-1507, and 56-32-118(a), and Omnibus Budget Reconciliation Act of 1990, Pub. L. No. 101-508, (1990), Genetic Information Non Discrimination Act, Pub. L. No.: 110-233 (2008), and Medicare Improvements for Patients and Providers Act, Pub. L. No.: 110-275 (2008) authorize the Commissioner to promulgate rules in order to regulate the rate structures for Medicare supplement policies or certificates. The proposed amendment eliminates the one (1) year banding and annual increase requirements for such policies, replacing them with a reasonableness standard.

The outcome of the analysis set forth in Tenn. Code Ann. § 4-5-403 is as follows:

(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.

The proposed rules will only apply to insurance companies writing Medicare supplement policies or certificates. While there may be some insurance companies considered to be small business affected by these rules, it is estimated that this number is small.

(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 projected reporting, recordkeeping, and other administrative costs associated with compliance with this proposed rule, are not anticipated to increase from that which exists under the current rules these proposed rules amend.

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

The effect on small businesses is minimal. The proposed amendment will positively affect consumers by allowing for a more flexible rating structure, and will only affect those insurance companies writing Medicare supplement policies or certificates.

(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 alternative methods to make the proposed rule less costly, less intrusive, or less burdensome.

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

42 U.S.C.A. § 1395ss(b)(1)(A) requires states approving Medicare supplemental policies to enforce standards with respect to such policies equal to or more stringent than the NAIC Model Standards. Section 15(A) of the 2016 Model Regulation to Implement the NAIC Medicare Supplement Insurance Minimum Standards Model Act ("Act") requires insurers to obtain approval for Medicare supplement policy rates by filing the rates along with supporting documentation with the Commissioner in accordance with the filing requirements prescribed by the Commissioner. Rule 0780-01-58-.17 similarly provides that insurers doing business in Tennessee are required to obtain rate approval by filing such rates with the Commissioner along with supporting documentation The proposed rule will allow the Commissioner to approve "attained age" rate structures for Medicare supplement policies that are reasonable in relation to the premium charge. The determination regarding whether certain "attained age" rates are reasonable in relation to the premium charged will be made using the supporting documentation that insurers are required to file for all rate approvals.

Most states have similar language permitting the Director and/or Commissioner of Insurance of that state discretion to approve certain rate methodologies if they are proven to be reasonable by supporting documentation.

(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.

Only insurance companies writing Medicare supplement policies or certificates are required to comply with this rule. Exempting any company from these proposed rules would place Tennessee residents at a risk of receiving disparate rating for Medicare supplement policies or certificates issued within the State of Tennessee.

**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)

This rule will not have an 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;

These rules establish authority within the Commissioner to approve attained age rate structures for Medicare supplement polices or certificates based upon a determination that the benefits provided in the policy are reasonable in relation to the premium charged using the supporting documentation that insurers are required to file for all rate approvals.

**(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;

Tennessee Code Annotated §§ 56-1-701, 56-2-301, 56-6-112, 56-6-124(a), 56-7-1501 et seq., 56-7-1503, 56-7-1504, 56-7-1505, 56-7-1507, and 56-32-118(a), and Omnibus Budget Reconciliation Act of 1990, Pub. L. No. 101-508, (1990), Genetic Information Non Discrimination Act, Pub. L. No.: 110-233 (2008), and Medicare Improvements for Patients and Providers Act, Pub. L. No.: 110-275 (2008) authorize the Commissioner to promulgate rules to regulate the rate structures for Medicare supplement policies or certificates.

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

These rules will affect any insurance company licensed in the State of Tennessee which writes Medicare supplement policies or certificates.

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

The Department is not aware of any attorney general opinions or any judicial rulings directly related to this rule.

**(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;

None.

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

Brian Hoffmeister, Director of the Policy Analysis of the Insurance Division of the Tennessee Department of Commerce and Insurance.

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

Jenny Taylor, Assistant General Counsel for Insurance; Michael Humphreys, Assistant Commissioner for Insurance.

**(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

Davy Crockett Tower, 8th Floor, 500 James Robertson Parkway, Nashville, Tennessee 37243; 615-770-5305; jenny.taylor@tn.gov

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

| None. |
|---|

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Sequence Number: 03-17-17
Rule ID(s): 6467
File Date: 3/16/17
Effective Date: 6/14/17

# 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:** | Department of Commerce and Insurance |
| **Division:** | Insurance |
| **Contact Person:** | Jenny Taylor, Assistant General Counsel |
| **Address:** | Davy Crockett Tower, 8th Floor<br>500 James Robertson Pkwy<br>Nashville, TN |
| **Zip:** | 37243 |
| **Phone:** | (615) 770-5305 |
| **Email:** | Jenny.taylor@tn.gov |

**Revision Type (check all that apply):**

X 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** |
|---|---|
| 0780-01-58 | Medicare Supplement Insurance Minimum Standards |
| **Rule Number** | **Rule Title** |
| 0780-01-58-.17 | Filing and Approval of Policies and Certificates and Premium Rates |

(1) An issuer shall not deliver or issue for delivery a policy or certificate to a resident of this state unless the policy form or certificate form has been filed with and approved by the commissioner in accordance with filing requirements and procedures prescribed by the commissioner.

(2) An issuer shall file any riders or amendments to policy or certificate forms to delete outpatient prescription drug benefits as required by the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 only with the commissioner in the state in which the policy or certificate was issued.

(3) An issuer shall not use or change premium rates for a Medicare supplement policy or certificate unless the rates, rating schedule and supporting documentation have been filed with and approved by the commissioner in accordance with the filing requirements and procedures prescribed by the commissioner.

(4) (a) Except as provided in subparagraph (b), an issuer shall not file for approval more than one form of a policy or certificate of each type for each standard Medicare supplement benefit plan.

(b) An issuer may offer, with the approval of the commissioner, up to four (4) additional policy forms or certificate forms of the same type for the same standard Medicare supplement benefit plan, one for each of the following cases:

1. The inclusion of new or innovative benefits;

2. The addition of either direct response or agent marketing methods;

3. The addition of either guaranteed issue or underwritten coverage;

4. The offering of coverage to individuals eligible for Medicare by reason of disability.

(c) For the purposes of this section, a "type" means an individual policy, a group policy, an individual Medicare Select policy, or a group Medicare Select policy.

(5) (a) Except as provided in part 1., an issuer shall continue to make available for purchase any policy form or certificate form issued after the effective date of this Chapter that has been approved by the commissioner. A policy form or certificate form shall not be considered to be available for purchase unless the issuer has actively offered it for sale in the previous twelve (12) months.

1. An issuer may discontinue the availability of a policy form or certificate form if the issuer provides to the commissioner in writing its decision at least thirty (30) days prior to discontinuing the availability of the form of the policy or certificate. After receipt of the notice by the commissioner, the issuer shall no longer offer for sale the policy form or certificate form in this state.

2. An issuer that discontinues the availability of a policy form or certificate form pursuant to subparagraph (5)(a) shall not file for approval a new policy form or certificate form of the same type for the same standard Medicare supplement benefit plan as the discontinued form for a period of five (5) years after the issuer provides notice to the commissioner of

the discontinuance. The period of discontinuance may be reduced if the commissioner determines that a shorter period is appropriate.

(b) The sale or other transfer of Medicare supplement business to another issuer shall be considered a discontinuance for the purposes of this subsection.

(c) A change in the rating structure or methodology shall be considered a discontinuance under subparagraph (a) unless the issuer complies with the following requirements:

1. The issuer provides an actuarial memorandum, in a form and manner prescribed by the commissioner, describing the manner in which the revised rating methodology and resultant rates differ from the existing rating methodology and existing rates.

2. The issuer does not subsequently put into effect a change of rates or rating factors that would cause the percentage differential between the discontinued and subsequent rates as described in the actuarial memorandum to change. The commissioner may approve a change to the differential that is in the public interest.

(6) (a) Except as provided in subparagraph (b), the experience of all policy forms or certificate forms of the same type in a standard Medicare supplement benefit plan shall be combined for purposes of the refund or credit calculation prescribed in Rule 0780-1-58-.16.

(b) Forms assumed under an assumption reinsurance agreement shall not be combined with the experience of other forms for purposes of the refund or credit calculation.

(7) ~~An issuer shall not present for filing or approval a rate structure for its Medicare supplement policies or certificates issued based upon a structure or methodology with any groupings of attained ages greater than one year. The ratio between rates for successive ages shall increase smoothly as age increases.~~ The commissioner may approve "attained age" rate structures for Medicare supplement policies or certificates based upon a determination that the benefits provided in the policy are reasonable in relation to the premium charged.

Authority: T.C.A. §§ 56-1-701, 56-2-301, 56-6-112, 56-6-124(a), ~~56-7-1401 et seq., 56-7-1453, 56-7-1454, 56-7-1455, 56-7-1457,~~ 56-7-1501 et seq., 56-7-1503, 56-7-1504, 56-7-1505, 56-7-1507, and 56-32-118(a), and Omnibus Budget Reconciliation Act of 1990, Pub. L. No. 101-508, (1990), Genetic Information Non Discrimination Act, Pub. L. No.: 110-233 (2008), and Medicare Improvements for Patients and Providers Act, Pub. L. No.: 110-275 (2008).

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

| Board Member | Aye | No | Abstain | Absent | Signature (if required) |
|---|---|---|---|---|---|
| N/A | | | | | |

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the Commissioner of the Department of Commerce and Insurance on 1/27/17 (mm/dd/yyyy), 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: November 16, 2016

Rulemaking Hearing(s) Conducted on: (add more dates). January 10, 2017

Date: 1/27/17

Signature: Julie Mix McPeak

Name of Officer: Julie Mix McPeak

Title of Officer: Commissioner, Department of Commerce and Insurance

DENISE M. LEWIS
STATE OF TENNESSEE NOTARY PUBLIC
DAVIDSON COUNTY
My Commission Expires

Subscribed and sworn to before me on: 1/27/17

Notary Public Signature: Denise M Lewis

My commission expires on: 11/15/20

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

3/10/2017
Date

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Filed with the Department of State on: 3/16/17

Effective on: 6/14/17

Tre Hargett
Secretary of State

## G.O.C. STAFF RULE ABSTRACT

DEPARTMENT: Board of Cosmetology and Barber Examiners

DIVISION: Regulatory Boards

SUBJECT: Licensing; Rules of the Barber Board

STATUTORY AUTHORITY: Tennessee Code Annotated, Section 62-3-123(f)

EFFECTIVE DATES: June 7, 2017 through June 30, 2018

FISCAL IMPACT: Minimal

STAFF RULE ABSTRACT: 0440-01-.03 Allows any person holding a valid master barber certification to appear before the board and request to sit for the cosmetology exam. The Board may approve if the individual completes 300 cosmetology school hours at a licensed cosmetology school or holds a master barber registration in Tennessee or another jurisdiction with reciprocity with Tennessee for five continuous years.

0440-01-.05 Adds a requirement that anyone seeking to operate a new school shall first pay the fee and submit specific information to the Board such as a copy of their curriculum, a sample of their catalog, an enrollment agreement, a refund policy, a backup method for logging hours and a plan to keep part-time and full-time files separate. The rule adds requirements for schools to maintain certain documentation of refunds owed to students and have a written policy that explains how credit hours will be handled from other institutions as well as a policy detailing teach-out programs or student options in the event of a school's closure for an extended period of time. Requires schools to keep copies of all tests, evaluations, and progress reports in the students' files and requires students to initial all evaluations and progress reports. Upon yearly renewal of licenses, schools must disclose any changes to their student enrollment agreements or other changes affecting students.

