

G.O.C. STAFF RULE ABSTRACT

AGENCY: University of Tennessee

SUBJECT: Charges for Producing Copies of Public Records

STATUTORY AUTHORITY: Public Chapter 722 (2016)

EFFECTIVE DATES: December 25, 2017 through June 30, 2018

FISCAL IMPACT: None

STAFF RULE ABSTRACT: A new state law, Public Chapter 722 (2016), requires every governmental entity in Tennessee to establish a written public records policy properly adopted by the appropriate governing authority prior to July 1, 2017. The University of Tennessee Board of Trustees adopted a new public records policy that complies with Public Chapter 722 and other provisions of the Tennessee Public Records Act. In compliance with Public Chapter 722, the new policy does not impose requirements on persons requesting records that are more burdensome than state law and describes: (1) the process for making requests to inspect public records or receive copies of public records and a copy of any required request forms; (2) the process for responding to requests, including redaction practices; (3) a statement of fees that will be charged for copies of public records and the procedures for billing and payment; and (4) the names or titles and the contact information for the individuals within the University designated as public records request coordinators. Chapter 1720-01-11 of the Rules of The University of Tennessee, which addresses only the subject of charges the University assesses for producing public records and will be superseded by the new policy.

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 Regulatory Flexibility Addendum is not applicable.

Impact on Local Governments

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

The University of Tennessee anticipates that this rule change will have no 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;

A new state law, Public Chapter 722 (2016), requires every governmental entity in Tennessee to establish a written public records policy properly adopted by the appropriate governing authority prior to July 1, 2017. The University of Tennessee Board of Trustees adopted a new public records policy that complies with Public Chapter 722 and other provisions of the Tennessee Public Records Act. In compliance with Public Chapter 722, the new policy does not impose requirements on persons requesting records that are more burdensome than state law and describes: (1) the process for making requests to inspect public records or receive copies of public records and a copy of any required request forms; (2) the process for responding to requests, including redaction practices; (3) a statement of fees that will be charged for copies of public records and the procedures for billing and payment; and (4) the names or titles and the contact information for the individuals within the University designated as public records request coordinators. Chapter 1720-01-11 of the Rules of The University of Tennessee, which addresses only the subject of charges the University assesses for producing public records and will be superseded by the new policy.

- (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;

Public Chapter 722 (2016)

- (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 University has not received any feedback from citizens or the media about the new policy.

- (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 University's Office of the General Counsel consulted with the Office of the Attorney General prior to the University's repeal of Chapter 1720-01-11.

- (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;

Matthew Scoggins
General Counsel
University of Tennessee

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

Matthew Scoggins
General Counsel
University of Tennessee

University of Tennessee Rules
Chapter 1720-01-11 Charges for Producing Copies of Public Records

- (H) Office address, telephone number, and email address of the agency representative or representatives who will explain the rule at a scheduled meeting of the committees; and

Matthew Scoggins
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719 Andy Holt Tower
Knoxville, TN 37996-0170
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- (I) Any additional information relevant to the rule proposed for continuation that the committee requests.

N/A

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Sequence Number: 09-26-17
Rule ID(s): 6608
File Date: 9/26/17
Effective Date: 12/25/17

Proposed Rule(s) Filing Form

Proposed rules are submitted pursuant to Tenn. Code Ann. §§ 4-5-202, 4-5-207, and 4-5-229 in lieu of a rulemaking hearing. It is the intent of the Agency to promulgate these rules without a rulemaking hearing unless a petition requesting such hearing is filed within ninety (90) days of the filing of the proposed rule with the Secretary of State. To be effective, the petition must be filed with the Agency and be signed by ten (10) persons who will be affected by the amendments, or submitted by a municipality which will be affected by the amendments, or an association of ten (10) or more members, or any standing committee of the General Assembly. The agency shall forward such petition to the Secretary of State.

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

Agency/Board/Commission: University of Tennessee
Division:
Contact Person: Matthew Scoggins, General Counsel
Address: 719 Andy Holt Tower, 1331 Circle Park, Knoxville, TN
Zip: 37996-0170
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Email: scoggins@tennessee.edu

Revision Type (check all that apply):

- Amendment
 New
 Repeal

Rule(s) (ALL chapters and rules contained in filing must be listed here. If needed, copy and paste additional tables to accommodate multiple chapters. Please make sure that **ALL** new rule and repealed rule numbers are listed in the chart below. Please enter only **ONE** Rule Number/Rule Title per row)

Chapter Number	Chapter Title
1720-01-11	Charges for Producing Copies of Public Records
Rule Number	Rule Title

**RULES
OF
THE UNIVERSITY OF TENNESSEE
(ALL CAMPUSES)**

**CHAPTER 1720-1-11
CHARGES FOR PRODUCING COPIES OF PUBLIC RECORDS REPEALED**

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1720-1-11-.04	Copying Costs	1720-1-11-.09	Requests for Copies Following Inspection
1720-1-11-.05	Labor Costs		

~~**1720-1-11-.01 PURPOSE.** Following the publication of the Schedule of Reasonable Charges for Copies of Public Records developed by the Office of Open Records Counsel pursuant to T.C.A. § 8-4-604(a), these Rules are promulgated for the purpose of establishing and implementing charges for producing copies of public records of The University of Tennessee. Other statutory provisions, such as T.C.A. § 10-7-506(c), describe charges that may be assessed when specific records are requested for a specific use.~~

~~*Authority:* T.C.A. § 49-9-209(e) and § 10-7-506(a). *Administrative History:* Public necessity rule filed October 31, 2008; effective through April 14, 2009. Public necessity rule filed October 31, 2008, and effective through April 14, 2009, expired effective April 15, 2009, and rule reverted to its previous status. Original rule filed February 26, 2009; effective June 26, 2009.~~

~~**1720-1-11-.02 DEFINITIONS.**~~

- ~~(1) "Labor" means the time reasonably necessary to produce the requested records and includes the time spent locating, retrieving, reviewing, redacting, and reproducing the records.~~
- ~~(2) "Labor threshold" means the labor of the employee(s) reasonably necessary to produce requested records for the first hour incurred by the University in producing the records.~~
- ~~(3) "Production costs" means all reasonable costs the University incurred to produce the public records requested by the requesting party. Production costs include copying costs, labor costs, and delivery costs, as described in these Rules.~~
- ~~(4) "Public record" means any record of the University that is required to be open to inspection under the provisions of the Tennessee Public Records Act, Tenn. Code Ann. §§ 10-7-501 et seq.~~
- ~~(5) "Public Records Designee" or "PRD" means the person at each campus, institute, or other unit of the University who receives and coordinates public records requests and maintains documentation of public records requests, responses, and charges. For purposes of these Rules, this term includes Human Resource and Purchasing Department employees who independently respond to public records requests for personnel or purchasing records.~~
- ~~(6) "Requesting party" means the person who requests to inspect or copy public records of the University. To have access to public records, a requesting party must be a citizen of the State of Tennessee.~~

~~*Authority:* T.C.A. § 49-9-209(e) and § 10-7-506(a). *Administrative History:* Public necessity rule filed~~

~~October 31, 2008; effective through April 14, 2009. Public necessity rule filed October 31, 2008, and effective through April 14, 2009, expired effective April 15, 2009, and rule reverted to its previous status. Original rule filed February 26, 2009; effective June 26, 2009.~~

~~**1720-1-11-.03 PRODUCTION COSTS.** Except as otherwise provided in these Rules, the PRD shall charge the requesting party for production costs as defined in Rule 1720-1-11-.02(3). The production costs charged to the requesting party shall be reasonable. The Schedule of Reasonable Charges for Copies of Public Records, published by the Office of Open Records Counsel, will be used as a guideline to determine the amount a requesting party will be charged for producing copies of public records. The PRD shall utilize the most cost efficient method of producing copies of public records.~~

~~**Authority:** T.C.A. § 49-9-209(e) and § 10-7-506(a). **Administrative History:** Public necessity rule filed October 31, 2008; effective through April 14, 2009. Public necessity rule filed October 31, 2008, and effective through April 14, 2009, expired effective April 15, 2009, and rule reverted to its previous status. Original rule filed February 26, 2009; effective June 26, 2009.~~

~~**1720-1-11-.04 COPYING COSTS.** Copying costs include the costs related to making copies of the public records requested by the requesting party, by photographic, or other means of duplication.~~

- ~~(1) The PRD shall assess a charge of fifteen cents (\$0.15) per page for each standard 8 ½ x 11" or 8 ½ x 14" black and white copy produced.~~
- ~~(2) If a public record is maintained in color, the PRD shall advise the requesting party that the record can be produced in color if the requesting party is willing to pay the higher charge for a color copy. If the citizen then requests a color copy, the PRD shall assess a copy charge of fifty (50) cents per page for each 8 ½ x 11" or 8 ½ x 14" color copy produced.~~
- ~~(3) The charge for a duplex copy shall be the same as the charge for two (2) separate copies.~~
- ~~(4) If a copy of a public record is produced on a medium other than 8 ½ x 11" or 8 ½ x 14" paper, the PRD shall assess a copy charge equal to the actual cost of producing a copy of the public record, taking into consideration the amount of material, equipment costs, and the cost of the alternative medium.~~
- ~~(5) If the requested records exist electronically, but not in the format requested or a new or modified computer program or application is necessary to put the records in a readable and reproducible format or it is necessary to access backup files, and the PRD shall charge the requesting party the actual costs incurred in producing the records in the format requested or in creating or modifying a computer program or application necessary to put the records in a readable and reproducible format or in accessing backup files.~~
- ~~(6) Electronic records will be produced only in a read-only format.~~
- ~~(7) If the PRD utilizes an outside vendor to produce copies of the requested records because the University is legitimately unable to produce the copies, the cost charged by the vendor to the University shall be recovered from the requesting party.~~
- ~~(8) If the PRD is charged a fee to retrieve requested records from the Tennessee State Library and Archives or from any other entity having possession of requested records, the PRD shall charge the requesting party the cost charged the University for retrieval of the records.~~

~~**Authority:** T.C.A. § 49-9-209(e) and § 10-7-506(a). **Administrative History:** Public necessity rule filed October 31, 2008; effective through April 14, 2009. Public necessity rule filed October 31, 2008, and effective through April 14, 2009, expired effective April 15, 2009, and rule reverted to its previous status. Original rule filed February 26, 2009; effective June 26, 2009.~~

~~1720-1-11-.05 LABOR COSTS.~~ The PRD shall charge the requesting party the hourly wage of the employee(s) reasonably necessary to produce the requested records above the labor threshold defined in Rule 1720-1-11.02(2). The "hourly wage" is based upon the employee(s) base salary and does not include benefits. In calculating the labor costs to be charged to the requesting party, the PRD shall:

- ~~(1) First, determine the number of hours each employee spent producing the requested public records;~~
- ~~(2) Second, subtract the one (1) hour threshold from the number of hours the highest paid employee spent producing the request;~~
- ~~(3) Third, multiply the total number of hours to be charged for the labor of each employee by that employee's hourly wage; and~~
- ~~(4) Fourth, add together the totals for all the employees involved in the request to determine the total amount of the labor costs to be charged to the requesting party.~~

~~*Authority:* T.C.A. § 49-9-209(e) and § 10-7-506(a). *Administrative History:* Public necessity rule filed October 31, 2008; effective through April 14, 2009. Public necessity rule filed October 31, 2008, and effective through April 14, 2009, expired effective April 15, 2009, and rule reverted to its previous status. Original rule filed February 26, 2009; effective June 26, 2009.~~

~~1720-1-11-.06 DELIVERY COSTS.~~ The PRD shall charge the requesting party for the costs incurred by the PRD in delivering the records to the requesting party, in addition to any other charge permitted by these Rules.

- ~~(1) Delivery of copies of public records to the requesting party shall be by hand delivery when the requesting party returns to the PRD's office to retrieve the requested records. If the requesting party chooses not to return to the PRD's office to retrieve the copies, the PRD shall deliver records to the requesting party through the United States Postal Service.~~
- ~~(2) In the discretion of the PRD, copies of public records may be delivered through other means, including electronically.~~

~~*Authority:* T.C.A. § 49-9-209(e) and § 10-7-506(a). *Administrative History:* Public necessity rule filed October 31, 2008; effective through April 14, 2009. Public necessity rule filed October 31, 2008, and effective through April 14, 2009, expired effective April 15, 2009, and rule reverted to its previous status. Original rule filed February 26, 2009; effective June 26, 2009.~~

~~1720-1-11-.07 PAYMENT OF PRODUCTION COSTS.~~ If the requesting party requests copies of public records, the following provisions concerning payment of production costs shall apply:

- ~~(1) The PRD shall provide the requesting party an estimate of the production costs before initiating the production of copies of the requested public records.~~
- ~~(2) The PRD may require payment in full of all production costs before copies of public records are delivered or otherwise made available to the requesting party.~~
- ~~(3) Production costs must be paid by cash or check. Cash payments must be for the exact amount of the production costs. Checks must be made payable to The University of Tennessee for the exact amount of the production costs.~~
- ~~(4) The PRD will provide a receipt to the requesting party upon receipt of payment of the production costs.~~

~~*Authority:* T.C.A. § 49-9-209(e) and § 10-7-506(a). *Administrative History:* Public necessity rule filed~~

~~October 31, 2008; effective through April 14, 2009. Public necessity rule filed October 31, 2008, and effective through April 14, 2009, expired effective April 15, 2009, and rule reverted to its previous status. Original rule filed February 26, 2009; effective June 26, 2009.~~

~~**1720-1-11-.08 WAIVER OF PRODUCTION COSTS.** Waiver of production costs for copies of public records shall be in accordance with the following provisions:~~

- ~~(1) The PRD shall provide copies of public records without charge if all production costs, as defined in Rule 1720-1-11-.02(3), do not exceed three dollars (\$3.00).~~
- ~~(2) The PRD shall provide copies of materials for meetings of the Board of Trustees and its committees without charge when requested contemporaneously with the meeting.~~
- ~~(3) When the requesting party is a federal, state, or local government agency, the PRD shall provide the requested copies of public records without charge.~~
- ~~(4) When the requesting party is a current employee of the University, the PRD shall provide the requesting party copies of his/her employment records without charge.~~
- ~~(5) The PRD may provide copies of the following records without charge if the University will not incur significant production costs in providing the records: current enrollment data, basic budget information, history of the University, biographical data for University employees, University policies and procedures, general facts and figures about the University, and similar information.~~

~~**Authority:** T.C.A. § 49-9-209(e) and § 10-7-506(a). **Administrative History:** Public necessity rule filed October 31, 2008; effective through April 14, 2009. Public necessity rule filed October 31, 2008, and effective through April 14, 2009, expired effective April 15, 2009, and rule reverted to its previous status. Original rule filed February 26, 2009; effective June 26, 2009.~~

~~**1720-1-11-.09 REQUESTS FOR COPIES FOLLOWING INSPECTION.** The PRD shall not assess a charge to inspect public records, unless otherwise required by law. However, if the requesting party, after requesting to inspect public records, requests copies of public records, the PRD shall charge the requesting party for all production costs.~~

~~**Authority:** T.C.A. § 49-9-209(e) and § 10-7-506(a). **Administrative History:** Public necessity rule filed October 31, 2008; effective through April 14, 2009. Public necessity rule filed October 31, 2008, and effective through April 14, 2009, expired effective April 15, 2009, and rule reverted to its previous status. Original rule filed February 26, 2009; effective June 26, 2009.~~

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 Chapter 1720-01-11 Charges for Producing Copies of Public Records

The University of Tennessee
 Chapter 1720-01-11
 Charges for Producing Copies of Public Records

Repeal

Rule 1720-01-11 Charges for Producing Copies of Public Records is repealed in its entirety.

Authority: T.C.A. § 49-9-209(e) and Public Acts of Tennessee, 1839-1840, Chapter 98, Section 5, and Public Acts of Tennessee, 1807, Chapter 64.

*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)
Governor Bill Haslam				X	
Commissioner Candace McQueen				X	
Commissioner Jai Templeton	X				
Dr. Joe DiPietro	X				
Charles C. Anderson, Jr.	X				
Shannon Brown				X	
George E. Cates				X	
Dr. Terrance G. Cooper (non-voting)					
Dr. Susan C. Davidson	X				
Spruell Driver, Jr.	X				
Dr. William E. Evans	X				
John N. Foy	X				
Crawford Gallimore	X				
Vicky B. Gregg	X				
Raja J. Jubran	X				
Mike Krause (non-voting)					
Brad A. Lampley	X				
Andrew P. McBride (non-voting)					
Sharon J. Pryse	X				
Rhedona Rose	X				
David A. Shepard	X				
Rachel M. Smith	X				
John D. Tickle	X				
Julia T. Wells	X				
Charles E. Wharton	X				
Tommy G. Whittaker	X				

University of Tennessee Rules
Chapter 1720-01-11 Charges for Producing Copies of Public Records

I certify that this is an accurate and complete copy of proposed rules, lawfully promulgated and adopted by the University of Tennessee Board of Trustees on 06/22/2017, and is in compliance with the provisions of T.C.A. § 4-5-222. The Secretary of State is hereby instructed that, in the absence of a petition for proposed rules being filed under the conditions set out herein and in the locations described, he is to treat the proposed rules as being placed on file in his office as rules at the expiration of ninety (90) days of the first day of the month subsequent to the filing of the proposed rule with the Secretary of State.

Date: 09/07/2017

Signature: _____

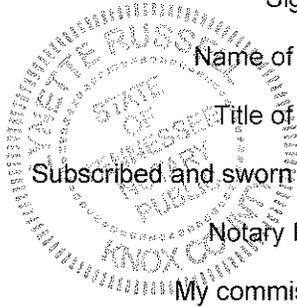
Name of Officer: Matthew Scoggins

Title of Officer: General Counsel

Subscribed and sworn to before me on: 9-7-17

Notary Public Signature: _____

My commission expires on: _____



Agency/Board/Commission: The University of Tennessee

Rule Chapter Number(s): Chapter 1720-01-11

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
9/18/2017
Date

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Filed with the Department of State on: _____

9/26/17

Effective on: _____

12/25/17

Tre Hargett

Tre Hargett
Secretary of State

G.O.C. STAFF RULE ABSTRACT

AGENCY: Commerce and Insurance

DIVISION: Tennessee Corrections Institute

SUBJECT: Minimum Standards for Local Correctional Facilities

STATUTORY AUTHORITY: Tennessee Code Annotated, § 41-4-140

EFFECTIVE DATES: January 22, 2018 through June 30, 2018

FISCAL IMPACT: Minimal

STAFF RULE ABSTRACT: Rule 1400-01-.06 "Personnel" is amended to provide that notice shall be provided to and consent obtained in writing prior to an agency conducting criminal history checks on specified persons.

Amendments to rule 1400-01 -.07 "Security" on the use of deadly force will clarify that the scope of the rule is limited to inmates and does not include civilians so as not to violate the 4th Amendment.

Rule 1400-01-.11 "Mail and Visiting" is amended to comply with federal law, Proconier v. Martinez, 94 S.Ct. 1800 (1974) and Martin v. Kelley, 803 F.2d 236 (6th Cir.1986), in regards to providing notice of and an opportunity to protest the restriction on the delivery of mail.

Rule 1400-01 -.15 "Hygiene" is amended to comply with federal law (e.g. Holt v. Hobbs, 135 S.Ct. 853 (2015) and the Religious Land Use and Institutionalized Persons Act).

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.

Economic Impact Statement:

1. Types and estimated number of small businesses directly affected:

Only small businesses that operate correctional facilities, including jails and workhouses, for a municipal or county government will be affected by the promulgation of these rules.

2. Projected reporting, recordkeeping, and other administrative costs:

There is no foreseeable alteration in small business reporting or recordkeeping that will result from the promulgation of these rules.

3. Probable effect on small businesses:

Only small businesses that operate correctional facilities, including jails and workhouses, for a municipal or county government will be affected by the promulgation of these rules.

4. Less burdensome, intrusive, or costly alternative methods:

No recommendations for less burdensome, intrusive or costly alternative methods have been offered, identified or recommended for use.

5. Comparison with federal and state counterparts:

These rules will amend existing Chapter 1400-01, and are required to comply with federal and state law including the following court decisions: *Proconier v. Martinez*, 94 S.Ct. 1800 (1974); *Martin v. Kelley*, 803 F.2d 236 (6th Cir. 1986); *Holt v. Hobbs*, 135 S.Ct. 853 (2015); and, the Religious Land Use and Institutionalized Persons Act.

6. Effect of possible exemption of small businesses:

There are no exemptions to the requirements contained in these rules 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://state.tn.us/sos/acts/106/pub/pc1070.pdf>) of the 2010 Session of the General Assembly)

These rules will impact local municipal or county governments that operate correctional facilities, including jails and workhouses.

Additional Information Required by Joint Government Operations Committee

All agencies, upon filing a rule, must also submit the following pursuant to T.C.A. § 4-5-226(i)(1).

- (A) A brief summary of the rule and a description of all relevant changes in previous regulations effectuated by such rule;

Rule 1400-01-.06 Personnel is amended to provide that notice shall be provided to and consent obtained in writing prior to an agency conducting criminal history checks on specified persons. Amendments to rule 1400-01-.07 Security on the use of deadly force will clarify that the scope of the rule is limited to inmates and does not include civilians so as not to violate the 4th Amendment. Rule 1400-01-.11 Mail and Visiting is amended to comply with federal law, *Procunier v. Martinez*, 94 S.Ct. 1800 (1974) and *Martin v. Kelley*, 803 F.2d 236 (6th Cir. 1986), in regards to providing notice of and an opportunity to protest the restriction on the delivery of mail. Rule 1400-01-.15 Hygiene is amended to comply with federal law (e.g. *Holt v. Hobbs*, 135 S.Ct. 853 (2015) and the Religious Land Use and Institutionalized Persons Act).

- (B) A citation to and brief description of any federal law or regulation or any state law or regulation mandating promulgation of such rule or establishing guidelines relevant thereto;

T.C.A. § 41-4-140(a) provides that the Tennessee Corrections Institute has the power and duty: to establish minimum standards for local jails, lock-ups and workhouses, including, but not limited to, standards for physical facilities and standards for correctional programs of treatment, education and rehabilitation of inmates and standards for the safekeeping, health and welfare of inmates; to establish guidelines for the security of local jails, lock-ups and workhouses for the purpose of protecting the public from criminals and suspected criminals by making the facilities more secure and thereby reducing the chances that a member of the public or a facility employee will be killed or injured during an escape attempt or while an inmate is fleeing from law enforcement officials following an escape; to inspect all local jails, lock-ups, workhouses and detention facilities at least once a year and publish the results of the inspections; and, to establish and enforce procedures to ensure compliance with the adopted minimum standards so as to ensure the welfare of all persons committed to the institutions. T.C.A. § 41-7-106(c) authorizes the Tennessee Corrections Institute Board of Control to promulgate rules and regulations for the implementation and the effective operation of the agency's responsibilities. Pursuant to *Procunier v. Martinez*, 94 S.Ct. 1800 (1974) and *Martin v. Kelley*, 803 F.2d 236 (6th Cir. 1986), both sender and receiver of letters must receive notice and an opportunity to protest to a neutral officer if the mail is rejected. Pursuant to *Holt v. Hobbs*, 135 S.Ct. 853 (2015), grooming rules need to comply with federal law, specifically the Religious Land Use and Institutionalized Persons Act.

- (C) Identification of persons, organizations, corporations or governmental entities most directly affected by this rule, and whether those persons, organizations, corporations or governmental entities urge adoption or rejection of this rule;

Any entity that operates correctional facilities, including jails and workhouses, for a municipal or county government 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;

OAG 03-101 (8/19/03), OAG 04-026 (2/12/04), and OAG 11-063 (8/26/11). *Procunier v. Martinez*, 94 S.Ct. 1800 (1974), *Martin v. Kelley*, 803 F.2d 236 (6th Cir. 1986), and *Holt v. Hobbs*, 135 S.Ct. 853 (2015).

- (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;

Minimal

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

Beth Ashe, Executive Director of Tennessee Corrections Institute; Joseph Underwood, Chief Counsel for Fire Prevention and Law Enforcement

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

Beth Ashe, Executive Director of Tennessee Corrections Institute; Joseph Underwood, Chief Counsel for Fire Prevention and Law Enforcement

- (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

Beth Ashe, Executive Director of Tennessee Corrections Institute, 500 James Robertson Parkway, Nashville, TN 37243, Beth.Ashe@tn.gov (615-741-3816); Joseph Underwood, Chief Counsel for Fire Prevention and Law Enforcement, 500 James Robertson Parkway, Nashville, TN 37243, Joseph.Underwood@tn.gov (615-741-3899).

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

None.

**Department of State
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Sequence Number: 10-22-17
Rule ID(s): 4628
File Date: 10-24-17
Effective Date: 1-22-18

Proposed Rule(s) Filing Form

Proposed rules are submitted pursuant to Tenn. Code Ann. §§ 4-5-202, 4-5-207, and 4-5-229 in lieu of a rulemaking hearing. It is the intent of the Agency to promulgate these rules without a rulemaking hearing unless a petition requesting such hearing is filed within ninety (90) days of the filing of the proposed rule with the Secretary of State. To be effective, the petition must be filed with the Agency and be signed by ten (10) persons who will be affected by the amendments, or submitted by a municipality which will be affected by the amendments, or an association of ten (10) or more members, or any standing committee of the General Assembly. The agency shall forward such petition to the Secretary of State.

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

Agency/Board/Commission:	Department of Commerce and Insurance
Division:	Tennessee Corrections Institute
Contact Person:	Joseph Underwood
Address:	500 James Robertson Pkwy. Davy Crockett Tower, 8th Floor Nashville, Tennessee
Zip:	37243
Phone:	(615) 741-3899
Email:	Joseph.Underwood@tn.gov

Revision Type (check all that apply):

- Amendment
 New
 Repeal

Rule(s) (ALL chapters and rules contained in filing must be listed here. If needed, copy and paste additional tables to accommodate multiple chapters. Please make sure that ALL new rule and repealed rule numbers are listed in the chart below. Please enter only ONE Rule Number/Rule Title per row)

Chapter Number	Chapter Title
1400-01	Minimum Standards for Local Correctional Facilities
Rule Number	Rule Title
1400-01-.06	Personnel
1400-01-.07	Security
1400-01-.11	Mail and Visiting
1400-01-.15	Hygiene

**RULES
OF
THE TENNESSEE CORRECTIONS INSTITUTE
CORRECTIONAL FACILITIES INSPECTION**

**CHAPTER 1400-01
MINIMUM STANDARDS FOR LOCAL CORRECTIONAL FACILITIES**

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1400-01-.04	Physical Plant	1400-01-.13	Medical Services
1400-01-.05	Administration/Management	1400-01-.14	Admission, Records and Release
1400-01-.06	Personnel	1400-01-.15	Hygiene
1400-01-.07	Security	1400-01-.16	Supervision of Inmates
1400-01-.08	Discipline	1400-01-.17	Classification
1400-01-.09	Sanitation/Maintenance		

1400-01-.06 PERSONNEL.

- (1) Type I, II, III, and IV Facilities shall meet the following requirements unless otherwise specified.
- (2) After providing notice and obtaining consent in writing, a criminal history check shall be conducted on all new facility employees, service providers with continuous access to restricted areas, contractors, and volunteers prior to their assuming duties to identify if there are criminal convictions that have a specific relationship to job performance. This criminal history check includes comprehensive identifier information to be collected and run against law enforcement indices. If suspect information on matter with potential terrorism connections is returned on the person, this information shall be forwarded to the local Joint Terrorism Task Force (JTTF) or other similar agency.

This requirement applies only to Type I, II, and III Facilities.

- (3) Facilities shall develop a personnel policy manual made available to each employee, and which provides information on the following subjects:
 - (a) Description of organizational structure;
 - (b) Position descriptions;
 - (c) Personnel rules and regulations;
 - (d) Recruitment procedures;
 - (e) Equal employment opportunity provisions;
 - (f) Work hours;
 - (g) Personnel records;
 - (h) Employee evaluation;
 - (i) In-Service training;
 - (j) Hostage policy; and
 - (k) Use of force.

These requirements apply only to Type I Facilities.

- (4) Prior to assuming duties, all detention facility employees, support employees and non-facility support staff shall receive orientation training regarding the functions and mission of the facility under the supervision of a qualified detention officer. This training may be accomplished through classroom instruction, supervised on-the-job training, an individual review of policies and procedures, or any combination of the three and shall include:
- (a) Facility policies and procedures;
 - (b) Suicide prevention;
 - (c) Use-of-force;
 - (d) Report writing;
 - (e) Inmate rules and regulations;
 - (f) Key control;
 - (g) Emergency plans and procedures;
 - (h) Cultural diversity;
 - (i) Communication skills; and
 - (j) Sexual misconduct.

These requirements apply only to Type I, II, and III Facilities.

- (5) A Facility Training Officer (FTO) shall coordinate the staff development and training program. This person shall have specialized training for that position (assigned as a primary or additional duty). The FTO shall complete the Training the Trainer (3T) course and attend the annual FTO Conference conducted by the Tennessee Corrections Institute.

This requirement applies only to Type I, II, and III Facilities.

- (6) All support employees who have minimal inmate contact shall receive at least sixteen (16) hours of facility training during their first year of employment. All employees in this category shall receive an additional sixteen (16) hours of facility training each subsequent year of employment.

This requirement applies only to Type I, II, and III Facilities.

- (7) All non-facility support staff who have regular or daily inmate contact, shall receive a minimum of four (4) hours continuing annual training, which may include:
- (a) Security procedures and regulations;
 - (b) Supervision of inmates;
 - (c) Signs of suicide risk;
 - (d) Suicide precautions;
 - (e) Use-of-force regulations and tactics;
 - (f) Report writing;
 - (g) Inmate rules and regulations;

- (h) Key control;
- (i) Rights and responsibilities of inmates;
- (j) Safety procedures;
- (k) All emergency plans and procedures;
- (l) Interpersonal relations;
- (m) Social/cultural lifestyles of the inmate population;
- (n) Cultural diversity;
- (o) CPR/first aid;
- (p) Counseling techniques;
- (q) Sexual harassment/sexual misconduct awareness;
- (r) Purpose, goals, policies, and procedures for the facility and the parent agency;
- (s) Security and contraband regulations;
- (t) Appropriate conduct with inmates;
- (u) Responsibilities and rights of employees;
- (v) Universal precautions;
- (w) Occupational exposure;
- (x) Personal protective equipment;
- (y) Bio-hazardous waste disposal; and
- (z) Overview of the correctional field.

These requirements apply only to Type I, II, and III Facilities.

- (8) All detention or correctional facility employees, including part-time employees, whose primary duties include the industry, custody, or treatment of inmates shall be required during the first year of employment to complete a basic training program consisting of a minimum of forty (40) hours and provided or approved by the Tennessee Corrections Institute.

This requirement applies only to Type I, II, and III Facilities.

- (9) All detention or correctional facilities employees, including part-time employees, whose primary duties include the industry, custody, or treatment of inmates shall be required to complete an annual in-service program designed to instruct them in specific skill areas of facility operations. This annual in-service shall consist of forty (40) hours with at least sixteen (16) of these hours provided or approved by the Tennessee Corrections Institute. The remaining twenty-four (24) hours may be provided by the facility if course content is approved and monitored by the Tennessee Corrections Institute.

This requirement applies only to Type I, II, and III Facilities.

- (10) A minimum number of hours of training and any additional courses for basic and in-service training shall be in compliance with the requirements established by the Tennessee Corrections Institute Board of Control.

This requirement applies only to Type I, II, and III Facilities.

- (11) All facility employees who are authorized to use firearms and less lethal weapons shall receive basic and ongoing in-service training in the use of these weapons. Training shall include decontamination procedures for individuals exposed to chemical agents. All such training shall be recorded with the dates completed and kept in the employee's personnel file.

This requirement applies only to Type I and II Facilities.

- (12) Facilities shall maintain records on the types and hours of training completed by each correctional employee, support employee and non-facility support staff.

This requirement applies only to Type I, II, and III Facilities.

- (13) Tennessee P.O.S.T. certified officers may perform the basic functions outlined within the standards, if the correctional facility has been approved as a Type IV facility by the Tennessee Corrections Institute Board of Control. Any employee who does not possess or maintain a P.O.S.T. Certification as specified in this rule, shall be required to comply with all training and reporting standards outlined within the minimum jail standards and policy contained in Tenn. Comp R. & Regs. 1400-06. Under no circumstances shall any employee of a correctional facility be allowed to perform correctional functions without possessing a valid Tennessee P.O.S.T. Certification (for Type IV Facility) or certification from the Tennessee Corrections Institute (All Facilities) as it relates to the duties of a correctional employee.

This requirement applies only to Type IV Facilities.

Authority: T.C.A. § 41-4-140. **Administrative History:** Original rule filed August 9, 1982; effective September 8, 1982. Repeal and new chapter filed June 29, 1984; effective September 11, 1984. Repeal and new rule filed October 29, 2014; effective January 27, 2015.

1400-01-.07 SECURITY.

- (1) Types I, II, III, and IV Facilities shall meet the following requirements unless otherwise specified.
- (2) Each newly admitted inmate shall be thoroughly searched for weapons and other contraband immediately upon arrival in the facility, regardless of whether the arresting officer previously conducted a search.
- (3) A record shall be maintained on a search administered to a newly admitted inmate.
- (4) Facilities shall maintain policy and procedures to require that all inmates, including trustees, shall be searched thoroughly by detention officers when the inmates enter and leave the security area.

This requirement applies only to Type I Facilities.

- (5) Facilities shall maintain a written policy and procedure to provide for searches of the facilities and inmates to control contraband.

This requirement applies only to Type I Facilities.

- (6) Procedure shall differentiate between the searches allowed (orifice, pat, or strip) and identify when these shall occur and by whom such searches may be conducted. All orifice searches shall be done under medical supervision. Inmates shall be searched by facility employees of the same sex, except in emergency situations.

This requirement applies only to Type I, II, and III Facilities.

- (7) Facilities shall maintain a written policy and procedure for key control, including the inventory and use of keys, and the operator of the control center shall have knowledge of who has the keys in use and the location of duplicate keys. All day-to-day operations shall be centralized and controlled through the control center.

This requirement applies only to Type I Facilities.

- (8) There shall be one (1) full set of well-identified keys, other than those in use, secured in a place accessible only to facility personnel for use in the event of an emergency. These keys shall be easily identifiable by sight and touch under adverse conditions.
- (9) Written policy and procedures shall govern the availability, control, inventory, storage, and use of firearms, less-lethal weapons, and related security devices, and specify the level of authority required for their access and use. Chemical agents and electrical disablers shall be used only with the authorization of the facility administrator or designee. Access to storage areas shall be restricted to authorized facility employees and the storage space shall be located in an area separate from and apart from inmate housing or activity areas. A written report shall be submitted to the facility administrator when such weapons are used.

This requirement applies only to Type I, II, and III Facilities.

- (10) Facilities shall develop a written policy and procedure to require that firearms, chemical agents, and related security and emergency equipment are inventoried and tested at least quarterly to determine the condition and expiration dates. This written policy and procedure shall provide for regular inspection of ABC type fire extinguishers, smoke detectors, and other detection and suppression systems.

This requirement applies only to Type I, II, and III Facilities.

- (11) All tools, toxic, corrosive and flammable substances and other potentially dangerous supplies and equipment shall be stored in a locked area which is secure and located outside the security perimeter of the confinement area. Tools, supplies and equipment which are particularly hazardous shall be used by inmates only under direct supervision.

This requirement applies only to Type I and II Facilities.

- (12) Facilities shall develop a written policy and procedure to require at least weekly inspection of all security facilities and documentation of the dates of inspections.

This requirement applies only to Type I and II Facilities.

- (13) Facilities shall develop a written policy and procedure to provide for continuous inspection, inventory, and maintenance of all locks, tools, kitchen utensils, toxic, corrosive, and flammable substances and other potentially dangerous supplies and equipment.

This requirement applies only to Type I Facilities.

- (14) Facilities shall develop a written plan that provides for continuing operations in the event of a work stoppage or other job action. Copies of this plan shall be available to all supervisory personnel who are required to familiarize themselves with it.

This requirement applies only to Type I Facilities.

- (15) Detention officer posts shall be located in close proximity to inmate living areas to permit officers to see or hear and respond promptly to emergency situations. There shall be written orders for every detention officer duty and post.

This requirement applies only to Type I, II, and III Facilities.

- (16) The facility administrator or designee shall visit the facility's living and activity areas at least weekly which shall be documented.

This requirement applies only to Type I, II, and III Facilities.

- (17) The security perimeter shall ensure that inmates are secured and that access by the general public without proper authorization is denied.

- (18) All inmate movement from one area to another shall be controlled by facility employees.

- (19) Facility employees shall maintain a permanent log and prepare shift reports that record routine information, emergency situations, and unusual incidents.

This requirement applies only to Type I, II, and III Facilities.

- (20) Facilities shall have sufficient staff, including a designated supervisor, to provide, at all times, the performance of functions relating to the security, custody, and supervision of inmates as needed to operate the facility in conformance with the standards.

This requirement applies only to Type I, II, and III Facilities.

- (21) Restraint devices shall never be applied as punishment. Facilities shall define circumstances under which supervisory approval is needed prior to application.

This requirement applies only to Type I, II, and III Facilities.

- (22) Four/five-point restraints shall be used only in extreme instances and only when other types of restraints have proven ineffective. Advance approval shall be secured from the facility administrator/ designee before an inmate is placed in a four/five-point restraint. Subsequently, the health authority or designee shall be notified to assess the inmate's medical and mental health condition, and to advise whether, on the basis of serious danger to self or others, the inmate should be in a medical/mental health unit for emergency involuntary treatment with sedation and/or other medical management, as appropriate. If the inmate is not transferred to a medical/mental health unit and is restrained in a four/five-point restraint, the following minimum procedures shall be followed:

- (a) Continuous direct visual observation by facility employees prior to an assessment by the health authority or designee;
- (b) Subsequent visual observation is made at least every fifteen (15) minutes;
- (c) Restraint procedures are in accordance with guidelines approved by the designated health authority; and
- (d) Documentation of all decisions and actions.

These requirements apply only to Type I, II, and III Facilities.

- (23) The use of firearms shall comply with the following requirements:

- (a) A written policy and procedure that governs the availability, control, and use of chemical agents and firearms;
- (b) Firearms, chemical agents, and related security and emergency equipment are inventoried and tested at least quarterly;
- (c) Weapons are subjected to stringent safety regulations and inspections;

- (d) A secure weapons locker is located outside the secure perimeter of the facility;
- (e) Except in emergency situations, firearms and authorized weapons are permitted only in designated areas to which inmates have no access;
- (f) Facility employees supervising inmates outside the facility perimeter follow procedures for the security of weapons;
- (g) Facility employees are instructed to use deadly force on inmates only after other actions have been tried and found ineffective, unless the employee believes that a person's life is immediately threatened;
- (h) Facility employees on duty use only firearms or other security equipment that has been approved by the facility administrator;
- (i) Appropriate equipment is provided to facilitate safe unloading and loading of firearms; and
- (j) A written report shall be submitted to the facility administrator when such weapons are used.

These requirements apply only to Types I, II, and III Facilities.

Authority: T.C.A. § 41-4-140. **Administrative History:** Original rule filed August 9, 1982; effective September 8, 1982. Repeal and new rule filed June 29, 1984; effective September 11, 1984. Amendment filed July 2, 1985; effective October 14, 1985. Repeal and new rule filed October 29, 2014; effective January 27, 2015.

1400-01-.11 MAIL AND VISITING.

- (1) Type I, II, III, and IV facilities shall meet the following requirements unless otherwise specified.
- (2) Facilities shall maintain a written policy outlining the facility's procedures governing inmate mail.

This requirement applies only to Type I Facilities.

- (3) Facilities shall develop a written policy governing the censoring of mail. Any regulation for censorship must meet the following criteria:
 - (a) The regulation must further an important and substantial governmental interest unrelated to the suppression of expression (e.g., detecting escape plans which constitute a threat to facility security and/or the well-being of employees and/or inmates); and,
 - (b) The limitation must be no greater than is necessary for the protection of the particular governmental interest involved.

These requirements apply only to Type I Facilities.

- (4) Both incoming and outgoing mail shall be inspected for contraband items prior to delivery, unless received from the courts, attorney of record, or public officials, where the mail shall be opened in the presence of the inmate.

This requirement applies only to Type I Facilities.

- (5) Outgoing mail shall be collected and incoming mail shall be delivered without unnecessary delay.

This requirement applies only to Type I Facilities.

- (6) An inmate and his/her correspondent shall be notified if either person's letter addressed to the inmate or written by the inmate is rejected and, if the inmate wrote the rejected letter, the inmate must be given a reasonable opportunity to protest the rejection to an impartial officer prior to the facility returning the letter to its sender.

This requirement applies only to Type I Facilities.

- (7) Written policy and procedure shall provide that the facility permits postage for two (2) free personal letters per week for inmates who have less than two dollars (\$2.00) in their account. Facilities shall also provide postage for all legal or official mail.

This requirement applies only to Type I Facilities.

- (8) Facilities shall maintain a written policy to define the facility's visitation policies which shall include, at a minimum:
- (a) One (1) hour of visitation each week for each inmate;
 - (b) A list of possible visitors;
 - (c) Children shall be allowed to visit their parents;
 - (d) Visitors shall register before admission and may be denied admission for refusal to register, for refusal to consent to search, or for any violation of posted institutional rules; and
 - (e) Probable cause shall be established in order to perform a strip or body cavity search of a visitor. When probable cause exists, the search shall be documented and performed by the proper authority and by authorized personnel.

These requirements apply only to Type I Facilities.

Authority: T.C.A. § 41-4-140. **Administrative History:** Original rule filed August 9, 1982; effective September 8, 1982. Repeal and new chapter filed June 29, 1984; effective September 11, 1984. Repeal and new rule filed October 29, 2014; effective January 27, 2015.

1400-01-.15 HYGIENE.

- (1) Type I, II, III, and IV Facilities shall meet the following requirements unless otherwise specified.
- (2) Inmates shall be issued clothing within a reasonable time frame that is properly fitted and suitable for the climate and shall include the following:
- (a) Clean socks;
 - (b) Clean undergarments;
 - (c) Clean outer garments; and,
 - (d) Footwear.
 - (e) Inmates' personal clothing (if available and clean) may be substituted for institutional clothing at the discretion of the facility administrator.

These requirements apply only to Type I and II Facilities.

- (3) Provisions shall be made so that inmates can regularly obtain the following minimum hygiene items:
- (a) Soap;
 - (b) Toothbrush;
 - (c) Toothpaste or toothpowder;
 - (d) Comb;
 - (e) Toilet paper;
 - (f) Hygiene materials for women; and
 - (g) Shaving equipment.
- (h) These items or services shall be made available at the inmate's expense unless the inmate cannot afford to pay, in which case the inmate shall be provided the item or services free of charge.

These requirements apply only to Type I and II Facilities.

- (4) An inmate commissary may be available by which inmates can purchase approved items that are not furnished by the facility. The commissary operations shall be strictly controlled using standard accounting procedures.

This requirement applies only to Type I and II Facilities.

- (5) Inmates shall be allowed freedom in personal grooming except when a valid governmental interest justifies otherwise. However, in no event shall a substantial burden be imposed on an inmate's exercise of a sincerely held religious belief, unless it is: (1) in furtherance of a compelling governmental interest; and, (2) the least restrictive means of furthering that compelling governmental interest. Arrangements for haircuts shall be made available, at the inmate's expense, on a regular basis. If an inmate cannot afford this service, it shall be provided free of charge.

This requirement applies only to Type I Facilities.

