G.O.C. STAFF RULE ABSTRACT

DEPARTMENT:	Agriculture
DIVISION:	Consumer and Industry Services
SUBJECT:	Restricted Use Pesticides - Dicamba
STATUTORY AUTHORITY:	Tennessee Code Annotated, Section 62-21-116
EFFECTIVE DATES:	November 5, 2019 through June 30, 2020
FISCAL IMPACT:	Minimal
STAFF RULE ABSTRACT:	This rulemaking hearing rule places time-of-year restrictions on the application of certain dicamba pesticide concentrations in the commercial production of cotton and soybeans.

Public Hearing Comments

The department of agriculture held a public hearing on May 14, 2019. Haley Todd served as the hearing officer for the rulemaking hearing regarding Chapter 0080-09-02 Restricted Use Pesticides. There were no oral comments at the hearing. Written comments from constituents are summarized below along with the department's response.

Comment:

Erica Bell Vick on behalf of Helena Agri-Enterprises, LLC ("Helena") made a comment regarding 0080-09-02-.13(2)(b) suggesting additional language limiting the section to dicamba tolerant cotton and soybeans.

Response:

The department appreciates the comments of Helena. The intent of section (2)(b) is to prohibit the use of outdated, burn-down dicamba technology being applied for the production of cotton and soybeans between May and October. The desired language from Helena would be redundant since the section is already limited to soybeans and cotton and adding another caveat to when the rules apply would make the rule harder to understand.

Comment:

Helena further commented that it seeks clarity on the record keeping requirements of 0080-09-02-.13(3).

Response:

The rule as written extends to any applicator using 6.5% dicamba or greater regardless of the target, not just soybeans and cotton.

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:

Pesticide applicators who serve producers of cotton and soybeans are subject to this rule.

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

Approximately 5,500 private applicators and 250 commercial applicators of pesticides are expected to be subject to this rule.

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

The proposed rule change is not expected to increase administrative costs of affected firms.

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

The rule implements time of year restrictions for application of certain dicamba pesticide concentrations in commercial production of cotton and soybeans. It is anticipated that affected firms will require greater planning and diligence during portions of the year to apply adequate quantities as applied in previous harvests. The department expects that these limits are reasonable and will minimally affect production, if at all.

(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 controlling off target drift are effective.

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

These rules are consistent with the EPA approved label for the product as well as EPA's recommended use of the product.

(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.

Exception of small businesses from this rule may expose the state to greater risks associated with dicamba products

Impact on Local Governments

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

These rules have no effect on local government.

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 places time of year restrictions on application of certain dicamba pesticide concentrations in the commercial production of cotton and soybeans.

(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;

Dicamba products are registered and labeled in accordance with the Federal Insecticide, Fungicide and Rodenticide Act. Under T.C.A. §62-21-116 dicamba may be applied consistent with its 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;

Cotton and soybean producers are affected by this 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;

Terminix International Company, L.P. v. Tennessee Department of Labor, 77 S.W.3d 185 (Tenn. Ct. App. 2001) (State jurisdiction to regulate sale or use of pesticide is not preempted by federal authority.)

(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 is minimal fiscal impact under this rule.

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

David Waddell, Director of Law and Policy, Tennessee Department of Agriculture

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

David Waddell, Director of Law and Policy, Tennessee Department of Agriculture

(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.

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For Department of State Use Only

Sequence Number: 08-10-19
Rule ID(s): 9230
File Date: 8/7/19
Effective Date: 11/5/19

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:	Agriculture
Division:	Consumer and Industry Services
Contact Person:	David Waddell
Address:	436 Hogan Road, Nashville, TN
Zip:	37220
Phone:	(615) 837-5331
Email:	david.waddell@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**
0080-09-02	Restricted Use Pesticides
Rule Number	**Rule Title**
0080-09-02-.13	Dicamba

Amendment

Chapter 0080-09-02
Restricted Use Pesticides

Rule 0080-09-02-.13 Dicamba is amended by deleting the rule in its entirety and substituting the following language so that, as amended, the rule shall read:

0080-09-02-.13 Dicamba.

(1) ~~Scope. This rule applies to any person who makes or causes a row crop application of dicamba. Provisions of the rule are made in addition to all other definitions and requirements for the sale and application of pesticides under the Act, its corresponding regulations, and associated product labels.~~

~~(2)~~ Definitions. ~~When used in this rule, unless the context requires otherwise:~~

~~(a)~~ Dicamba ~~means~~ is any pesticide containing 3, 6-Dichloro-2-methoxybenzoic acid~~;~~ or 3-, 6-Dichloro-o-anisic acid~~; or any pesticide containing either substance in a concentration greater than or equal to 6.5%; and,~~

~~(b) Row crop application means for production of cotton or soybeans in commerce.~~

~~(3)~~(2) Application. If a pesticide is labeled to have a dicamba concentration of at least 6.5% weight/weight and is not labeled for over the top use, a person shall not apply the pesticide between May 15 and October 1 of the same year for production of cotton or soybeans.

~~(a) A person shall not make a row crop application of dicamba before 7:30 a.m. or after 5:30 p.m. local time for the application site.~~

~~(b) Between May 15 and October 1, a person shall not make a row crop application of dicamba unless the dicamba product is labeled for in-crop use.~~

~~(4)~~(3) Records. Any person who ~~makes or causes a row crop application of~~ applies a pesticide labeled to have a dicamba concentration of at least 6.5% weight/weight shall keep records of the application as required under 0080-09-02-.07.

~~(5)~~(4) Violations.

(a) ~~Each acre w~~Where dicamba of any concentration is applied in violation of the Act, its corresponding regulations, or this rule, each acre of the application shall constitute a separate violation.

(b) A person is responsible for violations when committed by either the person or his agent.

(c) Each violation is grounds for denial or revocation of any certificate, license, or charter issued under the Act; actions for injunction; assessment of civil penalties up to $1500 per violation; and imposition of criminal charges against the violator.

Authority: T.C.A. §§ 4-3-203, 4-3-204, and 62-21-118.

* 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 Agriculture on 06/19/2019 (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: 03/22/19

Rulemaking Hearing(s) Conducted on: (add more dates). 05/14/19

K. DAVID WADDELL
STATE OF TENNESSEE NOTARY PUBLIC
WILLIAMSON COUNTY

Date: 06/19/2019

Signature:

Name of Officer: Charlie Hatcher

Title of Officer: Commissioner

Subscribed and sworn to before me on: 06/19/2019

Notary Public Signature: K D Waddell

My commission expires on: 10/11/2021

Agency/Board/Commission:

Rule Chapter Number(s):

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

7/26/2019
Date

Department of State Use Only

Filed with the Department of State on: 8/7/19

Effective on: 11/5/19

Tre Hargett
Tre Hargett
Secretary of State

G.O.C. STAFF RULE ABSTRACT

DEPARTMENT:	Tennessee Wildlife Resources Agency
DIVISION:	Boating and Law Enforcement
SUBJECT:	Commercial Non-Motorized Vessel Outfitters
STATUTORY AUTHORITY:	No federal or state law or regulation mandate this rule repeal or amendment.
EFFECTIVE DATES:	November 11, 2019 through June 30, 2020
FISCAL IMPACT:	Minimal
STAFF RULE ABSTRACT:	These rulemaking hearing rules establish a framework for regulating commercially rented/leased non-motorized vessels on the waters of Tennessee.

Public Hearing Comments

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

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

[X] Attached hereto are the responses to public comments.

The Commission heard comments from Mr. John Mattox, Mr. Ed Greer, Ms. Leanne Logan, Mr. Nathan Ridley, Ms. Andrea White, Mr. Jim Redwine, Ms. Billie Davis, and Mr. Michael Butler.

Mr. John Mattox noted that he is both a fisherman and an owner of a commercial NMV outfitter. He understands the need to reduce conflict between fishermen and others on the water. Mr. Mattox stated that he understands the need to collect data, but that even the reporting requirement will have an impact on his business.

Mr. Ed Greer, Commissioner of Cheatham County, noted that the Cheatham County Commission passed a resolution in support of the proposed rules. As a Commissioner, he is concerned that the rules as amended did not include a funding mechanism to expand public access to Tennessee waters. As an individual, he does not think commercial NMV outfitters should be able to launch hundreds of boats for free when he has to pay to register his boat to operate on the waters of Tennessee.

Ms. Leanne Logan expressed the need to get the rules right from the start. She hopes that the TWRA and other interested groups will continue to work together to get the right information and develop good recommendations.

Mr. Nathan Ridley, representing the Tennessee Paddlesports Assocation, proposed some matters for the Fish and Wildlife Commission to consider for future rules. These include: (a) parking at public access ramps is key, as this is important to various commercial NMV outfitters; (b) increasing the permit period from one-year to three or five years, as this will give the outfitters more certainty; (c) establish a reporting system for outfitters to submit the requisite information; (d) data being collected under the rules as amended is confidential business information; and (e) allow outfitters to give information in ranges (more than 500, less than 1,000) rather than exact numbers.

Ms. Andrea White expressed her gratitude for bringing in interested groups to provide input on the rules.

Mr. Jim Redwine expressed the need for increased safety on the water and avoiding user conflicts. Mr. Redwine also lauded the Fish and Wildlife Commission's efforts to collect proper data. Mr. Redwine proposed some matters for the Fish and Wildlife Commission to consider for future rules. These include: (a) fee exemptions for outfitters of a certain size; (b) carry capacity and usage capacity studies should be conducted on rivers; and (c) most of the money collected from users of a particular river should go back to that river for improvements.

Ms. Billie Davis stated that she hears what the Fish and Wildlife Commission is saying in terms of user conflicts and congested access areas. She cares about the Caney Fork River, and she does not want anyone to have a bad experience on the river.

Mr. Michael Butler proposed some matters for the Fish and Wildlife Commission to consider for future rules. These include: (a) remember to protect the resource itself (lakes and rivers) as it is a public resource and held in trust by the state, and (b) when considering future fees, evaluate an impact fee, as increased traffic on the water has an increased impact on the resource.

Two specific changes to the rules as amended were expressed.

Comment 1: Mr. Ridley, Ms. Logan, Ms. White, and Mr. Redwine all expressed the need for the rules to create a permanent advisory council.

Response: The Fish and Wildlife Commission feels that this proposed change to the rules as noticed would

be outside the scope. As such, the change would be prohibited by Tenn. Code Ann. § 4-5-203(c)(2)(B).

Comment 2: Ms. White suggested private universities and municipalities that rent or lease non-motorized vessels be exempt from the requirements of the rules and regulations.

Response: The Fish and Wildlife Commission exempted state governmental entities (including state universities) from the rules and regulations because the Commission is aware of the state entities meeting the definition of "commercial NMV outfitter." The Commission is confident that any data sought will be provided by the state governmental entity. The Commission is not aware of all the private universities and municipalities that engage in conduct meeting the definition of "commercial NMV outfitter." Therefore, the Commission chooses not to exempt private universities and municipalities from the requirements of these rules and regulations.

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.

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

Impact on Local Governments

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

The Agency does not believe that the rule amendment/repeal will have 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;

Pursuant to Tenn. Code Ann. § 69-9-227, these rules establish a framework for regulating commercially rented/leased nonmotorized vessels on the waters 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;

There are no federal or state laws mandating this rule repeal or amendment.

(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 business renting or leasing nonmotorized vessels will be affected by 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;

No Attorney General Opinion or judicial ruling directly relating 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 proposed rules will not significant impact the Agency's revenue or expenditures.

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

Chris Richardson, TWRA, PO Box 40747, Nashville, TN 37204; 615-308-0477; Chris.Richardson@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, Asst. Director, TWRA, 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, PO Box 40747, 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: 08-15-19
Rule ID(s): 9232
File Date: 8/13/19
Effective Date: 11/11/19

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
Contact Person:	Chris Richardson
Address:	PO Box 40747, Nashville, TN
Zip:	37204
Phone:	615-308-0477
Email:	chris.richardson@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**
1660-04	Non-Motorized Vessels
Chapter Number	**Chapter Title**
1660-04-01	Rules and Regulations Governing Commercial Non-Motorized Vessel Outfitters
Rule Number	**Rule Title**
1660-04-01-.01	Purpose
1660-04-01-.02	Definitions
1660-04-01-.03	Operating Requirements
1660-04-01-.04	Application to the Tennessee Wildlife Resources Agency
1660-04-01-.05	Vessel Requirements for Commercial Outfitters
1660-04-01-.06	Safety Requirements and Procedures
1660-04-01-.07	Transportation
1660-04-01-.08	Nonrenewal of Permit

New Rule

RULES
OF
TENNESSEE WILDLIFE RESOURCES AGENCY
NON-MOTORIZED VESSELS

CHAPTER 1660-04-01
RULES AND REGULATIONS GOVERNING COMMERCIAL NON-MOTORIZED VESSEL OUTFITTERS

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1660-04-01-.03 Operating Requirements
1660-04-01-.04 Application to the Tennessee Wildlife Resources Agency
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1660-04-01-.06 Safety Requirements and Procedures
1660-04-01-.07 Transportation
1660-04-01-.08 Nonrenewal of Permit

1660-04-01-.01 PURPOSE

(1) To provide the Tennessee Wildlife Resources Agency an effective system of regulation for commercial outfitters that lease or rent non-motorized vessels to individuals for recreational use on the waters of Tennessee

(2) To preserve the recreational value of Tennessee rivers and lakes by promoting the protection of these natural resources.

(3) To preserve the integrity of public access to Tennessee rivers and lakes for the benefit of recreational boaters and anglers.

(4) To promote the safety of the public.

Authority: *T.C.A. §§ 69-9-227 and 70-1-206.*

1660-04-01-.02 DEFINITIONS

(1) "Agency" and "TWRA" mean the Tennessee Wildlife Resources Agency.

(2) "Non-motorized vessel" (hereinafter referred to as "NMV") means canoes, kayaks, stand up paddle boards, tubes, and any other vessels powered only by their occupants and propelled by manual methods, including, but not limited to paddles and oars.

(3) "Waters of Tennessee" means any waters within the territorial limits of this state, except privately owned ponds or lakes not used for commercial purposes.

(4) "Commercial NMV outfitter" means any entity (e.g., business, joint venture, individual, etc.) that leases or rents NMV for non-commercial use by the public on the waters of Tennessee, except it does not mean:

(a) A commercial outfitter operating pursuant to and in possession of a permit issued by the United States Forest Service on waters in and adjacent to the Cherokee National Forest;

(b) A commercial outfitter operating at a lake or pond wholly contained within the boundaries of any property owned or operated by the Tennessee Department of Environment and Conservation or the Agency; or

(c) Any state governmental entity.

(5) "Life jacket" means a personal flotation device approved by the Commandant of the Coast Guard under 46 CFR part 160.

(6) "Public access area" means a government-owned area open to the public that grants the public access to the waters of Tennessee such as a boat ramp or canoe/kayak steps.

(7) "Accident" means any occurrence in which the operator of a commercial NMV requires medical attention beyond basic first aid.

(8) "Water rescue" means any occurrence in which, absent intervention, an occupant or operator of a commercial NMV could suffer serious bodily injury or death.

Authority: *T.C.A. §§ 69-9-227 and 70-1-206.*

1660-04-01-.03 OPERATING REQUIREMENTS

(1) A commercial NMV outfitter must possess a valid operating permit issued by the TWRA.

(2) A commercial NMV outfitter must maintain the following records:

(a) Number and type of NMV leased or rented each day;

(b) The public access and body of water utilized by an NMV each day, if known;

(c) Number of accidents and/or casualties involving the use of a commercial outfitter's NMV; and

(d) Number of water rescues each day involving a commercial NMV outfitter's vessel.

(3) Records maintained by commercial NMV outfitters required by these rules are subject to inspection by TWRA personnel. Commercial NMV outfitters shall provide the TWRA with any such requested information.

(4) A commercial NMV outfitter shall not lease or rent to an individual less than 16 years of age unless the individual is accompanied by someone at least 18 years of age.

Authority: *T.C.A. §§ 69-9-227 and 70-1-206.*

1660-04-01-.04 APPLICATION TO THE TENNESSEE WILDLIFE RESOURCES AGENCY

(1) Beginning October 1, 2019, a commercial NMV outfitter shall apply to the TWRA for an operating permit through the appropriate application form provided by the TWRA.

(2) An operating permit is effective from January 1 through December 31 of each year.

(3) All operating permit renewals shall be filed with the TWRA between October 1 and December 15.

(4) Each application shall include, among other information, the following information for each applicant:

(a) The number of vessels owned by the commercial NMV outfitter that are available for lease or rent;

(b) The waterways of the state on which the applicant intends to operate, if known;

(c) Any public access areas the applicant intends to utilize;

(d) Estimated months of operation;

(e) Tennessee Secretary of State control number, if applicable;

(f) A copy of the applicant's business license;

(g) A copy of the applicant's Department of Revenue Certificate of Registration;

(h) Proof of liability insurance; and

(i) Designated representative for the applicant.

(5) Operating permits may be transferred upon written notification to the TWRA of the date of transfer, the name of the new business owner, and the new designated representative. Transfer notifications must be submitted before the date of transfer.

Authority: *T.C.A. §§ 69-9-227 and 70-1-206.*

1660-04-01-.05 VESSEL REQUIREMENTS FOR COMMERCIAL OUTFITTERS

(1) Each NMV, except a stand up paddle board, operated by a commercial outfitter must clearly and conspicuously display the outfitter's name on both exterior sides of the NMV. If the outfitter has a uniquely identifying logo, then the outfitter's logo may be displayed instead of the outfitter's name. The name and/or logo must be visible above the water line when the NMV is in the water.

(2) Each stand up paddle board operated by a commercial outfitter must display the outfitter's name and/or uniquely identifying logo on the top or side of the paddle board, but the name and/or logo is not required to be visible above the water line when the paddle board is in the water.

(3) Each craft must be maintained in a reasonable operating condition for its intended use. Each outfitter shall inspect its craft after each trip for damage or wear which materially affect the structural integrity of the craft. If such damage is found, repairs must be made to the craft before it can be used for commercial NMV purposes.

(4) All NMV used in commercial NMV operations shall be subject to inspection by TWRA personnel.

Authority: *T.C.A. §§ 69-9-227 and 70-1-206.*

1660-04-01-.06 SAFETY REQUIREMENTS AND PROCEDURES

(1) Commercial NMV outfitters must provide life jackets to occupants of NMVs in accordance with United States Coast Guard regulations.

(2) If a canoe, kayak, or stand up paddle board is leased or rented, then the NMV must be equipped with the appropriate paddles and/or oars for the particular NMV and its occupants.

(3) If a paddle board is leased or rented for use on open water (e.g., lakes, reservoirs, ponds, etc.), then the NMV must be equipped with an appropriate paddle board leash.

(4) If a canoe, kayak or stand up paddle board is leased or rented, then the NMV must be equipped with a life jacket of the appropriate size for the person on the NMV.

(5) If a person on board the NMV is 12 years old or younger, then that person must wear a life jacket at all times while on the NMV.

(6) Commercial NMV outfitters must maintain life jackets, paddles/oars, and leashes in a good and serviceable condition for their intended use. Each commercial NMV outfitter shall inspect this equipment after each trip for damage which materially affects the structural integrity of the equipment. If such damage is found, repairs must be made before it can be used for commercial NMV purposes. If damage is found on a life jacket, the life jacket must be serviced or disposed of in accordance with Tenn. Comp. R. & Regs. 1660-02-03-.03.

(7) All life jackets, paddles, oars, and leashes used in commercial NMV operations shall be subject to inspection by TWRA personnel.

(8) Each commercial NMV outfitter is encouraged to equip each NMV leased or rented with a litter bag. Litter bags will be provided to commercial NMV outfitters by the TWRA upon request.

(9) Commercial NMV outfitters shall conduct a safety briefing for all passengers and strive to include at least the following topics as appropriate to the body of water in question and the conditions of the day:

(a) Description of the waterway and water features including, but not limited to, and any dam generation issues, shoals, shallows, riffles, or known obstructions;

(b) How to identify and manage hazards like deadfall/strainers and low head dams;

(c) How to manage wind and weather conditions of the day;

(d) How to navigate among motorized watercraft;

(e) Equipment;

(f) Paddling techniques to maintain a proper distance from the other NMVs, swimmers, fishermen, and other users on the water;

(g) Swimming in moving water;

(h) Relevant safe boating laws;

(i) River and lake etiquette; and

(j) Trespass concerns; and

(k) Contingency plans and phone numbers to use if someone in the group gets into trouble.

(10) All safety instruction must be conducted with materials or methods approved by the TWRA.

Authority: *T.C.A. §§ 69-9-227 and 70-1-206.*

1660-04-01-.07 TRANSPORTATION

(1) All parking by commercial NMV outfitters and their customers at public access areas controlled by the TWRA shall be restricted to areas approved by the TWRA. This provision shall not apply to customers of commercial NMV outfitters utilizing private NMVs.

(2) Commercial NMV outfitters shall comply with the Department of Safety Rules and Regulations regarding the transportation of passengers.

(3) Commercial NMV outfitters shall comply with the Department of Safety Rules and Regulations regarding commercial vehicles.

Authority: *T.C.A. §§ 69-9-227 and 70-1-206.*

1660-04-01-.08 NONRENEWAL OF PERMIT

(1) A commercial NMV outfitter's operating permit may not be renewed for failure to:

(a) Pay the requisite fees;

(b) Provide the necessary application information;

(c) Maintain the information and documentation required by Rule 1660-04-01-.03(2); or

(d) Produce and/or allow for the inspection of any information requested by the TWRA pursuant to Rule 1660-04-01-.03(3).

Authority: *T.C.A. §§ 69-9-227 and 70-1-206.*

* 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)
Angie Box	✓				
Jeff Cook	✓				
Bill Cox	✓				
Dennis Gardner	✓				
Kurt Holbert	✓				
Connie King	✓				
Brian McLerran	✓				
Tony Sanders	✓				
James Stroud	✓				
Bill Swan	✓				
Kent Woods	✓				
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 01/18/19, 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: *11/21/18*

Rulemaking Hearing(s) Conducted on: (add more dates). *01/18/19*

KIMBERLY K. WHITE
STATE OF TENNESSEE NOTARY PUBLIC
DAVIDSON COUNTY

Date: 1/18/19

Signature: Ed Carter

Name of Officer: Ed Carter

Title of Officer: Executive Director

Subscribed and sworn to before me on: 1/18/19

Notary Public Signature: Kimberly K. White

My commission expires on: 11/8/2022

Agency/Board/Commission: Tennessee Wildlife Resources Agency

Rule Chapter Number(s): 1660-04-01

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

3/1/2019
Date

Department of State Use Only

Filed with the Department of State on: 8/13/19

Effective on: 11/11/19

Tre Hargett
Secretary of State

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PUBLICATIONS

Public Hearing Comments

G.O.C. STAFF RULE ABSTRACT

DEPARTMENT:	Tennessee Wildlife Resources Agency
DIVISION:	Boating and Law Enforcement
SUBJECT:	Shooting / Operations of Private Wildlife Preserve
STATUTORY AUTHORITY:	No federal or state law or regulation requires this amendment
EFFECTIVE DATES:	November 11, 2019 through June 30, 2020
FISCAL IMPACT:	None
STAFF RULE ABSTRACT:	This rulemaking hearing rule would allow big game wildlife preserves to acquire instate CWD susceptible species once the animals are enrolled in a CWD monitoring program with TDA. This would remove the current mandatory enrollment, minimum of five years, prior to a preserve taking possession of the animals. Also, the amendment would require TDA to be responsible for all mandatory CWD testing on preserves and any escapes of nonindigenous mammals.

Public Hearing Comments

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

[X] 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, all agencies shall conduct a review of whether a proposed rule or rule affects small business.

This rule amendment will allow big game preserves access to cervids in-state that are currently not available. These in-state sources can provide cervids at a lower cost than those presently being imported for use in big game preserve operations. At present there are only two preserve operations importing CWD susceptible species. With this amendment, more of the 13 total operations will have access to cervids.

Impact on Local Governments

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

The Agency does not believe that the rule amendment/repeal will have 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;

This amendment would allow big game wildlife preserves to acquire instate CWD susceptible species once the animals are enrolled in a CWD monitoring program with TDA. This would remove the current mandatory enrollment, minimum of five years, prior to a preserve taking possession of the animals. Also, the amendment would require TDA to be responsible for all mandatory CWD testing on preserves and any escapes of non–indigenous mammals.

(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;

No federal or state law or regulation requires this amendment.

(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;

Big Game Wildlife Preserve Operators

(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;

None

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

Chris Richardson, Assistant Director TWRA

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

Chris Richardson, Assistant Director TWRA

(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

5107 Edmondson Pike, Nashville, TN 37211, 615-837-6016, 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 Ave., 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: 09-14-19
Rule ID(s): 9231
File Date: 8/13/19
Effective Date: 11/11/19

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
Contact Person:	Chris Richardson
Address:	5107 Edmondson Pike, Nashville, TN
Zip:	37211
Phone:	615-308-0477
Email:	chris.richardson@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**
1660-1-11	Rules and Regulations Governing Shooting
Rule Number	**Rule Title**
1660-1-11-.02	Operation of Private Wildlife Preserve

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

Amendment

1660-01-11-.02,.02 Rules and Regulations for Operation of Private Wildlife Preserve, is hereby amended by deleting the rule in its entirety and replacing it with the following:

1660-01-11-.02 OPERATION OF PRIVATE WILDLIFE PRESERVE.

(1) Definitions.

(a) "Private Wildlife Preserve" means a privately owned or lease controlled tract of land on which a person may hunt captive wildlife originating from a legal source.

(b) "Wildlife" means all warm-blooded animals classified under Tenn. Code Ann. § ~~TCA~~ 70-4-403 as Class II or Class III Wildlife.

(2) Permits.

(a) Any person desiring to operate a Private Wildlife Preserve as herein defined shall make application to the Tennessee Wildlife Resources Agency (TWRA) for a permit to do so. The ~~Wildlife Resources Agency~~ TWRA will cause an inspection to be made of the Private Wwildlife Ppreserve and if same shall be found to be meeting the qualifications of these rules and regulations, a permit will be issued. The permit will grant the privilege to the owner or operator of said Private Wildlife Preserve to release captive wildlife approved by the ~~Wildlife Resources Agency~~ TWRA. All Class III species and fowl authorized under this permit must come from sources approved by the Tennessee Department of Agriculture. The species to be released will be indicated on the permit.

(b) As of July 1, 2009, no new facilities will be issued a permit for the purpose of possessing and/or harvesting big game species under the authority of a Private Wildlife Preserve Permit.

(3) Animal Possession and Release.

(a) Wildlife indigenous to the State of Tennessee may not be held, released, or hunted on a Private Wwildlife Ppreserve unless specifically authorized by the Private Wwildlife Ppreserve permit. All Class I Wildlife species, white-tailed deer (Odocoileus virginianus), wild turkey (Meleagris gallipavos), and black bear (Ursus americanus) are specifically prohibited from being held, released, and hunted under the authority of a Private Wwildlife Ppreserve permit. Any wildlife on the Endangered or Threatened Species list(s) published by the State of Tennessee or the United States federal government are also prohibited from being held, released, or hunted on a Private Wwildlife Ppreserve. Game species, excluding black bear, ~~that~~ which are naturally occurring within the boundaries of a Private Wwildlife Ppreserve may be hunted in accordance with statewide regulations, license, and permit requirements.

(b) Any wildlife authorized for release on the Private Wwildlife Ppreserve may be taken with a gun, archery equipment, or a trap. Non-indigenous mammals, and elk, as defined in Tenn. Code Ann. § 70-4-403(3)-(P), released on the Private Wwildlife Ppreserve and which escape from the Private Wwildlife Ppreserve, must be reported to the Tennessee Department of Agriculture within 24 hours of such escape, and may be recaptured by the owner, operator, or regular employees of the Private Wildlife Ppreserve by means of tranquilizer gun, trap, or with the aid of dogs. The recapture of escaped animals is permitted only with prior approval ~~of~~ from the ~~Tennessee Wildlife Resources Agency~~ TWRA; however, the recapture of escaped indigenous wildlife, except elk, as defined in Tenn. Code Ann. § 70-4-403(3)(P), is not permitted.

(c) The following species of Cervidae may only be held or harvested by Private Wwildlife Ppreserves if such animals are obtained from a herd outside of the state that has been certified as Chronic Wasting Disease free for the past five (5) years, and are authorized for import by the Tennessee Department of Agriculture.

1. Elk/r~~R~~ed d~~D~~eer (Cervus elaphus);

2. Black-tailed d~~D~~eer/m~~M~~ule d~~D~~eer (Odocoileus hemionus);

3. Moose (Alces alces); and

4. Other Class III wildlife species shown to be susceptible to CWD.

(d) Private Wildlife Ppreserves may also hold and harvest the above mentioned species if these animals are obtained within the S~~s~~tate of Tennessee from a herd in a CWD surveillance program ~~continuously for the past 5 years or prior to July 1, 2006, whichever time period is shorter~~, as recognized by the Tennessee Department of Agriculture. Animals so obtained shall not have been exposed to non-surveillance animals during the surveillance period. Also, these animals must retain the identification marker(s) placed on the animals while in the surveillance programs. Animals so obtained must be harvested and ~~CWD~~ tested for CWD within twelve (12) months of acquisition. Also, animals so obtained can not be transferred to any other facility for any reason.

(e) The Tennessee Department of Agriculture, ~~USDA or TWRA~~ or their designee, must be notified within twenty-four (24) hours of the harvest or death of the above mentioned Cervidae. The head and neck of these animals must be retained and refrigerated by the Private Wildlife Ppreserve operator for at least seventy-two (72) hours in order to allow for any necessary testing by the above agencies.

(4) Facilities

(a) The land area for which a permit will be issued must contain a minimum of twenty (20) acres and this land must be in one continuous tract. No artificial structures or devices can be used to create a hunting or training area less than twenty (20) acres. On Private Wwildlife Ppreserves that require fencing, the fencing must be done in a continuous manner along the boundaries in such a fashion to prevent the escape of animals being held by the Private Wildlife Ppreserve. On Private Wwildlife Ppreserves where big game species are hunted, the boundaries must be fenced with woven wire fence of a minimum twelve and one half (12.5) gauge wire and such fence shall be a minimum of ninety-six (96) inches~~eight (8) feet in height~~. On Private Wwildlife Ppreserves where only swine, goats or sheep are hunted, the boundaries must be fenced with woven wire fence of a minimum twelve and one half (12.5) gauge wire, and such fence shall be a minimum of four (4) feet in height. On Private Wwildlife Ppreserves where foxes and raccoons are hunted, the boundaries must be fenced with woven wire fence of a minimum twelve and half (12.5) gauge wire with a maximum of four (4) inch spacing, anchored at the base and such fence shall be a minimum of seventy-two (72) inches in height. On Private Wwildlife Ppreserves where rabbits are hunted, the boundaries must be fenced with wire fence with a maximum of two (2) inch spacing anchored at the base and such fence shall be a minimum of thirty-six (36) inches in height. Private Wildlife Ppreserve boundaries which

are fenced with a minimum of ninety-six (96) inch ~~eight (8) foot~~ fencing~~,~~ must have any entrance to such Private Wildlife Ppreserve posted with signs identifying it as a Private Wwildlife Ppreserve. Private Wildlife Ppreserve boundaries that are fenced with less than ninety-six (96) inches ~~eight (8) foot~~ fencing or no fencing at all~~,~~ must have its boundaries posted every fifty (50) yards with signs identifying it as a Private Wwildlife Ppreserve. All signs used to identify a Private Wwildlife Ppreserve must be at least eight and one half (8.5) ~~1/2~~ inches by eleven (11) inches and have the words "Private Wildlife Preserve" printed on the sign in letters not less than one (1) inch in height on contrasting background.

(5) Records.

(a) Permittees will maintain records on forms provided by the TWRA showing the number and species of wildlife purchased, the name and address of the source of supply, number and species propagated, the number and species released,~~-~~ and the~~-~~ number~~-~~ and species taken. Also, permittees will maintain records on forms provided by the TWRA~~,~~ listing the name and address of each hunt participant, the date of the hunt, and their hunt record. These records are to be kept for a minimum of three (3) years and be available for inspection at the address listed on the permit for the Private Wildlife Preserve by agents of the ~~Tennessee Wildlife Resources agency~~ TWRA upon request.

(b) Operator and/or owners of a Private Wildlife Preserve must have at the address indicated on their Private Wildlife Ppreserve permit receipts for all animals held, released, hunted, and/or harvested on such Private Wildlife Ppreserve. These receipts must have the name and address of the supplier and be signed by such supplier. The receipts are to list species, numbers, sex, and all identifiers for animal(s) listed on such receipt. These receipts are to be provided to agents of the TWRA or the Tennessee Department of Agriculture upon request.

(6) Seasons.

(a) Private Wwildlife Ppreserve seasons open and close as promulgated by the Tennessee Wildlife Resources Commission.

Authority: *T.C.A. §§70-1-206 and 70-4-413.* ***Administrative History:*** *Original rule certified May 8, 1974. Amendment filed July 18, 1974; effective August 18, 1974. Amendment filed November 20, 1975. Amendment filed July 14, 1980; effective August 28, 1980. Amendment filed August 2, 1982; effective August 31, 1982. Amendment filed June 9, 1986; effective July 9, 1986. Amendment filed May 11, 1990; effective June 25, 1990. Amendment filed December 14, 1992; effective January 29, 1993. Amendment filed August 9, 1993; effective October 23, 1993. Amendment filed May 28, 1997; effective August 11, 1997. Amendment filed July 19, 2001; effective October 2, 2001. Amendment filed July 25, 2003; effective October 8, 2003. Amendment filed July 13, 2006; effective September 26, 2006. Amendment filed May 29, 2009; effective August 12, 2009.*

* 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)
Kurt Holbert	✓				
Brian McLerran	✓				
Angie Box	✓				
Dennis Gardner	✓				
Jimmy Granbery	✓				
Steve Jones	✓				
Connie King				✓	
Jim Ripley	✓				
Tony Sanders	✓				
James Stroud	✓				
Kent Woods	✓				
Tommy Woods	✓				
Hank Wright				✓	

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 (board/commission/ other authority) on 06/21/2019 (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: 4/30/19

Rulemaking Hearing(s) Conducted on: (add more dates). 06/21/19

KIMBERLY K. WHITE
STATE OF TENNESSEE NOTARY PUBLIC
DAVIDSON COUNTY

Date: June 21, 2019

Signature: Ed Carter

Name of Officer: Ed Carter

Title of Officer: Executive Director

Subscribed and sworn to before me on: June 21, 2019

Notary Public Signature: Kimberly K. White

My commission expires on: 11/08/2022

Agency/Board/Commission: Tennessee Fish and Wildlife Commission

Rule Chapter Number(s): 1660-1-11

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

8/1/2019
Date

Department of State Use Only

Filed with the Department of State on: 8/13/19

Effective on: 11/11/19

Tre Hargett
Secretary of State

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PUBLICATIONS

G.O.C. STAFF RULE ABSTRACT

DEPARTMENT:	Tennessee Technological University
SUBJECT:	Access to Public Records
STATUTORY AUTHORITY:	Tennessee Code Annotated, Section 10-7-503(g)(2)
EFFECTIVE DATES:	November 28, 2019 through June 30, 2020
FISCAL IMPACT:	None
STAFF RULE ABSTRACT:	Previously, Tennessee Tech adopted and followed the Open Records Counsel's model policy related to responding to requests for public records. This rule does not materially change Tennessee Tech's previous policy or processes for responding to such requests.

Comments Received and Tennessee Tech's Responses:

Comment: The rule should state that a resident can affirm Tennessee Tech residency through additional specified ways, such as a checkbox, residential or business address, or student id.

Response: The rule provides that a requestor can meet the citizenship requirement either by a valid Tennessee driver's license or an alternative acceptable form of identification. Tennessee Tech believes the rule is flexible enough to allow requestors to provide proof of residency through any number of avenues and that specifying the mechanisms in the rule would unnecessarily limit a requestor's or Tennessee Tech's options. Tennessee Tech's "Public Records Request" webpage lists a variety of documents that are acceptable proofs of citizenship for the purpose of accessing public records, as recommended as a best practice by the Office of Open Records Counsel.

Tennessee Tech does not believe, however, that a "checkbox" is a sufficient mechanism to prove Tennessee citizenship.

Comment: The rule should state that if Tennessee Tech has contracted with another entity and that entity possesses record subject to the Public Records Act, Tennessee Tech will facilitate or acquire those records on behalf of the requestor.

Response: Tennessee Code Annotated Section 10-7-503 (a)(2)(B) requires a "custodian" of a public record to "promptly make available for inspection any public record not specifically exempt from disclosure." Tennessee Code Annotated Section 10-7-503(a)(1)(C) defines a "records custodian" as any "office, official, or employee of any governmental entity lawfully responsible for the direct custody and care of a public record." While Tennessee Tech will make contract documents in its custody available to a requestor, Tennessee Tech declines to assume the burden of acquiring records that are not its direct custody or care.

Comment: While Tennessee Tech's rule does not prohibit photography of records, the commenter indicated that if Tennessee Tech does ban photography, that ban must be promulgated as part of the rule.

Response: Tennessee Tech does not prohibit the use of cellphones to photograph records. Tennessee Tech has added a provision to the rule that allows a requestor to use a personal cellphone to photograph up to 25 pages.

Comment: Tennessee Tech should accept a student id as proof of citizenship.

Response: Tennessee Tech declines to revise the rule for two reasons: First, a student id, by itself, is insufficient to prove citizenship or residency (*see, e.g.,* requirements for voter registration or for a driver's license); second, Tennessee Tech does not wish to treat one class of requestors more favorably than another by accepting less proof of citizenship.

Tennessee Tech's rule is flexible enough to allow the use of a student id in combination with another document such as dorm address, utility bill, rental agreement, etc. to meet the citizenship requirement. Tennessee Tech's "Public Records Request" webpage lists a variety of documents that are acceptable proofs of citizenship for the purpose of accessing public records, as recommended as a best practice by the Office of Open Records Counsel.

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.

The rule is not anticipated to have an impact on 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://publications.tnsosfiles.com/acts/106/pub/pc1070.pdf) of the 2010 Session of the General Assembly)

The rule is not anticipated to have an impact on local government.

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;

Previously, Tennessee Tech adopted and followed the Open Records Counsel's model policy related to responding to requests for public records. This rule does not materially change Tennessee Tech's previous policy or processes for responding to such requests.

(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. § 10-7-503(g)(2) requires state government entities to promulgate rules regarding public records that meet the requirements of T.C.A. § 10-7-503(g)(1).

(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 Tennessee Tech Board of Trustees urges adoption. Individuals/entities that wish to review public records of the State of Tennessee are directly affected by this rule. Tennessee Tech believes the rule is consistent with the intent of the law, namely to create transparency in its operations. The Tennessee Coalition for Open Governments and the Society for Student Journalists have raised objections to the requirement that a requestor provide proof of Tennessee citizenship.

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

None known.

(E) An estimate of the probable increase or decrease in state and local government revenues and expenditures, if any, resulting from the promulgation of this rule, and assumptions and reasoning upon which the estimate is based. An agency shall not state that the fiscal impact is minimal if the fiscal impact is more than two percent (2%) of the agency's annual budget or five hundred thousand dollars ($500,000), whichever is less;

None.

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

Karen Lykins, Chief Communication Officer

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

Karen Lykins, Chief Communication Officer

(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

1 William L. Jones Dr.
Cookeville, TN 38505
931-372-3084
KLykins@tntech.edu

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

Department of State
Division of Publications
312 Rosa L. Parks Ave., 8th Floor, Snodgrass/TN Tower
Nashville, TN 37243
Phone: 615-741-2650
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Sequence Number: 08-25-19
Rule ID(s): 9235
File Date: 8/30/19
Effective Date: 11/28/19

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 Technological University
Division:	
Contact Person:	Karen Lykins
Address:	1 William L. Jones Dr., Cookeville TN
Zip:	38505
Phone:	931-372-3084
Email:	KLykins@tntech.edu

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**
0240-09-05	Access to Public Records
Rule Number	**Rule Title**
0240-09-05-.01	Scope
0240-09-05-.02	Definitions
0240-09-05-.03	General Policy Statement
0240-09-05-.04	Requesting Access to Public Records
0240-09-05-.05	Responding to Public Records Request
0240-09-05-.06	Redaction
0240-09-05-.07	Inspection of Records
0240-09-05-.08	Request for Copies of Records

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JUN 28 2019
CRIMINAL APPEALS
DIVISION

Rules
Of
Tennessee Technological University, Cookeville
Chapter 0240-09-05
Access to Public Records

New

Table of Contents is added to Chapter 0240-09-05 Access to Public Records and shall read as the follows:

0240-09-05.01 Scope
0240-09-05.02 Definition
0240-09-05.03 General Provision
0240-09-05.04 Requesting Access to Public Records
0240-09-05.05 Responding to Public Records Request
0240-09-05.06 Redaction
0240-09-05.07 Inspection of Records
0240-09-05.08 Request for Copies of Records

0240-09-05-.01 Scope is added to Chapter 0240-09-05 Access to Public Records and shall read as follows:

0240-09-05-.01 Scope

(1) This rule does not apply to a student's request to see his/her own education records or to an employee's or former employee's reasonable requests to review or copy his/her own personnel file.

(2) Proof of Tennessee citizenship for the purpose of access to public records is not proof of residency for the purpose of classifying students as in-state or out-of-state when assessing tuition and fees and for admission purposes.

Authority: T.C.A. § 10-7-503(g)(2); T.C.A. § 49-8-203(a)(4).

0240-09-05-.02 Definitions is added to Chapter 0240-09-05 Access to Public Records and shall read as follows:

0240-09-05-.02 Definitions

(1) Public Records: All documents, papers, letters, maps, books, photographs, microfilms, electronic data processing files and output, films, sound recordings, or other material, regardless of physical form or characteristics, made or received pursuant to law or ordinance or in connection with the transaction of official business by any governmental agency.

(2) Public Records Request Coordinator ("Coordinator"): The designated individual who has the responsibility to ensure Public Record requests are routed to the appropriate records custodian and are fulfilled in accordance with the Tennessee Public Records Act.

(3) Records Custodian: The office, official, or employee lawfully responsible for the direct custody and care of a Public Record.

(4) Requestor: A person seeking access to a Public Record, whether it is for inspection or duplication.

Authority: T.C.A. § 10-7-503 (g)(2); T.C.A. § 49-8-203(a)(4).

0240-09-05-.03 General Policy Statement is added to Chapter 0240-09-05 Access to Public Records and shall read as follows:

0240-09-05-.03 General Policy Statement

(1) Tennessee Tech shall timely and efficiently provide access and assistance to persons requesting to view or receive copies of Public Records as required by law.

Authority: T.C.A. § 10-7-503(g)(2); T.C.A. § 49-8-203(a)(4).

0240-09-05-.04 Requesting Access to Public Records is added to Chapter 0240-09-05 Access to Public Records and shall read as follows:

0240-09-05-.04 Requesting Access to Public Records

(1) Public Record requests should be directed to the Coordinator or his/her designee in order to ensure Public Record requests are routed to the appropriate Records Custodian and fulfilled in a timely manner.

(2) Requestor may contact the Coordinator in person, by telephone, by email, or by mail.

(3) Tennessee Tech will publish the name, telephone number, email address, and office location of the Coordinator on its website or similar publication.

(4) Tennessee Tech will not require a Requestor to submit a request for inspection in writing, absent good cause.

(5) Tennessee Tech will require proof of Tennessee citizenship by either a valid Tennessee driver's license or alternative acceptable form of identification as a condition to inspect or receive copies of Public Records.

(6) No request is necessary for bid tabulations for Request for Proposals and Request for Quotes, which are posted regularly on Tennessee Tech's Purchasing and Contracts webpage. Similarly, meeting notices and materials for Tennessee Tech's Board of Trustees are posted on Tennessee Tech's Board webpage.

Authority: T.C.A. § 10-7-503(g)(2); T.C.A. § 49-8-203(a)(4).

0240-09-05-.05 Responding to Public Records Requests is added to Chapter 0240-09-05 Access to Public Records and shall read as follows:

0240-09-05-.05 Responding to Public Records Requests

(1) The Coordinator shall, as necessary or appropriate:

(a) Request proof of Tennessee citizenship;

(b) Clarify the scope of the request;

(c) Advise the Requestor that Tennessee Tech may charge for copies if the request exceeds the costs threshold allowed by its rule;

(d) Advise the Requestor that Tennessee Tech is not the custodian of the record;

(e) Provide the records;

(f) Deny the request in writing, providing the appropriate basis, such as one of the following:

1. The Requestor is not a Tennessee citizen or has not presented evidence of Tennessee citizenship;

2. The request lacks specificity;

3. An exemption makes the record not subject to disclosure under the Tennessee Public Records Act;

4. The records do not exist.

(2) The Coordinator may deny the request provided the Coordinator has identified in writing the specific legal

basis for the denial of the request.

(3) The Coordinator may, if appropriate, contact the Requestor to see if the request can be narrowed.

(4) If requested records are in the custody of a different governmental entity and the Coordinator knows the correct governmental entity, the Coordinator may direct the Requestor to the correct governmental entity.

(5) A Records Custodian must promptly forward a request to the Coordinator and assist the Coordinator in making the records available to the Requestor in a timely manner.

(6) If not practicable to promptly provide requested records because additional time is necessary to determine whether the requested records exist; to search for, retrieve, or otherwise gain access to records; to determine whether the records are open, to redact records; or for other similar reasons, then the Coordinator shall, within seven (7) business days from the receipt of the request, send the Requestor a completed Public Records Response Form.

(7) If the Coordinator reasonably determines production of records should be segmented because the Public Records Request is for a large volume of records, or additional time is necessary to prepare the records for access, the Coordinator shall notify the Requestor in writing that production of the records will be in segments and that a records production schedule will be provided as expeditiously as practicable. If appropriate, the Coordinator may contact the Requestor to see if the request can be narrowed.

(8) If the Coordinator discovers records responsive to a records request were omitted, the Coordinator will notify the Requestor and produce the records as quickly as practicable.

Authority: T.C.A. § 10-7-503 (g)(2); T.C.A. § 49-8-203(a)(4).

0240-09-05-.06 Redactions is added to Chapter 0240-09-05 Access to Public Records and shall read as follows:

0240-09-05-.06 Redaction

(1) If a record contains confidential information that is not open for public inspection, the Coordinator, with assistance from the Records Custodian, shall redact the record prior to providing access.

(2) Whenever the Custodian provides a redacted record, the Custodian will advise the Requestor of the general basis or bases for the redaction(s).

Authority: T.C.A. § 10-7-5039(g)(2); T.C.A. § 49-8-203(a)(4).

0240-09-05-.07 Inspections of Records is added to Chapter 0240-09-05 Access to Public Records and shall read as follows:

240-09-05.08 Inspection of Records

(1) Tennessee Tech will not charge for inspection of Public Records.

(2) Tennessee Tech will advise the Requestor of the location where the records may be inspected.

(3) The Coordinator may require an appointment for the inspection.

Authority: T.C.A. § 10-7-503(g)(2); T.C.A. § 49-8-203(a)(4).

0240-09-05-.08 Request for Copies of Records is added to Chapter 0240-09-05 Access to Public Records and shall read as follows:

0240-09-05-.08 Request for Copies of Records

(1) The Coordinator will respond to a Public Record request for copies in the most economic and efficient manner practicable.

(2) Copies will be available for pickup at a location specified by the Coordinator.

(3) Tennessee Tech will not use fees and charges for copies of Public Records to hinder access to Public Records.

(4) The Coordinator will provide Requestors with an estimate of the charges prior to producing copies of records and may require prepayment of such charges before producing requested records.

(5) If fees for copies and labor do not exceed $25, Tennessee Tech may waive those fees. Requests for waivers for costs that exceed $25 must be presented to the Coordinator, who is authorized to determine if such waiver is in the best interest of Tennessee Tech or for the public good.

(6) A Requestor may use a personal cellphone to take pictures of records when the total amount of pages to be photographed does not exceed twenty-five (25) pages.

(7) Tennessee Tech will not waive fees associated with aggregated records requests.

(8) A Requestor must pay by cash, credit card, or personal check made payable to Tennessee Tech and presented to the Coordinator or to the Tennessee Tech Business Office.

(9) Tennessee Tech will aggregate record requests in accordance with the current office of Open Records Schedule for Reasonable Charges for Frequent and Multiple Requests when more than (4) requests are received within a calendar month either from a single individual or a group of individuals deemed working in concert.

(10) If Tennessee Tech aggregates requests, the Coordinator will advise Requestors of the basis for the aggregation.

Authority: T.C.A. § 10-7-503(g)(2); T.C.A. § 49-8-203(a)(4)

* 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)
Melissa Geist	X				
Trudy Harper	X				
Tom Jones	X				
Rhedona Rose	X				
Purna Saggurti	X				
Johnny Stites	X				
Teresa Vanhooser	X				
Barry Wilmore				X	

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the Tennessee Tech Board of Trustees on 06/20/2019, 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: 12/12/18

Rulemaking Hearing(s) Conducted on: 02/01/19

Date: 6-21-19

Signature: Karen Lykins

Name of Officer: Karen Lykins

Title of Officer: Chief Communication Officer

Subscribed and sworn to before me on: 6/21/19

Notary Public Signature: Leah Kay Combs

My commission expires on: 6/29/2020

Agency/Board/Commission: TTU

Rule Chapter Number(s): Public Records

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

7/26/2019
Date

Department of State Use Only

Filed with the Department of State on: 8/30/19

Effective on: 11/28/19

Tre Hargett
Secretary of State

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G.O.C. STAFF RULE ABSTRACT

DEPARTMENT:	State Board of Education
SUBJECT:	Educator Licensure
STATUTORY AUTHORITY:	Tennessee Code Annotated, Section 49-1-302 and Section 49-5-108
EFFECTIVE DATES:	November 14, 2019 through June 30, 2020
FISCAL IMPACT:	No fiscal impact
STAFF RULE ABSTRACT:	This proposed rule clarifies and streamlines educator licensure expectations across academic, occupational, school services, instructional leader, and other license types. Changes include more clearly organizing the rule structure, cross-referencing required assessments for each license type, adding new licensure pathways for school social workers, outlining the reactivation pathway for school services personnel license and postsecondary educator license, adding additional flexibility for occupational educators on the adjunct license, and clarifying the endorsement exemption 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.