0440-01-.06 Adds a requirement for schools to keep copies of all receipts or payments the student has made or

received in the student's files. This rule also adds a requirement that every student enrollment agreement shall include additional policies, must have page numbers, and be initialed by the student on each page. It also requires documentation for students enrolling in teaching programs that the school notify the enrollee in writing that one must have been licensed for three continuous years prior to applying for an instructor's license.

0440-01-.11 Adds a requirement that a teacher training program submitted for approval shall conform to professional standards as determined by the Board.

0200-01-.02 Adds a requirement that every student enrollment agreement shall include additional policies, must have page numbers, and be initialed by the student on each page. It also adds a requirement that anyone seeking to operate a new school shall first pay the fee and submit specific information to the Board such as a copy of its curriculum, a sample of their catalog, an enrollment agreement, a refund policy, a backup method for logging hours, and a plan to keep part-time and full-time files separate. This rule adds requirements for schools to maintain certain documentation of refunds owed to students and have a written policy that explains how credit hours will be handled from other institutions as well as a policy detailing teach-out programs or student options in event of a school's closure for an extended period of time. This rule requires schools to keep copies of all tests, evaluations, and progress reports in the student's file and students to initial all evaluations and progress reports. Upon the yearly renewal of a license, a school must disclose any changes to its student enrollment agreements or other changes affecting students. It also adds an apprenticeship curriculum allowing an applicant to obtain 50% of the required hours for a specific license through classroom instruction and 50% of the required hours under the direct supervision or responsible charge of a licensed professional. The rule provides definitions relevant to this rule and specifies how the apprenticeship curriculum must operate and details the specific records that must be maintained by any school offering an apprenticeship curriculum. The rule details the responsibility of a participating school to confirm a supervising licensed professional's qualifications and the documentation that the school must maintain related to that person. Provides transfer rules related to apprenticeship experience and details the amount of time to complete the program as well as the attire that must be worn by participating students.

0200-01-.13 Allows any person holding a valid cosmetology license to appear before the Board and request to sit for the master barber exam. The Board may approve if the individual completes 300 school hours at a registered barber college or holds a cosmetology license in Tennessee or another jurisdiction with reciprocity with Tennessee for five continuous years.

0200-01-.14 Adds a requirement that a teacher training program submitted for approval will conform to professional standards as determined by the Board.

**Public Hearing Comments**

One copy of a document containing responses to comments made at the public hearing must accompany the filing pursuant to T.C.A. § 4-5-222. Agencies shall include only their responses to public hearing comments, which can be summarized. No letters of inquiry from parties questioning the rule will be accepted. When no comments are received at the public hearing, the agency need only draft a memorandum stating such and include it with the Rulemaking Hearing Rule filing. Minutes of the meeting will not be accepted. Transcripts are not acceptable

1. Mr. Marquise Martin made a comment in the form of a question. Specifically, he wanted to know where he could obtain a copy of the rules being reviewed by the Board.

Board Response: The Board responded to the comment by stating that one could go to the main website at www.tn.gov and locate the Tennessee Board of Cosmetology and Barber Examiners page. On this page, one could sign up using the "get notified" link, which would allow one to access the rules.

2. Mr. Marquise Martin made a comment in the form of a question. Specifically, he wanted to know when the rules would go into effect.

Board Response: The Board responded to the comment by stating that there is no exact date for the rules to go into effect. Once the Board adopts the rules, they are sent to the Office of the Attorney General for a constitutionality review. Once the Attorney General signs off on the rules, they are filed with the Secretary of State. The rules must remain at the Secretary of State's office for 90 days. Depending upon the workflow of all the parties involved, the rules typically become effective within 120-150 days of adoption.

3. Ms. Lauren Davis made a comment in the form of a question. Specifically, she wanted to know whether the Board included a requirement as to how many years students' tests must be kept in their files post-graduation.

Board Response: The Board responded to the comment by citing a Federal requirement that the files be maintained for 10 years post-graduation.

4. Ms. Lauren Davis made a comment in the form of a question. Specifically, she wanted to know whether schools could meet the requirement to maintain students' tests in academic files by maintaining electronic copies as opposed to hard copies.

Board Response: The Board responded to the comment by stating that schools can comply with the new requirement by keeping electronic versions of the test results. The Board further indicated that hard copies do not have to be maintained. The reason for this rule is that some schools do not maintain these records, which becomes an issue when students question their test scores and/or file complaints.

5. Ms. Lauren Davis made a comment in the form of a question. Specifically, she wanted to know of any parameters on the Board's discretion, such as definitions, in evaluating teacher training programs; Ms. Davis thought this requirement related to the curriculum.

Board Response: The Board responded to the comment by stating that the rules merely allow the Board more discretion to determine what meets its professional standards as far as professional and unprofessional conduct. The Board cited the proposed rule, which states that the Board can make this determination by considering things such as fraud, unprofessional, immoral or dishonorable conduct.

**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;

The proposed rules will impact the 105 licensed barber and cosmetology schools in Tennessee.

(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;

These rules do not create any new schedules or deadlines for reporting compliance. No new profession will be required to administer these new rules.

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

The effect the proposed rules will have on small business owners and consumers will be positive. Businesses will be allowed to create a new program to offer to students, which will allow them to accept more students. Additionally, the proposed rules will allow applicants who wish to open schools to have a clearer understanding of the standards that the Board expects of school owners. Consumers will also benefit from these proposed rules. Potential students will have more flexibility and control in managing their own education. Schools will also be better managed resulting in an overall better experience for students and better educated professionals in the field.

(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 intrusive or less costly methods of achieving the purpose of these proposed rules.

(5) A comparison of the proposed rule with any federal or state counterparts; and

Multiple surrounding states offer an apprenticeship program such as but not limited to Georgia, Virginia, Arkansas, Alabama, North Carolina, Missouri, California, and New York.

(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.

The overwhelming majority of schools that are affected by these rules are small businesses. Therefore, allowing separate compliance requirements would not be feasible. These rules do not create any new schedules, deadlines, or reporting compliance. Additionally, the apprenticeship program is voluntary for any private institution. Thus, no school is required to partake if they do not wish to do so.

**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)

There is no expected impact on local governments by the promulgation of the proposed rules.

**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;

0440-01-.03 Allows any person holding a valid master barber certification to appear before the board and request to sit for the cosmetology exam. The Board may approve if the individual completes 300 cosmetology school hours at a licensed cosmetology school or holds a master barber registration in Tennessee or another jurisdiction with reciprocity with Tennessee for five continuous years.

0440-01-.05 Adds a requirement that anyone seeking to operate a new school shall first pay the fee and submit specific information to the Board such as a copy of their curriculum, a sample of their catalog, an enrollment agreement, a refund policy, a backup method for logging hours and a plan to keep part time and fulltime files separate. Regarding transfers, cancellations, and refunds, the rule adds requirements for schools to maintain certain documentation of refunds owed to students and have a written policy that explains how credit hours will be handled from other institutions as well as a policy detailing teach-out programs or student options in the event of a school's closure for an extended period of time. Requires schools to keep copies of all tests, evaluations, and progress reports in the students' files and requires students to initial all evaluations and progress reports. Upon yearly renewal of licenses, schools must disclose any changes to their student enrollment agreements or other changes affecting students.

0440-01-.06 Adds a requirement for schools to keep copies of all receipts or payments the student has made or received in the student's files. This rule also adds a requirement that every student enrollment agreement shall include additional policies, must have page numbers, and be initialed by the student on each page. It also requires documentation for students enrolling in teaching programs that the school notify the enrollee in writing that one must have been licensed for three continuous years prior to applying for an instructor's license.

0440-01-.11 Adds a requirement that a teacher training program submitted for approval will conform to professional standards as determined by the Board.

0200-01-.02 Adds a requirement that every student enrollment agreement shall include additional policies, must have page numbers, and be initialed by the student on each page. It also adds a requirement that anyone seeking to operate a new school shall first pay the fee and submit specific information to the Board such as a copy of its curriculum, a sample of their catalog, an enrollment agreement, a refund policy, a backup method for logging hours, and a plan to keep part time and fulltime files separate. Regarding transfers, cancellations, and refunds, this rule adds requirements for schools to maintain certain documentation of refunds owed to students and have a written policy that explains how credit hours will be handled from other institutions as well as a policy detailing teach-out programs or student options in event of a school's closure for an extended period of time. This rule requires schools to keep copies of all tests, evaluations, and progress reports in the student's file and students to initial all evaluations and progress reports. Upon yearly renewal of a license, a school must disclose

any changes to its student enrollment agreements or other changes affecting students.
It also adds an apprenticeship curriculum allowing an applicant to obtain 50% of the required hours for a specific license through classroom instruction and 50% of the required hours under the direct supervision or responsible charge of a licensed professional. The rule provides definitions relevant to this rule and specifies how the apprenticeship curriculum must operate and details the specific records that must be maintained by any school offering an apprenticeship curriculum. The rule details the responsibility of a participating school to confirm a supervising licensed professional's qualifications and the documentation that the school must maintain related to that person. Provides transfer rules related to apprenticeship experience and details the amount of time to complete the program as well as the attire that must be worn by participating students.

0200-01-.13 Allows any person holding a valid cosmetology license to appear before the Board and request to sit for the master barber exam. The Board may approve if the individual completes 300 school hours at a registered barber college or holds a cosmetology license in Tennessee or another jurisdiction with reciprocity with TN for five continuous years.

0200-01-.14 Adds a requirement that a teacher training program submitted for approval will conform to professional standards as determined by the Board.

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

The Amendments for Rule 0200-01-.02(4)(l) regarding the barber apprenticeship program is the only rule that is mandated in order to effectuate T.C.A. § 62-3-123(f) created by 2015 Pub. Ch. 402, which allows a barber student to obtain 50% of his/her required hours of education via an apprenticeship program.

There are no known other federal or state laws or rules requiring the promulgation of these rules.

**(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;

Cosmetology schools and barber schools are most directly affected by these rules. Neither cosmetology schools nor barber schools have taken a position to urge adoption or rejection of these rules in the form of public hearing comments or otherwise.

**(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;

There are no known opinions of the attorney general and reporter or any judicial ruling that directly relate to the rule or the necessity to promulgate the rule.

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

These rules are not expected to have a probable increase or decrease in state or local government revenues and expenditures from the promulgation of this rule. Any fiscal impact would be minimal.

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

Cherrelle Hooper
Assistant General Counsel

Roxana Gumucio
Executive Director

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

Cherrelle Hooper
Assistant General Counsel

Roxana Gumucio
Executive Director

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

None.