- (6) Each inmate who is detained overnight shall be provided with the following standard issue:
- (a) One (1) clean fire-retardant mattress in good repair;
 - (b) One (1) clean mattress cover or sheet;
 - (c) If pillows are provided, they shall be fire-retardant and a clean pillowcase shall be provided;
 - (d) Sufficient clean blankets to provide comfort under existing temperature conditions; and
 - (e) One (1) clean bath-size towel.

These requirements apply only to Types I and II Facilities.

- (7) Facilities shall maintain an adequate supply of bedding and towels so that the following laundry or cleaning frequencies may be adhered to:
- (a) Sheets, pillowcases, mattress covers, and towels shall be changed and washed at least once a week;

- (b) All mattresses shall be disinfected quarterly and documented; and
- (c) Blankets shall be laundered monthly and sterilized before re-issue.

These requirements apply only to Type I Facilities.

- (8) Inmate clothing, whether personal or institutional, shall be exchanged and cleaned at least twice weekly unless work, climatic conditions or illness necessitate more frequent change.

This requirement applies to Type I Facilities.

Authority: T.C.A. § 41-4-140. **Administrative History:** Original rule filed August 9, 1982; effective September 8, 1982. Repeal and new rule filed June 29, 1984; effective September 11, 1984. Amendment filed July 31, 2000; effective November 28, 2000. Repeal and new rule Filed October 29, 2014; effective January 27, 2015.

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

Board Member	Aye	No	Abstain	Absent	Signature (if required)
Mayor Dan Hughes	X				
Chief Buddy Lewis	X				
Sheriff Armando Fontes	X				
Dr. Elizabeth Lewis	X				
Commissioner Tony Parker	X				
Don Johnson	X				
Sheriff William Oldham	X				

I certify that this is an accurate and complete copy of proposed rules, lawfully promulgated and adopted by the (board/commission/other authority) on 09/06/2017 (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: 9-28-17

Signature: [Handwritten Signature]

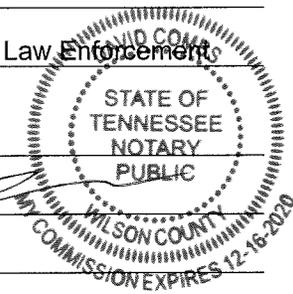
Name of Officer: Joseph M. Underwood

Title of Officer: Chief Counsel for Fire Prevention & Law Enforcement

Subscribed and sworn to before me on: 9/28/17

Notary Public Signature: [Handwritten Signature]

My commission expires on: 12/16/20



Agency/Board/Commission: _____

Rule Chapter Number(s): _____

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.

[Handwritten Signature]
Herbert H. Slatery III
Attorney General and Reporter

10/12/2017
Date

Department of State Use Only

Filed with the Department of State on: 10-24-17

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PUBLICATIONS

Effective on: 1/22/18
See Page
Tre Hargett
Secretary of State

G.O.C. STAFF RULE ABSTRACT

AGENCY: Agriculture

DIVISION: Consumer and Industry Services

SUBJECT: Domestic Kitchen Facilities

STATUTORY AUTHORITY: This rule is consistent with exemptions provided under Tennessee Code Annotated, Section 53-1-208 (amended 2017). Under the statute, unlicensed domestic kitchen firms are allowed to sell food products through direct, retail sales with end consumers. Upon the repeal of this rule, domestic kitchen firms that sell food products by other means will require licensure as a commercial food manufacturer

EFFECTIVE DATES: January 15, 2018 through June 30, 2018

FISCAL IMPACT: Minimal

STAFF RULE ABSTRACT: This rulemaking hearing rule repeals license and inspection requirements for domestic kitchen facilities.

Public Hearing Comments

The Department of Agriculture held a public hearing on July 11, 2017. Jay Miller served as hearing officer for the Rulemaking Hearing concerning repeal of 0080-04-11 Regulations for Establishments Utilizing Domestic Kitchen Facilities for Bakery and Other Non-Potentially Hazardous Foods Intended for Sale. The public presented no questions or comments during the hearing.



TENNESSEE DEPARTMENT OF AGRICULTURE

DIVISION OF CONSUMER & INDUSTRY SERVICES

JAI TEMPLETON
COMMISSIONER

HAND DELIVERY

July 20, 2017

Department of State
Division of Publications
8th Floor Snodgrass/TN Tower
312 Rosa L. Parks
Nashville, Tennessee 37243

RE: Rulemaking Hearing July 11, 2017

I served as hearing officer for a Rulemaking Hearing on July 11, 2017, concerning repeal of 0080-04-11 Regulations for Establishments Utilizing Domestic Kitchen Facilities for Bakery and Other Non-Potentially Hazardous Foods Intended for Sale.

The public presented no questions or comments during the hearing.

Sincerely,

Jason B. Miller, Esq. /s/
Tennessee Department of Agriculture
Division of Consumer & Industry Services

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:

Domestic kitchen facilities directly benefit from the proposed rule.
- (2) Identification and estimate of the number of small businesses subject to the proposed rule:

Approximately 150 domestic kitchen firms are subject to the proposed 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:

Administrative costs of affected firms are expected to decrease where the firms are no longer required to undergo routine inspection or licensure. The firms are however still subject to regulatory oversight in the event of complaint or foodborne illness.
- (4) Statement of the probable effect on impacted small businesses and consumers:

Domestic kitchens are no longer required to obtain a \$50 license fee or to undergo routine inspection. They are still subject to regulatory oversight for food safety. Domestic kitchens that intend to wholesale food products after the 2017 licensure year will be required to seek a commercial food manufacturer license.
- (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:

This rule repeals existing regulation. No less burdensome method for achieving this purpose is possible.
- (6) Comparison of the proposed rule with any federal or state counterparts:

This rule is consistent with exemptions from licensure provided under T.C.A. §53-1-208.
- (7) Analysis of the effect of the possible exemption of small businesses from all or any part of the requirements contained in the proposed rule.

Exemption of small businesses from this rule will undo the intent to repeal existing regulation.

Impact on Local Governments

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

No impact is expected on local governments.

Additional Information Required by Joint Government Operations Committee

All agencies, upon filing a rule, must also submit the following pursuant to T.C.A. § 4-5-226(i)(1).

- (A) A brief summary of the rule and a description of all relevant changes in previous regulations effectuated by such rule;

This rule repeals license and inspection requirements for domestic kitchen facilities.

- (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 rule is consistent with exemptions provided under T.C.A. §53-1-208 (amended 2017). Under the statute, unlicensed domestic kitchen firms are allowed to sell food products through direct, retail sales with end consumers. Upon repeal of this rule, domestic kitchen firms that sell food products by other means will require licensure as a commercial food manufacturer.

- (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;

Domestic kitchen facilities are affected by this rule. No public comments have been received urging adoption or rejection of this rule. No public comments have been received to indicate the rules are not easily understood; unnecessary to the public health, safety, and welfare; arbitrary or unreasonable; or adverse to business or individuals.

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

There are no known attorney general opinions or court decisions in this state that directly relate to the rule.

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

The estimated decrease in departmental revenues and expenditures resulting from this rule is minimal.

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

David Waddell, Administrative Director, Tennessee Department of Agriculture, Division of Consumer & Industry Services

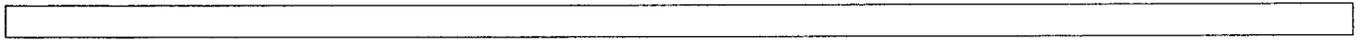
- (G) Identification of the appropriate agency representative or representatives who will explain the rule at a scheduled meeting of the committees;

David Waddell, Administrative Director, Tennessee Department of Agriculture, Division of Consumer & Industry Services

- (H) Office address, telephone number, and email address of the agency representative or representatives who will explain the rule at a scheduled meeting of the committees; and

436 Hogan Road, Nashville, Tennessee 37220; (615) 837-5331; david.waddell@tn.gov

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



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Sequence Number: 10-19-17
Rule ID(s): 6626
File Date: 10/17/17
Effective Date: 1/15/18

Rulemaking Hearing Rule(s) Filing Form

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

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

Agency/Board/Commission:	Department of Agriculture
Division:	Consumer & Industry Services
Contact Person:	Jay Miller
Address:	Post Office Box 40627, Nashville, Tennessee
Zip:	37204
Phone:	(615) 837-5341
Email:	jay.miller@tn.gov

Revision Type (check all that apply):

- 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
0080-04-11	Regulations for Establishments Utilizing Domestic Kitchen Facilities for Bakery and Other Non-Potentially Hazardous Foods Intended for Sale
Rule Number	Rule Title
0080-04-11-.01	Purpose
0080-04-11-.02	Definitions
0080-04-11-.03	Limitations of Sale
0080-04-11-.04	Permit Requirements
0080-04-11-.05	General Provisions
0080-04-11-.06	Facility Requirements
0080-04-11-.07	Labeling of Products
0080-04-11-.08	Exemptions

Repeal

Chapter 0080-04-11
Regulations for Establishments Utilizing Domestic Kitchen Facilities for Bakery and Other Non-Potentially
Hazardous Foods Intended for Sale

Chapter 0080-04-11 Regulations for Establishments Utilizing Domestic Kitchen Facilities for Bakery and Other Non-Potentially Hazardous Foods Intended for Sale is repealed in its entirety.

Authority: T.C.A. §§ 4-3-203 and 53-1-207.

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

Board Member	Aye	No	Abstain	Absent	Signature (if required)

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the Department of Agriculture (board/commission/ other authority) on 08/10/2017 (mm/dd/yyyy), and is in compliance with the provisions of T.C.A. § 4-5-222.

I further certify the following:

Notice of Rulemaking Hearing filed with the Department of State on: 05/18/17

Rulemaking Hearing(s) Conducted on: (add more dates). 07/11/17

Date: August 10, 2017

Signature: [Signature]

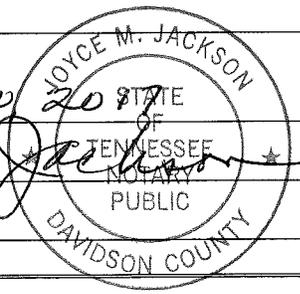
Name of Officer: Nai Templeton

Title of Officer: Commissioner

Subscribed and sworn to before me on: August 10, 2017

Notary Public Signature: [Signature]

My commission expires on: 09/11/2017



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.

[Signature]

Herbert H. Slattery III
Attorney General and Reporter

9/18/2017

Date

Department of State Use Only

Filed with the Department of State on: 10/17/17

Effective on: 1/15/18

[Signature]
Tre Hargett
Secretary of State

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PUBLICATIONS

G.O.C. STAFF RULE ABSTRACT

AGENCY: Air Pollution Control Board

DIVISION: Air Pollution Control

SUBJECT: Administrative Fees Schedule

STATUTORY AUTHORITY: Section 502(b)(3)(A) of the Federal Clean Air Act is the source of the requirement for Tennessee to collect "an annual fee, or the equivalent over some other period, sufficient to cover all reasonable (direct and indirect) costs required to develop and administer the permit program requirements of this subchapter."

EFFECTIVE DATES: January 8, 2018 through June 30, 2018

FISCAL IMPACT: None

STAFF RULE ABSTRACT: This rulemaking hearing rule amends Chapter 1200-03-26 Construction and Annual Emission Fees by changing the due date for fee payment from July 1 to April 1 for budgetary and planning purposes. Reflecting this change, the percentage paid by owners or operators required to pay a percentage of estimated fees owed is revised from 80% to 65%. The rule amendment expands eligibility for payment extensions and clarifies that the most recent choice by a source's Responsible Official of annual accounting period (state fiscal year or calendar year) and emissions fee basis (allowable, actual, or combination) is applicable until new elections are made.

Public Hearing Comments

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

Comment: The Division of Air Pollution Control requests to revise the noticed rule to make the due date April 1 rather than March 31.

Response: The change is adopted by the Air Pollution Control Board.

Comment: What is the Board hoping to achieve with the proposed rule amendment that couldn't be achieved under the previous version of the rule?

Response: There are two reasons for the proposed rule amendment: budgetary and planning.

Budgetary - Under the current rule, Title V fees are due July 1 of each year. These fees are used to fund expenses for the previous fiscal year that runs July 1 through June 30. Fee revenue received after the end of the fiscal year cannot be applied to that fiscal year's expenses. The new April 1 due date will better align Title V fee revenue with the fiscal year calendar and reduce the amount of fee revenue received after the end of the fiscal year.

Planning - Each year, the Division uses the previous year's reported tons of emissions and fee receipts as a basis for estimating Title V revenue for the upcoming fiscal year and determining if a change in the amount or structure of fees is necessary. With a due date of April 1, most of the information necessary for planning purposes will be available in the spring, allowing for more accurate planning prior to determining whether to initiate the fee rulemaking process.

Comment: With the proposed rule amendment, will the fee payment declaration no longer be required with the submission of a Title V Permit Application or Title V Permit Renewal Application?

Response: A fee payment declaration is not currently required although it is recommended. Sources that do not declare their fee choices have been and will be assigned the regulatory default bases. The default bases under the existing rule are fiscal year and allowable emissions; under this proposed revision the default year will be a calendar year. This proposal retains the default emission type basis as allowable.

Comment: If the annual fee for a source is due July 1, 2017, for the period from July 1, 2016, to June 30, 2017, how will the period from July 1, 2017, to December 31, 2017, be handled if the proposed rule amendment goes into effect on January 1, 2018, and a calendar year basis is selected? Is one-half of the "annual fee" due and payable for the initial fee payment under the revised schedule proposed by the Division?

Response: If the Responsible Official elects to change the basis of the fee from a fiscal year to a calendar year, then the fee paid will still be based on twelve months of emissions. The fee due July 1, 2017, will be based on emissions (actual, allowable, or a combination) from July 1, 2016, to June 30, 2017. The fee due April 1, 2018, will be based on emissions from January 1, 2017, to December 31, 2017. Although the same emissions are used as a basis for determining the fee, the owner or operator is still only paying for twelve months of emissions and not paying double.

If the Responsible Official were to elect to pay on a fiscal year April 1, 2019, the fee would be based on emissions from July 1, 2017, to June 30, 2018. The emissions from July 1, 2018, to December 31, 2018, would not be a basis for the fee; however the owner or operator is paying for twelve months of emissions.

The proposed change will allow an owner or operator to evaluate whether basing fees on a calendar year or fiscal year is more cost efficient and change the owner or operator's selection accordingly (as long as that selection is made by December 31).

The only situation that the Board is aware of that might result in an owner or operator "double-paying" for a particular time period is if it switches from fiscal year to calendar year and then permanently shuts down and surrenders its permit between January and June of the following year.

Comment: How did the Board arrive at the estimated sixty-five percent (65%) of the fee due amount for sources choosing to pay on a fiscal year basis? Why the departure from the original eighty percent (80%) of the fee due?

Response: Currently, an owner or operator electing to pay based on actual emissions (or a combination of actual and allowable emissions) and a fiscal year that requests an extension is allowed to make a payment of eighty percent (80%) of the estimated fee on the July 1 due date. This allows the owner or operator to estimate the amount owed based on the actual emissions data available to the owner or operator prior to the deadline. After the due date, the owner or operator can then determine the actual emissions up to June 30 and pay any remaining amount owed accordingly. The requirement to pay sixty-five percent (65%) of the estimated fee by the new April 1 due date approximately reflects the amount of data (June through February) available to the owner or operator paying on a fiscal year basis.

Owners or operators paying on actual emissions or a combination of actual or allowable emissions on a calendar year basis do not currently have the ability to request an extension and pay an estimated amount owed. The rule amendment allows these owners or operators to also request an extension and pay sixty-five percent (65%). The percentage is the same for simplicity.

Please note that the requirement is to pay "an estimated sixty-five percent". If the amount paid by the due date is less than sixty-five percent (65%) and the owner or operator made a good faith effort in its estimate, the owner or operator has complied with the fee rule.

Comment: Why doesn't the Board require the base \$7,500 part of the annual fee be paid by sources choosing the fiscal year payment basis by March 31 [April 1] instead of an estimated sixty-five percent (65%) of the fee payment with the balance of the annual fee due July 1?

Response: The current Title V fee rules don't include a base fee. The rules were previously amended to change the base fee to a minimum fee starting with FY2015 fees. Receipt of only the minimum fee by April 1 will not provide adequate revenue prior to the end of the fiscal year.

Comment: Currently, it is difficult for some owners or operators paying on actual emissions to get emissions calculated by June 30 and a check prepared for submission by the grace period of July 15 each fiscal year. For those still choosing to pay the fee on a fiscal year basis, this will mean two sets of emission calculations and two checks being prepared for submission by March 31 [April 1] and July 1. This means additional work for the permitted facility.

Response: The Board understands that with an earlier due date more owners or operators that have elected to pay on a fiscal year basis will make two partial payments than have done so under the current rule because they cannot now choose to pay the entire fee late but before a late fee is imposed. However, the earlier due date will enable the Division of Air Pollution Control to operate within its fiscal year budget and plan more accurately for the next fee cycle which will ultimately benefit all permittees.

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 amendment to paragraph (9) of Rule 1200-03-26-.02 Construction and Annual Emission Fees relative to collection of annual emission fees from sources subject to major source "Title V" permitting is federally mandated and exempt from the provisions of the Regulatory Flexibility Act pursuant to Tenn. Code Ann § 4-5-404. The Board is required to establish fees that result in sufficient revenue to administer the major source permitting program as mandated by federal law. Small businesses that are Title V sources will be affected only in that their annual emission fees, or a portion of their annual emission fees, will be due April 1 each year rather than July 1. If a small business elects to pay on a fiscal year and actual emissions or combination emissions basis and the small business engaged in the practice of paying the fee after the current July 1 due date, then the small business will submit two partial payments instead of one full payment.

Impact on Local Governments

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

The Department anticipates that these amended rules will 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 Air Pollution Control Board is amending Chapter 1200-03-26 Construction and Annual Emission Fees by changing the due date for fee payment from July 1 to April 1 for budgetary and planning purposes. Reflecting this change, the percentage paid by owners or operators required to pay a percentage of estimated fees owed is revised from 80% to 65%. The rule amendment expands eligibility for payment extensions and clarifies that the most recent choice by a source's Responsible Official of annual accounting period (state fiscal year or calendar year) and emissions fee basis (allowable, actual, or combination) is applicable until new elections are made.

- (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;

Section 502(b)(3)(A) of the Federal Clean Air Act is the source of the requirement for Tennessee to collect "an annual fee, or the equivalent over some other period, sufficient to cover all reasonable (direct and indirect) costs required to develop and administer the permit program requirements of this subchapter."

- (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;

Owners and operators of major sources in the state. These persons recognize the necessity of the rule.

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

The Air Pollution Control Board is not aware of any opinions that directly relate to the rulemaking.

- (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 change in state and local government revenues and expenditures is expected to result from this rule just the timing of the receipt of the revenue.

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

Lacey Hardin
Division of Air Pollution Control
William R. Snodgrass Tennessee Tower
312 Rosa L. Parks Avenue, 15th Floor
Nashville, Tennessee 37243
Lacey.Hardin@tn.gov

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

Emily Urban
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
Nashville, Tennessee 37243
(615) 532-0108
Emily.Urban@tn.gov

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

The Tennessee Air Pollution Control Board is not aware of any additional relevant information.

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Sequence Number: 10-11-17
Rule ID(s): 6022
File Date: 10/10/17
Effective Date: 1/8/18

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:	Air Pollution Control Board
Division:	Air Pollution Control
Contact Person:	Lacey J. Hardin
Address:	William R. Snodgrass Tennessee Tower 312 Rosa L. Parks Avenue, 15th Floor Nashville, TN
Zip:	37243
Phone:	(615) 532-0545
Email:	Lacey.Hardin@tn.gov

Revision Type (check all that apply):

- Amendment
 New
 Repeal

Rule(s) (ALL chapters and rules contained in filing must be listed here. If needed, copy and paste additional tables to accommodate multiple chapters. Please make sure that ALL new rule and repealed rule numbers are listed in the chart below. Please enter only ONE Rule Number/Rule Title per row)

Chapter Number	Chapter Title
1200-03-26	Administrative Fees Schedule
Rule Number	Rule Title
1200-03-26-.02	Construction and Annual Emission Fees

(Place substance of rules and other info here. Please be sure to include a detailed explanation of the changes being made to the listed rule(s). Statutory authority must be given for each rule change. For information on formatting rules go to http://sos.tn.gov/sites/default/files/forms/Rulemaking_Guidelines_August2014.pdf)

Chapter 1200-03-26
Administrative Fees Schedule

Amendments

Subparagraph (c) of paragraph (2) of Rule 1200-03-26-.02 Construction and Annual Emission Fees is amended by deleting it in its entirety and substituting instead the following:

- (c) "~~Annual Accounting Period~~ accounting period" is a twelve (12) consecutive month period. For ~~major~~ sources subject to paragraph (9) ~~(11)~~ of this ~~rule~~ Rule 1200-03-09-.02, the annual accounting period shall be either of the following: the calendar year (January 1 to December 31) or the state fiscal year (July 1 to June 30). For sources not subject to paragraph (11) of Rule 1200-03-09-.02, the annual accounting period is the twelve consecutive month period as specified in paragraph (6) of this rule.

Authority: §§ 68-201-101 et seq. and 4-5-201 et seq.

Part 12 of subparagraph (i) of paragraph (2) of Rule 1200-03-26-.02 is amended by deleting it in its entirety and substituting instead the following:

12. Each hazardous air pollutant listed below actually emitted or allowed to be emitted from a ~~major source~~ subject to paragraph (11) of Rule 1200-03-09-.02.

<u>CAS No.</u>	<u>Chemical name</u>
75070	Acetaldehyde
60355	Acetamide
75058	Acetonitrile
98862	Acetophenone
53963	2-Acetylamino fluorene
107028	Acrolein
79061	Acrylamide
79107	Acrylic acid
107131	Acrylonitrile
107051	Allyl chloride
92671	4-Aminobiphenyl
62533	Aniline
90040	o-Anisidine
1332214	Asbestos
71432	Benzene (including benzene from gasoline)
92875	Benzidine
98077	Benzotrichloride
100447	Benzyl chloride
92524	Biphenyl
117817	Bis(2-ethylhexyl)phthalate(DEHP)
542881	Bis(chloromethyl) ether
75252	Bromoform
106990	1,3-Butadiene
156627	Calcium cyanamide
133062	Captan
63252	Carbaryl
75150	Carbon disulfide
56235	Carbon tetrachloride
463581	Carbonyl sulfide
120809	Catechol

133904	Chloramben
57749	Chlordane
7782505	Chlorine
79118	Chloroacetic acid
532274	2-Chloroacetophenone
108907	Chlorobenzene
510156	Chlorobenzilate
67663	Chloroform Chloroform
107302	Chloromethyl methyl ether
126998	Chloroprene
1319773	Cresols/Cresylic acid (isomers and mixture)
95487	o-Cresol
108394	m-Cresol
106445	p-Cresol
98828	Cumene
94757	2,4-D, salts and esters
3547044	DDE
334883	Diazomethane
132649	Dibenzofurans
96128	1,2-Dibromo-3-chloropropane
84742	Dibutylphthalate
106467	1,4-Dichlorobenzene(p)
91941	3,3-Dichlorobenzidine
111444	Dichloroethyl ether (Bis(2-chloroethyl)ether)
542756	1,3-Dichloropropene
62737	Dichlorvos
111422	Diethanolamine
121697	N,N-Diethyl aniline (N,N-Dimethylaniline)
64675	Diethyl sulfite
119904	3,3-Dimethoxybenzidine
60117	Dimethyl aminoazobenzene
119937	3,3'-Dimethylbenzidine
79447	Dimethyl carbamoyl chloride
68122	Dimethyl formamide
57147	1,1-Dimethyl hydrazine
131113	Dimethyl phthalate
77781	Dimethyl sulfate
534521	4,6-Dinitro-o-cresol, and salts
51285	2,4-Dinitrophenol
121142	2,4-Dinitrotoluene
123911	1,4-Dioxane (1,4-Diethyleneoxide)
122667	1,2-Diphenylhydrazine
106898	Epichlorohydrin (1-Chloro-2,3-epoxypropane)
106887	1,2-Epoxybutane
140885	acrylate
100414	Ethyl benzene
51796	Ethyl carbamate (Urethane)
75003	Ethyl Chloride (Chloroethane)
106934	Ethylene dibromide (Dibromoethane)
107062	Ethylene dichloride (1,2-Dichlorethane)
107211	Ethylene glycol
151564	Ethylene imine (Aziridine)
75218	Ethylene oxide
96457	Ethylene thiourea
75343	Ethylidene dichloride (1,1-Dichloroethane)
50000	Formaldehyde
76448	Hepotachlor
118741	Hexachlorobenzene
87683	Hexachlorobutadiene
77474	Hexachlorocyclopentadiene

67721	Hexachloroethane
822060	Hexamethylene-1,6-diisocyanate
680319	Hexamethylphosphoramide
110543	Hexane
302012	Hydrazine
7647010	Hydrochloric acid
7664393	Hydrogen fluoride (Hydrofluoric acid)
123319	Hydroquinone
78591	Isophorone
58899	Lindane (all isomers)
108316	Maleic anhydride
67561	Methanol
72435	Methoxychlor
74839	Methyl bromide (Bromomethane)
74873	Methyl chloride (Chloromethane)
71556	Methyl chloroform (1,1,1-Trichloroethane)
60344	Methyl hydrazine
74884	Methyl iodide (Iodomethane)
108101	Methyl isobutyl ketone (Hexone)
624839	Methyl isocyanate
80626	Methyl methacrylate
1634044	Methyl tert butyl ether
101144	4,4-Methylene bis(2-chloroniline)
75092	Methylene chloride (Dichloromethane)
101688	Methylene diphenyl diisocyanate (MDI)
101779	4,4-Methylenedianiline
91203	Naphthalene
98953	Nitrobenzene
92933	4-Nitrobiphenyl
100027	4-Nitrophenol
79469	2-Nitropropane
684935	N-Nitroso-N-methylurea
62759	N-Nitrosodimethylamine
59892	N-Nitrosomorpholine
56382	Parathion
82688	Pentachloronitrobenzene (Quintobenzene)
87865	Pentachlorophenol
108952	Phenol
106503	p-Phenylenediamine
75445	Phosgene
7803512	Phosphine
7723140	Phosphorus
85449	Phthalic anhydride
1336363	Polychlorinated biphenyls (Arochlors)
1120714	1,3-Propane sultone
57578	beta-Propiolactone
123386	Propionaldehyde
114261	Propoxur (Baygon)
78875	Propylene dichloride (1,2-Dichloropropane)
75569	Propylene oxide
75558	1,2-Propylenimine (2-Methyl aziridine)
91225	Quinoline
106514	Quinone
100425	Styrene
96093	Styrene oxide
1746016	2,3,7,8-Tetrachlorodibenzo-p-dioxin
79345	1,1,2,2-Tetrachloroethane
127184	Tetrachoroethylene (Perchloroethylene)
7550450	Titanium tetrachloride
108883	Toluene

95807	2,4-Toluene diamine
584849	2,4-Toluene diisocyanate
95534	o-Toluidine
8001352	Toxaphene (chlorinated camphene)
120821	1,2,4-Trichlorobenzene
79005	1,1,2-Trichloroethane
79016	Trichloroethylene
95954	2,4,5-Trichlorophenol
88062	2,4,6-Trichlorophenol
121448	Triethylamine
1582098	Trifluralin
540841	2,2,4-Trimethylpentane
108054	Vinyl acetate
593602	Vinyl bromide
75014	Vinyl chloride
75354	Vinylidene chloride (1,1-Dichloroethylene)
1330207	Xylenes (isomers and mixture)
95476	o-Xylenes
108383	m-Xylenes
106423	p-Xylenes
0	Antimony Compounds
0	Arsenic Compounds (inorganic including arsine)
0	Beryllium Compounds
0	Cadmium Compounds
0	Chromium Compounds
0	Cobalt Compounds
0	Coke Oven Emissions
0	Cyanide compounds ¹
0	Glycol ethers ^{2, 6}
0	Lead Compounds
0	Manganese Compounds
0	Mercury Compounds
0	Fine mineral fibers ³
0	Nickel Compounds
0	Polycyclic Organic Matter ⁴
0	Radionuclides (including radon) ⁵

¹ X'CN where X = H' or any other group where a formal dissociation may occur. For example KCN or Ca(CN)₂

² Include mono- and di-ethers of ethylene glycol, diethylene glycol, and triethylene glycol R-(OCH₂CH₂)_n- OR'.
Where:

n = 1, 2, or 3:

R = alkyl C7 or less; or

R = phenyl or alkyl substituted phenyl;

R' = H or alkyl C7 or less; or

OR' consisting of carboxylic acid ester, sulfate, phosphate, nitrate, or sulfonate.

This action deletes each individual compound in a group called the surfactant alcohol ethoxylates and their derivatives (SAED) from the glycol ethers category in the list of hazardous air pollutants (HAP) established by section 112(b)(1) of the Clean Air Act (CAA).

³ Includes mineral fiber emissions from facilities manufacturing or processing glass, rock, or slag fibers (or other mineral derived fibers) of average diameter 1 micrometer or less.

⁴ Includes organic compounds with more than or equal to 100⁰ C which have a boiling point greater than or equal to 100⁰ C

⁵ A type of atom which spontaneously undergoes radioactive decay.

⁶ The substance ethylene glycol monobutyl ether (EGBE, 2-Butoxyethanol) (Chemical Abstract Service (CAS) Number 111-76-2) is deleted from the list of hazardous air pollutants established by 42 U.S.C. 7412(b)(1).

Authority: §§ 68-201-101 et seq. and 4-5-201 et seq.

Paragraph (9) of Rule 1200-03-26-.02 Construction and Annual Emission Fees is amended by deleting it in its entirety and substituting instead the following:

(9) ~~Annual Emission Fees for Major Sources~~ emission fees for major sources.

- (a) 1. ~~A responsible official of a major source must pay an annual emission fee to the Division. A major source is not subject to the minor source annual emission fees of paragraph (6) of this rule on or after July 1, 1994. Once a major stationary source begins to pay major source annual emission fees pursuant to this paragraph (9), it will not be subject to the construction permit fees of paragraph (5) of this rule for any additional construction occurring at the source.~~
2. Effective January 1, 2018, the following shall apply:
- (i) Sources choosing to pay annual emission fees on an allowable emissions basis pursuant to subparagraph (b) of this paragraph shall pay one hundred percent (100%) of the fee due pursuant to subparagraph (d) of this paragraph:
- (I) No later than April 1 of the year immediately following the annual accounting period for which the fee is due for sources paying on a calendar year basis pursuant to subparagraph (b) of this paragraph; or
- (II) No later than April 1 of the current fiscal year for sources paying on a fiscal year basis pursuant to subparagraph (b) of this paragraph.
- (ii) Sources choosing to pay annual emission fees on an actual emissions basis or a combination of actual and allowable emissions basis and on a calendar year basis pursuant to subparagraph (b) of this paragraph shall pay one hundred percent (100%) of the fee due pursuant to subparagraph (d) of this paragraph no later than April 1 of the year immediately following the annual accounting period for which the fee is due, except as allowed by part (g)3 of this paragraph.
- (iii) Sources choosing to pay annual emission fees on an actual emissions basis or a combination of actual and allowable emissions basis and on a fiscal year basis pursuant to subparagraph (b) of this paragraph shall pay an estimated sixty-five percent (65%) of the fee due pursuant to subparagraph (d) of this paragraph no later than April 1 of the current fiscal year. The remainder of the annual emission fee is due July 1 of each year, except as allowed by part (g)3 of this paragraph.
- (b) 1. On or before December 31 of the annual accounting period, the responsible official must submit to the Division in writing the responsible official's determination to pay the annual emission fee based on:
- (i) Either a calendar year or state fiscal year; and
- (ii) Actual emissions, allowable emissions, or a mixture of actual and allowable emissions of regulated pollutants.
2. If the responsible official does not declare a fee payment choice as provided in subparts 1(i) or (ii) of this subparagraph, then the basis of the annual fee payment shall be the antecedent annual accounting period and annual fee basis (actual emissions, allowable emissions, or a mixture) same as the responsible official's most recent choice of fee payment, or, if no such previous choice was made, the basis of the annual fee payment shall be that specified in the source's current major source operating permit.

3. If the responsible official wishes to restructure a major source's allowable emissions for the purpose of lowering the major source's annual emission fee, then an application must be filed at least ninety (90) days prior to December 31 of the annual accounting period as provided in subparagraph (g) of this paragraph.
 4. The responsible official of a newly constructed major source or a minor source modifying its operation such that the source becomes a major source shall pay an initial annual emission fee based on ~~the state fiscal~~ a calendar year and allowable emissions for the fractional remainder of the ~~state fiscal~~ calendar year annual ~~accounting~~ period commencing upon the source's start-up.
 5. For purposes of the payment of annual emission fees due July 1, 2016, parts 1 and 2 of this subparagraph shall not apply. Annual emission fees due July 1, 2016, shall be based on the state fiscal year and the annual fee basis (actual emissions, allowable emissions, or a mixture) specified in a source's current major source operating permit. If a source does not have an effective major source operating permit on July 1, 2016, then the source's responsible official shall pay the annual emission fee based on the state fiscal year and allowable emissions.
- (c) Reserved.
- (d) 1. Notwithstanding the ~~annual~~ emission fee rates established by part 2 of this subparagraph, the annual emission fee required to be paid by a responsible official relative to a major source pursuant to subparagraph (a) of this paragraph shall be no less than \$7,500.
 2. (i) For purposes of this part, an electric utility generating unit (EGU) means any steam electric generating unit or stationary combustion turbine that is constructed for the purpose of supplying more than one-third of its potential electric output capacity and more than 25 MW net-electrical output to any utility power distribution system for sale. Also, any steam supplied to a steam distribution system for the purpose of providing steam to a steam electric generator that would produce electrical energy for sale is considered in determining the electrical energy output capacity of the affected EGU.
 - (ii) The ~~annual~~ emission fee rates applied to calculate the annual emission fee assessed pursuant to paragraph (a) of this paragraph shall be as follows:
 - (I) Fee based on actual emissions: \$43.00 per ton for non-EGU sources and \$49.50 per ton for EGU sources; and
 - (II) Fee based on allowable emissions: \$32.50 per ton for non-EGU sources and \$39.00 per ton for EGU sources.
 - (iii) The ~~annual~~ emission fee rates enumerated in subpart (ii) of this part must be supported by the Division's annual workload analysis that is approved by the Board.
 3. The ~~annual~~ emission fee rates shall remain in effect until the effective date of an amendment to part 2 of this subparagraph. Any revision to the ~~annual~~ emission fee rates must result in the collection of sufficient fee revenue to fund the activities identified in subparagraph (1)(c) of this rule and must be supported by the Division's annual workload analysis that is approved by the Board.
- (e) 1. An emission cap of 4,000 tons per year per regulated pollutant per major source SIC code shall apply to actual or allowable based emission fees. A major source annual emission fee will not be charged for emissions in excess of the cap(s) or for carbon monoxide.

2. No major source annual emission fee will be charged for emissions of a pollutant solely because the pollutant is a constituent of greenhouse gases.
- (f) In the case where a source is shut down such that it has operated only during a portion of the annual accounting period and the source's permits are forfeited to the Technical Secretary, the appropriate fee shall be calculated on a prorated basis over the period of time that the source was operated in the annual accounting period. The responsible official of a major source that is shutdown, but wishes to retain its permits, shall pay a maintenance fee equivalent to 40% of the fee that would be charged had the responsible official determined to base the annual emission fee on allowable emissions. If the responsible official chooses this option in the midst of an annual accounting period, then the fee will be prorated according to the number of months that the source was in the maintenance fee status. The responsible official shall notify the Division no later than December 31 of the annual accounting period so that the Division will have sufficient time to adjust billing records for the maintenance fee status.
- (g) Responsible officials required to pay the major source annual emission fee pursuant to subparagraph (a) of this paragraph must conform to the following requirements with respect to fee payments:
1. (i) If a responsible official paying the annual emission fee based on allowable emissions wishes to restructure a major source's the allowable emissions of a source subject to paragraph (11) of Rule 1200-03-09-.02 for the purpose of lowering the major source's annual emission fee, then upon mutual agreement of the responsible official and the Technical Secretary, a more restrictive regulatory requirement may be established to minimize the allowable emissions and thus the annual emission fee. The more restrictive regulatory requirement, the method used to determine compliance with the limitation, and the documentation procedure to be followed by the major source to ensure that the limit is not exceeded must be included in the application and specified in a permit through either the permit modification processes of paragraph (11) of Rule 1200-03-09-.02, or the construction permit processes of Rule 1200-03-09-.01, or both. The more restrictive requirement shall be effective for purposes of lowering the annual emission fee upon agreement by both the responsible official and the Technical Secretary and for all other purposes shall be effective upon issuance of the permit, modification, or both.
 - (ii) To reduce the amount of the fee as provided in subpart (i) of this part, the responsible official must file a complete permit modification or construction permit application with the Division at least ninety (90) days prior to December 31 of the annual accounting period.
2. The responsible official shall file ~~the annual emission fee and~~ an analysis of actual emissions, allowable emissions, or both actual and allowable emissions, whichever is appropriate due to the basis of the annual emission fee payment, with the Technical Secretary on or before the ~~July 1 immediately following the annual accounting period~~ date the fee is due pursuant to subparagraph (a) of this paragraph. The analysis shall summarize the emissions of all regulated pollutants at the air contaminant sources of the major source facility and shall be used to calculate the amount of the annual emission fee owed pursuant to subparagraph (a) of this paragraph.
- (i) An annual emission fee based on both actual emissions and allowable emissions shall be calculated utilizing the 4,000 ton per year cap specified in subparagraph (2)(i) of this rule. In determining the tonnages to be applied toward the regulated pollutant 4,000 ton cap in a mixed base fee, the responsible official shall first calculate the actual emission-based fees for a regulated pollutant and apply that tonnage toward the regulated pollutant's cap. The remaining tonnage available in the 4,000 ton category of a regulated pollutant shall be subject to allowable emission based fee calculations. Once the 4,000 ton per year cap has been reached for a regulated pollutant, no additional fee for that pollutant shall be required.

- (ii) If the responsible official chooses to base the annual emission fee on actual emissions, then the responsible official must prove the magnitude of the major source's emissions to the satisfaction of the Technical Secretary. The procedure for quantifying actual emission rates shall be specified in the major source operating permit.
- 3.
- (i) Responsible officials choosing to pay the major source annual emission fee based on actual emissions or a mixture of actual and allowable emissions may request an extension of time for filing the emissions analysis with the Technical Secretary. The extension may be granted by the Technical Secretary for up to ninety (90) days after the fee is due pursuant to subparagraph (a) of this paragraph. The request for extension must be received by the Division no later than 4:30 p.m. on ~~July 4~~ April 1, or the request for extension shall be denied. The request for extension to file must state the reason for the request and provide an adequate explanation. An estimated annual emission fee payment of no less than ~~eighty~~ sixty-five percent (~~80%~~) (65%) of the annual emission fee must accompany the request for extension to avoid penalties and interest on the underpayment of the annual emission fee. A The remaining balance due must accompany the emission analysis. If there has been an overpayment, the responsible official may request a refund in writing to the Division or the amount of the overpayment may be applied as a credit toward the next annual emission fee.
 - (ii) ~~A responsible official choosing to pay the annual emission fee based on a calendar year annual accounting period or choosing to pay the annual emission fee based on allowable emissions is not eligible for the extension of time authorized by subpart (i) of this part.~~
- (h) Reserved.
 - (i) Reserved.

Authority: §§ 68-201-101 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. Ronne Adkins Commissioner's Designee, Dept. of Environment and Conservation	X				
Dr. John Benitez Licensed Physician with experience in health effects of air pollutants	X				
Karen Cisler Environmental Interests	X				
Dr. Wayne T. Davis Conservation Interests				X	
Stephen Gossett Working for Industry with technical experience	X				
Dr. Shawn A. Hawkins Working in field related to Agriculture or Conservation	X				
Richard Holland Working for Industry with technical experience			X		
Caitlin Roberts Jennings Small Generator of Air Pollution representing Automotive Interests	X				
L. Shawn Lindsey Working in Municipal Government				X	
Dr. Tricia Metts Involved with Institution of Higher Learning on air pollution evaluation and control				X	
Chris Moore Working in management in Private Manufacturing	X				
Amy Spann, PE Registered Professional Engineer	X				
Larry Waters County Mayor	X				
Jimmy West Commissioner's Designee, Dept. of Economic and Community Development				X	

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the Air Pollution Control Board on 05/10/2017, and is in compliance with the provisions of T.C.A. § 4-5-222.

I further certify the following:

Notice of Rulemaking Hearing filed with the Department of State on: (02/27/17)

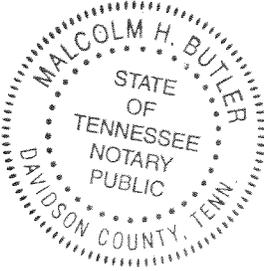
Rulemaking Hearing(s) Conducted on: (add more dates). (04/20/17)

Date: 5-11-2017

Signature: *Michelle W. Owenby*

Name of Officer: Michelle W. Owenby

Title of Officer: Technical Secretary



Subscribed and sworn to before me on: 5-11-2017

Notary Public Signature: *Malcolm H. Butler*

My commission expires on: September 7, 2020

All rulemaking hearing rules provided for herein have been examined by the Attorney General and Reporter of the State of Tennessee and are approved as to legality pursuant to the provisions of the Administrative Procedures Act, Tennessee Code Annotated, Title 4, Chapter 5.

Herbert H. Slatery III

Herbert H. Slatery III
Attorney General and Reporter

10/5/2017

Date

Department of State Use Only

Filed with the Department of State on: 10/10/17

Effective on: 11/8/18

Tre Hargett

Tre Hargett
Secretary of State

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PUBLICATIONS

G.O.C. STAFF RULE ABSTRACT

AGENCY: Tennessee Historical Commission

SUBJECT: Waivers

STATUTORY AUTHORITY: This rulemaking is being promulgated under the authority granted to the THC under Tennessee Code Annotated, Section 4-11-103 to implement the THC's responsibility under the Tennessee Heritage Protection Acts of 2013 and 2016.

EFFECTIVE DATES: January 17, 2018 through June 30, 2018

FISCAL IMPACT: None

STAFF RULE ABSTRACT: The Tennessee Heritage Protection Acts of 2013 and 2016 established a prohibition against public entities taking specified actions to affect historic places and monuments unless a waiver is granted by the Tennessee Historical Commission (THC). To evaluate petitions for a waiver under the Tennessee Heritage Protection Act of 2013, the THC developed its considerations by policy. After a petition for declaratory order was filed by the City of Memphis regarding this policy, a determination was made by the THC to adopt the waiver consideration criteria as a rule to apply to petitions under both acts.

Public Hearing Comments

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

Comment: Commenters stated that Tennessee Heritage Protection Act of 2016 ("2016 Act") contains five pages of rules regarding waivers that clearly define what is required by a public entity in seeking a waiver and what is required by the Tennessee Historical Commission ("Commission") in granting or rejecting a waiver. The commenters noted that the burden to prove the necessity for a waiver lies strictly with the public entity. The commenters stated that the Commission should not attempt to dilute and/or amend the 2016 Act to coddle the public entity seeking a waiver. When rendering a decision regarding waivers to the 2016 Act, the Commission should only consider what has been set forth in the 2016 Act.