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

This rule does 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;

This proposed rule clarifies and streamlines educator licensure expectations across academic, occupational, school services, instructional leader, and other license types. Changes include more clearly organizing the rule structure, cross-referencing required assessments for each license type, adding new licensure pathways for school social workers, outlining the reactivation pathway for school services personnel license and postsecondary educator license, adding additional flexibility for occupational educators on the adjunct license, and clarifying the endorsement exemption 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;

T.C.A. § 49-1-302 requires the State Board of Education to set the qualifications, requirements and standards of and provide the licenses and certificates for all public school teachers, principals, assistant principals, supervisors and directors of schools.

T.C.A. § 49-5-108 directs the State Board of Education to promulgate rules and regulations governing the issuance of licenses for supervisors, principals and public school teachers. These rules and regulations shall prescribe standards controlling the issuance and renewal of all licenses and permits.

(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 Tennessee Department of Education and State Board of Education are directly affected by this rule and both urge adoption. Local Education Agencies and licensed Tennessee educators are also directly affected by this rule. No LEAs or licensed educators have contacted the State Board to urge adoption or rejection of this 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;

N/A

(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;

No fiscal impact

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

Angie Sanders

Angela.C.Sanders@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;

Angie Sanders
Angela.C.Sanders@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

Angie Sanders
710 James Robertson Parkway, 1st Floor
Nashville, TN 27243
(615) 253-5707
Angela.C.Sanders@tn.gov

Nathan James
710 James Robertson Parkway, 1st Floor
Nashville, TN 27243
(615) 532-3528
Nathan.James@tn.gov

Elizabeth Fiveash
710 James Robertson Parkway, 9th Floor
Nashville, TN 27243
(615) 253-1960
Elizabeth.Fiveash@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
312 Rosa L. Parks Ave., 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: 08-17-19
Rule ID(s): 9233
File Date: 8/16/19
Effective Date: 11/14/19

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:	Angie Sanders
Address:	1st Floor, Andrew Johnson Tower, 710 James Robertson Parkway, Nashville, TN
Zip:	37243
Phone:	615-253-5707
Email:	Angela.C.Sanders@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**
0520-02-03	Educator Licensure
Rule Number	**Rule Title**
0520-02-03-.01	General Information and Regulations
0520-02-03-.02	Educator License Types
0520-02-03-.03	Requirements for Teacher Licenses
0520-02-03-.04	Requirements for Occupational Teacher Licenses
0520-02-03-.05	Requirements for School Services Personnel Licenses
0520-02-03-.06	Requirements for JROTC License
0520-02-03-.07	Requirements for Licenses of Postsecondary Educators
0520-02-03-.08	Requirements for the Adjunct License
0520-02-03-.10	Repealed

RULES OF
THE STATE BOARD OF EDUCATION

CHAPTER 0520-02-03
EDUCATOR LICENSURE

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0520-02-03-.03	~~Licensure, Instructional Leader~~Requirements for Teacher Licenses	0520-02-03-.10	Requirements for Instructional Leader Licenses
0520-02-03-.04	Requirements for Occupational Teacher Licenses	0520-02-03-.11	Endorsements
0520-02-03-.05	Requirements for School ~~Service~~Services Personnel Licenses	0520-02-03-.12	Permits
~~0520-02-03-.05~~	~~Occupational Education Licenses~~	0520-02-03-.13	Emergency Teacher License
0520-02-03-.06	~~Out of State Applicants~~	0520-02-03-.14	Professional Development Points
	~~Requirements for the JROTC License~~	0520-02-03-.15 through 0520-02-03-.94	Repealed
0520-02-03-.07	~~Other Special Cases~~ Requirements for Licenses of Postsecondary Educators		

0520-02-03-.01 GENERAL INFORMATION AND REGULATIONS.

~~(1) Prospective Educators.~~

~~(a) Securing a License. The educator shall be~~(1) Pursuant to T.C.A. § 49-1-302, the State Board of Education has the authority to adopt policies governing the qualifications, requirements, and standards of, and provide the licenses and certificates for, all public school teachers, principals, assistant principals, supervisors, and directors of schools.

(2) No person shall be employed as a principal, teacher (including school services personnel), or supervisor of any public elementary or high school by any local education agency (LEA), or receive any pay for such services out of the public school funds of the LEA, until the person presents to the director of schools a valid license as prescribed by the State Board.

(3) The Department of Education shall establish and publish all licensure application forms and timelines.

(4) Each educator shall be individually responsible for securing a license, verifying its accuracy, maintaining its validity, registering it with the employing board of education, and meeting the requirements of T.C.A. § 49-5-101.

~~(b) Unless otherwise designated in this chapter, prospective educators seeking initial licensure must hold a bachelor's degree from a regionally accredited college or university, be enrolled in or have completed a state-approved educator preparation program, and meet all requirements regarding assessments and qualifying scores as specified by State Board of Education rules or policy.~~

~~(c) Prospective educators seeking initial licensure must meet requirements in at least one area of endorsement.~~

(5) Pursuant to T.C.A. § 49-5-105, the holder of a license who changes or alters the holder's license in any way, or who permits any other person to change or alter the license, commits a Class C misdemeanor and shall have such holder's license revoked.

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(Rule 0520-02-03-.01, continued)

(6) This rule sets the minimum standards and requirements for licensure to ensure that individuals who serve in Tennessee classrooms and schools are prepared and equipped to serve Tennessee students.

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~~(d) In-State Applicant for Initial License. An In-State applicant applying for an initial license must apply through the appropriate official of the educator preparation provider.~~

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~~(e) At the time of application, prospective educators seeking initial licensure must be recommended by an approved educator preparation provider.~~

~~1. For applicants who have completed a licensure program, the provider must indicate that the applicant has successfully completed all required components of the program and indicate the area(s) of endorsement for which the applicant has successfully completed requirements. Recommendations must be received within five (5) years of the date of program completion. If a candidate completed a program more than five (5) years prior to the date of the application, the candidate may attempt to secure an updated recommendation from the provider. Educator preparation providers are under no obligation to issue an updated recommendation. Recommendations must attest that the candidate has met current standards for licensure.~~

~~2. For applicants who are enrolled in a licensure program, the provider must indicate the area(s) of endorsement for which the applicant has successfully demonstrated content competency. Verification of successful program completion, including verification of the endorsement areas for which the candidate is recommended, must be submitted by the end of the validity period of the initial license.~~

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~~(f) Official transcripts of all college credits, bearing the school seal and/or signature of the registrar, must be submitted with the application. These transcripts and forms upon which licensure is granted become the property of the State of Tennessee. Photocopies are not acceptable.~~

~~(g) Upon receipt of the applications, transcripts, and results of required assessments, materials will be evaluated and a license will be issued to the applicant or the applicant will be notified of deficiencies.~~

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~~(2) Licensed Educators.~~

~~(a) Duration of License or Certificate. Initial licenses become valid on the date of issuance. The end of the validity period of the license will be set for August 31. The year of expiration is determined by the date of issuance and advances one year on March 1 of each year.~~

~~(b) Licensure Expectations. All expectations for licensure advancement and renewal shall be defined in State Board of Education policy.~~

~~(c) Change of Name and Address. If a licensed educator changes his or her name or address by legal means, the holder must report such changes to the Office of Educator Licensing within thirty (30) days of making the change.~~

(Rule 0520-02-03-.01, continued)

Authority: *T.C.A. § 49-1-302, T.C.A. § 49-5-101, T.C.A. § 49-5-105, T.C.A. § 49-5-108, T.C.A. § 49-5-403.* ***Administrative History:*** *Original rule filed November 16, 1989; effective February 28, 1990. Amendment filed November 30, 1990; effective February 27, 1991. Repeal and new rule filed March 16, 1992; effective June 29, 1992. Amendment filed May 12, 1992; effective August 29, 1992. Amendment filed November 22, 1993; effective March 30, 1994. Amended by Public Chapter No. 957 Acts of 1994; effective May 10, 1994. Amended by Public Chapter 251 Acts of 1995; effective May 19, 1995 (See Attorney General Opinion No 094-080.) Amendment filed January 31, 1995; effective May 31, 1995. Amendment filed May 31, 1996; effective September 27, 1996. Amendment filed May 28, 1999; effective September 28, 1999. Amendment filed March 29, 2000; effective July 28, 2000. Amendment filed December 19, 2002; effective April 30, 2003. Amendment filed June 30, 2003; effective October 28, 2003. Amendment filed May 19, 2005; effective September 28, 2005. Amendment filed March 23, 2007; effective July 27, 2007. Amendment filed July 31, 2008; effective November 28, 2008. Amendment filed October 20, 2009; effective March 31, 2010. Amendment filed September 6, 2013; effective February 28, 2014. Repeal and new rules filed December 18, 2014; effective March 18, 2015. A stay of the rules was filed January 28, 2015; new effective date June 1, 2015. Emergency rules filed August 27, 2015; effective through February 23, 2016. Repeal and new rules filed October 27, 2015; effective January 25, 2016.*

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0520-02-03-.02 ~~TEACHER LICENSES.~~ EDUCATOR LICENSE TYPES.

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(1) ~~General~~ All educators in Tennessee shall hold one (1) of the following license types:

(a) The practitioner license is the first level license issued to applicants who meet the requirements set forth in this rule. There are three (3) types of practitioner licenses: practitioner teacher license, practitioner occupational teacher license, and practitioner school services personnel license.

(b) The professional license is issued to educators who have met licensure expectations at the practitioner level and who meet the requirements for ~~licensure, as defined~~advancement set forth in this Rule ~~0520-02-03-.01 General Information and Regulations, apply to all teacher licenses~~. There are three (3) types of professional licenses: professional teacher license, professional occupational teacher license, and professional school services personnel license.

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(c) The JROTC license is issued to active or retired military personnel who seek to serve as Junior Reserve Officers' Training Corps (JROTC) teachers.

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(d) The license for postsecondary educators (PSE) is issued to applicants who have been a full-time or part-time college professor or instructor and who meet the requirements set forth in this Rule.

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(e) The adjunct license is issued to applicants seeking to teach no more than three (3) classes in a content area of critical shortage identified by the State Board who meet the requirements set forth in this Rule.

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(f) ~~(2) Licenses Currently Issued.~~

~~(a) Practitioner~~The Instructional Leader License~~. Initial three (3) year teacher license~~ - Aspiring (ILL-A) is issued to applicants who hold a bachelor's degree, are enrolled in ~~or have completed a~~an instructional leadership preparation program approved by the State Board

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of Education, and ~~have verified content knowledge as defined in State Board policy. The Practitioner License may be renewed once.~~meet the requirements set forth in this Rule.

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~~(b) Professional~~(g) The Instructional Leader License~~. A six (6) year teacher license issued upon meeting licensure expectations at the practitioner level and completion of an approved educator preparation program. The Professional License~~ (ILL) is ~~renewable.~~

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~~(c) Non-Public School Teacher License. A ten (10) year license~~ issued to ~~individuals~~applicants who ~~qualify for or~~ hold a ~~valid Tennessee teaching license~~bachelor's degree, have ~~current certification from the National Board for Professional Teaching Standards, or hold a valid license from another state. The non-public license only provides license for~~completed an ~~educator to work in a Tennessee non-public school. The Non-Public School Teacher License is renewable.~~

~~(d) JROTC Teacher License. A five (5) year license issued to active or retired military personnel who seek to serve as junior reserve officers' training corps (JROTC) teachers, based upon a certification of preparation by the branch of the military approving the teacher placement. The JROTC teacher license does not entitle an individual to teach courses other than those designated as part of the JROTC program, consistent with the requirements of T.C.A. § 49-5-108. No other teaching endorsements may be added to a JROTC license. JROTC teachers may earn a teaching license with an endorsement in a content area through an educator~~instructional leadership preparation program approved by the State Board of Education~~. The JROTC Teacher License is renewable.~~, and meet the requirements set forth in this Rule.

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(h) The Instructional Leader License – Professional (ILL-P) The ILL-P is issued to educators currently holding the ILL who meet the requirements for advancement set forth in this Rule.

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(2) ~~(e) Adjunct License. A one (1) year license issued to applicants who teach no more than three (3) classes in subject areas of critical shortage as designated by the State Board of Education and who hold a bachelor's degree, have verified knowledge of the teaching content area and have completed a pre-service preparation program approved by the State Board of Education. The Adjunct License is renewable nine (9) times.~~

~~Adjunct teachers must meet the following criteria:~~

~~1. The applicant must hold at least a bachelor's degree or a master's degree from a regionally accredited institution of higher education that includes at least twenty-four (24) semester hours of credit in the content area in which they will be teaching.~~

~~2. The applicant must have at least five (5) years of work experience in the subject(s) to be taught.~~

~~3. The applicant must have completed the pre-service portion of an adjunct licensure program that addresses the knowledge and skills in the professional education core and that has been approved by the State Board of Education.~~

~~4. A Tennessee director of schools must state intent to employ the applicant for specific subject(s) and course(s) not to exceed three (3) classes and must provide a mentor teacher for the applicant during the first year of teaching.~~

5. ~~Applicants are eligible for an adjunct license for the specific subject(s) or course(s) indicated on the application in subject areas of critical shortage as designated by the State Board of Education.~~

6. ~~School systems shall assess the effectiveness of the teachers annually using the evaluation procedures approved by the State Board of Education.~~

7. ~~Applicants may renew an adjunct license annually but not more than nine (9) times provided that a director of schools states intent to employ and provided that the applicant has received a successful evaluation in the preceding year. Before the first renewal, the applicant must have passed all required licensure examinations.~~

8. ~~The teacher shall not attain licensure beyond the approved subject(s) or course(s) without successfully completing the state's regular or alternative licensure programs.~~

(f) ~~International Teacher Exchange License. The international exchange teacher license is a time limited license designed to allow eligible teachers from other nations to teach in Tennessee schools for up to three (3) consecutive years. The validity period begins on the date all application requirements for the license are met or July 1, whichever is more recent, and expires on June 30, three (3) years later. If the applicant is employed between January 1 and June 30, the validity period begins on the first (1st) day of the month of employment and expires June 30, three (3) years later. If the teacher wishes to remain beyond the third (3rd) year, the teacher must satisfy all requirements for a professional teacher license. Districts that wish to employ teachers holding this license must adhere to State Board of Education policies regarding mentoring and evaluation of these teachers. The International Teacher Exchange License is nonrenewable.~~

~~Teachers participating in an international teacher exchange program must meet the following criteria:~~

1. ~~Hold primary citizenship outside the United States;~~

2. ~~Hold the U.S. equivalent of a bachelor's degree or higher;~~

3. ~~Hold a foreign teacher credential in a field comparable to that recognized in Tennessee;~~

4. ~~Demonstrate proficiency in English;~~

5. ~~Provide verification from a Tennessee director of schools of intent to employ; and~~

6. ~~Provide a recommendation by the government of a country with whom the Department of Education has signed a memorandum of agreement or by a recognized international exchange program.~~

(3) ~~License Advancement and Renewal.~~

(a) ~~Practitioner License. At the end of the validity period of the initial practitioner license, if the educator has not met licensure expectations, the practitioner license may be renewed once. If the educator has not met licensure expectations at the end of the second validity period, the license will~~The

(Rule 0520-02-03-.01, continued)

validity period of each license type shall be outlined in the SBE Educator Licensure Policy 5.502, however:

(a) The validity period of the practitioner license shall be no more than four (4) years;

(b) The validity period of the professional license shall be no more than seven (7) years;

(c) The validity period of the ILL-A shall be no more than four (4) years;

(Rule 0520-02-03-.02, continued)

(d) The validity period of the ILL shall be no more than four (4) years; and

(e) The validity period of the ILL-P shall be no more seven (7) years.

~~become inactive.~~

~~(b) Professional License. At the end of the validity period of the professional license, if the educator has met licensure expectations, the license will be renewed. If the educator has not met licensure expectations, the license will become inactive.~~

~~(4) Additional Endorsements.~~

~~(a) Licensed teachers must submit qualifying scores on all required, state-approved teacher licensure specialty assessments for additional endorsements.~~

~~(b) Licensed teachers seeking to add endorsements may complete an educator preparation program. In some cases, as defined in State Board policy, teachers may add an endorsement by using a test only.~~

~~(c) Licensed teachers who complete programs of study for additional endorsements at education preparation providers in other states may be recommended by the out-of-state provider to the Tennessee Department of Education.~~

Authority: *T.C.A. § 49-1-302~~.~~, T.C.A. § 49-5-108.* ***Administrative History:*** *Original rule filed July 31, 2008; effective November 28, 2008. Amendment filed July 17, 2009; effective December 29, 2009. Repeal and new rules filed December 18, 2014; effective March 18, 2015. A stay of the rules was filed January 28, 2015; new effective date June 1, 2015. Emergency rules filed August 27, 2015; effective through February 23, 2016. Repeal and new rules filed October 27, 2015; effective January 25, 2016.*

0520-02-03-.03 ~~LICENSURE, INSTRUCTIONAL LEADER~~REQUIREMENTS FOR TEACHER LICENSES.

(1) ~~General~~ Prospective educators seeking a practitioner teacher license shall meet the requirements ~~for licensure, as defined in Rule 0520-02-03-.01 General Information and Regulations, apply to all instructional leader licenses.~~

~~(2) Licenses currently issued:~~

~~(a) Instructional Leadership License-Aspiring (ILL-A). Initial three (3) year instructional leader license issued to candidates who are enrolled in an instructional leader preparation program approved by the State Board. The Instructional Leadership License-Aspiring is not renewable.~~

~~(b) Instructional Leadership License (ILL). Initial three (3) year instructional leader license issued to candidates who have completed an instructional leader preparation program approved by the State Board and have submitted a qualifying score on the required licensure assessment. The Instructional Leadership License is renewable.~~

~~(c) Instructional Leadership License-Professional (ILL-P). Six (6) year instructional leader license issued to educators who have met licensure expectations for advancement from the ILL. The Instructional Leadership License-Professional is renewable.~~

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~~(3) License Advancement and Renewal.~~

~~(a) Instructional Leadership License Aspiring (ILL-A). At the end of the validity period~~one (1) of the ~~ILL-A, if the~~following pathways:

(a) Pathway 1. The prospective educator~~ has met licensure expectations.~~:

1. Holds a bachelor's degree from a regionally-accredited college or university;

2. Has completed a State Board-approved educator preparation program;

3. Is recommended by the ~~individual may apply~~approved educator preparation provider; and

4. Submits qualifying scores that are no more than five (5) years old on all required assessments as defined in the Professional Assessments for Tennessee Educators Policy.

(b) Pathway 2. The prospective educator:

1. Holds a bachelor's degree from a regionally-accredited college or university;

2. Is enrolled in a State Board-approved educator preparation program with a job-embedded clinical practice;

3. Is recommended by the approved educator preparation provider; and

4. Submits qualifying scores that are no more than five (5) years old on all required assessments as defined in the Professional Assessments for Tennessee Educators Policy.

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(2) Prospective educators from a state other than Tennessee seeking a practitioner teacher license shall meet the requirements of one (1) of the following pathways:

(a) Out of State Pathway 1. The out-of-state prospective educator:

1. Holds a bachelor's degree from a regionally-accredited college or university;

2. Has completed an educator preparation program approved by a state other than Tennessee;

3. Is recommended by the approved educator preparation provider; and

4. Submits qualifying scores that are no more than five (5) years old on all required assessments as defined in the Professional Assessments for Tennessee Educators Policy.

(b) Out of State Pathway 2. The out-of-state prospective educator:

1. Holds a bachelor's degree from a regionally-accredited college or university; and

2. Holds a valid professional level license from a state other than Tennessee.

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(c) ~~the ILL.~~ Out of State Pathway 3. The out-of-state prospective educator:

1. Holds a bachelor's degree from a regionally-accredited college or university;

2. Is enrolled in an educator preparation program with job-embedded clinical practice that is approved by a state other than Tennessee that has a state-recognized partnership with a Tennessee local education agency (LEA);

3. Is recommended by the approved educator preparation provider; and

4. Submits qualifying scores that are no more than five (5) years old on all required assessments as defined in the Professional Assessments for Tennessee Educators Policy.

(3) At the time of application for a Tennessee license, out-of-state prospective educators who hold a valid certification from the National Board for Professional Teaching Standards shall be issued a professional level teacher license.

(4) Out-of-state prospective educators who are military spouses and who hold an active license (initial or professional) from a state other than Tennessee shall be issued the practitioner license upon providing documentation of active military dependent status.

(5) A practitioner license may be renewed once upon completion of an approved educator preparation program and submission of qualifying scores on all State Board-required assessments as defined in the Professional Assessments for Tennessee Educators Policy prior to the end of the validity period of the first (1st) issuance of the practitioner license.

(6) If the requirements for practitioner license renewal are not met prior to the end of the validity period of the ~~initial ILL A, if~~first (1st) issuance of the ~~educator has not met licensure expectations~~practitioner license, the license ~~will~~shall become inactive.

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~~(b) Instructional Leadership License (ILL). At the~~ (7) An educator with a practitioner teacher license may seek to advance to a professional teacher license. In order to advance from a practitioner license to a professional license, an educator shall meet the following requirements:

(a) Completed an approved educator preparation program and submitted qualifying scores on all State Board-required assessments as defined in the Professional Assessments for Tennessee Educators Policy prior to the end of the validity period of the ~~ILL, if~~first (1st) issuance of the practitioner license;

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(b) Obtained three (3) years of qualifying experience as an educator ~~has met licensure expectations as~~ as defined ~~in State Board policy,~~ by the ~~individual may apply to advance to the ILL-P.~~ Department; and

(c) Earned thirty (30) professional development points.

(8) If the ~~educator has~~requirements for licensure advancement are not met ~~licensure expectations by~~ prior to the end of the ~~first~~ validity period of the ~~license, the ILL may be renewed, if renewal expectations have been met. If the educator has not met licensure expectations to advance or renew the license, the license will~~second (2nd) issuance of the practitioner license, the license shall become inactive.

(9) Educators who obtained the practitioner teaching license through the out-of-state pathway 2 shall not be required to submit qualifying scores on State Board-required assessments to advance if:

(a) The educator has been employed in a Tennessee public school in the candidate's area of endorsement; and

(b) ~~(c) Instructional Leadership License-Professional (ILL-P). At~~ The educator earned a level of overall effectiveness (LOE) score of "above expectations" or "significantly above expectations" in each of the first two (2) years immediately following the issuance of the individual's initial practitioner license.

(10) To renew the professional license, an educator shall earn sixty (60) qualifying professional development points as indicated in SBE Educator Licensure Policy 5.502.

(11) If the educator has not met the requirements for renewal at the end of the validity period of the ~~ILL-P, if the educator has met licensure expectations as defined in State Board policy, the license will be renewed. If the educator has not met licensure expectations, the license will~~professional license, then the license shall become inactive.

~~(4) Those who hold a Professional Administrator License (PAL) license issued prior to September 15, 2009, may maintain that license until July 1, 2022, at which time the ILL-P license will be required.~~

~~(5) Assistant principals, teaching principals, or dual assignment personnel with more than fifty percent (50%) of their responsibilities involved in instructional leadership must be properly licensed.~~

(12) In order to reactivate a license and endorsements held, an educator shall submit to the Department evidence of completion of an approved educator preparation program and shall submit qualifying scores on all State Board-required assessments that are not more than five (5) years old.

Authority: *T.C.A. § 49-1-302, T.C.A. § 49-5-108.* ***Administrative History:*** *Repeal and new rules filed December 18, 2014; effective March 18, 2015. A stay of the rules was filed January 28, 2015; new effective date June 1, 2015. Emergency rules filed August 27, 2015; effective through February 23, 2016. Repeal and new rules filed October 27, 2015; effective January 25, 2016. Amendments filed October 16, 2017; effective January 14, 2018.*

0520-02-03-.04 ~~SCHOOL SERVICE PERSONNEL~~ REQUIREMENTS FOR OCCUPATIONAL TEACHER LICENSES.

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(1) ~~General~~Prospective educators seeking a practitioner occupational teacher license shall meet the following requirements:

(a) Hold a high school diploma or higher;

(b) Be enrolled in a State Board-approved educator preparation program with a job-embedded clinical practice;

(c) ~~for licensure,~~Be recommended by the approved educator preparation provider;

(d) Have a minimum of five (5) years of relevant work experience, completed within the last ten (10) years, in the area of endorsement or equivalent education attainment as defined ~~in Rule 0520-02-03-.01 General Information~~by the Department; and ~~Regulations, apply to all school service personnel licenses.~~

(e) Hold an active industry license or credential for the area of endorsement as defined by the Department, if applicable.

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(Rule 0520-02-03-.04, continued)

(2) ~~Licenses Currently Issued.~~

~~(a) Practitioner School Service Personnel License. Initial three (3) year license issued to applicants~~A practitioner occupational teacher license may be renewed once upon completion of ~~a preparation program approved by the State Board of Education, leading to endorsement as a school counselor, school psychologist, school social worker, educational interpreter, school food service supervisor, school speech- language pathologist, or school audiologist. Applicants must have also submitted qualifying scores on the state required licensure assessment. The Practitioner School Service Personnel License is renewable once.~~
an approved educator preparation program prior to the

~~(b) Professional School Service Personnel License. A six (6) year license issued to applicants upon meeting licensure expectations at the practitioner level, as a school counselor, school psychologist, school social worker, educational interpreter, school food service supervisor, school speech-language pathologist, or school audiologist. The Professional School Service Personnel License is renewable.~~

~~(3) License Advancement and Renewal.~~

~~(a) Practitioner School Service Personnel License. At the~~ end of the validity period of the ~~initial practitioner license, if the educator has not met licensure expectations, the practitioner license may be renewed once. If the educator has not met licensure expectations at the end of the second validity period, the license will become inactive.~~first (1st) issuance of the practitioner license.

~~(b) Professional School Service Personnel License. At~~(3) If the requirements for practitioner license renewal are not met prior to the end of the validity period of the ~~professional license, if the educator has met licensure expectations,~~first (1st) issuance of the practitioner license ~~will be renewed. If the educator has not met licensure expectations~~, the license ~~will~~shall become inactive.

(4) In order to advance from a practitioner occupational teacher license to a professional occupational teacher license, an educator shall meet the following requirements:

(a) Complete three (3) years of qualifying experience as an educator as defined by the Department;

(b) Complete a State Board-approved educator preparation program;~~.~~

(c) Earn thirty (30) professional development points, a minimum of twenty (20) which shall come from new teacher training provided by the Department as indicated by SBE Educator Licensure Policy 5.502;

(d) Hold an active industry license or credential for the area of endorsement as defined by the Department, if applicable; and

(e) For educators that received the practitioner occupational teacher license on or after July 1, 2018, submit qualifying scores on all required assessments as defined in the Professional Assessments for Tennessee Educators Policy.

(5) If the requirements for licensure advancement are not met prior to the end of the validity period of the second (2nd) issuance of the practitioner occupational teacher license, the license shall become inactive.

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(6) In order to renew the professional occupational teacher license educators must meet the following requirements:

(a) Earn sixty (60) professional development points as indicted by SBE Educator Licensure Policy 5.502;

(b) Provide verification of an active industry license or credential for the area of endorsement as defined by the Department, if applicable; and

(7) If the educator has not met the requirements for renewal at the end of the validity period of the professional license, then the license shall become inactive.

(8) Teachers who hold an active professional occupational teacher license may add additional occupational endorsements through one (1) of the following pathways:

(a) Hold an active industry license or credential, as determined by the Department, for the area of endorsement, if applicable; or

(b) If the endorsement area does not require a license or credential, then have a minimum of five (5) years of relevant work experience, completed within the last ten (10) years, in the area of endorsement or equivalent education attainment as defined by the Department.

(9) A practitioner or professional occupational teacher license may be reactivated by completion of both of the following:

(a) Meeting one (1) of the following requirements:

1. Hold an active industry license or credential, as determined by the Department, for the area of endorsement, if applicable; or

2. If the endorsement area does not require a license or credential, then have a minimum of five (5) years of relevant work experience, completed within the last ten (10) years, in the area of endorsement or equivalent education attainment as defined by the Department; and

(b) Submit qualifying scores that are no more than five (5) years old on all required assessments as defined in the Professional Assessments for Tennessee Educators Policy.

Authority: *T.C.A. § 49-1-302, T.C.A. § 49-5-108.* ***Administrative History:*** *Repeal and new rules filed December 18, 2014; effective March 18, 2015. A stay of the rules was filed January 28, 2015; new effective date June 1, 2015. Emergency rules filed August 27, 2015; effective through February 23, 2016. Repeal and new rules filed October 27, 2015; effective January 25, 2016. Amendments filed October 7, 2016; effective January 5, 2017.*

0520-02-03-.05 ~~OCCUPATIONAL EDUCATION~~ REQUIREMENTS SCHOOL SERVICES PERSONNEL LICENSES.

(1) ~~General~~School services personnel licenses are available in the following areas:

(a) School speech-language pathologist;

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(Rule 0520-02-03-.04, continued)

(b) School audiologist;

(c) School psychologist;

(d) School counselor;

(e) School social worker; and

(f) School educational interpreter.

(2) School speech-language pathologists shall hold a school services personnel license with the school speech-language pathologist endorsement. Candidates seeking a practitioner school services personnel license as a school speech-language pathologist shall meet the following requirements ~~for licensure,~~:

(a) Submit qualifying scores that are no more than five (5) years old on all required assessments as defined in the Professional Assessments for Tennessee Educators Policy and meet one (1) of the following:

1. Hold an advanced degree in speech-language pathology from a regionally-accredited institution of higher education with a speech-language program approved by the Council on Academic Accreditation in Audiology and Speech-Language Pathology;

2. Hold a valid speech-language pathologist license issued by the Tennessee Board of Communication Disorders and Sciences or the licensing board of a state other than Tennessee; or

3. Hold an advanced degree in speech-language pathology and hold a valid out-of-state professional level educator license.

(3) School audiologists shall hold a school services personnel license with the audiologist endorsement. Candidates seeking a practitioner school services personnel license as a school audiologist shall meet the following requirements:

(a) Submit qualifying scores that are no more than five (5) years old on all required assessments as defined in the Professional Assessments for Tennessee Educators Policy and meet one (1) of the following:

1. Hold an advanced degree in audiology from a state or regionally-accredited institution of higher education with a graduate level program approved by the Council on Academic Accreditation in Audiology and Speech-Language Pathology;

2. Hold a valid audiology license issued by the Tennessee Board of Communication Disorders and Sciences or the licensing board of a state other than Tennessee ; or

3. Hold an advanced degree in audiology and hold a valid out-of-state professional level educator license.

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(4) School ~~Rule 0520-02-03-.01 General Information and Regulations, apply to all occupational education licenses, except for the requirement of~~ psychologists shall hold a school services personnel license with the school psychologist endorsement. Candidates seeking a practitioner school services personnel license as a school psychologist shall meet the following requirements:

(a) Submit qualifying scores that are no more than five (5) years old on all required assessments as defined in the Professional Assessments for Tennessee Educators Policy and meet one (1) of the following:

1. Complete a State Board-approved graduate level educator preparation program in school psychology or a graduate level educator preparation program in school psychology approved for licensure by a state other than Tennessee;

2. Hold an advanced degree in school psychology and hold a valid out-of-state professional level educator license; or

3. Hold a valid certificate as a Nationally Certified School Psychologist issued by the National School Psychology Certification System.

(5) School counselors shall hold a school services personnel license with the school counselor endorsement.

(a) Candidates seeking a practitioner school services personnel licensure and endorsement as a school counselor shall meet the requirements of one (1) of the following pathways:

1. Pathway 1. The candidate:

(i) Holds an advanced degree in school counseling from a regionally-accredited college or university;

(ii) Has completed a State Board-approved educator preparation program in school counseling;

(iii) Is recommended by the approved educator preparation provider; and

(iv) Submits qualifying scores that are no more than five (5) years old on all required assessments as defined in the Professional Assessments for Tennessee Educators Policy.

2. Pathway 2. The candidate:

(i) Holds a bachelor's degree. or higher from a regionally accredited college or university;

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(ii) Is enrolled in a State Board-approved educator preparation program in school counseling with a job embedded clinical practice;

(iii) Has completed all coursework required of the educator preparation program;

(iv) Is recommended by the approved educator preparation provider; and

(v) Submits qualifying scores that are no more than five (5) years old on all required assessments as defined in the Professional Assessments for Tennessee Educators Policy.

3. Pathway 3. The candidate:

(i) Holds an advanced degree in a counseling field;

(ii) Is enrolled in a State Board-approved educator preparation program in school counseling;

(iii) Has completed a minimum of twenty-four (24) hours of coursework in school counseling;

(iv) Is recommended by the approved educator preparation provider;

(v) Submits required supervision agreement between the LEA and approved educator preparation provider; and

(vi) Submits qualifying scores that are no more than five (5) years old on all required assessments as defined in the Professional Assessments for Tennessee Educators Policy.

4. Pathway 4. The candidate:

(i) Holds an advanced degree in school social work or school psychology from a State Board-approved educator preparation program or from an educator preparation program approved by a state other than Tennessee;

(ii) Is enrolled in a State Board-approved educator preparation program in school counseling;

(iii) Is recommended by the approved school counseling educator preparation provider;

(iv) Submits required supervision agreement between the LEA and approved educator preparation provider; and

(v) Submits qualifying scores that are no more than five (5) years old on all required assessments as defined in the Professional Assessments for Tennessee Educators Policy.

5. Pathway 5. The out-of-state candidate:

(i) Holds an advanced degree in school counseling from a regionally-accredited college or university; and

(ii) Has completed an educator preparation program in school counseling approved by a state other than Tennessee as evidenced by one (1) of the following:

(I) A valid professional level license from a state other than Tennessee; or

(II) A recommendation from the out-of-state educator preparation provider where the educator completed preparation and qualifying scores that are no more than five (5) years old on all required assessments as defined in the Professional Assessments for Tennessee Educators Policy.

(b) School counselors who serve in a supervisory role shall have a professional school services personnel license with an endorsement in school counseling.

(6) School social workers shall hold a school services personnel license with the school social worker endorsement. Candidates seeking a practitioner school services personnel license as a school social worker shall meet the following requirements:

(a) Submit qualifying scores that are no more than five (5) years old on all required assessments as defined in the Professional Assessments for Tennessee Educators Policy and meet one (1) of the following:

1. Complete a State Board-approved educator preparation program in school social work, or an educator preparation program in school social work approved for licensure by a state other than Tennessee, and be recommended by the approved educator preparation provider;

2. Hold a valid social worker license issued by the Tennessee Board of Social Workers or the licensing board of a state other than Tennessee; or

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(Rule 0520-02-03-.05, continued)

3. ~~(2) Licenses Currently Issued.~~

~~(a) Practitioner Occupational Education License. Initial three (3) year license issued to applicants who have met endorsement requirements pursuant to State Board of Education policy and have had content verification provided by the Tennessee Department of Education. The Practitioner Occupational Education License is renewable once.~~

~~(b) Professional Occupational Education License. A six (6) year license issued~~ Hold a bachelor's degree or higher in social work and hold a valid out-of-state professional-level educator license.

(7) School educational interpreters shall hold a school services personnel license with the educational interpreter endorsement. Candidates seeking licensure and endorsement as a school educational interpreter shall meet the following requirements:

(a) Hold a bachelor's degree from a regionally accredited college or university; and

(b) Meet one of the following:

1. Hold a current, nationally recognized certification in educational interpreting which includes a written examination related to ethics and practice; or

2. Submit qualifying scores that are no more than five (5) years old on all required assessments as defined in the Professional Assessments for Tennessee Educators Policy.

(8) A practitioner school services personnel license may be renewed once.

(9) In order to advance from a practitioner school services personnel license to a professional school services personnel license, an educator shall meet the following requirements:

(a) Three (3) years qualifying experience as defined by the Department; and

(b) Earn thirty (30) qualifying professional development points as indicated by SBE Educator Licensure Policy 5.502.

(10) If the requirements for licensure advancement are not met prior to ~~applicants upon meeting licensure expectations at the practitioner level, completing coursework covering the professional education standards and additional requirements as defined in State Board of Education policy. The Professional Occupational Education License is renewable.~~

~~(3) License Advancement and Renewal.~~

~~(a) Practitioner Occupational Education License. At~~ the end of the validity period of the ~~initial practitioner license, if the educator has not met licensure expectations, the practitioner license may be renewed once. If the educator has not met licensure expectations at the end of the~~ second ~~validity period,~~(2nd) issuance of the practitioner license ~~will~~, the license shall become inactive.

~~(b) Professional Occupational Education License. At the end of the validity period of the~~(11) In order to reactivate a professional school services personnel license, ~~if the~~an educator ~~has met licensure expectations, the~~shall:

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(a) Submit qualifying scores on all State Board-required assessments that are no more than five (5) years old; and

(b) Submit evidence of a current and valid license ~~will be renewed. If the educator has not met licensure expectations, the~~issued by the appropriate Tennessee or out-of-state licensing board, if applicable.

(12) In order to renew the professional school services license ~~will become inactive~~educators must earn sixty (60) qualifying professional development points as indicated by SBE Educator Licensure Policy 5.502.

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Authority: *T.C.A. § 49-1-302, T.C.A. § 49-5-108.* ***Administrative History:*** *Repeal and new rules filed December 18, 2014; effective March 18, 2015. A stay of the rules was filed January 28, 2015; new effective date June 1, 2015. Emergency rules filed August 27, 2015; effective through February 23, 2016. Repeal and new rules filed October 27, 2015; effective January 25, 2016.*

0520-02-03-.06 ~~OUT OF STATE APPLICANTS.~~ REQUIREMENTS FOR THE JROTC LICENSE.

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(1) ~~General Requirements.~~

(Individuals seeking a) ~~Tennessee has adopted the provisions of Interstate Agreement on Qualification of Educational Personnel as proposed by the National Association of State Directors of Teacher Education and Certification (NASDTEC). Participation in this agreement is evidenced by signed reciprocal contracts between Tennessee and other participating states as defined by the Interstate Certification Project (ICP).~~

~~(b) Licensure may be awarded to applicants from states which are not parties to the ICP but which are accredited by or affiliated with the national accrediting body with which the State of Tennessee has entered into an agreement on the same basis as those applying from states which are party to the ICP agreement.~~

~~(c) Licensure may be awarded to applicants not covered by Paragraphs (a) or (b) above on the same basis as those applying from states which are party to the ICP agreement if one of the following conditions is met:~~

~~1. The applicant has received a recommendation from an educator preparation provider which is accredited by the same national accrediting body with which the State of Tennessee has entered into an agreement; or~~

~~2.~~ ~~The Tennessee~~ JROTC license shall submit the following information to the Department of Education ~~has reviewed a state's process for approving educator preparation providers and has found the process to be acceptable for purposes of granting full licensure in Tennessee.~~:

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(a) Certification of preparation by the branch of the military approving the teacher placement;

(b) A copy of a valid JROTC training certificate that includes an expiration date;

(Rule 0520-02-03-.06, continued)

(c) Official transcripts of all credit and degrees earned in colleges or universities in the United States; and

(d) An Verification that the applicant from a state other than will be employed in a JROTC program in a Tennessee must apply directly to the Office of Educator LicensingLEA.

(e) The application for licensure must be accompanied by a set of official transcripts supplied by all institutions attended by the applicant.

(f) An applicant from another state must submit qualifying scores for assessments required by the State Board of Education. Scores must have been obtained within five (5) years prior to the date of application for licensure.

(g) No

(2) Individuals holding the JROTC license or endorsement which requires a Master's Degree or abovemay only teach courses designated as part of its requirementsthe JROTC program and no additional endorsements may be awarded to an individual not possessing said degree.

(2) Teacher Licensure for Applicants Trained in Other States.

(a) Applicants meeting all requirements will be issued a practitioneradded to the JROTC license except those who have been certified by the National Board for Professional Teaching Standards who will be issued a professional license.

(3) In order to renew the JROTC license, educators shall:

(a) Hold a valid JROTC license; and

(b) (b) Licensure will be awarded in all endorsement areas (the areas most similar to those awarded in Tennessee), which are reflected on the full, currently valid licensure credential(s) supplied by the other qualifying state(s) and the area most closely related to the area of certification by the National Board for Professional Teaching Standards.

(c) Applicants with an out-of-state endorsement in a teaching area covering a grade span that is more narrow than the comparable Tennessee K-12 teaching endorsement, shall be awarded the Tennessee endorsement based on parameters defined by State Board policy.

(3) Instructional Leader Licensure for Applicants Trained in Other States.

(a) Applicants who have completed an instructional leader preparation program approved in a state other than Tennessee who have not yet submitted qualifying scores on the required licensure assessment may be issued an ILL-A. Upon submitting qualifying scores, the individual may apply for the ILL.

(b) Applicants meeting all requirements will be issued an ILLSubmit a recommendation to the Department from the LEA where the educator is employed.

(4) School Service Personnel Licensure for Applicants Trained in Other States.

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(Rule 0520-02-03-.06, continued)

~~(a) Applicants meeting all requirements will be issued a Practitioner License.~~

~~(b) The Practitioner School Services Personnel License will be awarded to applicants who hold a full and valid school service personnel license from another state.~~

Authority: *T.C.A. § 49-1-302 T.C.A. § 49-5-108.* ***Administrative History:*** *Repeal and new rules filed December 18, 2014; effective March 18, 2015. A stay of the rules was filed January 28, 2015; new effective date June 1, 2015. Emergency rules filed August 27, 2015; effective through February 23, 2016. Repeal and new rules filed October 27, 2015; effective January 25, 2016. Amendments filed October 16, 2017; effective January 14, 2018.*

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0520-02-03-.07 ~~OTHER SPECIAL CASES.~~ REQUIREMENTS FOR LICENSES FOR POSTSECONDARY EDUCATORS.

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~~(1) Correspondence and Extension Credit. Credit earned by correspondence and extension instruction with a member of the National University Extension Association or the Teacher College Association for Extension and Field Services shall be accepted for licensure purposes to the extent of one-fourth of the amount of credit necessary for the particular license desired.~~

~~(2) Experience in Lieu of Student Teaching. An individual applying for a license who holds at least a bachelor's degree may present evidence of three (3) years of successful teaching experience in an approved school or a National Association for the Education of Young Children (NAEYC) accredited early childhood education program at the grade level of work authorized by the endorsement sought in lieu of student teaching.~~

~~(3) Military Service.~~

~~(a) The duration of a license may be extended from the date of termination of military service for the number of years, not to exceed four (4), which the holder spent in military service during the life of the license. Four (4) calendar months of military service during any school year shall be counted as a full year for purposes of extending the license.~~

(1) A practitioner license for postsecondary educators (PSE) may be issued to candidates that meet the following requirements:

(a) Meet one of the following experience requirements:

1. Have been a full-time college professor or instructor for at least two (2) of the last five (5) years at an eligible postsecondary institution that is

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~~(b) The five (5) years preceding the issuance of a teacher license, within which time academic credit must be earned, shall not include the years spent in military service.~~

~~(4) Validation of Credit from an Unapproved Institution.~~

~~(a) Credit from an unapproved institution may be accepted for licensure when such credit has been accepted in full on a transcript by an approved institution for advanced standing toward a degree, provided that not less than eight (8) semester hours of satisfactory work has been completed in the approved institution.~~

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~~(b) Degree or credit from an institution~~ accredited by a regional accrediting association ~~but not approved for teacher education will be accepted.~~, as defined by T.C.A. § 49-4-902; or

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(Rule 0520-02-03-.06, continued)

2. Have been a part-time college professor or instructor, teaching at least one (1) course per semester, for at least three (3) of the last five (5) years at an eligible postsecondary institution that is accredited by a regional accrediting association, as defined by T.C.A. § 49-4-902;

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(b)~~(c) An applicant who holds the bachelor's degree from an unapproved~~ Submit at least three (3) years of qualifying teaching evaluations that rate the applicant as proficient or better in the subject area in which the applicant is seeking licensure from the postsecondary institution at which the applicant taught, where evaluations are defined as an assessment of the educator's performance in the subject area, which may include a formal rating system or, if the institution does not use a rating system, may be a letter from the dean, department chair, or other direct supervisor regarding the educator's performance;

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(c) Submit qualifying scores that are no more than five (5) years old on all required assessments as defined in the Professional Assessments for Tennessee Educators Policy.

(2) The PSE license shall only be issued for teaching assignments in grades nine through twelve (9-12).

(Rule 0520-02-03-.07, continued)

(3) The PSE license shall bear an endorsement to teach only in the subject area in which the person taught at the eligible postsecondary institution~~and has otherwise met all of~~.

(4) In order to advance from a PSE practitioner license to a PSE professional license, an educator shall meet the following requirements:

(a) Have three (3) years of qualifying experience as an educator as defined by the Department; and

(b) Earn thirty (30) professional development points as indicated by SBE Educator Licensure Policy 5.502.

(5) If the requirements for advancement to the PSE professional license are not met prior to the end of the validity period of the PSE practitioner license, the PSE practitioner license may be renewed once.

(6) If the requirements for ~~a license may validate the degree and apply for a license as follows:~~advancement to the PSE professional license are not met prior to the end of the validity period of the second (2nd) issuance of PSE practitioner license, the license shall become inactive.

~~1. Enter an approved graduate school and complete a minimum of eight (8) semester hours in an approved educator preparation program. The applicant must successfully complete the approved educator preparation program in order to advance to a Professional License.~~

~~2. Secure a properly certified statement from an educator preparation program approved by the State Board of Education indicating all deficiencies and/or probations have been met.~~

~~(5) Emergency Teaching Credential. A one (1) year credential, effective for only one school year, to be issued to displaced licensed teachers under one of the following circumstances:~~

~~(a) The Governor declares a state of emergency or declares a disaster under T.C.A. § 58- 2-107, and the Commissioner of Education determines the necessity of conferring an emergency credential to displaced persons, or~~

~~(b) A federal state of emergency is declared anywhere in the United States, and the Commissioner of Education determines the necessity of conferring an emergency credential to displaced persons.~~

(7) In order to reactivate the PSE professional license, an educator shall submit qualifying scores on all State Board-required assessments that are not more than five (5) years old.

(8) In order to renew the PSE professional license educators must earn sixty (60) qualifying professional development points.

Authority: *T.C.A. § 49-1-302, T.C.A. § 49-5-108, T.C.A. § 49-5-112.* ***Administrative History:*** *Repeal and new rules filed December 18, 2014; effective March 18, 2015. A stay of the rules was filed January 28, 2015; new effective date June 1, 2015. Emergency rules filed August 27, 2015; effective through February 23, 2016. Repeal and new rules filed October 27, 2015; effective January 25, 2016.*

0520-02-03-.08 ~~PERMITS.~~ REQUIREMENTS FOR THE ADJUNCT LICENSE.

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(Rule 0520-02-03-.07, continued)

~~(1) Permits.~~

~~(a) The state may issue a permit when a school district or public charter school meets~~(1) An adjunct license may be issued to qualifying candidates seeking to teach no more than three (3) classes in a content area of critical shortage identified by the State Board.

(a) Prospective educators seeking an adjunct license shall meet the following requirements:

1 Hold a bachelor's degree or higher from a regionally accredited institution of higher education in the content area in which they will be teaching or hold an active industry license or credential for the occupational area in which they will be teaching;

2. Have a minimum of five (5) years of relevant work experience, completed within the last ten (10) years in the content area in which they will be teaching;

3. Complete an adjunct licensure program approved by the State Board; and

4. Be recommended by the approved adjunct licensure program.

(2) The adjunct license shall be valid for one (1) year and may renewed five (5) times. Prior to the first renewal, the candidate shall submit qualifying scores on required assessments as defined in the Professional Assessments for Tennessee Educators Policy 5.105.

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(Rule 0520-02-03-.08, continued)

(3) Individuals holding the adjunct license may only teach in the content area identified on the initial license and no additional endorsements may be added to the adjunct license.

§ 49-1-302, T.C.A. § 49-5-108. ***Administrative History:*** *Repeal and new rules filed December 18, 2014; effective March 18, 2015. A stay of the rules was filed January 28, 2015; new effective date June 1, 2015. Repeal and new rules filed October 27, 2015; effective January 25, 2016.*

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0520-02-03-.10 ~~REPEALED~~ REQUIREMENTS FOR INSTRUCTIONAL LEADER LICENSES

(1) All principals, assistant principals, and supervisors serving as instructional leaders in Tennessee shall hold the appropriate instructional leader license.

(2) Dual assignment personnel whose work assignment includes more than fifty percent (50%) instructional leadership responsibilities shall hold the appropriate instructional leader license.

(3) Educators seeking the Instructional Leader License (ILL) shall meet the following requirements:

(a) Hold an advanced degree from a regionally accredited college or university;

(b) Have at least three (3) years of qualifying experience as an educator as defined by the Department;

(c) Have completed a State Board-approved instructional leader preparation program;

(d) Be recommended by the State Board-approved instructional leader preparation provider; and

(e) Submit qualifying scores that are no more than five (5) years old on all required assessments as defined in the Professional Assessments for Tennessee Educators Policy.

(4) Educators from a state other than Tennessee who are seeking the ILL shall meet the following requirements:

(a) Hold an advanced degree from a regionally-accredited college or university;

(b) Have at least three (3) years of qualifying experience as an educator as defined by the Department;

(c) Submit qualifying scores that are no more than five (5) years old on all required assessments as defined in the Professional Assessments for Tennessee Educators Policy; and

(d) Have completed an instructional leader preparation program approved by a state other than Tennessee as demonstrated by:

1. A full and valid license, comparable to the Tennessee ILL, from a state other than Tennessee; or

2. A provider recommendation from the out-of-state instructional leader preparation program where the educator completed preparation.

(5) Educators holding the ILL may renew the license through one (1) of the following pathways:

(Rule 0520-02-03-.10, continued)

(a) Serve in a Tennessee Academy for School Leaders (TASL)-mandated position for at least two (2) years of the validity period of the license and be current in all TASL requirements; or

(b) Successfully complete a Department-approved instructional leadership training.

(6) Educators enrolled in a State Board-approved instructional leader preparation program may apply for the Instructional Leader License–Aspiring (ILL-A). Educators holding the ILL-A may only serve as an assistant principal and may not serve as a principal or instructional supervisor. Educators seeking the ILL-A shall meet the following requirements:

(a) Have at least three (3) years of qualifying experience as an educator as defined by the Department;

(b) Be enrolled in a State Board-approved instructional leader preparation program; and

(c) Be recommended by the State Board-approved instructional leader preparation provider.

(7) Candidates from a state other than Tennessee who are seeking the ILL-A shall meet the following requirements:

(a) Have at least three (3) years of qualifying experience as an educator as defined by the Department;

(b) Have completed an instructional leader preparation program approved by a state other than Tennessee as demonstrated by:

1. A full and valid license, comparable to the Tennessee ILL, from a state other than Tennessee; or

2. A provider recommendation from the out-of-state instructional leader preparation program where the educator completed preparation.