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Sequence Number: 03-06-17
Rule ID(s): 6455-6456
File Date: 3/9/17
Effective Date: 6/7/17

# 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:** | Tennessee Board of Cosmetology and Barber Examiners |
| **Division:** | Regulatory Boards |
| **Contact Person:** | Cherrelle Hooper, Assistant General Counsel |
| **Address:** | 500 James Robertson Parkway, Nashville, TN |
| **Zip:** | 37243 |
| **Phone:** | 615-741-3072 |
| **Email:** | cherrelle.hooper@tn.gov |

**Revision Type (check all that apply):**
x 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** |
|---|---|
| 0440-01 | Licensing |
| **Rule Number** | **Rule Title** |
| 0440-01-.03 | Curriculum |
| 0440-01-.05 | Requirements for Schools |
| 0440-01-.06 | Enrollment of Students |
| 0440-01-.11 | Teacher Training Programs |

| **Chapter Number** | **Chapter Title** |
|---|---|
| 0200-01 | Rules of the Barber Board |
| **Rule Number** | **Rule Title** |
| 0200-01-.02 | Curriculum |
| 0200-01-.13 | License Qualifications Programs |
| 0200-01-.14 | Teacher Training Programs |

Chapter 0440-01
Licensing

Amendments

Rule 0440-01-.03(5) Curriculum is amended by deleting the paragraph and replacing with the following language, so that as amended the paragraph shall read:

~~(5). Any person holding a valid Tennessee barber license will be given credit for seven hundred and fifty (750) clock hours/ 22.5 credit hours toward a Tennessee cosmetology license.~~

~~In order to be eligible for this credit, a barber must be enrolled in a cosmetology school full time, a minimum twenty-five (25) hours per week, not to exceed forty-eight (48) hours per week. After the student has completed the first seven hundred and fifty(750) clock hours/ 22.5 credit hours in a cosmetology school, the Board may apply the second seven hundred and fifty (750) hours/ 22.5 credit hours for the purpose of graduating and being permitted to take the cosmetology examination.~~

(5) Any person holding a valid Tennessee Master Barber certificate of registration may appear before the board and request to sit for the Cosmetology Exam. The board may approve the applicant to test if they:

(a) Complete three hundred (300) cosmetology school hours at a licensed cosmetology school learning the fundamentals of cosmetology technique and pedicuring. This student will be given credit for the remaining twelve hundred (1200) hours required to obtain a Tennessee cosmetology license upon finishing the required 300 hours in a cosmetology school; or

(b) Held a master barber certificate of registration in Tennessee or another jurisdiction with reciprocity with Tennessee for five (5) continuous years.

Authority: T.C.A. §§ 62-4-105(e), 62-4-108, 62-4-110, and 62-4-120(k).

Rule 0440-01-.05 Requirements for Schools is amended by deleting the rule in its entirety and substituting the following language so that, as amended, the rule shall read:

(1) Every school of cosmetology ~~including any school solely licensed to each natural hair styling, manicuring, or aesthetics,~~shall:

(a) Publish readily available and clearly expressed admission policies and requirements;

(b) Provide to prospective students (before enrollment) published materials which explain requirements for licensure as a cosmetologist, manicurist, instructor, shampoo technician, natural hair stylist, or aesthetician in the State of Tennessee; however, if a school is licensed to provide instruction solely in natural hair styling, manicuring or aesthetics, the school shall only be responsible for providing documentation relative to licensure in the field in which the school provides instruction~~.~~;

(c) Give a receipt to any student from whom money is collected by authorized school personnel; ~~and~~

(d) Submit to the office of the Board, on the prescribed form, a monthly progress report on each student enrolled. The monthly reports must be received no later than the tenth (10th) of each month for the previous month's hours of instruction. If reports are not submitted by this date, a penalty set by the Board will be issued for violation of this rule~~.~~; and

(e) Teach a minimum ten percent (10%) of theory hours each week in each curriculum offered in a school. This requirement does not apply to students enrolled in an apprenticeship program authorized by this chapter.

(2) Applications to operate New Schools: Any person seeking licensure of a new school shall first pay the fee for licensure and submit to the board the following:

(a) A copy of the school's curriculum to be deemed acceptable by the board;

(b) A sample copy of the school's catalog, brochure, enrollment agreement, and cancellation and refund policies;

(c) A backup method for logging hours that have been earned by students; and

(d) A plan to keep all part-time and full-time student files separate.

(3) Transfers, Cancellations and Refunds

(a) The school shall maintain documentation that the refunds owed to students are issued within 45 days of the last day of the student's attendance.

(b) The school shall have a written policy that clearly defines how the school determines whether or not credit hours will be accepted from another institution. This policy shall apply to all students. Nothing in this rule shall require a school to accept credit hours from another institution except as provided in the school's policy.

(c) The school shall provide each student with a written policy of a teach-out program, or outline the student's options in the event the school closes for an extended period of time, such as by way of license revocation, natural disaster, or other unforeseen consequences. Schools are encouraged to partner with neighboring institutions to achieve the best outcome for students.

(4) The school shall keep a copy of all tests, evaluations, or progress reports in the student's file. The student must initial any evaluation or progress reports.

(5) Upon yearly renewal of license to operate the school shall submit a Board approved form disclosing changes to student enrollment agreements, or other school changes affecting students.

Authority: T.C.A. §§ 62-4-105(e), 62-4-120, and 62-4-122.

Rule 0440-01-.06 Enrollment of Students is amended by deleting the rule and substituting the following language so that, as amended, the rule shall read:

(1) Every licensed school of cosmetology shall maintain documentation of age and education in each student's file, which evidences eligibility for enrollment under the terms of ~~Tenn. Code Ann.~~ T.C.A. § 62-4-122(a).

(2) Every enrollment of a student in a school of cosmetology shall be evidenced by a written enrollment agreement which clearly details the rights and obligations of both parties.

(3) The school shall:

(a) furnish to the student an executed copy of the enrollment agreement; ~~and~~

(b) maintain a copy of the agreement in the student's file.; and

(c) keep copies of all receipts and payments the student has made or received in the student's files.

(4) Every student enrollment agreement shall:

(a) be signed and dated by the student and an authorized representative of the school;

(b) specify the number of clock hours in the course of instruction and an approximate number of

weeks or months required for completion;

(c) identify all costs and charges which the student must bear;

(d) indicate any grounds for termination of a student by the school;

(e) state in clear and understandable language the school's refund policy;

(f) list any special conditions or requirements for graduation; ~~and~~

(g) contain an acknowledgment that the student has read and understands the agreement before making any payment thereunder~~.~~;

(h) include the school's discrimination and anti-harassment policy;

(i) include page numbers on each page and be initialed by the student on each page;

(j) contain a clearly defined policy on how the school will maintain sanitary code requirements and the student's role in maintaining those requirements, which must be based on the curriculum and industry practices; and

(k) contain an initialed acknowledgement by the student that the student has received a full and true copy of the student enrollment agreement for their own personal records.

(5) For students enrolling in teaching programs, the file shall contain documentation that the school notified the enrollee in writing that an applicant for an instructor's license must have been licensed for three (3) continuous years prior to applying for an instructor's license, along with any other qualifications that the legislature or the Board determines.

(6)~~(5)~~ All application information, including documentation and enrollment agreements required under this rule, shall be included in the student's file and made available for inspection by members or inspectors of the Board during business hours.

(7)~~(6)~~ A student shall be actively enrolled in a licensed school in order to participate in an apprenticeship program.

(8)~~(7)~~ An apprentice program must be completed within 150% of the time allowed for a student to complete a course of study under the school's standard, non-apprenticeship contract agreement.

Authority: T.C.A. §§ 62-4-105(e), 62-4-120, and 62-4-122.

Rule 0440-01-.11(2) Teacher Training Programs is amended by adding new subparagraph (f) so that, as amended, the paragraph shall read:

(2) The applicant shall demonstrate to the satisfaction of the Board that the teacher training program submitted for approval will:

(a) contain at least sixteen (16) hours of actual instruction;

(b) emphasize teaching methodology for its entire duration;

(c) restrict the size of classes sufficiently to ensure adequate attention to all participants;

(d) proceed for not more than two (2) hours without a break;

(e) prohibit demonstrations or presentations for commercial purposes in classrooms. Training programs may not sell, take orders, or in any way promote a product; and

(f) conform to professional standards as determined by the Board. This can be determined by, but not limited to, the following: fraud, unprofessional, immoral or dishonorable conduct, a violation of T.C.A. § 62-4 et. seq., or of any rules duly promulgated under this chapter, or failure to comply with a lawful order of the board.

Authority: T.C.A. §§ 62-4-105(e) and 62-4-114.

Chapter 0200-01
Rules of the Barber Board

Amendments

Rule 0200-01-.02(4) Curriculum is amended by deleting the paragraph and substituting the following language so that, as amended, the paragraph shall read:

(4) Every barber school shall:

(a) Publish readily available and clearly expressed admission policies and requirements;

(b) Provide to prospective students (before enrollment) published materials which explain requirements for licensure as a master barber, barber technician, and barber instructor in the State of Tennessee;

(c) Provide each enrolled student with:

1. the school's discrimination and anti-harassment policy;

2. a contract with page numbers for each page and space on each page for the student to initial;

3. a clearly defined policy on how the school will maintain sanitary code requirements and the student's role in maintaining those requirements, which must be based on the curriculum and industry practices; and

4. an initialed acknowledgement by the student that the student has received a full and true copy of the student enrollment agreement for their own personal records;

(d)~~(c)~~ Give a receipt to any student from whom money is collected by authorized school personnel; ~~and~~

(e) Provide the Board with a sample copy of the school's catalog, brochure, enrollment contract, and cancellation and refund policies as a part of their school license application;

(f) Have a backup method for logging hours that have been earned by students;

(g) Keep all part-time and full-time student files separate;

(h) Transfers, Cancellations and Refunds

1. The school shall maintain documentation that the refunds owed to students are issued within 45 days of the student's last date of attendance

2. The school shall have a written policy that clearly defines how the school determines whether or not credit hours will be accepted from another institution. This policy shall apply to all students. Provided, however, that nothing in this rule shall require a school to accept credit hours from another institution except as provided in the school's policy.

3. The school shall provide each student with a written policy of a teach out program, or outline the student's options in the event the school closes for an extended period of time, such as by way of license revocation, natural disaster, or other unforeseen consequences. Schools are encouraged to partner with neighboring institutions to achieve the best outcome for students;

(i) Keep a copy of all tests, evaluations, or progress reports in the student's file. The student must initial any evaluation or progress reports;

(j)(H) Submit to the office of the Board, on the prescribed form, a monthly progress report on each student enrolled. The monthly reports must be received no later than the tenth (10th) of each month for the previous month's hours of instruction. If reports are not submitted by this date, a penalty set by the board will be issued for violation of this rule.;

(k) Upon yearly renewal of the school license the school shall submit a Board approved form disclosing changes to student enrollment contracts, or other school changes affecting students.; and

(l) Notwithstanding any provision to the contrary, any school operated under T.C.A. § 62-3-123 may develop courses of instruction and practice incorporating an apprenticeship curriculum, which allows an applicant to obtain fifty percent (50%) of the required hours for a specific license through classroom instruction and fifty percent (50%) of the required hours under the direct supervision and responsible charge of a licensed professional who meets the requirements set forth in this rule. Supervision hours received may not be used for credit for more than fifty percent (50%) of the required hours in any instruction subcategory (General, Chemical or Physical).

1. Definitions

(i) "Apprenticeship student" means a student enrolled in a school participating in an apprenticeship program with the intention of completing the school's curriculum under that school's apprenticeship program.

(ii) "Supervising licensed professional" means a licensee in the field of study of an enrolled apprenticeship student who is in charge of supervising and accounting for the creditable activities of the student's apprenticeship program and providing the participating school with the student's apprenticeship activity record.

(I) Any supervising licensed professional in responsible charge as provided in this rule shall have at least ten (10) years of experience as a licensed professional in the field of study in which the supervision is provided and shall hold a certificate of registration as both a master barber and barber instructor issued by the Board. The supervising licensed professional's license must be current at all times while providing supervision.

(II) Each supervising licensed professional shall be the responsible charge of no more than one apprenticeship student.