Response: The Commission agrees that the 2016 Act provides for a detailed waiver process. The Commission also agrees that under both the Tennessee Heritage Protection Act of 2013 ("2013 Act") and the 2016 Act, the public entity petitioner bears the burden of demonstrating to the Commission that a waiver is warranted. The Commission does not agree that establishing its evaluation criteria through rulemaking dilutes or amends the 2016 Act, nor does it add to or take away from the Commission's statutory mandates. The Commission must apply the criteria in accordance with the applicable statutes. The rules establishing the Commission's evaluation criteria replace an existing evaluation policy previously adopted by the Commission. The rules are not intended to substantively change the existing evaluation criteria. However, the Commission has been advised by legal counsel that the existing evaluation criteria cannot be applied because the evaluation criteria were not promulgated through the rulemaking process.

Comment: Commenters suggested that subparagraph (1)(l) of Rule 0400-70-01-.01, be stated as "A historic site on the National Register of Historic Places or a national historic landmark is not subject to a waiver."

Response: Neither the 2013 Act nor the 2016 Act authorize the Commission to refuse to evaluate a petition if a site in question is on the National Register of Historic Places or designated as a national historic landmark. If a public entity follows the appropriate steps, then the Commission must vote to approve or deny the request. However, the 2016 Act does mandate a presumption in favor of preservation of listed or designated memorials.

Comment: Commenters maintained that the original evaluation criteria approved by the Commission at the October 2015 meeting are being "watered down" and may affect the original intent of the 2016 Act.

Response: The Commission did not intend to "water down" the evaluation criteria. However, the Commission has been advised by legal counsel that the existing evaluation criteria cannot be applied because the evaluation criteria did not go through the rulemaking process. The rules are not intended to substantively change the existing evaluation criteria. The criteria must be applied consistently with the applicable act. The substantive amendment to the criterion addressing the National Register of Historic Places was intended to ensure that the criterion was within the scope of the acts.

Comment: Commenters believe that the drafter of the proposed rules was dwelling on 'compelling public interest' instead of being 'in favor of preservation of the memorial.' As the latter is repeated in the 2016 Act, the commenters felt preservation of the memorial is the heart of the 2016 Act.

Response: The criteria established by the Commission are a minimum, non-exclusive list of considerations that must be applied consistently with the applicable act. For instance, the 2016 Act requires a public entity to demonstrate that a material or substantial need for a waiver based on historical or

other compelling public interest exists. The 2016 Act also provides that it shall be liberally construed in favor of historic preservation. The Commission will consider the criteria and any other considerations deemed appropriate when evaluating a petition for waiver consistent with these provisions of the 2016 Act. Under the 2016 Act, the Commission must document in writing the grounds upon which the petition has been granted or denied. The Commission expects that this documentation will demonstrate that the criteria have been applied consistently with the 2016 Act.

Comment: Commenters maintained that subparagraphs (1)(b), (d), (g), (h), and (i) of Rule 0400-70-01-.01, all appear to be outside bounds of the 2016 Act. The Commission is empowered by the 2016 Act. The Commission is not empowered to promote a commercial enterprise.

Response: The Commission agrees that any authority the Commission has relative to petitions for waiver is derived from the 2013 Act relative to petitions filed prior to March 11, 2016 and the 2016 Act. The Commission does not agree that the criteria necessarily result in the Commission promoting a commercial enterprise. The Commission does not agree that the criteria are beyond the Commission's statutory authority. The Commission believes that the criteria established by Rule 0400-70-01-.01 are important considerations to address when evaluating any petition for waiver and will apply the considerations consistently with the applicable act.

Comment: Commenters maintain that under subparagraphs (1)(e) and (f) of Rule 0400-70-01-.01, a public entity could petition that an area has too many references to a particular part of history. This brings factors outside the 2016 Act's bounds into the decision making. Especially when combined with the economic factors described in proposed subparagraphs (1)(a), (b), and (d) of Rule 0400-70-01-.01.

Response: The Commission does not agree that subparagraphs (1)(e) and (f) would necessarily support a petition based on an assertion that an area has too many references to a particular part of history. The criteria are intended to be applied to an evaluation of a proposed change to a name or dedication and not to be the basis for a proposed change. A petition for waiver to change a name or dedication could be filed by a public entity based on the assertion that an area has too many references to a particular part of history. In that instance, the Commission would consider whether the new name or dedication is duplicative and whether it conforms to the character of the area.

Comment: Commenters maintain that subparagraph (1)(k) of Rule 0400-70-01-.01, concerns existing memorials and is outside the authority of the 2016 Act to move, remove, or modify an existing memorial based on modern interpretation.

Response: Pursuant to subparagraph (1)(k), the Commission will consider whether a proposed change detracts from or enhances a commemoration. Whether commemoration is appropriate is not implicated by this criterion, but may be considered under another criterion or as an additional consideration included in the Commission's evaluation of the petition for waiver. The 2016 Act and the rule do not address "modern interpretation". Information regarding historical scholarship from any historical period can be presented to and considered by the Commission as it deems appropriate under the terms of the applicable act.

Comment: Some commenters expressed concerns about notification prior to the rulemaking hearing.

Response: The formal rulemaking hearing notice was published on the Secretary of State's website in compliance with Tenn. Code Ann. § 4-5-203 and on the Tennessee Historical Commission website. Because the Commission is interested in full public participation, videoconferencing was expanded from the Tennessee Tower in Nashville and the Environmental Field Office in Memphis to additional TDEC Environmental Field Offices in Chattanooga, Knoxville, and Johnson City as a result of interest expressed after the notice was posted.

Comment: Commenters believe that the criteria of subparagraph (1)(d) of Rule 0400-70-01-.01, should be modified to reflect the preservation support of all of Tennessee's residents and should read "whether the proposed change has demonstrated support or opposition from Tennessee

residents.”

Response: The criteria listed in paragraph (1) of Rule 0400-70-01-.01, including subparagraph (1)(d), is the minimum the Commission is required to consider. If the circumstances of a specific petition for waiver are deemed to warrant consideration of demonstrated support or opposition from Tennessee residents, the Commission may do so. Paragraph (2) of Rule 0400-70-01-.01, makes clear that the Commission may take other considerations into account as it determines appropriate on a case-by-case basis.

Comment: Commenters believe subparagraph (1)(l) of Rule 0400-70-01-.01, should state “whether the proposed change is relative to the National Register...but the presumption as stated in the statute still applies.”

Response: The Commission does not believe this change is necessary in order for the Commission to comply with its statutory responsibility toward a memorial designated as a national historic landmark or listed on the National Register of Historic Places. The purpose of all the criteria in paragraph (1) of Rule 0400-70-01-.01 is to ensure that the Commission consistently considers the minimum, non-exclusive criteria when evaluating a petition for waiver. The Commission must apply the criteria consistently with the applicable act. The Commission agrees that a specific reference to a memorial should be added so that petitioners and interested persons will be aware that the status of the memorial is a consideration, in addition to the status of a site.

Comment: A commenter pointed out that there is a big difference in “should” and “whether” between the Commission’s existing criteria and the proposed rules, when referring to the criteria the Commission developed in 2015.

Response: The Commission agrees there is a difference in “should” as used in the 2015 criteria and “whether” as used in the proposed rule. The Commission will apply all of the criteria based on its expertise and experience and as governed by the applicable statutory law. The criteria are a minimum, non-exclusive, enumeration of considerations to be utilized when evaluating a petition for waiver. In some instances, the Commission will be required to weigh competing considerations. The Commission maintains that the term “whether” is appropriate for the rule.

Comment: A commenter believes the introductory paragraph in Rule 0400-70-01-.01, is ambiguous because it appears to apply the proposed rule to requests filed under the 2013 Act and the 2016 Act. The 2013 Act and the 2016 Act address different subject matters, and applying the proposed criteria to the 2013 Act would exceed the statutory authority of the Commission.

Response: The Commission does not agree that the paragraph is ambiguous. Rule 0400-70-01-.01, does apply to all petitions for waiver, including those filed before March 11, 2016. The basis of the rule is criteria adopted to implement the 2013 Act. The Commission has determined that although there are substantive differences between the 2013 Act and the 2016 Act, those differences can be accommodated through the Commission’s implementation of the rule. The applicable act will govern the Commission’s application of the criteria to a petition for waiver. For instance, there is no presumption under the 2013 Act. If considering a petition governed by the 2013 Act, no presumption would apply, but the Commission can still include the status of a site or a memorial in its evaluation.

Comment: A commenter maintains that the proposed subparagraph (1)(l) of Rule 0400-70-01-.01, is in conflict with Tenn. Code Ann. § 4-1-412(c)(8)(A), which states that there is a presumption in favor of the preservation of a memorial if it is designated a national historic landmark or listed on the National Register of Historic Places. The proposed criterion impermissibly allows the Commission to deny a waiver even when a memorial itself is not designated as a national historic landmark or listed on the national register of historic places.

Response: The Commission does not fully agree with the commenter. The purpose of Rule 0400-70-01-.01, is to ensure that the Commission consistently considers established minimum, non-exclusive criteria before rendering a decision on a waiver petition. The 2016 Act requires that a presumption in favor of preservation be applied to a memorial designated as a historic landmark

or listed on the National Register of Historic Places regarding petitions made on or after March 11, 2016. Under the 2013 Act, the Commission may also consider whether a site is designated or listed even if the presumption does not apply. However, the Commission agrees that a specific reference to a memorial should be added so that petitioners and interested persons will be aware that the status of a memorial is also a consideration.

Comment: A commenter believes that the rules appear to ignore or make irrelevant whether the historical marker or memorial currently provides a distorted or unfair view of history, or to properly take into account whether the marker or memorial was originally erected for a nefarious, improper, or otherwise inappropriate purpose.

Response: Rule 0400-70-01-.01, ensures that the Commission consistently considers the minimum criteria before rendering a decision on a waiver petition. The rule does not prohibit the Commission from taking other considerations into account, nor does it direct the Commission to make any specific decision. The Commission would expect any specific concern of this type that an entity, group, or individual may have regarding a petition for waiver be brought to the Commission's attention so the Commission can address the issue when evaluating a petition for waiver.

Comment: A commenter pointed out that "offensive, derogatory, or defamatory implication" is confusing at best as used in subparagraph (1)(g) of Rule 0400-70-01-.01.

Response: The Commission will consider whether a proposed change is offensive or has derogatory or defamatory implications in its evaluation of a petition for waiver. The Commission does not agree that the criterion is confusing.

Comment: A commenter maintains that subparagraph (1)(h) of Rule 0400-70-01-.01, which reads: "whether the proposed change detracts from or enhances the commemoration of the conflict..." gives higher priority to maintaining the status quo regardless of whether the status quo misrepresents a person or event.

Response: The Commission does not believe subparagraph (1)(h) necessarily fails to address potential misrepresentation of a person or event caused either by a proposed change or by maintaining the status quo. The Commission will consider whether the proposed change detracts from or enhances a commemoration. Whether commemoration is appropriate is not implicated by this criterion but may be considered under another criterion or as an additional consideration included in the Commission's evaluation of the petition for waiver.

Comment: A commenter believes that subparagraph (1)(j) of Rule 0700-70-01-.01, which reads: "Whether the proposed change could cause confusion for visitors interested in the site" should not be a consideration without also considering if the display would cause confusion in light of current peer-reviewed scholarship.

Response: The Commission will consider whether a proposed change will cause any confusion for visitors interested in the site affected by the petition for waiver. Interested entities, groups, or individuals are encouraged to communicate information relative to current peer-reviewed scholarship to the Commission.

Comment: A commenter believes it is unclear what is meant by "whether the proposed change has any commercial overtones" as used in subparagraph (1)(b) of Rule 0400-70-01-.01.

Response: The Commission will consider whether a proposed change has any commercial secondary effects, qualities, or meanings when evaluating a petition for waiver. The Commission does not agree that the language is unclear.

Comment: Commenters provided information about historic individuals and provided arguments for or against specific historic monuments during the comment period.

Response: The scope of the rulemaking is to establish the criteria that will be applied to petitions for waiver by the Commission. The Commission appreciates the commenters' participation in this

rulemaking process; however, comments about historic individuals and arguments for or against specific historic memorials are beyond the scope of this rulemaking. The Commission encourages the commenters to provide information and arguments of this type when the Commission is considering a petition for waiver.

Regulatory Flexibility Addendum

Pursuant to T.C.A. §§ 4-5-401 through 4-5-404, prior to initiating the rule making process as described in T.C.A. § 4-5-202(a)(3) and T.C.A. § 4-5-202(a), all agencies shall conduct a review of whether a proposed rule or rule affects small businesses.

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

The proposed rule does not impact 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 proposed rule does not impact small businesses.

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

The proposed rule does not impact small businesses or consumers.

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

The proposed rule does not impact small businesses.

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

The proposed rule does not impact small businesses.

- (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 does not impact small businesses.

Impact on Local Governments

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

The Tennessee Historical Commission anticipates that this rulemaking will not result in an increase or decrease in expenditures or revenue for 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 Tennessee Heritage Protection Acts of 2013 and 2016 established a prohibition against public entities taking specified actions to affect historic places and monuments unless a waiver is granted by the Tennessee Historical Commission ("THC"). To evaluate petitions for a waiver under the Tennessee Heritage Protection Act of 2013, the THC developed its considerations by policy. After a petition for declaratory order was filed by the City of Memphis regarding this policy, a determination was made by the THC to adopt the waiver consideration criteria as a rule to apply to petitions under both acts.

- (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 being promulgated under the authority granted to the THC under Tenn. Code Ann. § 4-11-103 to implement the THC's responsibility under the Tennessee Heritage Protection Acts of 2013 and 2016.

- (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 person requesting a waiver under the Tennessee Heritage Protection Acts of 2013 or 2016.

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

The Tennessee Historical Commission is not aware of any opinions that directly relate to the rulemaking.

- (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 change in state and local government revenue and expenditures is expected to result from this rulemaking.

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

Patrick McIntyre
Executive Director
Tennessee Historical Commission
2941 Lebanon Pike
Nashville, Tennessee 37214
Patrick.McIntyre@tn.gov

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

Emily Urban
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
Nashville, Tennessee 37243
(615) 532-0108
Emily.Urban@tn.gov

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

The Tennessee Historical Commission is not aware of any additional relevant information.

**Department of State
Division of Publications**

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Nashville, TN 37243
Phone: 615-741-2650
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For Department of State Use Only

Sequence Number: 10-21-17
Rule ID(s): 6627
File Date: 10/19/17
Effective Date: 1/17/18

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 Historical Commission
Division:	
Contact Person:	Patrick McIntyre
Address:	Tennessee Historical Commission 2941 Lebanon Pike Nashville, Tennessee
Zip:	37214
Phone:	(615) 770-1096
Email:	Patrick.McIntyre@tn.gov

Revision Type (check all that apply):

- Amendment
 New
 Repeal

Rule(s) Revised (ALL chapters and rules contained in filing must be listed here. If needed, copy and paste additional tables to accommodate multiple chapters. Please enter only ONE Rule Number/Rule Title per row)

Chapter Number	Chapter Title
0400-70-01	Tennessee Historical Commission
Rule Number	Rule Title
0400-70-01-.01	Waivers

(Place substance of rules and other info here. Statutory authority must be given for each rule change. For information on formatting rules go to http://sos.tn.gov/sites/default/files/forms/Rulemaking_Guidelines_August2014.pdf)

Chapter 0400-70-01
Tennessee Historical Commission

New Rule

Table of Contents

Rule 0400-70-01-.01 Waivers

0400-70-01-.01 Waivers.

- (1) When an entity petitions the Tennessee Historical Commission for a waiver relative to Tennessee heritage protection the Tennessee Historical Commission shall evaluate the following considerations when rendering a decision:
 - (a) Whether the proposed change serves the public interest;
 - (b) Whether the proposed change has any commercial overtones;
 - (c) Whether the proposed change has a reasonable relationship to the site;
 - (d) Whether the proposed change has demonstrated support or opposition from local residents;
 - (e) If a change in name or rededication is proposed, whether the change is in conformance with the character of the existing names or dedications in the area;
 - (f) If a change in name or rededication is proposed, whether the change is duplicative of other nearby site names or dedications;
 - (g) Whether the proposed change is offensive or has derogatory or defamatory implications;
 - (h) Whether the proposed change detracts from or enhances the commemoration of the conflict, event, entity, figure, or organization previously commemorated;
 - (i) Whether the proposed change is expected to have a significant positive or negative economic impact;
 - (j) Whether the proposed change could cause confusion for visitors interested in the site;
 - (k) Whether the proposed change diminishes or enhances the historic integrity of the site;
 - (l) Whether the proposed change is relative to a historic site or memorial on the National Register of Historic Places or a national historic landmark; and
 - (m) If a relocation is proposed, whether the new location is appropriate.
- (2) The enumeration of the considerations in paragraph (1) of this rule does not prevent the Tennessee Historical Commission from taking into account other considerations.

Authority: T.C.A. §§ 4-11-101 et seq.

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

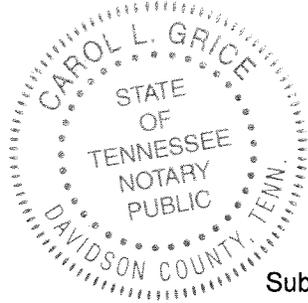
Board Member	Aye	No	Abstain	Absent	Signature (if required)
Ernie Bacon Middle Tennessee	✓				
David "Ray" Smith East Tennessee	✓				
Dr. Douglas Cupples West Tennessee	✓				
Elizabeth A. Campbell Middle Tennessee	✓				
Allen F. Carter East Tennessee	✓				
Dr. Kent Dollar Middle Tennessee	✓				
Sam D. Elliott East Tennessee	✓				
Ex Officio <i>Don Johnson</i> Governor	✓				
Jeremy S. Harrell Middle Tennessee	✓				
Yolanda (Loni) Harris West Tennessee	✓				
Toye Heape Middle Tennessee	✓				
Alpha B. (Tiny) Jones Middle Tennessee	✓				
Bill Landry East Tennessee	✓				
Lucy W. Lee Middle Tennessee	✓				
William Lyons East Tennessee	✓				
Ex Officio TDEC Commissioner	✓				
Linda Moss Mines East Tennessee	✓				
Dr. Reavis L. Mitchell, Jr Middle Tennessee	✓				
Joanne Cullom Moore West Tennessee	✓				
Mike Moore State Archaeologist	✓				
Keith Norman West Tennessee	✓				
Beverly C. Robertson West Tennessee	✓				
Don Roe West Tennessee	✓				
Chuck Sherrill State Librarian and Archivist	✓				
Joe Swann East Tennessee	✓				
Judge David Tipton East Tennessee	✓				
Dr. Carroll Van West State Historian	✓				
Ronald A. Walter West Tennessee	✓				RESIGNED
Derita Coleman Williams West Tennessee	✓				

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the Tennessee Historical Commission on 10/13/2017, 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: (04/13/17)

Rulemaking Hearing(s) Conducted on: (add more dates). (06/13/17)



Date: 10/16/2017

Signature: E. Patrick McIntyre

Name of Officer: E. Patrick McIntyre, Jr.

Title of Officer: Executive Director

Subscribed and sworn to before me on: October 16, 2017

Notary Public Signature: Carol L. Grice

My commission expires on: March 3, 2020

All rulemaking hearing rules provided for herein have been examined by the Attorney General and Reporter of the State of Tennessee and are approved as to legality pursuant to the provisions of the Administrative Procedures Act, Tennessee Code Annotated, Title 4, Chapter 5.

Herbert H. Slatery III
Herbert H. Slatery III
Attorney General and Reporter
10/19/2017
Date

Department of State Use Only

Filed with the Department of State on: 10/19/17

Effective on: 1/17/18

Lee Hargett
Lee Hargett
Secretary of State

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G.O.C. STAFF RULE ABSTRACT

DEPARTMENT: Health Services and Development Agency

DIVISION:

SUBJECT: Access to Agency Records; Definitions; Certificate of Need Program

STATUTORY AUTHORITY: Many of the proposed rule changes are necessary to comply with Pub. Ch. 1043, while other changes are being made to "clean up" the rules. Note: Please see authorities after each proposed change to the rules.

EFFECTIVE DATES: January 22, 2018 through June 30, 2018

FISCAL IMPACT: N/A

STAFF RULE ABSTRACT: Agency response: "Please see attached redline for detail."

Public Hearing Comments

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

See attachment



STATE OF TENNESSEE
HEALTH SERVICES AND DEVELOPMENT AGENCY
502 Deaderick Street, 9th Fl.
Nashville, Tennessee 37243
(615)741-2364

MEMORANDUM

TO: Interested Parties

**RE: RESPONSE TO ORAL AND WRITTEN COMMENTS REGARDING
THE HSDA'S PROPOSED RULEMAKING RULES**

DATE: August 15, 2017

Chapter 1043 of the Tenn. Public Acts of 2016 (“Act”) amended the Tennessee Health Services and Planning Act of 2002, T.C.A. §§ 68-11-1601, et seq. (CON statute), which amendments included, among other things, the addition of a fourth criterion to be considered when approving or denying a CON application: whether the proposal will provide health care that meets appropriate quality standards. The Act directed that the new quality standards are applicable to CON applications filed on or after July 1, 2016; must be adopted as rules; and that they shall be developed by the Agency after consultation with the Department of Health, the Department of Mental Health and Substance Abuse Services, and others. The Act also imposes certain annual reporting requirements and made other changes to the CON statute, which necessitate changes to the rules. Other rules changes are being proposed to update and improve the rules.

The HSDA received written comments prior to and following the July 28, 2017 Rulemaking Hearing, as well as oral comments at the July 28, 2017 Rulemaking Hearing. Comments summarized as follows, with the HSDA's responses thereto.

1. Proposed Rule 0720—9—.01 [Definition of “Mental health hospital”]

It was recommended that the following definition instead of that proposed in the Notice of Rulemaking:

“Mental health hospital” means a public or private hospital or facility equipped to provide inpatient care and treatment for persons with mental illness or serious emotional disturbance as licensed by the Department of Mental Health and Substance Abuse Services, or a part of a public or private hospital or facility equipped to provide inpatient care and treatment for persons with mental illness or serious emotional disturbance as licensed by the Department of Health.

HSDA Response: It is noted that the proposed rule does not account for programs licensed by TDH. However, TDH does not license Mental Health Hospitals, and therefore, the suggested definition would not be viable.

2. 0720—11—.01(3)(f)(1)(vii) ["Nonresidential substitution-based treatment center for opiate addiction" quality measures]

It was recommended that the term for such facilities be changed to match the following:

Behavioral health care accreditation by the Joint Commission or other Substance Abuse and Mental Health Services Administration (SAMHSA) designated entity for Nonresidential Substitution Based Treatment Center for Opiate Addiction Projects (otherwise known as Non-residential opioid treatment program facilities licensed by the Tennessee Department of Mental Health and Substance Abuse Services under 0940-05-42)

Response: "Nonresidential substitution-based treatment center for opiate addiction" is a term in the CON statute, and the Rules must conform to the CON statute.

3. Proposed Rules 0720—11—.01 (3)(h) [Quality Measures]

It was noted that the language "which may be developed per Policy Recommendation" in subparagraph 2. should be struck, as its inclusion in standards and criteria for cardiac catheterization (upon which the proposed quality measure was based) was an error. This was confirmed by the State Health Planning Division.

Response: The language will be deleted.

4. Proposed Rules 0720—11—.01 (3)(q) [Quality Measures]

It was suggested that item (q) should be modified to match language from the Division of Health Planning that refers to "quality of care, quality control and monitoring, and licensure and quality considerations" standards in order to appropriately link to relevant quality metrics imbedded in the standards and criteria.

Response: This suggestion will be addressed in the proposed rule.

5. Proposed Rules 0720—11—.01 (3)(r) [Quality Measures]

It was suggested that item (r) should be modified to match language from the Division of Health Planning that refers to "licensure and quality considerations" standards in order to appropriately link to relevant quality metrics imbedded in the standards and criteria.

Response: This suggestion will be addressed in the proposed rule.

6. Proposed Rule 0720-12-.06 [Report Concerning Continued Need and Appropriate Quality Measures.]

Concern was raised about tracking data for approved projects separately from existing programs, services, equipment or beds. Doing so may not be practical or even possible, depending upon the project.

Response: Depending upon the project, doing so may not be practical or even possible, whereas it might be for some. This concern is being addressed in the draft proposed rules.

7. Proposed Rule 0720-12-.06 [Report Concerning Continued Need and Appropriate Quality Measures.]

It was brought to the Agency's attention that the proposed requirement that CON holders report results of any self-assessment and external peer assessment processes in which the applicant participates or participated within the year would contradict the Tennessee Patient and Safety Quality Improvement Act of 2011, codified at T.C.A. §§ 68-11-272 and 63-1-150. That statute provides that records of and information provided to QICs are confidential and not subject to discovery.

Response: The portion of the proposed rule that contradicts state law will be deleted.

8. Proposed Rules 0720—11—.01 (3) [Quality Measures]

The following changes were recommended in light of the necessary changes to Proposed Rule 0720-12-.06, above:

At the top of page 6, item (f), change “in self-assessment and external peer assessment processes” to “in assessments and comparisons...” This is suggested in effort to better align with the proposed changes related to these same topics in 0720-12-.06.

On page 7, item (i)(3), change “and peer review system that benchmarks” to “and other assessments that benchmark...” This also is suggested in effort to better align with the proposed changes related to these same topics in 0720-12-.06.

Response: The suggestions will be shared with the Agency members. However, staff notes that participation in self-assessment and external assessment processes is a key element of improving quality of care, even though reporting the results could not be required by the Agency; therefore, the language of proposed rule 0720-11-.01(3) does not need to be aligned with the language of proposed rule 0720-12-.06 in that respect. The proposed rule presented to the Agency in August will be modified with these concerns in mind, but will not incorporate the suggested 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.

- 1. 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, and/or directly benefit from the proposed rule:**

These proposed rule amendments will have an impact upon health care providers who are subject to Certificate of Need requirements under Tennessee law, some of which may be small businesses.

Many of the proposed rule changes are for the purpose of conforming to changes made to the Certificate of Need Statute by 2016 Tenn. Pub. Acts Ch. 1043, and to update other parts.

- 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:**

These proposed rule amendments do not add additional reporting requirements that are not already proscribed by Tennessee law. Some of these proposed rule amendments provide detail as to how required reporting will be made.

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

These proposed rule amendments should not have a significant affect upon small businesses.

These proposed rule amendments should improve the quality of healthcare for consumers.

- 4. Description of any less burdensome, less intrusive or less costly alternative methods of achieving the purpose and/or objectives in the proposed rule that may exist, and to what extent, such alternative means might be less burdensome for small business:**

There are no less burdensome, less intrusive or less costly alternative methods of achieving the purpose and/or objectives in the proposed rule.

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

These proposed rule amendments do not overlap with 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 this proposed rule:**

These proposed rule amendments do not provide any exemptions for small business.

Impact on Local Governments

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

These proposed rule amendments should not have an impact upon 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;

Please see attached redline for detail.

- (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;

Many of the proposed rule changes are necessary to comply with Pub. Ch. 1043, while other changes are being made to "clean up" the rules. Please see authorities after each proposed change to the 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;

Health care providers would be affected by these rules; there is no known provider opposition, after numerous calls, drafts and feedback on the drafts.

- (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;

N/A

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

Melanie Hill, Executive Director, and Mark Farber, Assistant Executive Director

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

Melanie Hill, Executive Director, and Mark Farber, Assistant Executive Director

- (H) Office address, telephone number, and email address of the agency representative or representatives who will explain the rule at a scheduled meeting of the committees; and

Andrew Jackson Bldg., 9th Fl., 502 Deaderick St., Nashville, TN 37243; (615) 741-2364; melanie.hill@tn.gov

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

**Department of State
Division of Publications**

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Nashville, TN 37243
Phone: 615-741-2650
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For Department of State Use Only

Sequence Number: 10-23-17
Rule ID(s): 6629-6633
File Date: 10-24-17
Effective Date: 1-22-19

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:	Health Services and Development Agency
Division:	N/A
Contact Person:	Melanie Hill
Address:	Andrew Jackson Bldg., 9th Fl., 502 Deaderick St., Nashville, TN
Zip:	37243
Phone:	(615) 741-2364
Email:	melanie.hill@tn.gov

Revision Type (check all that apply):

- Amendment
- New
- Repeal

Rule(s) (ALL chapters and rules contained in filing must be listed here. If needed, copy and paste additional tables to accommodate multiple chapters. Please make sure that ALL new rule and repealed rule numbers are listed in the chart below. Please enter only **ONE** Rule Number/Rule Title per row)

Chapter Number	Chapter Title
0720-08	Conduct of Business
Rule Number	Rule Title
0720-08-.04	Access to Agency Records
Chapter Number	Chapter Title
0720-09	Definitions
Rule Number	Rule Title
0720-09-.01	Definitions
Chapter Number	Chapter Title
0720-10	Certificate of Need Program - Scope and Procedures
Rule Number	Rule Title
0720-10-.02	Activities Requiring Notification - Miscellaneous Provisions [Deleted in this filing]
0720-10-.02	Standard Procedures for Certificate of Need [Renumbered from 0720-10-.03 in this filing]
0720-10-.03	Emergency Certificate of Need [Renumbered from 0720-10-.04 in this filing]
0720-10-.04	Consent Calendar [Renumbered from 0720-10-.05 in this filing]
0720-10-.05	Expiration, Revocation and Modification of Issued Certificates [Renumbered from 0720-10-.06 in this filing]
Chapter Number	Chapter Title
0720-11	Certificate of Need Program – General Criteria

Rule Number	Rule Title
0720-11-.01	General Criteria for Certificate of Need
Chapter Number	Chapter Title
0720-12	Certificate of Need Program - Application, Disclosure of Information and Reporting Requirements
Rule Number	Rule Title
0720-12-.01	Standard Application
0720-12-.02	Report of Bed Increases Not Requiring a Certificate of Need
0720-12-.03	Replacement or Upgrade of Major Medical Equipment [Deleted in this filing]
0720-12-.03	Report of Change of Ownership of Licensed Institutions [Renumbered from 0720-12-.04 in this filing]
0720-12-.04	Registration of Equipment Renumbered from 0720-12-.05 in this filing]
0720-12-.05	Annual Reports Concerning Magnetic Resonance Imaging Services [New rule in this filing]
0720-12-.06	Report Concerning Continued Need and Appropriate Quality Measures [New rule in this filing]

0720—8—.04 ACCESS TO AGENCY RECORDS.

- (3) ~~Audio Tapes.~~ Recordings of meetings of The Agency are available for review and duplication. For each audio tape or disc to be duplicated, the person requesting the duplication shall pay a fee of fifteen dollars (\$15.00).
- (4) ~~Monthly Meeting Packet.~~ Notwithstanding the copy fee schedule established in Subsection (2) of this Rule, persons desiring to receive copies of the Monthly Meeting Packet distributed to Agency Members may subscribe at the annual rate of \$1,500.00. Each Monthly Meeting Packet will include copies of the meeting Agenda, certificate of need application summaries, related reports of the Departments of Health and Mental Health and Developmental Disabilities, and reports and correspondence pertaining to agenda items as required.

0720—9—.01 DEFINITIONS. The following terms shall have the following meanings.

- (3) ~~“Ambulatory surgical treatment center” is as defined in T.C.A., Title 68, Chapter 11, Part 2.~~ means any institution, place or building devoted primarily to the performance of surgical procedures on an outpatient basis.
- (4) ~~“Capital expenditure” in relation to a proposed establishment of, modification, renovation, or addition to a health care institution, means an expenditure by or on behalf of a health care institution which, under generally accepted accounting principles principals, is not properly chargeable as an expense of operation and maintenance. Any series of expenditures, each less than the threshold, but which when taken together are in excess of the threshold, directed toward the accomplishment of a single goal or project, requires a certificate of need. Any series of related expenditures made over a twelve (12) month period will be presumed to be a single project.~~
- (a) Establishment, modifications, additions, or renovations. In calculating the capital expenditure for establishment, modifications, additions, or renovations, “capital expenditure” is the amount per construction bid or total amount of invoices for the single project excluding major medical equipment.
- (b) ~~Equipment. The cost of major medical equipment over the monetary threshold of T.C.A. § 68-11-1607 is not considered when determining the amount of capital expenditures for determining whether the monetary threshold of T.C.A. § 68-11-1607 is met for an establishment, modification, addition, or renovation. The cost of all other equipment, whether fixed or moveable, is considered. The cost of major medical equipment is considered in calculating the amount of the examination fee. The cost for such fixed and moveable equipment includes, but is not necessarily limited to, taxes, government fees, assessments, and any other fees, assessments or charges directly associated with the acquisition of the equipment.~~
- (b) Equipment. The cost of all medical equipment, whether fixed or moveable, is considered in calculating the amount of the examination fee. The cost for such fixed and moveable equipment includes, but is not necessarily limited to all costs, expenditures, charges, fees and assessments which are reasonably necessary to put the equipment into use for the purpose applied for. Such costs specifically include, but are not limited to, the following:
1. maintenance agreements, covering the expected useful life of the equipment;
 2. federal, state and local taxes, and other government assessments; and
 3. installation charges, excluding capital expenditures for physical plant renovation or in-wall shielding.
- If the acquisition is by lease, the cost is either the fair market value of the equipment or the total amount of lease payments, whichever is greater.
- (c) Lease, loan, or gift. In calculating the value of a lease, loan, or gift, the “cost” is the fair market value of the above-described expenditures. In the case of a lease, the cost is the fair market value of the lease or the total amount of the lease payment, whichever is greater.

- (12) "Intellectual disability institutional habilitation facility" means a facility which offers on a regular basis health related services to individuals with intellectual disabilities who do not require the degree of care and treatment which a hospital or skilled nursing facility is designed to provide but, because of physical or mental condition require residential care and services (more than room and board) and involves health related care under the supervision of a physician. Such a facility also offers an intensive program of habilitative services, as licensed by the Department of Intellectual and Developmental Disabilities.
- (13) "Long-term categories" includes nursing home services, regardless of the length of stay, and any other health service which is intended or reasonably expected to result in an average length of stay of 21 days or longer.
- (13) ~~"Major medical equipment" — "Cost."~~
- (a) ~~As used in T.C.A. §§ 68-11-1602 and 68-11-1607, "major medical equipment" means any single item of equipment or a series of components with related functions, within the definition and cost threshold set forth at the referenced statutes, and which costs more than the amounts determined under T.C.A. § 68-11-1607.~~
- (b) ~~The cost of major medical equipment includes all costs, expenditures, charges, fees and assessments which are reasonably necessary to put the equipment into use for the purposes for which the equipment was intended. Such costs specifically include, but are not necessarily limited to, the following:~~
- ~~1. maintenance agreements, covering the expected useful life of the equipment;~~
 - ~~2. federal, state, and local taxes and other government assessments; and~~
 - ~~3. installation charges, excluding capital expenditures for physical plant renovation or in-wall shielding.~~
- (c) ~~Any individual components or a piece of medical equipment with related functions, which are purchased over a 12 month period shall be considered toward the cost of the piece of major medical equipment.~~
- (d) ~~If the acquisition is by lease, the cost is either the fair market value of the equipment, or the total amount of the lease payments, whichever is greater~~
- (14) "Mental health hospital" means a public or private hospital or facility or part of a hospital or facility equipped to provide inpatient care and treatment for persons with mental illness or serious emotional disturbance, as licensed by the Department of Mental Health and Substance Abuse Services~~Developmental Disabilities~~.
- (15) ~~"Mental retardation institutional habilitation facility" means a facility which offers on a regular basis health related services to individuals with mental retardation who do not require the degree of care and treatment which a hospital or skilled nursing facility is designed to provide but, because of physical or mental condition require residential care and services (more than room and board) and involves health related care under the supervision of a physician. Such a facility also offers an intensive program of habilitative services, as licensed by the Department of Mental Health and Developmental Disabilities.~~
- (15) "Neonatal intensive care unit" means a special care unit staffed and equipped to provide professional intensive treatment for the care of newborns with severe or complicated illnesses and/or high-risk newborn infants, staffed by a neonatologist and specialized nurses and in which bassinets are used as licensed beds.
- (16) "Not directly related to patient care" may include the following types of single, isolated expenditures:
- (a) Telephone systems;
 - (b) Non-clinical data processing systems;
 - (c) Heating and/or air conditioning systems;

- (d) Energy conservation devices;
 - (e) Parking facilities;
 - (f) Roof repairs;
 - (g) Medical office buildings;
 - (h) Warehouses; and
 - (i) Cafeterias.
- (17) "Nursing home" is as defined in T.C.A. Title 68, Chapter 11, Part 2.
- (18) "Outpatient diagnostic center" is as defined in T.C.A. Title 68, Chapter 11, Part 2.
- (19) "Person" where the context requires, may refer to any natural person, legal entity, facility, or institution, as defined in T.C.A. § 68-11-1602.
- (20) "Recuperation center" is as defined in T.C.A. Title 68, Chapter 11, Part 2.
- (21) "Residential hospice" is as defined in T.C.A. Title 68, Chapter 11, Part 2.
- (22) "Service area" means the county or counties, or portions thereof, representing a reasonable area in which a health care institution intends to provide services and in which the majority of its service recipients reside.
- (23) "Substantive amendment" as used in T.C.A. § 68—11—1607 means any amendment which has the effect of increasing the number of beds, square footage, cost, or other elements which are reasonably considered in the discretion of The Agency to be integral components of the application. A reduction of the above referenced components may be considered a substantive amendment if the amendment and supporting documentation are not received by the staff and Agency in a timely manner, necessary to allow The Agency to make an informed decision. Nothing in this rule shall be interpreted as limiting The Agency's authority to approve or deny all or part of any given application.

~~0720—10—02 ACTIVITIES REQUIRING NOTIFICATION — MISCELLANEOUS PROVISIONS.~~

- ~~(1) Any nursing home which increases its bed complement pursuant to the ten (10) bed/ten (10)% provision of T.C.A. § 68—11—1607 must have the additional beds licensed within one year of Agency receipt of notice of the increase. If such beds are not licensed within such one (1) year period, the notice shall be void, and the increase in bed complement shall not be implemented.~~
- ~~(2) Any hospital with fewer than one hundred (100) licensed beds, which increases its bed complement pursuant to the ten (10) bed provision of T.C.A. § 68—11—1607 must have the additional beds licensed within one (1) year of Agency receipt of the notice of the increase. If the additional beds are not licensed within such one (1) year period, the notice shall be void, and the increase in bed complement shall not be implemented.~~
- ~~(3) For purposes of the nursing home ten (10) bed/ten (10)% exemption, and the hospital ten (10) bed exemption, the one (1) year period after which the next such exempted change may be initiated at the facility shall begin on the date when the most recent exempted bed change at the facility is actually licensed. For the purposes of this exemption, "licensed bed capacity" shall mean that number of beds actually licensed in a facility at the time the exempted increase or decrease is initiated.~~
- ~~(4) Any person claiming the exemption from certificate of need requirements for the acquisition of major medical equipment on the basis that such equipment is a replacement or upgrade of existing equipment, shall provide notice to The Agency at least sixty (60) days prior to the purchase on a form provided by The Agency.~~
- ~~(5) Notice of a change of ownership occurring within two (2) years of the date of initial licensure of a health care institution must be provided to The Agency within thirty (30) days of the effective date on forms~~

provided by The Agency.

0720—10—.02 STANDARD PROCEDURES FOR CERTIFICATE OF NEED.

- (1) Application Form. Each application will be filed using standard application forms provided by The Agency. The applicant must provide all information requested in the application forms.
- (2) Letters of Intent.
 - (a) Each Letter of Intent shall be filed using standard forms provided by The Agency. The applicant must provide all information requested in the Letter of Intent form. The applicant must fully comply with all instructions contained in the Letter of Intent form provided by The Agency.
 - (b) Each Letter of Intent for home care organization applications shall also specify all counties in the proposed service area.
 - (c) Any Letter of Intent which contains insufficient information may be deemed void. The Letter of Intent may be refiled, but it is subject to the same requirements as an original Letter of Intent.
 - (d) Simultaneous with its filing with The Agency, the Letter of Intent shall be published for one day in a newspaper of general circulation in the county where the proposed project is to be located. The Letter of Intent shall be published in the Legal Notice section in a space which should be no smaller than four (4) column inches. Publication must be in the same form and format as the Publication of Intent form provided by The Agency.
 1. For the purpose of these rules, "simultaneous" means that publication should, if possible, occur on the same day as filing. A day or two delay between filing and publication will not necessarily void the Letter of Intent, but both filing and publication must occur between the 1st and 10th day of the month preceding the beginning of the review cycle. If the last day for filing the Letter of Intent is a Saturday, Sunday or State holiday, filing must occur on the last preceding regular business day. If both filing and publication do not occur within the time period, the Letter of Intent will be null and void, and the applicant will be notified in writing.
 2. For the purpose of these rules, "newspaper of general circulation" means a publication with the following characteristics:
 - (i) is regularly issued at least once a week;
 - (ii) has a second class mailing privilege;
 - (iii) includes a Legal Notice Section;
 - (iv) is not fewer than four (4) pages in length;
 - (v) has been published continuously during the immediately preceding one year period;
 - (vi) is published for dissemination of news of general interest; and
 - (vii) is circulated generally in the county in which it is published.
 3. In any county where a publication fully complying with this definition does not exist, the Executive director is authorized to determine appropriate publication to receive any required Letter of Intent. A newspaper which is engaged in the distribution of news of interest to a particular interest group or other limited group of citizens, is not a "newspaper of general circulation."
 4. In the case of an application for or by a home care organization, the Letter of Intent shall be published in each county in which the agency will be licensed or in a regional newspaper which qualifies as a newspaper of general circulation in each county. In those cases where the Letter of Intent is published in more than one newspaper, the earliest date of publication shall be the date of publication for the purpose of determining the date for the timely filing of the application. Both the Letter of Intent and the application must specify the counties to be served.
- (3) Simultaneous Review. Those persons desiring simultaneous review for a certificate of need for which a

Letter of Intent has been filed shall file a Letter of Intent with The Agency and the original applicant, and publish the Letter of Intent simultaneously in a newspaper of general circulation, as those terms are defined in sub-paragraph (2)(d), above, in the same county as the original applicant within ten (10) days after publication by the original applicant. The Executive director or his/her designee will determine whether applications are to be reviewed simultaneously.

- (a) The applicant seeking simultaneous review shall, at the time the Letter of Intent is filed with The Agency, also file a verified statement certifying it has complied with the procedural requirements for simultaneous review and evidence that the Notice was received by The Agency business office and the original applicant within ten (10) days after publication by the original applicant.
 - (b) In addition to the procedural requirements, the following factors may be considered by the Executive director in determining whether the applications are appropriate for simultaneous review:
 - 1. Similarity of services area.
 - 2. Similarity of location;
 - 3. Similarity of facilities; and
 - 4. Similarity of service to be provided.
 - (c) If, at the time an application is filed for simultaneous review, there is already another application filed for simultaneous review against the original application, the second application seeking simultaneous review may be simultaneously reviewed against both the original application and the other application seeking simultaneous review.
 - (d) The order in which applications filed for simultaneous review will be placed on the agenda will be determined by the order in which the Letters of Intent were received in The Agency office.
 - (e) Any application which is determined to not meet the criteria for a "simultaneous review" shall be null and void. The application may be re-filed for a subsequent review cycle, but is subject to the same requirements as an original application.
- (4) Applications.
- (a) All applications must be filed in ~~triplicate~~ with The Agency within five (5) days after publication by the applicant, and must be accompanied by the filing fee. The date of filing shall be the actual date of receipt. If the last day for filing an application falls on a Saturday, Sunday, or State holiday, the application, to be timely, must be filed on the last preceding regular business day.
 - (b) Failure by the applicant to file an application within five (5) days after publication of the Letter of Intent in accordance with (a) above shall render the Letter of Intent, and hence the application, void.
 - (c) When an application is received at The Agency office, it must include an initial ~~non-refundable~~ filing fee, as provided elsewhere in these rules. The filing fee is non-refundable, except as provided by T.C.A. § 68-11-1609. Review for completeness shall not begin prior to the receipt of the filing fee.
 - (d) Each application that is accompanied by the applicable filing fee will be reviewed for completeness by Agency staff.
 - 1. If it is deemed complete, The Agency will acknowledge receipt and notify the applicant that the review period will begin as of the date specified in the notification. Deeming complete means only that all questions and requests for information have been responded to in some reasonable manner. Deeming complete shall not be construed as validating the sufficiency of the information provided for the purposes of addressing the criteria under the applicable statutes, rules, and other guidelines.
 - 2. If the application is incomplete, responses to requests for supplemental information by the staff must be completed by the applicant and filed at The Agency office within sixty (60) days of the written request by Agency staff. Failure of the applicant to meet this

deadline will result in the application being considered withdrawn and returned to the contact person. Resubmittal of the application must be accomplished in accordance with Rule 0720—10— .03 and requires an additional filing fee.