(8) The ILL-A shall become inactive at the end of the validity period. The ILL-A is not renewable and may not be reactivated.

(9) Educators currently holding the ILL may seek advancement to the Instructional Leader License - Professional (ILL-P) through one (1) of the following advancement pathways:

(a) Tennessee Academy for School Leaders (TASL) Pathway. Educators seeking advancement through the TASL pathway shall meet the following requirements:

1. Be recommended by the TASL director;

2. Successfully complete the Beginning Principals' Academy or the Beginning Supervisors' Academy; and

3. Be recommended by the educator's director of schools verifying the educator has a minimum of two (2) years of successful experience as a principal, assistant principal, or an instructional supervisor as demonstrated by an overall evaluation rating of at expectations or higher on a state-approved administrator evaluation model during the most recent validity period of the ILL.

(b) Individual Professional Learning Plan (IPLP) Pathway. Educators seeking advancement through the IPLP pathway shall meet the following requirements:

(Rule 0520-02-03-.10, continued)

1. Be recommended by the TASL director;

2. Successfully complete an Individual Professional Learning Plan in coordination with an approved instructional leader preparation program; and

3. Be recommended by the educator's director of schools verifying the educator has a minimum of two (2) years of successful experience as a principal, assistant principal, or an instructional supervisor as demonstrated by an overall evaluation rating of at expectations or higher on a state-approved administrator evaluation model during the most recent validity period of the ILL.

(10) Educators may renew the ILL-P through one (1) of the following pathways:

(a) TASL Pathway. Educators who currently serve in a TASL mandated position shall meet the following renewal requirements:

1. Have served as an instructional leader in a TASL-mandated position for at least four (4) years of the validity period of the ILL-P; and

2. Meet all TASL requirements.

(b) Instructional Leadership Training Pathway. Educators who do not currently serve in a TASL mandated position seeking renewal shall successfully complete a Department approved instructional leadership training.

~~1. A director of schools or public charter school leader must state intent to employ and indicate the position to be held by the applicant.~~

~~2. The school district or public charter school must indicate that it is unable to obtain the services of a licensed educator for the type and kind of school in which a vacancy exists.~~

~~3. The school district or public charter school must identify and document a targeted recruitment strategy for the position or shortage areas. The strategy may include, but is not limited to, partnerships with educator preparation providers, advertisements, or recruitment campaigns.~~

~~(b) The state may issue a permit to a school district or public charter school to hire an applicant one (1) time and only if the applicant holds a bachelor's degree. A bachelor's degree is not required for an applicant in occupational education.~~

Authority: *T.C.A. § 49-1-302.* ***Administrative History:*** *Repeal and new rules filed December 18, 2014; effective March 18, 2015. A stay of the rules was filed January 28, 2015; new effective date June 1, 2015. Emergency rules filed August 27, 2015; effective through February 23, 2016. Repeal and new rules filed October 27, 2015; effective January 25, 2016.*

0520-02-03-.11 ~~REPEALED~~ ENDORSEMENTS.

(1) All educators shall hold a valid Tennessee educator license with an endorsement covering the work assignment as provided in T.C.A. Title 49, Chapter 5.

(2) Prospective educators seeking initial licensure shall meet requirements in at least one (1) area of endorsement.

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(Rule 0520-02-03-.10, continued)

(3) Educators may add additional endorsements to a license in accordance with the guidelines established by the Department.

(4) When an endorsement held by an out of state applicant does not match the content area or grade span of an available Tennessee endorsement, the Department shall identify the most appropriate match.

(5) All educators who teach a course in which a state-level end of course examination is required shall hold the subject-specific endorsement for the course or meet the appropriate employment standard set by the Department.

(6) An educator may teach up to two (2) sections of one (1) course outside the educator's area of endorsement each school year, with the exception of courses in which a state-level end of course examination is required.

(Rule 0520-02-03-.11, continued)

(7) An educator who holds a valid and active license may teach more than one (1) course or more than two (2) sections of one (1) course outside of the educator's area of endorsement if an endorsement exemption is requested by the director of schools and approved by the commissioner.

(a) In reviewing an initial endorsement exemption for approval, the commissioner shall consider:

1. The educator's previous teaching experience;

2. The educator's postsecondary coursework and degrees held; and

3. The content and grade span of endorsements held on the educator's current license.

(b) Endorsement exemptions shall be valid for one (1) school year. A director of schools may request renewal of an endorsement exemption for an educator who demonstrates progress toward earning the relevant endorsement. An endorsement exemption may be renewed no more than two (2) times.

(c) Educators may teach on an approved endorsement exemption for no more than a total of (3) school years.

(8) Licensed educators enrolled in an additional endorsement program in special education offered by a State Board approved educator preparation provider may add a provisional special education endorsement by:

(a) Submitting a recommendation from the educator preparation provider verifying:

1. Enrollment in a program of study for additional endorsement in the special education endorsement area; and

2. An assurance that the educator will be assigned a mentor who is endorsed in the special education endorsement area.

(b) In order to transition from a provisional endorsement to a full endorsement, educators shall submit qualifying scores on all State Board-required assessments and successfully complete the program of study within three (3) years of receiving a provisional endorsement. The provisional endorsement shall be valid for three (3) years and shall not be renewed.

Authority: *T.C.A. § 49-1-302, T.C.A. § 49-5-108, T.C.A. § 49-6-303, T.C.A. § 49-5-403, T.C.A. § 49-6-6006.* ***Administrative History:*** *Original rule filed November 16, 1989; effective February 29, 1990. Repeal and new rule filed March 16, 1992; effective June 29, 1992. Amendment filed May 28, 1999; effective September 28, 1999. Repeal and new rules filed December 18, 2014; effective March 18, 2015. A stay of the rules was filed January 28, 2015; new effective date June 1, 2015. Emergency rules filed August 27, 2015; effective through February 23, 2016. Repeal filed October 27, 2015; effective January 25, 2016.*

0520-02-03-.12 ~~REPEALED~~ PERMITS.

(1) In accordance with T.C.A. § 49-5-106, the Commissioner may grant a teaching permit to an individual who does not hold an active Tennessee educator license under the following conditions:

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(Rule 0520-02-03-.12, continued)

(a) The director of schools and the chair of the local board of education certify to the commissioner that the LEA is unable to secure a qualified teacher with a valid license for the position in which a vacancy exists;

(b) The LEA or charter school provides evidence of a targeted recruitment strategy for the vacant position;

(c) The director of schools or charter school leader recommends the individual for a teaching permit; and

(d) The recommended individual holds a minimum of a bachelor's degree.

(2) In reviewing a permit request for approval, the commissioner shall consider:

(a) The educator's previous work experience;

(b) The educator's postsecondary coursework and degrees held; and

(c) The educator's relevant experience in the subject area where the educator is seeking to teach.

(3) Individuals with a teaching permit shall not teach a course in which a state-level end of course examination is required.

(4) Each permit issued by the Commissioner shall be valid only until June 30 following the date of issuance.

(5) The permit may be renewed two (2) times upon the recommendation of the director of schools and certification by the director of schools and the chair of the local board of education that the LEA is unable to secure a qualified teacher with a valid license for the position.

(6) An LEA may employ a teacher holding a permit, but not holding a valid license, only for such period of time for which the LEA is unable to secure a qualified teacher with a valid license for the vacant position.

Authority: *T.C.A. § 49-1-302, T.C.A. § 49-5-106, T.C.A. § 49-5-108, T.C.A. § 49-5-403.* ***Administrative History:*** *Original rule filed November 16, 1989; effective February 29, 1990. Repealed and new rule filed March 16, 1992; effective June 29, 1992. Amendment filed May 28, 1999; effective September 28, 1999. Repeal and new rules filed December 18, 2014; effective March 18, 2015. A stay of the rules was filed January 28, 2015; new effective date June 1, 2015. Emergency rules filed August 27, 2015; effective through February 23, 2016. Repeal filed October 27, 2015; effective January 25, 2016.*

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0520-02-03-.13 ~~THROUGH 0520-02-03-.20 REPEALED~~ EMERGENCY TEACHER LICENSE.

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(1) A Tennessee emergency teacher license may be issued to educators who hold a valid license from a state other than Tennessee and who were displaced under one of the following circumstances:

(a) The Governor declares a state of emergency or declares a disaster under T.C.A. § 58-2-107, and the Commissioner of Education determines the necessity of conferring an emergency teacher license to displaced persons, or

(Rule 0520-02-03-.12, continued)

(b) A federal state of emergency is declared anywhere in the United States, and the Commissioner of Education determines the necessity of conferring an emergency teacher license to displaced persons.

(Rule 0520-02-03-.13, continued)

(2) An emergency teacher license shall only be valid for one (1) school year.

Authority: *T.C.A. § 49-1-302, T.C.A. § 49-5-106, T.C.A. § 49-5-108, T.C.A. § 49-5-403.* ***Administrative History:*** *Repeal and new rules filed December 18, 2014; effective March 18, 2015. A stay of the rules was filed January 28, 2015; new effective date June 1, 2015. Emergency rules filed August 27, 2015; effective through February 23, 2016. Repeal and new rules filed October 27, 2015; effective January 25, 2016.*

0520-02-03-.14 PROFESSIONAL DEVELOPMENT POINTS.

(1) Professional Development Points (PDPs) ensure continuous improvement for educators and are required for licensure advancement and renewal.

(2) Educators shall earn a total of thirty (30) PDPs in order to advance a practitioner license to a professional license.

(3) Educators shall earn a total of sixty (60) PDPs in order to renew a professional license.

(4) PDPs are earned through the successful completion of Department-approved professional development activities as indicated by SBE Educator Licensure Policy 5.502.

(5) In order to qualify for PDPs, professional development activities shall be related to improving educator effectiveness. Activities not related to improving educator effectiveness do not qualify for PDPs.

(6) PDPs shall be earned during the validity period of the educator's license.

Authority: *T.C.A. § 49-1-302, T.C.A. § 49-5-108, T.C.A. § 49-5-403.* ***Administrative History:*** *Repeal and new rules filed December 18, 2014; effective March 18, 2015. A stay of the rules was filed January 28, 2015; new effective date June 1, 2015. Emergency rules filed August 27, 2015; effective through February 23, 2016. Repeal and new rules filed October 27, 2015; effective January 25, 2016.*

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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)
Nick Darnell	X				
Mike Edwards	X				
Bob Eby	X				
Gordon Ferguson	X				
Elissa Kim	X				
Lillian Hartgrove	X				
Wendy Tucker	X				
Darrell Cobbins	X				

I certify that this is an accurate and complete copy of proposed rules, lawfully promulgated and adopted by the State Board of Education on 5/31/2019 (*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 ninety (90) days of the filing of the proposed rule with the Secretary of State.

Date: 7-5-19

Signature: Angela Sanders

Name of Officer: Angela Sanders

Title of Officer: General Counsel

Subscribed and sworn to before me on: 7-5-19

Notary Public Signature: C. Griffin

My commission expires on: 3-8-21

CASEY ONEAL GRIFFIN
STATE OF TENNESSEE NOTARY PUBLIC
DAVIDSON COUNTY
My Commission Expires 03-08-2021

Agency/Board/Commission: State Board of Education

Rule Chapter Number(s): 0520-02-03-.01 through .08 and 0520-02-03-.10 through .14

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

7/26/2019
Date

Department of State Use Only

Filed with the Department of State on: 8/16/19

Effective on: 11/14/19

Tre Hargett
Secretary of State

2019 AUG 16 AM 9:08
SECRETARY OF STATE
RULES

G.O.C. STAFF RULE ABSTRACT

DEPARTMENT: Board for Licensing Health Care Facilities

DIVISION:

SUBJECT: Trauma Centers

STATUTORY AUTHORITY: None

EFFECTIVE DATES: 11/4/2019 through 6/30/2020

FISCAL IMPACT: Minimal

STAFF RULE ABSTRACT: The amendments to Rule 1200-08-12-. 03 add and amend definitions. The amendments to Rule 1200-08-12-.04 create a new rule outlining the obligation of all Level I, II, and III centers to engage in educational outreach to Level IV centers The amendments to Rule 1200-08-12-.05(1) change the requirements for submission of data to the trauma registry including requiring CRPCs to submit data to the registry The amendments to Rule 1200-08-12-. 05(2) amend chart to reflect new "Level IV" designation and update requirements for all designations The amendments to Rule 1200-08-12-.05(3) add a new "Level IV" designation, distinguishes between composition and duties of on-site visit teams for each level of designation, and explains the designation process. The amendments to Rule 1200-08-12-.05(4) explain that after a facility receives a designation, the facility must go through a verification process every three years in order to maintain the designation; the amendment explains the verification process The amendments to Rule 1200-08-12-.05(5) explain the disciplinary process in regard to designation or provisional status The amendments to Rule 1200-08-12-.05(6) prohibit a facility from holding itself out as a trauma center without going through the designation process outlined in the rules; require trauma centers to provide emergency care regardless of a patient's ability to pay; and specify that trauma center refers to the main hospital campus, not off campus sites The amendments to Rule 1200-08-12-.07 add language regarding trauma care reporting that was originally contained in Rule 1200-08-12-

.04 The amendments to the References section (which is currently found after rule 1200-08-12-.04) delete the existing language in its entirety and add new language regarding new standards and protocols as referenced in the chart found at 1200-08-12-.05(2).

Public Hearing Comments

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

There were no public comments received, either written or oral.

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 rule may overlap, duplicate, or conflict with other federal, state, and local governmental rules.

The proposed rule amendment does 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.

The proposed rule amendment establishes clarity, conciseness, and lack of ambiguity.

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

Any compliance and/or reporting requirements are intended to not be overly burdensome for facilities that choose to pursue/maintain the optional trauma center designation.

(4) The establishment of friendly schedules or deadlines for compliance and/or reporting requirements for small businesses.

Any deadlines for compliance and/or reporting are intended to not be overly burdensome for facilities that choose to pursue/maintain the optional trauma center designation.

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

The proposed rule amendments do not consolidate or simplify 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.

The proposed rule amendments should have little effect on small businesses as a whole as the rules provide the minimum standards a facility must meet to obtain an optional board approved designation. The proposed rule establishes performance standards for those facilities that choose to seek and/or maintain a trauma center designation.

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

The proposed rule amendment does 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: Board for Licensing Health Care Facilities

Date of Hearing: February 5, 2019

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 proposed rule amendments will affect those facilities seeking designation as well as those already designated as a trauma center, and the amendments will also affect patients that are treated by these facilities. These facilities and patients will benefit from these proposed rule amendments.

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:**

   There may be some additional costs to those facilities that choose to pursue/maintain a trauma center designation. These costs would be facility-specific. Current facility administrative staff could submit any necessary data and/or reports.

3. **Statement of the probable effect on impacted small businesses and consumers:**

   The proposed rule amendments should positively impact small businesses by clarifying the guidelines to obtain and maintain a trauma center designation.

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:**

   The proposed rule amendments are not burdensome, intrusive, or costly.

5. **Comparison of the proposed rule with any federal or state counterparts:**

   Federal: None.

   State: 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.**

   The proposed rule amendments do not provide exemptions for small businesses. The proposed rule amendments address an optional board designation.

Impact on Local Governments

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

The proposed rule amendments 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;

The amendments to Rule 1200-08-12-.03 add and amend definitions.

The amendments to Rule 1200-08-12-.04 create a new rule outlining the obligation of all Level I, II, and III centers to engage in educational outreach to Level IV centers

The amendments to Rule 1200-08-12-.05(1) change the requirements for submission of data to the trauma registry including requiring CRPCs to submit data to the registry

The amendments to Rule 1200-08-12-.05(2) amend chart to reflect new "Level IV" designation and update requirements for all designations

The amendments to Rule 1200-08-12-.05(3) add a new "Level IV" designation, distinguishes between composition and duties of on-site visit teams for each level of designation, and explains the designation process. The amendments to Rule 1200-08-12-.05(4) explain that after a facility receives a designation, the facility must go through a verification process every three years in order to maintain the designation; the amendment explains the verification process

The amendments to Rule 1200-08-12-.05(5) explain the disciplinary process in regard to designation or provisional status

The amendments to Rule 1200-08-12-.05(6) prohibit a facility from holding itself out as a trauma center without going through the designation process outlined in the rules; require trauma centers to provide emergency care regardless of a patient's ability to pay; and specify that trauma center refers to the main hospital campus, not off-campus sites

The amendments to Rule 1200-08-12-.07 add language regarding trauma care reporting that was originally contained in Rule 1200-08-12-.04

The amendments to the References section (which is currently found after rule 1200-08-12-.04) delete the existing language in its entirety and add new language regarding new standards and protocols as referenced in the chart found at 1200-08-12-.05(2).

(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;

None.

(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 proposed rule amendments will affect those facilities seeking designation as well as those already designated as a trauma center, and the amendments will also affect patients that are treated by these facilities.

(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 rule amendments will have a minimal impact, if any, 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;

Kyonzté Hughes-Toombs, 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;

Kyonzté Hughes-Toombs, 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, Department of Health, 665 Mainstream Drive, Nashville, Tennessee 37243, (615) 741-1611, Kyonzte.Hughes-Toombs@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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Nashville, TN 37243
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Email: publications.information@tn.gov

For Department of State Use Only

Sequence Number: 08-05-19
Rule ID(s): 9227
File Date: 8/6/19
Effective Date: 11/4/19

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:	The Board for Licensing Health Care Facilities
Division:	
Contact Person:	Kyonzté Hughes-Toombs, Deputy General Counsel
Address:	665 Mainstream Drive, Nashville, Tennessee
Zip:	37243
Phone:	(615) 741-1611
Email:	Kyonzte.Hughes-Toombs@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**
1200-08-12	Trauma Centers
Rule Number	**Rule Title**
1200-08-12-.01	Preamble
1200-08-12-.02	Authority
1200-08-12-.03	Definitions
1200-08-12-.04	Requirements
1200-08-12-.05	Repealed
1200-08-12-.06	Trauma Registry Data

Chapter Number	**Chapter Title**
1200-08-12	Trauma Centers
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1200-08-12-.05	Trauma Registry Data

RULES

OF

THE TENNESSEE DEPARTMENT OF HEALTH

DIVISION OF HEALTH CARE FACILITIES

CHAPTER 1200-08-12

TRAUMA CENTERS

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~~1200-08-12-.01 Preamble~~

~~1200-08-12-.02 Authority~~

~~1200-08-12-.03 Definitions~~

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~~1200-08-12-.05 Repealed~~

~~1200-08-12-.06 Trauma Registry Data~~

1200-08-12-.01 Preamble	1200-08-12-.03 Facility Outreach
1200-08-12-.02 Definitions	1200-08-12-.04 Requirements
	1200-08-12-.05 Trauma Registry Data

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~~**1200-08-12-.01 PREAMBLE.** The Tennessee Department of Health is empowered to adopt such regulations and standards pertaining to the operation and management of hospitals as are necessary for the public interest. On November 24, 1982, the EMS Advisory Council prepared and presented to the Board for Licensing Health Care Facilities ("Board") a recommendation that a formal review of the issues involved in the designation of trauma centers for the State of Tennessee be explored. Subsequently, on February 17, 1983, the Board requested a presentation regarding the City of Memphis Hospital Trauma Center in an effort to further define the need for action on trauma center designation and/or categorization. As a result of that presentation, the Board created a Task Force to evaluate and recommend criteria concerning the development of trauma systems and the operation of trauma centers in the state.~~

~~The process of Designation and Reverification is voluntary on the part of hospitals in the state. It is meant to identify those hospitals that make a commitment to provide a given level of care of the acutely injured patient. Knowledge of statewide trauma care capabilities and the use of~~

Rule 1200-08-12-.03, continued)

~~trauma triage protocols will enable providers to make timely decisions, promote appropriate utilization of the trauma care delivery system, and ultimately save lives.~~

~~***Authority:*** *T.C.A. § 68-11-201 et seq.* ***Administrative History:*** *Original rule filed September 18, 1985; effective October 18, 1985. Repeal and new rule filed December 5, 2011; effective March 4, 2012.*~~

~~**1200-08-12-.02 AUTHORITY.** The Board for Licensing Health Care Facilities issues these regulations under the authority granted at T.C.A. 68-11-201 et seq.~~

~~***Authority:*** *T.C.A. § 68-11-201 et seq.* ***Administrative History:*** *Original rule filed September 18, 1985; effective October 18, 1985. Repeal and new rule filed December 5, 2011; effective March 4, 2012.*~~

~~**1200-08-12-.03 DEFINITIONS.**~~

~~(1) "ACS-COT" means American College of Surgeons Committee on Trauma.~~

~~(2) "Advisory Council" means the Tennessee Trauma Care Advisory Council.~~

~~(3) "ATLS" means Advanced Trauma Life Support.~~

~~(4) "Board" means the Board for Licensing Health Care Facilities.~~

~~(5) "Commissioner" means the Commissioner of the Tennessee Department of Health.~~

~~(6) "Comprehensive Regional Pediatric Center (CRPC)" means a facility designated as CRPC that shall be capable of providing comprehensive specialized pediatric medical and surgical care to all acutely ill and injured children. The center shall be responsible for serving as a regional referral center for the specialized care of pediatric patients or in~~

(Rule 1200-08-12-.03, continued)

~~special circumstances provide safe and timely transfer of children to other resources for specialized care. Rules and regulations governing CRPCs are delineated in Chapter 1200-08-30.~~

~~(7) "D" means desired.~~

~~(8) "Data" means the original information contained on the report required by the regulations, including, but not limited to, both identifying and non-identifying information.~~

~~(9) "Department" means the Tennessee Department of Health.~~

~~(10) "E" means essential.~~

~~(11) "Facility" shall have the same meaning as defined in T.C.A. § 68-11-201(18).~~

~~(12) "FAST" means focused abdominal sonography for trauma.~~

~~(13) "Health care practitioner" means a physician, surgeon, or other health care professional licensed under T.C.A. Title 63 or Title 68 who is engaged in diagnosing and/or treating patients within the trauma care system.~~

~~(14) "Identifying information" means any information that could lead to the identification of a patient who has been diagnosed or treated within the trauma care system.~~

~~(15) "Levels of Care" means the type of trauma service provided by the facility as shown by the degree of commitment in personnel and facilities made to the delivery of that service.~~

~~(16) "Level I" means a facility providing optimum care for the acutely injured patient and which meets all requirements in these regulations defined as Level of Care I.~~

(Rule 1200-08-12-.03, continued)

~~(17) "Level II" means a facility providing optimum care for the acutely injured patient and which meets all requirements in these regulations defined as Level of Care II.~~

~~(18) "Level III" means a facility providing a maximum trauma care commensurate with community resources. The Level III facility generally serves communities without all the resources usually associated with Level I or II facilities. Planning for care of the injured in small communities or suburban settings usually calls for transfer agreements and protocols for the most severely injured patients. Designation of the Level III facility may also require innovative use of the region's resources. For example, if there is no neurosurgeon in a large, sparsely populated region it may require that a general surgeon be prepared to provide the emergency decompression of mass lesions and arrangement for patient transfer to the most appropriate Level I or II hospital after the surgeon has carried out the patient's life-saving operation. Staffing of the Level III hospital is another example of the innovative use of a region's resources. It will be impractical to require a general surgeon to be in-house in many instances. With modern communication systems it seems reasonable that the surgeon should be promptly available and in a great majority of instances meet the patient in the emergency room on arrival. When a Level III hospital first receives notification of a critically injured patient, it can activate on-call personnel to respond promptly to the hospital. The intent of this flexibility should be clear: to provide the best possible care even in the most remote circumstances.~~

~~(19) "Medical Record" means medical histories, records, reports, summaries, diagnoses, prognoses, records of treatment and medication ordered and given, entries, x-rays, radiology interpretations, and other written, electronic, or graphic data prepared, kept, made or maintained in a facility that pertains to confinement or services rendered to patients admitted or receiving care.~~

~~(20) "Person" means any member of the "medical, scientific, and academic research community."~~

~~(21) "Policies and Procedures Manual" means the document(s) maintained in the offices of the Tennessee Trauma Registry giving specific written instructions for the implementation of policies and procedures utilized by the registry and which may be updated from time to time.~~

(Rule 1200-08-12-.03, continued)

~~(22) "PGY" means postgraduate year.~~

~~(23) "Trauma Center" shall have the same definition as provided in T.C.A. § 68-59-102(6).~~

~~(24) "Trauma Registry" means a central registry compiled of injury incidence information supplied by designated trauma centers and Comprehensive Pediatric Emergency Centers for the purpose of allowing the Board to analyze data and conduct special studies regarding the causes and consequences of traumatic injury.~~

~~***Authority:*** *T.C.A. §§ 4-5-202, 4-5-204, 68-11-201, 68-11-202, 68-11-209 and 68-11-259.*~~
~~***Administrative History:*** *Original rule filed September 18, 1985; effective October 18, 1985. Amendment filed March 31, 1989; effective May 15, 1989. Amendment filed August 16, 2006; effective October 30, 2006. Repeal and new rule filed December 5, 2011; effective March 4, 2012. Amendment filed February 12, 2013; effective Amendment filed February 12, 2013; effective May 13, 2013.*~~

~~**1200-08-12-.04 REQUIREMENTS.**~~

~~(1) Trauma registry requirements shall include the following:~~

~~(a) Each trauma center shall submit trauma registry data electronically to the trauma registry on all closed patient files.~~

~~(b) Each trauma center shall submit trauma registry data for receipt no later than one hundred twenty (120) days after each quarter of the year. Trauma centers shall receive confirmation of successful submission no later than two weeks after submission.~~

~~(c) Trauma centers which fail to submit required data to the trauma registry for three (3) consecutive quarters shall risk not receiving compensation from the Tennessee Trauma Center Fund.~~

~~(2) Levels of Care~~

~~(a) Hospital Origination~~

~~1.~~	~~Trauma Service~~	~~I~~	~~II~~	~~III~~

(Rule 1200-08-12-.04, continued)

	~~A recognizable program within the hospital which has a surgeon as its director/coordinator/physician in charge. The intent is to ensure the coordination of services and performance improvement for the trauma patient. The service includes personnel and other resources necessary to ensure appropriate and efficient provision of care and will vary according to facility and level of designation.~~ ~~In a Level I and II trauma center, the trauma team shall evaluate seriously injured patients based upon written institutional graded activation criteria and those patients shall be admitted by an identifiable surgical service staffed by credentialed trauma providers(1). Level I and II trauma centers shall have sufficient infrastructure and support to ensure adequate provision of care for this service. Sufficient infrastructure and support may require additional qualified physicians, residents, nurse practitioners, physician's assistants, or other physician extenders. This composite should be determined by the volume of patients requiring care and the complexity of their conditions. In teaching facilities, the requirements of the Residency Review Committee also must be met.~~ ~~In Level III centers, the center may admit the injured patients to individual surgeons, but the structure of the program must allow the trauma director to have oversight authority for the care of those injured patients. The center shall ensure that there is a method to identify the injured patients, monitor the provision of health care services, make periodic rounds, and hold formal and informal discussions with individual practitioners. It is particularly important for team members to attend trauma committee meetings regularly and participate in peer review activities to maintain cohesion within the service.~~	~~E~~	~~E~~	~~E~~
	~~Written graded activation criteria~~	~~E~~	~~E~~	~~E~~
	~~Administration supportive of the Trauma Program~~	~~E~~	~~E~~	~~E~~

(Rule 1200-08-12-.04, continued)

	~~Evidence of an annual budget for the Trauma Program~~	~~E~~	~~E~~	~~E~~
	~~The Trauma Team may be organized by a qualified physician but care must be directed by a general surgeon expert in and committed to the care of the injured. All patients with multiple-system or major injury must be initially evaluated by the trauma team, and the surgeon who shall be responsible for overall care of a patient (the team leader) identified. A team approach is required for optimal care of patients with multiple-system injuries~~			~~E~~
~~2.~~	~~Surgery Departments/Divisions/Services/Sections (each staffed by qualified specialists)~~			
	~~Cardiothoracic Surgery~~	~~E~~	~~E (2)~~	
	~~General Surgery~~	~~E~~	~~E~~	~~E~~
	~~Neurologic Surgery~~	~~E~~	~~E~~	
	~~Obstetrics-Gynecologic Surgery~~	~~E~~		
	~~Ophthalmic Surgery~~	~~E~~		
	~~Oral and Maxillofacial Surgery - Dentistry~~	~~E~~		
	~~Orthopedic Surgery~~	~~E~~	~~E~~	~~D~~
	~~Otorhinolaryngologic Surgery~~	~~E(3)~~		
	~~Pediatric Surgery~~	~~E(4)~~		
	~~Plastic Surgery~~	~~E~~		
	~~Urologic Surgery~~	~~E~~		
	~~Surgical Critical Care~~	~~E~~	~~D~~	
~~3.~~	~~Emergency Department/Division/Service/Section (staffed by qualified specialists)~~	~~E(5)~~	~~E(5)~~	~~E(5)~~
~~4.~~	~~Surgical Specialty Availability In-house 24 hrs a day~~			
	~~General Surgery~~	~~E(6)~~		
	~~Neurologic Surgery~~	~~E(7)~~		

(Rule 1200-08-12-.04, continued)

	~~Surgical Critical Care~~	~~E(6)~~	~~D(6)~~	
~~5.~~	~~Surgical Specialty Availability from inside or outside hospital~~			
	~~Cardiac Surgery~~	~~E~~	~~E(2)~~	
	~~General Surgery~~		~~E(17)~~	
	~~Neurologic Surgery~~		~~E(17)~~	~~D~~
	~~Microsurgery capabilities~~	~~E~~		
	~~Gynecologic Surgery~~	~~E~~		
	~~Hand Surgery~~	~~E(8)~~		
	~~Ophthalmic Surgery~~	~~E~~	~~E~~	~~D~~
	~~Oral and Maxillofacial Surgery - Dentistry~~	~~E~~	~~E~~	~~D~~
	~~Orthopedic Surgery~~	~~E~~	~~E~~	~~D~~
	~~Otorhinolaryngologic Surgery~~	~~E~~	~~E~~	~~D~~
	~~Pediatric Surgery~~	~~E(4)~~	~~E(4)~~	
	~~Plastic Surgery~~	~~E~~	~~E~~	~~D~~
	~~Thoracic Surgery~~	~~E~~	~~E~~	~~D~~
	~~Urologic Surgery~~	~~E~~	~~E~~	~~D~~
~~6.~~	~~Non-Surgical Specialty Availability in-hospital 24 hours a day~~			
	~~Emergency Medicine~~	~~E(9)~~	~~E(9)~~	~~E~~
	~~Anesthesiology~~	~~E~~	~~E(11)~~	~~E(12)~~
~~7.~~	~~Non-Surgical Specialty Availability on call from inside or outside hospital~~			
	~~Cardiology~~	~~E~~	~~E~~	~~D~~
	~~Chest (pulmonary) Medicine~~	~~E~~	~~E~~	
	~~Gastroenterology~~	~~E~~	~~E~~	
	~~Hematology~~	~~E~~	~~E~~	~~D~~

(Rule 1200-08-12-.04, continued)

	~~Infectious Diseases~~	~~E~~	~~E~~	
	~~Internal Medicine~~	~~E~~	~~E~~	~~E~~
	~~Nephrology~~	~~E~~	~~E~~	
	~~Pathology~~	~~E(13)~~	~~E~~	
	~~Pediatrics~~	~~E~~	~~E~~	
	~~Psychiatry~~	~~E~~	~~E~~	
	~~Radiology~~	~~E~~	~~E~~	

~~(b) Special Facilities/Resources/Capabilities~~

~~1(i).~~	~~Emergency Department (ED) – Personnel~~	~~I~~	~~II~~	~~III~~
	~~Designated Physician Director~~	~~E~~	~~E~~	~~E~~
	~~Physician with special competence in care of the critically injured who is a designated member of the trauma team and physically present in the ED 24 hours a day~~			~~E~~
	~~A physician or physician extender with ongoing certification in a recognized trauma course~~			
	~~Full time emergency department; RN personnel 24 hours a day~~	~~E~~	~~E~~	~~E~~
~~1(ii).~~	~~Emergency Department – Equipment for resuscitation and to provide support for the critically or seriously injured must include but shall not be limited to:~~			
	~~Airway control and ventilation equipment including laryngoscopes and endotracheal tubes of all sizes, bag-mask resuscitator, sources of oxygen, and mechanical ventilator~~	~~E~~	~~E~~	~~E~~
	~~Suction devices~~	~~E~~	~~E~~	~~E~~
	~~Electrocardiography-oscilloscope-defibrillator~~	~~E~~	~~E~~	~~E~~
	~~Bedside ultrasound capability for FAST examination~~	~~E~~	~~D~~	~~D~~
	~~Apparatus to establish central venous pressure monitoring~~	~~E~~	~~E~~	~~E~~

(Rule 1200-08-12-.04, continued)

	~~All standard intravenous fluids and administration devices, including intravenous catheters~~	~~E~~	~~E~~	~~E~~
	~~Sterile surgical sets for procedures standard for ED, such as thoracostomy, cutdown, etc.~~	~~E~~	~~E~~	~~E~~
	~~Gastric lavage equipment~~	~~E~~	~~E~~	~~E~~
	~~Drugs and supplies necessary for emergency care~~	~~E~~	~~E~~	~~E~~
	~~X-ray capability, 24 hour coverage by in-house technicians~~	~~E~~	~~E~~	~~E~~
	~~Two-way radio linked with vehicles of emergency transport system~~	~~E~~	~~E~~	~~E~~
	~~Skeletal tongs~~	~~E~~	~~E~~	~~E~~
	~~Cervical collars~~	~~E~~	~~E~~	~~E~~
	~~Spine Long Board~~	~~E~~	~~E~~	~~E~~
	~~Splinting materials and devices~~	~~E~~	~~E~~	~~E~~
	~~Helipad or Helicopter Landing Area~~	~~E~~	~~E~~	
~~2.~~	~~Intensive Care Units (ICU) for Trauma Patients~~			
	~~Designated Surgeon Medical Director~~	~~E~~	~~E~~	~~E~~
	~~Physician on duty in ICU 24-hours a day or immediately available from in-hospital (PGY4/5 qualify)~~	~~E(6)~~	~~E(6)~~	~~E~~
	~~Nurse-patient minimum ratio of 1:2 on each shift~~	~~E~~	~~E~~	~~E~~
	~~Immediate access to clinical laboratory service~~	~~E~~	~~E~~	~~E~~
	~~Equipment:~~	~~E~~	~~E~~	~~E~~
	~~Airway control and ventilation devices~~	~~E~~	~~E~~	~~E~~
	~~Oxygen source with concentration controls~~	~~E~~	~~E~~	~~E~~
	~~Cardiac emergency cart~~	~~E~~	~~E~~	~~E~~
	~~Temporary transvenous pacemaker~~	~~E~~	~~E~~	~~E~~
	~~Electrocardiograph-oscilloscope-defibrillator~~	~~E~~	~~E~~	~~E~~
	~~Cardiac output monitoring~~	~~E~~	~~E~~	~~D~~

(Rule 1200-08-12-.04, continued)

	~~Electronic pressure monitoring~~	~~E~~	~~E~~	~~D~~
	~~Mechanical ventilator-respirators~~	~~E~~	~~E~~	~~E~~
	~~Patient weighing devices~~	~~E~~	~~E~~	~~E~~
	~~Pulmonary function measuring devices~~	~~E~~	~~E~~	~~E~~
	~~Temperature control devices~~	~~E~~	~~E~~	~~E~~
	~~Drugs, intravenous fluids and supplies (needed also as supply replacement time for EMS crews)~~	~~E~~	~~E~~	~~E~~
	~~Intracranial pressure monitoring devices~~	~~E~~	~~E~~	~~D~~
~~3.~~	~~Post-anesthetic recovery room (ICU is acceptable)~~			
	~~Registered nurses 24-hours a day~~	~~E~~	~~E~~	~~E~~
	~~Monitoring and resuscitation equipment~~	~~E~~	~~E~~	~~E~~
~~4.~~	~~Acute hemodialysis capability~~	~~E~~	~~E(14)~~	~~E(14)~~
~~5.~~	~~Organized burn care (15): Physician directed burn center/unit staffed by nursing personnel trained in burn care and equipped properly~~	~~E(15)~~	~~E(15)~~	~~E(15)~~
~~6.~~	~~Acute spinal cord management capability OR written transfer agreement with a hospital capable of caring for a spinal cord patient~~			~~E~~
~~7.~~	~~Acute head injury management capability OR written transfer agreement with a hospital capable of caring for a patient with a head injury~~			~~E~~
~~8.~~	~~Radiological Special Capabilities~~			
	~~Angiography of all types~~	~~E~~	~~E~~	~~D~~
	~~Sonography~~	~~E~~	~~E~~	~~D~~
	~~Nuclear scanning~~	~~E~~	~~E~~	~~D~~
	~~In-house computerized tomography~~	~~E~~	~~E~~	~~D~~
	~~MRI (magnetic resonance imaging)~~	~~E~~	~~E~~	~~D~~
~~9.~~	~~Organ donation protocol~~	~~E(16)~~	~~E(16)~~	~~D~~

(Rule 1200-08-12-.04, continued)

~~(c) Operating suite special requirements~~

~~1.~~	~~Equipment/instrumentation~~	~~I~~	~~II~~	~~III~~
	~~Operating room, dedicated to the trauma service, with nursing staff in-house and immediately available 24-hours a day~~	~~E~~	~~E~~	~~D~~
	~~Cardiopulmonary bypass capability~~	~~E~~		
	~~Operating microscope~~	~~E~~	~~E~~	
	~~Thermal control equipment for patient~~	~~E~~	~~E~~	~~E~~
	~~Thermal control equipment for blood~~	~~E~~	~~E~~	~~E~~
	~~X-ray capability~~	~~E~~	~~E~~	~~E~~
	~~Endoscopes, all varieties~~	~~E~~	~~E~~	~~E~~
	~~Craniotomy instrumentation~~	~~E~~	~~E~~	~~D~~
	~~Monitoring equipment~~	~~E~~	~~E~~	~~E~~

~~(d) Clinical Laboratory Services available 24 hours a day~~

~~1.~~	~~Standard analysis of blood, urine, and other body fluids~~	~~E~~	~~E~~	~~E~~
~~2.~~	~~Blood typing and cross-matching~~	~~E~~	~~E~~	~~E~~
~~3.~~	~~Coagulation studies~~	~~E~~	~~E~~	~~E~~
~~4.~~	~~Blood bank or access to a community central blood bank and hospital storage facilities~~	~~E~~	~~E~~	~~E~~
~~5.~~	~~Blood gases and pH determinations~~	~~E~~	~~E~~	~~E~~
~~6.~~	~~Serum and urine osmolality~~	~~E~~	~~E~~	~~D~~
~~7.~~	~~Microbiology~~	~~E~~	~~E~~	~~E~~
~~8.~~	~~Drug and alcohol screening~~	~~E~~	~~E~~	~~D~~

~~(e) Trauma Medical Director~~

(Rule 1200-08-12-.04, continued)

~~1.~~	~~Board certified general surgeon~~	~~E~~	~~E~~	~~E~~
~~2.~~	~~Minimum of three years clinical experience on a trauma service or trauma fellowship training~~	~~E~~	~~D~~	~~D~~
~~3.~~	~~48 hours of category I trauma/critical care CME every 3 years or 16 hours each year and attend one national meeting whose focus is trauma or critical care~~	~~E~~	~~E~~	~~D~~
~~4.~~	~~Participate in call~~	~~E~~	~~E~~	~~E~~
~~5.~~	~~Has the authority to manage all aspects of trauma care~~	~~E~~	~~E~~	~~E~~
~~6.~~	~~Authorizes trauma service privileges of the on-call panel~~	~~E~~	~~E~~	~~E~~
~~7.~~	~~Works in cooperation with nursing administration to support the nursing needs of trauma patients~~	~~E~~	~~E~~	~~E~~
~~8.~~	~~Develops treatment protocols along with the trauma team~~	~~E~~	~~E~~	
~~9.~~	~~Coordinates performance improvement and peer review processes~~	~~E~~	~~E~~	~~E~~
~~10.~~	~~With the assistance of the hospital administrator and the TPM, be involved in coordinating the budgetary process for the trauma program~~	~~E~~	~~E~~	~~E~~
~~11.~~	~~Participates in the Tennessee Chapter of the ACS-COT~~	~~E~~	~~E~~	~~E~~
~~12.~~	~~Participates in regional and national trauma organizations~~	~~E~~	~~E~~	
~~13.~~	~~Remains a current provider of ACS-ATLS course and in the provision of trauma-related instruction to other health care personnel~~	~~E~~	~~E~~	~~E~~
~~14.~~	~~Is involved in trauma research~~	~~E~~		

~~(f) Attending General Surgeon on the Trauma Service~~

~~1.~~	~~Board Certified in General Surgery~~	~~E~~	~~E~~	~~E~~
~~2.~~	~~Completion of an ATLS course~~	~~E~~	~~E~~	~~E~~
~~3.~~	~~Trauma specific CME 16 hours/year or 48 hours every 3 years~~	~~E~~	~~E~~	~~D~~

~~(g) Emergency Department Physician~~

~~1.~~	~~Be Board Certified in Emergency Medicine or have ATLS~~	~~E~~	~~E~~	~~E~~

(Rule 1200-08-12-.04, continued)

	~~certification~~			

~~(h) Trauma Program Manager (TPM)/Trauma Nurse Coordinator (TNC)~~

~~1.~~	~~Must have a dedicated fulltime TNC/TPM~~	~~E~~	~~E~~	~~D~~
~~2.~~	~~Must have a part time TNC/TPM with the trauma program as a major focus of their job description (Level III)~~			~~E~~
~~3.~~	~~Must be a Registered Nurse licensed by the TN Board of Nursing (Level I/II/III)~~	~~E~~	~~E~~	~~E~~
~~4.~~	~~Must possess experience in Emergency/Critical Care Nursing (Level I/II)~~	~~E~~	~~E~~	~~D~~
~~5.~~	~~Must have a defined job description and organizational chart delineating the TNC/TPM role and responsibilities (Level I/II)~~	~~E~~	~~E~~	~~D~~
~~6.~~	~~Must be provided the administrative and budgetary support to complete educational, clinical, research, administrative and outreach activities for the trauma program~~	~~E~~	~~E~~	
~~7.~~	~~Shall attend one national meeting within the 3 year verification cycle~~	~~E~~	~~E~~	~~D~~

~~(i) Trauma Registrar~~

~~1.~~	~~A full time equivalent registrar for each 750-1000 admissions per year is required to assure high quality data collection~~	~~E~~	~~E~~	~~D~~
~~2.~~	~~Shall receive initial training when they start their job and also complete 4 hours of registry-specific continuing education per year (Level I/II)~~	~~E~~	~~E~~	~~D~~

~~(j) Programs for Quality Assurance~~

~~1.~~	~~Medical Care Education~~			
	~~Morbidity and Mortality Reviews to encompass all trauma deaths~~	~~E~~	~~E~~	~~E~~
~~2.~~	~~Trauma Process Improvement (PI)~~			
	~~The institution must provide resources to support the trauma process improvement program~~	~~E~~	~~E~~	~~E~~

(Rule 1200-08-12-.04, continued)

	~~Must have a Trauma Performance Committee that meets at least quarterly to include physicians, nurses, pre-hospital personnel and a variety of other healthcare providers, and reviews policies and procedures, system issues, and whose members or designees attend at least 50% of regular meetings. The committee shall:~~	~~E~~	~~E~~	~~E~~
	• ~~Identify discretionary and non-discretionary audit filters~~			
	• ~~Document and review times and reasons for trauma related diversion of patients from the scene or referral hospitals~~	~~E~~	~~E~~	~~E~~
	• ~~Document and review response times for trauma surgeons, neurosurgeons, anesthesia or airway managers, and orthopedists, all of whom must demonstrate 80% compliance~~	~~E~~	~~E~~	~~E~~
	• ~~Document and review response times for trauma surgeons, anesthesia or airway managers, and orthopedists, all of whom must demonstrate 80% compliance~~	~~E~~	~~E~~	
	• ~~Monitor trauma team notification times~~			
	• ~~Review pre-hospital trauma care to include patients dead on arrival~~			
	• ~~Review times and reasons for transfer of injured patients~~			
	• ~~Document availability of the surgeon on-call for trauma, such that compliance is 90% or greater where there is no trauma surgeon back-up call schedule~~			~~E~~
		~~E~~	~~E~~	~~E~~
		~~E~~	~~E~~	~~E~~
		~~E~~	~~E~~	~~E~~
				~~E~~
	~~The institution shall demonstrate that actions taken as a result of issues identified in the Process Improvement Program created a measurable improvement. Documentation shall include where appropriate: 1) problem identification; 2) analysis; 3) preventability; 4) action plan; 5) implementation; and 6) reevaluation~~	~~E~~	~~E~~	~~E~~

(Rule 1200-08-12-.04, continued)

~~3.~~	~~Operational Process Improvement (Evaluation of System Issues)~~			
	~~This is a multidisciplinary conference presided over by the Trauma Medical Director and shall include hospital administrative staff over trauma services as well as the staff in charge of all trauma-program related services. This committee addresses, assesses, and corrects global trauma program and system issues, corrects overall program deficiencies to continue to optimize patient care. This should be held at least quarterly, attendance noted, and minutes recorded.~~	~~E~~	~~E~~	~~D~~
~~4.~~	~~Trauma Bypass Log~~			
	~~Trauma bypass shall not exceed 5%. Trauma surgeons shall be involved in diversion/bypass decisions~~	~~E~~	~~E~~	~~E~~
~~5.~~	~~Outreach/Training Programs~~			
	~~Level I centers shall maintain a commitment to provide ATLS and other educational activities deemed appropriate and timely to surrounding referral centers.~~	~~E~~	~~D~~	
	~~Be involved with local and regional EMS agencies and/or personnel and assist in trauma education, performance improvement, and feedback regarding care~~	~~E~~	~~E~~	~~D~~
~~6.~~	~~Public Education~~			
	~~The trauma center shall be involved in community awareness of trauma and the trauma system~~	~~E~~	~~D~~	~~D~~
	~~Participate in statewide trauma center collaborative injury prevention efforts focused on common needs throughout the state~~	~~E~~	~~E~~	~~D~~
	~~Perform studies in injury control while monitoring the effects of prevention programs~~	~~E~~	~~D~~	~~D~~
~~7.~~	~~Institutional Commitment~~			
	~~Demonstrates knowledge, familiarity, and commitment of upper level administrative personnel to trauma service~~	~~E~~	~~E~~	~~E~~
	~~Upper level administration participation in multidisciplinary trauma conferences/committees~~	~~E~~	~~E~~	~~E~~
	~~Evidence of yearly budget for the trauma program~~	~~E~~	~~E~~	~~E~~
	~~Supports research efforts of the Trauma Service~~	~~E~~		
~~8.~~	~~Trauma System Development~~			
	~~All trauma centers shall participate in trauma system planning and development under the auspices of the Trauma Care Advisory Council~~	~~E~~	~~E~~	~~E~~

(Rule 1200-08-12-.04, continued)

~~9.~~	~~Activation Criteria~~			
	~~Each center shall have clearly defined graded activation criteria. For the highest level of activation, the PGY 4/5 shall be immediately available and the trauma attending available within 20 minutes~~	~~E~~	~~E~~	~~E~~

~~(3) Designation~~

~~(a) The Board shall implement the designation process.~~

~~(b) The preliminary designation process for facilities aspiring to designation as a Level I, II, or III Trauma Center shall consist of the following:~~

~~1. Each facility desiring designation shall submit an application to the Board;~~

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~~2. A Department site visit team ("team") shall review each submitted application and shall act in an advisory capacity to the Board;~~

~~3. The team shall communicate deemed application deficiencies to the facility in writing by certified letter;~~

~~4. The facility shall have thirty (30) days to submit required information; and~~

~~5. Arrangements shall be made for a provisional site visit for those facilities meeting application requirements.~~

~~(c) The site visit team shall consist of the following:~~

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~~1. A trauma surgeon medical director from an out-of-state trauma center who shall serve as team leader;~~

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~~2. A trauma surgeon from an in-state Level I trauma center;~~

(Rule 1200-08-12-.04, continued)

3. ~~An in-state trauma nurse coordinator/program manager from a Level I trauma center;~~

4. ~~The state trauma program manager/EMS director; and~~

5. ~~For the provisional site visit, an Emergency Department physician from a Level I or Level II trauma center.~~

(d) ~~The team shall be appointed by the following organizations:~~

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1. ~~The National and/or State Committees on Trauma of the American College of Surgeons shall assist in identifying the out-of-state surgeon; and~~

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2. ~~The state trauma program manager/Director of EMS, in consultation with the chairman and vice chairpersons of the Tennessee Committee on Trauma, shall select the in-state members of the site visiting team.~~

(e) ~~The team shall conduct a provisional visit to ensure compliance with all criteria required for designation as a Trauma Center with the requested level of designation before the Board grants an institution designation as a Trauma Center. During the provisional visit, the applicant shall demonstrate that the required mechanisms to meet the criteria for the desired accreditation level are in place.~~

(f) ~~The team shall identify deficiencies and areas of improvement it deems necessary for designation.~~

(g) ~~If the team does not cite any deficiencies and concludes that the facility is otherwise in compliance with all applicable standards, it shall approve the applicant to function with provisional status for a period of one (1) year.~~

(h) ~~If, during the provisional visit, the team cites deficiencies, it shall not approve provisional status for the applicant to function as a trauma center. Centers with deficiencies shall have fifteen (15) days to provide documentation demonstrating compliance. If the facility is unable to correct the deficiencies within fifteen (15) days, the application shall be denied and the applicant may not resubmit an application for trauma center designation for at least one (1) year from the date of denial.~~

(i) ~~Facilities granted provisional status as a trauma center shall adhere to the following:~~

(Rule 1200-08-12-.04, continued)

~~1. The facility shall submit an interim report at the end of one (1) year that shall include the following:~~

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~~(i) A description of changes made after the grant of provisional status;~~

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~~(ii) A description of areas of improvement cited during the provisional visit; and~~

~~(iii) A summary of the hospital's trauma service based on the trauma registry report.~~

~~2. The team shall conduct a site visit at the termination of the applicant's one (1) year provisional designation as a trauma center.~~

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~~3. During the follow-up visit, the team shall identify the presence of deficiencies and areas of improvement.~~

~~(j) Upon completion of the follow-up visit, the team shall submit its findings and designation recommendations to the Board.~~

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~~1. If the team cites deficiencies found during its follow-up visit, they shall be included in its report to the Board.~~