(iii) "Responsible charge" means a licensed professional in supervision of a student enrolled in an apprenticeship program curriculum, approved by the Board, and responsible for all aspects of that student's apprenticeship instruction.

2. Apprenticeship students shall complete instructional hours and pass the initial theory examination prior to initiating apprenticeship activities in a salon, shop, or establishment. A student shall be actively enrolled in a licensed school in order to participate in an apprenticeship program.

3. Any school offering an apprenticeship curriculum shall maintain a record of all hours completed under the apprenticeship program, including classroom hours, for which credit is awarded in a student's academic file. This record shall include the number of hours

completed under direct supervision and responsible charge, the dates these hours were earned, the license number of the professional in responsible charge who directly supervised the student, and the signatures of both the student and the supervising licensed professional in responsible charge.

(i) The required records shall be maintained in the student's file and made available for inspection during the student's academic career, shall be maintained for a period of not less than seven (7) years after a student is no longer attending the providing school, and shall be made available to the Board immediately upon request during this time.

(ii) A daily log accounting for all apprenticeship hours awarded under this chapter by any school offering an apprenticeship curriculum shall be maintained by the school and updated monthly. This log shall be made available for inspection at any time.

(iii) This daily log shall be submitted to the approving school no later than the close of business of the first (1st) day of the month for the previous month.

(iv) Should an apprentice change salon, shop, establishment, or supervising licensed professional, a notarized transcript of the total hours accumulated shall be signed by the salon, shop, or establishment owner or manager, along with the supervising licensed professional, and submitted to the approving school within ten (10) days of the change.

4. A participating school shall be responsible for confirming a supervising licensed professional's qualifications to be placed in responsible charge of an apprenticeship student as provided by this rule.

(i) The participating school providing hours for supervised apprenticeship credit shall maintain documented proof of a supervising licensed professional's experience and a copy of the supervising licensed professional's current, valid Tennessee license. This documentation shall be maintained for a minimum of seven (7) years following the date that the supervising licensed professional last provided supervision for that school.

(ii) Apprenticeship experience earned in any jurisdiction other than Tennessee may be considered for purposes of complying with this rule, provided that the supervising licensed professional was appropriately licensed in that jurisdiction at all times when responsible charge was provided for the purpose of earning credit. Proof of the supervising licensed professional's credentials must be provided by the transferring student candidate.

(iii) The owner of the business providing the student an apprenticeship shall provide the school with a written acknowledgement accepting the student.

(iv) Any salon, shop or establishment participating in an apprenticeship program shall provide a work station for the apprenticeship student.

(v) The supervising licensed professional must notify the participating school that the apprentice is no longer under his or her supervision and submit a transcript of all hours completed within ten (10) days of termination of the apprenticeship.

(vi) No participating school shall allow any person not appropriately licensed to provide any supervision for purposes of this rule, nor shall any participating school allow credit for hours under the supervision of unlicensed persons.

5. Students enrolled in an apprenticeship program must complete their apprenticeship within one-and-one-half times the length of enrollment under the school's standard full-time contract agreement.

6. All students participating in an apprenticeship program in a licensed school must wear attire prescribed by the school and participating shop collectively. The student must wear a name tag identifying the student as an apprenticeship student and identifying the school under which the student is participating in the apprenticeship program.

Authority: T.C.A §§ 62-3-105, 62-3-123, and 62-3-128.

Rule 0200-01-.13(1) License Qualifications is amended deleting the paragraph and substituting the following language so that, as amended, the paragraph shall read:

~~(1) Any person holding a valid Tennessee cosmetology license will be given credit for seven hundred fifty (750) hours toward obtaining a Tennessee barber license.~~

~~(a) In order to be eligible for the above, a cosmetologist must be enrolled in a barber school full time, minimum of six (6) hours, maximum of eight (8) per day. After the student has completed their first seven hundred fifty (750) hours in a barber school, the Board will apply the second seven hundred fifty (750) hours for the purpose of graduating and being permitted to take the Master Barber examination.~~

(1) Any person holding a valid Tennessee cosmetology license may appear before the board and request to sit for the Master Barber Exam. The board may approve the applicant to test if they:

(a) Complete three hundred (300) barbering school hours at a registered barber college learning the fundamentals of straight razor shaving and barbering technique. This student will be given credit for the remaining twelve hundred (1200) hours required to obtain a Tennessee master barber certification upon finishing the required three hundred (300) hours in a barber school, or

(b) Have held their cosmetology license in Tennessee or another Jurisdiction with reciprocity with Tennessee for five continuous years.

Authority: T.C.A. §§ 62-3-110 and 62-3-128

Rule 0200-01-.14 (2) Teacher Training Programs is amended by adding subparagraph (f) so that, as amended, the paragraph shall read:

(2) The applicant shall demonstrate to the satisfaction of the board that the teacher training program submitted for approval will:

(a) contain at least sixteen (16) hours of actual instruction;

(b) emphasize teaching methodology for its entire duration;

(c) restrict the size of classes sufficiently to ensure adequate attention to all participants;

(d) proceed for not more than two (2) hours without a break; ~~and~~

(e) prohibit demonstrations or presentations for commercial purposes in classrooms. Training programs may not sell, take orders, or in any way promote a product; and,

(f) conform to professional standards as determined by the Board. This may be determined by, but not limited to, the following: fraud, unprofessional, immoral or dishonorable conduct, a violation of T.C.A. § 62-3 et. seq., or of any rules duly promulgated under this chapter, or failure to comply with a lawful order of the Board.

Authority: T.C.A §§ 62-3-124 and 62-3-128

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

| Board Member | Aye | No | Abstain | Absent | Signature (if required) |
|---|---|---|---|---|---|
| Kelly Barger | X | | | | |
| Anita Charlton | X | | | | |
| Nina Coppinger | X | | | | |
| Bobby Finger | X | | | | |
| Frank Gambuzza | X | | | | |
| Brenda Graham | X | | | | |
| Judy McAllister | X | | | | |
| Patricia Richmond | X | | | | |
| Mona Sappenfield | X | | | | |
| Amy Tanksley | X | | | | |
| Ron Gillihan | | | | X | |
| Yvette Granger | | | | X | |

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the Tennessee Board of Cosmetology and Barber Examiners on December 12, 2016 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: *(10-20-16)*

Rulemaking Hearing(s) Conducted on: (add more dates). *(12-12-16)*

Date: 2/14/17

Signature:

Name of Officer: Cherrelle Hooper

Title of Officer: Assistant General Counsel

Subscribed and sworn to before me on: 2/14/17

Notary Public Signature:

My commission expires on: 11/21/2017

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.

| | |
|---|---|
| 0440-01-.03 | Curriculum |
| 0440-01-.05 | Requirements for Schools |
| 0440-01-.06 | Enrollment of Students |
| 0440-01-.11 | Teacher Training Programs |
| 0200-01-.02 | Curriculum |
| 0200-01-.13 | License Qualifications Programs |
| 0200-01-.14 | Teacher Training Programs |

Herbert H. Slatery III
Attorney General and Reporter

2/24/2017
Date

**Department of State Use Only**

Filed with the Department of State on: 3/9/17

Effective on: 6/7/17

Tre Hargett
Secretary of State

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## G.O.C. STAFF RULE ABSTRACT

| | |
|---|---|
| DEPARTMENT: | Board of Cosmetology and Barber Examiners |
| DIVISION: | Regulatory Boards |
| SUBJECT: | Sanitary Rules and Requirements |
| STATUTORY AUTHORITY: | Not Applicable |
| EFFECTIVE DATES: | June 7, 2017 through June 30, 2018 |
| FISCAL IMPACT: | Minimal |
| STAFF RULE ABSTRACT: | 0440-02-.01 - Amends the definition of aesthetics.<br><br>0440-02-.03 – Allows a manager or designated manager to be away from a shop for work breaks. Requires manager's name and license number to be posted and available to any employee or customer. Allows the manager to manage employees across disciplines if the manager is licensed in at least one discipline that the shop is licensed to offer.<br><br>0440-02-.13 – Adds requirement that if a cosmetologist uses a safety razor, each new customer must be treated with a new disposable razor or blade, if the blade is detachable from the handle.<br><br>0200-03-.14 – Allows a manager or designated manager to be away from a shop for work breaks. Requires manager's name and registration number to be posted and available to any employee or customer. Allows the manager to manage employees across disciplines as long as the manager is licensed in at least one discipline that the shop is licensed to offer. |

**Public Hearing Comments**

One copy of a document containing responses to comments made at the public hearing must accompany the filing pursuant to T.C.A. § 4-5-222. Agencies shall include only their responses to public hearing comments, which can be summarized. No letters of inquiry from parties questioning the rule will be accepted. When no comments are received at the public hearing, the agency need only draft a memorandum stating such and include it with the Rulemaking Hearing Rule filing. Minutes of the meeting will not be accepted. Transcripts are not acceptable.

1. Mr. Marquise Martin made a comment in the form of a question. Specifically, he wanted to know whether the proposed rules would impact the curriculum of schools or otherwise change the manner in which schools teach.

Board Response: The Board responded to the comment by stating that the proposed rules would not impact the curriculum of schools or otherwise change the manner in which schools teach.

**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;

   The proposed rules will affect the 8,652 licensed barber and cosmetology shops in Tennessee. The vast majority of these shops are considered small businesses.

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;

   These rules do not create any new schedules or deadlines for reporting compliance. No new professional skills will be required by any licensee to administer these new rules.

3. A statement of the probable effect on impacted small businesses and consumers;

   The effect on small businesses will be positive. These rules create more flexibility for managers which in turn will make it easier for them to hire competent managers. These rules will also give shops a clearer definition of aesthetics. These effects will be positive for consumers as well. It should lead to better managed shops and allow consumers of aesthetics practice to be more knowledgeable on the practices they can expect from licensed professionals.

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 intrusive or less costly methods of achieving the purpose of these proposed rules. The rules that are proposed will actually create less of a burden on many licensed professionals and small businesses.

5. A comparison of the proposed rule with any federal or state counterparts; and

   There is no federal counterpart to the proposed rules. North Carolina, Ohio and Kentucky have similar rules regarding managers. The proposed rules most similarly reflect Ohio's framework, but also include elements of the other two states in regulating managers.

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.

   The overwhelming majority of businesses that are affected by these rules are small businesses. Therefore, allowing separate compliance requirements would not be feasible. These rules do not create any new schedules, deadlines, or reporting compliance. These rules were created to accommodate small businesses in Tennessee.

**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)

There is no expected impact on local governments by the promulgation of the proposed rules.

**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;

0440-02-.01- Amends the definition of aesthetics.

0440-02-.03- Allows a manager or designated manager to be away from a shop for work breaks. Requires manager's name and license number to be posted and available to any employee or customer. Allows the manager to manage employees across disciplines if the manager is licensed in at least one discipline that the shop is licensed to offer.

0440-02-.13- Adds requirement that if a cosmetologist uses a safety razor, each new customer must be treated with a new disposable razor or blade, if the blade is detachable from the handle.

0200-03-.14- Allows a manager or designated manager to be away from a shop for work breaks. Requires manager's name and registration number to be posted and available to any employee or customer. Allows the manager to manage employees across disciplines as long as the manager is licensed in at least one discipline that the shop is licensed to offer.

**(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 are no known federal or state laws or rules requiring the promulgation of these rules.

**(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;

There are approximately 10,690 licensed cosmetology shops and barber shops in Tennessee that would be most directly affected by these rules. Neither cosmetology shops or barber shops have taken a position to urge adoption or rejection of these rules in the form of public hearing comments or otherwise.