- (e) An application for certificate of need shall not be amended in a substantive way by the applicant after being filed with The Agency. If the application is amended in a substantive manner varying from the Letter of Intent or the original application filed with The Agency, the application may be deemed void. This Rule does not prohibit correction of clerical errors in the application.
- (5) Examination Filing Fee.
- (a) The amount of the initial fee shall be equal to \$5.75 per \$1,000 of the estimated capital expenditure involved, but in no case shall this fee be less than \$15,000 nor more than \$95,000.
 - (b) Any unpaid balance of litigation costs previously assessed against the applicant or any related entity of the applicant by the Tennessee Health Services and Development Agency may be offset against any filing fees paid. An application will not be deemed complete until the full filing fee, as well as such off set amounts, are paid in full.
 - (c) A final fee will be determined upon The Agency's receipt of the final project report. The amount of the final fee shall be the difference between the initial fee and the total fee based on actual final project costs, as such fee is calculated based on \$5.75 per \$1,000 of project costs, but in no case shall the total fee be less than \$15,000 nor more than \$95,000.
- (6) Distribution of Applications. The Agency will promptly forward a copy of each application deemed complete to the Department of Health, or to the Department of Mental Health and Substance Abuse Services, or to the Department of Intellectual and Developmental Disabilities, and in doing so will fix the date on which the review process established by statute and these regulations will commence.
- (7) Withdrawal of Applications. An application may be withdrawn at any time by the applicant.
- (8) Beginning of the Review Cycle. The review cycle for each application shall begin on the first day of the appropriate month after the application has been deemed complete by the staff of The Agency.
- (9) Reviewing Agencies' Actions on Applications.
- (a) The Department of Health, or the Department of Mental Health and Developmental Disabilities Substance Abuse Services, or the Department of Intellectual and Developmental Disabilities, shall within seven (7) days from the receipt of a completed application give notice to ~~t~~The Health Services and Development Agency of its receipt in writing. The appropriate reviewing agency shall expeditiously review all applications in a consistent manner and conduct such studies and inquiries thereon as may be determined necessary by the appropriate reviewing agency, by ~~t~~The Health Services and Development Agency's rules, or upon request of ~~t~~The Health Services and Development Agency, to enable it to make a report to ~~t~~The Health Services and Development Agency. Applicants must comply promptly with all reasonable requests made by the appropriate reviewing agency, for additional information for the purpose of this review. Copies of said studies and all correspondence related to the application shall be forwarded to ~~t~~The Health Services and Development Agency by the reviewing agency.
 - (b) Within sixty (60) days (or thirty (30) days where the application is on the consent calendar), of the date fixed by The Health Services and Development Agency pursuant to Rule 0720—10— .03(4), the reviewing agency shall file its official written report with The Health Services and Development Agency. A copy of this report shall be forwarded by the reviewing agency to the applicant, and to any other person requesting one.
- (10) Reviewing Agency's Report to The Health Services and Development Agency. The reviewing agency's report shall address at a minimum each of the applicable criteria for certificate of need set forth in the statutes, rules, and the state health plan. The reviewing agency shall clearly set forth any planning methodologies, data bases, and resource materials utilized in making its findings. The reviewing agency may include other information it deems appropriate and informative. The report shall address the following:

- (a) The applicant's compliance with the criteria found in Agency Rules 0720-11;
 - (b) A verification of the methodologies provided by the applicant to meet the criteria specified in (a), as well as identification of any additional methodologies that would further clarify compliance with the criteria;
 - (c) An assessment of the applicant's compliance with any applicable Guidelines for Growth; and
 - (d) An analysis of any information received from the Division of TennCare Bureau as to the previous, current and proposed TennCare participation or non-participation of the applicant and any affiliate(s) involved with the project.
- (11) An applicant may provide written supporting information to its application during the review cycle. Further, the applicant will have the right to respond in writing to the report made by the reviewing agency. The reviewing agency and the Health Services and Development Agency shall receive a copy of the applicant's response to the agency's report not less than ten (10) days prior to the Health Services and Development Agency meeting.
- (12) Holder of certificate of need. A certificate of need will normally be issued to the person to whom the license for the health care institution is or will be issued; if not a health care institution as defined in T.C.A. § 68—11—1602, then a certificate of need will normally be issued to the person who will provide the service who owns the real property of the institution or facility concerned, provided, however, that a certificate may be issued to:
- ~~(a) The lessee or permittee of the property in cases where the property is not specifically designed for the provision of health care services and the lessor is not in the regular business of providing space for health care activities;~~
 - ~~(b) The lessee of the property where the terms of the lease convey long-term control of the facility to the lessee;~~
 - ~~(c) A management company where the terms of the management agreement convey long-term control of the facility to the management company, and management company also has significant responsibility for implementing and completing the project; or~~
 - ~~(d) The person who directly provides equipment or facilities for Health care activities when that person is not the owner of the property or facility.~~

0720—10—.03 EMERGENCY CERTIFICATE OF NEED.

- (1) Where an unforeseen event necessitates action of a type requiring a certificate of need and the public health, safety, or welfare would be unavoidably jeopardized by compliance with the standard procedures for application and granting of a certificate of need, The Agency may issue an emergency certificate of need.
- (2) An emergency certificate of need may be issued upon request of the applicant when the Executive director and officers of The Agency concur, after consultation with the appropriate reviewing agency. Prior to an emergency certificate of need being granted, the applicant must publish notice of the application in a newspaper of general circulation, and Agency members must be notified by Agency staff of the request.
- (3) A decision regarding whether to issue an emergency certificate of need will be considered at the next regularly scheduled Agency meeting unless the applicant's request is necessitated by an event that has rendered its facility, equipment or service inoperable. In such case, The Agency's Chair and Vice-Chair may act immediately to consider the application for an emergency certificate of need.
- (4) Said certificate is valid for a period not to exceed one hundred twenty (120) days: when the applicant has applied for a certificate of need under standard Agency procedures, an extension of the emergency certificate of need may be granted.

- (5) ~~For the purpose of this rule, the term "unforeseen event" means an event which could not be reasonably foreseen and which significantly affects the habitability of the facility or operation of the service including but not limited to fire, flood, acts of God, and the failure of fixed equipment such as heating, ventilating and air conditioning equipment, elevators, boilers, electrical transformers and switch gears, sterilization equipment, water supply and other utility connections.~~

0720—10—.04 CONSENT CALENDAR.

- (1) Each ~~monthly~~ meeting's agenda will be available for both a consent calendar and a regular calendar.
- (2) In order to be placed on the consent calendar, the application must not be opposed by anyone having legal standing to oppose the application, and the executive director must determine that the application appears to meet the established criteria for granting a certificate of need. Public notice of all applications intended to be placed on the consent calendar will be given.
- (3) As to all applications which are placed on the consent calendar, the reviewing agency shall file its official report with The Agency within thirty (30) days of the beginning of the applicable review cycle.
- (4) If opposition by anyone having legal standing to oppose the application is stated in writing prior to the application being formally considered by The Agency, it will be taken off the consent calendar and placed on the next regular agenda. Any member of The Agency may state opposition to the application being heard on the consent calendar, and if reasonable grounds for such opposition are given, the application will be removed from the consent calendar and placed on the next regular agenda.
 - (a) For purposes of this rule, the "next regular agenda" means the next regular calendar to be considered at the same ~~monthly~~ meeting.
- (5) Any application which remains on the consent calendar will be individually considered and voted upon by The Agency.

0720—10—.05 EXPIRATION, REVOCATION, AND MODIFICATION OF ISSUED CERTIFICATES.

- (1) Prolonged certification periods and extensions of expiration dates of certificates are disfavored, ~~and will be sparingly granted.~~ Any request for a prolonged certification period must be clearly set forth in the application in order to be considered. A request for an extension of the expiration date must be made in writing to The Agency and filed prior to the first day of the month in which the request is to be considered by The Agency, and will be processed in accordance with policies established by staff.
- (2) Prolonged certification period. A prolonged certification period will be granted only where exceptional circumstances are shown to exist which make completion of the project within the time limits prescribed by statute unachievable using all reasonable means.
- (3) Extension of expiration date may be granted due to unforeseen occurrences. ~~Extension of the expiration date of an issued certificate may be granted where some unforeseen and reasonably unavoidable occurrence causes a delay which makes completion of the project by the original expiration date unachievable using all reasonable means.~~
 - (a) ~~Occurrences which may justify an extension of the expiration date include, without limitation, fire, flood, explosion, catastrophic weather conditions, riots or other civil disturbances, and similar occurrences. A court order enjoining the project, or otherwise significantly interfering with the completion of the project, may, in the discretion of The Agency, constitute grounds for an extension of, the expiration date. Ordinarily, lack of adequate or accurate planning and/or financial difficulties will not justify an extension of the expiration date.~~
 - (b) ~~All requests for extension of the expiration date must be filed in triplicate at The Agency's office and be accompanied by a filing fee. The filing fee shall be an amount which bears the same ratio to the initial examination fee submitted with the application, as the requested extension of time bears to the original certification period.~~
- (4) Extension of expiration date due to appeal. In the event of a proper and timely appeal of The Agency's decision to grant a certificate of need, the certification period will be automatically extended, and the

expiration date will be automatically stayed, during the pendency of the appeal.

- (a) The time period of the extension/stay will be equal to the period of time beginning with the date the petition is received at The Agency's office, and ending with the effective date of the decision of the appellate court of last resort, or the expiration of the time period available for seeking further appellate review (where such appellate review is not sought), whichever occurs first.
 - (b) At the conclusion of the appellate process, as described in subparagraph (4)(a) above, a revised certificate of need, reflecting the new expiration date, may be issued upon request of the certificate holder.
- ~~(5) In order to show substantial and timely progress in seeking an extension of the expiration date, the certificate holder must show that the project was on schedule and could reasonably have been completed by the expiration date, but for the unforeseen and unavoidable occurrence.~~
- ~~(a) By way of illustration, but not limitation, if construction had not proceeded beyond the footing stage at three months prior to the expiration date, substantial and timely progress would likely not be shown.~~
- (5) The Agency will conduct an annual review of progress of each project for which a certificate of need has been granted. The certificate holder shall timely respond to staff requests for information in connection with such progress reviews, and otherwise cooperate with staff in such progress reviews. As part of this progress review, the certificate holder shall submit to The Agency a copy of any signed agreements with TennCare managed care organizations executed after the date the certificate of need was granted, or a status update on any pending negotiations with such entities, within six (6) months after issuance of the certificate of need, and again at twelve (12) months. The certificate holder must show that it is making substantial and timely progress in implementing the project. In the absence of such a showing, The Agency may initiate proceedings to revoke the certificate of need.
- (6) Special corrections and revised certificates. Any issued certificate of need containing typographical errors or requiring similar clerical changes on its face, should be reported by the certificate holder and/or may be recalled by The Agency or staff. In the event of such non-substantive changes, or technical errors or omissions the executive director may issue a "revised" certificate in correct form. The certificate holder shall surrender the original certificate prior to its reissuance in corrected form.
- (a) Examples of errors and omissions and other nonsubstantive changes which may be made through a revised certificate include:
 - 1. A typographical error;
 - 2. A change in the name of an institution or facility;
 - (i) This refers only to a change in the "doing business as" name, not to a change of ownership. Any change of ownership occurring prior to licensure of a proposed new health care institution is covered in paragraph eight (8) of this rule.
 - (ii) A change of ownership of a health care institution occurring within two years of initial licensure requires notice to The Agency, but no revised or modified certificate of need will be issued.
 - 3. An extension of the expiration date due to a completed appeal; and
 - 4. Other non-substantive changes as approved by the executive director;
 - (b) Except for changing the expiration date due to a completed appeal as provided above, a revised certificate pursuant to this subdivision shall not be construed as extending the expiration date.
- (7) Modifications and/or addendums to issued certificates. In the event a certificate holder wishes to make substantive changes relating to the scope, cost, or duration of the project, written request must be made to, and formally approved by, The Agency in its discretion. If approved, such changes may be reflected in either the issuance of a modified certificate of need, or by the issuance of an addendum to the

original certificate. If the request is denied, The Agency's decision is final, and no appeal shall be allowed.

(a) Changes included within the provisions of this subdivision may include, but are not limited to, cost increases or decreases, downscaling or increasing the scope or square footage of a project, requests for an extension of the expiration date and changes of ownership where allowed by law and Agency rules. Generally, such changes resulting in either a ten (10) percent increase or decrease shall be presumed substantive, though there will be instances where changes greater than ten (10) percent would not be substantive and instances where changes less than ten (10) percent would be substantive, depending upon the totality of the circumstances. In no event will any change in cost of less than \$10,000 be deemed a substantive cost modification. In no event will any change which would independently require a certificate of need be considered for a modification or addendum. Multiple requests for modifications of a certificate of need, and such other modifications which in the discretion of The Agency would have significantly impacted public participation in The Agency's consideration of the original application, may be considered by The Agency as requiring a separate certificate of need.

1. Certain changes of ownership ("change of control"), prior to licensure constitutes the transfer of a certificate of need, and will render the certificate null and void, as provided in T.C.A. § 68—11—1620.

In addition to the circumstances constituting a change of ownership ("change of control") as specified in T.C.A. § 68—11—1620, the termination of interest of over 50% of the membership of a non-profit corporation constitutes a change of ownership/change of control. If the change is made from a non-profit, membership corporation to a non-profit, non-membership corporation, there is no change of control if the boards of directors of the corporations are interlocking to the extent that there is no actual change of control of the corporate powers of the corporation which will hold the certificate of need.

(b) Any certificate holder seeking a modification or addendum must make a formal request in writing to The Agency, in accordance with policies adopted by The Agency staff. Such written request must be accompanied by the appropriate supporting documentation justifying the requested modification. Simultaneously with the submission of such written request, the certificate holder shall also file written notice with all parties who sought simultaneous review, filed competing applications, or who opposed the original application. Where an extension of the expiration date is sought, the request must be accompanied by the fee referred to elsewhere in this rule.

(c) A change of site may not be approved through a modification or addendum; a separate certificate of need is required.

(8) Any certificate holder seeking the removal of a condition which was placed on the certificate of need may make an application in writing to The Agency, in accordance with policies adopted by The Agency staff. At the time it makes such written application with The Agency, the certificate holder shall also file written notice with all parties who sought simultaneous review, filed competing applications, or who opposed the original application, and shall publish notice thereof in a newspaper of general circulation. In order to show "good cause" for removing a condition, the certificate holder has the burden of showing that circumstances have significantly changed, which necessitate the removal of the condition. Mere disagreement or dissatisfaction with the condition will normally not be considered to be good cause for removing the condition.

(a) Application to The Agency for the addition of a specialty to an issued certificate that is limited to either a single specialty or specific multiple specialties shall be made by the filing of a new certificate of need application form.

(b) Application to The Agency for the addition of therapeutic cardiac catheterization to an issued certificate that is limited to diagnostic cardiac catheterization shall be made by the filing of a new certificate of need application.

0720—11—.01 General Criteria for Certificate of Need

(3) Quality. Whether the proposal will provide health care that meets appropriate quality standards may be evaluated upon the following factors:

- (a) Whether the applicant commits to maintaining staffing comparable to the staffing chart presented in its CON application;
- (b) Whether the applicant will obtain and maintain all applicable state licenses in good standing;
- (c) Whether the applicant will obtain and maintain TennCare and Medicare certification(s), if participation in such programs was indicated in the application;
- (d) Whether an existing healthcare institution applying for a CON has maintained substantial compliance with applicable federal and state regulation for the three years prior to the CON application. In the event of non-compliance, the nature of non-compliance and corrective action shall be considered;
- (e) Whether an existing health care institution applying for a CON has been decertified within the prior three years. This provision shall not apply if a new, unrelated owner applies for a CON related to a previously decertified facility;
- (f) Whether the applicant will participate, within 2 years of implementation of the project, in self-assessment and external assessment against nationally available benchmark data to accurately assess its level of performance in relation to established standards and to implement ways to continuously improve.
 - 1. This may include accreditation by any organization approved by Centers for Medicare and Medicaid Services (CMS) and other nationally recognized programs. The Joint Commission or its successor, for example, would be acceptable if applicable. Other acceptable accrediting organizations may include, but are not limited to, the following:
 - (i) Those having the same accrediting standards as the licensed hospital of which it will be a department, for a Freestanding Emergency Department;
 - (ii) Accreditation Association for Ambulatory Health Care, and where applicable, American Association for Accreditation of Ambulatory Surgical Facilities, for Ambulatory Surgical Treatment Center projects;
 - (iii) Commission on Accreditation of Rehabilitation Facilities (CARF), for Comprehensive Inpatient Rehabilitation Services and Inpatient Psychiatric projects;
 - (iv) American Society of Therapeutic Radiation and Oncology (ASTRO), the American College of Radiology (ACR), the American College of Radiation Oncology (ACRO), National Cancer Institute (NCI), or a similar accrediting authority, for Megavoltage Radiation Therapy projects;
 - (v) American College of Radiology, for Positron Emission Tomography, Magnetic Resonance Imaging and Outpatient Diagnostic Center projects;
 - (vi) Community Health Accreditation Program, Inc., Accreditation Commission for Health Care, or another accrediting body with deeming authority for hospice services from CMS or state licensing survey, and/or other third party quality oversight organization, for Hospice projects;
 - (vii) Behavioral Health Care accreditation by the Joint Commission for Nonresidential Substitution Based Treatment Center, for Opiate Addiction projects;
 - (viii) American Society of Transplantation or Scientific Registry of Transplant Recipients, for Organ Transplant projects;
 - (ix) Joint Commission or another appropriate accrediting authority recognized by CMS, or other nationally recognized accrediting organization, for a Cardiac Catheterization project that is not required by law to be licensed by the

Department of Health;

- (x) Participation in the National Cardiovascular Data Registry, for any Cardiac Catheterization project;
 - (xi) Participation in the National Burn Repository, for Burn Unit projects;
 - (xii) Community Health Accreditation Program, Inc., Accreditation Commission for Health Care, and/or other accrediting body with deeming authority for home health services from CMS and participation in the Medicare Quality Initiatives, Outcome and Assessment Information Set, and Home Health Compare, or other nationally recognized accrediting organization, for Home Health projects;
 - (xiii) Participation in the National Palliative Care Registry, for Hospice projects; and
 - (xiv) As an alternative to the provision of third party accreditation information, applicants may provide information on any other state, federal, or national quality improvement initiatives, for Nursing Home projects.
- (g) For Ambulatory Surgical Treatment Center projects, whether the applicant has estimated the number of physicians by specialty expected to utilize the facility, developed criteria to be used by the facility in extending surgical and anesthesia privileges to medical personnel, and documented the availability of appropriate and qualified staff that will provide ancillary support services, whether on- or off-site.
- (h) For Cardiac Catheterization projects:
- 1. Whether the applicant has documented a plan to monitor the quality of its cardiac catheterization program, including but not limited to, program outcomes and efficiencies;
 - 2. Whether the applicant has agreed to cooperate with quality enhancement efforts sponsored or endorsed by the State of Tennessee; and
 - 3. Whether the applicant will staff and maintain at least one cardiologist who has performed 75 cases annually averaged over the previous 5 years (for an adult program), and 50 cases annually averaged over the previous 5 years (for a pediatric program).
- (i) For Open Heart projects:
- 1. Whether the applicant will staff with the number of cardiac surgeons who will perform the volume of cases consistent with the State Health Plan (annual average of the previous 2 years), and whether the applicant will maintain this volume in the future;
 - 2. Whether the applicant will staff and maintain at least one surgeon with 5 years of experience; and
 - 3. Whether the applicant will participate in a data reporting, quality improvement, outcome monitoring, and external assessment system that benchmarks outcomes based on national norms (demonstrated active participation in the STS National Database is expected and shall be considered evidence of meeting this standard);
- (j) For Comprehensive Inpatient Rehabilitation Services projects, whether the applicant will have a board-certified physiatrist on staff (preferred);
- (k) For Home Health projects, whether the applicant has documented its existing or proposed plan for quality data reporting, quality improvement, and an outcome and process monitoring system;
- (l) For Hospice projects, whether the applicant has documented its existing or proposed plan for quality data reporting, quality improvement, and an outcome and process monitoring system;
- (m) For Megavoltage Radiation Therapy projects, whether the applicant has demonstrated that it will

meet the staffing and quality assurance requirements of the American Society of Therapeutic Radiation and Oncology (ASTRO), the American College of Radiology (ACR), the American College of Radiation Oncology (ACRO), National Cancer Institute (NCI), or a similar accrediting authority;

- (n) For Neonatal Intensive Care Unit projects, whether the applicant has documented its existing or proposed plan for data reporting, quality improvement, and outcome and process monitoring systems; whether the applicant has documented the intention and ability to comply with the staffing guidelines and qualifications set forth by the Tennessee Perinatal Care System Guidelines for Regionalization, Hospital Care Levels, Staffing and Facilities; and whether the applicant will participate in the Tennessee Initiative for Perinatal Quality Care (TIPQC);
 - (o) For Nursing Home projects, whether the applicant has documented its existing or proposed plan for data reporting, quality improvement, and outcome and process monitoring systems, including in particular details on its Quality Assurance and Performance Improvement program;
 - (p) For Inpatient Psychiatric projects:
 - 1. Whether the applicant has demonstrated appropriate accommodations for patients (e.g., for seclusion/restraint of patients who present management problems and children who need quiet space; proper sleeping and bathing arrangements for all patients), adequate staffing (i.e., that each unit will be staffed with at least two direct patient care staff, one of which shall be a nurse, at all times), and how the proposed staffing plan will lead to quality care of the patient population served by the project;
 - 2. Whether the applicant has documented its existing or proposed plan for data reporting, quality improvement, and outcome and process monitoring systems; and
 - 3. Whether an applicant that owns or administers other psychiatric facilities has provided information on satisfactory surveys and quality improvement programs at those facilities.
 - (q) For Freestanding Emergency Department projects, whether the applicant has demonstrated that it will be accredited with the Joint Commission or other applicable accrediting agency, subject to the same accrediting standards as the licensed hospital with which it is associated;
 - (r) For Organ Transplant projects, whether the applicant has demonstrated that it will achieve and maintain institutional membership in the national Organ Procurement and Transplantation Network (OPTN), currently operating as the United Network for Organ Sharing (UNOS), within one year of program initiation; additionally, the applicant shall comply with CMS regulations set forth by 42 CFR Parts 405, 482, and 498, Medicare Program; Hospital Conditions of Participation: Requirements for Approval and Re-Approval of Transplant Centers To Perform Organ Transplants; and
 - (s) For Relocation and/or Replacement of Health Care Institution projects:
 - 1. For hospital projects, Acute Care Bed Need Services measures are applicable; and
 - 2. For all other healthcare institutions, applicable facility and/or service specific measures are applicable.
 - (t) HSDA will notify the applicant and any applicable licensing agency if any volume or quality measure has not been met.
 - (u) Within one month of notification the applicant must submit a corrective action plan and must report on the progress of the plan within one year of that submission.
- (4) Contribution to the Orderly Development of Adequate and Effective Healthcare Facilities and/or Services. The contribution which the proposed project will make to the orderly development of an adequate and effective health care system may be evaluated upon the following factors:
- (a) The relationship of the proposal to the existing health care system (for example: transfer

agreements, contractual agreements for health services, the applicant's proposed TennCare participation, affiliation of the project with health professional schools);

- (b) The positive or negative effects attributed to duplication or competition;
 - (c) The availability and accessibility of human resources required by the proposal, including consumers and related providers; and
 - ~~(d) Whether the applicant commits to maintaining an actual payor mix that is comparable to the payor mix projected in its CON application, particularly as it relates to Medicare, TennCare/Medicaid, Charity Care, and the Medically Indigent.~~
 - ~~(d) The quality of the proposed project in relation to applicable governmental or professional standards.~~
- (5) Applications for Change of Site. When considering a certificate of need application which is limited to a request for a change of site for a proposed new health care institution, The Agency may consider, in addition to the foregoing factors, the following factors:
- (a) Need. The applicant should show the proposed new site will serve the health care needs in the area to be served at least as well as the original site. The applicant should show that there is some significant legal, financial, or practical need to change to the proposed new site.
 - (b) Economic factors. The applicant should show that the project can be economically accomplished and maintained at the proposed new site ~~would be at least as economically beneficial to the population to be served as the original site.~~
 - ~~(c) Quality of Health Care to be provided. The applicant should show the quality of health care to be provided will be served at least as well as at the original site.~~
 - (d) Contribution to the orderly development of health care facilities and/or services. The applicant should address any potential delays that would be caused by the proposed change of site, and show that any such delays are outweighed by the benefit that will be gained from the change of site by the population to be served.
- (6) Certificate of need conditions. In accordance with T.C.A. § 68-11-1609, The Agency, in its discretion, may place such conditions upon a certificate of need it deems appropriate and enforceable to meet the applicable criteria as defined in statute and in these rules.

0720—12—.01 STANDARD APPLICATION.

- (1) Application for a certificate of need shall be made on form(s) provided by The Agency. The applicant must provide all information requested in the application forms. The information which may be required in the application form(s) includes, but is not necessarily limited to, the following:
- (a) Facility identification, including legal interests and status, operator and owners;
 - (b) Detailed project description;
 - (c) Detailed project cost data;
 - (d) Detailed disclosure of anticipated financing mechanism;
 - (e) Project operating costs and revenues, patient charges, and occupancy rate;
 - (f) Information on whether the proposed project will provide health care that meets appropriate quality standards;
 - (gf) Information on the project's relationship to public needs and the existing health service system; and

- (hg) A copy of any signed agreement between the applicant and TennCare managed care organizations; if a signed agreement has not been executed prior to The Agency's consideration of the application, the applicant shall provide a list of any such organizations with whom the applicant is negotiating, or a statement that the applicant does not intend to contract with any TennCare managed care organization(s).

0720—12—.02 REPORT OF BED INCREASES NOT REQUIRING A CERTIFICATE OF NEED.

- (1) Any ~~nursing home~~ rehabilitation facility, mental health hospital or hospital which is increasing the number of its licensed beds without the necessity of obtaining a certificate of need, as provided by law, shall report such activity on forms provided by The Agency.
- (2) Any ~~nursing home~~ rehabilitation facility, mental health hospital or hospital reporting such increases must provide all information requested in the form(s). Information required to be provided by the forms may include, but not be limited to, the following:
- (a) Facility identification;
 - (b) Date of most recent prior increase in number of licensed beds not requiring a certificate of need, number of beds increased, and type of beds;
 - (cb) Number of licensed beds prior to the request;
 - (dc) Number of beds being increased, by licensure category; and
 - (ed) Anticipated date of licensure/certification.

~~0720—12—.03 REPLACEMENT OR UPGRADE OF MAJOR MEDICAL EQUIPMENT.~~

- ~~(1) Any person claiming an exemption from the certificate of need requirements for the replacement or upgrade of major medical equipment shall report the replacement or upgrade on forms provided by The Agency.~~
- ~~(2) Any person claiming the exemption must provide all information requested in the form(s). Information which may be required by the form(s) may include, but not be limited to the following:~~
- ~~(a) A description of the original equipment, and of the replacement or upgraded equipment;~~
 - ~~(b) The cost of the original equipment and of the replacement or upgraded equipment, and whether the acquisition was by purchase, lease, or otherwise;~~
 - ~~(c) The expected useful life of the original equipment, and of the replacement or upgraded equipment;~~
 - ~~(d) The date of acquisition of the original equipment, and of the replacement or upgraded equipment; and~~
 - ~~(e) The owner of the original equipment, and of the replacement or upgraded equipment.~~

0720-12-.034 REPORT OF CHANGE OF OWNERSHIP OF LICENSED INSTITUTIONS.

- (1) Notice of a change of ownership of a health care institution, occurring within two years of the date of initial licensure, must be reported to The Agency in writing. Any person reporting such a change of ownership must provide all information requested by The Agency. Such information which may be required may include, but not be limited to, the following:
- (a) Identification of the current owner of the health care institution;
 - (b) Identification of the proposed new owner of the health care institution;

- (c) Identification of the health care institution, the ownership of which is proposed to be transferred; and,
- (d) The effective date of the proposed change of ownership.

0720—12—.045 REGISTRATION OF EQUIPMENT.

- (1) Ownership of computerized axial tomographers, ~~lithotripters~~, magnetic resonance imagers, linear accelerators, positron emission tomography, and any other piece of equipment specified by law, must be made on forms provided by The Agency within ninety (90) days of acquisition of the equipment.
- (2) The person registering such equipment must provide all information requested in the form(s) provided by Agency staff. Information which may be required by the form(s) may include, but not be limited to, the following:
 - (a) Identification of the owner of such equipment;
 - (b) The location of the equipment, including facility identification;
 - (c) Whether the acquisition is by purchase, lease, or otherwise;
 - (d) The date of delivery of the equipment; and
 - (e) The expected useful life of the equipment.
- (3) All such equipment shall be filed on an annual inventory survey developed by Agency staff. The survey shall include, but not be limited to, the identification of the equipment and utilization data according to source of payment. The survey shall be filed no later than thirty (30) days following the end of each state fiscal year. The Agency is authorized to impose a penalty not to exceed fifty dollars (\$50) for each day the filing of the survey is late.

0720—12—.05 Annual Reports Concerning Magnetic Resonance Imaging Services

Any person who provides magnetic resonance imaging services shall file an annual report each year with The Agency concerning adult and pediatric patients that details the mix of payors by percentage of cases for the prior calendar year for its patients, including private pay, private insurance, uncompensated care, charity care, Medicare, and Medicaid. These reports shall be filed on forms provided by The Agency, and shall be due as provided by law.

0720-12-.06 Report Concerning Continued Need and Appropriate Quality Measures.

- (1) For every certificate of need issued after July 1, 2016, reporting shall be made to the Health Services and Development Agency each year on the anniversary date of implementation of the certificate of need, on forms prescribed by the Agency. Reporting shall include an assessment of each applicable volume and quality standard and shall include results of any surveys or disciplinary actions by state licensing agencies, payors, or CMS, which are relevant to the health care institution or service authorized by the certificate of need. The existence and results of any remedial action, including any plan of correction, shall also be provided, unless the information is considered confidential under state or federal law. Reporting may be made for the entire health care institution, relevant department, service, equipment or beds, rather than segregating the portion authorized by the particular certificate of need; reporting for the portion authorized by the particular certificate of need is preferred if the data is easily segregated and doing so would not be unduly burdensome or costly to the provider.

* 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)
Grandy, Joe (Chair)	X				
Korth, Paul (Vice-Chair)	X				
Alsup, Thomas	X				
Gaither, Keith	X				
Harding, Jaclyn				X	
Jordan, Lisa	X				
Mills, Thom	X				
Patric, Kenneth	X				
Ridgway, Corey	X				
Taylor, Todd				X	

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the Health Services and Development Agency on August 23, 2017, 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: 06/01/2017

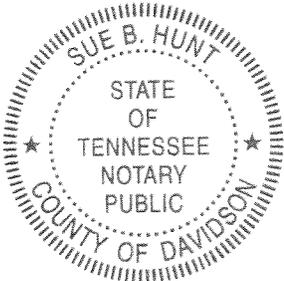
Rulemaking Hearing(s) Conducted on: (add more dates). 07/28/2017

Date: 9/7/17

Signature: Melanie Hill

Name of Officer: Melanie Hill

Title of Officer: Executive Director



Subscribed and sworn to before me on: September 7, 2017

Notary Public Signature: Sue B. Hunt

My commission expires on: March 8, 2021

Agency/Board/Commission: Health Services and Development Agency

Rule Chapter Number(s): 0720-08, 0720-09, 0720-10, 0720-11, and 0720-12

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

10/12/2017
Date

Department of State Use Only

Filed with the Department of State on: 10/24/17

Effective on: 11/22/18



Tre Hargett
Secretary of State

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POSITIONATIONS

G.O.C. STAFF RULE ABSTRACT

DEPARTMENT: Children's Services

DIVISION: Office of the General Counsel

SUBJECT: Classification and Review of Reports of Child Abuse/Neglect and Due Process Procedures for Release of Child Abuse/Neglect Records

STATUTORY AUTHORITY: Tennessee Code Annotated, Sections 37-1-409(e), 37-1-612(f), and 37-5-107(j)

EFFECTIVE DATES: January 4, 2018 through June 30, 2018

FISCAL IMPACT: None

STAFF RULE ABSTRACT: These rules govern the appeals process for individuals who have been substantiated as committing child abuse or neglect by the Department of Children's Services; as well as, the release of an individual's name as a substantiated perpetrator of child abuse or neglect for employment purposes. Previously, these rules only allowed for an individual to receive an APA contested case hearing if their job or professional licensure would be impacted. The proposed amendment would allow for every individual to receive an APA contested case hearing. Also, the proposed amendment would allow for an automatic file review, the first step in the substantiation appeal process, for minor perpetrators. The proposed amendment would also allow a substantiated perpetrator who has exhausted due process and waited one year since case closure to apply to the Child Abuse Registry Review Committee so that the committee may consider any remedial action they might have taken to administratively overturn the substantiation.

Public Hearing Comments

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

On March 17, 2017, DCS held a public hearing regarding the proposed changes to Classification and Review of Reports of Child Abuse/Neglect and Due Process Procedures for Release of Child Abuse/Neglect Records, 0250-07-09. We invited attendees to comment on each provision in the proposed rules. We received no written comments.

Craig Hargrow, with the Tennessee Commission on Children and Youth (TCCY), offered 2 general comments in support of the proposed changes. First, TCCY supports the change in language regarding the substantiations and strongly supports the new provision of the rule allowing individuals request their substantiation be withdrawn upon proof of changed behavior and circumstances. The Juvenile Justice Division of TCCY also supports the automatic notice and automatic review of a substantiation for a minor perpetrator.

Regulatory Flexibility Addendum

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

Regulatory Flexibility Addendum

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

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

The proposed rules align with Tennessee and federal law and do not conflict with other federal, state, or local governmental rule.

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

The proposed rules are clear, concise, and unambiguous.

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

These rules do not contain reporting requirements for small businesses.

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

These rules do not involve schedules or deadlines for compliance and reporting requirements for small businesses.

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

These rules do not contain reporting requirements for small businesses.

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

These rules do not establish performance, design, or operational standards for small businesses.

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

These rules do not create unnecessary barriers, stifle entrepreneurial activity, curb innovation, or increase costs.

Economic Impact Statement

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

These rules are not projected to apply to any small businesses.

(2) The projected reporting, recordkeeping, and other administrative costs required for compliance with the proposed rule, including the type of professional skills necessary for preparation of the report or record.

There are no reporting, recordkeeping, or other administrative costs required for compliance with the proposed rules.

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

The proposed rules will have no impact on small businesses and consumers.

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

There are no less burdensome, less intrusive, or less costly alternative methods of achieving the purpose of the proposed rule amendments.

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

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

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

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

These rules do not provide for any exemptions 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://state.tn.us/sos/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;

These rules govern the appeals process for individuals who have been substantiated as committing child abuse or neglect by the Department of Children's Services; as well as, the release of an individual's name as a substantiated perpetrator of child abuse or neglect for employment purposes. Previously, these rules only allowed for an individual to receive an APA contested case hearing if their job or professional licensure would be impacted. The proposed amendment would allow for every individual to receive an APA contested case hearing. Also, the proposed amendment would allow for an automatic file review, the first step in the substantiation appeal process, for minor perpetrators. The proposed amendment would also allow a substantiated perpetrator who has exhausted due process and waited one year since case closure to apply to the Child Abuse Registry Review Committee so that the committee may consider any remedial action they might have taken to administratively overturn the substantiation.

- (B) A citation to and brief description of any federal law or regulation or any state law or regulation mandating promulgation of such rule or establishing guidelines relevant thereto;

T.C.A. §§ 37-1-409(e), 37-1-612(f), and 37-5-107(j) require the Department of Children's Services to adopt rules to establish administrative and due process procedures for the disclosure of its investigative determinations in order to protect children from abuse and neglect.

- (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;

None

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

None

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

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

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

Stephanie Butler, Department of Children's Services, Director of Internal Quality Control and SafeMeasures Project Manager
Douglas Earl Dimond, Department of Children's Services, General Counsel
Helen Rodgers, Department of Children's Services, Assistant General Counsel

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

Stephanie Butler, Department of Children's Services, Director of Internal Quality Control and SafeMeasures Project Manager

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

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

(H) Office address, telephone number, and email address of the agency representative or representatives who will explain the rule at a scheduled meeting of the committees; and

Stephanie Butler
UBS Tower, 10th Floor
315 Deaderick Street
Nashville, TN 37243
615-532-6190
Stephanie.L.Butler@tn.gov

Douglas Earl Dimond
UBS Tower, 7th Floor
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Helen Rodgers
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315 Deaderick Street
Nashville, TN 37243
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(I) Any additional information relevant to the rule proposed for continuation that the committee requests.

None

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Sequence Number: 10-10-17
Rule ID(s): 6621
File Date: 10/6/17
Effective Date: 1/4/18

Rulemaking Hearing Rule(s) Filing Form

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

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

Agency/Board/Commission:	Tennessee Department of Children's Services
Division:	Office of the General Counsel
Contact Person:	Helen Rodgers
Address:	UBS Tower, 7 th Floor 315 Deaderick Street Nashville, TN
Zip:	37243
Phone:	615-741-1404
Email:	Helen.Rodgers@tn.gov

Revision Type (check all that apply):

- Amendment
 New
 Repeal

Rule(s) (ALL chapters and rules contained in filing must be listed here. If needed, copy and paste additional tables to accommodate multiple chapters. Please make sure that ALL new rule and repealed rule numbers are listed in the chart below. Please enter only ONE Rule Number/Rule Title per row)

Chapter Number	Chapter Title
0250-07-09	Classification and Review of Reports of Child Abuse/Neglect and Due Process Procedures for Release of Child Abuse/Neglect Records
Rule Number	Rule Title
0250-07-09-.01	Definitions
0250-07-09-.02	Scope of Rules
0250-07-09-.03	Release to Covered Educational Entities
0250-07-09-.04	Prohibited Releases
0250-07-09-.05	When Rights Under this Chapter Attach
0250-07-09-.06	Standards and Criteria for Review of Classification of Reports of Child Abuse/Neglect as "Substantiated"
0250-07-09-.07	Right to Notice and Opportunity for Formal File Review
0250-07-09-.08	Alleged Perpetrators with Current Access to Children; Emergency Notification
0250-07-09-.09	Right to Notice and Opportunity for an Administrative Hearing
0250-07-09-.10	Stay of Administrative Proceedings
0250-07-09-.11	Conduct of Administrative Hearing
0250-07-09-.12	Child Abuse Registry Review Committee

Redline

0250-07-09

Classification and Review of Reports of Child Abuse/Neglect and Due Process Procedures for Release of Child Abuse/Neglect Records

Rule 0250-07-09-.01 Definitions is amended by deleting the text of the rule and substituting instead the following language, so that as amended, the rule shall read:

(1) ~~“Abuse” exists when a person under the age of eighteen (18) is suffering from, has sustained, or may be in immediate danger of suffering from or sustaining a wound, injury, disability or physical or mental condition caused by brutality, neglect or other actions or inactions of a parent, relative, guardian or caretaker. Tenn. Code Ann. §37-1-102(b)(1)~~

(2) ~~“Adult” means any person eighteen (18) years of age or older. Tenn. Code Ann. §37-1-102(b)(3)~~

(3) ~~“Child” means (A) A person under the age of eighteen (18) years of age.~~

(4) ~~“Child sexual abuse” means:~~

~~(a) The commission of any act involving unlawful sexual abuse, molestation, fondling or carnal knowledge of a child that constitutes a criminal offense under Tennessee law; or~~

~~(b) One (1) or more of the following acts:~~

~~1. Any penetration, however slight, of the vagina or anal opening of one (1) person by the penis of another person, whether or not there is the emission of semen;~~

~~2. Any contact between the genitals or anal opening of one (1) person and the mouth or tongue of another person;~~

~~3. Any intrusion by one (1) person into the genitals or anal opening of another person, including the use of any object for this purpose, except that it shall not include acts intended for a valid medical purpose;~~

~~4. The intentional touching of the genitals or intimate parts, including the breasts, genital area, groin, inner thighs, and buttocks, or the clothing covering them, of either the child or the perpetrator, except that it shall not include:~~

~~(i) Acts that may reasonably be construed to be normal caretaker responsibilities, interactions with, or affection for a child; or~~

~~(ii) Acts intended for a valid medical purpose;~~

~~5. The intentional exposure of the perpetrator's genitals in the presence of a child, or any other sexual act intentionally perpetrated in the presence of a child, if such exposure or sexual act is for the purpose of sexual arousal or gratification, aggression, degradation, or other similar purpose;~~

~~6. The sexual exploitation of a child, which includes allowing, encouraging, or forcing a child to:~~

~~(i) Solicit for or engage in prostitution; or~~

~~(ii) Engage in an act prohibited by Tenn. Code Ann. §39-17-1003;~~

~~(c) For the purposes of the reporting, investigation, and treatment provisions of Tenn. Code Ann. §37-1-603–37-1-615 “child sexual abuse” also means the commission of any act specified in subdivision Tenn. Code Ann. §37-1-602(a)(3) against a child thirteen (13) years of age through seventeen (17) years of age if such ~~act~~ is committed against the child by a parent, guardian,~~

relative, person residing in the child's home, other person responsible for the care and custody of the child. Tenn. Code Ann. §37-1-602(a)(3)

- (5) —“Department” means the Tennessee Department of Children’s Services.
- (6) —“Neglect” means a child: (A) Who is without a parent, guardian or legal custodian; (B) Whose parent, guardian or person with whom the child lives, by reason of cruelty, mental incapacity, immorality or depravity is unfit to properly care for such child; (C) Who is under unlawful or improper care, supervision, custody or restraint by any person, corporation, agency, association, institution, society or other organization or who is unlawfully kept out of school; (D) Whose parent, guardian or custodian neglects or refuses to provide necessary medical, surgical, institutional or hospital care for such child; (E) Who, because of lack of proper supervision, is found in any place the existence of which is in violation of law; (F) Who is in such conditions of want or suffering or is under such improper guardianship or control as to injure or endanger the morals or health of such child or others; (G) Who is suffering from abuse or neglect; (H) Who has been in the care and control of an agency or person who is not related to such child by blood or marriage for a continuous period of eighteen (18) months or longer in the absence of a court order, and such person or agency has not initiated judicial proceedings seeking either legal custody or adoption of the child; or (I) Who is or has been allowed, encouraged or permitted to engage in prostitution or obscene or pornographic photographing, filming, posing, or similar activity and whose parent, guardian or other custodian neglects or refuses to protect such child from further such activity. Tenn. Code Ann. §37-1-102(b)(12)
- (7) —“Commissioner’s designee” means the person designated by the Commissioner of the Tennessee Department of Children’s Services to act pursuant to this rule.
- (8) —“Child care agency” means a place or facility, regardless of whether it is currently licensed, that is operated as a “family child care home”, a “group child care home”, a “child care center”, or a “drop-in center”, or that provides child care for five (5) or more children who are not related to the primary caregiver for three (3) or more hours per day. Tenn. Code Ann. 71-3-501.
- (9) —“Indicated” means the classification assigned to an individual found to be a perpetrator of abuse, severe child abuse, child sexual abuse, or neglect as the result of investigation of a report of abuse. Tenn. Code Ann. §37-1-406(i)
- (10) —“Regional General Counsel” means the supervising attorney for one of the regional DCS offices.
- (11) —“Severe child abuse” means (A) the knowing exposure of a child to or the knowing failure to protect a child from abuse or neglect that is likely to cause great bodily harm or death and the knowing use of force on a child that is likely to cause great bodily harm or death; (B) Specific brutality, abuse, or neglect towards a child that in the opinion of qualified experts has caused or will reasonably be expected to produce severe psychosis, severe neurotic disorder, severe depression, severe developmental delay or retardation, or severe impairment of the child’s ability to function adequately in the child’s environment, and the knowing failure to protect a child from such conduct; (C) the commission of any act towards the child prohibited by Tenn. Code Ann. §§39-13-502 – 39-13-504, 39-13-522, 39-15-302, and 39-17-1005 or the knowing failure to protect the child from omission of any such act towards the child; or (D) Knowingly allowing a child to be present within a structure where the act of creating methamphetamine, as that substance is identified in Tenn. Code Ann. § 39-17-408(d)(2), is occurring. Tenn. Code Ann. §37-1-102(b)(21).
- (12) —“Record” includes files, reports, records, communications and working papers related to investigations or providing services, video tapes, photographs, or electronic mails.
- (13) —“Formal File Review” means the review established pursuant to 42 U.S.C. § 5106a(b)(2)(A)(xv)(II) that is available to an individual whom the Department identifies or proposes to identify as a perpetrator of abuse, severe child abuse, child sexual abuse, or neglect. The Department shall use a formal file review as the initial form of due process when the information regarding the report and identity of a perpetrator must be released to any organization or individual and shall also afford the right to a hearing as provided in Rule 0250-07-09-.07.