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~~2. The facility requesting trauma center designation shall be allowed to present evidence demonstrating action taken to correct cited deficiencies to the Board during the ratification process.~~

~~(k) The final decision regarding trauma center designation shall be rendered by the Board. If granted, trauma center designation is applicable for a period of three (3) years.~~

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~~(l) If the Board denies the applicant trauma center designation, the facility may not reapply for at least one (1) year.~~

~~(m) The facility applying for trauma center designation shall bear all costs of the application process; including costs of a site visit.~~

(Rule 1200-08-12-.04, continued)

~~(4) Verification~~

~~(a) Following designation as a trauma center, a verification site visit shall be conducted at the facility every three (3) years.~~

~~(b) The team shall advise the center of an upcoming verification visit at least sixty (60) days prior to the visit. After the facility receives notice of the upcoming verification site visit, it shall prepare all materials the team requests for submission.~~

~~(c) The team shall conduct an exit interview with the facility at the conclusion of the verification visit.~~

~~1. During the exit interview the team shall communicate the following:~~

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~~(i) The presence of deficiencies;~~

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~~(ii) The facility's strengths and weaknesses; and~~

~~(iii) Recommendations for improvements and correction of deficiencies.~~

~~(d) The team shall submit a site visit report within sixty (60) days of completion of the site visit. It shall submit a copy of the report to the Board, the Chief Executive Officer of the hospital, the hospital board, and the Trauma Advisory Council within sixty (60) days of the site visit.~~

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~~(e) If the team does not cite deficiencies and the center is in compliance with all applicable standards, it shall recommend that the facility be confirmed at its current level of trauma designation for a period of three (3) years.~~

~~(f) If during the site visit the team identifies deficiency(ies), the center shall have a period not to exceed thirty (30) days to correct the deficiencies~~

~~(g) If the team ascertains that deficiencies have not been corrected within thirty (30) days, either through desk review or an on-site visit, the center must present an explanation to the Board at its next scheduled meeting.~~

~~(h) The Board may, in accordance with the Uniform Administrative Procedures Act, revoke a facility's trauma center designation.~~

~~(i) The facility shall bear all costs of the verification process, including the costs of a site visit.~~

(Rule 1200-08-12-.04, continued)

~~(5) All designated Trauma Centers shall participate in the collection of data for the Trauma Registry and in the review of the Trauma Registry.~~

~~(6) All designated Trauma Centers shall record and report the payor source for patient care on patient discharge. Final payment data shall be classed as self pay, commercial insurance, Medicare, Medicaid, or worker compensation.~~

~~(7) Prohibitions~~

~~(a) It shall be a violation of these regulations for any health care facility to hold out, advertise or otherwise represent itself to be a "trauma center" as licensed by the Board unless it has complied with the regulations set out herein and the Board has so licensed it.~~

~~(b) Any facility the Board designates as a trauma center, at any level, shall provide hospital emergency services to any applicant who applies for the same in case of injury or acute medical condition where the same is liable to cause death or severe injury or illness. The medical needs of an applicant and the available medical resources of the facility, rather than the financial resources of an applicant, shall be the determining factors concerning the scope of service provided.~~

~~References:~~

~~1. Credentialed trauma provider: Level I/II – Providers shall remain knowledgeable in trauma care principles through participation in 16 hours of trauma-related CME per year or 48 hours every 3 years. The Trauma Medical Director shall identify the core group covering trauma which shall take at least 60% of the total trauma calls per month and attend at least fifty (50) per cent of the multidisciplinary review committee meetings.~~

~~2. Or substituted by a current signed transfer agreement with an institution with Cardiothoracic Surgery and cardiopulmonary bypass capability.~~

~~3. Or substituted by a department or division capable of treating maxillofacial trauma as demonstrated by staff privileges.~~

~~4. Or substituted by a current signed transfer agreement with an institution having a Pediatric Surgery Service.~~

(Rule 1200-08-12-.04, continued)

~~5. The emergency department staffing must provide immediate and appropriate care for the trauma patient. The emergency department physician must function as a designated member of the trauma team.~~

~~6. Requirement may be fulfilled by a Senior surgical Resident (PGY 4 or higher) capable of assessing emergency situations in trauma patients and initiating proper treatment. A staff surgeon trained and capable of carrying out definitive treatment must be available within 20 minutes.~~

~~7. Requirement may be fulfilled by in-house neurosurgeon or neurosurgery resident, or senior general surgery resident who has special competence, as documented by the Chief of Neurosurgery Service, in the care of patients with neural trauma, and who is capable of initiating measures directed toward stabilizing the patient and initiating diagnostic procedures. An attending neurosurgeon dedicated to the hospital's trauma service must be available within 30 minutes.~~

~~8. Or substituted by a current signed transfer agreement with an institution having a Hand Surgery Service.~~

~~9. Requirement may be fulfilled by senior level (last year in training) Emergency Medicine Residents capable of assessing emergency situations and initiating proper treatment. The staff specialist responsible for the resident must be available within 30 minutes.~~

~~10. A physician extender may fulfill this role.~~

~~11. Requirements for Level II Trauma Center may be fulfilled when local conditions assure that a staff anesthesiologist is on call and available within 30 minutes. During the interim period prior to the arrival of a staff anesthesiologist, a Certified Registered Nurse Anesthetist (CRNA) operating under the direction of the anesthesiologist, the trauma team surgeon director or the emergency medicine physician, may initiate appropriate supportive care.~~

(Rule 1200-08-12-.04, continued)

~~12. Requirement for Level II Trauma Center may be fulfilled when local conditions assure that a staff anesthesiologist is on call and available within 30 minutes. However, when there is not an anesthesiologist on the hospital staff, this requirement may be fulfilled by a CRNA operating under the supervision of the surgeon, the anesthesiologist, and/or the responsible physician.~~

~~13. Forensic pathologist must be available either as part of the hospital staff or on a consulting basis.~~

~~14. Or substituted by current signed transfer agreement with hospital having hemodialysis capabilities.~~

~~15. Or substituted by current signed transfer agreement with burn center or hospital with burn unit.~~

~~16. Each Level I and II Center must have an organized protocol with a transplant team or service to identify possible organ donors and assist in procuring organs for donation.~~

~~17. All specialists must be available within 30 minutes.~~

~~***Authority:*** *T.C.A. §§ 4-5-202, 4-5-204, 68-11-202, and 68-11-209.* ***Administrative History:*** *Original rule filed September 18, 1985; effective October 18, 1985. Amendment filed March 31, 1989; effective May 15, 1989. Amendment filed August 31, 1990; effective October 15, 1990. Amendment filed October 20, 1992; effective December 4, 1992. Amendment filed July 21, 1993; effective October 4, 1993. Amendment filed August 16, 2006; effective October 30, 2006. Repeal and new rule filed December 5, 2011; effective March 4, 2012.~~

~~**1200-08-12-.05 REPEALED.**~~

~~***Authority:*** *T.C.A. §§ 4-5-202, 4-5-204, 68-11-202, and 68-11-209.* ***Administrative History:*** *Original rule filed March 31, 1989; effective May 18, 1989. Amendment filed July 21, 1993; effective October 4, 1993. Repeal filed December 5, 2011; effective March 4, 2012.~~

(Rule 1200-08-12-.06 continued)

~~**1200-08-12-.06 TRAUMA REGISTRY DATA.**~~

~~(1) Confidentiality.~~

~~(a) T.C.A. § 68-11-259 provides for the confidentiality of data obtained from the reports of trauma patients.~~

~~(b) Information contained in the trauma registry that reasonably could be expected to reveal the identity of any patient or a reporting facility may not be made available to the public.~~

~~(c) Trauma registry responsibilities~~

~~1. The trauma registry shall take strict measures to ensure that all patient identifying information is treated as confidential and privileged.~~

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~~2. All employees and consultants, including auditors of the trauma registry, shall sign a Tennessee Trauma Registry Employee Confidentiality Pledge and these signed pledges shall be kept on file.~~

~~3. Protection of report sources. Hospitals, laboratories, facilities, or health care practitioners who disclose trauma care data to the trauma registry or its employees in conformity with T.C.A. § 68-11-259 and rules and regulations promulgated thereto shall not be held liable for the release of such data to the department, unless the person or entity has knowledge of any falsity of the information reported or disclosed.~~

~~(d) Protection of patient identifying information obtained by special studies and other research studies~~

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~~1. All identifying information such as records of interviews, questionnaires, reports, statements, notes, and memoranda that are procured or prepared by employees or agents of the trauma registry shall be used solely for statistical, scientific and medical research purposes and shall be held strictly confidential by the trauma registry.~~

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(Rule 1200-08-12-.06 continued)

~~2. This applies also to identifying information procured by any other person, agency, or organization, including public or private colleges and universities acting jointly with the trauma registry in connection with special health studies and research investigations.~~

~~(2) Release of Data~~

~~(a) Release of non-identifying information~~

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~~1. To the Tennessee Department of Health:~~

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~~(i) The trauma registry shall work closely with the Tennessee Department of Health in investigating the causes and consequences of traumatic injuries and in evaluating programs.~~

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~~(ii) Because the trauma registry data are an integral part of the Tennessee Department of Health traumatic injury prevention and control programs, the use of trauma registry data by public health officials shall be considered an in-house activity.~~

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~~2. To the general public:~~

~~(i) Public reports published by the trauma registry shall include aggregate, not patient identifying information or facility identifying information.~~

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~~(ii) Information that would potentially identify a trauma patient shall not be published.~~

~~(iii) Non-identifying information may be made available to the general public upon request to the department.~~

(Rule 1200-08-12-.06 continued)

~~(iv) The availability of any data shall depend upon the department's financial or other ability to comply with such requests. The trauma registry shall respond to public requests as quickly as possible, subject to staffing constraints.~~

~~(b) Release of identifying information~~

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~~1. Identifying information collected from any hospital, laboratory, facility, or health care practitioner may be released to qualified persons for the purposes of traumatic injury prevention, control, care, and research, provided that each request for identifying information follows the established procedure outlined in the trauma registry Policies and Procedures Manual and receives prior approval by the department.~~

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~~2. Identifying information that is collected solely by the trauma registry for its own special studies shall not be released.~~

~~(c) Annual Report.A statistical report shall be prepared at the completion of each year's data collection cycle and will be distributed as requested.~~

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~~(3) Request procedure for patient identifying information~~

~~(a) Requests for identifying information shall be reviewed and approved by the department according to the policies of the Tennessee Department of Health and the trauma registry.~~

~~(b) A detailed description of the procedures for requesting identifying information can be obtained from the trauma registry.~~

~~***Authority:*** *T.C.A. §§ 68-11-209 and 68-11-259.* ***Administrative History:*** *New rule filed February 12, 2013; effective May 13, 2013.*~~

Rule 1200-08-12-.01 Preamble.

The Tennessee Department of Health is empowered to adopt such regulations and standards pertaining to the operation and management of hospitals as are necessary for the public interest. On November 24, 1982, the EMS Advisory Council prepared and presented to the Board for Licensing Health Care Facilities ("Board") a recommendation that a formal review of the issues involved in the designation of trauma centers for the State of Tennessee be explored. Subsequently, on February 17, 1983, the Board requested a presentation regarding the City of Memphis Hospital Trauma Center in an effort to further define the need for action on trauma center designation and/or categorization. As a result of that presentation, the Board created a Task Force to evaluate and recommend criteria concerning the development of trauma systems and the operation of trauma centers in the state.

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(Rule 1200-08-12-.06 continued)

The process of Designation and Reverification is voluntary on the part of hospitals in the state. It is meant to identify those hospitals that make a commitment to provide a given level of care of the acutely injured patient. Knowledge of statewide trauma care capabilities and the use of trauma triage protocols will enable providers to make timely decisions, promote appropriate utilization of the trauma care delivery system, and ultimately save lives.

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Authority: T.C.A. § 68-11-201.

Rule 1200-08-12-.02 Definitions.

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(1) "ACS-COT" means American College of Surgeons Committee on Trauma.

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(2) "Advisory Council" means the Tennessee Trauma Care Advisory Council.

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(3) "ATLS" means Advanced Trauma Life Support.

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(4) "Board" means the Board for Licensing Health Care Facilities.

(5) "Commissioner" means the Commissioner of the Tennessee Department of Health.

(6) "Comprehensive Regional Pediatric Center (CRPC)" means a facility that shall be capable of providing comprehensive specialized pediatric medical and surgical care to all acutely ill and injured children. The center shall be responsible for serving as a regional referral center for the specialized care of pediatric patients or in special circumstances provide safe and timely transfer of children to other resources for specialized care. Rules and regulations governing CRPCs are delineated in Chapter 1200-08-30.

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(7) "D" means desired.

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(8) "Data" means the original information contained on the report required by the regulations, including, but not limited to, both identifying and non-identifying information.

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(9) "Department" means the Tennessee Department of Health.

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(10) "E" means essential.

(11) "Facility" shall have the same meaning as defined in T.C.A. § 68-11-201(15).

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(12) "FAST" means focused abdominal sonography for trauma.

(13) "Health care practitioner" means a physician, surgeon, or other health care professional licensed under T.C.A. Title 63 or Title 68 who is engaged in diagnosing and/or treating patients within the trauma care system.

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(14) "Identifying information" means any information that could lead to the identification of a patient who has been diagnosed or treated within the trauma care system.

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(15) "Levels of Care" means the type of trauma service provided by the facility as shown by the degree of commitment in personnel and facilities made to the delivery of that service.

(16) "Level I" means a hospital capable of providing care for the acutely injured patient and which meets all requirements in these regulations defined as Level of Care I.

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(17) "Level II" means a hospital capable of providing care for the acutely injured patient and which meets all requirements in these regulations defined as Level of Care II.

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(Rule 1200-08-12-.06 continued)

(18) "Level III" means a hospital capable of providing care for the acutely injured patient and which meets all requirements in these regulations defined as Level of Care III. The Level III facility generally serves communities without all the resources usually associated with Level I or II facilities. Planning for care of the injured in small communities or suburban settings usually calls for transfer agreements and protocols for the most severely injured patients. Designation of the Level III facility may also require innovative use of the region's resources. For example, if there is no neurosurgeon in a large, sparsely populated region it may require that a general surgeon be prepared to provide the emergency decompression of mass lesions and arrangement for patient transfer to the most appropriate Level I or II hospital after the surgeon has carried out the patient's life-saving operation. Staffing of the Level III hospital is another example of the innovative use of a region's resources. It will be impractical to require a general surgeon to be in-house in many instances. With modern communication systems it seems reasonable that the surgeon should be promptly available and in a great majority of instances meet the patient in the emergency room on arrival. When a Level III hospital first receives notification of a critically injured patient, it can activate on-call personnel to respond promptly to the hospital. The intent of this flexibility should be clear: to provide the best possible care even in the most remote circumstances.

(19) "Level IV" means a hospital capable of providing care for the acutely injured patient and which meets all requirements in these regulations defined as Level of Care IV. They shall have treatment protocols for resuscitation, transfer protocols on record, shall submit trauma data elements to the state trauma registry as outlined in the Tennessee Trauma Data Dictionary, and participate in system performance improvement. The Level IV facility will maintain a good working relationship with the nearest Level I, II, or III trauma center.

(20) "Medical Record" means medical histories, records, reports, summaries, diagnoses, prognoses, records of treatment and medication ordered and given, entries, x-rays, radiology interpretations, and other written, electronic, or graphic data prepared, kept, made or maintained in a facility that pertains to confinement or services rendered to patients admitted or receiving care.

(21) "Person" means any member of the "medical, scientific, and academic research community."

(22) "PGY" means postgraduate year.

(23) "Physician Extender" means a health care professional, such as an advanced practice registered nurse or a physician assistant, whose skills have been enhanced by an appropriate course of trauma specific training e.g. ATLS education.

(24) "Policies and Procedures Manual" means the document(s) maintained in the offices of the Tennessee Trauma Registry giving specific written instructions for the implementation of policies and procedures utilized by the registry and which may be updated from time to time.

(25) "Trauma Center" shall have the same definition as provided in T.C.A. § 68-59-102(6).

(26) "Trauma Registry" means a central registry compiled of injury incidence information supplied by designated trauma centers and Comprehensive Pediatric Emergency Centers for the purpose of allowing the Board to analyze data and conduct special studies regarding the causes and consequences of traumatic injury.

Authority: T.C.A. §§ 68-11-201, 68-11-202, 68-11-209 and 68-11-259

Rule 1200-08-12-.03 Facility Outreach. All Level I, II, and III trauma centers shall help facilitate their educational outreach to the Level IV's in the form of professional education, consultation, or community

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outreach. A mechanism will exist between these centers to provide feedback about individual patient care and outcome analysis to the referring hospital.

Authority: T.C.A. §§ 68-11-201, 68-11-202, 68-11-209 and 68-11-259.

Rule 1200-08-12-.04 Requirements.

(1) Trauma registry requirements shall include the following:

(a) Each trauma center and CRPC shall submit trauma registry data electronically to the trauma registry on all closed patient files.

(b) Each trauma center and CRPC shall submit trauma registry data to be received no later than ninety (90) days after each quarter of the year. Trauma centers and CRPC's shall receive confirmation of successful submission no later than two weeks after submission.

(c) Trauma centers and CRPC's which fail to submit required data to the trauma registry for two (2) consecutive quarters shall risk not receiving compensation from the Tennessee Trauma Center Fund.

(2) Levels of Care

(a) Hospital Origination

1.	Trauma Service	I	II	III	IV
	A recognizable program within the hospital which has a qualified trauma surgeon as its director/coordinator/physician in charge. The intent is to ensure the coordination of services and performance improvement for the trauma patient. The service includes personnel and other resources necessary to ensure appropriate and efficient provision of care and will vary according to facility and level of designation. In a Level I and II trauma center, the trauma team shall evaluate seriously injured patients based upon written institutional graded activation criteria and those patients shall be admitted by an identifiable surgical service staffed by credentialed trauma providers. Level I and II trauma centers shall have sufficient infrastructure and support to ensure adequate provision of care for this service. Sufficient infrastructure and support may require additional qualified physicians, residents, nurse practitioners, physician's assistants, or other physician extenders. This composite should be determined by the volume of patients requiring care and the complexity of their conditions. In teaching facilities, the requirements of the Residency Review Committee also must be met. In Level III centers, the center may admit the injured patients to	E	E	E	

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	individual surgeons, but the structure of the program must allow the trauma director to have oversight authority for the care of those injured patients. The center shall ensure that there is a method to identify the injured patients, monitor the provision of health care services, make periodic rounds, and hold formal and informal discussions with individual practitioners. It is particularly important for team members to attend trauma committee meetings regularly and participate in peer review activities to maintain cohesion within the service.				
	Written graded activation criteria. Criteria for highest level of activation are clearly defined and evaluated by the performance improvement program (PIPs).	E	E	E	E
	Administration supportive of the Trauma Program	E	E	E	E
	Evidence of an annual budget for the Trauma Program	E	E	E	E
	The Trauma Team may be organized by a qualified physician but care must be directed by a board certified or board eligible general surgeon on a trauma service that is committed to the care of the injured. All patients with multiple-system or major injury must be initially evaluated by the trauma team, and the surgeon who shall be responsible for overall care of a patient (the team leader) identified. A team approach is required for optimal care of patients with multiple-system injuries.	E	E	E	D
2.	Surgery Departments/Divisions/Services/Sections (each staffed by qualified specialists)				
	Cardiothoracic Surgery	E	E[1]		
	General Surgery	E	E	E	D
	Neurologic Surgery	E	E		
	Obstetrics-Gynecologic Surgery	E			
	Ophthalmic Surgery	E			
	Oral and Maxillofacial Surgery - Dentistry	E[2]			
	Orthopedic Surgery	E	E	E	
	Otorhinolaryngologic Surgery	E			
	Pediatric Surgery	E[3]			
	Plastic Surgery	E			
	Urologic Surgery	E			
	Surgical Critical Care	E	D		

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3.	Emergency Department/Division/Service/Section (staffed by qualified specialists)	E[4]	E[4]	E[4]	E[9]
4.	Surgical Specialty Availability In-house 24 hrs a day				
▲	General Surgery	E[5]			
▲	Neurologic Surgery	E[6]			
▲	Surgical Critical Care	E[5]	D[5]		
5.	Surgical Specialty Availability from inside or outside hospital				
▲	Cardiac Surgery	E	E[1]		
▲	General Surgery		E[17]	E[17]	D
▲	Neurologic Surgery		E[17]	D	
▲	Microsurgery capabilities	E[15]			
▲	Gynecologic Surgery	E			
▲	Hand Surgery	E[7]			
▲	Ophthalmic Surgery	E	E	D	
▲	Oral and Maxillofacial Surgery - Dentistry	E	E	D	
▲	Orthopedic Surgery	E	E	E	
▲	Otorhinolaryngologic Surgery	E	E	D	
▲	Pediatric Surgery	E[3]	E[3]		
▲	Plastic Surgery	E	E	D	
▲	Thoracic Surgery	E	E	D	
▲	Urologic Surgery	E	E	D	
6.	Non-Surgical Specialty Availability in-hospital 24 hours a day				
▲	Emergency Medicine	E[8]	E[8]	E	E[9]
▲	Anesthesiology	E	E[10]	E[11]	
7.	Non-Surgical Specialty Availability on call from inside or outside hospital				
▲	Cardiology	E	E	D	
▲	Chest (pulmonary) Medicine	E	E		
▲	Gastroenterology	E	E		

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	Hematology	E	E	D	
	Infectious Diseases	E	E		
	Internal Medicine	E	E	E	
	Nephrology	E	E		
	Pathology	E[12]	E[12]		
	Pediatrics	E	E		
	Psychiatry	E	E		
	Radiology	E[18]	E[18]	E[18]	

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(b) Special Facilities/Resources/Capabilities

1.(i)	Emergency Department (ED) – Personnel	I	II	III	IV
	Designated Physician Director	E	E	E	E
	If managing trauma patients, physicians must be board certified or board eligible in Emergency Medicine and have current ATLS certification and who are a designated member of the trauma team and physically present in the ED 24 hours a day	E	E	D	D
	If managing trauma patients, physician or physician extender with ongoing certification in the management of the traumatically injured patient			E[9]	E[9]
	Full time emergency department: RN personnel 24 hours a day trained in trauma specific education/competencies	E	E	E	D
1.(ii)	Emergency Department – Equipment for resuscitation and to provide support for the critically or seriously injured must include but shall not be limited to:				
	Airway control and ventilation equipment including laryngoscopes and endotracheal tubes of all sizes, bag-mask resuscitator, sources of oxygen, and mechanical ventilator	E	E	E	E
	Suction devices	E	E	E	E
	Electrocardiography defibrillator	E	E	E	E
	Bedside ultrasound capability for FAST examination	E	E	D	
	Capability for advanced hemodynamic monitoring i.e. central lines, ICP monitoring, arterial lines etc.	E	E	D	
	All standard intravenous fluids and administration devices, including intravenous catheters	E	E	E	E

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	Sterile surgical sets for procedures standard for ED, such as thoracostomy, cutdown, etc.	E	E	E	E
	Drugs and supplies necessary for emergency care	E	E	E	E
	X-ray capability, 24 hour coverage by in-house technicians	E	E	E	E
	Two-way radio linked with vehicles of emergency medical services	E	E	E	E
	Cervical collars	E	E	E	E
	Long Spine Board	E	E	E	E
	Splinting materials and devices	E	E	E	E
	Helipad or Helicopter Landing Area	E	E		
	End Tidal Carbon Dioxide Monitoring	E	E	E	E
	Tourniquets	E	E	E	E
	Appropriate sized catheters for the performance of needle chest decompression	E	E	E	E
	Appropriate equipment for the performance of interosseous cannulation	E	E	E	E
	A rapid volume infuser for the utilization of transfusion protocol	E	E	D	
2.(i)	Intensive Care Units (ICU) for Trauma Patients				
	Designated Surgeon Medical Director. Level I director must be a surgeon boarded in surgical critical care. Level II Director or co-director must be a surgeon boarded in surgical critical care. Level III director or co-director must be a surgeon boarded in general surgery.	E	E	E	
	If admitting traumatically injured patients, director or co-director must be a board certified general surgeon				E
	Physician on duty in ICU 24-hours a day or immediately available from in-hospital (PGY4/5 qualify)	E[5]	E[5]	E	
	Nurse-patient minimum ratio of 1:2 on each shift	E	E	E	
	Immediate access to clinical laboratory service	E	E	E	
2.(ii)	Equipment:				
	Airway control and ventilation devices	E	E	E	
	Oxygen source with concentration controls	E	E	E	
	Cardiac emergency cart	E	E	E	

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	Temporary transvenous pacemaker	E	E	E	
	Electrocardiograph defibrillator	E	E	E	
	Cardiac output monitoring (e.g., Pulmonary Artery catheter)	E	E	D	
	End Tidal Carbon Dioxide Monitoring/Waveform capnography	E	E	E	D
	Electronic Arterial pressure monitoring	E	E	E	
	Mechanical ventilator-respirators	E	E	E	
	Patient weighing devices	E	E	E	
	Temperature control devices	E	E	E	
	Drugs, intravenous fluids and supplies	E	E	E	
	Intracranial pressure monitoring devices	E	E	D	
	A rapid volume infuser for the utilization of transfusion protocol	E	E	D	
3.	Post-anesthetic recovery room (ICU is acceptable)				
	Registered nurses 24-hours a day	E	E	E	
	Monitoring and resuscitation equipment	E	E	E	
4.	Acute hemodialysis capability	E	E[13]	E[13]	
5.	Organized burn care: Physician directed burn center/unit staffed by personnel trained in burn care and equipped properly	E[14]	E[14]	E[14]	
6.	Acute spinal cord management capability OR written transfer agreement with a hospital capable of caring for a spinal cord patient			E	
7.	Acute head injury management capability OR written transfer agreement with a hospital capable of caring for a patient with a head injury			E	
8.	Radiological Special Capabilities				
	Angiography of all types	E	E	D	
	Sonography	E	E	D	
	Nuclear scanning	E	E	D	
	In-house computerized tomography	E	E	E	D
	MRI (magnetic resonance imaging)	E	E	D	
9.	Organ donation protocol	E[16]	E[16]	E[16]	E[16]

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(c) Operating suite special requirements

1.	Equipment/instrumentation	I	II	III	IV
	Operating room, dedicated to the trauma service, with nursing staff in-house and immediately available 24-hours a day	E	E	D	
	Operating room, dedicated to the trauma service, adequately staff and available within 30 minutes of notification			E	
	Cardiopulmonary bypass capability	E			
	Operating microscope	E	E		
	Thermal control equipment for patient	E	E	E	
	Thermal control equipment for blood	E	E	E	
	X-ray capability	E	E	E	
	Endoscopes, all varieties	E	E	E	
	Craniotomy instrumentation	E	E	D	
	Monitoring equipment (e.g., ECG, blood pressure monitoring)	E	E	E	
	A rapid volume infuser for the utilization of transfusion protocol	E	E	E	

(d) Clinical Laboratory Services available 24 hours a day

1.	Standard analysis of blood, urine, and other body fluids	E	E	E	E
2.	Blood typing and cross-matching	E	E	E	E
3.	Coagulation studies	E	E	E	E
4.	Blood bank or access to a community central blood bank and hospital storage facilities	E	E	E	E
5.	Blood gases and pH determinations	E	E	E	E
6.	Serum and urine osmolality	E	E	D	D
7.	Microbiology	E	E	E	E
8.	Drug and alcohol screening	E	E	D	D
9.	Thromboelastography (TEG)	E	E		
10.	Must have transfusion protocol developed collaboratively between the trauma service and blood bank	E	E	D	
11.	Must have adequate blood product availability (FFP, RBC's &	E	E	E	

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	Platelets)				

(e) Trauma Medical Director

1.	Board certified in general surgery	E	E	E	
2.	Minimum of three years clinical experience on a trauma service or trauma fellowship training	E	E	D	
3.	48 hours of category I trauma/critical care CME every 3 years or 16 hours each year and attend one national meeting whose focus is trauma or critical care	E	E	E	
4.	Participate in call	E	E	E	
5.	Has the authority to manage all aspects of trauma care	E	E	E	
6.	Authorizes trauma service privileges of the on-call panel	E	E	E	
7.	Works in cooperation with nursing administration to support the nursing needs of trauma patients	E	E	E	
8.	Develops treatment protocols along with the trauma team	E	E	D	
9.	Coordinates performance improvement and peer review processes	E	E	E	
10.	With the assistance of the hospital administrator and the TPM, be involved in coordinating the budgetary process for the trauma program	E	E	E	
11.	Participates in the Tennessee Chapter of the ACS-COT	E	E	E	E
12.	Participates in regional and national trauma organizations	E	E	D	
13.	Retain a current certification of ATLS and participates in the provision of trauma-related instruction to other health care personnel	E	E	E	E
14.	Is involved in trauma research	E	D		

(f) Attending General Surgeon on the Trauma Service

1.	Board Certified or board eligible in General Surgery	E	E	E	
2.	Current certification as an ATLS provider	E	E	E	E
3.	Trauma specific CME 16 hours/year or 48 hours every 3 years	E	E	D	D

(g) Trauma Program Manager (TPM)/Trauma Nurse Coordinator (TNC)

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1.	Must have a fulltime TNC/TPM dedicated to the trauma program	E	E	D	
2.	Must have a part time TNC/TPM with the trauma program as a major focus of their job description			E	E
3.	Must be a Registered Nurse licensed by the TN Board of Nursing in good standing or a licensed Registered Nurse in another state with a multistate privilege to practice in Tennessee	E	E	E	E
4.	Must possess experience in Emergency/Critical Care Nursing	E	E	D	D
5.	Must have a defined job description and organizational chart delineating the TNC/TPM role and responsibilities	E	E	D	D
6.	Must be provided the administrative and budgetary support to complete educational, clinical, research, administrative and outreach activities for the trauma program	E	E		
7.	Shall attend one national meeting within the 3 year verification cycle	E	E	D	D

(h) Trauma Registrar

1.	A full time equivalent registrar for each 500-750 admissions per year is required to assure high quality data collection	E	E	E	
2.	Shall receive initial training when they start their job and also complete a minimum of 4 hours continuing education per year	E	E	E	
3.	If hired after July of 2014, registrars must attend or have previously attended two nationally recognized trauma registrars courses or equivalent within 12 months of being hired	E	E	E	

(i) Programs for Quality Assurance

1.	Medical Care Education				
	Morbidity and Mortality Reviews to encompass all trauma deaths	E	E	E	E
2.	Trauma Process Improvement (PI)				
	The institution must provide resources to support the trauma process improvement program	E	E	E	D
	Must have a performance improvement coordinator dedicated to the trauma program	E	E	D	D

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	Must have a Trauma Performance Improvement Committee that meets at least quarterly and includes physician liaisons from the following services: Orthopedics, Radiology, Anesthesia, Emergency Medicine, Neurosurgery, and core Trauma surgeons as well as Nursing, pre-hospital personnel and other healthcare providers. The Committee reviews policies and procedures as well as system issues, and its members or designees attend at least 50% of regular Committee meetings. The committee shall:	E	E	E	
	• Identify discretionary and non-discretionary audit filters	E	E	E	
	• Document and review times and reasons for trauma related diversion of patients from the scene or referral hospitals	E	E	E	
	• Document and review response/consult times for trauma surgeons, neurosurgeons, anesthesia, and orthopedists, all of whom must demonstrate 80% compliance	E	E		
	• Document and review response/consult times for trauma surgeons, anesthesia, and orthopedists, all of whom must demonstrate 80% compliance			E	
	• Monitor team notification times. For highest level of activation trauma attending must be present within 15 minutes of patient arrival 80% of the time.	E	E	D	
	• Monitor team notification times. For highest level of activation, trauma attending must be present within 30 minutes of patient arrival 80% of the time.			E	
	• Review pre-hospital trauma care to include patients dead on arrival	E	E	E	D
	• Review times and reasons for transfer of injured patients	E	E	E	
	• Document availability of the surgeon on-call for trauma, such that compliance is 90% or greater where there is no trauma surgeon back-up call schedule			E	

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	The institution shall demonstrate that actions taken as a result of issues identified in the Process Improvement Program created a measurable improvement. Documentation shall include where appropriate: 1) problem identification; 2) analysis; 3) preventability; 4) action plan; 5) implementation; and 6) reevaluation	E	E	E	D
3.	Operational Process Improvement (Evaluation of System Issues)				
	This is a multidisciplinary conference presided over by the Trauma Medical Director and shall include hospital administrative staff over trauma services as well as the staff in charge of all trauma-program related services. This committee addresses, assesses, and corrects global trauma program and system issues, and corrects overall program deficiencies to continue to optimize patient care. This should be held at least quarterly, attendance noted, and minutes recorded.	E	E	E	D
4.	Trauma Bypass Log				
	Trauma bypass/diversion shall not exceed 5%. Trauma surgeons shall be involved in bypass/diversion decisions. All bypass/diversions shall be reviewed.	E	E	E	

(j) System Development

1.	Level I and II centers shall maintain a commitment to provide ATLS and other educational activities deemed appropriate and timely to surrounding referral centers.	E	E		
2.	Be involved with local and regional EMS agencies and/or personnel and assist in trauma education, performance improvement, and feedback regarding care	E	E	E	
3.	All trauma centers shall participate in trauma system planning and development under the auspices of the Trauma Care Advisory Council	E	E	E	E
4.	The trauma center shall be involved in community awareness of trauma and the trauma system	E	E	E	D

(k) Injury Prevention

1.	Participate in statewide trauma center collaborative injury prevention efforts focused on common needs throughout the state	E	E	D	D
2.	Perform studies in injury control while monitoring the effects of prevention programs	E	E	D	

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(Rule 1200-08-12-.06 continued)

3.	Must have a full time injury prevention coordinator dedicated to the trauma program to ensure community and regional injury prevention activities are implemented and evaluated for effectiveness	E	E	D	D

(l) Institutional Commitment

1.	Demonstrates knowledge, familiarity, and commitment of upper level administrative personnel to trauma service	E	E	E	E
2.	Upper level administration participation in multidisciplinary trauma conferences/committees	E	E	E	E
3.	Evidence of yearly budget for the trauma program	E	E	E	E
4.	Supports research efforts of the Trauma Service	E			
5.	Must have 5 peer-reviewed (per review cycle) articles or abstracts published in journals that shall be related to work from the trauma center	E	D		

(m) Activation Criteria

1.	Each center shall have clearly defined graded activation criteria. For the highest level of activation, the trauma team (trauma Chief resident: PGY 4/5 or ED attending) shall be immediately available and the trauma attending available within 15 minutes	E	E		
2.	For the highest level of activation for Level III centers, the trauma attending shall be available within 30 minutes, unless the patient is immediately being transferred to a higher level of care			E	

(n) Disaster Preparedness

1.	The trauma program must be a part of the hospital disaster planning process	E	E	E	E

(3) References

(a) The following References refer to the superscripts in the Table in paragraph (2) of this rule:

1. This requirement may be substituted by a current signed transfer agreement with an institution with Cardiothoracic Surgery and cardiopulmonary bypass capability.

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(Rule 1200-08-12-.06 continued)

2. This requirement may be substituted by a department or division capable of treating maxillofacial trauma as demonstrated by staff privileges.

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3. This requirement may be substituted by a current signed transfer agreement with an institution having a Pediatric Surgery Service.

4. The emergency department staffing must provide immediate and appropriate care for the trauma patient. The emergency department physician must function as a designated member of the trauma team.

5. Requirements may be fulfilled by a Senior Surgical Resident (PGY 4 or higher) capable of assessing emergency situations in trauma patients and initiating proper treatment. A staff surgeon trained and capable of carrying out definitive treatment must be available within 15 minutes of patient arrival.

6. Requirements may be fulfilled by in-house neurosurgeon or neurosurgery resident, senior general surgery resident or trauma attending who has special competence as defined by the hospital, as documented by the Chief of Neurosurgery Service, in the care of patients with neural trauma, and who is capable of initiating measures directed toward stabilizing the patient and initiating diagnostic procedures. An attending neurosurgeon dedicated to the hospital's trauma service must be available within thirty (30) minutes from notification.

7. This requirement may be substituted by a current signed transfer agreement with an institution having a Hand Surgery Service.

8. Requirements may be fulfilled by senior level (last year in training) Emergency Medicine Residents capable of assessing emergency situations and initiating proper treatment. The staff specialist responsible for the resident must be available within thirty (30) minutes.

9. A physician or physician extender with current certification as an ATLS provider may fulfill this role.

10. Requirements for Level II Trauma Center may be fulfilled when local conditions assure that a staff anesthesiologist is on call and available within thirty (30) minutes. During the interim period prior to the arrival of a staff anesthesiologist, a Certified Registered Nurse Anesthetist (CRNA) operating under the direction of the anesthesiologist, the trauma team surgeon director or the emergency medicine physician may initiate appropriate supportive care.

11. Requirements for Level III Trauma Center may be fulfilled when local conditions assure that a staff anesthesiologist is on call and available within thirty (30) minutes. However, when there is not an anesthesiologist on the hospital staff, this requirement may be fulfilled by a CRNA operating under the supervision of the surgeon, the anesthesiologist, and/or the responsible physician.

12. Forensic pathologist must be available either as part of the hospital staff or on a consulting basis.

13. This requirement may be substituted by current signed transfer agreement with hospital having hemodialysis capabilities.

(Rule 1200-08-12-.06 continued)

14. This requirement may be substituted by current signed transfer agreement with burn center or hospital with burn unit.

15. This requirement may be substituted by a current signed transfer agreement with a hospital having Microsurgical capabilities.

16. Each Center must have an organized protocol with a transplant team or service to identify possible organ donors and in procuring organs for donation.

17. All specialists must be available within thirty (30) minutes from notification.

18. Qualified radiologists must be available within 30 minutes in person or by teleradiology for interpretation of radiographs.

(4) Designation

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(a) The Board shall implement the designation process.

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(b) The preliminary designation process for facilities aspiring for designation as a Level I, II, III, or IV Trauma Center shall consist of the following:

1. Each facility desiring designation shall submit an application to the Board;

2. A Department site visit team ("team") shall review each submitted application and shall act in an advisory capacity to the Board;

3. The team shall communicate deemed application deficiencies to the facility in writing;

4. The facility shall have thirty (30) days to submit required information; and

5. Arrangements shall be made for a provisional site visit for those facilities meeting application requirements.

(c) The site visit team shall consist of the following for Level I and Level II centers:

1. A trauma surgeon medical director or a trauma surgeon who has previously been a medical director from an out-of-state trauma center who shall serve as team leader;

2. A trauma surgeon from an in-state Level I trauma center;

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3. An in-state trauma nurse coordinator/program manager from a Level I trauma center; and

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4. The state trauma program manager/EMS director.

(d) The site visit team shall consist of the following for Level III centers:

1. A trauma surgeon from an in-state Level I trauma center;

2. An in-state trauma nurse coordinator/program manager from a Level I trauma center; and

3. The state trauma program manager/EMS director.

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(e) The site visit team shall consist of the following for Level IV centers:

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(Rule 1200-08-12-.06 continued)

1. An in-state trauma nurse coordinator/program manager from a Level I trauma center; and

2. The state trauma program manager/EMS director.

3. If deficiencies are found necessitating a focused visit, a trauma surgeon from an in-state Level I trauma center shall be part of the focused site visit team.

(f) The team shall be appointed by the following organizations:

1. The state trauma program manager/Director of EMS shall consult with the State Committee on Trauma of the American College of Surgeons for assistance in identifying the out-of-state surgeon; and

2. The state trauma program manager/Director of EMS, in consultation with the chairman and vice chairpersons of the Tennessee Committee on Trauma, shall select the in-state members of the site visiting team.

(g) The team shall conduct a provisional visit to ensure compliance with all criteria required for designation as a Trauma Center with the requested level of designation before the Board grants an institution designation as a Trauma Center. During the provisional visit, the applicant shall demonstrate that the required mechanisms to meet the criteria for the desired designation level are in place.

(h) The team shall identify deficiencies and areas of improvement it deems necessary for designation.

(i) If the team does not cite any deficiencies and concludes that the facility is otherwise in compliance with all applicable standards, it shall approve the applicant to function with provisional status for a period of one (1) year.

(j) If, during the provisional visit, the team cites deficiencies, it shall not approve provisional status for the applicant to function as a trauma center. Centers with deficiencies shall have fifteen (15) days from report receipt to provide documentation demonstrating compliance. If the facility is unable to correct the deficiencies within fifteen (15) days, the application shall be denied and the applicant may not resubmit an application for trauma center designation for at least one (1) year from the date of denial.

(k) Facilities granted provisional status as a trauma center shall adhere to the following:

1. The facility shall be prepared to provide:

(i) A description of changes made after the grant of provisional status;

(ii) A description of areas for improvement cited during the provisional visit; and

(iii) A summary of the hospital's trauma service based on the trauma registry report.

2. The team shall conduct a site visit at the termination of the applicant's one (1) year provisional designation as a trauma center.

3. During the follow-up visit, the team shall identify the presence of any deficiencies and areas for improvement.

(Rule 1200-08-12-.06 continued)

(l) Upon completion of the follow-up visit, the team shall submit its findings and designation recommendations to the Board.

1. If the team cites deficiencies found during its follow-up visit, they shall be included in its report to the Board.

2. The facility requesting trauma center designation shall be allowed to present evidence demonstrating action taken to correct cited deficiencies to the Board during the ratification process.

(m) The final decision regarding trauma center designation shall be rendered by the Board. If granted, trauma center designation is applicable for a period of three (3) years.

(n) If the Board denies the applicant trauma center designation, the facility may not reapply for at least one (1) year and will have its provisional status revoked.

(o) The facility applying for trauma center designation shall bear all costs of the application process, including costs of a site visit.

(p) A facility requesting an American College of Surgeons trauma center consultation/verification site visit shall coordinate with the state trauma program manager/EMS Director to ensure his/her attendance at the review. If the state trauma manager/EMS Director is unable to attend the site visit, the facility shall share the finalized report from the site visit with the state trauma manager/EMS Director for presentation to the board if the facility seeks a reciprocal state designation.

(q) Denial of Provisional or Full Designation. When the Board denies provisional or full designation, it must provide the center with a written notification of the action and the basis for the action. The notice will inform the center of the right to appeal and the procedure to appeal the action under the provisions of the Uniform Administrative Procedures Act.

(5) Verification

(a) Following designation as a trauma center, a verification site visit shall be conducted at the facility every three (3) years.

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(b) The team shall advise the center of an upcoming verification visit at least sixty (60) days prior to the visit. After the facility receives notice of the upcoming verification site visit, it shall prepare all materials the team requests for submission.

(c) The team shall conduct an exit interview with the facility at the conclusion of the verification visit. During the exit interview the team shall communicate the following:

1. The presence of deficiencies;

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2. The facility's strengths and weaknesses; and

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3. Recommendations for improvements and correction of deficiencies.

(d) The team shall submit a site visit report within sixty (60) days of completion of the site visit. It shall submit a copy of the report to the Board, the Chief Executive Officer of the hospital, the Trauma Medical Director and the Trauma Program Manager (TPM).

(Rule 1200-08-12-.06 continued)

(e) If the team does not cite deficiencies and the center is in compliance with all applicable standards, the team shall recommend that the facility be confirmed at its current level of trauma designation for a period of three (3) additional years.

(f) If during the site visit the team identifies deficiencies, the center shall have a period not to exceed sixty (60) days to correct deficiencies.

(g) If the team ascertains that deficiencies have not been corrected within sixty (60) days, whether through desk review or an on-site visit, the center must present an explanation to the Board at its next scheduled meeting.

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(h) The facility shall bear all costs of the verification process, including the costs of a site visit.

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(i) -If a trauma center already designated by the board elects to undergo an American College of Surgeons trauma center consultation/verification site visit, the facility shall coordinate with the state trauma program manager/EMS Director to ensure his/her attendance at the review. If the state trauma manager/EMS Director is unable to attend the site visit, the finalized report from the site visit shall be shared with the state trauma manager/EMS Director for presentation to the board if a reciprocal state designation is to be granted.

(6) Disciplinary Action

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(a) The Board may, in accordance with the Uniform Administrative Procedures Act, revoke, suspend, place on probation, or otherwise discipline, a facility's trauma center designation.

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(b) The Board may revoke, suspend, place on probation, or otherwise discipline, the designation or provisional status of a center when an owner, officer, director, manager, employee or independent contractor:

1. Fails or refuses to comply with the provisions of these rules;

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2. Makes a false statement of material fact about the center's capabilities or other pertinent circumstances in any record or matter under investigation for any purposes connected with these rules;

3. Prevents, interferes with, or attempts to impede in any way, the work of a representative of the Board;

4. Falsely advertises, or in any way misrepresents the facility's ability to care for patients based on its designation status;

5. Is substantially out of compliance with these rules and has not rectified such noncompliance;

6. Fails to provide reports required by the trauma registry or the Department in a timely and complete fashion;

7. Fails to comply with or complete a plan of correction in the time or manner specified;

8. Has engaged in a deliberate and willful violation of these rules; or

(Rule 1200-08-12-.06 continued)

9. Acts in a manner that endangers the public's health, safety, or welfare.

(7) Prohibitions

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(a) It shall be a violation of these regulations for any health care facility to hold out, advertise or otherwise represent itself to be a "trauma center" as licensed by the Board unless it has complied with the regulations set out herein and the Board has so licensed it.

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(b) Any facility the Board designates as a trauma center, at any level, shall provide hospital emergency services to any applicant who applies for the same in case of injury or acute medical condition where the same is liable to cause death or severe injury or illness. The medical needs of an applicant and the available medical resources of the facility, rather than the financial resources of an applicant, shall be the determining factors concerning the scope of service provided.

(c) The term "trauma center" refers to a main hospital campus that has met all requirements to satisfy trauma center rule designation. Off campus sites are excluded in this designation.

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Authority: T.C.A. §§ 68-11-201, 68-11-202, 68-11-209 and 68-11-259.

Rule 1200-08-12-.05 Trauma Registry Data.

(1) Reporting

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(a) All designated Trauma Centers and CRPC's shall participate in the collection of data for the Trauma Registry.

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(b) All designated Trauma Centers and CRPC's shall record and report the payor source for patient care on patient discharge. Final payment data shall be classed as self pay, commercial insurance, Medicare, Medicaid, or worker compensation.

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(c) Each trauma center and CRPC shall submit trauma registry data to be received no later than ninety (90) days after the end of each quarter.

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(2) Confidentiality

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(a) T.C.A. § 68-11-259 provides for the confidentiality of data obtained from the reports of trauma patients.

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(b) Information contained in the trauma registry that reasonably could be expected to reveal the identity of any patient or a reporting facility may not be made available to the public.

(c) Trauma registry responsibilities.

1. The trauma registry shall take strict measures to ensure that all patient identifying information is treated as confidential and privileged.

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2. All employees and consultants, including auditors of the trauma registry, shall sign a Tennessee Trauma Registry Employee Confidentiality Pledge and these signed pledges shall be kept on file.

3. Protection of report sources. Hospitals, laboratories, facilities, or health care practitioners who disclose trauma care data to the trauma registry or its employees in conformity with T.C.A. § 68-11-259 and rules and regulations

(Rule 1200-08-12-.06 continued)

promulgated thereto shall not be held liable for the release of such data to the department, unless the person or entity has knowledge of any falsity of the information reported or disclosed.

(d) Protection of patient identifying information obtained by special studies and other research studies.

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1. All identifying information such as records of interviews, questionnaires, reports, statements, notes, and memoranda that are procured or prepared by employees or agents of the trauma registry shall be used solely for statistical, scientific and medical research purposes and shall be held strictly confidential by the trauma registry.

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2. This applies also to identifying information procured by any other person, agency, or organization, including public or private colleges and universities acting jointly with the trauma registry in connection with special health studies and research investigations.

(3) Release of Data

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(a) Release of non-identifying information

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1. To the Tennessee Department of Health:

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(i) The trauma registry shall work closely with the Tennessee Department of Health in investigating the causes and consequences of traumatic injuries and in evaluating programs.

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(ii) Because the trauma registry data are an integral part of the Tennessee Department of Health traumatic injury prevention and control programs, the use of trauma registry data by public health officials shall be considered an in-house activity.

2. To the general public:

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(i) Public reports published by the trauma registry shall include aggregate, not patient identifying information or facility identifying information.

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(ii) Information that would potentially identify a trauma patient shall not be published.

(iii) Non-identifying information may be made available to the general public upon request to the department.

(iv) The availability of any data shall depend upon the department's financial or other ability to comply with such requests. The trauma registry shall respond to public requests as quickly as possible, subject to staffing constraints.

(b) Release of identifying information

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1. Identifying information collected from any hospital, laboratory, facility, or health care practitioner may be released to qualified persons for the purposes of traumatic injury prevention, control, care, and research, provided that each

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(Rule 1200-08-12-.06 continued)

request for identifying information follows the established procedure outlined in the trauma registry Policies and Procedures Manual and receives prior approval by the department.

2. Identifying information that is collected solely by the trauma registry for its own special studies shall not be released.

(c) Annual Report. A statistical report shall be prepared at the completion of each year's data collection cycle and will be distributed as requested.

(4) Request procedure for patient identifying information

(a) Requests for identifying information shall be reviewed and approved by the department according to the policies of the Tennessee Department of Health and the trauma registry.

(b) A detailed description of the procedures for requesting identifying information can be obtained from the trauma registry.

Authority: T.C.A. §§ 68-11-209 and 68-11-259.