**(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;

There are no known opinions of the attorney general and reporter or any judicial ruling that directly relate to the rule or the necessity to promulgate the rule.

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

These rules are not expected to have a probable increase or decrease in state or local government revenues and expenditures from the promulgation of this rule. Any fiscal impact would be minimal.

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

Cherrelle Hooper
Assistant General Counsel

Roxana Gumucio
Executive Director

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

Cherrelle Hooper
Assistant General Counsel

Roxana Gumucio
Executive Director

**(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

Cherrelle Hooper
Assistant General Counsel
500 James Robertson Parkway
Nashville, TN 37243
615-532-0631
Cherrelle.Hooper@tn.gov

Roxana Gumucio
Executive Director
500 James Robertson Parkway
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615-532-7081
Roxana.Gumucio@tn.gov

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

None

**Department of State**
**Division of Publications**
312 Rosa L. Parks Avenue, 8th Floor Snodgrass/TN Tower
Nashville, TN 37243
Phone: 615-741-2650
Email: publications.information@tn.gov

**For Department of State Use Only**

Sequence Number: 03-07-17
Rule ID(s): 6457-6458
File Date: 3/9/17
Effective Date: 6/7/17

# 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:** | Tennessee Board of Cosmetology and Barber Examiners |
| **Division:** | Regulatory Boards |
| **Contact Person:** | Cherrelle Hooper, Assistant General Counsel |
| **Address:** | 500 James Robertson Parkway, Nashville, TN |
| **Zip:** | 37243 |
| **Phone:** | 615-741-3072 |
| **Email:** | cherrelle.hooper@tn.gov |

**Revision Type (check all that apply):**
X 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** |
|---|---|
| 0440-02 | Sanitary Rules |
| **Rule Number** | **Rule Title** |
| 0440-02-.01 | Definitions |
| 0440-02-.03 | Responsibility for Compliance |
| 0440-02-.13 | Sanitation and Disinfection |

| **Chapter Number** | **Chapter Title** |
|---|---|
| 0200-03 | Sanitary Requirements |
| **Rule Number** | **Rule Title** |
| 0200-03-.14 | Responsibility for Compliance |

Chapter 0440-02
Sanitary Rules

Amendments

Rule 0440-02-.01 Definitions is amended by adding the new subparagraph (d) so that, as amended, the rule shall read:

(1) As used in this Chapter, unless the context requires otherwise, the definitions of terms contained in ~~Tenn. Code Ann.~~ T.C.A. § 64-4-102 are applicable. In addition:

(a) "Establishment" means any cosmetology, manicure, skin care or natural hair stylist shop or school of cosmetology;

(b) "Licensee" means any person holding a valid license (issued by the Board) as a cosmetologist, manicurist, aesthetician, shampoo/manicurist, instructor, natural hair stylist or shampoo technician;

(c) "Shampooing" is cleansing of hair and scalp and includes:

1. brushing and combing;

2. rinsing (includes removal of color, permanents, relaxers and conditioners);

3. conditioning (applying);

(d) "Aesthetics", as it is practiced and taught, includes:

1. Care of the skin, including:

(i) hot compresses;

(ii) massages of the face, hands, feet, and scalp;

(iii) facials and masks that do not require prescriptions unless there is medical supervision;

(iv) wraps;

(v) exfoliation of the uppermost layers of the skin; and

(vi) use of electrical or mechanical appliances or chemical compounds.

2. Removal of superfluous hair by all customary means not including electrolysis.

(e) "Shop" means a cosmetology shop, manicure shop, skin care shop or natural hair styling shop.

(f) "Unprofessional Conduct" shall include, but not be limited to failure to respond or comply with a board issued request or lawful order.

(g) "Violation" means any breach or failure to abide by the statutes, rules and orders enforceable by the Tennessee State Board of Cosmetology and Barber Examiners and any unprofessional conduct by any individual or entity licensed or required to be licensed under the Tennessee Cosmetology Act.

Authority: T.C.A §§ 62-4-102 and 62-4-105(e).

Rule 0440-02-.03 Responsibility for Compliance is amended by deleting the text of the rule and substituting,

instead, the following language so that, as amended, the rule shall read:

(1) The manager of an establishment shall be responsible for maintaining all parts thereof in a sanitary condition at all times, and for otherwise insuring that such establishment is operated in compliance with this Chapter. However, this rule shall not relieve any licensee of responsibility for the sanitary condition of any space or equipment used in an establishment.

(2) ~~The manager or designated manager of a cosmetology, manicure, skin care or natural hair stylist shop shall be required to be present on the shop premises at all times cosmetology related, aesthetic or natural hairstyling services are being rendered.~~ The manager or designated manager of a cosmetology, manicure, skin care, or natural hair stylist shop shall be required to be present on the shop premises any day that cosmetology, manicure, skin care, or natural hair stylist services are being rendered.

(a) The manager is entitled to two (2) thirty (30) minute periods in which he/she may be away from the premises during the day so long as the manager is reachable by phone and can return to the shop within twenty (20) minutes in the event that a representative of the Board requests their presence, an employee or customer requires assistance, or for any other situation that would require the manager's presence.

(b) The manager's name must be posted and their license number must be available to any employee or customer of the shop. The manager or designated manager shall not be relieved of responsibility for compliance during those times when the manager is away from the premises.

(3) The shop manager must be licensed by this board for at least one (1) discipline that the shop is licensed to offer. Managers may manage employees across disciplines. This rule shall not interfere with the statutory requirements that each licensee may only offer those services they are licensed to practice, and licensees are only practicing those services that the shop is licensed to offer.

Authority: T.C.A §§ 62-4-102, 62-4-105(e), 62-4-118, and 62-4-119.

Rule 0440-02-.13 Sanitation and Disinfection is amended by adding the following as a new paragraph:

(12) If a cosmetologist uses a safety razor, each new customer must be treated with a new disposable razor or blade, if the blade is detachable from the handle.

Authority: T.C.A §§ 62-4-105(e) and 62-4-125.

Sanitary Rules

Amendments

Rule 0200-03-.14 Responsibility for Compliance is amended by adding the following language so that, as amended, the rule shall read:

(1) The manager of an establishment shall be responsible for maintaining all parts thereof in a sanitary condition at all times, and insuring that such establishment is operated in compliance with this Chapter. However, this rule shall not relieve any licensee of responsibility for the sanitary condition of any space or equipment used in an establishment.

(2) The manager or designated manager of an establishment shall be required to be on the premises at all times barber related services are being rendered.

(a) The manager is entitled to two (2) thirty (30) minute periods in which he/she may be away from the premises during the day so long as the manager is reachable by phone and can return to the shop within twenty (20) minutes in the event that a representative of the Board requests their presence, an employee or customer requires assistance, or for any other situation that would require the manager's presence.

(b) The manager's name must be posted and their registration number must be available to any employee or customer of the shop. The manager or designated manager shall not be relieved of responsibility for compliance during those times when the manager is away from the premises.

(3) The shop manager must be licensed by this board for at least one (1) discipline that the shop is licensed to offer. Managers may manage employees across disciplines. This rule shall not interfere with the statutory requirements that each licensee may only offer those services they are licensed to practice, and licensees are only practicing those services that the shop is licensed to offer.

Authority: T.C.A §§ 62-3-109 and 62-3-128

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

| Board Member | Aye | No | Abstain | Absent | Signature (if required) |
|---|---|---|---|---|---|
| Kelly Barger | X | | | | |
| Anita Charlton | X | | | | |
| Nina Coppinger | X | | | | |
| Bobby Finger | X | | | | |
| Frank Gambuzza | X | | | | |
| Brenda Graham | X | | | | |
| Judy McAllister | X | | | | |
| Patricia Richmond | X | | | | |
| Mona Sappenfield | X | | | | |
| Amy Tanksley | X | | | | |
| Ron Gillihan | | | | X | |
| Yvette Granger | | | | X | |

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the Tennessee Board of Cosmetology and Barber Examiners on December 12, 2016 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: *(10-20-16)*

Rulemaking Hearing(s) Conducted on: (add more dates). *(12-12-16)*

Date: 2/14/17

Signature: Cherrelle Hooper

Name of Officer: Cherrelle Hooper

Title of Officer: Assistant General Counsel

Subscribed and sworn to before me on: 2/14/17

Notary Public Signature: Vanessa Huntsman

My commission expires on: 11/21/17

VANESSA HUNTSMAN STATE OF TENNESSEE NOTARY PUBLIC SUMNER COUNTY MY COMMISSION EXPIRES 11-21-2017

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.

0440-02-.01 Definitions
0440-02-.03 Responsibility for Compliance
0440-02-.13 Sanitation and Disinfection
0200-03-.14 Responsibility for Compliance

Herbert H. Slatery III
Attorney General and Reporter
2/24/2017
Date

**Department of State Use Only**

Filed with the Department of State on: 3/9/17

Effective on: 6/7/17

Tre Hargett
Secretary of State

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PUBLICATIONS

## G.O.C. STAFF RULE ABSTRACT

| | |
|---|---|
| DEPARTMENT: | Board of Cosmetology and Barber Examiners |
| DIVISION: | Regulatory Boards |
| SUBJECT: | Barber Board Licensing Fees |
| STATUTORY AUTHORITY: | Not Applicable |
| EFFECTIVE DATES: | June 7, 2017 through June 30, 2018 |
| FISCAL IMPACT: | Minimal |
| STAFF RULE ABSTRACT: | 0440-02-.13 - Increases the fees for individual licenses, individual renewals, shop licenses, shop renewals, and reciprocity. Adds a fee for new dual shop licenses, dual shop license renewals, annual school renewals, and retiring a license.<br><br>0200-01.11 – Adds specific rules regarding candidates scheduling examinations and paying fees for master barber registration, master barber instructor registration and technician registration. Adds rules regarding reinstating a master barber registration or technician registration that has been expired for more than three years. Decreases registration fees, renewal fees, and penalty for late renewal fees for master barbers, technicians, barber instructors, barber schools and colleges. Adds a fee for retirement of a license, new dual shop license, and dual shop license renewal. Increases the fee for a lost, misplaced or mutilated certificate of registration. |

**Public Hearing Comments**

One copy of a document containing responses to comments made at the public hearing must accompany the filing pursuant to T.C.A. § 4-5-222. Agencies shall include only their responses to public hearing comments, which can be summarized. No letters of inquiry from parties questioning the rule will be accepted. When no comments are received at the public hearing, the agency need only draft a memorandum stating such and include it with the Rulemaking Hearing Rule filing. Minutes of the meeting will not be accepted. Transcripts are not acceptable.

There were no public hearing comments on these rules.

**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;

   All professional licenses in this program will be impacted by the proposed rules. There are about 10,690 licensed shops whose fees will change. There are approximately 55,827 licensed cosmetologists and barbers whose fees for license renewal will change. There are approximately 105 licensed barber and cosmetology schools whose fees will change.

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 proposed rules do not create any new schedules or deadlines for reporting compliance. No new profession type will be required to administer these new rules.

3. A statement of the probable effect on impacted small businesses and consumers;

   The proposed rules will affect all licensed businesses and all licensed professionals in this program. Some licenses will cost significantly less while others are going to have small increases. The proposed rules will create uniform fees for licensees businesses regardless of whether they are licensed under the cosmetology or barber statute. Cosmetologists will be paying $10 more than they are currently paying every two years to renew a license. Barbers will be paying $20 less then they currently pay every two years to renew their license.