- (1) "Abuse" exists when a child victim is suffering from, has sustained, or may be in immediate danger of suffering from or sustaining a wound, injury, disability or physical or mental condition caused by brutality, neglect or other actions or inactions of a parent, relative, guardian or caregiver.
- (2) "Adult" means any person eighteen (18) years of age or older.
- (3) "Child victim" means a person under the age of eighteen (18) years of age or a delinquent youth in the Department's custody under the age of nineteen (19).
- (4) "Child sexual abuse" shall have the same meaning as set out in T.C.A. § 37-1-602(a) (2016 and as amended).
- (5) "Commissioner's designee" means the person designated by the Commissioner of the Tennessee Department of Children's Services to act pursuant to this rule.
- (6) "Covered Educational Entities" means the Department of Education, any local board of education, and any Local Educational Agency (LEA).
- (7) "Covered Individual" means any individual who is currently employed by or conditionally offered employment with one of the Covered Educational Entities.
- (8) "Department" means the Tennessee Department of Children's Services.
- (9) "Minor Perpetrator" means a perpetrator of any form of child abuse or neglect who was under the age of eighteen (18) at the time of substantiation and case closure. A minor perpetrator will follow all procedures for perpetrator throughout these Rules unless otherwise specifically noted.
- (10) "Neglect" means the actions or omissions of a parent, relative, guardian, or caregiver which subject a child victim to actual or threatened harm, including, but not limited to, conduct which leads to a child suffering from any of the conditions listed in the definition of "dependent and neglected child" set out at T.C.A. § 37-1-102(b)(12) (2016 and as amended).
- (11) "Record" includes files, reports, records, communications and working papers related to investigations or providing services, video tapes, photographs, or electronic mails.
- (12) "Severe child abuse" shall have the same meaning as set out in T.C.A. § 37-1-102 (2016 and as amended).
- (13) "Substantiated" means the classification assigned to an individual determined to be a perpetrator of abuse, severe child abuse, child sexual abuse, or neglect. The term substantiated also encompasses synonymous terms set out in rules, policy, and statute, including, but not limited to, "indicated", "founded", or other terms signifying the individual was determined to be the perpetrator of child abuse or neglect.
- (14) "Unsubstantiated" means the classification assigned to an individual who is not determined to be a perpetrator of abuse, severe child abuse, child sexual abuse or neglect. The term unsubstantiated encompasses synonymous terms set out in rules, policy, and statute, including, but not limited to, "unfounded" or other terms signifying the individual has not been determined to be the perpetrator of child abuse or neglect.

Authority: T.C.A. §§ 4-5-226(b)(2), 37-1-409, 37-1-612, 37-1-616, 37-5-101, 37-5-105, 37-5-106, 37-5-107, 37-5-112, and 37-5-512(a).

Rule 0250-07-09-.02 Scope of Rules is amended by deleting the text of the rule and substituting instead the following language, so that, as amended, the rule shall read:

- ~~(1) — These Rules shall apply to all indicated cases of child abuse/neglect.~~
- ~~(2) — These Rules establish procedures to review indicated cases and to release the identity and other related information of a perpetrator in "indicated" reports of abuse, severe child abuse, child sexual abuse, or neglect to organizations or persons.~~

- (3) ~~A release pursuant to these Rules shall be for purposes of protecting children from further abuse, severe child abuse, child sexual abuse, or neglect and for purposes directly connected with the administration of Tenn. Code Ann. §§37-1-401 et seq.; 37-1-601 et seq.; 49-1-1101 et seq. and 71-3-501 et seq.~~
- (4) ~~This rule shall apply to any release of information to the Department of Health in compliance with Tenn. Code Ann. §68-11-1004(b)(2). Prior to such release, the individual shall have the right to an administrative hearing pursuant to these rules.~~
- (5) ~~These Rules shall not apply when the Department intends to release or has released any information about an individual who is an alleged perpetrator of abuse, severe child abuse, child sexual abuse, or neglect to any of the following:~~
- (a) ~~any state(s) or federal law enforcement agency(ies) investigating a report of known or suspected child abuse or neglect or any crimes involving children;~~
 - (b) ~~any state(s) District Attorney, Attorney General, or United States Attorney(s) or their authorized assistants, of the judicial districts or agencies involved in investigating or prosecuting crimes against children;~~
 - (c) ~~any state(s) or federal grand jury by subpoena or presentation of evidence by the District Attorney or United States Attorney to such grand jury;~~
 - (d) ~~treatment professionals treating the child, his or her family, or the perpetrator;~~
 - (e) ~~in-house requests by employees of the Department for purposes consistent with enforcement of the child abuse and neglect or child welfare licensing laws of the State of Tennessee including disclosure to other individuals for purposes directly connected with the administration of Title 37, Chapter 1, Parts 4 and 6 or Title 71, Chapter 3, Part 5, of the Tennessee Code Annotated, other than disclosure to the employers, or licensing authority other than the Department;~~
 - (f) ~~any state(s) or federal social service or other agencies investigating cases of child abuse or neglect or providing treatment or care for alleged or known victims of child abuse or neglect;~~
 - (g) ~~any court official, probation counselor, parole officer, designated employee of any Department of Correction or other similarly situated individual charged with the responsibility of preparing information to be presented in any administrative or judicial proceeding concerning any individual charged with or convicted of any offense involving child abuse, child sexual abuse, or neglect;~~
 - (h) ~~to the court, administrative board or hearing, the officials or employees thereof in the performance of their duties, the parties, or their legal representatives in any judicial or administrative proceeding or before any board or hearing officer for the purpose of protecting a child or children from physical or severe child abuse, neglect, or child sexual abuse, except in such situation when such court, administrative hearing, board, or hearing officer, other than the Department of Children's Services, is adjudicating a case affecting the perpetrator's ability to remain or become employed or licensed, in which situation such information shall be released only by order of the court or hearing officer;~~
 - (i) ~~any release of information to the Departments of Education or Human Services pursuant to Tenn. Code Ann. §§ 37-5-512(a)(2) and (3) regarding an individual who is the subject of an ongoing or a completed investigation of abuse, severe child abuse, child sexual abuse, or neglect by the Department may be released to the Departments of Education and Human Services.~~
 - 1. ~~Any further release of information by the Departments of Education or Human Services of a finding by the Department that an individual has been classified in an "indicated" report as a perpetrator of abuse, severe child abuse, child sexual abuse, or neglect shall occur according to the procedures established by these Rules.; or~~
 - (j) ~~Any release to a foster care agency contractor of the Department for purposes of determining whether a child in the Department's custody should be placed with an individual.~~

- (1) These Rules establish procedures to review substantiated cases and to release the identity and other related information of a perpetrator in substantiated reports of any form of abuse or neglect.
- (2) A release pursuant to these Rules shall be for purposes of protecting children from any form of child abuse or neglect and for purposes directly connected with the administration of T.C.A. §§ 37-1-401 et seq., 37-1-601 et seq., 49-1-1101 et seq., and 71-3-501 et seq.
- (3) These Rules shall not apply when the Department intends to release or has released records or information related to child abuse or neglect to any of the following:
 - (a) Any state or federal law enforcement agency investigating a report of known or suspected child abuse or neglect or any crimes involving children;
 - (b) Any state District Attorney, Attorney General, or United States Attorney or their authorized assistant involved in investigating or prosecuting crimes against children;
 - (c) Any state or federal grand jury by subpoena or presentation of evidence by the District Attorney or United States Attorney to such grand jury;
 - (d) Treatment professionals treating the child, his or her family, or the perpetrator;
 - (e) Department employees for purposes consistent with enforcement of the child abuse and neglect or child welfare licensing laws, including disclosure to other individuals for authorized purposes;
 - (f) Any state or federal social service or other agency investigating cases of child abuse or neglect or providing treatment or care for alleged or known victims of child abuse or neglect;
 - (g) Any court official, probation counselor, parole officer, designated employee of any Department of Correction or other similarly situated individual charged with preparing information to be presented in any administrative or judicial proceeding concerning any individual charged with or convicted of any offense involving child abuse, child sexual abuse, or neglect;
 - (h) The court, administrative board or hearing, the officials or employees thereof in the performance of their duties, the parties, or their legal representatives in any judicial or administrative proceeding or before any board or hearing officer for the purpose of protecting a child or children from any form of abuse or neglect, except when such court, administrative hearing, board, or hearing officer, other than the Department, is adjudicating a case affecting the perpetrator's ability to remain or become employed or licensed, in which situation such information shall be released only by order of the court or hearing officer;
 - (i) The Department of Education and the Department of Human Services pursuant to T.C.A. §§ 37-5-512(a)(2) and (3) (2016 and as amended) regarding an individual who is the subject of an ongoing or completed investigation;
 - (j) A foster care agency contractor to determine if an individual is a suitable placement for a DCS custodial child;
 - (k) The Department of Intellectual and Developmental Disabilities, the Department of Mental Health and Substance Abuse Services, or any other department of state government with whom the Department has developed an appropriate Memorandum of Understanding;
 - (l) An agency for the purposes of complying with the Department's employee and contractor background check policies;
 - (m) An adoption and child placing agency for the purpose of complying with Hague Accreditation Standards;
 - (n) An out-of-state entity for the purpose of complying with Adam Walsh Child Protection and Safety Act or other applicable federal or state law;
 - (o) An out-of-state entity for the purpose of determining whether a placement is suitable for a child pursuant to the Interstate Compact for the Placement of Children;

- (p) An agency for the purposes of determining whether a kinship care placement is appropriate; or
- (q) Any agency or entity that is provided access under state or federal law.

Authority: T.C.A. §§ 4-5-226(b)(2), 37-1-409, 37-1-612, 37-1-616, 37-5-101, 37-5-105, 37-5-106, 37-5-107, 37-5-112, and 37-5-512(a).

Rule 0250-07-09-.03, currently Prohibited Releases, is amended so that the title of the rule shall now be Release to Covered Educational Entities. Additionally, Rule 0250-07-09-.03 is amended by deleting the text of the Rule and substituting instead the following language, so that, as amended, the Rule shall read:

~~0250-07-09-.03 Prohibited Releases~~

- ~~(1) Any report of abuse, severe child abuse, child sexual abuse, or neglect is confidential pursuant to Tenn. Code Ann. §§37-1-409(a)(1) and 37-1-609(a).~~
- ~~(2) Any unauthorized release of a report of abuse, severe child abuse, child sexual abuse, or neglect constitutes a class B misdemeanor.~~
- ~~(3) Until the affected individual has exhausted all reviews permitted by these Rules, the Department shall not release any information from its records to any organization or person for purposes of pre-employment screening or licensing, to identify any individual as a perpetrator abuse, severe child abuse, child sexual abuse, or neglect.~~
- ~~(4) Until the affected individual has exhausted all reviews permitted by these Rules, the Department shall not release any information from its records to identify any individual as a perpetrator of abuse, severe child abuse, child sexual abuse, or neglect to any organization or person that requests this information for purposes of routine or random screening of current employees, volunteers, or associates.~~
- ~~(5) If the Department does not begin procedures to release the identity and other related information of a perpetrator in an "indicated" report of abuse, severe child abuse, child sexual abuse, or neglect within two years of the initial classification, the Department shall not release any information as to that report. This provision shall not, however, require expunction of this information from the Department's internal records.~~

0250-07-09-.03 Release to Covered Educational Entities

- (1) This Rule shall apply only to child abuse and neglect investigation information mandated by T.C.A. § 49-5-413(e) (2016 and as amended) to be released to Covered Educational Entities relative to a Covered Individual, in which case this rule's procedures apply notwithstanding any language to the contrary contained elsewhere within these rules.
- (2) The Department shall offer the due process procedures set out in Rule 0250-07-09-.05(1), including the opportunity for a hearing pursuant to Rule 0250-07-09-.09, to any Covered Individual who has ever been found by the Department to have committed any form of child abuse or neglect and who has not previously waived or exhausted his or her due process rights to a hearing. When the Covered Individual's due process rights have been waived or fully concluded, the Department shall disclose its final finding to any relevant Covered Educational Entity.
- (3) In the case of any Covered Individual whose investigation has not been concluded or any Covered Individual whose due process rights have not yet been offered or are otherwise pending, the Department shall conduct an emergency file review pursuant to Rule 0250-07-09-.08. If the emergency file review results in a finding that the Covered Individual poses an immediate threat to the health, safety, or welfare of children, the Department shall disclose that threat to the relevant Covered Educational Entity.
- (4) If the Department's proceedings under these rules have been stayed pursuant to Rule 0250-07-09-.10 due to pending criminal charges against a Covered Individual, the Department shall notify the Covered Educational Entity of the pending criminal charge.

Authority: T.C.A. §§ 4-5-226(b)(2), 37-1-409, 37-1-612, 37-1-616, 37-5-101, 37-5-105, 37-5-106, 37-5-107, 37-5-112, 37-5-512(a), and 49-5-413(e).

Rule 0250-07-09-.04, currently When Rights Under this Chapter Attach, is amended so that the title of the Rule shall now be Prohibited Releases. Additionally, Rule 0250-07-09-.04 is amended by deleting the text of the Rule and substituting instead the following language, so that, as amended, the Rule shall read:

~~0250-07-09-.04 When Rights Under this Chapter Attach~~

- ~~(1) An individual whom the Department has classified in an "indicated" report as a perpetrator of abuse, severe child abuse, child sexual abuse, or neglect shall have the right to a formal file review and to a hearing under these Rules if:
 - ~~(a) The Department intends to or shall release the individual's name under the emergency procedures of Rule 0250-07-09-.11 to any organization or person; or~~
 - ~~(b) The Department intends to or shall release the individual's name in non-emergency situations to any organization or person.~~~~
- ~~(2) An individual whom the Department has classified in an "indicated" report as a perpetrator of abuse, severe child abuse, child sexual abuse, or neglect and whose identity shall be placed in the Department's registry of perpetrators of abuse or neglect shall only have the right to a formal file review under these Rules.
 - ~~(a) This paragraph applies when the Department will not identify or does not intend to identify to any organization or person in Rules that it has classified an individual in an "indicated" report as a perpetrator of abuse, severe child abuse, child sexual abuse, or neglect.~~
 - ~~(b) If after an individual exhausts the formal file review afforded by paragraph 2 of this Rule, and if within the two-year period from the date of the initial classification of the report the Department intends to identify to any organization or person that it has classified the individual in an "indicated" report as a perpetrator of abuse, severe child abuse, child sexual abuse, or neglect, the Department shall not release this information unless the individual is afforded the right to a hearing under Rule 0250-07-09-.07. The Department shall insure that the individual is notified in accordance with these Rules.~~~~

0250-07-09-.04 Prohibited Releases

- (1) Any report of abuse or neglect is confidential pursuant to T.C.A. §§ 37-1-409(a)(1), 37-1-612(a), and 37-5-107 (2016 and as amended).
- (2) Any unauthorized release of a report of abuse, severe child abuse, child sexual abuse, or neglect constitutes a class B misdemeanor.
- (3) Until an individual has exhausted all reviews, excluding the review set out in Rule 0250-07-09-.12, permitted by these Rules, the Department shall not release any information from its records to any organization or person for purposes of pre-employment screening or licensing, to identify the individual as a perpetrator of any form of abuse or neglect, unless such disclosure is necessary to comply with T.C.A. § 49-5-413(e) (2016 and as amended) or other applicable law.
- (4) Until an individual has exhausted all reviews permitted by these Rules, excluding the review set out in Rule 0250-07-09-.12, the Department shall not release any information from its records to identify the individual as a perpetrator of any form of abuse or neglect to any organization or person that requests this information for purposes of routine or random screening of current employees, volunteers, or associates.

Authority: T.C.A. §§ 4-5-226(b)(2), 37-1-409, 37-1-612, 37-1-616, 37-5-101, 37-5-105, 37-5-106, 37-5-107, 37-5-112, 37-5-512(a), and 49-5-413(e).

Rule 0250-07-09-.05, currently Standard and Criteria for Review of Classification of Reports of child Abuse/Neglect as "Indicated", is amended so that the title of the Rule shall now be When Rights Under this Chapter Attach. Additionally, Rule 0250-07-09-.05 is amended by deleting the text of the Rule and substituting instead the following language, so that, as amended, the Rule shall read:

~~0250-07-09-.05 Standard and Criteria for Review of Classification of Reports in child Abuse/Neglect as "Indicated"~~

- (1) ~~A report made against an alleged perpetrator shall be classified as "indicated" if the preponderance of the evidence, in light of the entire record, proves that the individual committed abuse, severe child abuse, child sexual abuse, or neglect. Proof of one or more of the following factors, linking the abusive act(s) to the alleged perpetrator, may constitute a preponderance of the evidence:~~
- ~~(a) Medical and/or psychological information from a licensed physician, medical center, or other treatment professional, that substantiates that physical abuse, sexual abuse, or severe physical abuse occurred;~~
 - ~~(b) An admission by the perpetrator;~~
 - ~~(c) The statement of a credible witness or witnesses to the abusive or neglectful act;~~
 - ~~(d) The child victim's statement that the abuse occurred;~~
 - ~~(e) Physiological indicators or signs of abuse or neglect, including, but not limited to, cuts, bruises, burns, broken bones or medically diagnosed physical conditions;~~
 - ~~(f) Physical evidence that could impact the classification decision;~~
 - ~~(g) The existence of behavioral patterns that may be indicative of child abuse/neglect and corroborates other evidence of abuse, severe child abuse, child sexual abuse, or neglect should be examined;~~
 - ~~(h) The existence of circumstantial evidence linking the alleged perpetrator to the abusive or neglectful act(s) (e.g., child was in care of the alleged perpetrator at the time the abuse occurred and no other reasonable explanation of the cause of the abuse exists in the record).~~

0250-07-09-.05 When Rights Under this Chapter Attach

- (1) An individual whom the Department has classified in a substantiated report as a perpetrator of any form of abuse or neglect shall have the right to request a formal file review.
- (2) If at the conclusion of the formal file review the substantiation is upheld, with or without modification, the individual shall have the right to request an administrative hearing. An individual who fails to request a formal file review after proper notice waives their right to an administrative hearing.

Authority: T.C.A. §§ 4-5-226(b)(2), 37-1-409, 37-1-612, 37-1-616, 37-5-101, 37-5-105, 37-5-106, 37-5-107, 37-5-112, and 37-5-512(a).

Rule 0250-07-09-.06, currently Right to Notice and Opportunity for Formal File Review, is amended so that the title of the Rule shall now be Standard and Criteria for Review of Classification of Reports of Child Abuse/Neglect as "Substantiated". Additionally, Rule 0250-07-09-.06 is amended by deleting the text of the Rule and substituting instead the following language, so that, as amended, the Rule shall read:

0250-07-09-.06 Right to Notice and Opportunity for Formal File Review

- (1) ~~Within 10 business days after the Department has classified an individual in an "indicated" report as a perpetrator of abuse, severe child abuse, child sexual abuse, or neglect, the Department shall notify the individual, in writing at the individual's last known address, of the classification and shall inform the individual that he or she may request a formal file review by the Commissioner's designee to determine whether the report has been properly classified as "indicated."~~
- (2) ~~If the indicated perpetrator in the classified report is a minor, the Department shall notify the minor, the child's parent or guardian, Child Protective Services, Regional General Counsel, and any Guardian Ad Litem or other attorney for the child. The parent, guardian, Guardian Ad Litem, or the child's attorney may request a formal file review on the minor's behalf.~~
- (3) ~~The Department shall determine whether the emergency procedures of Rule 0250-07-09-.11 apply to the individual whom the Department has classified as the perpetrator of abuse, severe child abuse, child sexual abuse, or neglect in an "indicated" report,~~
- (4) ~~The notice to obtain a formal file review shall contain, at a minimum, the following:~~

- (a) ~~That the individual has been classified as the perpetrator of abuse, severe child abuse, child sexual abuse, or neglect in an "indicated" report investigated by the Department;~~
 - (b) ~~That the individual may request a formal file review by the Commissioner's designee within 10 business days of the date of the notice (the date of the notice must reflect the actual mailing date);~~
 - (c) ~~That failure to submit a request for a formal file review within 10 business days, absent a showing of good cause, shall result in the classified report becoming final and the individual shall waive any right to a formal file review;~~
 - (d) ~~That the request for a formal file review shall be submitted to State of Tennessee Department of Children's Services, Child Protective Services Division, Formal File Review, Cordell Hull Building, 436 Sixth Ave. North, Nashville, Tennessee, 37243; and~~
 - (e) ~~That if the individual provides care, supervision, instruction or treatment to a child or children to any organization or individual, the formal file review decision may have an impact on the individual's employment, and that, in this case, the individual also shall have the right to an administrative hearing under Rule 0250-07-09-.07.~~
- (5) ~~The Department shall date stamp all requests for formal file reviews on the date received.~~
- (6) ~~The Department shall respond to a timely filed request for a formal file review within 10 business days of receipt by sending written notice of the individual's obligations pursuant to a formal file review process. This additional notice shall include, at a minimum, the following:~~
- (a) ~~That pursuant to the Department's Rules the individual may submit additional written or documentary information on his or her behalf to the address identified in paragraph 3(d) of this Rule;~~
 - (b) ~~That the individual must submit the additional information within 30 business days of the date of the notice;~~
 - (c) ~~That if the information is not timely submitted, the formal file review shall proceed with the information provided in the file and that the individual's right to submit additional information shall be waived; and~~
 - (d) ~~That the formal file review shall be completed within 90 business days of the date of the notice.~~
- (7) ~~Unless the emergency procedures in Rule 0250-07-09-.07 apply, during the 10-business-day period in which an individual may request a formal file review, the Department shall not disclose that the individual has been classified as the perpetrator of abuse, severe child abuse, child sexual abuse, or neglect in an "indicated" report. In addition, the Department shall not disclose any details about the case. The Department may only confirm that a child abuse, severe child abuse, child sexual abuse, or neglect investigation has commenced.~~
- (8) ~~In conducting the formal file review, the Commissioner's designee shall determine whether the evidentiary standards set forth in Rule 0250-07-09-.05 have been satisfied.~~
- (9) ~~If the Commissioner's designee determines that the standards in Rule 0250-07-09-.05 are not met, the report shall be reversed and it shall be classified as "not indicated." The Department shall not release information from its records identifying the individual as a perpetrator of abuse, severe child abuse, child sexual abuse, or neglect. Nothing in these rules shall be construed to require the expunction of internal case records maintained by the Department.~~
- (a) ~~Within 10 business days of the date of the formal file review, the Department shall send to the individual who was classified in a report of abuse, severe child abuse, child sexual abuse, or neglect at his or her last known address written notice containing, at a minimum, the following:~~
 - 1. ~~the formal file review has classified the report as "not indicated"; and~~

~~2. the Department will not release information from its records identifying the individual as a perpetrator of abuse, severe child abuse, child sexual abuse, or neglect.~~

~~(10) If the Commissioner's designee determines that the proof in the report supports a different conclusion than that reached by the Department, the report shall be modified and it shall be classified accordingly. The Commissioner shall notify the individual in accordance with paragraphs 8 or 10 of this Rule.~~

~~(11) If the Commissioner's designee determines that the standards in Rule 0250-07-09-.05 are met, the report shall be upheld and it shall be classified as "indicated."~~

~~(a) Within 10 business days of the date of the formal file review, the Department shall send to the individual who was classified in a report of abuse, severe child abuse, child sexual abuse, or neglect at his or her last known address written notice containing, at a minimum, the following:~~

~~1. That the individual has been identified as the perpetrator of abuse, severe child abuse, child sexual abuse, or neglect in an "indicated" report investigated by the Department; and~~

~~2. That, after conducting a formal file review, the "indicated" report was upheld.~~

~~(b) The notice in this paragraph shall also contain, at a minimum, the following:~~

~~1. That, if the individual meets the standards for an administrative hearing pursuant to 0250-07-09-.08, the individual may request a hearing within 10 business days of the date of the notice before an administrative law judge by filling out an attached request for administrative hearing;~~

~~2. That, if the individual requests a hearing, he or she shall complete the attached form and mail or fax it to the Department's Administrative Procedures Division;~~

~~3. That, if the individual fails to timely request a hearing absent good cause, he or she shall waive the right to an administrative hearing; and~~

~~4. That, if the individual fails to timely request a hearing absent good cause, the Department will release its finding of abuse, severe child abuse, child sexual abuse, or neglect to any individual or organization.~~

0250-07-09-.06 Standard and Criteria for Review of Classification of Reports of Child Abuse/Neglect as "Substantiated"

A report made against an alleged perpetrator shall be classified as substantiated if the preponderance of the evidence, in light of the entire record, proves that the individual committed any form of abuse or neglect. In determining whether there is a preponderance of the evidence to uphold the substantiation, the reviewer may consider, but is not limited to, the following factors:

- (1) Medical and/or psychological information from a licensed physician, medical center, or other treatment professional, that substantiates that abuse or neglect occurred;
- (2) An admission by the perpetrator;
- (3) The statement of a credible witness or witnesses to the abusive or neglectful act;
- (4) The child victim's statement that the abuse or neglect occurred;
- (5) Physiological indicators or signs of abuse or neglect, including, but not limited to, cuts, bruises, burns, broken bones or medically diagnosed physical conditions;
- (6) Physical evidence that could impact the classification decision;
- (7) The existence of behavioral patterns that may be indicative of child abuse or neglect and corroborate other evidence of any form of abuse or neglect;

- (8) Circumstantial evidence linking the alleged perpetrator to the abusive or neglectful act(s) (e.g., child was in care of the alleged perpetrator at the time the abuse occurred and no other reasonable explanation of the cause of the abuse exists in the record).

Authority: T.C.A. §§ 4-5-226(b)(2), 37-1-409, 37-1-612, 37-1-616, 37-5-101, 37-5-105, 37-5-106, 37-5-107, 37-5-112, and 37-5-512(a).

Rule 0250-07-09-.07, currently Alleged Perpetrators with Current Access to Children; Emergency Notification, is amended so that the title of the Rule shall now be Right to Notice and Opportunity for Formal File Review. Additionally, Rule 0250-07-09-.07 is amended by deleting the text of the rule and substituting instead the following language, so that, as amended, the Rule shall read:

~~0250-07-09-.07 Alleged Perpetrators with Current Access to Children; Emergency Notification~~

- (1) ~~The provisions of this Rule apply to individuals classified as perpetrators of abuse, severe child abuse, child sexual abuse, or neglect in an "indicated" report who pose an immediate threat to the health, safety, or welfare of a child or children to whom the alleged perpetrator has access.~~
- (2) ~~As soon as reasonably possible after the Department has investigated and identified an individual in an "indicated" report as a perpetrator of abuse, severe child abuse, child sexual abuse, or neglect, who poses an immediate threat to the health, safety or welfare of a child or children to whom the alleged perpetrator has access, the Department shall conduct an emergency file review in accordance with this rule.~~
- (3) ~~The Commissioner's designee shall determine: (1) Whether the indication should be upheld; and (2) Whether there is an immediate threat to the health, safety, or welfare of a child or children to whom the alleged perpetrator has access.~~
- (a) ~~If both factors are met, the Department shall then follow the procedures set forth in paragraphs (4), (5) and (6) of this Rule.~~
- (b) ~~If no such immediate threat exists, the Department shall not reveal the alleged perpetrator's identity.~~
- (4) ~~As soon as reasonably possible after the Commissioner's designee has determined that an immediate threat to the health, safety, or welfare of a child or children to whom the alleged perpetrator has access exists, the Department shall notify in writing both the alleged perpetrator and the organization or person with whom the individual is associated identified of such immediate threat.~~
- (a) ~~The notice shall contain the information set forth in Rule 0250-07-09-.06(10)(b); and~~
- (b) ~~A statement that the organization or person with which the individual is associated shall receive notice of the Department's determination.~~
- ~~1. The notice shall also contain the following:~~
- (i) ~~that the organization or person shall ensure that the individual is not a threat to the safety of any child in their care; and~~
- (ii) ~~that the individual has been notified of his or her rights to a hearing on the allegations, and that the organization or person shall be notified of the final decision regarding the allegations.~~
- (5) ~~If the individual fails timely to request a hearing absent good cause, the individual shall waive his or her right to a hearing. The Department's "indicated" report regarding the individual shall then be available for dissemination to any organization or individual and the individual's identity shall be placed in the registry.~~
- (6) ~~If the individual timely requests a hearing, the Department shall follow the procedures set forth in Rule 0250-07-09-.08(4).~~

0250-07-09-.07 Right to Notice and Opportunity for Formal File Review

- (1) With the exception of minor perpetrators, within ten (10) business days after the Department has closed the case and classified an individual in a substantiated report as a perpetrator of abuse, severe child abuse, child sexual abuse, or neglect, the Department shall begin the process of notifying the individual of the classification. The notification shall be made through a delivery system capable of tracking to the individual's last known address. The notification shall inform the individual that he or she may request a formal file review by the Commissioner's designee to determine whether the report has been properly classified as "substantiated".
- (2) If the substantiated perpetrator is a minor perpetrator, the Department shall notify the minor, the child's parent or guardian, Child Protective Services, Regional General Counsel, and any known Guardian Ad Litem or other attorney for the child. The minor perpetrator shall automatically receive a formal file review as set out below. The minor perpetrator will not receive the notice set out in Rule 0250-07-09-.07(4) since the formal file review shall be automatic. The Department shall notify the minor perpetrator of the opportunity to submit rebuttal evidence in accordance with Rule 0250-07-09-.07(6) and shall otherwise follow the procedures and timeframes outlined in Rule 0250-07-09-.07(7) through Rule 0250-07-09-.07(11).
- (3) The Department shall determine whether the emergency procedures of Rule 0250-07-09-.08 apply to the individual whom the Department has classified as a substantiated perpetrator of any form of abuse or neglect in a substantiated report.
- (4) The notice to obtain a formal file review shall contain, at a minimum, the following:
 - (a) That the individual has been classified as the perpetrator of abuse, severe child abuse, child sexual abuse, or neglect in a substantiated report investigated by the Department;
 - (b) That the individual may request a formal file review by the Commissioner's designee within twenty (20) business days of the date of service of the notice, the notice must be received by the Commissioner's designee within the twenty business days to be considered timely;
 - (c) That failure to submit a request for a formal file review within twenty (20) business days, absent a showing of good cause, shall result in the classified report becoming final and the individual shall waive any right to a formal file review; and
 - (d) That the request for a formal file review shall be submitted to the specific address listed in the notice.
- (5) The Department shall date-stamp all requests for formal file reviews on the date received.
- (6) The Department shall respond to a timely filed request for a formal file review within ten (10) business days of receipt by sending written notice of the individual's obligations pursuant to a formal file review process. This additional notice shall include, at a minimum, the following:
 - (a) That the individual may submit additional written or documentary information on his or her behalf to the address identified in paragraph 4(d) of this Rule;
 - (b) That the individual must submit and the Department must receive the additional information within thirty (30) business days of the date of the notice;
 - (c) That if the information is not timely submitted, the formal file review shall proceed with the information provided in the file and that the individual's right to submit additional information shall be waived; and
 - (d) That the formal file review shall be completed within ninety (90) business days of the date of the notice.
- (7) Unless the emergency procedures in Rule 0250-07-09-.08 apply, during the twenty (20) business day period in which an individual may request a formal file review, the Department shall not disclose that the individual has been classified as the perpetrator of abuse, severe child abuse, child sexual abuse, or

neglect in a substantiated report. In addition, the Department shall not disclose any details about the case. The Department may only confirm that a child abuse, severe child abuse, child sexual abuse, or neglect investigation has commenced.

- (8) In conducting the formal file review, the Commissioner's designee shall determine whether a preponderance of the evidence available to the reviewer, including any submission by the alleged perpetrator, supports substantiation.
- (9) If the Commissioner's designee determines that a preponderance of evidence does not support substantiation, the report shall be reversed and it shall be classified as unsubstantiated. The Department shall not release information from its records identifying the individual as a perpetrator of any form of abuse or neglect. Nothing in these rules shall be construed to require the expunction of internal case records maintained by the Department. Within ten (10) business days of the date of completion of the formal file review, the Department shall send to the individual who was classified in a report of any form of abuse or neglect at his or her last known address written notice containing, at a minimum, the following:
 - (a) The formal file review has classified the report as unsubstantiated; and
 - (b) The Department shall not release information from its records identifying the individual as a perpetrator of abuse, severe child abuse, child sexual abuse, or neglect.
- (10) If the Commissioner's designee determines that the proof in the report supports a different conclusion than that reached by the Department, the report shall be modified and it shall be classified accordingly. The Commissioner's designee shall notify the individual of the outcome.
- (11) If the Commissioner's designee determines that a preponderance of the evidence supports substantiation, the report shall be upheld and it shall be classified as substantiated. Within ten (10) business days of the date of completion of the formal file review, the Department shall send to the individual who was classified in a report of any form of abuse or neglect at his or her last known address written notice containing at a minimum, the following:
 - (a) That the individual has been identified as the perpetrator of abuse, severe child abuse, child sexual abuse, or neglect in a substantiated report investigated by the Department; and
 - (b) That, after conducting a formal file review, the "substantiated" report was upheld.
 - (c) That the individual may request a hearing within twenty (20) business days of the date of the notice before an administrative law judge by completing the form provided to the individual by the Department.
 - (d) That if the individual requests a hearing, he or she shall complete the attached form and mail or fax it to the Department's Administrative Procedures Division.
 - (e) That if the individual fails to timely request a hearing absent good cause, he or she shall waive the right to an administrative hearing.
 - (f) That if the individual fails to timely request a hearing absent good cause, the Department will release its finding of abuse, severe child abuse, child sexual abuse, or neglect to any individual or organization consistent with these rules.

Authority: T.C.A. §§ 4-5-226(b)(2), 37-1-409, 37-1-612, 37-1-616, 37-5-101, 37-5-105, 37-5-106, 37-5-107, 37-5-112, and 37-5-512(a).

Rule 0250-07-09-.08, currently Right to Notice and Opportunity for Administrative Hearing, is amended so that the title of the Rule shall now be Alleged Perpetrators with Current Access to Children; Emergency Notification. Additionally, Rule 0250-07-09-.08 is amended by deleting the text of the rule and substituting instead the following language, so that, as amended, the Rule shall read:

~~0250-07-09-.08 Right to Notice and Opportunity for Administrative Hearing~~

- ~~(1) — An individual whom the Department has classified in an “indicated” report as a perpetrator of abuse, severe child abuse, child sexual abuse, or neglect and whose classification has been upheld pursuant to a formal file review may request an administrative hearing before a hearing officer of the Administrative Procedures Division of the Department if the Department is going to release information or if the indication will affect their employment or any professional license.~~
- ~~(2) — An individual shall request an administrative hearing within 10 business days from the date of the notice of the outcome of the formal file review. A request for a hearing submitted before a case file review has been completed shall be invalid.~~
- ~~(3) — Unless the emergency procedures in Rule 0250-07-09-.07 apply, during the 10-business-day period in which an individual may request a hearing, the Department shall not disclose that the individual has been classified as the perpetrator of abuse, severe child abuse, child sexual abuse, or neglect in an “indicated” report. In addition, the Department shall not disclose any details about the case. The Department may only confirm that a child abuse, severe child abuse, child sexual abuse, or neglect investigation has commenced.~~
 - ~~(a) — If the individual timely requests a hearing, the Department may only release a statement stating that a hearing concerning the individual pursuant to the child abuse laws of this State is currently pending.~~
- ~~(4) — If the individual timely requests a hearing, the Department shall schedule a hearing and give the individual adequate notice of the hearing, as provided by Rules 1360-4-1.~~
 - ~~(a) — The hearing will be held, and an initial order entered therein, within 90 business days of the date of the notice required in Rule 0250-07-09-.06(10), unless:
 - ~~1. — the time limit is extended or waived by agreement of the parties, or for good cause shown; or~~
 - ~~2. — the proceedings are stayed pursuant to Rule 0250-07-09-.09.~~~~
- ~~(5) — If the individual fails timely to request a hearing, the individual shall waive his or her right to a hearing. The Department’s “indicated” report regarding the individual shall be then be available for dissemination to any organization or person with whom the individual is associated and the individual’s identity shall be placed in the registry.~~
- ~~(6) — An individual who fails timely to request a hearing may be granted a hearing provided that he or she shows good cause for his or her failure to make a timely request.~~
 - ~~(a) — Good cause is limited to a failure to receive the notice referred to in Rule 0250-07-09-.06(10), severe illness, or some other circumstance that substantially prevented the individual from timely requesting a hearing.~~

0250-07-09-.08 Alleged Perpetrators with Current Access to Children; Emergency Notification

- (1) The provisions of this Rule apply to individuals classified as perpetrators of any form of abuse or neglect in a substantiated report who pose an immediate threat to the health, safety, or welfare of a child or children to whom the alleged perpetrator has access.
- (2) As soon as reasonably possible, the Commissioner’s designee shall conduct an emergency file review to determine if an individual identified in a substantiated report as a perpetrator of any form of abuse or neglect poses an immediate threat to the health, safety, or welfare of a child or children to whom the individual has access.
- (3) In completing an emergency file review, the Commissioner’s designee shall determine whether the substantiated report should be upheld, and whether there is an immediate threat to the health, safety, or welfare of a child or children to whom the alleged perpetrator has access.
 - (a) If both factors are met, the Department shall then follow the procedures set forth in paragraphs (4), (5) and (6) of this Rule.

- (b) If no such immediate threat exists, the Department shall not immediately reveal the alleged perpetrator's identity.
- (4) As soon as reasonably possible, the Department shall notify in writing both the alleged perpetrator and the organization or person with whom the individual is associated, if the Commissioner's designee determines the alleged perpetrator poses an immediate threat to the health, safety, or welfare of a child or children to whom the individual has access.
- (a) The notice shall contain the information set forth in Rule 0250-07-09-.07(11); and
 - (b) A statement that the organization or person with which the individual is associated shall receive notice of the Department's determination. The notice shall contain the following:
 - 1. That the organization or person shall ensure that the individual is not a threat to the safety of any child in their care; and
 - 2. That the individual has been notified of his or her rights to a hearing on the allegations, and that the organization or person shall be notified of the final decision regarding the allegations.
- (5) If the individual fails timely to request a hearing absent good cause, the individual shall waive his or her right to a hearing. The Department's substantiated report regarding the individual shall then be available for dissemination, in accordance with these rules, to any associated organization or associated person and the individual's identity shall be placed in the registry. The Department must receive the request for a hearing within the time frame set out in Rule 0250-07-09-.09(2) for the request to be considered timely.
- (6) If the individual timely requests a hearing, pursuant to Rule 0250-07-09-.09(2), the Department shall follow the procedures set forth in Rule 0250-07-09-.09(4).

Authority: T.C.A. §§ 4-5-226(b)(2), 37-1-409, 37-1-612, 37-1-616, 37-5-101, 37-5-105, 37-5-106, 37-5-107, 37-5-112, and 37-5-512(a).