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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)
Carissa S. Lynch, Pharm.D.	X				
Evelyn J. Brock, D.O.	X				
Patricia P. Ketterman	X				
Thomas H. Gee	X				
Lisa M. Piercey, M.D.				X	
Jennifer Gordon-Maloney, DDS				X	
Sherry Robbins, M.D.	X				
Patsy E. Crihfield	X				
Robert C. Breeden	X				
Roger L. Mynatt	X				
Janet Williford	X				
Chuck V. Griffin	X				
Joshua A. Crisp	X				
Gina Throneberry	X				
Paul C. Boyd	X				
Bobby Wood	X				
Rene Saunders, M.D., Chairman	X				
Jim Shulman	X				
Vacant					

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the Board for Licensing Health Care Facilities (board/commission/ other authority) on 02/05/2019 (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: *11/02/18 (mm/dd/yy)*

Rulemaking Hearing(s) Conducted on: (add more dates). *02/05/19 (mm/dd/yy)*

Date: 3/19/19

Signature: Kyonzté Hughes-Toombs

Name of Officer: Kyonzté Hughes-Toombs

Title of Officer: Deputy General Counsel
Department of Health

Subscribed and sworn to before me on: 3-19-19

Notary Public Signature: Suzanne Mechkowski

My commission expires on: My Commission Expires January 26, 2021

SUZANNE MECHKOWSKI STATE OF TENNESSEE NOTARY PUBLIC SUMNER COUNTY

Agency/Board/Commission: Board for Licensing Health Care Facilities

Rule Chapter Number(s): 1200-08-12-.01, 1200-08-12-.02, 1200-08-12-.03, 1200-08-12-.04, 1200-08-12-.05, 1200-08-12-.06

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

7/31/2019
Date

Department of State Use Only

Filed with the Department of State on: 8/6/19

Effective on: 11/4/19

Tre Hargett
Secretary of State

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G.O.C. STAFF RULE ABSTRACT

DEPARTMENT: Real Estate Commission

DIVISION: Regulatory Boards

SUBJECT: Licensing; Educational Requirements; Fee

EFFECTIVE DATES: November 3, 2019 through June 30, 2020

FISCAL IMPACT: By reducing the original license fee and renewal fees, as well as eliminating the firm name change, address change, and duplicate license fees, the total decrease in licensing revenue for the Tennessee Real Estate Commission would amount to approximately 5.21% or $125,923.00 per year. Expenditures would not be impacted.

By reducing the required initial licensee fee and the education course fees the total decrease in revenue for the Tennessee Real Estate Commission's education and recovery account would amount to 60.6% or $58,247 per year. This significant decrease in revenue will aid in limiting the legislature's concern pertaining to the growth of the education and recovery account's balance.

STAFF RULE ABSTRACT: The proposed rules eliminate and reduce certain licensing fees. Specifically, the proposed rules reduce the original license fee from $100.00 to $90.00 and the renewal license fee from $80.00 to $75.00. In addition, the proposed rules eliminate fees for the address change, firm name change, the commission manual, certified copies, copies, printouts of licensee information, printouts of licensee continuing education and duplicate license fees. Also, the proposed rules revise the language for the handling of bad checks to comport with state law. The proposed rules also significantly reduce the fees associated with the real estate education and recovery account. Currently, all licensees must pay $10.00 upon original licensure and education course providers must pay certain corresponding fees based upon education hours. The initial licensure fee is reduced to $1.00 and all education course provider fees for education hours are now reduced by at least half.

Rules of Tennessee Real Estate Commission
Chapter 1260-01 Licensing; 1260-05 Educational Requirements
Rule 1260-01-.12; Rule 1260-05-.15

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.

The proposed rule would benefit small businesses in the real estate industry, including present and future licensees, by reducing and removing several fees. For example, the proposed rules reduce the original licensure and renewal fees as well as eliminate the fees for change of address, change of firm address, the commission manual, certified copies, copies, printouts of licensee continuing education, and duplicate licenses. Also, the proposed rules reduce the fee deposited into the real estate education and recovery account required by each licensee from $10.00 to $1.00. Additionally, the proposed rules reduce all of the credit hour course education fees by at least half. Reducing the education course fees and reducing the initial licensee fee will significantly curtail the real estate education and recovery account's future growth.

The proposed rules will positively affect all small businesses that are under the purview of the Tennessee Real Estate Commission. However, the proposed rules will not assess any additional fees to small businesses but will instead directly benefit the small businesses as these rules are either fee reductions or complete elimination of fees required for small businesses and their employees. The proposed rules would require minimal, if any, costs for compliance.

The proposed rules will have an impact on small businesses and consumers, but this impact is advantageous to both groups. The proposed rules will eliminate and reduce many fees, such as the initial license fee and education course fees. The reduction and elimination of these fees will provide more access for small businesses, consumers, and future applicants to the profession. An exemption of small business from these requirements would not be beneficial. As these proposed rules are reductions and eliminations of certain fees, small business would benefit and not suffer any foreseeable detriment.

The Commission knows of no other less burdensome, less intrusive, or less costly alternative methods of achieving the purpose and objectives of the proposed rules. The Commission knows of no other rules that are similar.

Rules of Tennessee Real Estate Commission
Chapter 1260-01 Licensing; 1260-05 Educational Requirements
Rule 1260-01-.12; Rule 1260-05-.15

Impact on Local Governments

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

The Tennessee 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;

The proposed rules eliminate and reduce certain licensing fees. Specifically, the proposed rules reduce the original license fee from $100.00 to $90.00 and the renewal license fee from $80.00 to $75.00. In addition, the proposed rules eliminate fees for the address change, firm name change, the commission manual, certified copies, copies, printouts of licensee information, printouts of licensee continuing education and duplicate license fees. Also, the proposed rules revise the language for the handling of bad checks to comport with state law. The proposed rules also significantly reduce the fees associated with the real estate education and recovery account. Currently, all licensees must pay $10.00 upon original licensure and education course providers must pay certain corresponding fees based upon education hours. The initial licensure fee is reduced to $1.00 and all education course provider fees for education hours are now reduced by at least half.

(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 law or regulation mandating promulgation of such rule of establishing guidelines relevant.

(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 rule would affect current licensees and future applicants. We believe that all affected would approve of the adoption of these rules because the proposed rules are beneficial to all industry members.

(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 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;

By reducing the original license fee and renewal fees, as well as eliminating the firm name change, address change, and duplicate license fees, the total decrease in licensing revenue for the Tennessee Real Estate Commission would amount to approximately 5.21% or $125,923.00 per year. Expenditures would not be impacted.

By reducing the required initial licensee fee and the education course fees the total decrease in revenue for the Tennessee Real Estate Commission's education and recovery account would amount to 60.6% or $58,247 per year. This significant decrease in revenue will aid in limiting the legislature's concern pertaining to the growth of the education and recovery account's balance.

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

Anna D. Matlock, Assistant General Counsel for the Tennessee Real Estate Commission
Caitlin Maxwell, Executive Director for the Tennessee Real Estate Commission

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

Anna D. Matlock, Assistant General Counsel for the Tennessee Real Estate Commission
Caitlin Maxwell, Executive Director for the Tennessee Real Estate Commission

(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

Anna D. Matlock
500 James Robertson Parkway, Nashville, TN 37243
(615) 253-0070
Anna.Matlock@tn.gov

Caitlin Maxwell
500 James Robertson Parkway, Nashville, TN 37243
(615) 253-1837
Caitlin.Maxwell@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 Ave., 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: 08-03-19
Rule ID(s): 9225-9226
File Date: 8/5/19
Effective Date: 11/3/19

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 Real Estate Commission
Division:	Regulatory Boards
Contact Person:	Anna D. Matlock
Address:	500 James Robertson Parkway, Nashville, Tennessee
Zip:	37243
Phone:	(615) 253-0070
Email:	Anna.Matlock@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**
1260-01-.12	Fees

Chapter Number	**Chapter Title**
1260-05	Educational Requirements
Rule Number	**Rule Title**
1260-05-.15	Fee for Educational Course Application

2019 Proposed Rules
Tennessee Real Estate Commission

Chapter 1260-01
Licensing
Amendments

Rule 1260-01-.12 is amended by deleting the text of the rule in its entirety and substituting instead language so that, as amended, Rule 1260-01.-12 shall read:

1260-01-.12 FEES. The following fees shall apply:

(1) For each examination, a fee to be paid to the testing vendor as set by state contract;

(2) For the issuance of an original license, a fee to be paid to the Commission of ~~one hundred~~ ninety dollars ($~~100.00~~ 90.00);

(3) For each renewal of a license, a fee to be paid to the Commission of ~~eighty~~ seventy-five dollars ($~~80.00~~ 75.00);

(4) A fee to be paid to the Commission for each of the following:

~~(a) Change of firm address, fifty dollars ($50.00);~~

(~~b~~a) Change of Principal Broker, twenty-five dollars ($25.00);

(~~c~~b) Transfer of affiliation or transfer in or out of retirement status, twenty-five dollars ($25.00);

~~(d) Commission manual, ten dollars ($10.00);~~

~~(e) Certified copies, one dollar ($1.00) per page;~~

~~(f) Copies, twenty-five cents ($.25) per page;~~

~~(g) Printouts of licensee information, charges will be based upon the cost of producing said printout;~~

(~~h~~c) Certification of licensure, twenty-five dollars ($25.00);

~~(ih) Printouts of licensee continuing education, ten dollars ($10.00);~~

~~(j) Change of name, ten dollars ($10.00);~~

~~(k) Duplicate license, ten dollars ($10.00);~~

~~(l~~d) ~~Bad Checks must be made good within five (5) days after the licensee is notified. Any bad check not made good within sixty (60) days of the notification will be subject to a one hundred dollar ($100.00) fee for collection.~~ Bad checks shall be subject to the penalties and fees set out in T.C.A. §§ 9-1-108 and 9-1-109.

(5) A penalty fee of fifty dollars ($50.00) per month, or portion thereof, for failing to timely renew a license if the licensee reinstates the license within the sixty (60) day time frame set forth in T.C.A. § 62-13-319(a); provided however, the Commission shall have the discretion to waive or lower said fee for good cause shown.

(6) When any individual applies for an original license as a broker, affiliate broker or time-share salesperson, the applicant shall pay, in addition to the original license fee, a fee in the amount of ~~ten~~ one dollars (~~$10.00~~ 1.00) for deposit into the real estate education and recovery account.

Authority: T.C.A. §§ 62-13-203, 62-13-208, 62-13-307, ~~62-13-208(c)(1)~~, 62-13-308, and 62-13-319

Chapter 1260-05
Educational Requirements
Amendments

Rule 1260-05-.15 is amended by deleting the text of the rule in its entirety and substituting instead language so that, as amended, Rule 1260-05.-15 shall read:

1260-05-.15 FEE FOR EDUCATIONAL COURSE APPLICATION.

(1) Before any educational course is reviewed for approval by the Commission, the following non-refundable fees shall be paid according to the following hourly credit schedule:

(a) any course not exceeding eight (8) hours a fee of ~~twenty-five~~ ten dollars (~~$25.00~~ 10.00);

(b) any course from nine (9) hours to thirty (30) hours a fee of ~~fifty~~ twenty-five dollars (~~$50.00~~ 25.00);

(c) any course exceeding thirty (30) hours a fee of ~~one hundred~~ fifty dollars (~~$100.00~~ 50.00).

(2) In addition to the above fees, a twenty-five dollar ($25.00) fee shall be paid for each course instructor.

Authority: T.C.A. §§ 62-13-106, 62-13-203 and 62-13-324.

Rules of Tennessee Real Estate Commission
Chapter 1260-01 Licensing; 1260-05 Educational Requirements
Rule 1260-01-.12; Rule 1260-05-.15

* 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				
Austin McMullen				X	
Marcia Franks	X				
Diane Hills	X				
Bobby Wood Jr.	X				
Fontaine Taylor	X				
Johnny Horne	X				
Rick Douglass				X	
Geoffrey Diaz	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 December 5, 2018, 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: 6/14/2019

Signature: Anna D. Mathock

Name of Officer: Anna D. Mathock

Title of Officer: Assistant General Counsel

CAROL L. McGLYNN STATE OF TENNESSEE NOTARY PUBLIC DAVIDSON COUNTY My Commission Expires NOV. 5, 2019

Subscribed and sworn to before me on: June 14, 2019

Notary Public Signature: Carol L. McGlynn

My commission expires on: Nov. 5, 2019

Agency/Board/Commission: Tennessee Real Estate Commission

Rule Chapter Number (s): 1260-01-.12 Fees
1260-05-.15 Fee for Educational Course Application

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

7/24/2019
Date

Rules of Tennessee Real Estate Commission
Chapter 1260-01 Licensing; 1260-05 Educational Requirements
Rule 1260-01-.12; Rule 1260-05-.15

Department of State Use Only

Filed with the Department of State on: 8/5/19

Effective on: 11/3/19

Tre Hargett
Secretary of State

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G.O.C. STAFF RULE ABSTRACT

DEPARTMENT:	Architectural and Engineering Examiners
DIVISION:	Regulatory Boards
SUBJECT:	Registration Requirements and Procedures
EFFECTIVE DATES:	October 30, 2019 through June 30, 2020
FISCAL IMPACT:	None
STAFF RULE ABSTRACT:	The proposed rule allows a person gaining practical experience in an office of a practicing architect to use the title "architectural associate".

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 businesses 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 amendment to Rule 0120-01-.03(1) would affect small businesses which employ any person gaining practical experience in the office of a practicing architect. This rule would directly benefit those small businesses by allowing the persons gaining practical experience to refer to themselves as "architectural associates". This title is projected to decrease confusion among the public.

Currently, in Tennessee, there are around one thousand nine hundred (1,900) registered Architecture firms, around four thousand five hundred (4,500) registered Engineering firms, and around two hundred (200) registered Landscape Architecture Firms; the majority of these would be considered a small business in Tennessee and thus would benefit from the rule amendment.

(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 projected reporting, recordkeeping, or other administrative cost associated with the amendments to Rule 0120-01-.03(1).

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

The probable effect on impacted small businesses and consumers from the amendment to Rule 0120-01-.03(1) would be less confusion regarding the knowledge and skills of those working toward registration as a licensed architect. Persons gaining practical experience under a registered architect may obtain more jobs with the title "architectural associate" than with the previous title "intern architect" as much of the public does not understand the education and skills required to obtain this previous designation.

(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 Board 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.

This rule does not have any federal or state counterparts.

(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, as uniformity among the profession is important to maintain consistency and quality of the work performed by licensed engineers, architects, and landscape architects. All expected effects would be positive for 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://publications.tnsosfiles.com/acts/106/pub/pc1070.pdf) of the 2010 Session of the General Assembly)

The rule changes are not expected to impact local government.

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 amendment to Rule 0120-01-03(1) allows a person gaining practical experience in an office of a practicing architect to use the title "architectural associate".

(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 state or federal law 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;

This amendment will directly affect persons gaining practical experience in an office of a practicing architect and the offices that employ such persons. The Board urges adoption of this amendment.

(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 estimated to have a probable increase or decrease in state or local government revenue and expenditures.

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

Roxana Gumucio, Executive Director
Tennessee Department of Commerce and Insurance
Davy Crockett Tower, 9th Floor
500 James Robertson Pkwy, Nashville, TN 37243
roxana.gumucio@tn.gov

Tony Glandorf, Chief Counsel
Tennessee Department of Commerce and Insurance
Davy Crockett Tower, 12th Floor
500 James Robertson Pkwy, Nashville, TN 37243
Anthony.glandorf@tn.gov

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

Roxana Gumucio, Executive Director
Tony Glandorf, Chief 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

Roxana Gumucio, Executive Director Tennessee Department of Commerce and Insurance Davy Crockett Tower, 9th Floor 500 James Robertson Pkwy, Nashville, TN 37243 roxana.gumucio@tn.gov Tony Glandorf, Chief Counsel Tennessee Department of Commerce and Insurance Davy Crockett Tower, 12th Floor 500 James Robertson Pkwy, Nashville, TN 37243 Anthony.glandorf@tn.gov

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

There is no known additional relevant information.

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Nashville, TN 37243
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For Department of State Use Only

Sequence Number: 08-01-19
Rule ID(s): 9223
File Date: 8/1/19
Effective Date: 10/30/19

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 Board of Architectural and Engineering Examiners
Division:	Division of Regulatory Boards, Dept. of Commerce and Insurance
Contact Person:	Tony Glandorf
Address:	500 James Robertson Parkway, Nashville, TN
Zip:	37243
Phone:	615-741-3072
Email:	Anthony.glandorf@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**
0120-01	Registration Requirements and Procedures
Rule Number	**Rule Title**
0120-01-.03	Clarifications to Offering to Practice

Rules of the Tennessee Board of Architectural and Engineering Examiners
Chapter 0120-01
Registration Requirements and Procedures

Paragraph 0120-01-.03(1) Clarifications to Offering to Practice is amended by adding a newly designated subparagraph so that as amended the rule shall read:

(1) The following items are not considered offering to practice architecture, engineering, or landscape architecture, provided that the architect, engineer or landscape architect is registered in another jurisdiction:

(a) Advertising in publications or electronic media, provided there is no holding out of professional services in jurisdictions where not registered.

(b) Responding to letters of inquiry regarding requests for proposals or requests for qualifications, provided there is written disclosure that the architect, engineer, or landscape architect is not registered in Tennessee and the response is limited to inquiries regarding scope of project and to demonstrate interest.

(c) Responding to letters of inquiry from prospective clients, provided there is written disclosure that the architect, engineer, or landscape architect is not registered in Tennessee and the response is limited to inquiries regarding scope of project and to demonstrate interest.

(d) Using the title "engineer," "architect," "landscape architect," or any appellation thereof, provided that the individual using the title is registered in another jurisdiction and clearly specifies the jurisdiction in which they are registered following the title so as not to mislead the public regarding their credentials.

(e) Using the title "engineer," "architect," "landscape architect," or any appellation thereof in communications from an office in the jurisdiction where registration is held.

(f) Any person gaining practical experience in an office of a practicing architect may use the title, appellation or designation "architectural associate".

(2) Notwithstanding paragraph (1), proposals may not be submitted, contracts signed, nor work commenced until the architect, engineer, or landscape architect becomes registered in Tennessee, unless the architect, engineer, or landscape architect is either acting as a consulting associate in accordance with T.C.A. § 62-2-103(2) or working under the responsible charge of a Tennessee registrant.

Authority: T.C.A. §§ 62-2-101, 62-2-103, and 62-2-203(c).

* 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)
Susan K. Ballard, RID	X				
Frank W. Wagster, RA	X				
Ricky Bursi, PE				X	
Robert Campbell, Jr. PE	X				
R. Blair Parker, RLA	X				
Richard D. Thompson, RA				X	
Brian Tibbs, RA	X				
Kathryn S. Ware, PE	X				

I certify that this is an accurate and complete copy of proposed rules, lawfully promulgated and adopted by the Board on **April 4, 2019**, 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: July 12, 2019

Signature: [signature]

Name of Officer: Anthony Glandorf

Title of Officer: Chief Counsel

Subscribed and sworn to before me on: July 12, 2019

Notary Public Signature: Carol McGlynn

My commission expires on: Nov. 5, 2019

CAROL L. McGLYNN
STATE OF TENNESSEE NOTARY PUBLIC
DAVIDSON COUNTY
My Commission Expires NOV. 5, 2019

Agency/Board/Commission: Tennessee Board of Architectural and Engineering Examiners

Rule Chapter Number(s): 0120-01

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

7/24/2019
Date

Department of State Use Only

Filed with the Department of State on: 8/1/19

Effective on: 10/30/19

Tre Hargett
Secretary of State

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PUBLIC DOCUMENTS

G.O.C. STAFF RULE ABSTRACT

DEPARTMENT:	Motor Vehicle Commission
DIVISION:	Regulatory Boards Division
SUBJECT:	General Rules
STATUTORY AUTHORITY:	None
EFFECTIVE DATES:	11/14/2019 through 6/30/2020
FISCAL IMPACT:	Minimal
STAFF RULE ABSTRACT:	The first amendment adds further requirements on what contact information an applicant must or should provide, specifically requiring an email address. The second amendment seeks to allow two conjoined businesses, with one being a licensed dealer, to have a door between those businesses. The door must not be used by consumers and should be secured and locked when not in use.

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.

At the end of 2018, the Tennessee Motor Vehicle Commission licensed 3,791 motor vehicle dealers, 138 distributors/manufacturers, 30 auctions, 38 RV dealers, and 73 RV manufacturers. Of all those licensees, the majority would be considered small businesses. The rule requiring an email address and other contact information will affect small businesses on their initial applications and renewals. A phone number and address were already required, so the only new factor will be the required email address. Email addresses can be obtained for free or at a low cost, so the impact should be low.

The rule allowing a conjoining private door between businesses would impact new applicants and licensees who wish to add a door because it was previously not allowed. New applicants may have the expense of securing the door. Businesses wishing to add a door would be electing those expenses and it would not have been required by the rule 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.

There are no projected reporting, recordkeeping, or other administrative costs anticipated to be required for compliance with the proposed rule.

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

Adding a required email address may come with a nominal expense if a licensee wishes to have a custom email rather than one provided by a free service. However, email allows faster communication, quicker responses regarding consumer complaints, and benefits the licensees by enabling online license renewals and services.

(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 alternative to the updated contact information requirement. There is no less burdensome manner that also considers consumer information security in relation to the secured door requirement. The updated conjoined business rule seeks to be less burdensome than the current requirement that does not allow a door.

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

There are no known comparable federal or state counterparts to these rule changes.

(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 known benefits to allowing businesses to be exempt from the updated contact information rule. While allowing broader means of connecting two conjoining businesses may appear beneficial to small businesses, the increased risk of consumer harm and difficulty in enforcing other regulatory requirements offsets the apparent benefit of an exemption.

Impact on Local Governments

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

These rules are not projected to impact local government.

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 first amendment adds further requirements on what contact information an applicant must or should provide, specifically requiring an email address. The second amendment seeks to allow two conjoined businesses, with one being a licensed dealer, to have a door between those businesses. The door must not be used by consumers and should be secured and locked when not in use.

(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 regulations mandating 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 contact information update will affect all applicants and all dealers applying for renewals. While this will affect all licensees, the small burden it creates is not anticipated to create opposition to the rule change. The door rule represents a lessening of the restrictions on dealers conjoining other businesses, so it is not anticipated that this rule change will draw opposition.

(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 and reporter or judicial rulings directly related to this 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;

There are no estimated increases or decreases in state and local government revenue.

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

Maria P. Bush – Assistant General Counsel
TN Dept. of Commerce and Insurance

Anthony Glandorf – Chief Counsel
TN Dept. 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;

Maria P. Bush – Assistant General Counsel
TN Dept. of Commerce and Insurance

Anthony Glandorf – Chief Counsel
TN Dept. 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

Maria P. Bush – Assistant General Counsel
500 James Robertson Parkway
Nashville, TN 37243
615-741-3072
Maria.P.Bush@tn.gov

Anthony Glandorf – Chief Counsel
500 James Robertson Parkway
Nashville, TN 37243
615-741-3072
Anthony.Glandorf@tn.gov

(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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Nashville, TN 37243
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Email: publications.information@tn.gov

For Department of State Use Only

Sequence Number: 08-18-19
Rule ID(s): 9234
File Date: 8/16/19
Effective Date: 11/14/19

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 Motor Vehicle Commission
Division:	Regulatory Boards Division
Contact Person:	Maria P. Bush
Address:	500 James Robertson Parkway, Nashville, TN
Zip:	37243
Phone:	(615) 741-3072
Email:	maria.p.bush@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**
0960-01	General Rules
Rule Number	**Rule Title**
0960-01-.08	Applications
0960-01-.21	Motor Vehicle Dealer Facilities

0960-01-.08 Applications shall be amended by adding paragraph (5) so that, as amended, the rule shall read:

(1) An applicant for a license to sell motor vehicles shall comply with T.C.A. § 55-17-111 and shall provide the Commission with all information required by this section. An applicant for a license to sell recreational vehicles shall comply with T.C.A. § 55-17-405 and shall provide the Commission with all information required by this section.

(2) Applicants are required to provide the Commission, and keep current, the names of any inventory financers, i.e. "floor planners" used by the dealership.

(3) A motor vehicle or recreational vehicle dealer applicant shall provide to the Commission a compiled financial statement indicating a minimum net worth of at least Ten Thousand Dollars ($10,000.00). The compiled financial statement must be prepared in accordance with generally accepted accounting principles by a certified public accountant or public accountant dated not earlier than twelve (12) months prior to the date of the application, and a copy of the same must be furnished to the Commission along with any changes to the statement.

(4) The Commission may deny any application for a license if any manager, director, or owner of five percent (5%) interest or greater of the applicant could be denied licensure as an individual pursuant to T.C.A. § 55-17-114.

(5) Applicants are required to provide the Commission with a current address, phone number, and email address. If available, applicants shall also provide a facsimile number.

Authority: T.C.A. §§ 55-17-107, 55-17-111, 55-17-402, and 55-17-405.

0960-01-.21 Motor Vehicle Dealer Facilities is amended by striking the last sentence of paragraph (1) and substituting new language so that, as amended, the rule shall read:

(1) The facility must be physically separate and apart from any other businesses and shall not include any residence, tent or temporary stand. The facility may be connected to another business facility provided there is a permanent wall from floor to ceiling between the two businesses and the motor vehicle or recreational vehicle facility has a separate outside entrance and exit. ~~Any doors between the businesses shall be permanently sealed.~~ Any doors conjoining the businesses shall be secured and locked from the interior in a nature that is satisfactory to the Commission. Doors conjoining the businesses shall only be utilized by employees of the businesses and shall not be accessible to or utilized by members of the public.

(2) The facility shall contain adequate office space (a minimum of 288 square feet) for processing sales and purchases of motor vehicles or recreational vehicles. The facility shall also contain restroom accommodations.

(3) The facility shall have a primary telephone number listed in the local directory under the name of the dealership. The primary phone number of the dealership shall be posted either on the door to the dealership, in a window of the dealership or on the dealership's sign.

(4) The facility shall have immediate and contiguous access to and exclusive dedicated use of a motor vehicle or recreational vehicle storage or display lot capable of accommodating fifteen (15) motor vehicle~~s~~ or recreational vehicles of the dealership's product line. A lot shall consist of compacted gravel, chert, stone or similar materials and shall not include public lands, unimproved land or residential driveways. The facility shall also contain a minimum of three (3) parking spots dedicated for customer parking.

(5) The facility shall be used exclusively for buying, selling, renting, displaying, advertising, demonstrating, servicing or repairing motor vehicles or recreational vehicles or selling functional or nonfunctional parts, including accessories, safety equipment and vehicle branded clothing.

Authority: T.C.A. §§ 55-17-107, 55-17-114, and 55-17-402.

Rules of the Tennessee Motor Vehicle Commission
Chapter 0960-01 – General Rules
Rule 0960-01-.08 and 0960-01-.21 – Applications; Motor Vehicle Dealer Facilities
* 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)
Eddie Roberts	x				
Stan Norton	x				
Ian Leavy				x	
Nathaniel Jackson	x				
John Chobanian	x				
Stephen Tomaso	x				
Karl Kramer	x				
Charles West	x				
Ronald Fox	x				
Kahren White				x	
Chris Lee	x				
Jim Galvin Jr.	x				
John S. Murrey				x	
Debbie Melton				x	
Farrar Schaeffer Vaughan	x				
Victor Evans	x				
John Barker, Jr.	x				

I certify that this is an accurate and complete copy of proposed rules, lawfully promulgated and adopted by the Tennessee Motor Vehicle Commission on 01/14/2019 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: June 26, 2019

Signature: Maria P. Bush

Name of Officer: Maria P. Bush

Title of Officer: Assistant General Counsel

Subscribed and sworn to before me on: June 26, 2019

Notary Public Signature: Anna D Matlock

My commission expires on: 09-07-2021

ANNA D MATLOCK
STATE OF TENNESSEE NOTARY PUBLIC
DAVIDSON COUNTY
Expires 09-07-2021

Agency/Board/Commission: Tennessee Motor Vehicle Commission

Rule Chapter Number(s): 0960-01 – General Rules

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

7/31/2019
Date

Department of State Use Only

Filed with the Department of State on: 8/16/19

Effective on: 11/14/19

Tre Hargett
Tre Hargett
Secretary of State

2019 AUG 16 AM 9:09
SECRETARY OF STATE
PUBLICATIONS

G.O.C. STAFF RULE ABSTRACT

DEPARTMENT:	Commerce and Insurance
DIVISION:	Regulatory Boards
SUBJECT:	General Provisions, Fees
STATUTORY AUTHORITY:	Tennessee Code Annotated, Section 49-3-308
EFFECTIVE DATES:	November 3, 2019 through June 30, 2020
FISCAL IMPACT:	None
STAFF RULE ABSTRACT:	The proposed rule will waive initial licensure fees for low-income persons and certain business entities. A person qualifies for waiver of initial fees if they are enrolled in a state or federal public assistance program. A business entity qualifies for a waiver if the person or persons that request the waiver owns the majority (more than half) of the entity. The low-income person or business entity must request a waiver in writing at the time of the initial application. NOTE: Rule not submitted in redline form. Entire rule contains new language.

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.

The rule, as proposed, will provide waivers of fees for certain applicants – both individuals and business entities. There is no foreseeable cost for small businesses as a result of the implementation of this rule. In fact, the proposed rule provides a potential benefit for small businesses by making licensure more accessible to low-income persons thus adding to the number of candidates eligible for hiring.

The proposed rule would require minimal, if any, costs for compliance. The rule is written so as to make it as easy as possible for qualified applicants to submit the necessary paperwork along with their application. The rule allows the applicant to submit the most recent document issued by the applicable assistance agency showing that the applicant requesting the waiver is enrolled in a qualifying program. Therefore, the applicant is not required to procure or produce any additional paperwork to establish that they are eligible to receive the fee waiver, thereby keeping costs low.

The proposed rule may affect small businesses, but in a positive way. The proposed rule would promote employment by increasing the volume of eligible candidates for hiring and for lowering the costs of licensure for certain employees and for a subset of small businesses themselves. As a result, an exemption for small businesses would not be beneficial.

The Department knows of no other less burdensome, less intrusive, or less costly alternative method to achieve the purposes and objectives of the proposed rules. The Department knows of no similar federal or state counterparts to the proposed rule.

Impact on Local Governments

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

The Tennessee Department of Commerce & Insurance does not foresee 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 proposed rule will waive initial licensure fees for low-income persons and certain business entities. A person qualifies for waiver of initial fees if they are enrolled in a state or federal public assistance program. A business entity qualifies for a waiver if the person or persons that request the waiver owns the majority (more than half) of the entity. The low-income person or business entity must request a waiver in writing at the time of the initial application.

(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 proposed rule was drafted in response 2018 Public Chapter 954, codified as Tenn. Code Ann. § 62-76-105.

(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 Department is unaware of entities that would either urge adoption or rejection of this 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;

The Department is unaware of any opinion of the attorney general 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;

The Department foresees no probable increase or decrease in state and local government revenues or expenditures as a result of the promulgation of this rule.

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

Carter Lawrence, Deputy Commissioner for Regulatory Boards and Consumer Affairs;
Mark Green, Deputy General Counsel for Regulatory Boards and Consumer Affairs;
Denard Mickens, Chief General Counsel for Regulatory Boards and Consumer Affairs

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

Carter Lawrence, Deputy Commissioner for Regulatory Boards and Consumer Affairs;
Mark Green, Deputy General Counsel for Regulatory Boards and Consumer Affairs;
Denard Mickens, Chief General Counsel for Regulatory Boards and Consumer Affairs

(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

Carter Lawrence
500 James Robertson Parkway, Nashville, TN 37243
(615) 253-4265
Carter.Lawrence@tn.gov

Mark Green
500 James Robertson Parkway, Nashville, TN 37243
(615) 532-7617
Mark.Green@tn.gov

Denard Mickens
500 James Robertson Parkway, Nashville, TN 37243
(615) 741-8689
Denard.Mickens@tn.gov

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

There is no known additional relevant information.

Rules of Tennessee Department of Commerce & Insurance
Chapter 0780-05-11 General Provisions
Rule 0780-05-11-.02

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For Department of State Use Only

Sequence Number: 08-02-19
Rule ID(s): 9224
File Date: 8/5/19
Effective Date: 11/3/19

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 Department of Commerce and Insurance
Division:	Regulatory Boards Division
Contact Person:	Denard Mickens
Address:	500 James Robertson Parkway, Nashville, Tennessee
Zip:	37243
Phone:	(615) 741-8689
Email:	denard.mickens@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**
0780-05-11	General Provisions
Rule Number	**Rule Title**
0780-05-11-.02	Fee Waiver for Low Income Persons

2018 Proposed Rules
Tennessee Department of Commerce & Insurance

Chapter 0780-05-11
General Provisions
New Rule

Table of Contents

0780-05-11-.01 Assessment of Investigatory and Hearing Costs
0780-05-11-.02 Fee Waiver for Low Income Persons

0780-05-11-.02 Fee Waiver for Low Income Persons is added as a new rule and shall read:

(1) This rule is applicable to any state board, agency, or commission attached to the division of regulatory boards, as listed in T.C.A. § 4-3-1304(a). This rule shall be effective ninety (90) days from filing with the office of the Secretary of State.

(2) As used in this rule, unless context otherwise requires:

(a) The terms "licensing," "licensing authority," "licensure fee," "low-income persons," and "state agency" shall have the same meanings as set out in T.C.A. § 62-76-105.

(b) "Assistance agency" means any state or federal agency empowered to administer a state or federal public assistance program that forms the basis for a request for a waiver under this rule and T.C.A. § 62-76-105.

(c) "Commissioner" means the Commissioner of the Tennessee Department of Commerce and Insurance or the Commissioner's designee.

(d) "Department" means the Tennessee Department of Commerce and Insurance.

(e) "Qualifying program" means temporary assistance for needy families (TANF), Medicaid, supplemental nutrition assistance program (SNAP), or any other similar state or federal public assistance program determined by the Commissioner to be issued based on substantially similar income guidelines as one or more of those programs.

(3) A request for a waiver of an initial licensure fee pursuant to T.C.A. § 62-76-105 shall be made in writing on a form prescribed by the Commissioner at the time of the initial application. The waiver request shall include:

(a) The full name, address, and phone number of the applicant requesting the waiver;

(b) The most recent document issued by the applicable assistance agency showing that the applicant requesting the waiver is enrolled in a qualifying program at the time that the waiver request is submitted to the Department. The Commissioner may request additional documentation to reasonably determine the applicant's eligibility for the waiver;

(c) A statement that the applicant acknowledges that the Department may contact any assistance agency to verify the applicant's enrollment in a qualifying program and that the Department is authorized to do so;

(d) A certification, under penalty of perjury, that the information contained in the request for the fee waiver is true and accurate to the best of the applicant's knowledge. This certification shall not be required to be notarized;

(e) If the basis for the fee waiver request is any program other than temporary assistance for needy families (TANF), Medicaid, or supplemental nutrition assistance program (SNAP), a written explanation of the nature of the program that the applicant claims entitles them to a waiver of fees under these rules, a copy of the income guidelines for enrollment in the program issued by the assistance agency, and any other documentation that the applicant wishes to provide regarding the program having substantially similar income guidelines as one or more of TANF, Medicaid, or SNAP. A determination as to whether or not a program constitutes a substantially similar qualifying program shall be in the sole discretion of the Commissioner; and

(f) Such other information as the Commissioner may reasonably request.

(4) The initial licensure fee for a business entity (including, but not necessarily limited to, a Limited Liability Company, Limited Liability Partnership, or Corporation) or for a general partnership shall be waived if the person that is requesting and is entitled to the fee waiver under this rule owns the majority (more than half) of the business entity or general partnership. The ownership interest of two (2) or more persons may be combined to meet this threshold so long as the applicants comprising the majority ownership provide sufficient documentation for a fee waiver under this rule.

Authority: T.C.A. §§ 56-1-302(a)(5) & 62-76-105.

Rules of Tennessee Department of Commerce & Insurance
Chapter 0780-05-11 General Provisions
Rule 0780-05-11-.02

* 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 06/07/2019 (*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 ninety (90) days of the filing of the proposed rule with the Secretary of State.

DENISE M. LEWIS
STATE OF TENNESSEE NOTARY PUBLIC
WILSON COUNTY, TENN.
My Commission Expires

Date: 6/7/19

Signature: Julie Mix McPeak

Name of Officer: Julie Mix McPeak

Title of Officer: Commissioner, Department of Commerce & Insurance

Subscribed and sworn to before me on: 6/7/19

Notary Public Signature: Denise M Lewis

My commission expires on: 1/15/20

Agency/Board/Commission: Tennessee Department of Commerce & Insurance

Rule Chapter Number(s): 0780-05-11-.02 Fee Waiver for Low Income Persons

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

7/26/2019
Date

Department of State Use Only

Filed with the Department of State on: 8/5/19

Effective on: 11/3/19

Tre Hargett
Tre Hargett
Secretary of State

SECRETARY OF STATE
2019 AUG -5 AM 9:56

G.O.C. STAFF RULE ABSTRACT

DEPARTMENT:	Board of Water Quality, Oil and Gas
DIVISION:	Water Resources
SUBJECT:	Aquatic Resource Alteration
STATUTORY AUTHORITY:	Tennessee Code Annotated, Section 69-3-108(b)
EFFECTIVE DATES:	September 11, 2019 through June 30, 2020
FISCAL IMPACT:	This rule is expected to have a neutral effect on state and local government revenues and expenditures, with the exception of some savings to local government applicants who will be required to publish shorter public notices in local newspapers.
STAFF RULE ABSTRACT:	Many of these Aquatic Resource Alteration Permit (ARAP) rules are being amended for the first time since November 8, 2000, and others since May 31 , 2011. ARAPs authorize habitat alterations and water withdrawals and, where required, serve as certifications of compliance with state water quality standards under Section 401 of the Clean Water Act. The revisions clarify that ARAPs are required only for alterations of streams and wetlands, and would remove references to wet weather conveyances because these are now governed by T.C.A. § 69-3-108(q). This rulemaking hearing rule introduces the new term "existing conditions" to reflect actual pre-impact resource values. The rules require compensatory mitigation to ensure no overall net loss of resource values from existing conditions. The new term is intended to ensure that this mitigation is limited to what is necessary to offset the harm actually caused by the permitted activity, and not to compensate for pre-existing degradation. This change is also intended to ensure appropriate mitigation for impacts to high quality waters, including Exceptional Tennessee Waters.

However, this change is primarily to clarify the mitigation requirements from the current version of the rules, which only required mitigation for the loss of resource values associated with the permitted activity.

The current ARAP rules require only that a permit applicant consider avoidance and minimization and submit an alternatives analysis. As amended, for applicants for individual permits, Rule 0400-40-07-.04(5)(b) requires implementation of any practicable alternatives that have less adverse impact on resource values, so long as this does not result in other adverse environmental consequences. This rule is comparable to the Corps of Engineers requirement for Section 404 permits, which are the federal equivalent of ARAPs. This rule change is intended to counterbalance provisions in the water quality standards rules, which would otherwise result in fewer new individual permits having to demonstrate a lack of practicable alternatives to degradation.

The amendments will change the permitting process to include a draft permit and rationale, consistent with other types of permits issued by the Division of Water Resources. This will enhance transparency and improve the public notice process. Currently, the Division publishes only a notice of a complete application, without a draft permit or an explanation of what it intends to do, leaving interested persons (including permit applicants) with little basis to submit meaningful comment. The amendments also conform the permit appeal process to T.C.A. § 69-3-105(i) by clarifying that third parties, not just permit applicants, may appeal permits if they meet specific conditions, and by clarifying those conditions.

Amendments to the mitigation rule, 0400-40-07-.04(7), retain substantial portions of the prior rule while clarifying the methodology to ensure no overall net loss of resource values from existing conditions. This rule prioritizes mitigation as close to the impact site as practicable. The rule also clarifies that mitigation for impacts to Tennessee streams and wetlands must occur in Tennessee.

Finally, the revisions include administrative updates and clean-up edits, including elimination of definitions that are not used in the rules or in permits.

Public Hearing Comments

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

Rule Chapter 0400-40-07
2018 Amendments
Responses to Comments

Comment Summary

The Board received numerous comments from a wide range of stakeholders. This document summarizes and responds to nearly 150 separate comments. A number of commenters asserted that the rules would be less protective of waters of the state. The Board disagreed, noting that most of the changes referred to by these commenters are simply clarifications of existing rules and that in some cases (notably public notice of draft permits), the rules are actually being strengthened.

Many comments were received regarding the new requirement to select the least damaging practicable alternative. A number of these comments reflected a misunderstanding of the current rules, which did not actually require avoidance and minimization as many commenters asserted. Some comments argued against adding this requirement, but the Board explained this provision is consistent with federal requirements and counterbalances revisions proposed in the Triennial Review rulemaking to the Antidegradation Statement (Rule 0400-40-03-.06) concerning *de minimis* degradation.

Finally, a large number of comments were received concerning compensatory mitigation. These comments ranged from requests for clarification to arguments to implement different policies. Many comments objected to the draft rule's proposal to rely on stream mitigation guidelines. In response, that reference was removed from the rules and specific performance standards for stream mitigation were added. A number of commenters argued that compensatory mitigation should not be based on the existing condition of the stream or wetland prior to the proposed alteration, and that mitigation should instead require restoration to a "pristine" condition. The Board disagreed with this position because mitigation is intended to compensate for the loss of resource values caused by the permitted activity, not prior degradation caused by overall development of an area. However, the Board added a provision requiring at least minimal mitigation even for degraded waters.

GENERAL

Comment 1: *We believe the rule revision process overall should not be pushed ahead until the final submission of the TNH2O document. The final proposed rule should not conflict with the values, Areas of Concern, and Recommendations of the TNH2O report.*

Response: The TNH2O document is a non-regulatory process which will result in recommendations to be implemented over the long term. Other than ARAPs for water withdrawals, which constitute a small subset of this rulemaking process, there is no necessary subject-matter overlap between these rules and TNH2O. Accordingly, there is no reason to delay adoption of these rules pending TNH2O.

Comment 2: *A commenter requested a concise statement of the principal reasons for the Board's action in adopting the rules pursuant to Tenn. Code Ann. § 4-5-205(b).*

Response: This statement is attached as Appendix 1.

Comment 3: *The rule changes under consideration would make it easier for the Tennessee Department of Transportation (TDOT) and real estate developers to obtain permits to divert streams, pave over wetlands, or otherwise alter the state's waterways.*

Response: It is not the intent of the rules to make it either easier or harder to obtain permits, but instead to ensure that the permitting process is transparent, fair, and consistent in implementing the statutory goal of ensuring that the public's rights to unpolluted waters are maintained and that "the water resources of Tennessee might be used and enjoyed to the fullest extent consistent with the maintenance of unpolluted waters."

Comment 4: *Several commenters asked that the Board not weaken rules that protect our natural resources.*

Response: The purpose for this rulemaking is primarily to make the rules more clear and transparent, and to update the mitigation rules to be more consistent with Corps Section 404 permitting requirements. The rules are not being weakened, and in some ways are being strengthened, particularly with respect to improving the public notice and comment process.

Comment 5: *Please keep Tennessee's environmental standards stricter and more preservation- conscious than current federal requirements.*

Response: The ARAP rule changes proposed are intended as clarifications and updates of current rules, and it is not the intent or effect of these amendments to weaken the rules from existing requirements.

DEFINITIONS

Comment 6: *Where there are rules in other parts of TDEC's rulebook that cover areas (definitions or interpretations) that are also covered under the ARAP rule, it is important to state a) whether the new definition in this document, for example, is to replace that definition wherever it appears in TDEC rules or only in this case, and b) if a proposed new interpretation is intended to supplant other rules or if those other rules will be used to interpret these rules.*

Response: Rule 0400-40-07-.03 makes it clear that the definitions in the ARAP rules are applied to this rule chapter and to permits issued pursuant to this chapter. These definitions are not intended to apply to the use of these terms in other contexts. Where these rules do not provide a definition, those provided in the Water Quality Control Act apply. If ARAPs require the use of terms that are not defined in the Act or these rules, the permits can establish definitions.

Comment 7: *Per Rule 0400-40-07-.03 Definition, paragraph (3) ARAP. The deletion of the sentence about conditions that may be included in the permit seems odd. While it may not need to be here in the definitions section, surely TDEC is not saying that they will not include conditions in future permits.*

Response: The commenter is correct that these elements are being removed from the definitions because that is not the appropriate place for establishing the provisions that are required to be included in a permit. As required by Tenn. Code Ann. § 69-3-108(g), ARAPs will continue to include conditions necessary to accomplish the purposes of the Act.

Comment 8: *The definition of "resource values" should address all classified uses.*

Response: The TNWQCA does not allow TDEC to issue permits that cause pollution, which the Act defines as impairment of the designated usages of the waters. The Board agrees with the comment, and is expanding the definition of resource values to cover all applicable classified uses.

Comment 9: *Per Rule 0400-40-07-.03 Definitions, paragraph (8) Constructed Wetland. While this is a perfectly acceptable definition, mitigation for damage to wetlands does indeed sometimes result in the construction of a new wetland where the hydrology will support it. What are these constructed mitigation wetlands then called? Should there be a definition for this included here?*

Response: Generally, these are referred to as mitigation wetlands. This definition expressly does not apply to mitigation wetlands, which will be subject to site protection under these rules.

Comment 10: *Per Rule 0400-40-07-.03 Definitions, paragraph (21) Minimal Impacts. The reworking of this definition removes the concept that there could be a project with "no impact," and replaces it with "no appreciable impact" instead. It can certainly be argued that any work within the riparian zone will cause some impact, positive or negative, temporary or permanent. It raises some concerns, however, that the examples which were given, which are current TDEC policy, have been removed.*

Response: Minimal impact activities are those that cause only *de minimis* degradation even without compensatory mitigation. So, for example, the types of activities authorized by general permits would qualify as minimal impacts because those permits cover activities that cause only *de minimis* degradation without mitigation. The list of examples is removed because there is no realistic way to ensure such a list could be complete given the number of different types of activities that could be authorized by ARAPs.

The term "*de minimis*" is often used informally to describe activities that have minimal impacts. Because the definition of *de minimis* degradation includes both small impacts and larger impacts for which in-system mitigation is provided, the term "minimal impact" is a more appropriate term for activities that cause no appreciable permanent loss of resource values and do not require mitigation.

Comment 11: *Per Rule 0400-40-07-.03 Definitions, paragraph (19) Interflow. Delete it because it isn't used anywhere in these rules.*

Response: The commenter is correct and this change will be made.

GENERAL PERMITS

Comment 12: *Please do not delete the sentence, "All General Permits in effect as of the date of this rule shall continue in effect, and are not revoked by these rules."*

Response: This sentence was based on a previous iteration of the rules and a different set of circumstances. Because the provision for general permits has been in the rules for some time, and because the Division has issued all of its current general permits pursuant to the rules, there is no need to retain this sentence. To be clear, however, the statement remains true even though it is being removed from the rule: nothing in this rule amendment is intended to revoke any existing general ARAPs, which shall continue in effect. The existing general ARAPs are listed in the response to Comment 14 below, and incorporated by reference here.

Comment 13: *In reference to the phrase, of no "appreciable permanent loss of resource value." Is this the new standard to separate general from individual permits. If so, given the other proposed changes in this document about how to determine when "de minimis" applies and how impacts can be mitigated so that there is no net loss of resource value, does the use of this statement here grant permission for impacts that require mitigation to be covered under a general permit? We would oppose that.*

Response: The intent of this language is to make it clear that only activities with impacts below the threshold for requiring compensatory mitigation are eligible to be covered by a general ARAP. These are activities that have

only minimal impacts. Compensatory mitigation requires site-specific determinations, which are not currently available through the mechanism of general permits. This is the reason the rule does not use the term "*de minimis*" degradation with respect to habitats alteration, which includes either minimal impact activities or more than minimal impacts offset through in-system mitigation.

Comment 14: *Rule 0400-40-07-.04(2) contains the following wording: "General Permits for habitat alterations may be issued only for activities that do not result in an appreciable permanent loss of resource values. General Permits may be issued for water withdrawals that cause no more than de minimis degradation." This statement should be removed. There is not a qualifier on the extent of permanent loss of resource values. Some could consider some activities that have historically been covered under a general permit as being a permanent loss of resource values for a small segment of a stream. The broad interpretation of this statement could attract litigation. The following sentence says, "When the Commissioner determines that a category or activity is suitable for coverage by a General Permit, or that substantive modification of existing General Permits is consistent with Tenn. Code Ann. § 69-3-108...". This has been sufficient in the past and should remain sufficient for determining when to issue a general permit.*

Response: General permits cannot authorize more than *de minimis* degradation because they are not subject to site-specific antidegradation review. Although this would be true even without saying so here, the new language will be retained because it makes the requirement more transparent to members of the public, including regulated entities.

General ARAPs result in only *de minimis* degradation, both individually and cumulatively. General ARAPs include provisions that ensure minimal impacts in compliance with this provision, including the following General ARAPs currently in effect: General Permit for Bank Armoring and Vegetative Stabilization; General Permit for Construction and Removal of Minor Road Crossings; General Permit for Construction of Launching Ramps and Public Access Structures, General Permit for Construction of Intake and Outfall Structures; General Permit for Emergency Infrastructure Repair, General Permit for Maintenance Activities; General Permit for Minor Alterations to Wetlands, General Permit for Minor Dredging and Filling; General Permit for Gravel Removal; General Permit for Stream Remediation; General Permit for Surveying and Geotechnical Exploration; General Permit for Utility Line Crossings; General Permit for Minor Stream Grade Stabilization; General Permit for Stream and Wetland Enhancement; and General Permit for Recreational Prospecting.

Comment 15: *Per Rule 0400-40-07-.04 Permits, paragraph (1). The deletion of the footnote at the end of this section makes this section much less understandable. The footnote itself would be better represented by a table that lists the existing general permits and then states which of the three categories (or more than one) apply and what the criteria are which might move a project from a lower to a higher category. It would answer the question of which general permits don't require notification, which require notification, and which require notification and approval and what might move an application from one category up to another. Since these general permits necessarily flow from the authorization in this document, the connection deserves a clear elucidation. This will also greatly help in understanding the next section on general permits.*

Response: As stated in Rule 0400-40-07-.04(2), "The procedures for obtaining coverage under a General Permit shall be specified in the General Permit." The rule language governs the issuance of general permits, while those permits define the applicable requirements. The footnote is deleted because it was the list of general permits that were being retained in the last rulemaking. Because general permits, like any other permits, may change over time it is not advisable to continue to list all of them in the rule. A list of general ARAPs is available online, and can be found by searching for "TDEC general ARAPs."

Comment 16: *Given that the previous list of general permits was dropped from section 1, and neither habitat alteration or water withdrawals were included in that previous list, or are listed on the current list of general permits under ARAPs on the TDEC website, it is curious why language about these two (potentially new?) types of*

general permits are included here. The language about habitat alteration is also notable because it seems to introduce a new standard for a General Permit – no "appreciable permanent loss of resource value." Given that habitat is only one component of a stream assessment, it is hard to imagine an activity that would be so narrow in scope as to only impact habitat, with no impact on hydrology, hydraulics, channel stability, etc. If a new Habitat Alteration General Permit is not anticipated, why include it here? If it is anticipated, the standard being proposed needs to be examined. What does this mean and how is it different from current standards? For that matter, neither in this section or the previous one, is the rationale for distinguishing between general and individual permits stated. While we understand that general permits are designed to cover activities where the impact is considered well understood and acceptable (road crossings, for example, are not always "de minimis," and for a large, wide road, with the use of box culverts can have a considerable impact), such a statement should be made somewhere here, or the reason for having general and individual permits remains invisible.