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;

   The purpose of changing the fees was to allow the program to run on a realistic budget while self-sustaining. The fees are only raised a small amount so that each individual licensee will not feel a great financial burden. There are no less burdensome, less intrusive or less costly methods of achieving the purpose of these proposed rules.

5. A comparison of the proposed rule with any federal or state counterparts; and

   There is no state or federal counterpart to the proposed rules.

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.

   The overwhelming majority of businesses that are affected by these rules are small businesses. Therefore, allowing separate compliance requirements would not be feasible. These rules do not create any new schedules, deadlines, or reporting compliance. These rules were created to accommodate small businesses in Tennessee.

**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)

There is no expected impact on local governments by the promulgation of the proposed rules.

**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;

0440-02-.13- Increases the fees for individual licenses, individual renewals, shop licenses, shop renewals, and reciprocity. Adds a fee for new dual shop licenses, dual shop license renewals, annual school renewals, and retiring a license.

0200-01-.11- Adds specific rules regarding candidates scheduling examinations and paying fees for master barber registration, master barber instructor registration and technician registration. Adds rules regarding reinstating a master barber registration or technician registration that has been expired for more than three years. Decreases registration fees, renewal fees, and penalty for late renewal fees for master barbers, technicians, barber instructors, barber schools and colleges. Adds a fee for retirement of a license, new dual shop license, and dual shop license renewal. Increases the fee for a lost, misplaced or mutilated certificate of registration.

**(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 are no known other federal or state laws or rules requiring the promulgation of these rules.

**(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 rules will affect all licensees including individuals, shops and schools. None of these parties have taken a position to urge adoption or rejection of these rules in the form of public hearing comments or otherwise.

**(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;

There are no known opinions of the attorney general and reporter or any judicial ruling that directly relate to the rule or the necessity to promulgate the rule.

**(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 promulgation of these rules is expected to increase state government revenues by approximately $326,715. This estimate is based upon an analysis by the accounting department for the Tennessee Department of Commerce and Insurance.

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

Cherrelle Hooper
Assistant General Counsel

Roxana Gumucio
Executive Director

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

Cherrelle Hooper

Assistant General Counsel

Roxana Gumucio
Executive Director

**(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

Cherrelle Hooper
Assistant General Counsel
500 James Robertson Parkway
Nashville, TN 37243
615-532-0631
Cherrelle.Hooper@tn.gov

Roxana Gumucio
Executive Director
500 James Robertson Parkway
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**(I)** Any additional information relevant to the rule proposed for continuation that the committee requests.

None

**Department of State**
**Division of Publications**
312 Rosa L. Parks Avenue, 8th Floor Snodgrass/TN Tower
Nashville, TN 37243
Phone: 615-741-2650
Email: publications.information@tn.gov

**For Department of State Use Only**

Sequence Number: 03-08-17
Rule ID(s): 6459-6460
File Date: 3/9/17
Effective Date: 6/7/17

# 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:** | Tennessee Board of Cosmetology and Barber Examiners |
| **Division:** | Regulatory Boards |
| **Contact Person:** | Cherrelle Hooper, Assistant General Counsel |
| **Address:** | 500 James Robertson Parkway, Nashville, TN |
| **Zip:** | 37243 |
| **Phone:** | 615-741-3072 |
| **Email:** | cherrelle.hooper@tn.gov |

**Revision Type (check all that apply):**
X 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** |
|---|---|
| 0440-01 | Licensing |
| **Rule Number** | **Rule Title** |
| 0440-01-.13 | Fees |

| **Chapter Number** | **Chapter Title** |
|---|---|
| 0200-01 | Rules of the Barber Board |
| **Rule Number** | **Rule Title** |
| 0200-01-.11 | Fees |

Chapter 0440-01
Licensing

Amendments

Rule 0440-01-.13 Fees is amended by deleting the text of the rule and substituting the following so that as amended the rule shall read:

(1) Application/examination

(a) A candidate shall schedule the test needed for a specific license (cosmetologist, manicurist, instructor, aesthetician, shampoo technician, or natural hair stylist) with the Board's designated testing agency and pay an examination fee that will include any fees charged by the designated testing agency.

(b) The Board shall set the examination fee through choosing a contractor from a solicitation process pursuant to ~~Tenn. Code Ann.~~ T.C.A. § 12-3-501, et seq. and the Comprehensive Rules and Regulations of the Central Procurement Office found at Tenn. Comp. R. & Reg. Chapter 0690-03-01, or any other predecessor rules and laws of the State of Tennessee regarding the procurement of such contracts.

(2) Original License

(a) Cosmetologist.....~~fifty dollars ($50.00)~~sixty dollars ($60.00)
(b) Manicurist.....~~fifty dollars ($50.00)~~sixty dollars ($60.00)
(c) Instructor.....~~seventy dollars ($70.00)~~eighty dollars ($80.00)
(d) Aesthetician.....~~fifty dollars ($50.00)~~sixty dollars ($60.00)
(e) Shampoo Technician.....~~fifty dollars ($50.00)~~sixty dollars ($60.00)
(f) Natural Hair Stylist.....~~fifty dollars ($50.00)~~sixty dollars ($60.00)

(3) Renewal

(a) Cosmetologist.....~~fifty dollars ($50.00)~~sixty dollars ($60.00)
(b) Manicurist.....~~fifty dollars ($50.00)~~sixty dollars ($60.00)
(c) Instructor.....~~sixty dollars ($60.00)~~ seventy dollars ($70.00)
(d) Aesthetician.....~~fifty dollars ($50.00))~~sixty dollars ($60.00)
(e) Shampoo Technician.....~~fifty dollars ($50.00)~~sixty dollars ($60.00)
(f) Natural Hair Stylist.....~~fifty dollars ($50.00)~~sixty dollars ($60.00)
~~(g) Retired License reactivation.....Fifty dollars ($50.00)~~

(4) Penalty for late renewal

(a) Cosmetologist, manicurist, instructor, aesthetician, shampoo technician, and natural hair stylist.....twenty-five dollars ($25.00)

(5) Cosmetology, manicure, skin care, natural hair stylist or manicure/skin care shops

(a) Inspection (new shop, relocated shop, shop with change of ownership)
.....fifty dollars ($50.00)

(b) License

new shop.....~~fifty dollars ($50.00)~~ one hundred dollars ($100.00)
relocated shop.....~~fifty dollars ($50.00)~~ one hundred dollars ($100.00)
change of ownership.....~~fifty dollars ($50.00)~~ one hundred dollars ($100.00)

(c) Renewal.....~~fifty dollars ($50.00)~~ seventy five dollars ($75.00)

(d) Penalty for late renewal.....fifty dollars ($50.00)

(e) Change of name only.....ten dollars ($10.00)

(f) Change of ownership due to death of immediate family, no charge, with a copy of the death certificate or obituary.

(g) New Dual shop license .....one hundred and fifty dollars ($150.00)

(h) Dual shop license renewal.....one hundred dollars ($100.00)

(i) Dual shop penalty for late renewal.....fifty dollars ($50.00) per year

(6) School

(a) Application/license (new school) .....~~three hundred dollars ($300.00)~~three hundred and fifty dollars ($350.00)

(b) License for relocated or change of ownership for a school .....one hundred and seventy-five dollars ($175.00)

(c) Penalty for late monthly report from schools of hours attended by students .....twenty-five dollars ($25.00)

(d) Annual school renewal.....one hundred and fifty dollars ($150.00)

(7) Replacement or correction of license

(a) Lost, misplaced or mutilated license..... twenty-five dollars ($25.00)

(b) Change of name by any cosmetologist, aesthetician, manicurist, instructor, shampoo technician, natural hair stylist or shampoo/manicurist....ten dollars ($10.00)

(c) Certification for licensee .....fifty dollars ($50.00)

1. Fee should be sent with:
   (i) written request for certification
   (ii) I.D. number

(d) Student certification of hours.....twenty-five dollars ($25.00)

1. Fee should be sent with:
   (i) certification request form
   (ii) completion/withdrawal form (unless previously submitted)

(8) Surcharge to issue manicurist license to former shampoo/manicurist as in Tenn. Code Ann. § 62-4-131(c).....twenty-five dollars ($25.00)

(9) Reciprocity.....~~fifty dollars ($50.00)~~ one hundred dollars ($100.00)

The fee for application through reciprocity must be received along with the applicant's initial application documents. Any reciprocity application received without this fee shall be incomplete and will not be considered.

(10) Retiring a license.....fifty dollars ($50.00)

(11) ~~(10)~~In the event that any check, draft or order for the payment of a fee to the Board of Cosmetology and Barber Examiners is returned because of insufficient funds, only cash, certified check or money order will be accepted for the amount due, plus twenty dollars ($20.00) additional fee.

(12)~~(11)~~Applications for licensure of a salon are valid for ninety (90) days after approval by the Board. Failure to

obtain an approved inspection for operation within the ninety (90) days shall invalidate the application and require a new application and fee.

Authority: T.C.A. §§ 62-4-105(e), 62-4-110, 62-4-112, 62-4-115, 62-4-117, 62-4-118, 62-4-120, 62-4-121, 62-4-131 and 62-4-132

## Chapter 0200-01
## Rules of the Barber Board

### Amendments

Rule 0200-01-.11 Fees is amended by deleting the rule in its entirety and substituting the following language so that as amended, the rule shall read:

(1) The Board shall charge and collect the following fees and penalties:

(a) Master Barbers

1. ~~Examination- set by contract -~~A candidate shall schedule an examination with the Board's designated testing agency and pay an examination fee that will include any fees charged by the designated testing agency. The Board shall set the examination fee through choosing a contractor from a solicitation process pursuant to T.C.A. § 12-3-501, et seq. and the Comprehensive Rules and Regulations of the Central Procurement Office found at Tenn. Comp. R. & Reg. Chapter 0690-03-01, or any other predecessor rules and laws of the State of Tennessee regarding the procurement of such contracts.

2. Certificate of registration.....~~seventy-five dollars ($75.00)~~ sixty dollars ($60.00)

3. Renewal.....~~eighty dollars ($80.00)~~ sixty dollars ($60.00)

~~4. Reinstatement of certificate of registration within one (1) year of expiration (includes penalty) ..... one hundred and sixty dollars ($160.00) Penalty for late renewal.....sixty dollars ($60.00) per year that the renewal is late.~~

4. Penalty for late renewal up until one (1) year of expiration.....sixty dollars ($60.00).

~~5. Reinstatement of certificate of registration if more than one (1) year but less than two (2) years since expiration (includes penalty) three hundred and twenty dollars ($320.00) if more than two (2) years but less than three (3) years.....four hundred and eighty dollars ($480.00)~~

5. Reinstatement of certificate of registration if more than one (1) year but less than three (3) years, a fee as set forth in T.C.A. § 62-3-129(c)(1).

~~6.~~ 6. For the reinstatement of a certificate of registration for a master barber license which has been expired for more than three (3) years, a new application for examination and the examination fee shall be submitted. If successful, the applicant shall pay the specified license fee. The examination shall consist of a practical examination before the board. Such applicant shall not be required to meet the qualifications for a certificate of registration established in T.C.A. § 62-3-110(b)(2) and (3).

~~7.~~ 7. Change of name.....ten dollars ($10.00)

8. Retirement of license .....fifty dollars ($50.00)

(b) Technicians

1. ~~Examination- set by contract -~~A candidate shall schedule an examination with the Board's

designated testing agency and pay an examination fee that will include any fees charged by the designated testing agency. The Board shall set the examination fee through choosing a contractor from a solicitation process pursuant to T.C.A. 12-3-501, et seq. and the Comprehensive Rules and Regulations of the Central Procurement Office found at Tenn. Comp. R. & Reg. Chapter 0690-03-01, or any other predecessor rules and laws of the State of Tennessee regarding the procurement of such contracts.