Rule 0250-07-09-.09, currently Stay of Administrative Proceedings, is amended so that the title of the Rule shall now be Right to Notice and Opportunity for Administrative Hearing. Additionally, Rule 0250-07-09-.09 is amended by deleting the text of the Rule and substituting instead the following language, so that, as amended, the Rule shall read:

~~0250-07-09-.09 Stay of Administrative Proceedings~~

- (1) ~~The Department shall stay all administrative proceedings under these Rules:~~
 - (a) ~~If an individual whom the Department has classified in an "indicated" report as a perpetrator of abuse, severe child abuse, child sexual abuse, or neglect has been arrested or indicted on criminal charges that are derived from the same allegations that caused the Department to investigate; or~~
 - (b) ~~if an individual whom the Department has classified in an "indicated" report as a perpetrator of abuse, severe child abuse, child sexual abuse, or neglect is the subject of other administrative or civil proceedings that are derived from the same allegations that caused the Department to investigate.~~
- (2) ~~If the arrest, indictment, or initiation of other judicial or other administrative proceedings occurs any time prior to the entry of a final order by the Department, all proceedings under these Rules shall be immediately stayed pending final resolution (including appeals) of the judicial or administrative proceedings. Provided, however, that the Department shall notify an individual in accordance with Rules 0250-07-09-.06, 0250-07-09-.07, or 0250-07-09-.08, as appropriate. The individual shall comply with the provisions of these Rules, as appropriate, in order to preserve his or her future rights to a hearing or to judicial review. During the stay, unless the emergency procedures in Rule 0250-07-09-.07 apply, the Department shall not disclose that the individual has been classified as the perpetrator of abuse, severe child abuse, child sexual abuse, or neglect in an "indicated" report until the proceedings referred to in paragraph 1 of this Rule become final. The Department may only release the fact that judicial or administrative proceedings involving allegations of abuse, severe child abuse, child sexual abuse, or~~

~~neglect by the individual are pending before a specified court or administrative proceeding.~~

- ~~(3) If a criminal prosecution results in a conviction or guilty plea for any offense listed in Tenn. Code Ann. §37-1-602(a)(3), or for any act which would constitute physical abuse, sexual abuse, or severe physical abuse as defined in Tenn. Code Ann. §37-1-102(21), or if the individual is found guilty or pleads guilty to any lesser offense derived from the offenses or acts alleged under Tenn. Code Ann. §37-1-602(a)(3) or Tenn. Code Ann. §37-1-102(21), or if any court or administrative proceeding results in a judicial or administrative adjudication that the individual has committed, or has knowingly allowed to be committed, any act which would constitute physical abuse, sexual abuse, or severe physical abuse, as defined in Tenn. Code Ann. §37-1-102(21) or any act which constitutes child sexual abuse as defined in Tenn. Code Ann. §37-1-602(a)(3), then such conviction and/or adjudication will be conclusive evidence that the individual is the perpetrator classified in the "indicated" report and the individual will have no right to a hearing provided for in 0250-07-09-.08 in regard to that particular report. In this event, the Department may release information about the perpetrator as permitted under these Rules.~~
- ~~(a) If the criminal, civil or administrative proceeding does not result in a conviction or in a finding as specified in paragraph 3 of this Rule, including pretrial diversion, this fact shall be admissible in the Department's administrative hearing, but shall not be conclusive on the issue of whether the report is properly classified as "indicated."~~
- ~~(4) If administrative proceedings were stayed pursuant to this Rule, they shall resume at the point at which they were stayed if the alleged perpetrator so requests in writing to Tennessee Department of Children's Services, Case File Review, 8th Floor, Cordell Hull Building, Child Protect Services, 436 6th Ave. N., Nashville, Tennessee 37243, within 30 days of entry of a final order by a court or other administrative body favorably disposing of the issue of child abuse involving the alleged perpetrator or of any disposition other than guilty by a court in a criminal proceeding. If the alleged perpetrator fails timely to make such a written request, he or she shall waive his or her rights to a hearing in regard to that report. The indicated report and information regarding the perpetrator will be released as permitted under these Rules.~~
- ~~(5) Unless the individual has waived his or her rights to a formal file review or to an administrative hearing by failing timely to request same, if administrative proceedings have been stayed, the Department shall notify in writing the individual as follows:~~
- ~~(a) That administrative proceedings have been stayed pending the final outcome of judicial or other administrative proceedings concerning allegations of child abuse involving the individual;~~
- ~~(b) that the administrative proceedings under these rules will be reinstated at the point they were stayed only if the individual requests such in writing to the local office of the Department which issued the original notice within 30 days of the entry of a final order by the court or administrative tribunal or verdict by a criminal court (unless the order or verdict is a conviction or guilty plea as specified in paragraph (3) above);~~
- ~~(c) if the individual fails timely to make such a written request, he or she shall waive his or her rights to an administrative hearing in regard to the report.~~

0250-07-09-.09 Right to Notice and Opportunity for Administrative Hearing

- (1) An individual whom the Department has classified in a substantiated report as a perpetrator of any form of abuse or neglect and whose classification has been upheld pursuant to a formal file review may request an administrative hearing before an administrative judge of the Administrative Procedures Division of the Department.
- (2) An individual shall request an administrative hearing within twenty (20) business days from the date of the notice of the outcome of the formal file review. The Department must receive the request for an administrative hearing by the twentieth (20th) business day for the request to be considered timely.
- (3) Unless the emergency procedures in Rule 0250-07-09-.08 apply, during the twenty (20) business day period in which an individual may request a hearing, the Department shall not disclose that the individual has been classified as the perpetrator of any form of abuse or neglect in a substantiated report. In addition, the Department shall not disclose any details about the case. The Department may only confirm that an investigation involving child abuse or neglect has commenced. If the individual timely requests a hearing, the Department may only release a statement stating that a hearing concerning the individual pursuant to the child abuse laws of this State ~~is~~ currently pending.

- (4) If the individual timely requests a hearing, the Department shall schedule a hearing and give the individual adequate notice of the hearing, as provided by Rule 0250-05-04-.01.
- (5) The hearing will be held, and an initial order entered therein, within one hundred twenty (120) business days of the date of the notice required in Rule 0250-07-09-.07(11), unless:
 - (a) The time limit is extended or waived by agreement of the parties, or for good cause shown; or
 - (b) The proceedings are stayed pursuant to Rule 0250-07-09-.10.
- (6) If the individual fails to timely request a hearing absent good cause, the individual shall waive his or her right to a hearing. The Department's substantiated report regarding the individual shall then be available for dissemination, in accordance with these rules, to any associated organization or associated individual and the individual's identity as a substantiated perpetrator shall be placed in the registry.
- (7) An individual who fails to timely request a hearing may be granted a hearing provided that he or she shows good cause for failure to make a timely request.
- (8) Good cause is limited to a failure to receive the notice referred to in Rule 0250-07-09-.07(11), severe illness, or some other circumstance that substantially prevented the individual from timely requesting a hearing.

Authority: T.C.A. §§ 4-5-226(b)(2), 37-1-409, 37-1-612, 37-1-616, 37-5-101, 37-5-105, 37-5-106, 37-5-107, 37-5-112, and 37-5-512(a).

Rule 0250-07-09-.10, currently Conduct of Administrative Hearing, is amended so that the title of the Rule shall now be Stay of Administrative Proceedings. Additionally, Rule 0250-07-09-.10 is amended by deleting the text of the Rule and substituting instead the following language, so that, as amended, the Rule shall read:

~~0250-07-09-.10 Conduct of Administrative Hearing~~

- ~~(1) The hearing provided for in 0250-07-09-.08 will be conducted in accordance with the provisions of the Uniform Administrative Procedures Act and of Rule 0250-5-6.~~
- ~~(2) In hearings pursuant to 0250-07-09-.08, the sole issue for the hearing officer is to determine whether the preponderance of the evidence, in light of the entire record, proves that the individual committed abuse, severe child abuse, child sexual abuse, or neglect. In making this determination, the hearing officer shall consider whatever relevant and admissible proof the individual offers that the report is not properly classified as indicated and shall further consider any competent and admissible proof concerning the dynamics of child abuse relevant to whether the classification is proper.~~
- ~~(3) Unless the emergency procedures in Rule 0250-07-09-.07 apply, the Department shall not disclose that the individual has been classified as the perpetrator of abuse, severe child abuse, child sexual abuse, or neglect in an "indicated" report until the individual has exhausted all of his or her appeal rights under these Rules, including judicial review of a final order by the Department. The Department may only release the fact that a hearing concerning the individual pursuant to the child abuse laws of the State is pending.~~
- ~~(4) If the Department, or a court of competent jurisdiction in the event of judicial review, concludes that the standards in Rule 0250-07-09-.05 are not met, the report shall be classified as "not indicated." The Department shall not release information from its records identifying the individual as a perpetrator of abuse, severe child abuse, child sexual abuse, or neglect.

 - ~~(a) If the Department had previously disclosed that an individual was under investigation under the child abuse laws of this State, the Department shall forthwith notify that organization or person that the report was "not indicated." Nothing in this rule shall be construed to require the expunction of any information from internal case records maintained by the Department.~~~~
- ~~(5) If the Individual is dissatisfied with the decision of the Department, a Petition for Reconsideration of the Final Order may be filed within fifteen (15) days from the date of the Order. Further, the individual may petition for review in the Chancery Court of his/her county of residence or in Davidson County~~

within sixty (60) days of the date of this order.

0250-07-09-.10 Stay of Administrative Proceedings

- (1) The Department shall stay all administrative proceedings under these Rules:
 - (a) If an individual whom the Department has classified in a substantiated report as a perpetrator of abuse, severe child abuse, child sexual abuse, or neglect has been arrested or indicted on criminal charges that are derived from the same allegations that caused the Department to investigate; or
 - (b) If an individual whom the Department has classified in a substantiated report as a perpetrator of abuse, severe child abuse, child sexual abuse, or neglect is the subject of other administrative or civil proceedings that are derived from the same allegations that caused the Department to investigate.
- (2) If the arrest, indictment, or initiation of other judicial or other administrative proceedings occurs any time prior to the entry of a final order by the Department, all proceedings under these Rules shall be immediately stayed pending final resolution, including appeals of the judicial or administrative proceedings. Provided, however, that the Department shall notify an individual in accordance with Rules 0250-07-09-.07, 0250-07-09-.08, or 0250-07-09-.09, as appropriate. The individual shall comply with the provisions of these Rules, as appropriate, in order to preserve his or her future rights to a hearing or to judicial review. During the stay, unless the emergency procedures in Rule 0250-07-09-.08 apply, the Department shall not disclose that the individual has been classified as the perpetrator of abuse, severe child abuse, child sexual abuse, or neglect in a substantiated report until the proceedings referred to in paragraph (1) of this Rule become final. The Department may only release the fact that judicial or administrative proceedings involving allegations of abuse, severe child abuse, child sexual abuse, or neglect by the individual are pending before a specified court or administrative body.
- (3) A final criminal conviction and/or civil adjudication will be conclusive evidence the individual is the perpetrator classified in the substantiated report and the individual will have no right to a hearing provided for in Rule 0250-07-09-.09 in regard to that particular report and the Department may release information and the perpetrator as permitted under these Rules when:
 - (a) A criminal prosecution results in a conviction or guilty plea for any offense listed in T.C.A. § 37-1-602(a)(3) (2016 and as amended), or any act which would constitute child abuse or neglect;
 - (b) The individual is found guilty or pleads guilty to any lesser offense derived from the offenses or acts alleged under T.C.A. §§ 37-1-602(a)(3) or 37-1-102(b)(21) (2016 and as amended); or
 - (c) Any court or administrative proceeding results in a judicial or administrative adjudication that the individual has committed, or has knowingly allowed to be committed any act against a child which would constitute abuse, severe child abuse, child sexual abuse, or neglect.
- (4) If the criminal, civil or administrative proceeding does not result in a conviction or in a finding as specified in paragraph (3) of this Rule, including pretrial diversion, this fact shall be admissible in the Department's administrative hearing, but may not be dispositive to the issue of whether the report is properly classified as substantiated.
- (5) If administrative proceedings were stayed pursuant to this Rule, they shall resume at the point at which they were stayed if the alleged perpetrator so requests in writing to the address listed on the notification to stay proceedings, within thirty (30) days of entry of a final order by a court or other administrative body favorably disposing of the issue of child abuse or neglect involving the alleged perpetrator or of any disposition other than guilty by a court in a criminal proceeding. If the alleged perpetrator fails timely to make such a written request, he or she shall waive his or her rights to a hearing in regard to that report. The substantiated report and information regarding the perpetrator will be released as permitted under these Rules. If the Department learns the civil or criminal proceedings were resolved and thirty (30) days

have passed since the resolution of the matter, the Department may reinstate due process at the point at which it was stayed and take the appropriate action.

- (6) Unless the individual has waived his or her rights to a formal file review or to an administrative hearing by failing to timely request same or by other action or inaction, if administrative proceedings have been stayed, the Department shall notify in writing the individual as follows:
 - (a) That administrative proceedings have been stayed pending the final outcome of judicial or other administrative proceedings concerning allegations of child abuse involving the individual;
 - (b) That the individual may reinstitute the administrative proceedings under these rules at the point they were stayed only if the individual requests such in writing to the Department at the address listed on the notice of stay within thirty (30) days of the entry of a final order by the court or administrative tribunal or verdict by a criminal court (unless the order or verdict is a conviction or guilty plea as specified in paragraph (3) above);
 - (c) If the individual fails timely to make such a written request, he or she shall waive his or her rights to a formal file review or an administrative hearing in regard to the report and be finally determined as a "substantiated" perpetrator of child abuse or neglect.

Authority: T.C.A. §§ 4-5-226(b)(2), 37-1-409, 37-1-612, 37-1-616, 37-5-101, 37-5-105, 37-5-106, 37-5-107, 37-5-112, and 37-5-512(a).

Rule 0250-07-09-.11, currently Evidence; Standard of Proof at the Administrative Hearing, is amended so that the title of the Rule shall now be Conduct of Administrative Hearing. Additionally, Rule 0250-07-09-.11 is amended by deleting the text of the rule and substituting instead the following language, so that, as amended, the Rule shall read:

~~0250-07-09-.11 Evidence; Standard of Proof at the Administrative Hearing~~

- ~~(1) Admissibility of evidence in hearings pursuant to 0250-07-09-.08 is governed by the provisions of Tenn. Code Ann. §4-5-313. Provided, however, that "evidence admissible in a court" shall, for purposes of hearings pursuant to this chapter, refer also to evidence admissible in any juvenile court of this state. Provided further that the evidentiary provisions of Title 24, Chapter 7, Part 1 of the Tennessee Code Annotated and Tenn. Code Ann. §§37-1-401 et seq. and 37-1-601 et seq., including the use of videotape testimony, shall be applicable to such hearings.~~
- ~~(2) An individual will be indicated as the perpetrator of abuse, severe child abuse, child sexual abuse, or neglect only after the case is proven by a preponderance of the evidence.~~
- ~~(3) Following final resolution of the case, whether by administrative hearing, court order, or waiver by the alleged perpetrator, the Department shall promptly notify of its decision the organization or person with whom the individual is associated of its decision.
 - ~~(a) If the classification of the report as "indicated" is upheld, the organization or person shall continue to assure that the individual is not a threat to the safety of any child in their care, and the notice shall so state.~~
 - ~~(b) If the classification of the report as "indicated" is reversed, the organization or person will be promptly notified of the reversal of the indication and will not be required to assure that the individual is not a threat to the safety of any child in their care, and the notice shall so state.~~~~

0250-07-09-.11 Conduct of Administrative Hearing

- (1) The administrative hearing will be conducted in accordance with the provisions of the Uniform Administrative Procedures Act and of Rule 0250-05-06.
- (2) The sole issue for the administrative judge to determine is whether the preponderance of the evidence, in light of the entire record, proves that the individual committed any form of abuse or neglect.
- (3) Unless the emergency procedures in Rule 0250-07-09-.08 apply, the Department shall not disclose that the individual has been classified as the perpetrator of any form of abuse or neglect in a substantiated

report until the individual has exhausted all of his or her appeal rights under these Rules, including judicial review of a final order by the Department. The Department may only release the fact that a hearing concerning the individual pursuant to the child abuse laws of the State is pending.

- (4) If the administrative judge concludes that a preponderance of the evidence does not support a conclusion that the individual committed the act of abuse or neglect, or if a reviewing court reverses a departmental determination of abuse or neglect, the report shall be classified as unsubstantiated. The Department shall not release information from its records identifying the individual as a perpetrator of any form of abuse or neglect. If the Department had previously disclosed to any organization or person that an individual was under investigation under the child abuse laws of Tennessee, the Department shall immediately notify that organization or person that the report was unsubstantiated. Nothing in this rule shall be construed to require expunction of any information from internal case records maintained by the Department.
- (5) The decision of the administrative law judge may be appealed in accordance with the Uniform Administrative Procedures Act.

Authority: T.C.A. §§ 4-5-226(b)(2), 37-1-409, 37-1-612, 37-1-616, 37-5-101, 37-5-105, 37-5-106, 37-5-107, 37-5-112, and 37-5-512(a).

Rule 0250-07-09-.12 currently Reserved is amended so that the title of the rule shall now be Child Abuse Registry Review Committee. Additionally, rule 0250-07-09-.12 is amended by deleting the text of the rule and substituting instead the following language, so that, as amended, the rule shall read:

~~0250-07-09-.12 Reserved~~

0250-07-09-.12 Child Abuse Registry Review Committee

- (1) An individual who has been determined to be a perpetrator of abuse or neglect in a substantiated report may apply to have their substantiation(s) reviewed by the Child Abuse Registry Review Committee when:
 - (a) A year has passed since the final substantiated case was closed; and
 - (b) The perpetrator has waived or otherwise exhausted due process.
- (2) The individual must complete an application in accordance with applicable Departmental policy.
- (3) The purpose of the committee is not to reexamine the underlying facts of the substantiated report(s), but to provide an opportunity for the perpetrator to present rehabilitative or other remedial evidence which suggests the individual should no longer be listed as a perpetrator within Departmental records.
- (4) The committee shall decide whether the individual should remain classified as a perpetrator in Departmental records or if sufficient remedial evidence has been presented to justify the removal of that individual as a perpetrator.
- (5) If the committee decides the individual should remain classified as a substantiated perpetrator, the individual shall be allowed to re-apply after one (1) year from the date of the decision. Except for minor perpetrators, the individual shall only be allowed to apply for a review twice.
- (6) A minor perpetrator shall be allowed to apply once a year until their eighteenth (18th) birthday. Once a minor perpetrator reaches the age of majority, the procedure set out in Rule 0250-07-09-.12(5) shall apply and the minor perpetrator shall have the ability to request only two (2) further reviews.
- (7) The decision of the committee shall be considered discretionary and final.

Authority: T.C.A. §§ 4-5-226(b)(2), 37-1-409, 37-1-612, 37-1-616, 37-5-101, 37-5-105, 37-5-106, 37-5-107, 37-5-112, and 37-5-512(a).

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

Board Member	Aye	No	Abstain	Absent	Signature (if required)
Not Applicable					

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the Department of Children's Services (board/commission/ other authority) on 03/27/2017 (mm/dd/yyyy), and is in compliance with the provisions of T.C.A. § 4-5-222.

I further certify the following:

Notice of Rulemaking Hearing filed with the Department of State on: 01/12/17

Rulemaking Hearing(s) Conducted on: (add more dates). 03/17/17

Date: 3/28/2017

Signature: Douglas Earl Dimond

Name of Officer: Douglas Earl Dimond

Title of Officer: General Counsel



Subscribed and sworn to before me on: March 28, 2017

Notary Public Signature: Kelley Bell Hazlett

My commission expires on: August 21, 2017

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
10/5/2017 Date

RECEIVED
2017 OCT -6 PM 3:59
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PUBLICATIONS

Department of State Use Only

Filed with the Department of State on: 10/6/17

Effective on: 1/4/18

Tre Hargett
Tre Hargett
Secretary of State

G.O.C. STAFF RULE ABSTRACT

DEPARTMENT: Board of Dentistry

DIVISION:

SUBJECT: Rules Governing Practice of Dentistry, Dental Hygienists,
and Dental Assistants

STATUTORY AUTHORITY: None

EFFECTIVE DATES: January 23, 2018 through June 30, 2018

FISCAL IMPACT: Minimal

STAFF RULE ABSTRACT: The rule amendments will require applicants and licensees to pass an ethics and jurisprudence exam in order to obtain, renew, or reinstate a license.

Public Hearing Comments

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

There were no public comments made or written comments submitted for this rulemaking hearing.

Regulatory Flexibility Addendum

Pursuant to T.C.A. §§ 4-5-401 through 4-5-404, prior to initiating the rule making process as described in T.C.A. § 4-5-202(a)(3) and T.C.A. § 4-5-202(a), all agencies shall conduct a review of whether a proposed rule or rule affects small businesses.

(If applicable, insert Regulatory Flexibility Addendum here)

REGULATORY FLEXIBILITY ANALYSIS

(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 amendments do not overlap, duplicate, or conflict with other federal, state, and local governmental rules.

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

The proposed rule amendments are clear, concise and lack ambiguity.

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

The rule amendments clarify existing requirements and do not institute new compliance or reporting requirements for small businesses.

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

The rule amendments do not establish schedules or deadlines for compliance and/or reporting requirements for small businesses.

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

Compliance requirements contained in the rules are the same for large or small businesses.

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

The rule amendments do not establish new performance standards for small businesses and do not establish design or operational standards.

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

The proposed rule amendments do not create unnecessary entry barriers or other effects that stifle entrepreneurial activity.

STATEMENT OF ECONOMIC IMPACT TO SMALL BUSINESSES

Name of Board, Committee or Council: Tennessee Department of Health, Board of Dentistry

Rulemaking hearing date: June 19, 2014

- 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:**

The proposed rule amendments only affect licensed dentists, dental hygienists and dental assistants. The proposed rules will require new applicants and existing licensees to successfully pass an ethics and jurisprudence exam in order to obtain a license and, as such, there are no additional costs to the businesses. These rules do not provide a direct benefit to any small business.

- 2. Projected reporting, recordkeeping and other administrative costs required for compliance with the proposed rule, including the type of professional skills necessary for preparation of the report or record:**

The proposed rule amendments do not implement any changes in reporting, recordkeeping or other administrative costs.

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

The proposed rule amendments only affect licensed dentists, dental hygienists and dental assistants. The proposed rules will require new applicants and existing licensees to successfully pass an ethics and jurisprudence exam in order to obtain a license and, as such, do not adversely impact small businesses.

- 4. Description of any less burdensome, less intrusive or less costly alternative methods of achieving the purpose and/or objectives of the proposed rule that may exist, and to what extent, such alternative means might be less burdensome to small business:**

There are no less burdensome, less intrusive or less costly alternative methods of achieving the purpose and/or objectives of the proposed rule amendments.

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

Federal: The Board of Dentistry is not aware of any federal entity that regulates the practice of Dentistry.

State: After reviewing the rules for other states in the southeastern region of the United States, it has been determined that other states either have rules that are consistent with the proposed rule amendments or do not address the specific topics covered by the proposed rule amendments.

- 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 for exemptions of small businesses.

Impact on Local Governments

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

(Insert statement here)

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;

Rule 0460-02-.01: The rule amendment will require applicants to successfully pass an ethics and jurisprudence exam in order to obtain a dental license.

Rule 0460-02-.02: The rule amendment will require applicants to successfully pass an ethics and jurisprudence exam in order to obtain a dental license.

Rule 0460-02-.03: The rule amendment will require applicants to successfully pass an ethics and jurisprudence exam in order to obtain a dental license.

Rule 0460-02-.05: The rule amendment will require applicants to successfully pass an ethics and jurisprudence exam in order to obtain a dental license.

Rule 0460-02-.08: The rule amendment will require licensees to successfully pass an ethics and jurisprudence exam as part of the license renewal and reinstatement process.

Rule 0460-02-.09: The rule amendment will require licensees to successfully pass an ethics and jurisprudence exam as part of the license reactivation process.

Rule 0460-03-.01: The rule amendment will require applicants to successfully pass an ethics and jurisprudence exam in order to obtain a dental hygienist license.

Rule 0460-03-.02: The rule amendment will require applicants to successfully pass an ethics and jurisprudence exam in order to obtain a dental hygienist license.

Rule 0460-03-.03: The rule amendment will require applicants to successfully pass an ethics and jurisprudence exam in order to obtain a dental hygienist license.

Rule 0460-03-.05: The rule amendment will require applicants to successfully pass an ethics and jurisprudence exam in order to obtain a dental hygienist license.

Rule 0460-03-.07: The rule amendment will require licensees to successfully pass an ethics and jurisprudence exam as part of the license renewal and reinstatement process.

Rule 0460-03-.08: The rule amendment will require licensees to successfully pass an ethics and jurisprudence exam as part of the license reactivation process.

Rule 0460-04-.02: The rule amendment will require applicants to successfully pass an ethics and jurisprudence exam in order to obtain a dental assistant registration.

Rule 0460-04-.06: The rule amendment will require licensees to successfully pass an ethics and jurisprudence exam as part of the license renewal and reinstatement process.

Rule 0460-04-.07: The rule amendment will require licensees to successfully pass an ethics and jurisprudence exam as part of the license reactivation 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;

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;

The proposed rule amendments only affect licensed dentists, dental hygienists and dental assistants and applicants.

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

None.

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

The proposed rule amendments should not result in any increase or decrease in state and local government revenues and expenditures.

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

Jennifer L. Putnam, Assistant General Counsel, Tennessee Department of Health

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

Jennifer L. Putnam, Assistant General Counsel, Tennessee 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

Jennifer L. Putnam, Assistant General Counsel, Tennessee Department of Health, 665 Mainstream Drive, Nashville, TN 37243, (615)741-1611, jennifer.putnam@tb.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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For Department of State Use Only

Sequence Number: 10-25-17
Rule ID(s): 6035-6037
File Date: 10/25/17
Effective Date: 1/23/18

Rulemaking Hearing Rule(s) Filing Form

Rulemaking Hearing Rules are rules filed after and as a result of a rulemaking hearing. T.C.A. § 4-5-205

Agency/Board/Commission:	Board of Dentistry
Division:	
Contact Person:	Jennifer Putnam, Assistant General Counsel
Address:	665 Mainstream Drive, Nashville, Tennessee
Zip:	37234
Phone:	(615) 741-1611
Email:	Jennifer.Putnam@tn.gov

Revision Type (check all that apply):

- Amendment
 New
 Repeal

Rule(s) Revised (ALL chapters and rules contained in filing must be listed here. If needed, copy and paste additional tables to accommodate multiple chapters. Please enter only ONE Rule Number/Rule Title per row)

Chapter Number	Chapter Title
0460-02	Rules Governing the Practice of Dentistry
Rule Number	Rule Title
0460-02-.01	Licensure Process-By Exam and by Criteria (Reciprocity)
0460-02-.02	Dual Degree Licensure Process
0460-02-.03	Limited and Educational Limited Licensure Process
0460-02-.05	Examinations
0460-02-.08	Licensure Renewal
0460-02-.09	Licensure Retirement and Reactivation

Chapter Number	Chapter Title
0460-03	Rules Governing the Practice of Dental Hygienists
Rule Number	Rule Title
0460-03-.01	Licensure Process
0460-03-.02	Criteria Approval Licensure Process (Reciprocity)
0460-03-.03	Educational Licensure Process
0460-03-.05	Examinations
0460-03-.07	Licensure Renewal
0460-03-.08	Licensure Retirement and Reactivation

Chapter Number	Chapter Title
0460-04	Rules Governing the Practice of Dental Assistants
Rule Number	Rule Title
0460-04-.02	Registration Process
0460-04-.06	Registration Renewal

**RULES
OF
TENNESSEE BOARD OF DENTISTRY**

**CHAPTER 0460-02
RULES GOVERNING THE PRACTICE OF DENTISTRY**

TABLE OF CONTENTS

0460-02-.01	Licensure Process - By Exam and By Criteria (Reciprocity)	0460-02-.08	Licensure Renewal
0460-02-.02	Dual Degree Licensure Process	0460-02-.09	Licensure Retirement and Reactivation
0460-02-.03	Limited and Educational Limited Licensure Process	0460-02-.10	Advertising
0460-02-.04	Licensure Exemption Process	0460-02-.11	Regulated Areas of Practice
0460-02-.05	Examinations	0460-02-.12	Dental Records
0460-02-.06	Specialty Certification	0460-02-.13	Free Health Clinic, Inactive Pro Bono and Volunteer Practice Requirements
0460-02-.07	Anesthesia and Sedation	0460-02-.14	Tamper-Resistant Prescriptions

0460-02-.01 LICENSURE PROCESS - BY EXAM AND BY CRITERIA (RECIPROCITY).

- (1) The process for obtaining licensure by exam or by criteria (reciprocity) is as follows:
- (a) An applicant shall obtain a Board application form from the Board Administrative Office, respond truthfully and completely to every question or request for information contained in the form and submit it along with all documentation and fees required by the form and this rule to the Board Administrative Office. It is the intent of this rule that all activities necessary to accomplish the filing of the required documentation be completed prior to filing a licensure application and that all documentation be filed simultaneously.
 - (b) An applicant shall cause to be submitted directly, from a dental school, college or university duly accredited by the Commission on Dental Accreditation of the American Dental Association, to the Board Administrative Office a certificate of graduation containing the institution's Official Seal and which shows the following:
 - 1. The applicant's transcript; and
 - 2. The degree and diploma conferred, or a letter from the Dean of the educational institution attesting to the applicant's eligibility for the degree and diploma if the last term of dental school has not been completed at the time of application. However, no license shall be issued until official notification is received in the Board Administrative Office that the degree and diploma have been conferred.
 - (c) An applicant shall submit a signed "passport" style photograph taken within the preceding twelve (12) months.
 - (d) An applicant shall submit evidence of good moral character. Such evidence shall include at least two (2) letters attesting to the applicant's character from dental professionals on the signator's letterhead.
 - (e) An applicant shall submit proof of United States or Canadian citizenship or evidence of being legally entitled to live in the United States. Such evidence may include copies of birth certificates, naturalization papers, or current visa status.
 - (f) An applicant shall submit the required fees as provided in Rule 0460-01-.02 (1).
 - (g) An applicant shall disclose the circumstances surrounding any of the following:

(Rule 0460-02-.01, continued)

1. Conviction of any criminal law violation of any country, state, or municipality, except minor traffic violations.
 2. The denial of licensure application by any other state or the discipline of licensure in any state.
 3. Loss or restriction of hospital privileges.
 4. Any other civil suit judgment or civil suit settlement in which the applicant was a party defendant including, without limitation, actions involving malpractice, breach of contract, antitrust activity or any other civil action remedy recognized under any country's or state's statutory, common, or case law.
 5. Failure of any dental licensure examination.
- (h) An applicant shall cause to be submitted to the Board's administrative office directly from the vendor identified in the Board's licensure application materials, the result of a criminal background check.
- (i) An applicant shall submit evidence of current training in cardiopulmonary resuscitation issued by a Board approved training organization.
- (j) An applicant shall indicate whether the applicant is physically capable of performing the procedures included in the practice of dentistry and if not, make explanation.
- (k) An applicant shall successfully complete the Tennessee Board of Dentistry Ethics and Jurisprudence examination.
- (2) In addition to completing the process described in paragraph (1), an applicant for licensure by exam:
- (a) Shall cause to be submitted a certificate of successful completion of the examinations for licensure as governed by Rule 0460-02-.05; and
 - (b) If an applicant for licensure by exam has ever held a license to practice dentistry in any other state or Canada, the applicant shall submit or cause to be submitted directly to the Board's administrative office from each licensing board that has currently or has ever granted authority to practice dentistry indication that the applicant either holds a current active license and whether it is in good standing, or held a license which is currently inactive and whether it was in good standing at the time it became inactive.
- (3) In addition to completing the process described in paragraph (1), an applicant for licensure by criteria (reciprocity):
- (a) Shall cause to be submitted directly to the Board's administrative office from each licensing board that has currently or has ever granted authority to practice dentistry indication that the applicant previously held or currently holds a valid license to practice dentistry and is absent of any pending disciplinary charges or action or any current investigation by a disciplinary authority, and
 1. Shall cause to be submitted directly to the Board's administrative office pertinent information about any disciplinary action imposed in any other state; and
 2. Shall provide a copy of all current and valid licenses to practice dentistry; and

(Rule 0460-02-.01, continued)

3. Shall provide the name of another state in which licensure to practice dentistry is or has been held; and
 - (b) Shall demonstrate intent to actively practice or teach in Tennessee by submitting proof of employment as a dentist or by submitting proof of starting a private dental practice; and
 - (c) Shall demonstrate that he/she has not failed previously any exams required by Rule 0460-02-.05 without subsequently retaking and passing such exams, if passage of such exams has ever been attempted; and
 - (d) Shall demonstrate that he/she has practiced dentistry in another state or states for at least five (5) years by submitting proof of employment as a dentist or by submitting proof of having had a private dental practice; or
 - (e) Shall demonstrate that he/she has taught in an American Dental Association accredited institution for at least five (5) years; or
 - (f) Shall demonstrate any combination of subparagraphs (d) and (e) for at least five (5) years; or
 - (g) Shall demonstrate that he/she has practiced dentistry in another state or states for at least two (2) years by submitting proof of employment as a dentist or by submitting proof of having had a private dental practice, and shall cause to be submitted a certificate of successful completion of an examination administered by another state, as provided in T.C.A. § 63-5-110(b)(6)(D); or
 - (h) Shall demonstrate that he/she has taught in an American Dental Association accredited institution for at least two (2) years, and shall cause to be submitted a certificate of successful completion of the examinations for licensure as governed by Rule 0460-02-.05 or of an examination administered by another state, as provided in T.C.A. § 63-5-110(b)(6)(E); or
 - (i) Shall demonstrate any combination of subparagraphs (g) and (h) for at least two (2) years.
- (4) Application review and licensure decisions required by this rule shall be governed by Rule 0460-01-.04.

Authority: T.C.A. §§4-3-1011, 4-5-202, 4-5-204, 63-5-105, 63-5-107, 63-5-110, 63-5-111, 63-5-124, and 63-5-132. **Administrative History:** Original rule certified June 7, 1974. Repeal and new rule filed August 26, 1980; effective December 1, 1980. Amendment filed October 13, 1983; effective November 14, 1983. Amendment filed September 24, 1987; effective November 8, 1987. Amendment filed June 8, 1989; effective July 23, 1989. Amendment filed November 30, 1989; effective January 14, 1990. Amendment filed April 30, 1991; effective June 14, 1991. Repeal and new rule filed December 11, 1991; effective January 25, 1992. Amendment filed May 15, 1996; effective September 27, 1996. Amendment filed February 9, 2000; effective April 24, 2000. Amendment filed October 20, 2003; effective January 3, 2004. Amendment filed August 23, 2005; effective November 6, 2005. Amendment filed December 16, 2005; effective March 1, 2006. Amendment filed March 17, 2006; effective May 31, 2006.

0460-02-.02 DUAL DEGREE LICENSURE PROCESS. The Board may issue a license to practice dentistry in Tennessee to persons who hold both dental and medical degrees and meet the qualifications contained in this rule. The process for obtaining a license by this method is as follows:

- (1) An applicant shall obtain an application form from the Board Administrative Office, respond truthfully and completely to every question or request for information contained in the form

(Rule 0460-02-.02, continued)

- and submit it along with all documentation and fees required by the form or this rule to the Board Administrative Office. It is the intent of this rule that all activities necessary to accomplish the filing of the required documentation be completed prior to filing a licensure application and that all documentation be filed simultaneously.
- (2) An applicant shall request that a transcript from a dental school, college or university be sent directly from the institution to the Board Administrative Office. The transcript must show that either a D.D.S. or D.M.D. degree was conferred and carry the official seal of the institution.
 - (3) An applicant shall submit a signed and notarized passport photograph taken within the preceding twelve (12) months.
 - (4) An applicant must submit evidence of good moral character and competence. Such evidence shall include at least two (2) letters attesting to the applicant's character and ability from licensed dentists or physicians on the signator's letterhead.
 - (5) An applicant shall submit proof of United States or Canada citizenship or evidence of being legally entitled to live in the United States. Such evidence may include notarized copies of birth certificates, naturalization papers, or current visa status.
 - (6) An applicant shall submit the licensure application fee and state regulatory fees as provided in rule 0460-01-.02 (1).
 - (7) If the applicant has ever taken any Board-approved examination as provided in rule 0460-02-.05 (1) (a), an application will not be approved unless and/or until a certification is submitted which indicates that the applicant achieved passing scores on all parts of the examination.
 - (8) An applicant shall indicate whether the applicant is physically capable of performing the procedures included in the practice of dentistry and if not, make explanation.
 - (9) An applicant shall submit evidence of current training in cardiopulmonary resuscitation issued by a Board approved training organization.
 - (10) An applicant shall disclose the circumstances surrounding any of the following:
 - (a) Conviction of any criminal law violation of a country, state or municipality, except minor traffic violations.
 - (b) The denial of licensure application by any other state or the disciplinary of licensure in any state.
 - (c) Loss or restriction of hospital privileges.
 - (d) Any other civil suit judgment or civil suit settlement in which the applicant was a party defendant including, without limitation, actions involving malpractice, breach of contract, antitrust activity or any other civil action remedy recognized under any county's or state's statutory, common, or case law.
 - (e) Failure of any dental and/or medical licensure examination.
 - (11) An applicant shall cause to be submitted to the Board's administrative office directly from the vendor identified in the Board's licensure application materials, the result of a criminal background check.
 - (12) An applicant shall submit or cause to be submitted the equivalent of a Tennessee Certificate of Endorsement from the licensing board(s) of every state or U.S. territory in which the

(Rule 0460-02-.02, continued)

applicant has ever been licensed as a dentist and/or physician which indicates the applicant either holds a current active license(s) and whether it is in good standing, or held a license(s) which is currently inactive and whether it was in good standing at the time it became inactive. An applicant must possess an active dental license which is in good standing in at least one (1) other state or U.S. territory.

- (13) An applicant shall cause to be submitted a certification which indicates that a graduate training program in a specialty branch of dentistry listed in T.C.A. §63-5-112 or rule 0460-02-.06 has been successfully completed.
- (14) An applicant must apply for a specialty certification and successfully complete all requirements for that specialty certification as provided in rule 0460-02-.06 before application for licensure shall be granted.
- (15) An applicant shall submit a copy of an active, current license to practice medicine in Tennessee.
- (16) An applicant shall successfully complete the Tennessee Board of Dentistry Ethics and Jurisprudence examination.
- (17) Application review and licensure decisions required by this rule shall be governed by rule 0460-01-.04.

Authority: T.C.A. §§4-3-1011, 4-5-202, 4-5-204, 63-5-105, 63-5-110, 63-5-111, and 63-5-124.

Administrative History: Original rule certified June 7, 1974. Repeal and new rule filed August 26, 1980; effective December 1, 1980. Amendment filed October 13, 1983; effective November 14, 1983. Amendment filed September 24, 1987; effective November 8, 1987. Amendment filed June 8, 1989; effective July 23, 1989. Amendment filed April 30, 1991; effective June 14, 1991. Repeal and new rule filed December 11, 1991; effective January 25, 1992. Amendment filed May 15, 1996; effective September 27, 1996. Amendment filed August 18, 2003; effective November 1, 2003. Amendment filed March 17, 2006; effective May 31, 2006.

0460-02-.03 LIMITED AND EDUCATIONAL LIMITED LICENSURE PROCESS. Any dentist who has completed the requirements set forth in this rule may be issued a limited license for the practice of dentistry in American Dental Association accredited institutions, or dental education programs, or in federally-designated health professional shortage areas, or may be issued an educational limited license to practice dentistry under the auspices of a dental educational institution. The educational limited license limits the dentist's location and activity to teaching and practice in programs offered only through the educational institution. It does not authorize independent private practice in any location.

- (1) The process for obtaining a limited or an educational limited license is as follows:
 - (a) An applicant shall obtain an application form from the Board Administrative Office, respond truthfully and completely to every question or request for information contained in the form and submit it along with all documentation and fees required by the form and this rule to the Board Administrative Office. It is the intent of this rule that all activities necessary to accomplish the filing of the required documentation be completed prior to filing a licensure application and that all documentation be filed simultaneously.
 - (b) An applicant shall submit a signed "passport" style photograph taken within the preceding twelve (12) months.
 - (c) An applicant must submit evidence of good moral character and professional competence. Such evidence shall include at least two (2) letters attesting to the applicant's character and ability from licensed dentists on the signator's letterhead.

(Rule 0460-02-.03, continued)

- (d) An applicant shall submit proof of United States or Canadian citizenship or evidence of being legally entitled to live and work in the United States. Such evidence may include copies of birth certificates, naturalization papers, or current visa status.
 - (e) An applicant shall submit the required fees as provided in Rule 0460-01-.02 (1).
 - (f) An applicant shall submit evidence of current training in cardiopulmonary resuscitation issued by a Board approved training organization.
 - (g) An applicant shall indicate whether the applicant is physically capable of performing the procedures included in the practice of dentistry and if not, make explanation.
 - (h) An applicant shall disclose the circumstances surrounding any of the following:
 - 1. Conviction of any criminal law violation of any country, state or municipality, except minor traffic violations.
 - 2. The denial of licensure application by any other state or the discipline of licensure in any state.
 - 3. Loss or restriction of hospital privileges.
 - 4. Any other civil suit judgment or civil suit settlement in which the applicant was a party defendant including, without limitation, actions involving malpractice, breach of contract, antitrust activity or any other civil action remedy recognized under any country's or state's statutory, common, or case law.
 - 5. Failure of any dental licensure examination.
 - (i) An applicant shall cause to be submitted to the Board's administrative office directly from the vendor identified in the Board's licensure application materials, the result of a criminal background check.
 - (j) An applicant shall submit or cause to be submitted the equivalent of a Tennessee Certificate of Endorsement from the licensing board(s) of every state in which the applicant has ever been licensed which indicates the applicant either holds a current active license and whether it is in good standing, or held a license which is currently inactive and whether it was in good standing at the time it became inactive.
 - (k) An applicant shall successfully complete the Tennessee Board of Dentistry Ethics and Jurisprudence examination.
- (2) In addition to completing the process described in paragraph (1), an applicant for limited licensure:
- (a) Shall cause a transcript from a dental school, college or university to be sent directly from the institution to the Board Administrative Office that shows the equivalent of the D.D.S. or the D.M.D. degree was conferred and carries the official seal of the institution; and
 - (b) Shall cause to be submitted, directly from Educational Credential Evaluators, Inc. (www.ece.org) to the Board Administrative Office, a "Course-By-Course Evaluation Report" that indicates the applicant has successfully completed the equivalent of four (4) years of study in a dentistry program in the United States; and

(Rule 0460-02-.03, continued)

- (c) Shall cause to be submitted, directly from the educational institution to the Board Administrative Office, certification of successful completion of a graduate training program in a recognized specialty branch of dentistry from an advanced specialty program accredited by the American Dental Association; and
 - (d) Shall cause to be submitted, directly from the examination agency to the Board Administrative Office, certification of successful completion of the National Board examination; and
 - (e) Shall cause, if practice is to occur in American Dental Association accredited institutions or dental education programs, the Dean or Director of the dental educational institution at which the applicant is to be employed to submit upon application for licensure and renewal of licensure, on behalf of the applicant, a letter of recommendation for limited licensure and a copy of the contract employing the applicant as a faculty member at the institution; or
 - (f) Shall submit when applying for licensure and when applying for renewal of licensure, if practice is to be in a federally-designated health professional shortage area, proof of employment as a dentist or proof of starting/maintaining a private dental practice; and
 - (g) If the applicant has ever taken any regional testing agency examination or any other Board-approved examination as provided in rule 0460-02-.05, an application will not be approved unless and/or until a certification is submitted which indicates that the applicant achieved passing scores on all parts of the examination.
- (3) In addition to completing the process described in paragraph (1), an applicant for educational limited licensure:
- (a) Shall cause a transcript from a dental school, college or university to be sent, directly from the institution to the Board Administrative Office, that shows the degree was conferred and carries the official seal of the institution; and
 - (b) Shall cause the Dean or Director of the dental educational institution at which the applicant is to be employed to submit upon application for licensure and renewal of licensure, on behalf of the applicant, a letter of recommendation for educational limited licensure and a copy of the contract employing the applicant as a faculty member at the institution; and
 - (c) Shall possess an active license which is in good standing in at least one (1) other state that was active for at least one (1) year prior to application; and
 - (d) If the applicant has ever taken any regional testing agency examination or any other Board-approved examination as provided in rule 0460-02-.05, an application will not be approved unless and/or until a certification is submitted which indicates that the applicant achieved passing scores on all parts of the examination.
- (4) When a limited or educational limited licensee is employed at an educational institution or program, the licensee shall cause the Dean or Director of the educational institution or program to immediately notify the Board in writing of the termination of the licensee's employment and the reasons therefore. Such notification terminates the licensee's authority to practice in Tennessee.
- (5) When a limited licensee is no longer practicing dentistry in a federally-designated health professional shortage area, the licensee shall immediately notify the Board in writing. Such notification terminates the licensee's authority to practice in Tennessee.

(Rule 0460-02-.03, continued)

- (6) Limited and educational limited licensees are subject to all rules governing renewal, retirement, reinstatement and reactivation as provided by Rules 0460-02-.08 and .09. These licenses are also subject to disciplinary action for the same causes and pursuant to the same procedures as active licenses. Under no circumstance shall a limited or educational limited license be renewed without payment of the required biennial renewal fee as stated in Rule 0460-01-.02, and completion of the annual continuing education requirement as stated in Rule 0460-01-.05 (1).
- (7) Application review and licensure decisions required by this rule shall be governed by Rule 0460-01-.04.

Authority: T.C.A. §§ 4-3-1011, 4-5-202, 4-5-204, 63-5-105, 63-5-107, 63-5-110, 63-5-111, 63-5-124.