Response: The Division is evaluating the development of new general permit for water withdrawals, which the rule revision will allow so long as the general permit does not authorize more than *de minimis* degradation as defined in Rule Chapter 0400-04-03. Existing general ARAPs all cover habitat alterations. Limiting conditions in these general permits ensure that their application result in no more than *de minimis* degradation. Please see the response to Comment 13.

PRACTICABLE ALTERNATIVES

Comment 17: *What is a practicable alternative and who decides?*

Response: The term "practicable alternative" is defined in Rule 0400-40-07-.03(23) as "an alternative that is available and capable of being done after taking into consideration cost, existing technology, and logistics in light of overall project purposes." This definition is based on the Clean Water Act Section 404 rules. The applicant proposes and evaluates what may be a practicable alternative, but the Division makes the final determination, subject to permit appeal and review by the Board.

Comment 18: *In Rule 0400-40-07-.04(5) it appears there is a policy change reflected in the wording of the new (b). The current wording in (a) requires the applicant to list practicable alternatives. However, the applicant may mitigate the effects of the activities. The new wording in (b) indicates the Department will have sole authority to choose an alternative submitted by the applicant regardless of whether the applicant plans to use mitigation. This removes mitigation as an option if the Department chooses an alternative regardless of the needs of the applicant. The previous policy required the alternatives to be used in the event no net loss of water resource values cannot be achieved through mitigation. We would support keeping the current wording and removing the new (b).*

Response: The commenter is correct that the intent of this rule change is to require an applicant to select the least damaging practicable alternative (including avoidance) rather than to simply mitigate for impacts as allowed by the current ARAP rules. This is consistent with federal requirements under Section 404 of the Clean Water Act, so this requirement already applies to projects for which that federal permit is required. This change is intended to maintain the integrity of the ARAP program, consistent with the Act's purpose of protecting waters of the state. This change also counterbalances contemporaneous changes in the Antidegradation Statement.

Comment 19: *Several commenters expressed concern about moving away from requirements to avoid and minimize impacts rather than merely compensate for them.*

Response: These comments reflect a common misunderstanding of the previous version of the ARAP rules, which did not require avoidance and minimization of impacts, but instead required only that the applicant consider avoidance and minimization. The only time selection of a less damaging practicable alternative was

required by the previous ARAP rules was when the impact could not be offset by mitigation, in which case a permit could not have been issued anyway. The new rules require all applicants for individual permits to analyze practicable alternatives and to select the practicable alternative with the least adverse impact on resource values that does not result in other significant environmental impacts. This requirement applies regardless of whether mitigation is required.

Comment 20: *The term "practicable" in regards to alternatives, as the word has been redefined is problematic as the applicant will always want to choose the lowest cost option as the most "practicable." Pipe culverts will always be cheaper than box culverts, and box culverts will always be cheaper than bridges, but the more expensive option is more protective of the resource.*

Response: The definition of "practicable alternatives" is not proposed to be changed, has been in the ARAP rules for some time, and is based on the Clean Water Act Section 404 rules. If a higher cost option is practicable and would reduce the loss of resource values associated with the proposal, then it must be applied unless the alternative would cause significant adverse environmental impacts. The Division, not the applicant, determines practicability. This determination is subject to a permit appeal.

Comment 21: *Restore the determination of practicable to the Individual Permit language, in Rule 0400-40-07-.04 (5)(a) & (b) Individual Permits. The commenter suggests TDEC restore the concept of an applicant assessing and recommending practicable alternatives to meet the permit requirements. The Chamber believes this change will add costs both to the preparation of applications and that more costly alternatives will be selected by the Department. Using the Department's own definition of "practicable alternative" (paragraph (23) of Rule 0400-40-07-.03) is that "an alternative is available and capable of being done after taking into consideration cost, existing technology, and logistics in light of the overall project purposes." The commenter strongly believes that the project applicant has a superior perspective to consider all the factors involved, including cost. Paragraph (5)(a) maintains the requirement that an application must include "all necessary technical information for the Commissioner to make a determination"; therefore, the Department has sufficient authority to require an applicant to submit additional information to ensure that the suggested practicable alternative satisfies the permitting requirements. We believe that restoring the determination of the applicant for providing a practicable alternative is in the best interest of an efficient and effective permitting process.*

Response: This proposed rule change is critical to maintaining the effectiveness of the ARAP permitting program and will be retained in the final rule. This rule change counterbalances existing provisions in the Antidegradation Statement allowing projects causing only *de minimis* degradation to avoid the alternatives review that would otherwise be required for waters with available parameters and Exceptional Tennessee Waters. This requirement already applies to all activities that require a Section 404 permit. On balance, this requirement is not expected to impose significant new requirements on applicants.

While the project applicant should have the first opportunity to demonstrate a lack of less impactful practicable alternatives, the Division should have the authority to make the final determination and to require the applicant to avoid and minimize impacts. The applicant may present information that a higher cost design alternative is not practicable, and the Division will certainly consider that information in making its permit determination. The Board does not dispute that an applicant often has a more informed perspective on costs, and the Division will certainly consider – while reserving the ability to question - the applicant's documentation of practicability. If an applicant disagrees with the Division's determination regarding practicable alternatives, the applicant may appeal the permit to this Board.

The above-referenced authority to require additional information is meaningless absent the requirement to select the least impactful practicable alternative.

Comment 22: *The Division should consider making the following revision:*

"Practicable alternative" is an alternative that is reasonably available and reasonably capable of being done after taking into consideration cost, existing uses and investment, existing technology, and logistics in light of overall project purposes. (In making this determination, the Department shall not be bound by any guidance document created for use in its antidegradation analyses.)"

If TDEC is reluctant to change the above definition as requested due to its desire to maintain a certain consistency of this language with Corps federal definitions, then please consider making these changes and then adding it as a new "practicable alternative" definition that would stand alone and be applied by TDEC only to water withdrawal ARAP's -- which are unrelated to Corps definitions, processes, and standards.

Response: The definition will be retained as proposed to maintain consistency with federal requirements. Regarding water withdrawals, applicants should demonstrate that less damaging practicable alternatives are not available.

Comment 23: *Regarding Rule 0400-40-07-.04(5)(b), we object to the carve-out of any government funded road project from the alternative analysis requirement. Alternative locations of a roadway are a critical consideration of lessening impacts to natural resource values and should not be exempted from an alternatives analyses, including options to "avoid" impacts altogether.*

Response: The Board agrees that applicants for public road projects should analyze alternative road locations to avoid or minimize aquatic impacts and present information to the Division demonstrating that such alternative locations are either not practicable or would result in additional adverse environmental impacts. The proposed language has been deleted.

Comment 24: *"Shall consider" would need to be changed to "must demonstrate why the impact can't be avoided and, if not, how impacts will be minimized" to be compliant with Section 404. The proposed rule is not comparable to Section 404 requirements because it does not require rebutting presumptions for the need to fill a wetland or alter a stream.*

Response: Although it does not speak in terms of presumptions, Rule 0400-40-07-.04(5)(b) requires selection of the practicable alternative causing the minimal adverse impact on resource values. This is a requirement to avoid or minimize impacts, and is derived directly from the Section 404 requirements.

Comment 25: *Although we support TDEC's proposed stronger alternatives analyses and required showing of no practicable alternative before granting individual permits, we ask that TDEC eliminate the sentence from Proposed Rule 0400-40-07-.04(5)(b) stating that alternatives analysis for road projects need not include alternative locations. TDEC should strike the sentence creating an exception for road projects. At the very least, we suggest TDEC clarify the requirement as follows: "For public road projects, a state, county or local government agency does not have to submit alternative endpoint locations as part of its alternatives analysis, but the proposal must demonstrate that it has first avoided or minimized impacts to streams or wetlands through alignment and design alternatives. In addition, nothing in this part shall be interpreted to limit the Commissioner's authority to ensure that public road projects comply with applicable state and federal law."*

Response: See response to Comment 23.

Comment 26: *The commenter recommends retaining the alternatives analysis requirement from the previous version of the rules.*

Response: See response to Comment 21.

Comment 27: *It appears that the "practicable alternative" analysis is NOT required for new Tennessee Department of Transportation (TDOT) road projects. There is no justification for creating an exception for a single permit applicant, particularly one which has already had continuous and geographically widespread impacts on water bodies and water quality.*

Response: See response to Comment 23.

Comment 28: *Rule 0400-40-07-.04(5)(b). Revise the sentence saying the alternatives analysis for road projects does not have to include alternative locations as follows, "For public road projects, a state, county or local government agency does not have to submit alternative locations as part of its alternatives analysis, but the Commissioner may require the project to be moved to an alternative location to avoid or minimize impacts to streams or wetlands." This would clarify that the fact that the alternative locations need not be submitted does not imply that the department will never consider them when a proposed location impacts streams or wetlands.*

Response: See response to Comment 23.

Comment 29: *The statement, "For public road projects commissioned by a state, county or local government, does not need to include alternative locations" should be changed to "...may include alternative locations." TDEC should consider adding a statement to address the fact that TDOT should strive to avoid aquatic impacts wherever possible. Additionally, we feel that it's a bad precedent to identify a specific type of project impact in rule.*

Response: See response to Comment 23.

Comment 30: *Rule 0400-40-07-.04(5)(b), the second sentence says that state, county and local governments don't need to include alternative locations in their alternatives analysis. Please clarify that the Division can raise alternative locations.*

Response: See response to Comment 23.

Comment 31: *Rule 0400-40-07-.04(5)(b). Revise the sentence saying the alternatives analysis for road projects does not have to include alternative locations as follows, "For public road projects, a state, county or local government agency does not have to submit alternative locations as part of its alternatives analysis, but the Commissioner may require the project to be moved to an alternative location to avoid or minimize impacts to streams or wetlands." This would clarify that the fact that the alternative locations need not be submitted does not imply that the department will never consider them when a proposed location impacts streams or wetlands.*

Response: See response to Comment 23.

Comment 32: *The exemption for road projects should explicitly state that location issues cannot be challenged during the ARAP permitting process because TDOT, counties, and cities utilize public processes for siting roads. This would leave open the possibility for using the ARAP process for challenging siting if there had been no previous opportunity to raise siting issues.*

Response: See response to Comment 23. Given that the provision has been stricken, this change will not be made.

Comment 33: *Per Rule 0400-40-07-.04(5)(b). The revisions proposed at this subsection may be the most crucial aspect of this rulemaking. While we understand that for habitat alteration projects there is an interest in conforming to Corps standards (even though ARAP's cover more waters and more activities) and the order of preference to avoid/minimize/mitigate, this strict new permitting standard proposed is a poor fit for water*

withdrawal permitting. It should not be required for withdrawals, either new withdrawals or especially for ongoing renewals, if an applicant can show lack of harm to the water body affected from the proposed or existing project despite some small level of measurable or potential impact.

Response: The Board believes that the same general provisions for alternatives analysis proposed for other alterations should also be applied to new or expanded water withdrawals, including avoidance, minimization, and an exploration of practicable alternatives. For renewals that do not increase existing withdrawal limits, the applicant will not be required to "re-justify" an amount of withdrawal and location that the Division has previously permitted. The Division does retain the authority to revisit withdrawal levels if adverse impacts result from the withdrawal or if background conditions change, such as if there were a significant change in the flow regime of a stream.

Comment 34: *The language proposed in Rule 0400-40-07-.04(5)(b) regarding Individual Permits calls for evaluation of "potentially" practicable alternatives. The word "avoid" should be added to this section – "to avoid and minimize the loss of resource values." If "avoid" is omitted here, it appears that an applicant is never held to the standard of documenting why impacts are unavoidable. Also, if the applicant turns in an alternatives analysis and an in-system mitigation plan, and the in-system plan is unreviewable in the draft permit, challenges remain with respect to reviewing "de minimis" declarations.*

Response: The word "minimize" already includes reduction of the impacts to zero, or avoidance. Nonetheless, for the sake of clarity, the term "avoid " will be added. The Division's determination of *de minimis* degradation is reviewable through a permit appeal.

CUMULATIVE IMPACTS

Comment 35: *Per Rule 0400-40-07-.03(9): definition of "Cumulative Impacts" - Please clarify if actions resulting in "cumulative impacts" are the actions of a single permit applicant. The use of the term "past actions" is currently open to interpretation; we recommend more clearly defining the term "past actions" and how it relates to "common plan of development".*

Response: The wording used is intended to apply to both past actions or a single applicant.

Comment 36: *Per Rule 0400-40-07-.04(6)(c)6:* whether the proposed activity is reasonably likely to have cumulative or secondary impacts to the water resource (p. 15). *We recommend removal or definition of the word "secondary."*

Response: The term "secondary impacts" is already in the current rule, and the Division has not proposed to add or change it. This means impacts that are unintentional or indirect, such as impacts that occur upstream or downstream of the direct impact area as a result of the permitted activity.

Comment 37: *The imperative of considering cumulative impacts is nowhere present in this document. While the definition remains in this definition section, the term is completely absent from the document. As consideration of cumulative impacts is explicit in the Clean Water Act, it would of necessity be required to be part of the consideration in issuing permits for impacts under ARAPs. Necessarily, the impacts of previous degrading activities or general human impacts such as development in the watershed (cumulative impacts) would need to be part of assessing "baseline conditions" as defined here. The TN SQT tool, as written and where applicable, would capture the current conditions, but lacks the tracking function that only TDEC can provide for cumulative impacts. Perhaps even more important, there is no guidance here, or in any referenced documents, that set limits for when cumulative impacts can be said to have met the allowable limits (except for chemical pollution), that would prevent the issuance of an ARAP.*

Response: Rule 0400-40-07-.04(6)(c)6 lists cumulative impacts among those factors the Commissioner should consider when evaluating the loss of resource values for the purpose of determining mitigation. The commenter is correct that there is no explicit requirement for the applicant to provide an analysis of cumulative impacts. Because habitat is a narrative, rather than a numeric water quality criterion, the Board has not attempted to set specific numeric limits in rule for how much of various types of alterations can be allowed in a given watershed or segment. The Stream Mitigation Guidelines are expected to offer some guidance on this subject.

COMPENSATORY MITIGATION

Comment 38: *The rules should express a preference for mitigation banks, which reduce the level of uncertainty associated with permittee responsible mitigation.*

Response: The rules are intended to be neutral with respect to the mitigation provider. However, where proposed habitat alterations also require Section 404 permits, the Corps's preference for mitigation banks would apply through the Corps's permitting process.

Comment 39: *Rule 0400-40-07-.04(7)(c)1. Revise sentence as follows, "When practicable, mitigation for wetland impacts should occur within the same US EPA level III ecoregion as the impacts." The "may be based on" language in the proposal is so weak as to be almost meaningless. This clarifies that the preference for wetland mitigation is that the mitigation be in the same level III ecoregion as the impacts, while still allowing it in the HUC 8 or 12 if the same ecoregion is not practicable.*

Response: The Board finds this revision too restrictive to be universally applied. The intent is to make clear that ecoregion similarity is one of several factors the Division may consider when reviewing mitigation sites, and that in some cases closer proximity to the impact and staying in the same ecoregion is preferable to a site further away in the same HUC 8.

Comment 40: *Mitigation needs to be located as close to the impact as possible.*

Response: The Board agrees with the principle that mitigation should be located close to the impact, and Rule 0400-40-07-.04(7)(a)4 reflects this preference.

Comment 41: *The order of mitigation stated in Rule 0400-40-07-.04(7)(a)4 is contrary to the Federal 2008 Mitigation Rule, where the preferential order of mitigation is Mitigation Banks first, In-lieu-fee programs second, and Permittee-Responsible Mitigation (PRM) third. The State's order of preference places an undue burden upon the applicant to potentially provide two mitigation plans, one to satisfy the Corps of Engineers requirements and one to satisfy the States requirements.*

Response: The rule expresses a preference, but not an absolute requirement. One of the goals of this rulemaking is to avoid situations in which an applicant would be required to mitigate twice for the same impact because of direct conflicts between the ARAP rules and Section 404 requirements. However, the State's policy has been, and remains, to promote compensatory mitigation close to the impact site because when mitigation is provided farther away from the impact site, it is more difficult to ensure no overall net loss of resource values. Moreover, the Corps's rules encourage watershed-based mitigation. In order to balance these two policy goals, which are in tension with each other, the rule is expressed in non-mandatory language but allows the Division to develop a multiplier to be applied to mitigation that is farther from the impact site.

Comment 42: *The text says after the prioritization process that multipliers "may" be used as the benefits move further away from the impact site. This should say "will" or "shall" in order to incentivize mitigation that truly compensates for the damage.*

Response: The Division needs some flexibility to meet the widely varied situations that arise in ARAPs, and to attempt to coordinate with Corps permitting.

Comment 43: *Rule 0400-40-07-.04(7)(a)4. Revise the sentence before the listing of five priorities to read, "Mitigation, whether done by the permittee or another mechanism, should occur as close to the impact..." This would clarify that the location priorities apply to banking and in-lieu fee as well as permittee-responsible mitigation.*

Response: The rule language proposed does not specify permittee-responsible, banking, or in-lieu fee mitigation. Therefore the wording is intended to include all mitigation scenarios.

Comment 44: *Please add the following language to avoid taking of private property:*

(c) Mitigation of Wetlands.

...

2. The ratio of acres required for wetland mitigation must be reasonably related and roughly proportional to the impacts and, in general, should not be less than 2:1 for wetland restoration....

Response: The Board believes the wording in subparagraph (7)(a) of Rule 0400-40-07-.04 ("..the applicant must provide mitigation that results in no overall net loss of resource value from existing conditions.") to be adequate to address the commenter's desire for mitigation to be related and proportional.

Comment 45: *Per Rule 0400-40-07-.04(7)(a)4.* The Division will evaluate resource value compensation through the use of an appropriate quantitative assessment or other defensible scientific method, and where applicable will account for temporal loss of resource values. *This provision should also allow use of a "quantitative assessment tool" to determine baseline conditions and suggest using qualitative tools.*

Response: It is indeed the intent of the Board that the Division both allows and encourages the use of quantitative assessment tools for assessing existing conditions. The Board does not intend to make the use of any specific tool mandatory. Some proposed alterations are easily assessed with much less cost and effort. The Division will address this issue in greater detail in the Stream Mitigation Guidelines.

Comment 46: *The rule states that where applicable the Division will account for temporal loss of resource values. TDEC should demonstrate how this will be done so that temporal loss is factored into the value of the mitigation.*

Response: As stated at the end of part (7)(a)4 of Rule 0400-40-07-.04, the Division will use a multiplier added onto to the mitigation ratios to account for significant temporal losses. Specifics on how a multiplier will be applied will vary with the temporal loss.

Comment 47: *There are two kinds of temporal loss and both should be compensated. The first is the loss of resource values from the time of the destruction to the time of the compensatory mitigation completion. If there is a two year time lag, for example, there should be a charge for that lag with funds directed to other kinds of restoration and enhancement projects. The second temporal loss is the loss of full function from the time of the construction until the project is fully functioning. This is often seen in the time lag to repopulate a stream segment with aquatic species, or in the growth required to create a well-rooted bank and riparian zone. It is only after a number of years (5-10?) that it can be determined whether the ecological functions have been replaced. Rule 0400-40-07-.04(7)(a)4. This is a very important addition, the temporal factor as noted above. Either a multiplier could be applied to the debit and additional credits would be needed to balance, or a flat fee calculated for an average delay based on the nature of the damage and restoration time, say two to five years, would be paid to TDEC and used to fund restoration and enhancement on impaired streams on the 303(d) list.*

Response: The Board proposes that the Division will utilize a multiplier, as the commenter suggests, for any significant temporal losses. See Comment #46 and associated response.

Comment 48: *Per Rule 0400-40-07-.04(7)(a)4. How will the Division "apply a multiplier" based on subparts (i) through (v)? Please provide rationale for applying a multiplier? If a multiplier is to be provided and used on mitigation projects, we suggest including the procedure in the Rule.*

Response: The use of a multiplier to require more mitigation for significant temporal losses is more consistent with the concept of 'no net loss' than charging additional fees or other cost-incentives. This requirement applies only when there is an appreciable permanent loss of resource values such that mitigation is required. When mitigation occurs years after the impact, this lag time further magnifies the loss of resource values. Specifics on how a multiplier will be applied will vary with the temporal loss. The Division plans to provide more specifics in the Stream Mitigation Guidelines.

Comment 49: *Regarding Rule 0400-40-07-.04(5)(c), there is no bar to government joining as a co- applicant or a co-holder of a permit and use this status to facilitate a private for profit activity. This is an open invitation to local governments as well as state agencies to facilitate permits which previously would have been denied. Regulations to allow government to pick economic winners and losers is bad public policy.*

Response: The Board concurs with the commenter. Language will be added specifying that only in the case of a public works project may a government entity propose mitigation after a permit has been issued. The Division retains the authority to judge what constitutes unusual circumstances in this context; the intent is that this only be applied in urgent situations and for legitimate public projects.

Comment 50: *The draft regulation fails to acknowledge the EPA rules governing stream and wetland protection under Clean Water Act Section 404.*

Response: While the Board has endeavored to avoid direct conflicts with federal requirements, the ARAP rules do not substitute for the CWA Section 404 rules, which will apply separately to any projects that require a Section 404 permit in addition to an ARAP.

Comment 51: *The term "appreciable" is used in the definition of "minimal impacts". This term is also used throughout the rule to make similar references. This term is not defined in the rule. We assume this term will be applied using the normal and ordinary meaning as defined in the dictionary. If this term will be used broader than the normal and ordinary meaning, the Department should define the term within the rule and make available for public review*

Response: The commenter is correct. It is the intent of the Board that the Division will apply the term "appreciable" in the ordinary and normally accepted meaning. However, the Board is also adding a definition of "appreciable permanent loss of resource values" due to comments received reflecting a lack of clarity about this threshold.

Comment 52: *We recommend that when an applicant provides reasonable justification, e.g. due to small size and location of the HUC-12, why mitigation within a HUC-12 cannot be found then a multiplier should not be added.*

Response: The Board agrees that there are some scenarios where mitigation outside the HUC 12 would not have a multiplier applied. (For example, if an excellent mitigation site is in close proximity and in the same ecoregion but just outside the HUC 12). The wording used in part (7)(a)4 of Rule 0400-40-07-.04 ("Where appropriate...") allows the Division flexibility in applying multipliers.

Comment 53: *Per Rule 0400-40-07-.04(7)(c)2 - "4:1 for wetland creation and enhancement; and 10:1 for wetland preservation". Rule 0400-40-07-.04(7)(a)3, indicates the order of acceptable mitigation methods are prioritized in the following order: restoration, enhancement, preservation, creation. If enhancement and preservation are preferred ahead of creation then one would assume the mitigation ratios for these two methods would be better than for creation. Since wetland enhancement already has some wetland characteristics, the chances of success are much greater than creation; likewise, with high quality wetlands that are in much need of protection, one would assume a much better ratio would be provided. It is suggested that a 2:1 enhancement ratio be considered and a 5:1 to 10:1 range be considered for preservation.*

Response: The commenter makes a logical point, but enhancement and preservation, while more likely to be successful, do not necessarily meet the goal of "no net loss" at a low ratio. For example, the Division cannot claim to have met the no net loss standard if it issues a permit that allows an acre of wetland to be filled, and mitigated for by enhancing and/or preserving the same amount of an already existing wetland. For this reason creation is granted a lower ratio and requirements for monitoring the success of the creation are included in the permit. Preservation is generally acceptable as part of an overall mitigation package, but at a higher ratio. The Division considers the conversion of unique or high quality wetland resources when determining how much, and what type, of mitigation should be required in a permit. A high quality mitigation wetland may, for example, be required to compensate for the loss of a high quality impacted wetland, and no downward ratio adjustment should be made in this situation.

Comment 54: *Per Rule 0400-40-07-.04(7)(a)3:* Acceptable mitigation methods are prioritized in the following order: restoration, enhancement, preservation, creation, or any other measures that are reasonably assured to result in no net loss of resource values from baseline conditions. *We recommend this statement be eliminated or revised to better align with federal rule. Federal rule prefers restoration first, then other methods of mitigation in no particular order:*

Response: With the language as proposed, the rule has laid out a prioritization more specific than the federal rule, but does not conflict with it, since as the commenter points out, the federal rule expresses no priority preference after restoration. This is the intent.

Comment 55: *The goal of the proposed rule changes should focus on providing greater transparency, consistency, and equivalency in the mitigation permitting process. It is the responsibility of the Department to promote a level playing field with respect to all mitigation mechanism providers. Greater oversight should be placed on providers who fail to meet the goals and objects of an approved mitigation plan. Specifically, in-lieu fee (ILF) programs are allowed to pre-sell credits based on a commitment, and often unproven track record, to provide successful mitigation in the future. This not only hurts the environment, it creates an uncertain marketplace holding back responsible and timely economic development and job creation. When advanced mitigation is purchased, but never performed or fails to perform, the Department should review the associated permits and ensure the proper environmental benefits are achieved by another proven provider.*

Response: The Board appreciates the comment, which raises valid issues. However, ILFs are primarily governed under federal rules through the Interagency Review Team, of which the Division is a member. Recent actions by the IRT have facilitated the development of a broader marketplace of third-party mitigation providers in Tennessee. Federal rules require the IRT to secure financial assurances, which should ensure eventual mitigation. The remedy for failed performance of purchased credits, however, generally lies with the ILF provider, not the permittees.

Comment 56: *Per Proposed Rule 0400-40-07-.04(7)(a)1. -- Suggested change:*
The applicant shall provide the Division with a mitigation plan, including <u>but not limited to site selection and control, credit / debit determinations, performance standards, credit release schedule, financial assurance, site</u>

protection, long-term management plan, and monitoring ~~a time schedule for completion of all mitigation measures~~, for approval. To the extent practicable, the applicant shall complete the required mitigation, excluding monitoring, prior to, or simultaneous with, any authorized impacts.

Justification:
It is important all mitigation mechanisms are held to highest performance standards by demonstrating control over critical elements of a valid mitigation plan, as outlined above, and presented to the Division for review. Furthermore, the Division, or other relevant agencies, should hold applicants accountable for any site failures or delays in implementing mitigation projects in a timely and consistent manner.

Response: The commenter raises a good point with respect to site protection. The draft rules had overlooked this requirement, which is routinely applied in ARAPs and is required to ensure that compensatory mitigation sites are protected from later development. Accordingly, the rules will be updated to include an express requirement for permanent protection of compensatory mitigation sites consistent with current practice.

The balance of the measures proposed by the commenter may not be applicable to all mitigation scenarios, so the rule language will not be changed.

Comment 57: *Per Proposed Rule 0400-40-07-.04(7)(a)4(iv) - Suggested change:* projects providing an increase in resource values to degraded streams or wetlands ~~outside~~ adjacent to the HUC-8 in which the impact is located; or ...

Justification:
The proposed change will create greater consistency when determining the service area of a mitigation mechanism. This would follow similar practices used by the U.S. Army Corps of Engineers when permitting mitigation banks or determining the location of a permittee responsible mitigation (PRM). Overall, mitigation mechanism should be given same determination when selecting a service area in order to drive more private investment through the establishment of traditional mitigation banks or choosing the appropriate area for a (PRM). With greater service area certainty, private investment will follow leading to more advanced ecological restoration through the development of mitigation banks, competitive pricing, and a greater supply of credits.

Response: The requested change will not be made. This language is in the current rule, and has not proven to create problems when combined with the Corps's priorities. Specifically, mitigation in an adjacent HUC 8 is a subset of mitigation outside the HUC 8, so the two sets of rules do not conflict.

Comment 58: *Mitigation banks and in lieu fee programs often have several HUC 8 watersheds as a service area; and federal mitigation rule gives preference, in order, to mitigation banks, in lieu fee programs, then permittee responsible mitigation. An applied multiplier to use a bank or in lieu fee program may favor permittee responsible mitigation. If permittee responsible mitigation is favored over banks and in lieu fee programs, then this may discourage mitigation sponsors from developing banks and in-lieu fee programs in Tennessee. In order to keep TDEC's permitting process predictable and ordinary as outlined in the Bill of Rights for Permit Applicants (Tenn. Code Ann. § 69-3-141), we recommend that clarification be provided that TDEC rule is consistent with the preference outlined in the federal mitigation rule.*

Response: While the Board endeavors to avoid any conflicts between state and federal requirements, in order to avoid or minimize appreciable loss of resource values, it is important to keep the mitigation as close as practicable to the site of the proposed impacts. The Division works collaboratively with the Corps and other members of the Interagency Review Team to avoid conflicting requirements, and will continue to do so. Moreover, there is a subset of applications that require ARAPs but do not require Section 404 permits, and in these cases the State's preference for mitigation close to the impact site applies without any potential tension with other rules.

Comment 59: *Per Proposed Rule 0400-40-07-.04(7)(a)5. Suggested change:*
~~All mitigation plans shall include a monitoring and reporting program to document~~ ~~timely achievement of successful mitigation and remedial actions to correct any~~ ~~deficiency.~~

Justification:
This section is unnecessary if the critical elements of a mitigation plan are clearly outlined in the Proposed Rule 0400-40-07-.04(7)(a)1. Applicants should describe their future monitoring events as well as adaptive management (remedial actions) through the mitigation plan submission and approval process. While the Division retains the final authority to determine each critical element of an acceptable mitigation plan, these changes provide an overview of the most important elements and allow an applicant to see them listed in a concise and comprehensive manner.

Response: Monitoring and reporting are critical elements of mitigation and will be retained in the rule as is.

Comment 60: *Per Proposed Rule 0400-40-07-.04(7)(c)1. - Suggested change:*
~~Prioritization of mitigation site selection for wetland impacts may also be based~~ ~~on U.S. EPA Level III ecoregions.~~

Justification:
This section creates confusion with Proposed Rule 0400-40-07-.04(7)(a)4(i) – (7)(a)4(v). All mitigation mechanisms should follow a consistent service territory and be prioritized in manner that minimizes temporal loss when and where available.

Response: There are multiple factors to consider when selecting sites for wetland mitigation, including proximity, geology and ecoregion, and likelihood of success. Wetlands share similarities within watersheds and also within ecoregions. The Board prefers to reserve enough flexibility in the rule to allow for the best mitigation options in each situation.

Comment 61: *Per Proposed Rule 0400-40-07-.04(7)(c)2. - Please confirm whether the ratios listed here are for calculating compensation/impact ratios for impactors or ratios given to mitigation providers for the work they perform on wetland sites.*

Response: These ratios establish the amount of mitigation to be required to offset permitted impacts, depending on the type of mitigation provided. These ratios affect both the permittee and the mitigation provider.

Comment 62: *Mitigation outside of an area that is degraded or removed has no effect whatsoever on water quality and potentially serves to degrade water quality not only the new use area but in a newly developed offset area.*

Response: The rules require, and the Division ensures, that compensatory mitigation results in no overall net loss of resource values. The Division must ensure that an impact does not cause pollution, including downstream impacts. Moreover, the Division recognizes that compensatory mitigation itself is an impact, and imposes measures to ensure these projects have a net positive effect on water resource values.

Comment 63: *One of the proposed rule changes would open the door to disturbance of pristine aquatic ecosystems by developers (known as "exceptional Tennessee waters") as long as they mitigate the damage within a defined nearby area that could potentially be some distance from the impacted aquatic system. This kind of remote mitigation would be inadequate to provide the necessary protection of the system's water quality.*

Response: There are few if any truly pristine (which is usually defined as completely undisturbed by human contact) aquatic ecosystems in TN, and 'pristine' is not part of the definition of Exceptional Tennessee Waters. We also disagree that in-system mitigation is insufficient to compensate for the loss of ETWs. The ARAP rules require consideration of the "conversion of unique or high quality waters as defined in Rule 0400-40-03-.06 to more common systems" as a factor in evaluating a mitigation package. Therefore, an activity that impacts an ETW is going to require more and/or higher quality mitigation to offset the loss of resource values.

Comment 64: *Wetlands filter our water, for drinking water quality, and are home to many unique species. Wetlands should be protected, approval of projects and mitigation should be permitted only when true duplication of habitat can be found within the same habitat/watershed.*

Response: The Board agrees with the commenter, and the language proposed herein is intended to better achieve avoidance, minimization, and mitigation in proximity to the proposed impact.

Comment 65: *Wherever and to the fullest extent possible, TDEC should work to ensure that degradation of streams due to mitigation moving away from the impacts (proximity) is minimized.*

Response: The Board agrees with the commenter and believes the proposed changes strengthen the priorities in favor of proximity.

Comment 66: *Rule 0400-40-07-.04(7)(a) where acceptable mitigation mechanisms are described, it lists PRM, ILF, and mitigation banks but does not specify the hierarchical preference of each mechanism. As such, it is unclear whether the Rule will follow the 2008 Federal Mitigation Rule's hierarchical preference (i.e. mitigation banks, ILF, and then PRM). It seems appropriate to indicate Division preference (or no preference) under this section as it may imply that PRM is the #1 choice since it is listed first.*

Response: These rules do not establish a preference for the type of mitigation provider.

Comment 67: *Per Rule 0400-40-07-.04(7)(a)6:* Mitigation for impacts to Tennessee streams and wetlands shall occur in Tennessee. *We recommend eliminating this wording. Where the goal of TDEC is to assure no net loss of resource value with a watershed prioritization approach, out-of-state mitigation should be allowed regardless of state boundary when proposed mitigation is located within the same watershed or major drainage basin as impacts.*

Response: The commenter makes a valid point. However, the Division has no authority or right of entry outside the bounds of the state of Tennessee, making it difficult to effectively regulate out-of-state sites. Furthermore, the Board and the Division have a responsibility to ensure that no appreciable loss of resource values occurs to waters of the state of Tennessee. If an authorized impact reduces resource values to waters of the state, the offsetting mitigation must be provided in waters of the state.

Comment 68: *Given there is no "scientific" bases for selecting mitigation ratios, language should be added that the mitigation required must be reasonably related and roughly proportional to the resource value lost to assure compliance with the Attorney General guidelines to avoid regulatory takings... Suggested language is underlined.*
Rule 0400-40-07-.04(7)(c) Mitigation of Wetlands.

...

2. The ratio of acres required for wetland mitigation <u>must be reasonably related and roughly proportional to the impacts and, in general,</u> should not be less than 2:1 for wetland restoration; 4:1 for wetland creation and enhancement; and 10:1 for wetland preservation.

*The federal mitigation rule is clear on this issue - Federal compensatory mitigation policy dictates that the amount of mitigation required must be "**roughly proportional with the permitted impacts**, so that it is sufficient*

to offset those lost aquatic resource functions." Compensatory Mitigation for Losses of Aquatic Resources, 73 Fed. Reg. 19,594, 19,633 (Apr. 10, 2008) (emphasis added).

Response: The Board believes the wording proposed in subparagraph (7)(a) of Rule 0400-40-07-.04 *"...the applicant must provide mitigation which results in no overall net loss of resource values from existing conditions"* ensures that the mitigation is roughly proportional with permitted impacts. The ratios established in the rule for wetland mitigation are roughly proportional. An applicant has no requirement to provide more mitigation than needed to achieve 'no overall net loss' of resource values. However an applicant may choose to offer a higher level of mitigation than required by rule.

Comment 69: *The expansion of Rule 0400-40-07-.04(7) introduces a completely new process for determining impacts of projects. Under current rules, TDEC was required to determine under its antidegradation guidance whether there was an appreciable impact on the resource, i.e., that resource values would be lost. This determination then triggered the requirement for documentation that all avoidance and minimization options had been explored, and that mitigation would be required. The application would then be reviewed to ascertain compliance with these requirements, including how the mitigation requirement would be met. The expanded language appears to say this very thing, but that sense of clarity is lost with the final phrase, referencing "baseline conditions." Baseline conditions, as defined in the definition section (not adequately), is based on an assessment of the stream (or wetland). The assessment is of precisely a particular stream segment or wetland and is not generalized to a watershed. Therefore the only way that mitigation could meet the standard in this paragraph is if the mitigation is contiguous to the impact area so that a subsequent assessment of the site would score the same as the original assessment. It is clear, however, from other parts of this document, that acceptable compensatory mitigation need not occur contiguously and that TDEC is willing to accept permanent loss of resource value at a particular site in exchange for an increase in resource value at some other, perhaps quite distant, site. While such mitigation arrangements may sometimes be unavoidable, it cannot take the place of a determination that the degradation is NOT "de minimis" and therefore all requirements of projects that cause degradation must apply, including compensatory mitigation and a documented analysis of options to avoid and minimize as well as socio-economic justifications for the project.*

Response: There is no requirement, express or inherent in these rules, that mitigation must be provided "contiguous to the impact area." The use of the term "existing conditions" in the ARAP rules (substituting for "baseline conditions") simply reemphasizes the current rule that mitigation must compensate for the lost resource values associated with the impact. The Board and EPA have both previously approved the use of in-system compensatory mitigation as resulting in only *de minimis* degradation, appropriately encouraging mitigation close to the impact site.

Comment 70: *We recommend that assessments not be limited to quantitative methodology, but also allow for the use of qualitative assessments. Quantitative assessments are not required in the federal mitigation rule, Compensatory Mitigation for Losses of Aquatic Resources (2008.) The federal mitigation rule allows for several types of assessment methods and does not specifically call out quantitative assessments. For more timely and cost effective mitigation decisions, we recommend the use of either a qualitative or quantitative methodology. Such quantitative methodology, like TDEC's Stream Quantification Tool (SQT), can be costly to implement, labor intensive, and result in a more arduous regulatory process. Other states around Tennessee are currently using a qualitative assessment because permitting and mitigation decisions can be made using a much simpler, rapid, method than a qualitative method to collect baseline data and evaluate mitigation site success. There is concern that specifically calling out 'quantitative' assessment in rule will result in only the use of the SQT. If other assessment methods are truly acceptable there is no need to specially call out quantitative assessment.*

Response: There is no intent on the part of the Board to make the specific use of the SQT or other quantitative tool mandatory. The commenter is correct that there are common scenarios where a much less intensive process may be adequate to assess existing conditions. The Board expects that the Division will express a

preference for the use of the SQT or other quantitative tool for the purposes of mitigation banking crediting and debiting in the Stream Mitigation Guidelines.

BASELINE/EXISTING CONDITIONS

Comment 71: *A number of commenters expressed support for assessing mitigation based on baseline conditions. However, some commenters noted that this term is used in the field of mitigation with a different meaning and asked that a different term be used.*

Response: The Board appreciates these comments and will retain the substance of the proposal. However, to avoid confusion with other commonly-accepted uses of the term "baseline conditions," the term "existing conditions" will be used instead.

Comment 72: *The definition of baseline condition in the ARAP regulations grandfathers in existing pollution contrary to the spirit and letter of the Tennessee Water Quality Control Act where all waters are supposed to be held in the public trust, and that Tennesseans have the right to unpolluted waters, and polluted waters are supposed to be abated, reclaimed and prevent future pollution.*

Response: The commenter correctly, though only partially, references the overall mission statement of the TWQCA, and the Board and the Division indeed have this mission. An applicant proposing an alteration on their property, however, does not. The intent behind this definition is to make clear that the applicant's responsibility for mitigation is not to conduct stream restoration to remediate all past degradation regardless of whether it was associated with the development activity at that site. The applicant's responsibility is to show the Division and the public that the alteration they are proposing, along with past activities associated with the same development, will not cause a violation of water quality standards, nor an overall net loss of resource values.

This principle is reflected in the previous version of ARAP Rule 0400-40-07-.04(6)(c), which required the Department to ensure no lost resource values "associated with the proposed impact" and to determine "the lost resource value associated with the proposed impact and the resource value of any proposed mitigation." The rules have never required an ARAP permittee to provide mitigation beyond that required to compensate for the permitted impacts within the development.

Comment 73: *The rules should better define baseline conditions.*

Response: To avoid confusion with other commonly-accepted uses of the term "baseline conditions", the Board will change to the term "*existing* conditions," meaning the habitat and water quality status of the waterbody in question at the time of the application. These existing conditions are those that are present at the outset of a common plan of development. For example, if a developer undertakes minimal impact activities under a general ARAP, but later exceeds that threshold with additional impacts, mitigation would be required for the entire loss of resource values from the outset of the development work at the site.

Comment 74: *The new definition "Baseline conditions," contains the following language: "other defensible scientific method as approved or determined by the Division." We do not object to this language however, we believe any scientific methods used by the Department to make assessments should be made available for public review. The regulated community depends on private environmental consultants and federal agencies such as USDA for technical guidance. Transparency regarding scientific methods used by the Department ensures consistency between the Department and regulated community when making decisions.*

Response: The situations encountered in Individual ARAPs are widely varied, and it is for this reason that the rules are not more specific as to methods. In addition, new methods are constantly being developed, so to name preferred methods specifically in rule would require a rule change every time a new viable method

became available. Under the proposed requirement for a draft permit and a permit rationale to be made available for public review, the regulated community will be able to review any methodologies proposed by an applicant.

Comment 75: *The stream quantification tool is not appropriate for determining baseline conditions in urban streams.*

Response: Urban streams can indeed be problematic. However, we disagree that the SQT is inappropriate for use in urban settings. By adopting a resource value scoring system which assigns mitigation credit based upon functional value lift from the existing conditions, the Division believes that mitigation opportunities in urban settings will be improved. The rules are being revised to reflect that the Division may set a lower limit on the score that can be assigned to a severely impaired stream so that the goal of no overall net loss is assured. In addition, the SQT is not a requirement, and rules provide for other alternative assessment methods to be proposed by an applicant.

Comment 76: *Exceptional Tennessee Waters (ETWs) have a higher baseline resource value.*

Response: The commenter is generally correct. The purpose of using existing conditions is to require mitigation to offset the loss of resource values. This loss is typically greater for ETWs and Outstanding National Resource Waters than for other types of waters because the quality of the impacted resource values is higher. But some ETWs are identified for reasons other than having high resource values, and these would not necessarily have a higher existing condition level.

Comment 77: *Mitigation should be assessed based on the ecoregional reference stream rather than baseline conditions due to urban stream syndrome.*

Response: Mitigation is intended to compensate for the loss of resource values resulting from a permitted impact. However, the Board is modifying Rule 0400-40-07-.04(7)(a) slightly to clarify that the Division can set a lower limit on existing condition values, recognizing that all streams and wetlands provide important resource values even if some of their designated uses have been degraded. The commenter correctly points out that without this lower limit, an applicant could propose a loss of resource value to an urban stream that exhibits extremely low existing condition scores and provide relatively little mitigation elsewhere to compensate.

Comment 78: *Per Rule 0400-40-07-.03(4) definition of "Baseline Conditions", and Rule 0400-40-07-.04(6)(c) "the Commissioner shall determine the loss of resource values from baseline conditions associated with a proposed impact and the increase in resource values .... " – the commenter suggests replacing "quantitative" with "qualitative". Many of the current protocols are qualitative in nature. If the State is requesting a quantitative approach, then it is suggested that some guidance on which approach the Division will accept would be appreciated.*

Response: Please see responses to Comments #70 and #74. There are some situations where a quantitative methodology will be required (consistency in assessing mitigation debits and credits makes this a necessity). However, the Board agrees that there are many common ARAP scenarios where a more qualitative approach will be adequate for permit decisions.

Comment 79: *I oppose the rule changes that propose setting "baseline conditions" when a developer applies for a permit. Any impacts to the stream or wetlands would be judged based on the conditions present at the time the project is proposed, as opposed to more pristine levels. Such an approach would potentially weaken future pollution limits if the baseline is inaccurate.*

Response: Please see response to Comment #77. The Board agrees that the determination of existing conditions must be accurate, and division staff will review these conclusions.

Comment 80: *We urge that TDEC establish processes and maximize use of all available science and resources to optimize the agency and others' ability to conduct accurate resource value calculations. This should ideally include considerations related to ecosystem service values that may be adversely impacted, like recreational uses, one of Tennessee's primary stream-use classifications, identified for the protection of the public's ability to swim, wade and fish. Regarding baseline conditions, if the revised rules for determination of baseline conditions are approved, we encourage TDEC to test the assumption that permittee-determined baseline assessments are equal to or better than the agency's.*

Response: The rules reflect no assumption that permittee-determined assessments are equal to or better than the agency's. The Division is expected to review such assessments and to make its own determination of what the actual baseline condition is.

Comment 81: *The Rule revision states that baseline conditions are the biological, chemical, bacteriological, radiological, and physical conditions of a stream or wetland as measured by a quantitative assessment tool or other defensible scientific method as approved by the Division. As we understand it, the Stream Quantification Tool has not yet been finalized. TDEC should clarify what other methods are permissible for use and are most appropriate for evaluation of streams, especially those in urban settings.*

Response: Please see the response to Comment #74.

Comment 82: *The introduction of the "baseline condition" definition (0400-40-07-.03) is problematic, as it replaces any consideration of the resource values in a reference stream with those of the stream(s) or wetlands(s) affected by a proposal. Many streams in urban, suburban, and agricultural areas are already listed as impaired for habitat alterations. Many of these alterations have come from legacy impacts (e.g. – land use changes in the watershed) and/or unregulated nonpoint source land management practices (e.g.- livestock or crop production). These are precisely the streams and wetlands under most threat from further degradation by new construction and land use changes.*

Does the new definition of "baseline conditions" suggest that if a stream is already impaired for habitat alteration, that this impairment negates the requirement to even propose mitigation? Does the definition of "significant degradation" (Rule 0400-40-03-.04(29)) and the language under Rule 0400-40-03-.06(2)(c) allow more degradation to a particular urban stream so long as the offset is proposed in the same HUC 8 watershed? In addition, would any entity covered by a Municipal Separate Storm Sewer System permit become unaccountable for existing or new habitat alterations that fall under its jurisdiction simply because the alterations already exit? Urban watersheds provide substantial health, recreation, and aesthetic values to Tennesseans, and any changes to TDEC rules should promote their restoration and enhancement rather than allow additional degradation that is not adequately compensated for nearby.

Response: The Board understands and agrees that urban streams are more likely to be degraded and under threat due to development, which is true regardless of what requirements these rules establish. However, the ARAP permitting program is not the proper vehicle with which to achieve restoration of urban streams: that would effectively require the permittee to compensate for the damage caused by all of us.

Moreover, the Board must reiterate that this is a clarification, and not a substantive change, of the previous rules. Specifically, although the previous rules defined the term "background conditions" in relation to reference streams, that definition was not used again in the rules or applied to determinations of mitigation requirements, so it had no effect whatsoever on permitting.

This introduction of existing conditions was never intended to imply that mitigation would not be required for urban streams. In response to comments on this issue, Rule 0400-40-07-.04(7)(a) is revised to reflect the intent that all streams and wetlands have value and will require at least a minimal level of mitigation for activities causing an appreciable permanent loss of resource values notwithstanding prior degradation.

The definition of "significant degradation" does not require mitigation in the same HUC 8, which is only required for "*de minimis* degradation."

The Municipal Separate Storm Sewer System permit is an NPDES permit authorizing the discharge of pollutants. It does not satisfy ARAP permitting requirements for habitat alterations.

Comment 83: *Because multipliers are being suggested in terms of proximity and temporal loss to ensure proper compensation, we believe there is also a role for multipliers on the debit side as well. 303(d) streams, especially those suffering from "urban stream syndrome" should have multipliers that partially dis-incentivize further degradation, because the loss itself may be minimal due to previous degradation. We know that urbanized streams can be improved, but the straight scoring on resource loss of an additional project may be minimal. This is the potential downside of baseline resource value scoring, using the SQT or other means. Under the current ratio system, the applicant is charged on the number of feet of stream impacted, regardless of its condition. Adding a multiplier would still result in a lower mitigation cost than the ratio system, but not so low that no benefits could be provided.*

Response: The Board agrees with the principle that adequate mitigation should be provided, even to compensate for impacts to a degraded stream. Instead of applying a multiplier as proposed by the commenter, the rules are being further revised to allow the Division to apply minimum existing condition values. The rules have always required mitigation to offset the lost resource values associated with the proposed impact, and although ratios are currently applied, less mitigation is required for lower value streams than for higher value streams.

Comment 84: *The changes make attaining compensatory mitigation easier and cheaper by instituting the use of an untested Stream Quantification Tool for both assessing damage as well as compensating "lift." In describing the use of the tool, it introduces the concept of measuring the damage against the current "baseline conditions" of the resource. Unfortunately the SQT guidance document which was put out for comment earlier in the year and the published TDEC response to the comments, suggested that the tool would not be used for this purpose and that many types of streams could not be accurately represented with the tool. The ARAP document contains no mention of these identified problems or how TDEC intends to address them in using this tool. The streams that are most likely to suffer due to this shift of policy and incomplete thinking are headwaters streams and urbanized streams already on the 303(d) list for impairments. Because their "baseline conditions" under the SQT will score relatively low, the expected compensatory mitigation will be less than under current policy, resulting in a loss to resources. There might be ways to fix this problem of less compensation either by the use of multipliers (mentioned in the document but not fully developed), or in the Stream Mitigation document which has not yet been released, but as written, this ARAP document simply suggest a lowered expectation for compensatory mitigation.*

Response: The ARAP rules do not specifically reference or require use of the SQT. Although it is true that degraded streams will score lower than high quality streams, that outcome is entirely consistent with the long-standing requirement to compensate for the loss of resource values associated with the proposed impacts. The rules are being modified to allow for a "floor" of existing conditions.

Comment 85: *Per Rule 0400-40-07-.03 Definitions paragraph (4) Baseline Conditions. This is problematic for two reasons. The first is that in replacing the previous "Background Condition" definition, it drops the idea of using a "reference stream" instead of the actual stream when the stream has already been degraded. This suggests a*

policy shift to accept degraded streams as "normal," rather than as a priority to restore. The second problem is that the definition leaves open how the Department or the applicant will determine baseline conditions.

Response: In the previous rules, the term "background conditions" was defined, but never used. Therefore, that term had no regulatory effect. As explained previously, there is no policy shift here, just an attempt to be clearer and more transparent.

REFERENCE TO GUIDANCE DOCUMENTS

Comment 86: *Rule 0400-40-07-.04(7)(b). To avoid the potential for a future change in the guidelines document changing the rules without going through the process of amending the rules, make this reference to a version of a particular date, rather than to the most recent version.*

Response: The proposed reference to the Stream Mitigation Guidelines has been eliminated. Instead, several key performance standards were added to the rule. The Division is still expected to proceed with preparation and public notice of a guidance document, to reflect the Division's interpretation of the stream mitigation requirements.