2. Certificate of registration ..... ~~seventy-five dollars ($75.00)~~sixty dollars ($60.00)

3. Renewal..... ~~eighty dollars ($80.00)~~ sixty dollars ($60.00)

~~4. Reinstatement of certificate of registration within one (1) year of expiration (includes penalty) .....one hundred and five dollars ($105.00)~~

4. Penalty for late renewal up until one (1) year of expiration.....sixty dollars ($60.00).

5. For reinstatement of a certificate of registration over one (1) year after its expiration, a new examination application shall be submitted. If successful, the applicant shall pay the specified license fee. The examination shall consist of a practical and law examination. Such applicant shall not be required to meet the qualifications for a certificate of registration established in ~~Tenn. Code Ann.~~ T.C.A. § 62-3-110(a).

6. Change of name.....ten dollars ($10.00)

7. Retirement of license .....fifty dollars ($50.00)

(c) Barber Schools or Colleges

1. Certificate of registration..... ~~six hundred dollars ($600.00)~~ three hundred and fifty dollars ($350.00)

2. Renewal..... ~~three hundred and fifty dollars ($350.00)~~ one hundred and fifty dollars ($150.00)

3. Reinstatement of certificate of registration within one (1) year of expiration (includes penalty) ..... ~~three hundred and seventy five dollars ($375.00)~~ one hundred and seventy five dollars ($175.00)

4. Change of ownership and/or location..... ~~three hundred and fifty dollars ($350.00)~~ one hundred and seventy five dollars ($175.00)

5. Change of name .....ten dollars ($10.00)

(d) Barber Instructors

1. ~~Examination set by contract~~ A candidate shall schedule an examination with the Board's designated testing agency and pay an examination fee that will include any fees charged by the designated testing agency. The Board shall set the examination fee through choosing a contractor from a solicitation process pursuant to T.C.A. § 12-3-501, et seq. and the Comprehensive Rules and Regulations of the Central Procurement Office found at Tenn. Comp. R. & Reg. Chapter 0690-03-01, or any other predecessor rules and laws of the State of Tennessee regarding the procurement of such contracts.

2. Certificate of registration..... ~~eighty-five dollars ($85.00)~~ eighty dollars ($80.00)

3. Renewal..... ~~ninety dollars ($90.00)~~ seventy dollars ($70.00)

4. ~~Penalty for late renewal of certificate of registration per year... eighty dollars ($80.00)~~

Penalty for late renewal of certificate of registration within one (1) year of expiration seventy ($70.00) dollars

~~5. Reinstatement of certificate of registration if more than one (1) year since expiration (includes penalty).....three hundred and sixty dollars ($360.00) plus for each additional year or portion thereofone hundred and eighty dollars ($180.00)~~

5. Reinstatement of certificate of registration if more than one (1) year since expiration (includes penalty) a fee as set forth in T.C.A. § 62-3-129(c)(3).

~~6.~~6. Change of name.....ten dollars ($10.00)

7. Retirement of license .....fifty dollars ($50.00)

(e) Barber Shops

1. To register a new barber shop or for change of ownership and/or location, the following fees are required:

(i) Inspection.....fifty dollars ($50.00)

(ii) Certificate of registration..... one hundred dollars ($100.00)

2. Renewal.....~~one hundred dollars ($100.00)~~ seventy-five dollars ($75.00)

~~3. Reinstatement of certificate of registration within one (1) year of expiration (includes penalty)..... one hundred and twenty-five dollars ($125.00)~~
~~4. Reinstatement of certification if registration is more than one (1) year since expiration (includes penalty)..... four hundred dollars ($400.00) plus for each additional year or portion thereof ..... two hundred dollars ($200.00)~~

3. ~~Penalty for late renewal.....one hundred and fifty dollars ($150.00) per year that renewal is late~~ Penalty for late renewal up until one (1) year of expiration....seventy five ($75.00) dollars.

4. Reinstatement of certification if registration is more than one (1) year since expiration (includes penalty) as set forth in T.C.A. § 62-3-129(c)(4).

~~5~~5. Change of name.....ten dollars ($10.00)

(f) New Dual shop license ..... one hundred and fifty dollars ($150.00)

(g) Dual shop license renewal.....one hundred dollars ($100.00)

(h) Dual shop penalty for late renewal..... fifty dollars ($50.00) per year.

~~(f)~~ (i) Certifications to other Jurisdictions

1. License certification.....fifty dollars ($50.00)

2. Student certification of hours.....~~fifty dollars ($50.00)~~ twenty five dollars ($25.00)

~~(g)~~ (j) Barber instructor assistant certificate of registration .....twenty-five dollars ($25.00)

~~(h)~~(k) Reciprocity.....~~one hundred and fifty dollars ($150.00)~~ one hundred dollars ($100.00)

~~(i)~~ (l) In the event that any check, draft or money order for the payment of a fee to ~~the Board of Barber Examiners~~ the Board of Cosmetology and Barber Examiners is returned because of insufficient funds, only cash, certified checks or money orders will be accepted for the amount due, plus a penalty fee of twenty dollars ($20.00).

~~(j)~~ (m) Change of ownership in a barber school or shop due to the death of an immediate family member.....no charge.
Application must be accompanied by death certificate or notice.

~~(k)~~ (n) Replacement of ~~or correction of license~~ L lost, misplaced or mutilated certificate of registration ~~ten dollars ($10.00)~~.....twenty five dollars ($25.00).

Authority: T.C.A. §§ 62-3-113, 62-3-117, 62-3-122, 62-3-128 and 62-3-~~139~~129

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

| Board Member | Aye | No | Abstain | Absent | Signature (if required) |
|---|---|---|---|---|---|
| Kelly Barger | X | | | | |
| Anita Charlton | X | | | | |
| Nina Coppinger | X | | | | |
| Bobby Finger | X | | | | |
| Frank Gambuzza | X | | | | |
| Brenda Graham | X | | | | |
| Judy McAllister | X | | | | |
| Patricia Richmond | X | | | | |
| Mona Sappenfield | X | | | | |
| Amy Tanksley | X | | | | |
| Ron Gillihan | | | | X | |
| Yvette Granger | | | | X | |

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the Tennessee Board of Cosmetology and Barber Examiners on December 12, 2016, 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: *(10-20-16)*

Rulemaking Hearing(s) Conducted on: (add more dates). *(12-12-16)*

Date: 2/14/17

Signature:

Name of Officer: Cherrelle Hooper

Title of Officer: Assistant General Counsel

VANESSA HUNTSMAN
STATE OF TENNESSEE NOTARY PUBLIC
SUMNER COUNTY
MY COMMISSION EXPIRES 11-21-2017

Subscribed and sworn to before me on: 2/14/17

Notary Public Signature: Vanessa Huntsman

My commission expires on: 11/21/2017

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.

| | |
|---|---|
| 0440-01-.13 | Fees |
| 0200-01-.11 | Fees |

Herbert H. Slatery III
Attorney General and Reporter

2/24/2017
Date

**Department of State Use Only**

Filed with the Department of State on: 3/9/17

Effective on: 6/7/17

Tre Hargett
Secretary of State

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## G.O.C. STAFF RULE ABSTRACT

| | |
|---|---|
| DEPARTMENT: | State Board of Education |
| DIVISION: | |
| SUBJECT: | Non-Public Schools Administrative Rules |
| STATUTORY AUTHORITY: | Pursuant to T.C.A. §§ 49-1-302, the State Board, through the state department of education, shall enforce standards for non-public programs operated by private schools as defined by § 49-6-3001(c)(3). |
| EFFECTIVE DATES: | June 22, 2017 through June 30, 2018 |
| FISCAL IMPACT: | There will be no substantial fiscal impact to state or local governments as a result of these revisions. |
| STAFF RULE ABSTRACT: | Rule 0520-07-01 Non-Public Schools Administrative Rules creates the Advisory Council for Non-Public Schools to advise the Department of Education on policies relating to non-public school administration and a repository for permanent records of non-public schools that cease operation, and it provides for the transfer of students among public schools, or Category I, II, or III non-public schools without loss of credit for completed work. |

**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.

Not applicable

**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)

Not applicable

**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;

Rule 0520-07-01 Non-Public Schools Administrative Rules creates the Advisory Council for Non-Public Schools to advise the Department of Education on policies relating to non-public school administration and a repository for permanent records of non-public schools that cease operation, and it provides for the transfer of students among public schools, or Category I, II, or III non-public schools without loss of credit for completed work.

**(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;

Pursuant to T.C.A. §§ 49-1-302, the State Board, through the state department of education, shall enforce standards for non-public programs operated by private schools as defined by § 49-6-3001(c)(3).

**(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;

This rule most directly affects non-public schools. The State Board supports the rule change and has not received any objection from any non-public schools.

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

None

**(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 substantial fiscal impact to state or local governments as a result of these revisions.

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

Elizabeth Taylor
Elizabeth.Taylor@tn.gov

Nathan James
Nathan.James@tn.gov

Elizabeth Fiveash
Elizabeth.Fiveash@tn.gov

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

Elizabeth Taylor
Elizabeth.Taylor@tn.gov

Nathan James
Nathan.James@tn.gov

Elizabeth Fiveash
Elizabeth.Fiveash@tn.gov

**(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

Elizabeth Taylor
General Counsel, Tennessee State Board of Education
1st Floor, Andrew Johnson Tower
710 James Robertson Parkway
Nashville, TN 37243
(615) 253-5707
Elizabeth.Taylor@tn.gov

Nathan James
Nathan.James@tn.gov
1st Floor, Andrew Johnson Tower
710 James Robertson Parkway
Nashville, TN 37243
(615) 532-3528

Elizabeth Fiveash
Elizabeth.Fiveash@tn.gov
Assistant Commissioner Policy & Legislative Affairs, Tennessee Department of Education
9th Floor, Andrew Johnson Tower
710 James Robertson Parkway
Nashville, TN 37243
(615) 253-1960

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

None

**Department of State**
**Division of Publications**
312 Rosa L. Parks Avenue, 8th Floor Snodgrass/TN Tower
Nashville, TN 37243
Phone: 615-741-2650
Email: publications.information@tn.gov

**For Department of State Use Only**

Sequence Number: 03-28-17
Rule ID(s): 6475
File Date: 3/24/17
Effective Date: 6/22/17

# Proposed Rule(s) Filing Form

*Proposed rules are submitted pursuant to Tenn. Code Ann. §§ 4-5-202, 4-5-207, and 4-5-229 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 ninety (90) days of 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 ten (10) persons who will be affected by the amendments, or submitted by a municipality which will be affected by the amendments, or an association of ten (10) or more members, or any standing committee of the General Assembly. The agency shall forward such petition to the Secretary of State.*

*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:** | State Board of Education |
| **Division:** | |
| **Contact Person:** | Elizabeth Taylor |
| **Address:** | Andrew Johnson Tower, 1st Floor<br>710 James Robertson Pkwy |
| **Zip:** | 37243 |
| **Phone:** | 615-253-5707 |
| **Email:** | Elizabeth.Taylor@tn.gov |

**Revision Type (check all that apply):**

X 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** |
|---|---|
| 0520-07-01 | Non-Public Schools Administrative Rules |
| **Rule Number** | **Rule Title** |
| 0520-07-01-.01 | Creation of the Advisory Council for Non-Public |
| 0520-07-01-.02 | Repository for Permanent Records |
| 0520-07-01-.03 | Student Transfers |

RULES
OF
THE STATE BOARD OF EDUCATION

CHAPTER 0520-07-01
NON-PUBLIC SCHOOLS ADMINISTRATIVE RULES

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05200-07-01-.01 Creation of the Advisory Council for Non-Public Schools
0520-07-01-.02 Repository for Permanent Records
0520-07-01-.03 Student Transfers

**0520-07-01-.01 CREATION OF THE ADVISORY COUNCIL FOR NON-PUBLIC SCHOOLS.**

(1) The Commissioner of Education shall appoint a nine (9) member Advisory Council for Non-Public Schools to advise the Department of Education on policies relating to non-public school administration.