Administrative History: Original rule certified June 7, 1974. Repeal and new rule filed August 26, 1980; effective December 1, 1980. Amendment filed October 13, 1983; effective November 14, 1983. Amendment filed September 21, 1989; effective November 5, 1989. Amendment filed April 30, 1991; effective June 14, 1991. Repeal and new rule filed December 11, 1991; effective January 25, 1992. Amendment filed May 15, 1996; effective September 27, 1996. Amendment filed February 9, 2000; effective April 24, 2000. Amendment filed April 10, 2001; effective June 24, 2001. Amendment filed April 10, 2002; effective June 24, 2002. Amendment filed August 18, 2003; effective November 1, 2003. Amendment filed October 20, 2003; effective January 3, 2004. Amendment filed March 17, 2006; effective May 31, 2006. Amendment filed July 10, 2006; effective September 23, 2006.

0460-02-.04 LICENSURE EXEMPTION PROCESS. Any person who pursuant to T.C.A. §63-5-109, may be eligible to practice dentistry in Tennessee without a Tennessee dental license or with a Board issued exemption from licensure may practice or secure an exemption upon compliance with any of the following which apply to the person's circumstances:

- (1) Dentists licensed in Tennessee who intend to call into Tennessee, a dentist licensed in another state for consultative or operative purposes, must obtain prior or advance approval by submitting a letter of request to the Board Administrative Office. In emergency situations, telephone requests for prior approval may be utilized.
- (2) The director of any special project not affiliated with a state supported institution or public health agency who intends to employ dentists licensed in another state must obtain approval of the special project by submitting a letter of request to the Board Administrative Office which sets forth all particulars of the special project. Dentists employed in the approved special projects may practice only until the next Board-approved examination as provided in rule 0460-02-.05 (1) (a). However, dentists employed in such projects who are under the sponsorship of a dentist licensed in Tennessee and are under the auspices of a local dental society may only be employed for a period of six (6) months.
- (3) The Director or Owner of any agency other than a licensed hospital which intends to employ dental interns, externs or graduates of dental schools when such individuals are not licensed in any state must obtain approval of the agency by submitting a written request for approval to the Board Administrative Office which sets forth the particulars of the agency and justification for employing such individuals.
- (4) The Director of any research or development project employing personnel who will be performing dental procedures must obtain approval of the project by submitting a written request for approval to the Board Administrative Office which sets forth the particulars of the project and contains evidence that the project is under the auspices and direction of a recognized educational institution or the Tennessee Department of Health.
- (5) The Dean of the dental teaching institution which intends to employ or utilize unlicensed graduates of dental schools, colleges or universities as clinical instructors must submit a

(Rule 0460-02-.04, continued)

written application for exemption to the Board Administrative Office which contains the following:

- (a) The duties to be performed by the graduates, and
 - (b) The method of supervision imposed by the institution over the graduates, and
 - (c) A list of all graduates requiring exemption, and
 - (d) The student clinical instructor exemption fee as provided in rule 0460-01-.02 (1) for each graduate requiring exemption.
- (6) Exemptions granted pursuant to paragraph (5) of this rule shall be effective only until the next scheduled applicable examination of the Board and shall not be extended.
- (7) Application review and decisions required by this rule are governed by rule 0460-01-.04.

Authority: T.C.A. §§4-5-202, 4-5-204, 63-5-105, 63-5-105(7), and 63-5-109. **Administrative History:** Original rule filed December 11, 1991; effective January 25, 1992. Amendment filed May 15, 1996; effective September 27, 1996. Amendment filed August 18, 2003; effective November 1, 2003.

0460-02-.05 EXAMINATIONS. ~~All persons intending to apply for licensure as a dentist in Tennessee must successfully complete the examinations provided by this rule, except for educational limited licensure applicants and dual degree licensure applicants who need not complete any licensure examinations, limited licensure applicants who must successfully complete only the National Board examination, criteria (reciprocity) applicants who are qualifying pursuant to Rule 0460-02-.01 (3) (d), (e), or (f) and need not complete any licensure examinations, and criteria (reciprocity) applicants who are qualifying pursuant to Rule 0460-02-.01 (3) (g), (h), or (i) and must have successfully completed a regional testing agency examination or an examination given by another state as provided in T.C.A. § 63-5-110(b)(6)(D) or (E). Completion of the required examinations is a prerequisite for application for licensure. Certification of successful completion must be submitted as part of the application process.~~

All persons intending to apply for licensure as a dentist in Tennessee must successfully complete the examinations provided by this rule, except for educational limited licensure applicants and dual degree licensure applicants who need not complete any licensure examinations other than the Tennessee Board of Dentistry Ethics and Jurisprudence examination; limited licensure applicants who must successfully complete only the National Board examination and Board of Dentistry Ethics and Jurisprudence examination; criteria (reciprocity) applicants who are qualifying pursuant to Rule 0460-02-.01(3)(d), (e), or (f) and need not complete any licensure examinations other than the Tennessee Board of Dentistry Ethics and Jurisprudence examination; and criteria (reciprocity) applicants who are qualifying pursuant to Rule 0460-02-.01(3)(g), (h), or (i) and must successfully complete only the Board of Dentistry Ethics and Jurisprudence examination and a regional testing agency examination or examination given by another state as provided in T.C.A. § 63-5-110(b)(6)(D) or (E). Completion of the required examinations is a prerequisite for application for licensure. Certification of successful completion must be submitted as part of the application process.

- (1) The Board adopts as its licensure examinations and requires, with the previously noted exceptions, successful completion of all of the following examinations as a prerequisite for licensure:
- (a) Any Board-approved examination including, but not limited to, the examinations offered by:
 1. The Southern Regional Testing Agency (SRTA)

(Rule 0460-02-.05, continued)

2. The Western Regional Examining Board (WREB)

- (b) The National Board if the applicant graduated from a dental college, school or university after 1972.
 - (c) The Tennessee Board of Dentistry Ethics and Jurisprudence examination
- (2) Admission to, application for and the fees required to sit for the regional examinations and the National Board examinations are governed by and must be submitted to the testing agency. Admission to, application for and the fees required to sit for any other Board-approved examination must be submitted to the Board as provided in rule 0460-01-.02, or at the Board's option, its designated exam administrator.
 - (3) Passing scores on the regional and National Board examinations are determined by the testing agency. Such passing scores as certified to the Board are adopted by the Board as constituting successful completion of those examinations. Passing scores for any other Board-approved examination are determined by the Board.
 - (4) Applicants must supply or furnish their own patients, instruments and materials as required by the testing agency, the Board, or the Board's designated exam administrator.
 - (5) Applicant's who fail to successfully complete any of the examinations may apply for reexamination.
 - (6) Oral examination may be required pursuant to rule 0460-01-.04.
 - (7) The Board adopts as its own, the determination made by the regional testing agencies and the National Boards of the length of time that a passing score on their respective examinations will be effective for purposes of measuring competency and fitness for dental licensure; however, an applicant's test scores from any Board-approved examination as provided in subparagraph (1) (a) which were taken over five (5) years before application was made for licensure in Tennessee will be considered by the Board on a case by case basis after the applicant appears before the Board for an examination.
 - (8) Applicants for licensure who have failed three (3) times the National Board or any Board-approved examination as provided in subparagraph (1) (a) must successfully complete a remedial course of post-graduate studies at a school accredited by the American Dental Association before consideration for licensure by the Board. The applicant shall cause the program director of the post-graduate program to provide written documentation of the content of such course and certify successful completion.
 - (9) If an applicant has successfully completed a clinical board examination administered by another state and is applying for licensure pursuant to Rule 0460-02-.01 (3) (g), (h), or (i), it is that applicant's responsibility to submit documentation substantiating the appropriateness of such examination. The Board shall make the final decision to accept or reject such examination.

Authority: T.C.A. §§4-5-202, 4-5-204, 63-5-105, 63-5-110, 63-5-111, and 63-5-114. **Administrative History:** Original rule filed December 11, 1991; effective January 25, 1992. Amendment filed March 20, 1996; effective June 3, 1996. Amendment filed May 15, 1996; effective September 27, 1996. Amendment filed August 28, 2001; effective November 11, 2001. Amendment filed April 10, 2002; effective June 24, 2002. Amendment filed August 18, 2003; effective November 1, 2003. Amendment filed October 20, 2003; effective January 3, 2004. Amendment filed April 5, 2006; effective June 19, 2006.

0460-02-.06 SPECIALTY CERTIFICATION.

(Rule 0460-02-.07, continued)

4. Two (2) oral and maxillofacial surgeons.
- (c) The Anesthesia Consultants shall advise the Board of Dentistry regarding the continuing education courses, to be approved by the Board, to satisfy the requirements in subpart (6) (a) 1. (ii), item (6) (a) 2. (i) (II) and subparagraph (8) (b).

Authority: T.C.A. §§4-5-202, 4-5-204, 63-5-105, 63-5-107, 63-5-108, 63-5-112, 63-5-115, 63-5-117, 63-5-122, and 63-5-124. **Administrative History:** Original rule filed December 11, 1991; effective January 25, 1992. Amendment filed May 15, 1996; effective September 27, 1996. Amendment filed February 18, 2003; effective May 4, 2003. Amendment filed December 28, 2004; effective March 13, 2005. Amendment filed July 10, 2006; effective September 23, 2006. Amendment filed September 25, 2008; effective December 9, 2008. Amendments filed October 22, 2010; effective January 20, 2011.

0460-02-.08 LICENSURE RENEWAL. All licensed dentists must renew their licenses to be able to legally continue in practice. Licensure renewal is governed by the following:

- (1) Renewal application
 - (a) The due date for licensure renewal is the last day of the month in which a licensee's birthday falls pursuant to the Division of Health Related Boards "birthdate renewal system" contained on the renewal certificate as the expiration date.
 - (b) Methods of Renewal
 1. Internet Renewals - Individuals may apply for renewal and pay the necessary fees via the Internet. The application to renew can be accessed at:

www.tennesseeanytime.org
 2. Paper Renewals - For individuals who have not renewed their license online via the Internet, a renewal application form will be mailed to each individual licensed by the Board to the last address provided to the Board. Failure to receive such notification does not relieve the licensee from the responsibility of meeting all requirements for renewal.
 - (c) A license issued pursuant to these rules is renewable by the expiration date. To be eligible for renewal an individual must submit to the Division of Health Related Boards on or before the expiration date the following:
 1. A completed renewal application form.
 2. The renewal and state regulatory fees as provided in Rule 0460-01-.02.
 3. If licensed pursuant to rule 0460-02-.03, a letter of request accompanied by a letter of recommendation from the dean or director of the educational institution.
 4. Proof of successful completion of the Tennessee Board of Dentistry Ethics and Jurisprudence examination.
 - (d) Licensees who fail to comply with the renewal rules or notification received by them concerning failure to timely renew shall have their licenses processed pursuant to Rule 1200-10-01-.10.
- (2) Reinstatement of an Expired License - Reinstatement of a license that has expired may be accomplished upon meeting the following conditions:

(Rule 0460-02-.08, continued)

- (a) Payment of all past due renewal fees, state regulatory fees and the reinstatement fee, as established in Rule 0460-01-.02; and
 - (b) Provide documentation of successfully completing continuing education requirements for the entire time the license was expired, pursuant to Rule 0460-01-.05; and
 - (c) Submit proof of successful completion of the Tennessee Board of Dentistry Ethics and Jurisprudence examination.
 - (d)(e) Any licensee who fails to renew licensure prior to the expiration of the second (2nd) year after which renewal is due may be required to meet other conditions as the Board may deem necessary to protect the public.
- (3) Anyone submitting a renewal form, reinstatement/reactivation application, or letter which is found to be untrue may be subject to disciplinary action as provided in T.C.A. § 63-5-124.
 - (4) Renewal issuance decisions pursuant to this rule may be made administratively, upon review by the Board.
 - (5) Application review and decisions required by this rule shall be governed by rule 0460-01-.04.

Authority: T.C.A. §§4-5-202, 4-5-204, 63-1-107, 63-1-108, 63-5-105, 63-5-107, 63-5-117, 63-5-124, and 63-5-129. **Administrative History:** Original rule filed December 11, 1991; effective January 25, 1992. Amendment filed February 12, 1996; effective April 27, 1996. Amendment filed April 10, 2001; effective June 24, 2001. Amendment filed August 21, 2002; effective November 4, 2002. Amendment filed August 18, 2003; effective November 1, 2003.

0460-02-.09 LICENSURE RETIREMENT AND REACTIVATION.

- (1) Licensees who wish to retain their licenses but not actively practice may avoid compliance with the licensure renewal process, continuing education and CPR requirements by doing the following:
 - (a) Obtain from, complete and submit to the Board Administrative Office an affidavit of retirement form.
 - (b) Submit any documentation which may be required by the form to the Board Administrative Office.
- (2) Any licensee whose license has been retired may reenter active practice by doing the following:
 - (a) Submit a written request for licensure reactivation to the Board Administrative Office; and
 - (b) Pay the licensure renewal fees and state regulatory fee as provided in rule 0460-01-.02(1), and if retirement was pursuant to rule 0460-02-.08(5) and reactivation was requested prior to the expiration of one (1) year from the date of retirement, the Board may require payment of the late renewal fee and past due licensure renewal and state regulatory fees as provided in rule 0460-01-.02(1).
 - (c) If requested, after review by the Board a designated Board member or the Board consultant, appear before the Board, a Board member or the Board consultant for an

(Rule 0460-02-.09, continued)

interview regarding continued competence in the event of licensure retirement in excess of two (2) years.

- (d) Comply with the continuing education provisions of rule 0460-01-.05(6) applicable to reactivation of retired licenses.
 - (e) Submit proof of successful completion of the Tennessee Board of Dentistry Ethics and Jurisprudence examination.
- (3) Application review and decisions required by this rule shall be governed by rule 0460-01-.04.

Authority: T.C.A. §§4-5-202, 4-5-204, 63-5-105, 63-5-107, 63-5-117, and 63-5-129. **Administrative History:** Original rule filed December 11, 1991; effective January 25, 1992. Amendment filed March 20, 1996; effective June 3, 1996. Amendment filed August 21, 2002; effective November 4, 2002.

0460-02-.10 ADVERTISING.

- (1) Policy Statement. The lack of sophistication on the part of many members of the public concerning dental services, the importance of the interests affected by the choice of a dentist and the foreseeable consequences of unrestricted advertising by dentists, which is recognized to pose special possibilities for deception, require that special care be taken by dentists to avoid misleading the public. The dentist must be mindful that the benefits of advertising depend upon its reliability and accuracy. Since advertising by dentists is calculated and not spontaneous, reasonable regulation designed to foster compliance with appropriate standards serves the public interest without impeding the flow of useful, meaningful, and relevant information to the public.
- (2) Definitions.
 - (a) Advertisement. Informational communication to the public in any manner designed to attract public attention to the practice of a dentist who is licensed to practice dentistry in Tennessee.
 - (b) Licensee. Any person holding a license to practice dentistry in the State of Tennessee. Where applicable this shall include dental partnerships and/or corporations.
 - (c) Material Fact. Any fact which an ordinary reasonable and prudent person would need to know or rely upon in making an informed decision concerning the choice of dental practitioners to serve his or her particular dental needs.
 - (d) Bait and Switch Advertising. An alluring but insincere offer to sell a product or service which the advertiser in truth does not intend or want to sell or provide. Its purpose is to switch consumers from buying or receiving the advertised merchandise or services, in order to sell or provide something else, usually at a higher fee or on a basis more advantageous to the advertiser.
 - (e) Discounted Fee. Shall mean a fee offered or charged by a person or organization for any dental product or service that is less than the fee the person or organization usually offers or charges for the product or service. Products or services expressly offered free of charge shall not be deemed to be offered at a "discounted fee".
- (3) Advertising Dental Fees and Services
 - (a) Fixed Fees. Fixed fees may be advertised for any service.

**RULES
OF
TENNESSEE BOARD OF DENTISTRY**

**CHAPTER 0460-03
RULES GOVERNING THE PRACTICE OF DENTAL HYGIENISTS**

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0460-03-.01 LICENSURE PROCESS. To practice as a dental hygienist in Tennessee a person must possess a lawfully issued license from the Board. The process for obtaining a license is as follows:

- (1) An applicant shall obtain a Board application form from the Board Administrative Office, respond truthfully and completely to every question or request for information contained in the form and submit it along with all documentation and fees required by the form and this rule to the Board Administrative Office. It is the intent of this rule that all activities necessary to accomplish the filing of the required documentation be completed prior to filing a licensure application and that all documentation be filed simultaneously at least sixty (60) days prior to the next scheduled Board meeting.
- (2) An applicant shall cause to be submitted directly, from a dental hygiene school, college or university approved or provisionally approved by the Commission on Dental Accreditation of the American Dental Association, to the Board Administrative Office, a certificate of graduation containing the institutions Official Seal and which shows the following:
 - (a) The applicant's transcript; and
 - (b) The degree and diploma conferred, or a letter from the dean of the educational institution attesting to the applicant's eligibility for the degree and diploma if the last term of dental hygiene school has not been completed at the time of application. However, no license shall be issued until official notification is received in the Board Administrative Office that the degree and diploma have been conferred.
- (3) An applicant shall submit:
 - (a) proof of having attained at least eighteen (18) years of age; and
 - (b) a signed "passport" style photograph taken within the preceding twelve (12) months.
- (4) An applicant shall submit evidence of good moral character. Such evidence shall include at least two (2) letters attesting to the applicant's character from dental professionals on the signator's letterhead.
- (5) An applicant shall submit proof of United States or Canadian citizenship or evidence of being legally entitled to live in the United States. Such evidence may include copies of birth certificates, naturalization papers, or current visa status.

(Rule 0460-03-.01, continued)

- (6) An applicant shall submit the licensure application fee and state regulatory fee as provided in rules 0460-01-.02 (2).
- (7) An applicant shall cause to be submitted a certificate of successful completion of the examinations for licensure as governed by rule 0460-03-.05.
- (8) An applicant shall disclose the circumstances surrounding any of the following:
 - (a) Conviction of any criminal law violation of any country, state, or municipality, except minor traffic violations.
 - (b) The denial of licensure application by any other State or the discipline of licensure in any state.
 - (c) Any other civil suit judgment or civil suit settlement in which the applicant was a party defendant including, without limitation, actions involving malpractice, breach of contract, antitrust activity or any other civil action remedy recognized under any country's or state's statutory, common, or case law.
 - (d) Failure of any dental or dental hygiene licensure examination.
- (9) An applicant shall cause to be submitted to the Board's administrative office directly from the vendor identified in the Board's licensure application materials, the result of a criminal background check.
- (10) Failure to make application for licensure within ninety (90) days after a person has successfully completed all requirements for licensure may result in denial of any subsequently filed application unless good cause is shown for failure to do so.
- (11) An applicant shall submit evidence of current training in cardiopulmonary resuscitation issued by a Board approved training organization.
- (12) If an applicant has ever held a license to practice in any other state or Canada, the applicant shall submit or cause to be submitted the equivalent of a Tennessee Certificate of Endorsement from each such licensing board which indicates the applicant either holds a current active license and whether it is in good standing, or held a license which is currently inactive and whether it was in good standing at the time it became inactive.
- (13) An applicant shall successfully complete the Tennessee Board of Dentistry Ethics and Jurisprudence examination.
- (143) Application reviews and licensure decisions required by this rule shall be governed by rule 0460-01-.04.

Authority: T.C.A. §§4-5-202, 4-5-204, 63-5-105, 63-5-105(3), 63-5-105(4), 63-5-105(7), 63-5-107, 63-5-107(a), 63-5-107(c), 63-5-111, 63-5-111(a), 63-5-111(b)(2), 63-5-114, and 63-5-124. **Administrative History:** Original rule certified June 7, 1974. Repeal and new rule filed December 11, 1991; effective January 25, 1992. Amendment filed May 15, 1996; effective September 27, 1996. Amendment filed February 9, 2000; effective April 24, 2000. Amendment filed April 10, 2001; effective June 24, 2001. Amendment filed March 17, 2006; effective May 31, 2006.

0460-03-.02 CRITERIA APPROVAL LICENSURE PROCESS (RECIPROCITY). Dental hygienists who are licensed in other states may obtain a license to practice in Tennessee by the following process:

- (1) An applicant shall obtain a Board application form from the Board's Administrative Office, respond truthfully and completely to every question or request for information contained in the

(Rule 0460-03-.02, continued)

- form and submit it along with all documentation and fees required by the form and this rule to the Board's Administrative Office. It is the intent of this rule that all activities necessary to accomplish the filing of the required documentation be completed prior to filing a licensure application.
- (2) An applicant shall cause to be submitted directly, from a dental hygiene school, college or university approved or provisionally approved by the Commission on Dental Accreditation of the American Dental Association, to the Board Administrative Office, a certificate of graduation containing the institutions official seal and which shows the following:
 - (a) The applicant's transcript; and
 - (b) The degree and diploma conferred.
 - (3) An applicant shall cause to be submitted directly from the American Dental Association, to the Board Administrative Office, proof of successful completion of the National Board examination if the person graduated from a dental hygiene college, school or university after 1972.
 - (4) An applicant shall submit:
 - (a) proof of having attained at least eighteen (18) years of age; and
 - (b) a signed "passport" style photograph taken within the preceding twelve (12) months.
 - (5) An applicant shall submit evidence of good moral character. Such evidence shall include at least two (2) letters attesting to the applicant's character, standing and ability from dentists on the signator's letterhead.
 - (6) An applicant shall submit proof of United States or Canadian citizenship or evidence of being legally entitled to live in the United States. Such evidence may include copies of birth certificates, naturalization papers, or current visa status.
 - (7) An applicant shall submit the licensure application fee and state regulatory fee as provided in rules 0460-01-.02 (2). Also, if licensure is granted, the new licensee must submit the criteria approval licensure fee provided in Rule 0460-01-.02 (2) before a license will be issued.
 - (8) An applicant shall disclose the circumstances surrounding any of the following:
 - (a) Conviction of any criminal law violation of any country, state, or municipality, except minor traffic violations.
 - (b) The denial of licensure application by any other state or the discipline of licensure in any state.
 - (c) Any other civil suit judgment or civil suit settlement in which the applicant was a party defendant including, without limitation, actions involving malpractice, breach of contract, antitrust activity or any other civil action remedy recognized under any country's or state's statutory, common, or case law.
 - (d) Failure of any dental or dental hygiene licensure examination.
 - (9) An applicant shall cause to be submitted to the Board's administrative office directly from the vendor identified in the Board's licensure application materials, the result of a criminal background check.

(Rule 0460-03-.02, continued)

- (10) An applicant shall submit evidence of current training in cardiopulmonary resuscitation issued by a Board approved training organization.
- (11) The applicant shall submit or cause to be submitted the equivalent of a Tennessee Certificate of Endorsement from each licensing board of each State in which licensure is or was ever held which indicates the applicant either holds a current active license and whether it is in good standing, or held a license which is currently inactive and whether it was in good standing at the time it became inactive. An applicant must possess an active, current license which is in good standing in at least one other state.
- (12) An applicant must submit a personal or professional resume on a form provided by the Board.
- (13) An applicant must submit evidence satisfactory to the Board of all the following:
 - (a) Active, licensed practice of dental hygiene in a private office setting, or in post-graduate dental hygiene study or in service as a dental hygiene faculty member for three (3) of the five (5) years immediately preceding application. Temporary absences from employment during the three (3) year period may under individual circumstances not be considered as a disqualifying factor at the discretion of the Board.
 - (b) If requested, ability to provide patient care on a continuing basis.
- (14) Unless an applicant subsequently retakes and passes a failed examination, an applicant must never have failed any Board-approved examination as provided in rule 0460-03-.05 to be eligible for licensure under the criteria approval process described in this rule.
- (15) An applicant must successfully complete the Tennessee Board of Dentistry Ethics and Jurisprudence examination.
- (16) Application review and licensure decisions required by this rule shall be governed by Rule 0460-01-.04.

Authority: T.C.A. §§4-5-202, 4-5-204, 63-5-105, 63-5-107, 63-5-111, 63-5-114, and 63-5-124.
Administrative History: Original rule certified June 7, 1974. Repeal and new rule filed December 11, 1991; effective January 25, 1992. Amendment filed June 29, 1994; effective September 12, 1994. Amendment filed December 5, 1994; effective February 18, 1995. Amendment filed May 15, 1996; effective September 27, 1996. Amendment filed February 9, 2000; effective April 24, 2000. Amendment filed April 10, 2001; effective June 24, 2001. Amendment filed April 10, 2002; effective June 24, 2002. Amendment filed July 21, 2004; effective October 4, 2004. Amendment filed August 23, 2005; effective November 6, 2005. Amendment filed March 17, 2006; effective May 31, 2006. Amendment filed August 4, 2009; effective November 2, 2009.

0460-03-.03 EDUCATIONAL LICENSURE PROCESS. A dental hygienist licensed in another state may obtain a license to practice in Tennessee under the auspices of a dental or dental hygiene educational institution. This type of license limits only practice location and not services allowed to be performed. The practice location for dental hygienists who have this type of licensure is limited to programs offered by the educational institution and does not authorize practice outside the institution. The process for obtaining a limited educational license is as follows:

- (1) An applicant shall obtain a Board application form from the Board Administrative Office, respond truthfully and completely to every question or request for information contained in the form and submit it along with all documentation and fees required by the form and this rule to the Board Administrative Office. It is the intent of this rule that all activities necessary to accomplish the filing of the required documentation be completed prior to filing a licensure application and that all documentation be filed simultaneously.

(Rule 0460-03-.03, continued)

- (2) An applicant shall request that a transcript from a dental hygiene school, college or university be sent directly from the institution to the Board Administrative Office. The transcript must show that the degree was conferred and carry the Official Seal of the institution.
- (3) An applicant shall submit:
 - (a) proof of having attained at least eighteen (18) years of age; and
 - (b) a signed "passport" style photograph taken within the preceding twelve (12) months.
- (4) An applicant shall submit evidence of good moral character and competence. Such evidence shall include at least two (2) letters attesting to the applicant's character and ability from licensed dentists on the signator's letterhead.
- (5) An applicant shall submit proof of United States or Canadian citizenship or evidence of being legally entitled to live in the United States. Such evidence may include copies of birth certificates, naturalization papers, or current visa status.
- (6) An applicant shall submit the licensure application fee and state regulatory fees as provided in rules 0460-01-.02 (2). Also, if licensure is granted, the new licensee must submit the educational licensure fee provided in Rule 0460-01-.02 (2) before a license will be issued.
- (7) An applicant shall submit evidence of current training in cardiopulmonary resuscitation issued by a Board approved training organization.
- (8) An applicant shall disclose the circumstances surrounding any of the following:
 - (a) Conviction of any criminal law violation of any country, state, or municipality, except minor traffic violations.
 - (b) The denial of licensure application by any other state or the discipline of licensure in any state.
 - (c) Any other civil suit judgment or civil suit settlement in which the applicant was a party defendant including, without limitation, actions involving malpractice, breach of contract, antitrust activity or any other civil action remedy recognized under any country's or state's statutory, common, or case law.
 - (d) Failure of any professional licensure examination.
- (9) An applicant shall cause to be submitted to the Board's administrative office directly from the vendor identified in the Board's licensure application materials, the result of a criminal background check.
- (10) An applicant shall submit or cause to be submitted the equivalent of Tennessee Certificate of Endorsement from the licensing board(s) of every state in which the applicant has ever been licensed which indicates the applicant either holds a current active license and whether it is in good standing, or held a license which is currently inactive and whether it was in good standing at the time it became inactive. An applicant must possess an active license in good standing in at least one (1) state. That license must have been active for at least one (1) year prior to application.
- (11) An applicant must successfully complete the Tennessee Board of Dentistry Ethics and Jurisprudence examination.

(Rule 0460-03-.03, continued)

- (124) The dean or director of the dental or dental hygiene educational institution at which the applicant is to be employed shall submit on behalf of the applicant the following:
- (a) A letter of recommend for educational licensure; and
 - (b) a copy of the contract employing the applicant in a faculty position at the institution.
- (132) The dean or director of the educational institution shall immediately notify the Board in writing of the termination of any licensee's employment and the reasons therefore delivered to the Board Administrative Office. Such notification terminates the licensee's authority to practice in Tennessee.
- (143) Any person holding an educational license is subject to all disciplinary provisions of the Tennessee Dental Practice Act.
- (154) Application review and licensure decisions shall be required by this rule governed by rule 0460-01-.04.

Authority: T.C.A. §§4-5-202, 4-5-204, 63-5-105, 63-5-107, 63-5-110, 63-5-111, 63-5-114, and 63-5-124.
Administrative History: Original rule certified June 7, 1974. Repeal and new rule filed December 11, 1991; effective January 25, 1992. Amendment filed March 20, 1996; effective June 3, 1996. Amendment filed May 15, 1996; effective September 27, 1996. Amendment filed February 9, 2000; effective April 24, 2000. Amendment filed April 10, 2001; effective June 24, 2001. Amendment filed April 10, 2002; effective June 24, 2002. Amendment filed March 17, 2006; effective May 31, 2006.

0460-03-.04 LICENSURE EXEMPTION PROCESS. Any person who, pursuant to T.C.A. §63-5-109, may be eligible to practice in Tennessee without a Tennessee license or with a Board issued exemption from licensure may practice or secure an exemption upon compliance with any of the following which apply to the person's circumstances:

- (1) Dentists licensed in Tennessee who intend to call into Tennessee, a dental hygienist licensed in another state for consultative or operative purposes, must obtain prior or advance approval by submitting a letter of request to the Board Administrative Office. In emergency situations, telephone requests for prior approval may be utilized.
- (2) The director of any special project not affiliated with a state supported institution or public health agency who intends to employ dental hygienists licensed in other states must obtain approval of the special project by submitting a letter of request to the Board Administrative Office which sets forth all particulars of the special project. Dental hygienists employed in the approved special projects may practice only until the next Board-approved examination as provided in rule 0460-03-.05 (1) (a), or their licensure by criteria approval, whichever comes first. However, dental hygienists employed in such projects who are under the sponsorship of a dentist licensed in Tennessee and are under the auspices of a local dentist licensed in Tennessee and are under the auspices of a local dental society may only be employed for a period of six (6) months pursuant to this type exemption.
- (3) The director or owner of any agency other than a licensed hospital which intends to employ graduates of dental hygiene schools when such individuals are not licensed in any state must obtain approval of the agency by submitting a written request for approval to the Board Administrative Office which sets forth particulars of the agency and justification for employing such individuals.
- (4) The director of any research or development project employing personnel who will be performing dental hygiene procedures must obtain approval of the project by submitting a written request for approval to the Board Administrative Office which sets forth the particulars

(Rule 0460-03-.04, continued)

of the project and contains evidence that the project is under the auspices and direction of a recognized educational institution or the Tennessee Department of Health.

- (5) The Dean of the dental hygienist teaching institution which intends to employ or utilize unlicensed graduates of dental hygiene schools, college or universities as clinical instructors must submit a written application for exemption to the Board Administrative Office which contains the following:
 - (a) The duties to be performed by the graduates; and
 - (b) The method of supervision imposed by the institution over the graduates, and
 - (c) A list of all graduates requiring exemption; and
 - (d) The student clinical instructor exemption fee as provided in rule 0460-01-.02 (2) for each graduate requiring exemption.
- (6) Exemptions granted pursuant to paragraph (5) of this rule shall be effective only until the next scheduled applicable examination of the Board and shall not be extended.
- (7) Application review and decisions required by this rule shall be governed by rules 0460-01-.03 and 0460-01-.04.

Authority: T.C.A. §§4-5-202, 4-5-204, 63-5-105, 63-5-109, and 63-5-114. **Administrative History:** Original rule certified June 7, 1974. Repeal and new rule filed December 11, 1991; effective January 25, 1992. Amendment filed May 15, 1996; effective September 27, 1996. Amendment filed August 18, 2003; effective November 1, 2003.

0460-03-.05 EXAMINATIONS. Where successful completion of an examination is required by the rules governing the type of licensure applied for, those examinations are governed by this rule:

- (1) The Board adopts the following as its licensure examinations and requires their successful completion, where required by the rules governing the licensure process, as a prerequisite for licensure:
 - (a) Any Board-approved examination including, but not limited to, the examinations offered by:
 1. The Southern Regional Testing Agency (SRTA)
 2. The Western Regional Examining Board (WREB)
 - (b) The National Board if the person graduated from a dental hygiene college, school or university after 1972.
 - (c) The Tennessee Board of Dentistry Ethics and Jurisprudence examination.
- (2) Admission to, application for and the fees required to sit for the regional examinations and the National Board examinations are governed by and must be submitted to the testing agency. Admission to, application for and the fees required to sit for any other Board-approved examination must be submitted to the Board as provided in rule 0460-01-.02, or at the Board's option, its designated exam administrator.
- (3) Passing scores on the regional and National Board examinations are determined by the testing agency. Such passing scores as certified to the Board are adopted by the Board as

(Rule 0460-03-.05, continued)

- constituting successful completion of those examinations. Passing scores for any other Board-approved examination are determined by the Board.
- (4) Applicants must supply or furnish their own patients, instruments and materials as required by the testing agency, the Board, or the Board's designated exam administrator.
 - (5) Applicants who fail to successfully complete any of the examinations may apply for reexamination.
 - (6) Oral examination may be required pursuant to rule 0460-01-.04.
 - (7) The Board adopts as its own, the determination made by the regional testing agencies and the National Boards of the length of time that a passing score on their respective examinations will be effective for purposes of measuring competency and fitness for dental hygiene licensure.
 - (8) Applicants for licensure who have failed three (3) times the National Board or any other Board-approved examination as provided in subparagraph (1) (a) must successfully complete a remedial course of post-graduate studies at a school accredited by the American Dental Association before consideration for licensure by the Board. The applicant shall cause the program director of the post-graduate program to provide written documentation of the content of such course and certify successful completion.

Authority: T.C.A. §§4-5-202, 4-5-204, 63-5-105, 63-5-111, and 63-5-114. **Administrative History:** Original rule certified June 7, 1974. Repeal and new rule filed December 11, 1991; effective January 25, 1992. Amendment filed May 15, 1996; effective September 27, 1996. Amendment filed August 28, 2001; effective November 11, 2001. Amendment filed April 10, 2002; effective June 24, 2002. Amendment filed August 18, 2003; effective November 1, 2003. Amendment filed April 5, 2006; effective June 19, 2006.

0460-03-.06 NITROUS OXIDE CERTIFICATION. Licensed dental hygienists may administer and/or monitor nitrous oxide upon issuance of certification after successful completion of a Board-approved Nitrous Oxide Certification Course and in compliance with T.C.A. § 63-5-108(d) and this rule. To become certified, the licensed dental hygienist must complete and abide by the following process and rules:

- (1) Application and Qualifications for Certification
 - (a) Licensed dental hygienists in good standing with the Tennessee Board of Dentistry are eligible to take the Board-approved nitrous oxide certification course.
 - (b) Licensed dental hygienists, who have successfully completed an accredited dental hygiene program which includes an ADA accredited course on nitrous oxide administration and monitoring, which is comparable to the Board-approved course, are eligible to apply directly to the Board for certification in administering and monitoring nitrous oxide without additional training.
- (2) Monitoring Certification.
 - (a) A licensed dental hygienist who, on the effective date of this rule, possesses a certificate to monitor shall not begin to administer nitrous oxide unless and until the licensed dental hygienist has completed a Board-approved administration and monitoring certification course and has received certification issued by the Board.
 - (b) Licensed dental hygienists with a monitoring certificate shall only monitor nitrous oxide sedation for patients of the employer dentist in accordance with the definition for monitoring nitrous oxide, as provided in Rule 0460-2-.07.

(Rule 0460-03-.06, continued)

- (c) Licensed dental hygienists with certification in monitoring of nitrous oxide shall prominently display, at their of employment, the current renewal certificate, which is received upon licensure and renewal.
 - (d) Certification in monitoring nitrous oxide is only valid as long as the licensed dental hygienist has a current license to practice dental hygiene. If the license expires or is retired, the certification is also considered expired or retired and the dental hygienist may not monitor nitrous oxide until the license is reinstated or reactivated.
- (3) Administration and Monitoring Certification.
- (a) A licensed dental hygienist, with or without monitoring certification, must apply for and complete a Board-approved certification course in the administration and monitoring of nitrous oxide and obtain their certification, issued by the Board, before he/she can administer nitrous oxide and monitor any patient.
 - (b) Certification in administration and monitoring of nitrous oxide is only valid as long as the licensed dental hygienist has a current license to practice dental hygiene. If the license expires or is retired, the certification is also considered expired or retired and the dental hygienist may not administer and/or monitor nitrous oxide until the license is reinstated or reactivated.
 - (c) Licensed dental hygienists who possess a certification in administration and monitoring of nitrous oxide shall prominently display, at their place of employment, the current renewal certificate, which is received upon licensure and renewal.
 - (d) Duly licensed dental hygienists with nitrous oxide administration certification may administer nitrous oxide only under the direct supervision of a licensed dentist.
 - (e) A licensed dental hygienist may not administer and monitor nitrous oxide to more than one (1) patient at a time and must physically remain in the operatory at all times with the patient.

Authority: T.C.A. §§4-5-202, 4-5-204, 63-5-105, 63-5-108, and 63-5-115. **Administrative History:** Original rule certified June 7, 1974. Repeal and new rule filed December 11, 1991; effective January 25, 1992. Amendment filed May 15, 1996; effective September 27, 1996. Amendment filed February 18, 2003; effective May 4, 2003. Amendment filed September 17, 2003; effective December 1, 2003.

0460-03-.07 LICENSURE RENEWAL. All licensed dental hygienists must renew their licenses to be able to legally continue in practice. Licensure renewal is governed by the following:

- (1) Renewal application
 - (a) The due date for licensure renewal is the last day of the month in which a licensee's birthday falls pursuant to the Division of Health Related Boards "birthdate renewal system" contained on the renewal certificate as the expiration date.
 - (b) Methods of Renewal
 - 1. Internet Renewals - Individuals may apply for renewal and pay the necessary fees via the Internet. The application to renew can be accessed at:

www.tennesseeanytime.org

(Rule 0460-03-.07, continued)

2. Paper Renewals - For individuals who have not renewed their license online via the Internet, a renewal application form will be mailed to each individual licensed by the Board to the last address provided to the Board. Failure to receive such notification does not relieve the licensee from the responsibility of meeting all requirements for renewal.
- (c) A license issued pursuant to these rules is renewable by the expiration date. To be eligible for renewal an individual must submit to the Division of Health Related Boards on or before the expiration date the following:
1. A completed renewal application form.
 2. The renewal and state regulatory fees as provided in Rule 0460-01-.02.
 3. If licensed pursuant to rule 0460-03-.03, a letter of request accompanied by a letter of recommendation from the dean or director of the educational institution.
 4. Proof of successful completion of the Tennessee Board of Dentistry Ethics and Jurisprudence examination
- (d) Licensees who fail to comply with the renewal rules or notification received by them concerning failure to timely renew shall have their licenses processed pursuant to rule 1200-10-1-.10.
- (2) Reinstatement of an Expired License - Reinstatement of a license that has expired may be accomplished upon meeting the following conditions:
- (a) Payment of all past due renewal fees, state regulatory fees and the reinstatement fee as established in rule 0460-01-.02; and
 - (b) Provide documentation of successfully completing continuing education requirements for the entire time the license was expired, pursuant to Rule 0460-01-.05; and
 - (c) Submit proof of successful completion of the Tennessee Board of Dentistry Ethics and Jurisprudence examination.
 - (d)(e) Any licensee who fails to renew licensure prior to the expiration of the second (2nd) year after which renewal is due may be required to meet other conditions as the Board may deem necessary to protect the public.
- (3) Anyone submitting a renewal form, reinstatement/reactivation application, or letter which is found to be untrue may be subject to disciplinary action as provided in T.C.A. § 63-5-124.
- (4) Renewal issuance decisions pursuant to this rule may be made administratively, upon review by the Board.
- (5) Application review and decisions required by this rule shall be governed by rule 0460-01-.04.

Authority: T.C.A. §§4-5-202, 4-5-204, 63-1-107, 63-1-108, 63-5-105, 63-5-105(7), 63-5-107, 63-5-114, 63-5-117, 63-5-124, and 63-5-129. **Administrative History:** Original rule filed December 11, 1991; effective January 25, 1992. Amendment filed December 5, 1994; effective February 18, 1995. Amendment filed February 12, 1996; effective April 27, 1996. Amendment filed April 10, 2001; effective June 24, 2001. Amendment filed August 21, 2002; effective November 4, 2002. Amendment filed August 18, 2003; effective November 1, 2003.

(Rule 0460-03-.08, continued)

0460-03-.08 LICENSURE RETIREMENT AND REACTIVATION.

- (1) Licensees who wish to retain their licenses but not actively practice may avoid compliance with the licensure renewal process, continuing education and CPR requirements by doing the following:
 - (a) Obtain from, complete and submit to the Board Administrative Office an affidavit of retirement form.
 - (b) Submit any documentation which may be required by the form to the Board Administrative Office.
- (2) Any licensee whose license has been retired may reenter active practice by doing the following:
 - (a) Submit a written request for licensure reactivation to the Board Administrative Office; and
 - (b) Pay the licensure renewal fee and state regulatory fee as provided in rule 0460-01-.02(2). If retirement was pursuant to rule 0460-03-.07(5) and reactivation was requested prior to the expiration of one (1) year from the date of retirement, the Board may require payment of the late renewal fee and past due licensure renewal and state regulatory fees as provided in rule 0460-01-.02(2).
 - (c) If requested, after review by the Board or a designated Board member or the Board consultant, appear before the Board, a Board member or the Board consultant for an interview regarding continued competence in the event of licensure retirement in excess of two (2) years.
 - (d) Comply with the continuing education provisions of rule 0460-01-.05(6) applicable to reactivation of retired licenses.
 - (e) Submit proof of successful completion of the Tennessee Board of Dentistry Ethics and Jurisprudence examination.
- (3) Application review and decisions required by this rule shall be governed by rule 0460-01-.04.

Authority: T.C.A. §§4-5-202, 4-5-204, 63-5-105, 63-5-107, 63-5-117, and 63-5-129. **Administrative History:** Original rule filed December 11, 1991; effective January 25, 1992. Amendment filed March 20, 1996; effective June 3, 1996. Amendment filed August 21, 2002; effective November 4, 2002.

0460-03-.09 SCOPE OF PRACTICE. Licensed Dental Hygienists may only practice under direct and/or general supervision in the employment of a licensed dentist consistent with the provisions of T.C.A. Title 63, Chapter 5.

- (1) Delegable or Assignable Procedures – In addition to those duties of the licensed dental hygienist which are commonly recognizable by the dental profession for safe performance, pursuant to T.C.A. § 63-5-108 a licensed dental hygienist may perform the following duties which are assigned or delegated to the licensed dental hygienist by the employer dentist:
 - (a) The removal of all hard and soft deposits and stains from the human teeth to the depth of the gingival sulcus, polishing natural and restored surfaces of teeth, performing clinical examination of teeth and surrounding tissues for diagnosis by the dentist, and performing other such procedures as may be delegated by the dentist consistent with the provisions of T.C.A. Chapter 5, Title 63.

**RULES
OF
TENNESSEE STATE BOARD OF DENTISTRY**

**CHAPTER 0460-04
RULES GOVERNING THE PRACTICE OF DENTAL ASSISTANTS**

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0460-04-.01 LEVELS OF PRACTICE. It is the intent of the Board to authorize two distinct levels of practice for dental assistants in dental offices in Tennessee.

(1) Practical Dental Assistants

(a) Definition - A practical dental assistant is an auxiliary employee of a licensed dentist(s) who is receiving practical chair side dental assisting training from a licensed dentist(s) or is a dental assistant student in an educational institution accredited by the Commission on Dental Accreditation of the American Dental Association.