Comment 87: *These rules create new unreviewable powers in TDEC staff through the incorporation of guidance documents.*

Response: The comment is incorrect that use of guidance documents creates unreviewable powers. ARAPs, like other permits, are subject to statutory permit appeal in which the petitioner has the opportunity to demonstrate that the permit does not comply with the statute or the rules. Such an appeal could challenge the application of guidance documents to a specific permit decision. Nonetheless, the proposed rule reference to the Stream Mitigation Guidelines has been eliminated.

Comment 88: *Several comments were received objecting to the draft rule's reference to as-yet-published Stream Mitigation Guidelines.*

Response: The reference to the Stream Mitigation Guidelines has been removed from the rule.

DRAFT PERMITS AND PUBLIC NOTICE

Comment 89: *The proposal to provide a draft permit is a device to cut off antidegradation review. The draft permit idea coming out of this is in fact a device for cutting off anti-degradation reviews, because once you find you've got de minimis and you don't have to have anti-degradation, you just stop the internal process for that as part of the permit. Once you have draft permit, the TN Supreme Court has said that the only route of appeal is to challenge the permit. The permit is issued, it goes into effect and the activity goes on notwithstanding any appeal. Since even the fastest appeals of permits that may raise anti-degradation would take at least 6 months, many projects will have done damage to the waters that are at issue and that will be irretrievable. So, the remedy of antidegradation as something that could really go to the board and be decided adversely to the permit applicant and degradation disallowed has really disappeared as a practical matter under these regulations*

Response: The purpose of a providing a draft permit is to ensure a greater level of transparency for both members of the public and the permit applicant. Moreover, the Antidegradation Statement - both before and after the proposed amendments - combines the public notice and comment period for the purposes of antidegradation and permit review. That is not a change to the rules.

Comment 90: *Under the Proposed Rule 0400-40-07-.04(4)(c), ETW waters which would previously have triggered antidegradation review and an opportunity for public participation in the antidegradation determination need not be identified as such.*

Response: These are rules for public notice of ARAPs, not the Antidegradation Statement, which provides that the antidegradation status should be included in the public notice.

Comment 91: *If Rule 0400-40-03-.06(1)(c) is intended to be a mandatory and universal requirement it belongs in the list of notice requirements in Rule 0400-40-07-.04(4)(c). As written, the public notice posted online will not include this information.*

Response: See response to Comment 90. However, it is the intent that the antidegradation status be included in the public notice that is posted online, as provided for under the Antidegradation Statement.

Comment 92: *Per Rule 0400-40-07-.04(4)(b). We support the proposed changes and improvements about using draft permits, explanatory rationales, and mitigation discussions, so long as these features do not materially slow down the TDEC permitting process for ARAPs or cause Division staff to be unable to meet their duties under the "bill of rights for permit applicants" statute in Tennessee.*

Response: The time requirements that the Division must meet in permitting reviews will remain the same under these rule changes. Nothing in these proposed changes will affect the Division's ability to comply with the bill of rights for permit applicants because no additional steps are being added to the process.

Comment 93: *Per Rule 0400-40-07-.04(4)(d). We support the elimination of the newspaper publication of notice by the applicant as burdensome for many small applicants and redundant given modern forms of electronic notification and communication (and given retention of the site signage requirement).*

Response: The Board has retained a newspaper notice requirement to better ensure that local residents, who may not be on the Division's notification lists, are provided notice.

Comment 94: *We support removing many of the requirements for public notice in Rule 0400-40-07-.04(4)(c). Making the public aware of more information on the Department's website through part (4)(c)5 of Rule 0400-40-07-.04 will remove burdensome requirements in the public notice process*

Response: Thank you for your comment – please see previous response to Comment #93. It is the intent of these rule revisions to provide for a more efficient and transparent process. A number of the requirements in subparagraph (4)(c) of Rule 0400-40-07-.04 were removed from the public notice document because they will be incorporated into the draft permit instead.

Comment 95: *Per Rule 0400-40-07-.04(4)(f). We support the change proposed that would encourage interested persons requesting public hearings to do so as soon as possible in the process.*

Response: Thank you for your comment. The Board is aware aware that sometimes, members of the public deliberately wait out the clock before requesting a public hearing for the purpose of delaying permit issuance, which is why this change is being made.

Comment 96: *To reduce the timely discovery of proposed activities which will, by definition, cause "appreciable permanent loss of resource values" in a community the revised rules eliminate the requirement that notices of a completed application be summarized in a Public Notice published in a local paper at the applicant's expense. (Revised ARAP Rule 0400-40-07-.04(4)(d)2.)*

All that is left is email notice to those who have previously requested such notice. In your response to comments please tell us how many subscribers there are for notices of ARAP permits. The email notices are required by Tenn. Code Ann. § 4-29-120 (Tennessee Governmental Entity Review Law).

Response: See response to Comment 93.

Comment 97: *The tiny 8½ by 14 inch signs which TDEC provides to applicants are a farce. To make sure that they are useless the proposed regulations no longer require that they be "legible" which suggests readable but only "visible." There is no requirement that a sign be readable. There is no requirement that the proof of posting photos show the sign as it would be seen from an actually accessible vantage point from which it is safe for an observer to occupy given the traffic conditions, nearby construction or other factors which could make stopping to actually read or photograph the sign unsafe or infeasible.*

Response: The Division provides blue signs that are significantly larger than 8½ by 14 inches. These signs are modeled on land use notice signs commonly used by municipalities for local zoning issues. While a person driving by on a busy street may not be able to read the words on the sign at 40 mph, most people understand that the sign indicates a proposed development of some sort and can figure out how to find a way to read the sign if they want to learn more. Obviously, sites vary significantly in their visibility and safety of access. Often these factors are offsetting – a busier site will result in more people seeing the sign, while a less well-travelled site will often be safer to access. But, it is important that the signs be posted at the site to fulfill their intended function of notifying local residents who may not be on the Division's email notice list.

Comment 98: *Only 30 calendar days for comments is provided, a very short time for agencies which should review hundreds of permit applications each year if TDEC is to have the benefit of input from TWRA, U.S. Fish and Wildlife which administers the Endangered Species Act and TVA. Local government environmental and stormwater managers will have only a few days to review a permit that may be as much as 100 pages long for major projects which may affect large acreages and have several streams and wetland impacts.*

Response: These rules seek to balance competing priorities: achieving timely permit processing as required by the bill of rights for permit applicants while ensuring effective public notice. Thirty days is a very common permit comment period for the Department, but the Division also may allow more time for complicated projects. Moreover, when a proposed project is known to be of particular importance to a specific government agency, the Division will often have communicated with that agency prior to the formal public comment period to determine how to address those concerns in the draft permit, especially if threatened or endangered species are potentially present.

Comment 99: *The draft regulations do not require a permit application to be posted to the Water Resources Permits dataviewer at any point. The regulations should require posting of the application and other documents and email and hard copy communications no later than the working day following receipt of the permit application fee. TDEC is rightly proud of the "Waterlog" and it should be made widely known as a timely source of detailed information which is proposed to be omitted from the email notices of permit applications as well as complaints, inspections, etc.*

Response: The Division's intent is to post permit applications to Waterlog in a timely manner. The Division does not have the resources to ensure that applications will be posted within a day, especially mail hard copies. The Board appreciates the comment about the effectiveness of Waterlog, and expects that the Division will continue to publicize the availability of this resource.

Comment 100: *In all permitting scenarios (general and individual), we urge that TDEC maintain the greatest level of transparency and provide satisfactory opportunities for comment through the permitting process. This should include providing full disclosure about potentially impacted waters (the scope of the project, location, purpose of*

the proposed activity, the watershed, and description of the condition of the impacted waters), and antidegradation protection and mitigation, at opportune times (prior to final determinations) in order that issues related to comments can be considered before permits are issued.

Response: The Board agrees that transparency and opportunity to comment is important. The list of items to be included in a separate public notice of an individual ARAP is trimmed down in these rules because equivalent information will be included in the new draft permit and rationale. As a result, the public will actually be given more, and better quality, information about exactly what is being proposed and how the Division derived the proposed conditions of the permit.

For general permits, the opportunity for public notice and comment is provided in the issuance of the general permit. Although the Division also posts information about requests for coverage under general permits in Waterlog, no public notice is required.

Comment 101: *The proposed language under 0400-40-07-.04 suggests that only in those cases where "appreciable permanent loss" will occur will the draft permit put on public notice to explain how the mitigation is sufficient to achieve no net loss. The proposed language does not appear to support that TDEC's, or the permit applicant's, proffered in-system mitigation plan is subject to review as part of a draft permit issuance declaring "de minimis" impact. All proposed mitigation options and rationale should be subject to public review.*

Response: Public notice is required for all new or expanded individual ARAPs, regardless of whether mitigation is required. If mitigation is required, the rationale will explain how both the "debits" and the "credits" are determined to demonstrate that there will be no overall net loss of resource values. There are limited situations for urgent public projects where this may not be possible, so the public notice will include information defining how much mitigation will be required. If an in-system mitigation plan is proposed prior to the public notice, it will be discussed in the rationale and the draft permit. However, in order to retain the ability to meaningfully respond to comments, this can be changed between the draft permit and the final permit without additional public notice as expressly authorized by Tenn. Code Ann. § 69-3-105(i).

Comment 102: *Per Rule 0400-40-07-.04(4)(a)2: ....For activities that are projected to have only minimal impacts to ~~state waters~~ streams or wetlands, which can be readily addressed, the Commissioner may utilize a twenty (20) day public notice period. We recommend clarifying "minimal impacts" as they relate to Individual ARAPs. Minimal impacts are normally associated with General ARAP conditions. TDOT also recommends that government agencies providing infrastructure facilities to the public be allowed to use the 20 day public notice periods. This will save the citizens of TN time and money.*

Response: This is a long-standing provision of the rules that has rarely been used. This provision should be applied where an activity is so small that it does not require mitigation, yet it does not fit into any of the existing general permits.

Members of the public often have a great interest in public infrastructure projects, and these projects sometimes cause significant impacts. The 20-day public notice process is intended to be used rarely and to apply only to truly minimal impacts. However, some public infrastructure projects that do not require mitigation may appropriately have a 20-day notice period.

Comment 103: *Rule 0400-40-07-.04(4)(a)2. This part allows ("may") the Commissioner to have a 20 rather than 30 day public notice. Where and how in the application process does the applicant learn about this option and apply for it?*

Response: If a permit writer believes that the abbreviated public notice process may be appropriate for a particular proposal, the permit writer will discuss the issue with the permit applicant. Again, this notice period is not intended to be used commonly.

Comment 104: *Per Rule 0400-40-07-.04(4)(f): .....* The Commissioner will distribute notice of the public hearing as set forth in part (d)1 of this paragraph, and by publishing in a local newspaper. *We support elimination of the requirement for publication in newspaper. We recommend removing the referenced sentence.*

Response: The express requirement to provide a separate newspaper notice for the public hearing was removed from the rules. However, the rule provides that the notice of hearing shall be distributed at least as widely as the original public notice.

Comment 105: *In paragraph (2) of Rule 0400-40-07-.04 (General Permits) and paragraph (4) of Rule 0400-40-07-.04 (Public Notice and Participation), it is unclear to us whether activities covered under Aquatic Resource Alteration General Permits now require a public-notice period as part of the permitting process, or whether the public-notice requirement still applies only to activities that require coverage under an ARAP Individual Permit. Could clarification be made of these sections?*

Response: Rule 0400-40-07-.04(2) establishes the procedures for providing public notice and comment for issuance of general permits. The reference to subparagraph (4)(c) of Rule 0400-40-07-.04 only identifies what information needs to be included in the public notice of the general permit. The "location of the state waters" for a general permit would be statewide, or a smaller area if the general permit has limited geographically applicability. This public notice requirement applies only to the general permit itself, and not to applications for coverage under the general permit.

Rule 0400-40-07-.04(4)(a) begins, "An ARAP individual permit or a § 401 certification requires the issuance of a public notice." Accordingly, the requirements in Rule 0400-40-07-.04(4) do not apply to applications for coverage under a general permit.

WATER WITHDRAWALS

Comment 106: *Rule 0400-40-07-.04(5)(d). I understand that the intent of the first sentence is to allow for general permits for minor withdrawals. Therefore I would revise it to read, "Unless authorized by a general permit, an individual permit is required for water withdrawals which will or will likely result in alteration of the properties of the source stream."*

Response: Paragraph (5) of Rule 0400-40-07-.04 concerns only individual permits. The last phrase of this provision limits it to withdrawals that result in greater than *de minimis* degradation, so general permits are not an option in this case. To be clear, water withdrawals that are subject to general permit coverage do not also need to obtain an individual permit.

Comment 107: *In many ways the ARAP rules do not fit well with how TDEC could best process the infrequent but highly important applications it receives for water withdrawal permits due to a withdrawal having an actual or potential impact on surface water quality by removal of a portion of stream flow. For example, having ARAP definitions or terms match what is used by the Corps in Section 404 permitting may be helpful in TDEC Section 401 water quality certifications and even in TDEC's independent ARAP permitting of physical alterations in state streams and wetlands. However, use of the federal language may not relate to separate water withdrawal-only ARAP's and can lead to unintended negative consequences for those applicants.*

Response: This comment illustrates that the impacts to resource values caused by water withdrawals are measured differently than physical habitat alterations for which mitigation can offset impacts. Water

withdrawals can affect resource values for long segments of rivers or streams. As stated in the rule, protection of resource values will be accomplished through maintenance of flow levels below which no withdrawal may occur together with maximum withdrawal rates.

Water withdrawals are akin to NPDES permits, in that assimilative capacity can effectively be quantified and regulated through a permit. Because these regulated water withdrawals do not result in the same type of resource loss as wetland fills or stream alterations, compensatory mitigation is not required for water withdrawals.

Comment 108: *Per Rule 0400-40-07-.03(4): We strongly support the revision proposed to use "Baseline Conditions" rather than more amorphous "Background Conditions" as the realistic reflection of the condition of a stream or wetland at the time that a project is proposed. It should also be clarified that (1) for an ongoing water withdrawal coming up for 5-year ARAP renewal, the "baseline" includes the permittee's existing water withdrawal, and only if withdrawal rate changes are proposed by the renewal applicant will that be considered a "new or increased" water withdrawal; and (2) in addition to citing the TDEC quantitative assessment tool for measuring the conditions of the resource or another "defensible scientific method" approved by TDEC, the Division should clarify that methods used by existing permittees and approved by the Division in the past may be among the other methods deemed approved going forward for use in renewals of the same water withdrawal permits. Wetland and habitat measurements and resource scoring tools are not the only context for determining "baseline conditions" in ARAP permitting because ARAPs include regulated water withdrawals and not just habitat-altering development projects.*

Response: The Board agrees with the commenter in principal. However, the methods proposed in a specific ARAP situation to assess existing conditions may not necessarily be deemed appropriate just because that method was utilized and approved in the past. New methods and better information may dictate a different approach moving forward.

Comment 109: *Per Rule 0400-40-07-.04(2). We strongly support the Division's efforts to create and adopt a reasonable General Permit for new water withdrawals that rise to the level of requiring an ARAP but involve no more than de minimis degradation. At the same time, we reserve the right to comment on the details of any such draft General Permit whenever it appears for public review.*

Response: The Board appreciates the comment. Any general permit would be subject to public notice and comment and anyone may submit comments.

Comment 110: *Subparagraph (5)(d) of Rule 0400-40-07-.04. I'm concerned about the exemption for water withdrawals that result in no more than de minimis degradation not needing a permit. As we talked about earlier, de minimis still needs a permit. The statute requires activities that result in alterations; it's still going to be an alteration even if its de minimis. So it's taking it out of the anti-degradation realm into the permitting realm which I think is a problem.*

Response: This addition is being made in light of the new provision in Rule 0400-40-07-.04(2) allowing for general permits for water withdrawals that cause no more than *de minimis* degradation. In either case, a new or expanded water withdrawal would require a permit: the distinction is whether that is an individual permit or a general permit.

Comment 111: *Per Rule 0400-40-07-.04(4)(a)3. We strongly support this proposed amendment: for a "no change" water withdrawal ARAP renewal, one that requests simply a continuation of the previously permitted activity on the same terms, no new public notice should be necessary or required. It should also be clarified that in such "no change" permit renewals, since no new terms are proposed, there is nothing that can be appealed by any party except for any new terms that TDEC might add or change (or deny) on its own initiative*

in the renewed permit. Likewise, a "no change" water withdrawal ARAP renewal is not a "new or increased" water withdrawal proposal. Thus, it should not be subjected to or required to meet antidegradation analysis if the original permitted withdrawal satisfied such analysis, even if the ongoing conditioned water withdrawal to be renewed and continued is at a level that the Division would otherwise deem to be above de minimis degradation.

Response: The Board agrees that the renewal of a previously authorized water withdrawal does not represent a new or increased withdrawal, and therefore no new antidegradation analysis would be required. If there is no public comment period, then no one other than the permittee would have standing to appeal the permit renewal pursuant to Tenn. Code Ann. § 69-3-105(i).

Comment 112: *Per Rule 0400-40-07-.04(5)(d). We support retention of the water withdrawal provisions stated here and the addition of monitoring and reporting requirements to ARAP's, when applied consistently, as the Division has already been doing for many permits.*

Response: Thank you for your comment.

Comment 113: *The Rule states that a [individual] permit is required for water withdrawals which will or likely will result in alteration of the properties of the stream and more than de minimis degradation. This suggests that there are rivers and streams where withdrawals would not have a discernible impact and individual permits would not be required. What is the threshold for assuming impacts? How does TDEC account for multiple withdrawals on a single stretch of stream or in a river system? Is this based on minimum flow conditions for each stream? It also states that monitoring and reporting requirements may be established to ensure and document compliance with permit conditions. If they are not required, how will the permit be enforced?*

Response: The threshold for evaluating impacts for water withdrawals is a numeric comparison of the rate of withdrawal to the rate of flow in a river or stream. A single water withdrawal will be considered *de minimis* if it removes less than five percent of the 7Q10 flow of the stream. Multiple authorized withdrawals are considered *de minimis* if they use 10 percent or less of the 7Q10 flow.

The Division may issue a permit with no monitoring and reporting where other assurances exist. This typically involves a nonadjustable pump rate and intake design where the permit limits of minimum instream flow and rate of withdrawal cannot physically be non-compliant without structural modification.

Comment 114: *Under the "General Permits" proposed language, we note that the standards for what constitutes de minimis degradation for water withdrawals is also unclear. Does this mean a substantial water withdrawal in one location that is offset by increasing discharges in another location constitutes a "de minimis" impact and could, therefore, be covered by a General Permit? The same question is asked for other types of habitat alterations – does a submitted in-system mitigation plan equate to "de minimis" and then allow an activity to be covered under a general permit?*

Response: The rule was clarified to refer back to the definition of *de minimis* degradation for water withdrawals and the water quality standards. Proposed impacts cannot use mitigation to become eligible for an ARAP general permit. Mitigation requires an individual ARAP.

Comment 115: *Per Rule 0400-40-07-.04(7). Mitigation in these rules seems to relate almost entirely to habitat/stream/wetland physical alterations. We believe that TDEC should consider adding mitigation methods whereby a proposed new or increased ARAP water withdrawer can have its degradation status reduced to de minimis up front by use of off-setting gains to the resource in other ways, even if a water withdrawal under a properly conditioned permit typically does not result in appreciable permanent loss of resource values. Other than reducing a proposed withdrawal to 5% or less of the stream's 7Q10 low flow (a very strict standard for what*

is de minimis), or adding new compensating water flows to the stream from some other source, typically no realistic avenue exists for water withdrawers to use up-front mitigation for this purpose as done by ARAP applicants proposing habitat alterations.

Response: The water quality standards apply different definitions of *de minimis* degradation for water withdrawals and habitat alterations because the former can be easily evaluated numerically. The case law affirms the same numeric limitations for NPDES permits for discharges, so the standard is well-supported as constituting *de minimis* degradation. The addition of water upstream could result in *de minimis* degradation as defined in those rules.

Comment 116: *The modification of Rule 0400-40-07-.04(7) implies that there is a water withdrawal rate that would have a "de minimis" impact and would therefore be covered under a General Permit, hinted at in paragraph (2) of Rule 0400-40-07-.04. Obviously, this rate would be dependent on the size of the stream and the time of the year, with the possible exception of the Tennessee and the Cumberland Rivers. In any case, the state has an interest in monitoring withdrawals in order to ensure adequate drinking water in drought years, so all withdrawals above a certain volume level should require at least notification.*

Response: The Division is contemplating the development of a general permit for water withdrawals that cause no more than *de minimis* degradation, which is a term defined in the Board's water quality standards as a percentage of the 7Q10 low flow of a stream. Accordingly, the upper threshold for the general permit will be based on the size the stream and drought conditions.

In addition, any permit for water withdrawals would need to contain the necessary provisions and conditions to be protective of all types of waters under all hydrologic circumstances, including drought.

At present, the division believes that there are certain withdrawals such as individual residential landscape irrigation from large lakes that should not require notification. In other cases, such as long term water supply withdrawals that are nonetheless *de minimis*, notification would be required.

Comment 117: *Rule 0400-40-07-.04(5)(d) on water withdrawals. Please make the following changes:*

An Individual Permit is required for water withdrawals which will or will likely result in alteration of the properties <u>of a stream or wetland</u> and will result in more than de minimis degradation.

1. *Persons proposing to withdraw water from waters of the state in a manner which will or will likely result in an alteration of the properties <u>of a stream or wetland</u>, <u>shall file an SS-7037 (September 2017) RDA 1693 14</u> application with the Division which includes the following minimum information:*
   (i) proposed withdrawal rates and volumes;
   (ii) proposed withdrawal schedule; and
   (iii) flow data of the affected stream (if free flowing).

2. *Where a permit for water withdrawal is required, the Commissioner shall establish permit conditions which are protective of the resource values <u>of the affected stream or wetland.</u> These conditions may include flow levels below which no withdrawal may occur. The Commissioner may also establish a maximum withdrawal rate in order to maintain the natural flow fluctuation characteristics of the affected stream. Monitoring and reporting requirements may be established to ensure and document compliance with permit conditions.*

Response: The rule has been modified as requested, except that it does not refer to a specific application form. Although application forms do not change frequently, the Division needs to be able to use new forms without amending the rules.

PERMIT APPEAL, RENEWALS, AND MODIFICATIONS

Comment 118: *Rule 0400-40-07-.04(9)(d)3. This looks like language that was copied and pasted from a provision addressing permit appeals. My suggestion is to delete part (9)(d)3 and just have the two options of (9)(d)1 and 2. Although an oral comment should be a basis for someone to be aggrieved, as provided by (9)(c)2, I don't think it is advisable for the basis of the appeal to be an oral statement so I wouldn't include something like (9)(c)2 in (9)(d)3. Since the department shouldn't be making changes except in relation to a comment, I don't think it is necessary to allow an appeal to be made on the basis of a change made after the public hearing.*

Response: We agree that the provision in Rule 0400-40-07-.04(9)(c)2 should be eliminated and the rule is changed accordingly, and additional changes are made to further define appeal requirements. It is very difficult to track "other direct communication," and an interested member of the public could qualify under subparagraph (9)(c) by sending a simple email or brief letter to the permit writer expressing concerns about the project. The provision in (9)(d)3 of Rule 0400-40-07-.04 is based on the statutory permit appeal provision in Tenn. Code Ann. § 69-3-105(i), which authorizes an appeal based on material changes between the draft and final permit. This provision is important if, for example, the Division makes a change in response to a comment by one party, but a different party objects to it.

Comment 119: *Per Rule 0400-40-07-.04(9), we request that TDEC alter subparagraph (b) here to read as follows:*

"For permit modifications, <u>and for permit renewals</u>, only those terms that were the subject of the modification, <u>or that were changed (or were proposed for change but denied) in the permit renewal compared to the preceding permit</u>, may be appealed."

This clarification and refinement would further serve to allow "no change" ARAP permit renewals, such as for ongoing compliant water withdrawals, to proceed forward quickly, smoothly, and fairly without undue use of Division resources to "reinvent the wheel" in each such circumstance. At the same time TDEC would retain flexibility to adapt the terms and conditions in renewal permits to changed circumstances if and when necessary, and parties would retain the right to contest such changes.

Response: The Board agrees that for habitat alteration ARAPs, only terms that are changed from the prior permit should be appealable. This is especially true given that in most cases, the alteration will have already occurred during the original 5-year term and all that remains is mitigation and monitoring. Under these rules, there is no public comment period for a no-change renewal of a habitat alteration ARAP. Therefore, third parties would not have standing to appeal. The Board does not agree that a permittee should be allowed to appeal the original mitigation provisions in a renewal permit.

Accordingly, the Board will add language to the rule limiting appeals of permit renewals for habitat alterations to conditions that have been changed from the preceding permit.

Comment 120: *Per Rule 0400-40-07-.04(8)(b). Renewal of permits is not required for one-time alterations such as construction, as long as the alterations, mitigation, and monitoring are completed within the time limit established by the permit. Any permittee that has not completed the alteration authorized by the permit, or the mitigation and monitoring required by the permit must apply for renewal at least ninety (90) day prior to the expiration date.*

This issue of re-applying for a permit for the mitigation and monitoring would only apply in the instance of PRM. If the permit that was issued to impact the stream or wetland has expired then, likewise, the mitigation permit has expired. This scenario, in essence, requires the applicant to go through the permit process again, including public notice expense, and also requires the resources of the Division staff to be used for a permit action that was

previously approved. Typically permits are valid for a period of five (5) years, but almost every mitigation project takes longer than five (5) years to complete the construction and monitoring. The Division should consider, in the instance of PRM that the permit duration be extended beyond five (5) years or for the anticipated length of the required mitigation monitoring. This would make the permit process more streamlined and less burdensome on both the applicant and the State.

Response: The proposed change cannot be made because Tenn. Code Ann. § 69-3-108(g) limits the permit term to five years. However, we recognize that for ARAPs, the authorized impact typically will have already taken place during the first five-year term and all that remains to be regulated is mitigation and monitoring. This is why the rules allow no-change renewals without public notice.

Comment 121: *An ARAP is not required for mitigation monitoring actions. We recommend that the ARAP life be extended to include the mitigation monitoring period or that an ARAP extension process be developed to specifically to address post-construction mitigation monitoring.*

Response: See response to Comment 120.

Comment 122: *There is no reason that the "permit evaluation criteria "should be revised to delete: ~~"Permits for activities that have been completed are not subject to modification. If a modification results in a less restrictive permit, then public notice and opportunity for hearing must be given prior to modification."~~ This invites and allows modifications which go undisclosed contrary to the transparency expected of a state agency and allows potentially harmful permit modifications as permit writers allow modifications which may only appear in the Waterlog based upon a simple but unreviewable assertion that a modification is "less restrictive".*

Response: The referenced statement was contained in Rule 0400-40-07-.04(6)(b), a section addressing modification, suspension, or revocation for cause. The deleted language does not make sense in that context. Rule 0400-40-07-.04(4)(a)3 addresses public notice for renewals and modifications. The following sentence will be added to the end of that rule for clarification, "Otherwise, a renewal or modification would require public notice."

Comment 123: *Per Rule 0400-40-07-.04(1)(a): ....A person must file an application for an Individual Permit or for a § 401 Water Quality Certification with the Division, in accordance with paragraphs (3) and (5) of this rule, to implement any activity requiring an ARAP that is not authorized by a General Permit. ~~All General Permits in effect as of the date of this rule shall continue in effect, and are not revoked by these rules.~~ (p. 10). We recommend that the last sentence remain in rule. Removal of this sentence has the potential to impact an excessive number of ARAPs already issued for TDOT projects that are currently under construction.*

Response: See response to Comment 12. Current general permits remain in effect, notwithstanding this amendment.

JURISDICTIONAL WATERS

Comment 124: *The Chamber supports the change in terminology from "waters of the state" to the more specific phrase "stream or wetland" to more accurately represent the scope of the aquatic resource alteration regulatory framework. The terms stream or wetland have a common understanding and will lead to a better understanding of when parties should pursue the ARAP permitting process. Likewise, the Chamber supports the removal of the references to "wet weather conveyances" instead relying on the Tennessee statute in Tenn. Code Ann. § 69-3-108(q) to serve as the governing text for these limited drainage features.*

Response: Thank you for your comment. Given that alterations of wet weather conveyances are permitted by statute, the Board agrees that the new wording is more accurate.

Comment 125: *Provide Clarification on the Exception under Rule 0400-40-07-.04(3) Section 401 Water Quality Certification. This portion of the rule has been substantially rewritten to clarify the 401 certification process. The final sentence describes activity that will not require an ARAP and reads as follows.*

"If the proposed activity does not require an ARAP, the applicant for a federal license or permit may obtain a § 401 certification by submitting a copy of the federal application to the Division and a request for a § 401 certification."

We recommend providing a footnote to provide examples of activities, described in the previous sentence, that would qualify for the exception from an ARAP. It should be noted that the purpose of the 401 certification is for the State to certify that the proposed federal activity does not violate state water quality standards. Since wet weather conveyances have no established uses, certification appears to be a formality, and we would recommend that the rule be amended to state that an approved wet weather conveyance hydrologic determination either expressly granted or waived in accordance with the procedures in this chapter constitutes a certification and/or waiver of a requirement to obtain such certification under the Clean Water Act, 33 U.S.C. 1341(a).

Response: It is not practicable to specifically list activities that would qualify under this clause because the Corps periodically revises its nationwide permits, and then rule revisions might be required to update Tennessee's list of activities. Also, unforeseen situations could arise that require a Section 401 certification.

The State will retain the specific authority to make Section 401 certifications. Wet weather conveyances must be altered in accordance with the requirements of Tenn. Code Ann. § 69-3-108(q). If not, the alterations could result in violation of Tennessee's water quality standards downstream of wet weather conveyances.

Comment 126: *It is unclear whether the rules intend to exclude jurisdictional waters other than streams or wetlands from the requirement to obtain an ARAP.*

Response: Tenn. Code Ann. § 69-3-108(q) establishes that ARAPs are not required for wet weather conveyances. The intent is to conform the rules to the statute. The definition of "stream" includes any surface water that is not a wet weather conveyance or a wetland, which would include lakes, reservoirs, ponds, springs, seeps, and other surface waters. The ARAP rules do not apply to groundwater, which is regulated through other mechanisms such as underground injection control or state operating permits.

Tennessee does not define "jurisdictional waters," which is a term more applicable to the Clean Water Act. There is a possibility that waters may be jurisdictional under the Clean Water Act such that a Section 404 permit is required, but are wet weather conveyances not subject to ARAP requirements.

Comment 127: *Per Rule 0400-40-07-.01(1), we strongly support the clarifications being made here, including the "stream or wetland" applicability reference, and the "resource value" references subject to the definition thereof appearing later*

Response: Thank you for your comment.

Comment 128: *Per Rule 0400-40-07-.04(4)(c). The location of the state waters impacted by the proposed activity. Section (4)(a)2. Replaces "state waters" with "streams or wetlands". Should this reference to "state waters" be changed to read "streams or wetlands" to be consistent?*

Response: The proposed change will be made.

Comment 129: *Per Rule 0400-40-07-.04(6)(c)1. "Direct loss of stream length, water, or wetland area due to the proposed activity" - to be consistent should "water" be deleted and just use reference to stream or wetland?*

Response: The use of the word 'water' in this sentence was intended to refer to loss of flow, or natural water volume. The Board will revise the language to "flow" make this intent more clear.

Comment 130: *After reviewing the document, it is unclear to me whether or not the purpose of replacing waters of the state with stream or wetlands if that intent was to not include jurisdictional waters that aren't a stream or wetland. So I'm wondering if an impact to a jurisdictional water that isn't a stream or wetland would require a permit and if so, what that mitigation would require.*

Response: The intent of the language change is to exclude wet weather conveyances, as provided for by the General Assembly in adopting Tenn. Code Ann. § 69-3-108(q), and to clarify that ARAPs are not required for alterations to groundwater. See Response to Comment 126.

Comment 131: *Since the stream definition which is included says it's not a wet weather conveyance, the definition of wet weather conveyance should not have been deleted, though it certainly could be updated to match current definitions.*

Response: The term "wet weather conveyance" is defined in the Water Quality Control Act, so it does not necessarily have to be included in this rule chapter. However, we will add the definition of "wet weather conveyance" back to the rules to ensure ease of reference.

Comment 132: *Rule 0400-40-07-.01(1), please add the following sentence at the end of the paragraph:*
Persons who wish to conduct an activity that may impact a wet weather conveyance shall only do so in accordance with the conditions stated in *Tenn. Code Ann.* § 69-3-108(q).

This clarifies the intent (as I understand it) of changing "waters of the state" to "stream or wetland."

Rule 0400-40-07-.01(3) Delete the sentence proposed to be added at the end, "Alterations of wet..."
It's not needed with the above change to .01(1), which is worded in a stronger fashion and in a better place.

Response: The Board agrees that it would be more clear to specify that compliance with Tenn. Code Ann. § 69-3-108(q) is required for alterations of wet weather conveyances and will amend the rules accordingly. Specifically, Rule 0400-40-07-.01(3) will be changed.

OTHER

Comment 133: *Rule 0400-40-07-.04(5)(c). Revise the last sentence as follows, "In the case of emergency permits or other situations compelling measures be taken in a very short time, a permit may be issued to a state, county or local government agency that specifies the amount of mitigation required and an implementation timeframe and the agency may submit a specific mitigation plan after the permit is issued, and the agency shall comply with the plan as approved by the Commissioner." This limits the applicability of this procedure more than "unusual circumstances" and it revises the sentence structure to follow the sequence of the actions it describes. It also specifies that there is still an approval step for the plan, the Division does not have to accept whatever is submitted.*

Response: The Board agrees that more precise wording is advisable, and will revise the language.

Comment 134: *Per Rule 0400-40-07-.04(6)(c)5. Direct loss of stream canopy due to the proposed activity: How would the loss of stream canopy be determined and/or regulated? How would tree clearing be regulated if no permit was required (i.e. a landowner or developer was avoiding any impact to the stream or wetland other than clearing trees outside of the regulated stream or wetland)? Propose deleting this item.*

Response: Tree clearing alone is generally not regulated by the Division unless it violates the conditions of the NPDES Construction Stormwater Permit as it applies to buffer zones, or unless the streamside canopy removal or resulting bank destabilization causes an appreciable permanent loss of resource values. The Board will retain this language as an example of one of many factors potentially affecting water quality that the Commissioner is allowed to consider as part of a permit review. This language is not intended to imply that the Board is authorizing the Division to exercise regulatory authority over the cutting of individual trees by landowners, or over normal silvicultural activities.

Comment 135: *Per Paragraph (3) of Rule 0400-40-07-.02 - The wording change relative to silviculture BMPs currently reads: "BMPs and a point source discharge results in water pollution...". The new wording removes the reference to point source discharge. We believe the terminology requiring a point source discharge should remain in the rule. Tenn. Code Ann. § 69-3-133 is unique because it allows the Department to issue a stop work order where timber harvesting operations take place. It is our understanding a stop work order of this nature is only available for silviculture activities. We believe Tenn. Code Ann. § 69-3-120(g) limits the Department to regulatory actions on agriculture and forestry operations only if a point source of pollution exists.*

Response: The intent of the change proposed is to make clear that the Division may issue a stop work order whether or not a point source discharge has been documented if pollution of waters is occurring, as expressly authorized by Tenn. Code Ann. § 69-3-133, which provides, "When certain silvicultural activities have polluted waters of the state as a result of an operator's failure or refusal to use forestry best management practices, the commissioner of environment and conservation may issue a stop work order to the operator."

Comment 136: *Per Rule 0400-40-07-.04(6)(c)4):* diminishment in species composition in any stream, stream or wetland, or state waters due to the proposed activity; *Species composition can fluctuate naturally making this an unreliable measure when evaluating a permit application or other permit action. Diminishment of species composition would be difficult, if not impossible, to determine and therefore we recommend it be removed or clearly defined.*

Response: The Board agrees that species composition can fluctuate via natural conditions or activities outside the control of the applicant, hence the inclusion of the wording "...due to the proposed activity." Should enforcement actions arise based upon this clause, the burden of proof that diminishment was due to the applicant's activity would fall upon the Division.

Comment 137: *Per Rule 0400-40-07-.04(6)(c)11: whether the ~~state waters~~ stream or wetland is listed on the § 303(d) list ... We recommend removing "or wetland", since wetlands are not routinely included on the 303(d) list.*

Response: The commenter is correct that wetlands are not often included on the 303(d) list. However, this does not preclude the possibility that the Division would include wetland listings in the future, and so the language will be retained, and modified to include actual impairment that is not 303(d) listed.

Comment 138: *There is another, less urgent, concern about the changes that were not proposed, specifically around defining activities that might fall under the two categories described as not needing permits – those where the activity is so "de minimis" that no permit or notification is required, and those where no permit is required, but notification is required. Given the punitive fee structure that TDEC has adopted for small restoration and enhancement projects where the impact is not only "de minimis" but actually positive, it would clearly be in the public interest to encourage more such projects. One way to do so would be to create a*

category, with descriptions, of such restoration and enhancement projects that would be exempt from permitting. While we believe that notification is appropriate with sufficient information to assure TDEC that there is no potential for damage to the resource, it seems inappropriate to require a permit designed to regulate damages to an activity that enhances rather than damages a resource.

Response: The Division has issued an ARAP general permit that covers small- to medium-scale enhancement projects. Revegetating streambanks is expressly exempted from the permit requirement by statute. Activities with more significant impacts, even if the intent is to achieve an overall positive impact, require site-specific consideration and thus an individual permit.

Comment 139: *Per Rule 0400-40-07-.01(3) - The change from "may result" to "results" "in alterations...of properties..." is very significant on two levels and may well weaken permitting authority. The first level is that it may put the burden of proof on TDEC rather than the applicant to prove there will be alterations that change properties of the waters of the state. The second level, which could be positive if applied to enhancement and restoration projects, is that it would remove permitting requirements for projects that don't cause alterations of resource properties. The phrase "may result" allows more flexibility while maintaining TDEC's regulatory authority to provide oversight of any activity that has the potential to cause a change in properties.*

Response: This change is not intended to substantively change permitting requirements or to shift burdens of proof. The Water Quality Control Act provides that it is unlawful to "carry out any of the following activities, except in accordance with the conditions of a valid permit: (1) the alteration of the physical, chemical, radiological, biological, or bacteriological properties of any waters of the state." Thus, the statutory permit requirement hinges upon an actual alteration, not a potential alteration, of such properties, which is the reason for the language change. The purpose of restoration and enhancement projects is to alter such properties (albeit for the better) and ARAPs will continue to be required for such activities.

Comment 140: *There is no justification for requiring the public notice for a draft ARAP to include the applicant's address and phone number. Particularly when an applicant is an individual seeking a permit, this requirement has the potential for negative outcomes concerning privacy.*

Response: The Board agrees with the comment and will change the rule accordingly. However, applicants should be aware that their contact information is required to be included in an application and remains public record even if it is not included in the formal public notice document.

Comment 141. *Since most all waters of the State are also waters of the U.S., I am confused regarding how changes to the rules are not contrary to CWA Section 404(b)(1) guidelines requiring that avoidance must be considered first, minimization second and only then, mitigation.*

Response. These rules do not supersede or substitute for the 404(b) rules. If a proposal affects waters of the United States and is otherwise subject to the Section 404 permit requirement, then the applicant must obtain that permit from the U.S. Army Corps of Engineers in accordance with the 404(b) rules. Tennessee rules do not alter or affect that requirement.

Comment 142. *The draft regulation fails to acknowledge the EPA rules governing stream and wetland protection under Clean Water Act Section 404.*

Response. These rules do not alter or affect requirements imposed separately under Section 404 of the Clean Water Act or the 404(b) rules promulgated thereunder.

Comment 143. *Please clarify how the changes in the proposed regulations can be reconciled with the obligations and procedures in the General Wetland Banking Memorandum of Agreement dated June 12, 1995 (the "1995*

MOA"), as well as in the prior agreement it references, the "Memorandum of Agreement between the Environmental Protection Agency and the Department of the Army concerning determination of mitigation under the Clean Water Act, Section 404 (b)(1) Guidelines, 1990."

Response. The "1995 MOA" was supplanted with the promulgation of the 2008 mitigation rules. Those rules established the Interagency Review Team (IRT) which oversees third party mitigation banking. As to the MOA between the Army and EPA it is not clear that it is still in effect, and even if it is, it only applies to the relationship between those parties which signed it of which TDEC was not a signatory.

Comment 144. *Under the proposed rule language, potential "new" habitat alterations requested by permit can also come in many forms, from the building of an impoundment to the straightening, fill, or other alteration of a stream channel. In applying the new rule language, could TDEC determine that a new proposed impoundment, causing "habitat alteration," results in "de minimis" degradation so long as some other stream channels somewhere in the HUC 8 watershed are restored or enhanced?*

Response. Regardless of the type of habitat alteration, the Division cannot issue a permit if the impact's appreciable and permanent resource value loss cannot be offset through compensatory mitigation. Many impoundments are simply not eligible for permitting because they would cause permanent resource loss that cannot be compensated for through traditional compensatory mitigation. While it is possible that on-site mitigation could be provided to offset the loss of resource values caused by an impoundment, it is difficult to foresee a situation in which off-site mitigation for an impoundment would be permitted, much less count as *de minimis* degradation.

Comment 145. *Because TDEC proposes to rely so heavily on mitigation throughout the proposed rules (including those for ARAPs), any such reliance must be demonstrated to be effective. Commenters would support a thorough and objective survey of the effectiveness and longevity of mitigation measures already approved throughout the State, taking into account all the factors relevant thereto, including the potential for "remedy failure" and financial assurance therefor. Commenters would be ready to assist TDEC in scoping and implementing such a survey.*

Response. This comment does not address a specific rule, or proposed rule change. The Board appreciates the recommendation of a study of mitigation.

Rule Chapter 0400-40-07
2018 Amendments – Appendix 1
Tenn. Code Ann. § 4-5-205(b) Concise Statement of Principal Reasons for Rulemaking

Rule 0400-40-07-.01 General. This rule is amended to refer to "streams or wetlands" instead of "waters of the state" in light of Tenn. Code Ann. § 69-3-108(q).

Rule 0400-40-07-.02 Exemptions. This rule is amended to fix grammatical errors and to more closely track the provisions for silvicultural activities provided by Tenn. Code Ann. § 69-3-133.

Rule 0400-40-07-.03 Definitions. This rule is amended principally to eliminate terms that are defined, but not used later in the rules. For example, the term "background conditions" was previously included in this section, but was never used again in the rest of the chapter.

Rule 0400-40-07-.04 Permits.

(1)Application for a Permit. This paragraph is amended for clarity. The amendments also eliminate the joint public notice with the U.S. Army Corps of Engineers, because that process had not been fully implemented and did not comport with the Corps's public notice and comment procedures.

(2) General Permits. This paragraph is amended to make it clear that general permits can only be issued for activities that result in minimal impacts, such that no compensatory mitigation is required and site-specific review under the Antidegradation Statement is not required for permit applicants to obtain coverage. "Minimal impacts" was effectively the threshold for general permits previously, and this amendment simply makes that requirement more transparent. All general ARAPs in effect as of the adoption of this rule remain in effect, and comply with this requirement. In addition, the rule is revised to allow for general permits for water withdrawals requiring ARAP coverage, but which fall within the definition of *de minimis* degradation in Rule Chapter 0400-40-03.

(3) Section 401 Water Quality Certification. This paragraph was redrafted to more clearly state a streamlined process for obtaining a Section 401 certification, particularly for activities that do not otherwise require ARAP coverage.

(4) Public Notice and Participation. In the past, the ARAP rules have only required public notice of a complete permit application. Unlike nearly all other permits issued by TDEC, the rules did not require public notice of a draft permit. The amendments improve the public notice process for both permit applicants and members of the public alike by requiring the Division to publish a draft permit and a rationale for its proposed action. A number of specific pieces of information are eliminated from the public notice requirement because the draft permit will include this information. As a result, people participating in the public comment period will know what the Division proposes to require, not just what the applicant requested. This process is a significant improvement for transparency and public process, and will not interfere with the Division's ability to comply with the bill of rights for permit applicants.

(5) Individual Permits. The primary change to this paragraph is to require applicants for individual permits to not only submit an alternatives analysis, but to select the practicable alternative with the least adverse impacts on water quality, so long as that alternative does not have significant adverse environmental impacts. This rule is consistent with federal requirements for Clean Water Act Section 404 permits, and offsets the reduction in comparable requirements under the Antidegradation Statement for activities that result in only *de minimis* degradation.

(6) Permit Evaluation Criteria. This paragraph is revised to delete a misplaced public notice requirement for permit renewals (which is, more appropriately, addressed in section (8)) and to eliminate a prohibition on changing permits "for activities that have been completed." The latter provision was unclear regarding whether it applied to permitted impacts, or permitted mitigation and monitoring, and prevented the Division from making appropriate modifications to mitigation requirements in light of additional information that arises after permit issuance. Additional amendments reflect the wet weather conveyance statute (Tenn. Code Ann. § 69-3-108(q)) and clarify that compensatory mitigation is only required to offset the loss of resource values actually caused by the permit applicant/permittee.

(7) Mitigation. This paragraph is rewritten to improve clarity and transparency. This section provides key performance standards for compensatory mitigation for impacts to both streams and wetlands. The prior version of the rules provided that mitigation should offset the loss of resource values associated with the proposed activity. The amendments more clearly establish that compensatory mitigation must ensure no net loss of resource values from existing conditions, which are the resource values of the impact site at the time of a permit application. Also, although it was the Division's practice to require a notice of land use restriction or similar protection at mitigation sites, the rules did not expressly require such restrictions, and the rules are amended to make this logical requirement clearer.

(8) Duration and Renewal of Permits. Other than for water withdrawals, ARAPs typically authorize one-time impacts. When these impacts result in an appreciable permanent loss of resource values, individual ARAPs require mitigation and monitoring. When such requirements are provided by the permittee, the length of time required for mitigation and monitoring often exceed the five-year limit on permit terms established by Tenn. Code Ann. § 69-3-108(g)(2). The prior version of the rule did not clearly provide a mechanism for renewal of ARAPs.

(9) Permit Appeals. This paragraph is amended to conform to Tenn. Code Ann. § 69-3-105(i), which allows for third party appeals. The prior version of the rule did not comply with this provision, because it only allowed appeals by permittees and applicants for permits. The Division has not enforced that limitation because it is inconsistent with statutory requirements. However, the rule clarifies the specific preconditions to appeal applicable to third-party petitioners.

(10) Alteration of Wet Weather Conveyances. This paragraph is deleted because alterations of wet weather conveyances are now governed entirely by Tenn. Code Ann. § 69-3-108(q).

Rule Chapter 0400-40-07
2018 Amendments
Revisions made by the Board of Water Quality, Oil and Gas

(1) To the first sentence in part (4)(d)2 of Rule 0400-40-07-.04 the Board voted to continue to require the applicant to give notice to interested persons by publishing the approved public notice in a local newspaper.

(2) The Board voted to delete the second sentence to subparagraph (5)(b) of Rule 0400-40-07-.04. As proposed the sentence read prior to deletion: "For public road projects commissioned by a state, county, or local government, this alternatives analysis does not need to include alternative road locations but must include other measures to avoid and minimize impacts to resource values."

(3) The Board voted to add "flow and" between "improve" and "classified" in the second sentence of subparagraph (7)(b) of Rule 0400-40-07-.04 so that, as amended, the sentence shall read as follows: "All mitigation watercourses must maintain or improve flow and classified uses after mitigation is complete."

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.

Aquatic Resource Alteration Permits (ARAPs) are most often required by real estate developers, large companies, the Tennessee Department of Transportation, homeowners, mining companies, and municipalities. TDEC does not specifically ask whether permit applicants qualify as small businesses, so it is difficult to precisely estimate how many small businesses will be affected by this rulemaking. Currently, there are approximately 2,400 ARAP files that are active or for which complete applications have been received. Based on a review of a sample of this list, somewhere between 50% to 60% of applications appear to involve 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.

The changes in the ARAP rules will not require either more, or less, reporting or recordkeeping than the previous version of the rules. The primary rule change that will affect compliance costs for permit applicants is the reduction in the amount of information required to be published in a public notice in a local newspaper. That abbreviated public notice will identify the location and the proposed activity, while referring interested persons to a website for additional information and providing the contact information for the permit writer. The cost of publishing notices varies significantly depending on the newspaper, and is generally more expensive in larger communities. In large markets, the cost of the advertisement can range from $3,000 to $6,000. We estimate the current total cost of newspaper notices for ARAPs to exceed $100,000 annually for all applicants. We anticipate that the notices may be approximately half as long as under the prior rules, with a proportionate cost savings.

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

Overall, the rulemaking is expected to have a modest positive effect on small businesses by reducing the requirement for newspaper notices.

This rulemaking is being conducted in conjunction with a parallel rulemaking for water quality standards. Those rules are being amended in a manner that will reduce the frequency with which individual permit applicants must demonstrate a lack of practicable alternatives. In order to maintain that requirement, and to be more consistent with federal requirements for Section 404 permits, these rules will require applicants for individual permits to demonstrate a lack of practicable alternatives rather than simply analyze alternatives. The changes to the two rule chapters, on balance, are expected to have a neutral impact on small businesses.

These rules are not expected to affect 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.

TDEC seeks to reduce the burden of obtaining ARAPs by issuing a number of general permits for a common set of minimal impact activities. Applicants may seek coverage under these general permits through a relatively simple application, and do not need to undergo public notice and comment for each proposed activity, making it faster and less costly to obtain permit coverage than the individual permit process. Currently, there are 15 such general ARAPs which cover the majority of permittees. These rules clarify the requirements for general permits and authorize for a new general permit for *de minimis* water withdrawals.

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

The most comparable rules are the U.S. Army Corps of Engineers and EPA rules for federal Clean Water Act Section 404 permits. Overall, the ARAP rules are comparable to, although less prescriptive than, these federal 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.

Tenn. Code Ann. § 69-3-108(b) requires all persons to obtain and comply with ARAPs prior to altering the physical, chemical, radiological, biological, or bacteriological properties of any waters of the state. Therefore, the Board lacks the authority to exempt small businesses from the provisions of this rulemaking.

Impact on Local Governments

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

This rulemaking will have a modest impact on local governments, who are among the entities who are required to obtain ARAP coverage.

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;

Many of these Aquatic Resource Alteration Permit (ARAP) rules are being amended for the first time since November 8, 2000, and others since May 31, 2011. ARAPs authorize habitat alterations and water withdrawals and, where required, serve as certifications of compliance with state water quality standards under Section 401 of the Clean Water Act.