(2) The term of each council member shall be for three (3) years, and members may be re-appointed.

***Authority:*** *T.C.A. § 49-1-302.* ***Administrative History:*** *Original rule filed April 24, 1987; effective June 8, 1987. Repealed and new rule filed March 16, 1992; effective June 29, 1992.*

**0520-07-01-.02 REPOSITORY FOR PERMANENT RECORDS.**

(1) Non-public schools which cease operation shall place their student academic and attendance records in the office of the appropriate school administrator as specified below:

(a) Schools which merge, consolidate, or undergo change of ownership shall deposit their records with the continuing school;

(b) Schools which are a part of a system, an organization, a franchise, or a ministry of a local church or a group of churches shall deposit their records with the appropriate ongoing administrative office;

(c) Schools may deposit their records with another private school in the near vicinity; or

(d) Unless records are deposited in accordance with (a), (b), or (c) above, schools shall deposit their records with the local public school system where the non-public school was located.

(2) Non-public schools which cease operation shall notify the superintendent of the public school system and the State Department of Education.

(3) Non-public schools which cease operation shall publish the location of student records in local newspapers.

***Authority:*** *T.C.A. § 49-1-302.* ***Administrative History:*** *Original rule filed April 24, 1987; effective June 8, 1987. Repealed and new rule filed March 16, 1992; effective June 29, 1992.*

**0520-7-1-.03 STUDENT TRANSFERS.**

(1) Students may transfer among public schools, or Category I, II, or III, ~~or VII~~ non-public schools without loss of credit for completed work. See Chapter 0520-01-03. The school which the student leaves must supply a properly certified transcript showing the student's record of attendance, achievement, and the units of credit earned. However, this rule shall not be construed as to supersede any contractual obligation of parents with the non-public school (e.g. withholding of grades until all tuition/fees are paid).

***Authority:*** *T.C.A. § 49-1-302.* ***Administrative History:*** *Original rule filed April 24, 1987; effective June 8, 1987. Repealed and new rule filed March 16, 1992; effective June 29, 1992. Repeal and new rule filed December 28, 2005; effective April 28, 2006.*

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~~April, 2006 (Revised) 2~~

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* 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) |
|---|---|---|---|---|---|
| Chancey | X | | | | |
| Cook | X | | | | |
| Edwards | X | | | | |
| Hartgrove | X | | | | |
| Johnson | X | | | | |
| Pearre | | | | X | |
| Roberts | | | | X | |
| Rolston | X | | | | |
| Tucker | X | | | | |
| Troutt | | | | X | |

I certify that this is an accurate and complete copy of proposed rules, lawfully promulgated and adopted by the Tennessee State Board of Education on 10/14/2016 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 ninety (90) days of the filing of the proposed rule with the Secretary of State.

Date: February 1, 2017

Signature:

Name of Officer: Elizabeth Taylor

Title of Officer: General Counsel

SUSAN L. LIVERMAN
STATE OF TENNESSEE NOTARY PUBLIC
DAVIDSON COUNTY

Subscribed and sworn to before me on: Feb. 1, 2017

Notary Public Signature: Susan L. Liverman

My commission expires on: 8-4-2020

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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.

Herbert H. Slatery III
Attorney General and Reporter

3/6/2017
Date

FILED
MAR 24 PM 4:09
SECRETARY OF STATE
PUBLICATIONS

**Department of State Use Only**

Filed with the Department of State on: 3/24/17

Effective on: 6/22/17

Tre Hargett
Secretary of State

## G.O.C. STAFF RULE ABSTRACT

| | |
|---|---|
| DEPARTMENT: | State Board of Education |
| DIVISION: | |
| SUBJECT: | Creation or Reactivation of City School Systems |
| STATUTORY AUTHORITY: | Pursuant to T.C.A. §§ 49-2-106 and 49-2-127 the State Board of Education is charged with promulgating rules regarding the creation and reactivation of city and special school districts. |
| EFFECTIVE DATES: | June 22, 2017 through June 30, 2018 |
| FISCAL IMPACT: | There will be no substantial fiscal impact to state or local governments as a result of these revisions. |
| STAFF RULE ABSTRACT: | Rule 0520-01-08 Creation or Reactivation of City School System outlines the requirements for the creation or reactivation of a city school system. The revisions to the rule bring it up to date with current law and practices by changing "superintendent" to "director of schools" and eliminating outdated salary requirements for directors of schools and teachers. |

**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.

Not applicable

**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)

Not applicable

**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;

Rule 0520-01-08 Creation or Reactivation of City School System outlines the requirements for the creation or reactivation of a city school system. The revisions to the rule to bring it up to date with current statute and practices by changing "superintendent" to "director of schools" and eliminating outdated salary requirements for directors of schools and teachers.

**(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;

Pursuant to T.C.A. §§ 49-2-106 and 49-2-127 the State Board of Education is charged with promulgating rules regarding the creation and reactivation of city and special school districts.

**(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;

This rule most directly affects a potential city or special school district. The State Board supports the rule change and has not received any objection from a potential city or special school district.

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

None

**(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 substantial fiscal impact to state or local governments as a result of these revisions.

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

Elizabeth Taylor
Elizabeth.Taylor@tn.gov

Nathan James
Nathan.James@tn.gov

Elizabeth Fiveash
Elizabeth.Fiveash@tn.gov

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

Elizabeth Taylor
Elizabeth.Taylor@tn.gov

Nathan James
Nathan.James@tn.gov

Elizabeth Fiveash
Elizabeth.Fiveash@tn.gov

**(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

Elizabeth Taylor
General Counsel, Tennessee State Board of Education
1st Floor, Andrew Johnson Tower
710 James Robertson Parkway
Nashville, TN 37243
(615) 253-5707
Elizabeth.Taylor@tn.gov

Nathan James
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Elizabeth Fiveash
Elizabeth.Fiveash@tn.gov
Assistant Commissioner Policy & Legislative Affairs, Tennessee Department of Education
9th Floor, Andrew Johnson Tower
710 James Robertson Parkway
Nashville, TN 37243
(615) 253-1960

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

None

**Department of State**
**Division of Publications**
312 Rosa L. Parks Avenue, 8th Floor Snodgrass/TN Tower
Nashville, TN 37243
Phone: 615-741-2650
Email: publications.information@tn.gov

**For Department of State Use Only**

Sequence Number: 03-29-17
Rule ID(s): 6476
File Date: 3/24/17
Effective Date: 6/22/17

# Proposed Rule(s) Filing Form

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| | |
|---|---|
| **Agency/Board/Commission:** | State Board of Education |
| **Division:** | |
| **Contact Person:** | Elizabeth Taylor |
| **Address:** | Andrew Johnson Tower, 1st Floor<br>710 James Robertson Pkwy |
| **Zip:** | 37243 |
| **Phone:** | 615-253-5707 |
| **Email:** | Elizabeth.Taylor@tn.gov |

**Revision Type (check all that apply):**

X 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** |
|---|---|
| 0520-01-08 | Creation or Reactivation of City School Systems |
| **Rule Number** | **Rule Title** |
| 0520-01-08-.01 | Requirements for Creation or Reactivation of City School Systems |
| | |
| | |
| | |

# RULES
# OF
# THE STATE BOARD OF EDUCATION

## CHAPTER 0520-01-08
## CREATION OR REACTIVATION OF CITY SCHOOL SYSTEMS

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0520-01-08-.01 Requirements for Creation or Reactivation of City School Systems

### 0520-01-08-.01 REQUIREMENTS FOR CREATION OR REACTIVATION OF CITY SCHOOL SYSTEMS.

No city school system shall be created or reactivated for the purpose of operating a system of public schools unless such school system ~~shall~~:

(1) ~~Ha~~save a scholastic population within its boundaries that will assure an enrollment of at least 1,500 pupils in its public schools, or which has at least 2,000 pupils presently enrolled in the proposed school system;

(2) Employs a full-time ~~superintendent~~ director of schools who ~~shall~~ meets all ~~the~~ legal and regulatory requirements for directors of schools in Tennessee; ~~for county and city superintendents, and who shall be paid an annual salary of at least the amount paid to a county superintendent of schools having the same training and experience under the state salary schedule.~~

(3) Employs teachers who meet all legal and regulatory requirements for teachers in Tennessee; ~~whose average training shall be at least as high as the average training of the teachers in the school system, or systems, out of which the new system is to be formed, and pay to each teacher a salary supplement in an amount at least as much as the salary supplement being paid in the parent school system or systems.~~

(4) Provides school plant facilities which ~~shall~~ meet the minimum requirements and standards of the State Board of Education;

(5) Spends each fiscal year for the current operation of its public schools an amount of money in addition to the amount required to be raised by the county at least equal to that which a fifteen cents ($0.15) tax levy on each One Hundred Dollars ($100.00) of taxable property for the current year in said city school district would produce if the same were all collected; ~~and/or~~

(6) Furnishes all information as requested by the State Commissioner of Education on behalf of the State Board of Education relating to the creation or reactivation of the new school system, such as supporting statistical and fiscal data; and furnish certified results of a referendum election indicating the willingness of the local people to meet the standards of adequacy as here in above set forth and to provide the necessary local funds to do so, after the new school system's share of the state and other school funds has first been applied.

***Authority***: *T.C.A. §§ 49-2-106 and ~~49-2-127~~49-2-109.* ***Administrative History***: *Original rule filed March 16, 1992; effective June 29, 1992.*

* 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) |
|---|---|---|---|---|---|
| Chancey | X | | | | |
| Cook | X | | | | |
| Edwards | X | | | | |
| Hartgrove | X | | | | |
| Johnson | X | | | | |
| Pearre | | | | X | |
| Roberts | | | | X | |
| Rolston | X | | | | |
| Tucker | X | | | | |
| Troutt | | | | X | |

I certify that this is an accurate and complete copy of proposed rules, lawfully promulgated and adopted by the Tennessee State Board of Education on 10/14/2016 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 ninety (90) days of the filing of the proposed rule with the Secretary of State.

Date: 2/1/2017

Signature:

Name of Officer: Elizabeth Taylor

Title of Officer: General Counsel

SUSAN L. LIVERMAN
STATE OF TENNESSEE NOTARY PUBLIC
DAVIDSON COUNTY

Subscribed and sworn to before me on: Feb. 1, 2017

Notary Public Signature: Susan L. Liverman

My commission expires on: 8-4-2020

---

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.

RECEIVED
2017 MAR 24 PM 4:09
SECRETARY OF STATE
PUBLICATIONS

Herbert H. Slatery III

Herbert H. Slatery III
Attorney General and Reporter

3/6/2017
Date

**Department of State Use Only**

Filed with the Department of State on: 3/24/17

Effective on: 6/22/17

Tre Hargett
Secretary of State