The revisions clarify that ARAPs are required only for alterations of streams and wetlands, and would remove references to wet weather conveyances because these are now governed by T.C.A. § 69-3-108(q).

This rulemaking introduces the new term "existing conditions" to reflect actual pre-impact resource values. The rules require compensatory mitigation to ensure no overall net loss of resource values from existing conditions. The new term is intended to ensure that this mitigation is limited to what is necessary to offset the harm actually caused by the permitted activity, and not to compensate for pre-existing degradation. This change is also intended to ensure appropriate mitigation for impacts to high quality waters, including Exceptional Tennessee Waters. However, this change is primarily to clarify the mitigation requirements from the current version of the rules, which only required mitigation for the loss of resource values associated with the permitted activity.

The current ARAP rules require only that a permit applicant consider avoidance and minimization and submit an alternatives analysis. As amended, for applicants for individual permits, Rule 0400-40-07-.04(5)(b) requires implementation of any practicable alternatives that have less adverse impact on resource values, so long as this does not result in other adverse environmental consequences. This rule is comparable to the Corps of Engineers requirement for Section 404 permits, which are the federal equivalent of ARAPs. This rule change is intended to counterbalance provisions in the water quality standards rules, which would otherwise result in fewer new individual permits having to demonstrate a lack of practicable alternatives to degradation.

The amendments will change the permitting process to include a draft permit and rationale, consistent with other types of permits issued by the Division of Water Resources. This will enhance transparency and improve the public notice process. Currently, the Division publishes only a notice of a complete application, without a draft permit or an explanation of what it intends to do, leaving interested persons (including permit applicants) with little basis to submit meaningful comment. The amendments also conform the permit appeal process to T.C.A. § 69-3-105(i) by clarifying that third parties, not just permit applicants, may appeal permits if they meet specific conditions, and by clarifying those conditions.

Amendments to the mitigation rule, 0400-40-07-.04(7), retain substantial portions of the prior rule while clarifying the methodology to ensure no overall net loss of resource values from existing conditions. This rule prioritizes mitigation as close to the impact site as practicable. The rule also clarifies that mitigation for impacts to Tennessee streams and wetlands must occur in Tennessee.

Finally, the revisions include administrative updates and clean-up edits, including elimination of definitions that are not used in the rules or in permits.

(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 rulemaking is promulgated pursuant to T.C.A. § 69-3-108(b) related to permitting requirements.

(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 people most directly affected by this rule are the permittees, who consist of property developers, TDOT, mining companies, individual property owners, and local government. Overall, the regulated community supports adoption of the proposed rules in tandem with revisions to the Antidegradation Statement in another rulemaking.

A number of environmental nongovernmental organizations submitted comments expressing concerns related to this rulemaking. The Board considered these comments, and made a number of changes from the draft rules in response. In particular, the Board changed a proposed provision that would have exempted public road projects from evaluating alternative site selection, restored a requirement for publishing notices in newspapers, added a requirement to ensure at least minimal protection for degraded waters, and specified performance standards for stream mitigation. Nonetheless, even with these changes some NGOs may still oppose the rule amendments.

(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;

This rulemaking is not affected by any opinions of the attorney general and reporter or any judicial ruling.

(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 expected to have a neutral effect on state and local government revenues and expenditures, with the exception of some savings to local government applicants who will be required to publish shorter public notices in local newspapers.

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

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

Mallorie Kerby
Assistant General Counsel
Office of General Counsel

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

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

The Board of Water Quality, Oil and Gas is not aware of any requests.

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Effective Date: 9/11/19

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: Board of Water Quality, Oil and Gas
Division: Water Resources
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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**
0400-40-07	Aquatic Resource Alteration
Rule Number	**Rule Title**
0400-40-07-.01	General
0400-40-07-.02	Exemptions
0400-40-07-.03	Definitions
0400-40-07-.04	Permits

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-files.s3.amazonaws.com/forms/Rulemaking%20Guidelines_September2016.pdf.

Chapter 0400-40-07
Aquatic Resource Alteration

Amendments

Rule 0400-40-07-.01 General is amended by deleting it in its entirety and substituting instead the following:

0400-40-07-.01 General

(1) These rules are promulgated ~~in order~~ to prevent the future pollution of state waters and to plan for the future use of such waters so that the water resources of Tennessee might be used and enjoyed to the fullest extent consistent with the maintenance of unpolluted waters, T.C.A. § 69-3-102(b). Persons who wish to conduct an activity that may impact a ~~water of the state~~ stream or wetland shall consider avoidance and minimization of such impacts. If impacts to ~~the waters~~ a stream or wetland will ~~occur~~ result in an appreciable permanent loss of resource values, mitigation as set forth in paragraph (7) of Rule 0400-40-07-.04 must be ~~proposed~~ provided to ~~offset any lost resource value~~ ensure no overall net loss of resource values.

(2) ~~The Federal~~ Section 401 of the federal Water Pollution Control Act or Clean Water Act, ~~§ 401 (~~ 33 U.S.C. § 1341~~)~~, provides that an applicant for a federal license or permit for a discharge into the waters of the United States must provide the federal licensing or permitting agency a certification from the ~~State~~ state in which the discharge originates or will originate, and that any such discharge will comply with the applicable provisions of §§ 301, 302, 303, 306 and 307 of that Act.

(3) Additionally, the Tennessee Water Quality Control Act of 1977, T.C.A. § 69-3-108(b)(1), provides that it is unlawful for any person, except in accordance with the conditions of a valid permit, to carry out any activity which ~~may result~~ results in the alteration of the physical, chemical, radiological, biological, or bacteriological properties of any waters of the ~~State~~ state, including wetlands. These activities include, but are not limited to: the discharge of dredge or fill material, dredging, stream channel modifications, water withdrawals, wetlands alterations including drainage, and other construction activities which result in the alteration of the waters of the ~~State~~ state. State permits for these activities are ~~either § 401 Water Quality Certifications or~~ Aquatic Resource Alteration Permits, which also serve as § 401 certifications where required. Alterations of wet weather conveyances are governed by, and must be conducted in compliance with, T.C.A. § 69-3-108(q).

(4) This Chapter prescribes the procedures ~~peculiar~~ applicable to ~~these permits~~ Aquatic Resource Alteration Permits, in addition to the general requirements and procedures of Chapter 0400-40-01 of the rules of the Board of Water Quality, Oil and Gas and the Department of Environment and Conservation, and the Tennessee Water Quality Control Act of 1977. ~~This regulation only applies to~~ Permits issued pursuant to this chapter do not authorize activities ~~which do not~~ that require a National Pollutant Discharge Elimination System (NPDES) ~~permit or which do not result from the operation of a treatment system~~ permit, a state operating permit, or an underground injection control permit.

Authority: T.C.A. §§ 69-3-101 et seq. and 4-5-201 et seq.

Paragraphs (3) and (4) of Rule 0400-40-07-.02 Exemptions are amended by deleting them in their entirety and substituting instead the following:

(3) The Department of Agriculture provides guidance for development of best management practices ~~(BMP's)~~ (BMPs) for agriculture and forestry. One of the primary goals of these ~~BMP's~~ BMPs is the prevention of soil erosion and discharge of silt and sedimentation to streams. These ~~BMP's~~ BMPs should be followed. If silvicultural activities ~~fail~~ have polluted waters of the state as a result of a failure to use ~~BMP's and a point source discharge results in water pollution~~ BMPs, the Commissioner is authorized to issue a stop work order under ~~P.Ch. 680 of the Acts of 2000~~ T.C.A. § 69-3-133.

(4) Existing water withdrawals on July 25, 2000, which do not adversely alter or ~~effect~~ affect the classified use of the source stream are not subject to these requirements.

Authority: T.C.A. §§ 69-3-101 et seq. and 4-5-201 et seq.

Rule 0400-40-07-.03 Definitions is amended by deleting it in its entirety and substituting instead the following:

As used in this ~~Chapter~~ chapter and in any ARAP ~~permit issued, including General Permits~~ issued pursuant to this chapter, the following terms have these meanings:

(1) "Act" means The Tennessee Water Quality Control Act of 1977, as amended, T.C.A. §§ 69-3-101 et seq.

(2) "Activity" means any and all work or acts associated with the performance, or carrying out of a project or a plan, or construction of a structure.

~~(3) "Adjacent" means bordering, contiguous, or neighboring. Wetlands separated from other waters of the State by man-made dikes or barriers, natural river berms and the like are "adjacent wetlands".~~

(3) "Appreciable permanent loss of resource values" means a reduction in resource values that is expected to continue without fundamental change and is large enough to be observed and measured as resulting in more than minimal adverse effects.

(4) "Aquatic Resource Alteration Permit" or "ARAP" means a permit issued pursuant to T.C.A. § 69-3-108 of the ~~Tennessee Water Quality Control~~ Act ~~of 1977~~, which authorizes the alteration of properties of waters of the ~~State which~~ state that result from activities other than discharges of wastewater through a pipe, ditch, or other conveyance. ~~Such a permit shall impose conditions, including standards and terms of periodic review, as are necessary to accomplish the purposes of the Act.~~

~~(5) "Background Conditions" means the biological (plant and animal species), chemical and physical conditions of the wetland or water body prior to the proposed activity. If the water body is disturbed, it may be necessary to use the biological, chemical and physical conditions of a similar water body as a reference condition.~~

~~(6)~~(5) "Best ~~Management Practices~~ management practices" or "BMPs" means a schedule of activities, prohibition of practices, maintenance procedures, and other management practices to prevent or reduce the pollution of waters of the ~~State~~ state. ~~BMP's~~ BMPs include methods, measures, practices, and design and performance standards.

~~(7)~~(6) "Certification" means an Aquatic Resource Alteration Permit under the ~~Tennessee Water Quality Control~~ Act ~~of 1977~~, ~~as~~ when required by § 401 of the ~~Federal~~ federal Water Pollution Control Act, which certifies, either unconditionally or through imposition of terms under which the activity must be carried out, that the activity will comply with applicable provisions of §§ 301, 302, 303, 306, and 307 of the ~~Federal~~ federal Water Pollution Control Act and Chapter 0400-40-01 of the rules of the Board of Water Quality, Oil and Gas and the Department of Environment and Conservation and the Act.

~~(8)~~(7) "Channelization" means the alteration of stream channels including but not limited to straightening, widening, or enlarging.

~~(9) "Cofferdam" means an enclosure from which water can be pumped to expose the bottom of a body of water or a barrier constructed to divert the flow of water to allow construction work.~~

~~(10) "Commence Construction" means the physical initiation of on-site structural or earthmoving work.~~

~~(11)~~(8) "Constructed ~~Wetland~~ wetland" means a wetland intentionally designed, built and operated on previously nonwetland sites for the primary purpose of wastewater treatment or stormwater retention; such wetlands are not created to provide mitigation for adverse impacts or other wetlands.

~~(12) "Clearing and Grubbing" means the removal of vegetation by cutting and digging up roots and stumps.~~

~~(13)~~(9) "Cumulative ~~Impacts~~ impacts" means the impact on ~~the environment~~ resource values which results from

the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions. ~~A cumulative impact to a wetland can be the loss of the variety of the natural wetland types, wetland acreage, functions and classified uses.~~

~~(14)~~(10)"Debris" means woody materials, trash, flotsam, dislodged vegetation, and other potentially mobile materials which may, when located within a stream channel, contribute to flow blockage. This does not include gravel, sand, soil or its constituents such as silt, clay, or other sediments.

~~(15)~~(11)"Ditch" means a man-made excavation for the purpose of conveying water. Ditches do not include streams, modified streams, or canals.

(12) "Division" means the Division of Water Resources within the Tennessee Department of Environment and Conservation.

~~(16)~~(13)"Dredging" (sand and gravel dredging) means the removal of sand, gravel, and similar sediments or deposits from a stream, river, or lake bed or wetland by any method.

~~(17) "Earthmoving" means any construction or other activity, which disturbs the surface of the land including, but not limited to, excavation, embankment, fill, and cut of soil, rock, or earth.~~

~~(18)~~(14)"Emergency" means a situation where life, public health, the environment, or substantive improvements to real property is in immediate danger.

~~(19)~~(15)"Erosion" means the process by which the land surface is worn away by the action of water, wind, gravity, chemicals, or a combination thereof.

~~(20) "Excavation" (a) means a cavity formed by digging, quarrying, uncovering, displacing, or relocating soil or rock; or, (b) means to dig or remove soil, rocks, or other materials resulting in a change in all or part of the elevation of a site.~~

(16) "Existing conditions" means the biological, chemical, bacteriological, radiological, and physical conditions of a stream or wetland at the time the project is proposed as measured by a quantitative assessment tool or other defensible scientific method as approved or determined by the Division.

~~(21)~~(17)"General Permit" means a permit issued under the Act and this rule authorizing an alteration to state waters within the state for a specified category of activities that are substantially similar in nature.

~~(22)~~(18)"Ground water" means water beneath the surface of the ground within the zone of saturation, whether or not flowing through known and definite channels.

~~(23) "Ground water table" means the upper surface of the zone of saturation by ground water.~~

~~(24) "Hydrogeomorphic System" means a classification system for wetlands based on geomorphic setting, water source, and hydrodynamics; used to identify and group functionally similar wetlands.~~

(19) "HUC" means the hydrologic unit code assigned by the United States Geological Survey.

~~(25)~~(20)"Individual Permit" means a permit issued by the Division ~~of Water Resources~~ to a specified person to conduct specified activities at a specified location. This type of permit does not authorize an activity by a class of persons or the public in general.

~~(26) "Interflow" means the runoff infiltrating into the surface soil and moving toward streams as shallow, perched water above the main ground water level.~~

~~(27)~~(21)"In the ~~Dry~~ dry" means in such a manner that no equipment or dredged material is in contact with the stream or wetland and that the soil water boundary is not disturbed by equipment or that no infiltration is pumped to the stream from the dredge site.

~~(28)~~(22)"Minimal ~~Impacts~~ impacts" means an activity for which the scope is very limited in area, the impact is very short in duration, and that has no appreciable impact to waters just downstream of the location of the

activity. ~~Examples of activities with 'minimal impacts' include, but are not limited to, (1) minor channel changes associated with bank stabilization; and (2) an activity typically authorized by General Permit, but which requires an Individual Permit because the project falls under one of the listed exclusions.~~

~~(29) "Minor Road Crossing" is a bridged or culverted roadway fill across a stream or river which results in the alteration of 200 linear feet or less of stream bed or shoreline.~~

~~(30)~~(23)"Mitigation" means ~~compensating for impacts in regulated areas~~ the restoration, creation, enhancement, and/or preservation of aquatic resources to compensate for unavoidable impacts as provided by paragraph (7) of Rule 0400-40-07-.04.

~~(31) "Multiple populations" means two or more individuals from each of two or more distinct taxa, in the context of obligate lotic aquatic organisms.~~

~~(32) "Normal weather conditions" are those within one standard deviation of the cumulative monthly precipitation means for at least the three months prior to the hydrologic determination investigation, based on a 30-year average computed at the end of each decade. Precipitation data shall come from National Oceanographic and Atmospheric Agency's National Climatic Data Center, National Resources Conservation Service's National Climatic Data Center, Natural Resources Conservation Service's National Water and Climate Center, or other well-established weather station.~~

~~(33) "Obligate lotic aquatic organisms" means organisms that require flowing water for all or almost all of the aquatic phase of their life cycles.~~

~~(34) "Perched water" means water that accumulates above an aquitard that limits downward migration where there is an unsaturated interval below it, between the aquitard and the zone of saturation.~~

~~(35)~~(24)"Practicable alternative" is an alternative that is available and capable of being done after taking into consideration cost, existing technology, and logistics in light of overall project purposes.

~~(36)~~(25)"Resource ~~Values~~ values" are the ~~benefits~~ physical, chemical, and biological properties of ~~provided by~~ the water résource that help maintain classified uses. These ~~benefits~~ properties may include, but are not limited to, the ability of the water resource to:

(a) filter, settle and/or eliminate pollutants;

(b) prevent the entry of pollutants into downstream waters;

(c) assist in flood prevention;

(d) provide habitat for fish, aquatic life, ~~livestock and water fowl~~ and wildlife;

(e) provide drinking water for wildlife and ~~water fowl~~ livestock;

(f) provide and support recreational and navigational uses; and

(g) provide both safe quality and adequate ~~quality and~~ quantity of ~~drinking~~ water for domestic water supply and other applicable classified uses.

~~(37)~~(26)"Sediment" means soil or its constituents that has been deposited in water, is in suspension in water, is being transported, or has otherwise been removed or disturbed from its site of origin.

~~(38)~~(27)"Sedimentation" or "Siltation" ~~means~~ mean the process by which sediment is deposited in or by the waters of the ~~State~~ state.

~~(39) "Settling Basin" means a prepared storage area constructed to trap and store sediment from erodible areas in order to protect any streams below the construction areas from excessive siltation; an impoundment that accumulates transported sediment and has provisions for a principal spillway; a reservoir which retains high flows sufficiently to cause deposition of transported sediment.~~

~~(40)~~(28)"Stabilize" means the proper placing, grading, and/or covering of soil, rock, or earth to insure their resistance to erosion, sliding, or other movement.

~~(41)~~(29)"Stream" means a surface water that is not a wet weather conveyance. For purposes of this chapter, and permits issued pursuant to this chapter, a wetland is not a stream. See definition of wetland.

~~(42)~~(30)"Structure" means any building, pier, wharf, dolphin, weir, boom, breakwater, bulkhead, revetment, riprap, jetty, mooring structure, moored floating vessel, piling, aid to navigation, bridge, culvert, or any other obstacle or obstruction.

~~(43) "Utility Line" means any pipe or pipeline for the transportation of any gaseous, liquid, liquefiable or slurry substance, for any purpose, and any cable, line, or wire for the transmission for any purpose of electrical energy, telephone and telegraph messages, and radio and television communication.~~

~~(44) "Watercourse" means a manmade or natural hydrologic feature with a defined linear channel which discretely conveys flowing water, as opposed to sheet flow.~~

~~(45) "Water Dependent" describes an activity that requires location in or adjacent to surface waters or wetlands in order to fulfill its basic purpose.~~

~~(46)~~(31)~~"Wetlands"~~ "Wetland" means ~~those areas~~ an area that ~~are~~ is inundated or saturated by surface or ~~ground water~~ groundwater at a frequency and duration sufficient to support, and that under normal circumstances ~~do~~ does support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas.

~~(47) "Wetland Dependent" means that the location of a project or conducting an activity in a wetland is essential to fulfill the purpose of the project. Examples of such projects are fish and wildlife management, nature trails, wildlife observation points, etc.~~

~~(48)~~(32)"Wet ~~Weather Conveyances~~ weather conveyances" are man-made or natural watercourses, including natural watercourses that have been modified by channelization, that flow only in direct response to precipitation runoff in their immediate locality, whose channels are at all times above the ~~ground water~~ groundwater table, that are not suitable for drinking water supplies, and in which hydrological and biological analyses indicate that, under normal weather conditions, due to naturally occurring ephemeral or low flow there is not sufficient water to support fish, or multiple populations of obligate lotic aquatic organisms whose life cycle includes an aquatic phase of at least two months.

~~(49) "Wet weather conveyance determination" means the decision based on site specific information of whether a particular conveyance is a stream or a wet weather conveyance. It is synonymous with "stream determination" and "hydrologic determination."~~

~~(50) "Zone of saturation" means a subsurface zone below the ground water table in which all of the interconnected voids and pore spaces are filled with water.~~

~~(51)~~ Terminology not specifically defined herein shall be defined in accordance with the ~~Tennessee Water Quality Control~~ Act ~~of 1977, T.C.A. § 69-3-101 et seq.,~~ and the rules adopted thereunder.

Authority: T.C.A. §§ 69-3-101 et seq. and 4-5-201 et seq.

Rule 0400-40-07-.04 Permits is amended by deleting it in its entirety and substituting instead the following:

0400-40-07-.04 Permits

(1) Application for a Permit.

~~(a)~~ Any person who plans to engage in any of the activities outlined in T.C.A. § 69-3-108 must obtain a permit from the Commissioner to lawfully engage in such activity. When a § 401 certification is required, the ARAP also serves as the § 401 certification. There are ~~three (3)~~ two (2) types of ~~permits~~ ARAPs: Individual Permits~~; § 401 Water Quality Certifications;~~ and General Permits. There are several types of General Permits: (1) a General Permit that authorizes the implementation of the activity in accordance

with all the terms and conditions of the General Permit without prior notice and approval from the Commissioner; (2) a General Permit ~~which~~ that requires the applicant to notify TDEC of the planned activity prior to implementing the activity in accordance with the terms and conditions of the General Permit; and (3) a General Permit ~~which~~ that requires the applicant to notify the Commissioner of the planned activity and receive ~~approval~~ a notice of coverage from the Commissioner prior to implementing the activity in accordance with the terms and conditions of the General Permit. ARAP applications shall be submitted on forms approved by the Commissioner, and include all of the information requested therein. Certain of the General Permits authorize an activity that is authorized by a Nationwide Permit of the U.S. Corps of Engineers and therefore serve as a § 401 Certification. Persons need not file an application with the Commissioner if they are conducting an activity pursuant to a General Permit that does not require ~~Notice~~ notice or approval, but must implement the planned activity in accordance with the terms and conditions of the General Permit. Persons who desire to implement an activity pursuant to a General Permit which requires ~~Notice or Notice~~ notice, or notice and prior approval, must submit the necessary documentation required by the General Permit prior to implementing the planned activity in accordance with the terms and conditions of the General Permit. A person must file an application for an Individual Permit or for a § 401 Water Quality Certification with the ~~Department~~ Division, in accordance with paragraphs (3) and (5) of this rule, to implement any activity requiring an ARAP that is not authorized by a General Permit. ~~All General Permits in effect as of the date of this rule shall continue in effect, and are not revoked by these rules.~~[4]

~~(b) The application to the Commissioner for certification of activities which require § 404 permits from the United States Army Corps of Engineers (Corps) shall be the application filed with the Army Corps of Engineers. The Joint Public Notice which shall be issued by the Corps, describes the activity and notifies the general public of the application for the § 404 permit and state certification and of the public's right to submit comments and requests for public hearing. If further information is required for project evaluation, the Commissioner may request it from either the applicant or the Corps.~~

(2) General ~~permits~~ Permits.

The Commissioner may ~~use~~ issue General Permits to authorize alterations to state waters for specific categories of activities that are substantially similar in nature within the state or other specified geographical areas. General Permits for habitat alterations may be issued only for activities that do not result in an appreciable permanent loss of resource values. General Permits may be issued for water withdrawals that cause no more than de minimis degradation. When the Commissioner determines that a category or activity is suitable for coverage by a General Permit, or that substantive modification of existing General Permits is consistent with T.C.A. § 69-3-108 ~~of the Tennessee Water Quality Control Act of 1977~~, the Commissioner will provide notice of, and conduct a minimum of, one public hearing. The public notice will contain the relevant information, as set forth in subparagraph (4)(c) of this rule and will be published along with a copy of the draft General Permit and a rationale explaining the basis for the permit. ~~TDEC~~ The Division will distribute the public notice to interested persons who have requested ~~TDEC~~ the Division notify them of ARAP applications and by posting on the ~~TDEC~~ Tennessee Department of Environment and Conservation's (TDEC's) website. Interested persons may submit written comments on the draft General Permit within ~~thirty (30)~~ days of the public notice or such greater period as the Commissioner allows. All written comments submitted shall be retained and considered in the final determination to issue a General Permit. The procedures for obtaining coverage under a General Permit shall be specified in the General Permit.

(3) § Section 401 Water Quality Certification.

~~(a) General.~~

~~Any person who plans to engage in any of the activities outlined in § 404 of the Federal Clean~~

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[4] ~~The following activities were authorized by a General Permit on the date these rules were promulgated: Bank Stabilization, Gravel Dredging, Launching Ramps, Road Crossings, Alteration of Wet Weather Conveyance, Stream Restoration and Habitat Enhancement, Minor Wetlands, Bridge Scour Repair, Emergency Road Repair, Utility Line Crossings, Surveying and Geotechnical Exploration, Minor Dredging, Alteration and Restoration of Intermittent Streams for Mining, Maintenance Activities, Relocation of Intermittent Streams, Wetlands Restoration and Enhancement, and Impoundment of Intermittent Streams.~~

~~Water Act must obtain a federal permit as well as either a state permit or a state water quality certification under § 401 of the Clean Water Act to lawfully engage in such activity in the State of Tennessee. Section 401 of the Federal Clean Water Act requires the Commissioner to certify that the issuance of the federal § 404 permit meets the requirements of sections of the Federal Clean Water Act and the Water Quality Control Act. Persons must make application for the planned activity with the Army Corps of Engineers for an individual § 404 permit or make use of a Corps of Engineers' nationwide permit.~~

~~(b) An individual § 404 permit.~~

~~Where the activity requires an individual § 404 permit, the application filed with the Army Corps of Engineers will serve as the application for either the state permit or the state § 401 certification. The applicant must file the completed federal application with TDEC for the Commissioner to process and evaluate. The Commissioner will review a completed application and make a determination whether to issue a § 401 Water Quality Certification. The application must describe the proposed activity and include all the necessary technical information for the Commissioner to make a determination, including an evaluation of practicable alternatives. The practicable alternatives analysis required by this subparagraph shall be satisfied by the applicants' submittal to the Division of a practicable alternatives evaluation for the proposed activity which has been submitted to the Army Corps of Engineers.~~

~~(c) A nationwide permit.~~

~~Where the activity can be authorized by a Corps of Engineers nationwide permit, the § 401 certification can be obtained through the use of a state general permit, if applicable, or an individual permit pursuant to paragraph (5) of this rule. If the Commissioner issues a § 401 Certification, the § 401 Certification is the state permit.~~

An applicant for a federal license or permit to conduct an activity which may result in a discharge to the navigable waters must first obtain a § 401 certification from the Division. If the proposed activity requires an ARAP, that permit serves as the § 401 certification and is subject to the application and public notice procedures for obtaining ARAP coverage established by this chapter. Coverage under a General Permit, obtained either through a notice of coverage or automatic coverage under a General Permit for which no prior notice to the Division is required, constitutes a § 401 certification. If the proposed activity does not require an ARAP, the applicant for a federal license or permit may obtain a § 401 certification by submitting a copy of the federal application to the Division and a request for a § 401 certification.

(4) Public Notice and Participation.

(a) An ARAP Individual Permit or a § 401 Certification requires the issuance of ~~Public Notice~~ public notice seeking public participation and comment on the planned activity. However, ~~Public Notice~~ public notice is not required for an activity authorized by General Permit ~~since Public Notice~~ because public notice is provided pursuant to paragraph (2) of this rule. Each completed application shall be subject to the public notice and participation requirements of subparagraph (b) of this paragraph with the following exceptions:

1. § 401 Certification.

The ~~Department's~~ Division's procedure for issuing public notice for certification of an application for a federal license or permit pursuant to § 401 of the Clean Water Act ~~may be either a public notice issued jointly with the Corps, or~~ for an activity that does not require an ARAP shall be a public notice issued by the ~~Department~~ Division. Such notice will describe the ~~activity,~~ activity and advise the public of the scope of certification, their rights to comment on the proposed activity, and to request a public hearing. The notice will also inform the public to whom they should send their requests and comments.

2. Minimal impact activities.

For activities that are projected to have only minimal impacts to ~~state waters~~ streams or wetlands, which can be readily addressed, the Commissioner may utilize a ~~twenty (20)~~

day public notice period.

3. When the Commissioner determines that a proposed permit modification or renewal will not materially change water quality aspects of the project, or will result in an improvement of water quality, as compared to the originally permitted activity, a permit may be modified or renewed without public notice. Otherwise, a renewal or modification requires public notice.

4. Where the Commissioner determines an emergency situation exists, a permit for remedial action may be issued without prior public notice and participation. The emergency permit shall be advertised by public notice, however, no later than ~~twenty (20)~~ days after issuance. This permit shall be subject to all other provisions of subparagraph (b) of this paragraph. The remedial actions allowed shall be limited to those necessary to remedy the emergency.

(b) Upon receipt of a completed ARAP application, the Commissioner will review and evaluate the proposed activity or project to make a determination whether to issue an Individual Permit, as described in paragraph (5) of this rule. In order to inform interested and potentially interested persons of the proposed activity, a ~~Public Notice~~ public notice seeking public participation and comment on the activity will be given, along with a draft permit and a rationale explaining the basis for the draft permit, including the basis for determining whether a proposed activity will result in an appreciable permanent loss of resource values. Except as provided in subparagraph (5)(c) of this rule, if an activity will result in an appreciable permanent loss of resource values, the draft permit shall include requirements for mitigation and the rationale shall explain the basis for determining that the mitigation is sufficient to result in no overall net loss of resource values from existing conditions.

(c) The ~~Public Notice~~ public notice will include the following information:

1. Name, address, and telephone number of the applicant;

2. Name, ~~and~~ address, telephone number, and electronic mail address of ~~TDEC~~ the Division contact person;

3. A brief description of the proposed activity;

~~4. A brief description of the scope of the proposed activity;~~

~~5.~~4. The location of the ~~state waters~~ streams or wetlands impacted by the proposed activity;

~~6. A sketch or detailed description of the location of the proposed activity and the subject waters of the state;~~

~~7. The purpose of the proposed activity;~~

~~8. The watershed of the subject waters;~~

~~9. A description of the conditions of the subject waters and the watershed, (e.g., physical conditions of the waters, quality of the waters such as size, flow, substrate, channel, etc.);~~

5. The Division website at which additional information about the permit application can be found;

~~10.~~6. The procedure to submit comments on the proposed activity;

~~11.~~7. The procedure for requesting a public hearing; and

~~12.~~8. A brief description of the procedure for the Commissioner to make a final determination to issue a permit.

(d) The approved ~~Public Notice~~ public notice shall be distributed to interested persons and shall be circulated within the geographical area of the proposed activity as follows:

1. ~~TDEC~~ The Division will distribute the approved ~~Public Notice~~ public notice to interested persons who have requested ~~TDEC~~ the Division notify them of ARAP applications and by posting on the TDEC website.

2. The Applicant shall distribute the approved ~~Public Notice~~ public notice to the neighboring landowners by publishing in a local newspaper of general circulation and by posting a sign within view of a public road in the vicinity of the proposed project site as specified by the Division. The sign shall contain those provisions as specified by the Division. The sign shall be of such size that is ~~legible~~ readily visible from the public road. Also, the sign shall be maintained for at least ~~thirty (30)~~ days following distribution of the approved ~~Public Notice~~ public notice.

3. The applicant shall provide certification to the Division of compliance with part 2 of this subparagraph.

(e) A copy of the public notice shall be sent to any person who specifically requests one. Interested persons may submit written comments on the proposed activity within ~~thirty (30)~~ days of public notice or such greater period as the Commissioner allows. All written comments submitted shall be retained and considered in the final determination to issue a permit.

(f) Interested persons, including the applicant, may request, in writing, that the Commissioner hold a public hearing on any application. Said request from interested persons must be filed as soon as possible, but no later than the end of the period allowed for public comment, and must indicate the interest of the party filing it, must concisely state the water quality issues being raised, and the reasons why a hearing is warranted. If there are water quality issues and significant public interest in having a hearing, the Commissioner shall hold one in the geographical area of the proposed activity. No less than ~~thirty (30)~~ days in advance of the hearing, public notice of it shall be circulated at least as widely as was notice of the application. The Commissioner will distribute notice of the public hearing as set forth in part (d)1 of this paragraph~~, and by publishing in a local newspaper~~. The notice shall cite the date, time and place of the public hearing, a statement of the issues raised by the person requesting the hearing, and the purpose of the public hearing.

(5) Individual Permits.

(a) Persons who plan to engage in any activity that requires an Aquatic Resource Alteration Permit which is not governed by a General Permit or a § 401 Water Quality Certification, must submit an application to the Commissioner for review and approval prior to implementing the planned activity. The Commissioner will review a completed application and make a determination whether to issue an Individual Permit. The application must describe the proposed activity and include all the necessary technical information for the Commissioner to make a determination. ~~The applicant shall assess the practicable alternatives for a planned activity. If the activity does not avoid impacts to state waters, the individual must comply with paragraph (7) of this rule. However, if the nature of the affected waters is such that mitigation is not reasonably likely to result in no net loss of water resource values, and if there is a practicable alternative to the activity which through avoidance or minimization of impacts would result in no net loss, then such alternative shall be selected.~~

(b) The applicant shall submit an alternatives analysis evaluating a range of potentially practicable alternatives to avoid and minimize the loss of resource values consistent with the overall purpose of the proposed activity. No Individual Permit shall be granted if there is a practicable alternative to the proposed activity that would have less adverse impact on resource values, so long as the alternative does not have other significant adverse environmental consequences.

~~(b)~~(c) ~~An~~ The applicant shall describe the proposed project including the use of technical terms defined in Rule 0400-40-07-.03 where relevant. The sketch or plans and specifications submitted with the application shall describe the method for implementation of the planned activity. Where the proposed activity would result in an appreciable permanent loss of resource value, the applicant

must propose ~~adequate~~ mitigation ~~actions so that there is~~ sufficient to result in no overall net loss of state water resource values. ~~The applicant shall set forth in the application a brief summary of the practicable alternatives considered to implement the proposed activity~~ In the case of emergency permits or other situations compelling that measures be taken in a short time, a state, county, or local government applicant for a public works project may propose a specific mitigation plan after an Individual Permit has been issued, provided that the permit shall specify the amount of mitigation required and an implementation timeline. In this case, the permittee shall comply with the mitigation plan approved by the Division.

~~(c)~~(d) An Individual Permit is required for water withdrawals which will or will likely result in alteration of the properties of the ~~source~~ affected stream or wetland and will result in more than de minimis degradation as defined in Rule 0400-40-03-.04(4).

1. Persons proposing to withdraw water from waters of the state in a manner which will or will likely result in an alteration of the properties of ~~the source~~ a stream or wetland, shall file an application with the ~~Department~~ Division which includes the following minimum information:

   (i) ~~proposed~~ Proposed withdrawal rates and volumes;

   (ii) ~~proposed~~ Proposed withdrawal schedule; and

   (iii) ~~flow~~ Flow data of the source stream (if free flowing).

2. Where a permit for water withdrawal is required, the Commissioner shall establish permit conditions which are protective of the ~~source stream's~~ resource values of the affected stream or wetland. These conditions may include flow levels below which no withdrawal may occur. The Commissioner may also establish a maximum withdrawal rate in order to maintain the natural flow fluctuation characteristics of the source stream. Monitoring and reporting requirements may be established to ensure and document compliance with permit conditions.

(6) Permit Evaluation Criteria.

(a) Some activities may not be entitled to a permit. When a permit is granted, it shall require compliance with all provisions of the Act, the ~~regulations~~ rules adopted pursuant to the Act, and any special terms or conditions the Commissioner determines are necessary to fulfill the purposes or enforce the provisions of the Act.

(b) A permit may be modified, suspended, or revoked for cause by the Commissioner upon such notice to the permittee as required by law. ~~Permits for activities that have been completed are not subject to modification. If a modification results in a less restrictive permit, then public notice and opportunity for hearing must be given prior to modification.~~ Cause shall include, but not be limited to the following:

1. ~~violation~~ Violation of any terms or conditions of the permit;

2. ~~obtaining~~ Obtaining a permit by misrepresentation or failure to disclose fully all relevant facts;

3. ~~causing~~ Causing a condition of pollution;

4. ~~violation(s)~~ Violation(s) of the Act or other environmental statutes;

5. ~~a~~ A change in the Act or ~~regulations~~ rules that substantively impacts the content of the permit;

6. ~~a~~ A change in the ~~Federal~~ federal Clean Water Act that substantively impacts the content of the permit; and

7. ~~a~~ A significant change of the physical condition(s) of the site or the waters.

(c) ~~The Act requires that no~~ No activity may be authorized by the Commissioner unless any ~~lost~~ appreciable permanent loss of resource ~~value~~ values associated with the proposed impact is offset by mitigation sufficient to result in no overall net loss of resource ~~value~~ values from existing conditions. In a situation in which an applicant proposes mitigation that would not result in no overall net loss, the Commissioner shall not issue the permit unless the applicant redesigns the project to avoid impacts, minimize them, or provide mitigation as provided in paragraph (7) of this rule so that the redesigned project would result in no net loss of resource value. In making a decision on a permit application, the Commissioner shall determine the ~~lost~~ loss of resource ~~value~~ values from existing conditions associated with a proposed impact and the increase in resource ~~value~~ values of any proposed mitigation and shall consider the following factors:

1. ~~direct~~ Direct loss of stream length, ~~waters~~ flow, or wetland area due to the proposed activity;

2. ~~direct~~ Direct loss of in-stream~~, waters,~~ or ~~wetlands~~ wetland habitat due to the proposed activity;

3. ~~impairment~~ Impairment of stream channel stability due to the proposed activity;

4. ~~diminishment~~ Diminishment in species composition in any ~~stream,~~ stream or wetland~~, or state waters~~ due to the proposed activity;

5. ~~direct~~ Direct loss of stream canopy due to the proposed activity;

6. ~~whether~~ Whether the proposed activity is reasonably likely to have cumulative or secondary impacts to the water resource;

7. ~~conversion~~ Conversion of unique or high quality waters as established in Rule 0400-40-03-.06 to more common systems;

8. ~~hydrologic~~ Hydrologic modifications resulting from the proposed activity;

9. ~~the~~ The adequacy and viability of any proposed mitigation including, but not limited to, quantity, quality, likelihood of long term protection, and the inclusion of ~~upland~~ riparian buffers;

10. ~~quality~~ Quality of stream or wetland proposed to be impacted;

11. ~~whether~~ Whether the ~~state waters~~ stream or wetland is listed on the § 303(d) list or otherwise has unavailable parameters; whether the proposed activity is located in a component of the National Wild and Scenic River System, a State Scenic River, waters designated as Outstanding National Resource Waters, or waters identified as high quality waters as defined in Rule 0400-40-03-.06, known as Tier II waters; whether the activity is located in a waterway which has been identified by the ~~Department~~ Division as having contaminated sediments; and whether the activity will adversely affect species formally listed in State and ~~Federal~~ federal lists of threatened or endangered species; and

12. ~~any~~ Any other factors relevant under the Act.

(d) All permits which require mitigation of impacts shall contain conditions requiring that the mitigation is performed properly, performed in a timely manner, and is adequately maintained.

(7) Mitigation.

~~(a) Mitigation of state waters other than wetlands.~~

~~If an applicant proposes an activity that would result in an appreciable permanent loss of resource value of a state water, the applicant must provide mitigation which results in no overall net loss of~~

~~resource values. The applicant shall provide the Commissioner with a time schedule for completion of all mitigation measures for approval. Further, for any mitigation involving the relocation or re-creation of a stream segment, to the extent practicable, the applicant shall complete the mitigation before any impact occurs to the existing state waters. Mitigation measures include, but are not limited to:~~

~~1. Restoration of degraded stream reaches and/or riparian zones;~~

~~2. New (relocated) stream channels;~~

~~3. Removal of pollutants from and hydrologic buffering of stormwater runoff; and~~

~~4. Any other measures which have a reasonable likelihood of increasing the resource value of a state water.~~

~~The Commissioner will assess the proposed mitigation to assure there is no overall net loss of resource value. The mitigation measures or actions should be prioritized in the following order: restoration, enhancement, re-creation, and protection.~~

~~(b) Mitigation of Wetlands.~~

~~1. If an applicant proposes an activity that would result in an appreciable permanent loss of resource value of wetlands, the applicant must provide mitigation, which results in no overall net loss of resource value. The applicant shall provide the Commissioner with a time schedule for completion of all mitigation measures for approval. Further, for any mitigation involving the enhancement or preservation of existing wetlands, to the extent practicable, the applicant shall complete the mitigation before any impact occurs to the existing state waters. For any mitigation involving restoration or creation of a wetland, to the extent practicable, the mitigation shall occur either before or simultaneously with impacts to the existing state waters. Mitigation for impacts to wetlands are prioritized as follows:~~

~~(i) Restoration of a previously degraded or impacted wetland (with emphasis on prior converted areas) on site or in the immediate project area;~~

~~(ii) Restoration, including mitigation banking, off-site but within the eight digit United States Geological Survey hydrological unit in which the project is located;~~

~~(iii) Restoration, including mitigation banking, outside of the eight digit United States Geological Survey hydrological unit in which the project is located;~~

~~(iv) Creation of wetlands on site or in the immediate project area;~~

~~(v) Creation of wetlands off-site;~~

~~(vi) Enhancement of existing wetlands;~~

~~(vii) Preservation of existing wetlands; or~~

~~(viii) A combination of any of the above activities.~~

~~2. The ratio of acres required for wetland mitigation should not be less than 2:1 for restoration activities; 4:1 for creation and enhancement; and 10:1 for preservation. Alternatively, the applicant may propose and utilize, subject to the Division's approval, best professional judgment ratios. The best professional judgment ratios shall be based on the resource value and functions of the affected wetland, resource value of the mitigation, and the likelihood of success of the mitigation.~~

~~3. All wetland mitigation projects shall include a monitoring and reporting program to document timely achievement of a successful mitigation wetland and remedial actions to~~

~~correct any deficiency.~~

(a) If an applicant proposes an activity in a stream or wetland that would result in an appreciable permanent loss of resource values, the applicant must provide mitigation which results in no overall net loss of resource values from existing conditions. Because all streams and wetlands serve important functions, the determination of existing conditions shall ensure at least minimal protection for all streams and wetlands notwithstanding prior degradation.

1. The applicant shall provide the Division with a mitigation plan, including a time schedule for completion of all mitigation measures, for approval. To the extent practicable, the applicant shall complete any required mitigation, excluding monitoring, prior to, or simultaneous with, any authorized impacts. All mitigation shall include a permanent restriction on the use of the mitigation site in a form approved by the Division, including but not limited to a recorded notice of land use restrictions, conservation easement, or other equivalent mechanism.

2. Acceptable mitigation mechanisms include any combination of permittee-responsible mitigation, in-lieu fee programs, mitigation banks, or other mechanisms that are reasonably assured to result in no overall net loss of resource values from existing conditions.

3. Acceptable mitigation methods are prioritized in the following order: restoration, enhancement, preservation, creation, or any other measures that are reasonably assured to result in no net loss of resource values from existing conditions.

4. The Division will evaluate resource value compensation through the use of an appropriate quantitative assessment or other defensible scientific method, and where applicable will account for temporal loss of resource values. The Division will use a watershed prioritization approach to evaluate proposed mitigation sites. Mitigation should occur as close to the impact location as practicable, prioritized as follows:

   (i) projects providing an increase in resource values to degraded streams or wetlands on site or within the immediate impact area;

   (ii) projects providing an increase in resource values to degraded streams or wetlands within the HUC-12 in which the impact is located;

   (iii) projects providing an increase in resource values to degraded streams or wetlands within the HUC-8 in which the impact is located;

   (iv) projects providing an increase in resource values to degraded streams or wetlands outside the HUC-8 in which the impact is located; or

   (v) a combination of any of the above activities.

   Where appropriate, the Division may apply a multiplier based on items (i) through (v) of this part.

5. All mitigation plans shall include a monitoring and reporting program to document timely achievement of successful mitigation and remedial actions to correct any deficiency.

6. Mitigation for impacts to Tennessee streams and wetlands shall occur in Tennessee.

(b) Mitigation of streams.

Mitigation for impacts to streams must be developed in a scientifically defensible manner approved by the Division that demonstrates a sufficient increase in resource values to compensate for permitted impacts. At a minimum, all new or relocated streams must include a vegetated riparian zone, demonstrate lateral and vertical channel stability, and have a natural channel bottom. All mitigation watercourses must maintain or improve flow and classified uses

after mitigation is complete.

(c) Mitigation of Wetlands.

1. Prioritization of mitigation site selection for wetland impacts may also be based on U.S. EPA Level III ecoregions.

2. The ratio of acres required for wetland mitigation should not be less than 2:1 for wetland restoration; 4:1 for wetland creation and enhancement; and 10:1 for wetland preservation. Applicants may propose and utilize, subject to the Division's approval, best professional judgment ratios. The best professional judgment ratios shall be based on the resource values and functions of the affected wetland, anticipated resource value of the proposed mitigation, temporal loss, and the likelihood of success of the proposed mitigation.

(8) Duration and ~~Re-issuance~~ Renewal of Permits.

(a) Each permit issued shall have a fixed term not to exceed five (5) years.

(b) ~~Re-issuance~~ Renewal of permits is not required for one-time alterations such as construction, as long as the alterations, mitigation, and monitoring are completed within the time limit established by permit. Any permittee that has not completed the alteration authorized by the permit, or the mitigation and monitoring required by the permit, must apply for renewal at least ninety (90) days prior to the expiration date.

(c) For ~~on-going~~ ongoing alterations, such as water withdrawals, any permittee who wishes to continue the permitted activity after the expiration date of the permit must make application for renewal at least ninety (90) days prior to its expiration date. If an application for permit renewal does not fall within subparagraph (4)(a)3 of this rule, ~~(d) The~~ the Commissioner shall follow the procedures for public notice and participation detailed in paragraph (4) of this rule, regarding each application for ~~re-issuance~~ renewal of ~~a~~ the permit.

(9) ~~Review of~~ Permit ~~Denials, Suspensions, Revocations, Terms and Conditions~~ Appeals.

~~Permittees and applicants for permits who disagree with the denial, suspension or revocation of a permit or the terms and conditions of a permit are entitled to review of the Commissioner's decision by the Board of Water Quality, Oil and Gas pursuant to T.C.A. § 69-3-105.~~

(a) Permittees, applicants for permits, and aggrieved persons meeting the criteria of subparagraph (9)(c) of this rule who disagree with the denial, issuance, terms, or conditions of a permit may seek review of the Commissioner's decision by the Board of Water Quality, Oil and Gas pursuant to T.C.A. § 69-3-105(i) and § 69-3-110.

(b) For permit modifications, only those terms that were the subject of the modification may be appealed. For permit renewals, only those terms that were changed in the permit renewal compared to the preceding permit may be appealed.

(c) To be entitled to a review of the Commissioner's permit decision, aggrieved persons shall:

1. have submitted a written comment during the public comment period on the permit;

2. given testimony at a formal public hearing on the permit; or

3. attended a public hearing as evidenced by completion of a Department of Environment and Conservation Record of Attendance Card or other method as determined by the Division.

(d) The basis for the appeal for aggrieved persons may only include issues which:

1. were provided to the Commissioner in writing during the public comment period;

2. were provided in testimony at a formal public hearing on the permit; or

3. arise from any material change to conditions in the final permit from those in the draft, unless the material change has been subject to additional opportunity for public comment.

(e) All petitions for permit appeals shall be filed with the Board of Water Quality, Oil and Gas within 30 days after the date that public notice of the permit issuance, denial, or modification is given by way of posting the notice on the Division's website. All petitioners shall specify the basis for their appeal, and state a claim for relief based on an alleged violation of the Act or the rules promulgated thereunder. Aggrieved persons shall specify facts sufficient to establish that they have satisfied the criteria of subparagraphs (9)(c) and (9)(d) of this rule and otherwise have standing to appeal.

(f) Any action taken by the Commissioner regarding a permit remains in effect unless and until an order of the Board of Water Quality, Oil and Gas or a reviewing court becomes final.

~~(10) Alteration of wet weather conveyances~~

~~(a) The alteration of wet weather conveyances, as defined in T.C.A. § 69-3-103, by any activity is permitted by this paragraph and shall require no notice to or approval by the department, provided it is done in accordance with the following conditions:~~

~~1. The activity may not result in the discharge of waste or other substances that may be harmful to humans or wildlife;~~

~~2. Material may not be placed in a location or manner so as to impair surface water flow into or out of any wetland area; and~~

~~3. Sediment shall be prevented from entering other waters of the state.~~

~~(i) Erosion and sediment controls shall be designed according to the size and slope of disturbed or drainage areas to detain runoff and trap sediment and shall be properly selected, installed, and maintained in accordance with the manufacturer's specifications and good engineering practices.~~

~~(ii) Erosion and sediment control measures shall be in place and functional before earthmoving operations begin, and shall be constructed and maintained throughout the construction period. Temporary measures may be removed at the beginning of the work day, but shall be replaced at the end of the work day.~~

~~(iii) Checkdams shall be utilized where runoff is concentrated. Clean rock, log, sandbag or straw bale checkdams shall be properly constructed to detain runoff and trap sediment. Checkdams or other erosion control devices are not to be constructed in stream. Clean rock can be of various type and size depending on the application. Clean rock shall not contain fines or other wastes or contaminants.~~

~~4. Appropriate steps shall be taken to ensure that petroleum products or other chemical pollutants are prevented from entering waters of the state. All spills shall be reported to the appropriate emergency management agency and to the department. In the event of a spill, measures shall be taken immediately to prevent pollution of waters of the state, including ground water.~~

~~5. There shall be no additional conditions upon a person's activity within a wet weather conveyance. This provision does not apply to National Pollutant Discharge Elimination System Permits.~~

Authority: T.C.A. §§ 69-3-101 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)
Dr. Gary G. Bible (Oil and Gas Industry)	X				
Elaine Boyd (Commissioner's Designee, Department of Environment and Conservation)	X				
James W. Cameron III (Small Generator of Water Pollution representing Automotive Interests)	X				
Jill E. Davis (Municipalities)	X				
Mayor Kevin Davis (Counties)	X				
Derek Gernt (Oil or Gas Property Owner)	X				
C. Monty Halcomb (Environmental Interests)				X	
Charlie R. Johnson (Public-at-large)				X	
Judy Manners (Commissioner's Designee, Department of Health)	X				
John McClurkan (Commissioner's Designee, Department of Agriculture)	X				
Frank McGinley (Agricultural Interests)	X				
D. Anthony Robinson (Manufacturing Industry)	X				

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the Board of Water Quality, Oil and Gas on 10/16/2018, 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: 05/03/18

Rulemaking Hearing(s) Conducted on: (add more dates). 06/27/18

Date: October 17, 2018

Signature: James W. Cameron III

Name of Officer: James W. Cameron III

Title of Officer: Chairman

CAROL L. GRICE STATE OF TENNESSEE NOTARY PUBLIC DAVIDSON COUNTY, TENN.

Subscribed and sworn to before me on: October 17, 2018

Notary Public Signature: Carol L. Grice

My commission expires on: March 3, 2020

Agency/Board/Commission: Board of Water Quality, Oil and Gas

Rule Chapter Number(s): 0400-40-07

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

6/10/2019
Date

Department of State Use Only

Filed with the Department of State on: 6/13/19

Effective on: 9/11/19

Tre Hargett
Tre Hargett
Secretary of State