(b) Scope of Practice

1. A practical dental assistant must be under the direct supervision of a licensed dentist.
2. It is the intent of this rule that practical dental assistants not invade the practice procedures only allowed to be assigned or delegated to registered dental assistants or licensed dental hygienists.

(2) Registered Dental Assistant

(a) Definition - A dental assistant who has received a registration from the Board pursuant to rule 0460-04-.02.

(b) Scope of Practice - A registered dental assistant may perform those additional procedures for which they have received Board certification as provided by Rule 0460-04-.08 under the direct supervision of a dentist.

Authority: T.C.A. §§ 4-5-202, 4-5-204, 63-5-105, 63-5-105(4), 63-5-105(7), 63-5-108, 63-5-108(c), 63-5-115, 63-5-116, 63-5-117, and 63-5-124. **Administrative History:** Original rule certified June 7, 1974. Repeal filed August 26, 1980; effective December 1, 1980. Repeal and new rule filed December 11, 1991; effective January 25, 1992. Amendment filed June 29, 1994; effective September 12, 1994. Amendment filed October 9, 1997; effective December 23, 1997. Amendment filed February 9, 2000; effective April 24, 2000. Amendment filed October 12, 2007; effective December 26, 2007.

0460-04-.02 REGISTRATION PROCESS. To practice as a dental assistant beyond the scope of a practical dental assistant a person must possess a lawfully issued registration from the Board. The process for obtaining a registration is as follows:

(Rule 0460-04-.02, continued)

- (1) An applicant shall obtain a Board application form from the Board Administrative Office, respond truthfully and completely to every question or request for information contained in the form and submit it along with all documentation and fees required by the form and this rule to the Board Administrative Office. It is the intent of this rule that all activities necessary to accomplish the filing of the required documentation be completed prior to filing a registration application and that all documentation be filed simultaneously.
- (2) An applicant shall submit:
 - (a) proof of having graduated from a high school or submit proof of possession of a general educational development (g.e.d.) certificate; and
 - (b) proof of having attained at least eighteen (18) years of age; and
 - (c) a signed "passport" style photograph taken within the preceding twelve (12) months.
- (3) An applicant shall submit evidence of good moral character. Such evidence shall include at least two (2) letters attesting to the applicant's character from dental professionals on the signator's letterhead.
- (4) An applicant shall submit proof of United States or Canadian citizenship or evidence of being legally entitled to live in the United States. Such evidence may include copies of birth certificates, naturalization papers, or current visa status.
- (5) An applicant shall submit the registration application fee and state regulatory fee provided in rule 0460-01-.02 (3).
- (6) An applicant shall disclose the circumstances surrounding any of the following:
 - (a) Conviction of any criminal law violation of any country, state, or municipality, except minor traffic violations.
 - (b) The denial of registration application by any other state or the discipline of registration in any state.
 - (c) Failure of any professional licensure examinations.
- (7) An applicant shall cause to be submitted to the Board's administrative office directly from the vendor identified in the Board's registration application materials, the result of a criminal background check.
- (8) If an applicant has ever held a registration of any kind to practice dental assistance in any other state or Canada, the applicant shall submit or cause to be submitted the equivalent of the Tennessee Certificate of Endorsement from each such licensing board which indicates the applicant either holds a current active registration which is in good standing, or holds a registration which is currently inactive and whether it was in good standing at the time it became inactive.
- (9) An applicant must submit or cause to be submitted, documentation necessary to show proof of current Cardio Pulmonary Resuscitation (CPR) certification.
- (10) An applicant must successfully complete the Tennessee Board of Dentistry Ethics and Jurisprudence examination.
- (11) Application review and registration decisions required by this rule shall be governed by rule 0460-01-.04.

(Rule 0460-04-.02, continued)

Authority: T.C.A. §§ 4-5-202, 4-5-204, 63-5-105, 63-5-108, 63-5-111, 63-5-115, and 63-5-124.
Administrative History: Original rule certified June 7, 1974. Repeal filed August 26, 1980; effective December 1, 1980. New rule filed December 11, 1991; effective January 25, 1992. Amendment filed June 29, 1994; effective September 12, 1994. Amendment filed December 5, 1994; effective February 18, 1995. Amendment filed May 15, 1996; effective September 27, 1996. Amendment filed February 9, 2000; effective April 24, 2000. Amendment filed March 14, 2001; effective May 28, 2001. Amendment filed April 10, 2002; effective June 24, 2002. Amendments filed March 17, 2006; effective May 31, 2006. Amendment filed October 12, 2007; effective December 26, 2007.

0460-04-.03 REPEALED.

Authority: T.C.A. §§ 4-5-202, 4-5-204, 63-5-105, 63-5-108, 63-5-111, and 63-5-115. **Administrative History:** Original rule certified June 7, 1974. Repeal filed August 26, 1980; effective December 1, 1980. New rule filed December 11, 1991; effective January 25, 1992. Amendment filed March 20, 1996; effective June 3, 1996. Amendment filed May 15, 1996; effective September 27, 1996. Amendment filed April 10, 2002; effective June 24, 2002. Amendment filed December 16, 2005; effective March 1, 2006. Repeal filed October 12, 2007; effective December 26, 2007.

0460-04-.04 CORONAL POLISHING CERTIFICATION. Dental assistants who, pursuant to this rule and T.C.A. § 63-5-108 (d), receive certification to perform coronal polishing may only do so under the restrictions contained in this rule.

- (1) Definition - Coronal Polishing shall mean the polishing of the enamel and restorations on the clinical crown of human teeth by utilizing a combination of a polishing agent and a slow speed handpiece, a prophyl angle, a rubber cup, or any home care cleaning device.
- (2) Qualifications – An applicant for a coronal polishing certification must be registered as a dental assistant in Tennessee prior to applying for admission to an education course in coronal polishing. The sequence of the certification process is as follows:
 - (a) An applicant must apply for and successfully complete an educational course, as provided in this rule, as a prerequisite for certification; or
 - (b) An applicant who has successfully completed a coronal polishing course in another state which was approved by the board in the other state, which the Board consultant has determined as equivalent to the Board-approved course in Tennessee, is eligible to apply directly to the Board for certification. If a certification or permit was issued by the other state, verification of the certificate or permit must be received directly from that state. The information regarding content of the course and proof of completion must be sent directly from the course provider to the Board's administrative office; or
 - (c) Applicants who have successfully completed an ADA accredited dental assisting program which included coronal polishing in the curriculum are eligible to apply for the certification upon completion of the program. Within thirty (30) days of an applicant's completion of the program, the program director/instructor must submit a letter to the Board administrator verifying that coronal polishing was included in the curriculum and a written and clinical examination was passed by the applicant. Upon receipt of the letter from the program director/instructor and the application and fees, the certification for coronal polishing will be issued.
- (3) Retention of Certification - Certification for coronal polishing is only valid as long as the registered dental assistant has a current registration. If the registration expires or is retired, the certification is also considered expired or retired, and the dental assistant may not engage in coronal polishing until the registration is reinstated or reactivated.

(Rule 0460-04-.05, continued)

board. Once eligible for certification, the registered dental assistant shall not monitor nitrous oxide until certification has been issued by the Board.

- (4) Nitrous oxide monitoring certification shall be added to the registration of the registered dental assistant, if the registered dental assistant has successfully completed a Board-approved certification course and notification of completion has been submitted to the Board's Administrative Office by the course director on a form provided by the Board.
- (5) Registered dental assistants with nitrous oxide monitoring certification shall only monitor patients under the direct supervision of a licensed Tennessee dentist. This assistant shall not monitor more than one (1) patient at a time and shall physically remain with the patient at all times.
- (6) Registered dental assistants with nitrous oxide monitoring certification are not permitted to administer nitrous oxide. This assistant is only permitted to adjust the dosage or terminate the nitrous oxide at the specific direction and under the protocol of the supervising dentist or in cases of patient distress.
- (7) Registered dental assistants with nitrous oxide monitoring certification shall prominently display their current registration certificate, which is received upon registration and renewal, at their place of employment.
- (8) Certification in monitoring nitrous oxide is only valid as long as the registered dental assistant has a current registration. If the registration expires or is retired, the certification is also considered expired or retired and the dental assistant may not monitor nitrous oxide until the registration is reinstated or reactivated.
- (9) Application review and decisions required by this Rule shall be governed by 0460-01-.04.

Authority: T.C.A. §§ 4-5-202, 4-5-204, 63-5-105, 63-5-105(3), 63-5-105(4), 63-5-105(7), 63-5-108, 63-5-108(b) through 63-5-108(d), and 63-5-115. **Administrative History:** Original rule certified June 7, 1974. Repeal filed August 26, 1980; effective December 1, 1980. Amendment filed October 13, 1983; effective November 14, 1983. Repeal and new rule filed December 11, 1991; effective January 25, 1992. Amendment filed February 18, 2003; effective May 4, 2003. Amendment filed September 17, 2003; effective December 1, 2003. Amendment filed October 12, 2007; effective December 26, 2007.

0460-04-.06 REGISTRATION RENEWAL. All dental assistants issued registrations by the Board must renew those registrations to be able to legally continue in practice. Registration renewal is governed by the following:

- (1) Renewal application
 - (a) The due date for registration renewal is the last day of the month in which a registrant's birthday falls pursuant to the Division of Health Related Boards "birthdate renewal system" contained on the renewal certificate as the expiration date.
 - (b) Methods of Renewal
 1. Internet Renewals - Individuals may apply for renewal and pay the necessary fees via the Internet. The application to renew can be accessed at:

www.tennesseeanytime.org
 2. Paper Renewals - For individuals who have not renewed their registration online via the Internet, a renewal application form will be mailed to each individual registered by the Board to the last address provided to the Board. Failure to

(Rule 0460-04-.06, continued)

receive such notification does not relieve the registrant from the responsibility of meeting all requirements for renewal.

- (c) A registration issued pursuant to these rules is renewable by the expiration date. To be eligible for renewal an individual must submit to the Division of Health Related Boards on or before the expiration date the following:
 - 1. A completed renewal application form.
 - 2. The renewal and state regulatory fees as provided in Rule 0460-01-.02.
 - 3. Proof of successful completion of the Tennessee Board of Dentistry Ethics and Jurisprudence examination.
 - (d) Registrants who fail to comply with the renewal rules or notification received by them concerning failure to timely renew shall have their registrations processed pursuant to rule 1200-10-1-.10.
- (2) Reinstatement of an Expired Registration - Reinstatement of a registration that has expired may be accomplished upon meeting the following conditions:
- (a) Payment of all past due renewal fees, state regulatory fees and the reinstatement fee as established in rule 0460-01-.02; and
 - (b) Provide documentation of successfully completing continuing education requirements for the entire time the registration was expired, pursuant to Rule 0460-01-.05; and
 - (c) Submit proof of successful completion of the Tennessee Board of Dentistry Ethics and Jurisprudence examination.
 - (d)(e) Any registrant who fails to renew registration prior to the expiration of the second (2nd) year after which renewal is due may be required to meet other conditions as the Board may deem necessary to protect the public.
- (3) Anyone submitting a renewal form, reinstatement/reactivation application, or letter which is found to be untrue may be subject to disciplinary action as provided in T.C.A. § 63-5-124.
- (4) Renewal issuance decisions pursuant to this rule may be made administratively, upon review by the Board.
- (5) Application review and decisions required by this rule shall be governed by rule 0460-01-.04.

Authority: T.C.A. §§ 4-5-202, 4-5-204, 63-1-107, 63-1-108, 63-5-105, 63-5-105(7), 63-5-107, 63-5-108, 63-5-115, 63-5-117, 63-5-124, and 63-5-129. **Administrative History:** Original rule certified June 7, 1974. Repeal filed August 26, 1980; effective December 1, 1980. New rule filed December 11, 1991; effective January 25, 1992. Amendment filed February 12, 1996; effective April 27, 1996. Amendment filed April 10, 2001; effective June 24, 2001. Amendment filed August 21, 2002; effective November 4, 2002. Amendment filed August 18, 2003; effective November 1, 2003.

0460-04-.07 REGISTRATION RETIREMENT AND REACTIVATION.

- (1) Registrants who wish to retain their registration but not actively practice may avoid compliance with the registration renewal process, continuing education and CPR requirements by doing the following:

(Rule 0460-04-.07, continued)

- (a) Obtain from, complete and submit to the Board Administrative Office an affidavit of retirement form.
 - (b) Submit any documentation which may be required by the form to the Board Administrative Office.
- (2) Any registrant whose registration has been retired may reenter active practice by doing the following:
- (a) Submit a written request for reactivation to the Board Administrative Office; and
 - (b) Pay the registration renewal fee and state regulatory fee as provided in rule 0460-01-.02 (3). If retirement was pursuant to rule 0460-04-.06 (5) and reactivation was requested prior to the expiration of one (1) year from the date of retirement, the Board may require payment of the late renewal fee and past due renewal and state regulatory fees as provided in rule 0460-01-.02 (3).
 - (c) If requested, after review by the Board, a designated Board member, or the Board consultant, appear before the Board, a designated Board member, or the Board consultant, for an interview regarding continued competence in the event of retirement in excess of two (2) years.
 - (d) Comply with the continuing education provisions of rule 0460-01-.05 (6) applicable to reactivation of retired registrations.
 - (e) Submit proof of successful completion of the Tennessee Board of Dentistry Ethics and Jurisprudence examination.
- (3) Application review and decisions required by this rule shall be governed by rule 0460-01-.04.

Authority: T.C.A. §§ 4-5-202, 4-5-204, 63-5-105, 63-5-107, 63-5-117, and 63-5-129. **Administrative History:** Original rule certified June 7, 1974. Repeal and new rule filed December 11, 1991; effective January 25, 1992. Amendment filed March 20, 1996; effective June 3, 1996. Amendment filed August 21, 2002; effective November 4, 2002. Amendment filed August 4, 2009; effective November 2, 2009.

0460-04-.08 SCOPE OF PRACTICE.

- (1) A lawfully licensed and duly registered dentist may delegate to dental assistants those procedures for which they have received adequate training and for which the dentist exercises direct supervision and full responsibility, except as follows:
 - (a) Those procedures which require professional judgment and skill of a dentist as defined in the Dental Practice Act or rules of the Board.
 - (b) Those clinical procedures which are primarily concerned with the practice of dentistry or dental hygiene and which are allocated by the Dental Practice Act or Rules of the Tennessee Board of Dentistry specifically and solely to licensed dentists and/or licensed dental hygienists.
- (2) Registered dental assistants, with additional Board-approved training, may, under the direct supervision of a licensed dentist perform the following procedures:
 - (a) Coronal polishing, pursuant to Rule 0460-04-.04; and
 - (b) Monitoring nitrous oxide, pursuant to Rule 0460-04-.05; and

* 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)
Charles E. Holt, Jr.	X				
Katherine N. Hall	X				
Mary R. Warner	X				
Nadim J. Jubran	X				
Ernest J. DeWald	X				
Mary Ellen Vaughn	X				
Airica Brooke Puckett	X				
Randall P. Prince	X				
Stephen J. Maroda, Jr.	X				
Bettye Lynn Richert				X	
Dan T. Meadows	X				

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the Board of Dentistry (board/commission/ other authority) on 06/19/2014 (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: 04/10/14 (mm/dd/yy)

Rulemaking Hearing(s) Conducted on: (add more dates). 06/19/14 (mm/dd/yy)

Date: 8/12/15

Signature: Jennifer Z. Putnam

Name of Officer: Jennifer Putnam

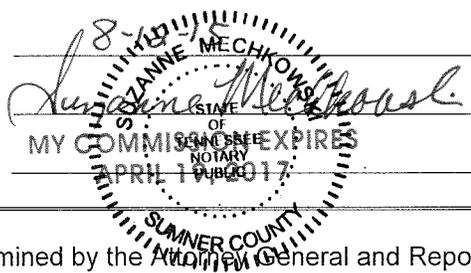
Assistant General Counsel

Title of Officer: Department of Health

Subscribed and sworn to before me on: _____

Notary Public Signature: [Signature]

My commission expires on: APRIL 1 2017



All rulemaking hearing rules provided for herein have been examined by the Attorney General and Reporter of the State of Tennessee and are approved as to legality pursuant to the provisions of the Administrative Procedures Act, Tennessee Code Annotated, Title 4, Chapter 5.

Herbert H. Slatyer III
 Herbert H. Slatyer III
 Attorney General and Reporter
8/20/2015
 Date

Department of State Use Only

Filed with the Department of State on: 10/25/17

Effective on: 11/23/19

Tre Hargett

Tre Hargett
Secretary of State

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FILIBIDATIONS

G.O.C. STAFF RULE ABSTRACT

DEPARTMENT: State Board of Education

DIVISION:

SUBJECT: Employment Standards

STATUTORY AUTHORITY: Tennessee Code Annotated, Section 49-1-302

EFFECTIVE DATES: January 14, 2018 through June 30, 2018

FISCAL IMPACT: N/A

STAFF RULE ABSTRACT: Rule 0520-01-02-.03 - Employment Standards describes standards for Tennessee educators. These changes make revisions to employment standards for teachers of computer technology, career and technical education teachers, and career and technical education supervisors. They also clarify that a supervisor of instruction must have the instructional leader license-professional. Moreover, the changes add requirements for school nutrition program directors based on newly released federal employment standards for school nutrition program directors.

Regulatory Flexibility Addendum

Pursuant to T.C.A. §§ 4-5-401 through 4-5-404, prior to initiating the rule making process as described in T.C.A. § 4-5-202(a)(3) and T.C.A. § 4-5-202(a), all agencies shall conduct a review of whether a proposed rule or rule affects small businesses.

(If applicable, insert Regulatory Flexibility Addendum here)

Not applicable.

Impact on Local Governments

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

These rules will have no 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;

Rule 0520-01-02-.03 - Employment Standards describes standards for Tennessee educators. These changes make revisions to employment standards for teachers of computer technology, career and technical education teachers, and career and technical education supervisors. They also clarify that a supervisor of instruction must have the instructional leader license-professional. Moreover, the changes add requirements for school nutrition program directors based on newly released federal employment standards for school nutrition program directors.

- (B)** A citation to and brief description of any federal law or regulation or any state law or regulation mandating promulgation of such rule or establishing guidelines relevant thereto;

Pursuant to T.C.A. § 49-1-302, it is the duty of the State Board, and it has the power to develop and adopt policies governing the qualifications, requirements, and standards of and provide the licenses and certificates for all public educators.

- (C)** Identification of persons, organizations, corporations or governmental entities most directly affected by this rule, and whether those persons, organizations, corporations or governmental entities urge adoption or rejection of this rule;

This rule most directly affects local boards of education and educators who have neither urged adoption nor rejection of this rule. The State Board supports the rule change and has not received any objection from the local boards of education and/or educators.

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

N/A

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

Elizabeth Taylor
Elizabeth.Taylor@tn.gov

Nathan James
Nathan.James@tn.gov

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

Elizabeth Taylor
Elizabeth.Taylor@tn.gov

Nathan James
Nathan.James@tn.gov

(H) Office address, telephone number, and email address of the agency representative or representatives who will explain the rule at a scheduled meeting of the committees; and

Elizabeth Taylor
1st Floor, Andrew Johnson Tower
710 James Robertson Parkway
Nashville, TN 37243
(615)-253-5707
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Nathan James
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(615)-532-3528

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

N/A

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Email: publications.information@tn.gov

For Department of State Use Only

Sequence Number: 10-16-17
Rule ID(s): 4624
File Date: 10-16-17
Effective Date: 01-14-18

Proposed Rule(s) Filing Form

Proposed rules are submitted pursuant to Tenn. Code Ann. §§ 4-5-202, 4-5-207, and 4-5-229 in lieu of a rulemaking hearing. It is the intent of the Agency to promulgate these rules without a rulemaking hearing unless a petition requesting such hearing is filed within ninety (90) days of the filing of the proposed rule with the Secretary of State. To be effective, the petition must be filed with the Agency and be signed by ten (10) persons who will be affected by the amendments, or submitted by a municipality which will be affected by the amendments, or an association of ten (10) or more members, or any standing committee of the General Assembly. The agency shall forward such petition to the Secretary of State.

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

Agency/Board/Commission:	State Board of Education
Division:	
Contact Person:	Elizabeth Taylor
Address:	710 James Robertson Parkway Andrew Johnson Tower 1 st Floor Nashville, TN
Zip:	37243
Phone:	615-253-5707
Email:	Elizabeth.Taylor@tn.gov

Revision Type (check all that apply):

- Amendment
 New
 Repeal

Rule(s) Revised (ALL chapters and rules contained in filing must be listed here. If needed, copy and paste additional tables to accommodate multiple chapters. Please enter only ONE Rule Number/Rule Title per row)

Chapter Number	Chapter Title
0520-01-02	Administrative Rules and Regulations
Rule Number	Rule Title
0520-01-02-.03	Employment Standards

RULES
OF
THE TENNESSEE DEPARTMENT OF EDUCATION THE STATE BOARD OF EDUCATION
CHAPTER 0520-01-02 ADMINISTRATIVE RULES AND REGULATIONS

0520-01-02-.03- EMPLOYMENT STANDARDS.

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

~~(2) A teacher may teach up to two (2) sections of one (1) course outside the area of endorsement. For a teacher to teach more than one (1) course or more than two (2) sections of one (1) course outside the area of endorsement, an employment standard waiver must be requested and approved. Teachers assigned two (2) or more sections of a course outside the area of endorsement before June 30, 1976 may continue to teach those courses until a new assignment is made by the local school officials.~~

~~(2) A classroom teacher with an endorsement in elementary education or early childhood education is eligible to teach any subject, including art, music, and physical education in the grades covered by the endorsement as part of the teacher's regular classroom assignment.~~

~~(3) Districts and schools may exercise the following endorsement flexibility for educators:~~

~~(a) A classroom teacher with an endorsement in elementary education or early childhood education is eligible to teach any subject, including art, music, and physical education in the grades covered by the endorsement as part of the teacher's regular classroom assignment.~~

~~(b) A teacher with a professional license may teach Algebra I at any grade level if they have:~~

~~1. An endorsement to teach at least through grade eight (8);~~

~~2. A passing score on the middle school math PRAXIS; and~~

~~3. Successful completion of a state-approved training OR a passing score on a supplemental test in the content area approved for this purpose by the department of education.~~

~~The department of education may provide additional endorsement flexibility as appropriate.~~

~~(c)~~

~~However, a teacher with a professional license pursuant to State Board Rule 0520-02-04-01(2)(c), may teach Algebra I at any grade level if they have:~~

~~(a) An endorsement to teach through at least grade eight (8), and~~

~~(b) A passing score on the middle school math PRAXIS, and~~

~~1. Successful completion of a state-approved training, or~~

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

- ~~2. A passing score on a supplemental test in the content area approved for this purpose by the State Department of Education, or~~
- ~~3. A one (1) year, two (2) year, or three (3) year Tennessee Value-Added Assessment System (TVAAS) score of Level five (5) in Algebra I in the 2011-12, 2012-13, or 2013-14 school years.~~
- (3) A teacher in grades ~~K~~kindergarten through ~~eight (8)~~ who teaches art, music, or physical education ~~for~~ the major portion of the day shall be endorsed in art, music, or physical education respectively. However, a teacher endorsed in elementary education who was assigned to teach music, art, or physical education ~~for~~ the major portion of the day during the 1990-91 school year may continue to teach the specific course until such time as a new assignment is made by the local school officials.
- ~~(4)~~
- ~~(4) A teacher with a license endorsed in a subject 7-12 may teach any subject in grade six covered by the endorsement.~~
- (5) Principals.
- (a) ~~Effective September 15, 2009, 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 or be enrolled in a State Board approved instructional leadership preparation program.~~
- (b) ~~A principal shall hold one of the following endorsements: beginning administrator, professional administrator, administration/supervision, or principal instructional leader or professional administrator license.~~
- ~~(c) Individuals employed for the first time as a principal beginning July 1, 1994, shall hold an appropriate endorsement and shall meet the requirements for test/assessment specified by the State Board of Education.~~
- ~~(d) Individuals employed for the first time as a principal beginning July 1, 1994, shall be employed with the beginning administrator, administration/supervision or principal endorsements for a maximum of three years; after three years, the principal must be recommended for and attain the professional administrator endorsement for continued employment as a principal. In the event that a candidate changes employment prior to obtaining the professional administrator endorsement, the candidate may be employed again as a beginning principal prior to obtaining the professional administrator endorsement.~~
- ~~(e)(c) A principal, with the approval of the superintendent, shall establish and implement an annual plan for personal professional development in accordance with guidelines established by the State Board of Education.~~
- ~~(f) A principal of a school with less than 225 students shall not be required to meet the requirements of (a), (b), or (c).~~
- ~~(d)~~
- ~~(g) A principal holding an endorsement in administration/supervision, supervisor of instruction, or principal on August 31, 1994, shall not be required to meet the requirements of (b) or (c).~~
- (6) Teaching Personnel in Gifted Education

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

- (a) A classroom teacher in special or general education providing direct instruction to students identified by state criteria as intellectually gifted students shall meet the following employment standards:
1. The teacher shall be endorsed in the appropriate general education area or must hold the appropriate special education endorsement; and
 2. The teacher shall meet one of the following standards:
 - (i) The teacher shall work in consultation with a teacher who meets the standards for consulting teachers listed in (b); or
 - (ii) The teacher shall have completed six (6) semester hours of college or university course work or the equivalent contact hours in teaching gifted students approved by the Department of Education; or
 - (iii) The teacher shall hold an endorsement in gifted education.
- (b) A consulting teacher in special or general education who works with other teachers or who teaches classes especially designed for gifted students in grades pre-kindergarten through twelve (12) shall meet the following employment standards:
- (b)
1. The consulting teacher shall be endorsed in the appropriate general education area or must hold the appropriate special education endorsement; and
 2. The consulting teacher shall meet one of the following standards:
 - (i) The consulting teacher shall have completed six (6) semester hours of college or university coursework or the equivalent contact hours in teaching gifted students approved by the Department of Education; or
 - (ii) The consulting teacher shall hold an endorsement in gifted education.
- (c) An individual who serves as a gifted education coordinator in special or general education shall meet one of the following employment standards:
1. The individual shall hold an educator license with an endorsement in gifted education; or
 2. The individual shall hold an educator license and shall have completed six (6) semester hours of college or university coursework or the equivalent contact hours in teaching gifted students approved by the Department of Education; or
 3. The individual shall hold a license endorsed in one of the following, beginning administrator, professional administrator, administration/supervision or supervisor of instruction, instructional leader or professional administrator license.
- (d) A classroom teacher who was endorsed in special education prior to September 1, 1989 and who served gifted students prior to July 1, 1988, may continue to teach eligible intellectually gifted students, provided that they have completed an in-service training program approved by the Department of Education.
- (7) Teachers of Computer Technology, Grades 9-12.

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

- (a) A teacher of personal computing, computer productivity applications, and interactive multimedia design shall have a valid Tennessee teacher license with an endorsement in grades six (6) through twelve (6-12) and/or seven (7) through twelve (7-12) and shall have completed the equivalent of six (6) semester hours of computer course work or have the appropriate endorsement.
 - ~~(b) A teacher of BASIC and adventures in computing shall have a valid Tennessee teacher license with an endorsement grades 7-12 and shall have completed the equivalent of six semester hours of computer course work including at least one programming language.~~
 - ~~(c)~~(b) A teacher of programming languages and advanced placement computer science shall have a valid Tennessee teacher license with an endorsement grades six (6) through twelve (6-12) and seven (7) through twelve (7-12) and shall have completed the equivalent of twelve (12) semester hours of computer course work including six (6) semester hours of programming.
- (8) Career and Technical Education.
- (a) A teacher of agricultural education shall hold a valid Tennessee teacher license with appropriate endorsement and shall have appropriate work experience.
 - ~~(b) A teacher of marketing education shall hold a valid Tennessee teacher license with appropriate endorsement~~
(b) ~~and shall have two (2) years of appropriate experience in marketing education.~~
 - (c) A teacher of health science education shall have completed one (1) year of successful employment experience, obtained through full-time or part-time status, within the past five (5) years in a related health occupation prior to teaching.
 - (d) Other occupational educators shall be a high school graduate or higher. The teacher shall have a minimum of one (1) to five (5) years of appropriate and current work experience in the field for which application is made and based on the respective requirements of the endorsement. A combination of career and technical education at the postsecondary level from a state approved institution, or other accredited public or private institution, may also be evaluated. The amount of credit awarded for work experience through postsecondary education shall depend on the endorsement and related industry.
- (9) Other Instructional and Related Personnel.
- (a) A school counselor shall hold the appropriate license and endorsement for the grade levels assigned.
 - (b) A school psychologist shall hold a valid license with the school psychologist endorsement.
 - (c) A school social worker shall hold a license with the school social work endorsement.
 - ~~(d) A supervisor of instruction shall hold a valid Tennessee license with one of the following endorsements endorsed in: beginning administrator, professional administrator, administrator/supervisor, or supervisor of instruction. instructional leader or professional administrator license.~~
 - ~~(d)~~

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

~~1. Beginning July 1, 1994, individuals employed for the first time as a supervisor of instruction shall hold an appropriate endorsement and shall meet the requirements for test/assessment specified by the State Board of Education.~~

1. Beginning July 1, 1994, Individuals employed for the first time as a supervisor of instruction shall be employed with the beginning administrator, administrator/supervisor, or supervisor of instruction instructional leader or professional administrator license endorsement for a maximum of three (3) years. After three (3) years, for continued employment as a supervisor of instruction, the supervisor of instruction must be recommended for and attain the professional administrator endorsement. In the event that the candidate changes employment prior to obtaining the professional administrator endorsement, the candidate may be employed again as a beginning supervisor of instruction prior to obtaining the professional administrator endorsement.

2.1. Any person who performs the duties of a supervisor of instruction, regardless of the title of such person's position, must have the endorsement or license required of a supervisor of instruction.

3.2. Persons having an endorsement as a supervisor of instruction as of August 31, 1994, shall be issued a professional administrator license and shall not be required to meet the requirements of 1 or 2.

(e) A supervisor of special education shall:

1. Hold a valid Tennessee license with one of the following endorsements: beginning administrator, administrator/supervisor, or supervisor of instruction instructional leader or professional administrator license and shall have three (3) years of experience with programs for children with disabilities; or

2. Hold a master's degree and a valid Tennessee teacher license with endorsement in at least one (1) area of special education and shall have three (3) years of experience with programs for children with disabilities.

(f) Any person who performs the duties of a supervisor of instruction, regardless of the title of such person's position, must have the endorsement or license required of a supervisor of instruction.

(g) Persons having an endorsement as supervisor of instruction as of August 31, 1994, shall be issued a professional administrator license.

~~(h) Compensatory Education Personnel (Chapter 1):~~

~~1. A project director or supervisor of the subject areas and/or program areas shall hold endorsement as supervisor of instruction, administration/supervision or superintendent.~~

~~1. A Chapter I evaluator shall hold a valid Tennessee teacher license or shall meet employment standards as a school psychologist or school counselor.~~

~~1. Other professional personnel employed in Chapter I programs not otherwise covered by licensure or employment standards shall possess a valid Tennessee teacher license.~~

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

(i)(h) Persons holding career and technical education supervisory positions, including local directors, supervisors, coordinator specialists, assistant principals for career and technical education, and center administrators, shall have one (1) of the following sets of qualifications:

1. A bachelor's degree in career and technical education from an accredited four (4)- year college or university, three (3) years of teaching experience in an approved career and technical education program and two (2) years of appropriate employment experience in a recognized occupation, and completion of (by July 1, 2008 or within a three (3)-year period from the date of employment) the required matrix of career and technical core competencies for professional development;; or
2. A bachelor's degree with a career and technical education endorsement, three (3) years teaching experience, two (2) years of appropriate work experience, and completion of (by July 1, 2008 or within a three (3)-year period from the date of employment) the required matrix of career and technical core competencies for professional development; or
3. An endorsement as a PreK-12 administrator or secondary supervisor or principal and completion of (by July 1, 2008 or within a three (3)-year period from the date of employment) the required matrix of career and technical core competencies for professional development.

(j)(i) Educational assistants shall have not less than a high school education or an equivalency high school diploma; those who have completed one (1) or more years of college shall be given preference in employment.

~~(k)(j) A director of schools superintendent appointed by the local board of education elected by the general public shall only be required to have a baccalaureate degree. Any elected superintendent shall meet all qualifications set forth in these rules and regulations, which include at least a master's degree with emphasis in administration supervision and related courses.~~

(h)(k) All individuals employed by local school systems to provide educational interpreting for students who are deaf, deaf-blind, or hard of hearing must hold a valid Tennessee School Services Personnel license with the appropriate endorsement or must meet the following employment standards:

1. Non-licensed educational interpreters employed by a local school system prior to January 2021, shall satisfy the following requirements by January 1, 2021:
 - (i) Obtain a passing score on the written portion of the Educational Interpreter Performance Assessment (EIPA); and
 - (ii) Obtain a minimum score of 3.0 on the performance assessment portion of the EIPA.
2. All non-licensed educational interpreters employed by a local schools system on January 1, 2021, or after, shall satisfy the following requirements:
 - (i) Hold at a minimum an associate's degree;
 - (ii) Obtain a passing score on the written portion of the Educational

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

Interpreter Performance Assessment (EIPA); and

- (iii) Obtain a minimum score of 3.0 on the performance assessment portion of the EIPA.

Compensation of non-licensed individuals providing educational interpreting shall be determined by the local school system and shall take into consideration the level of preparation, training, and work requirements.

~~(m)(l)~~ An audiologist shall hold a license with audiologist endorsement.

~~(n)(m)~~ A school speech-language pathologist shall hold a school service personnel license with the school speech language pathologist endorsement, pursuant to ~~0520-02-04-12(2)~~.

~~(o)(n)~~ A school speech-language teacher hired by a local school system to work under the direction of a school speech-language pathologist shall hold a school speech-language teacher license (A or B), a teacher license with a school speech-language teacher endorsement or a teacher license with an endorsement 068 or 664, pursuant to ~~0520-02-03-01(20)~~.

(10) Personal Finance.

(a) A teacher of personal finance shall hold a valid secondary or K-12 Tennessee teacher license; and

1. Complete a minimum of fourteen (14) clock hours of training provided by the State Department of Education on use of the state adopted Personal Finance curriculum; or
2. Complete fourteen (14) clock hours of training on Personal Finance provided by State Department of Education-approved organizations and/or institutions of higher education.

(b) Teachers licensed to teach Economics, Business, Marketing, and Family and Consumer Sciences meet these employment standards and may be exempted from the training requirements of subparagraph (a).

(11) School Nutrition Program Directors.

(a) School nutrition program directors hired on or after July 1, 2015, shall complete at least eight (8) hours of food safety training either not more than five (5) years prior to the employee's start date or within thirty (30) days of the employee's start date and shall meet the following criteria:

1. School nutrition program directors employed by LEAs with a student enrollment of 500 to 2,499 must meet one (1) of the following criteria:

(i) Bachelor's degree or equivalent educational experience with academic major in food and nutrition, food service management, dietetics, family and consumer sciences, nutrition education, culinary arts, business, or a related field;

(ii) Bachelor's degree in any academic major and a School Nutrition

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

Association Level 3 Certificate in School Nutrition;

- (iii) A valid Tennessee teacher license with a school food service supervisor endorsement;
 - (iv) Bachelor's degree in any academic major and at least one (1) year of relevant school nutrition experience;
 - (v) Associate's degree or equivalent educational experience, with academic major in food and nutrition, food service management, dietetics, family and consumer sciences, nutrition education, culinary arts, business, or a related field and at least one (1) year of relevant school nutrition programs experience; or
 - (vi) High school diploma, or equivalency diploma, and at least three (3) years of relevant experience in school nutrition programs.
2. School nutrition program directors employed by LEAs with a student enrollment of 2,500 to 9,999 must meet one (1) of the following criteria:
- (i) Bachelor's degree or equivalent educational experience with academic major in food and nutrition, food service management, dietetics, family and consumer sciences, nutrition education, culinary arts, business, or a related field;
 - (ii) Bachelor's degree in any academic major and a School Nutrition Association Level 3 Certificate in School Nutrition;
 - (iii) A valid Tennessee teacher license with a school food service supervisor endorsement;
 - (iv) Bachelor's degree in any academic major and at least two (2) years of relevant school nutrition experience; or
 - (v) Associate's degree or equivalent educational experience, with academic major in food and nutrition, food service management, dietetics, family and consumer sciences, nutrition education, culinary arts, business, or a related field and at least two (2) years of relevant school nutrition programs experience.
3. School nutrition program directors employed by LEAs with a student enrollment of more than 10,000 must meet one (1) of the following criteria:
- (i) Bachelor's degree or equivalent educational experience with academic major in food and nutrition, food service management, dietetics, family and consumer sciences, nutrition education, culinary arts, business, or a related field;
 - (ii) Bachelor's degree in any academic major and a School Nutrition Association Level 3 Certificate in School Nutrition;
 - (iii) A valid Tennessee teacher license with a school food service supervisor endorsement; or

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

- (iv) Bachelor's degree in any academic major and at least five (5) years of experience in management of school nutrition programs.

(b)

Authority: T.C.A. §§ 49-1-302, 49-2-301, 49-5-108; 49-6-6006, and Section 86 of Chapter 535 of the Public Acts of 1992. **Administrative History:** Original rule certified June 10, 1974. Amendment filed July 10, 1974; effective July 10, 1974. Amendment filed June 30, 1975; effective July 30, 1975. Amendment filed July 15, 1976; effective August 15, 1976. Amendment filed February 28, 1978; effective March 30, 1978. Amendment filed January 9, 1979; effective February 23, 1979. Amendment and new rule filed October 15, 1979; effective January 8, 1980. Amendment filed November 13, 1981; effective March 16, 1982. Amendment filed June 4, 1982; effective September 30, 1982. Amendment filed August 17, 1983; effective November 14, 1983. Amendment filed August 20, 1984; effective November 13, 1984. Amendment filed September 26, 1985; effective December 14, 1985. Amendment filed May 8, 1986; effective June 27, 1986. Amendment filed September 20, 1987; effective December 22, 1987. Amendment filed October 18, 1988; effective January 29, 1989. Amendment filed November 9, 1989; effective February 28, 1990. Amendment filed July 11, 1990; effective October 29, 1990. Repeal and new rule filed March 16, 1992; effective June 29, 1992. Amendment filed May 12, 1992; effective August 29, 1992. Amendment filed September 1, 1992; effective December 29, 1992. Amendment filed August 10, 1993; effective December 29, 1993. Amendment filed November 22, 1993; effective March 30, 1994. Amendment filed January 21, 1994; effective May 31, 1994. Amendment filed March 31, 1994; effective June 14, 1994. Amended by Public Chapter No. 957, Acts of 1994; effective May 10, 1994. (See Attorney General opinion Opinion No. 094-080). Amendment filed January 31, 1995; effective May 31, 1995. Amendment filed May 31, 1996; effective September 27, 1996. Amendment filed October 17, 1997; effective February 27, 1998. Amendment filed May 28, 1999; effective September 28, 1999. Amendment filed July 31, 2000; effective November 28, 2000. Amendment filed March 1, 2005; effective July 29, 2005. Amendments filed May 19, 2005; effective September 28, 2005. Amendment filed June 15, 2005; effective October 28, 2005. Amendment filed March 23, 2007; effective July 27, 2007. Amendments filed September 6, 2007; effective January 28, 2008. Amendment filed May 30, 2008; effective September 26, 2008. Amendment filed July 17, 2009; effective December 29, 2009. Amendments filed February 6, 2013; effective July 29, 2013. Amendments filed September 6, 2013; effective February 28, 2014. Amendment filed May 8, 2014; effective October 29, 2014. Amendment filed May 26, 2015; effective August 24, 2015. Amendment filed September 22, 2015; effective December 21, 2015.

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

Board Member	Aye	No	Abstain	Absent	Signature (if required)
Chancey	X				
Cook	X				
Edwards	X				
Hartgrove	X				
Johnson	X				
Pearre				X	
Roberts				X	
Rolston	X				
Tucker	X				
Troutt				X	

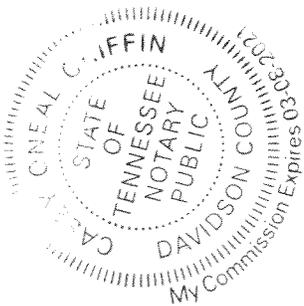
I certify that this is an accurate and complete copy of proposed rules, lawfully promulgated and adopted by the Tennessee State Board of Education on 10/14/2016, and is in compliance with the provisions of T.C.A. § 4-5-222. The Secretary of State is hereby instructed that, in the absence of a petition for proposed rules being filed under the conditions set out herein and in the locations described, he is to treat the proposed rules as being placed on file in his office as rules at the expiration of ninety (90) days of the filing of the proposed rule with the Secretary of State.

Date: September 27, 2017

Signature: _____

Name of Officer: Elizabeth Taylor

Title of Officer: General Counsel



Subscribed and sworn to before me on: _____

Notary Public Signature: _____

My commission expires on: _____

9/27/17
C. Neal C. Jiffin
3-30-21

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
10/5/2017
 Date

Department of State Use Only

Filed with the Department of State on: _____

Effective on: _____

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Tre Hargett by Elizabeth Taylor

Tre Hargett
 Secretary of State

G.O.C. STAFF RULE ABSTRACT

DEPARTMENT: State Board of Education

DIVISION:

SUBJECT: Educator Licensure

STATUTORY AUTHORITY: Tennessee Code Annotated, Section 49-5-108

EFFECTIVE DATES: January 14, 2018 through June 30, 2018

FISCAL IMPACT: This rule will not impact state and local government revenues or expenditures.

STAFF RULE ABSTRACT: This item is part of a series of items that modify renewal and advancement requirements for the instructional leader licenses and add language for individuals not primarily serving in Tennessee Academy for School Leaders (TASL)-mandated positions. Additionally, the revisions clarify the licensure requirements for educational interpreters.

Regulatory Flexibility Addendum

Pursuant to T.C.A. §§ 4-5-401 through 4-5-404, prior to initiating the rule making process as described in T.C.A. § 4-5-202(a)(3) and T.C.A. § 4-5-202(a), all agencies shall conduct a review of whether a proposed rule or rule affects small businesses.

Not Applicable

Impact on Local Governments

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

These rules will have no 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 item is part of a series of items that modify renewal and advancement requirements for the instructional leader licenses and add language for individuals not primarily serving in Tennessee Academy for School Leaders (TASL)-mandated positions. Additionally, the revisions clarify the licensure requirements for educational interpreters.

- (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. § 49-5-108 provides "the state board of education is authorized, empowered and directed to set up rules and regulations governing the issuance of licenses for supervisors, principals and public school teachers."

- (C) Identification of persons, organizations, corporations or governmental entities most directly affected by this rule, and whether those persons, organizations, corporations or governmental entities urge adoption or rejection of this rule;

This rule is likely to affect educators who have neither urged acceptance or rejection of this rule. The State Board urges acceptance of this rule.

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

This rule will not impact state and local government revenues or expenditures.

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

Elizabeth Taylor
Elizabeth.Taylor@tn.gov

Nathan James
Nathan.James@tn.gov

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

Elizabeth Taylor
Elizabeth.Taylor@tn.gov

Nathan James
Nathan.James@tn.gov

(H) Office address, telephone number, and email address of the agency representative or representatives who will explain the rule at a scheduled meeting of the committees; and

Elizabeth Taylor
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Nathan James
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710 James Robertson Parkway
Nashville, TN 37243
(615)-532-3528

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

N/A

**Department of State
Division of Publications**

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Nashville, TN 37243
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For Department of State Use Only

Sequence Number: 10-15-17
Rule ID(s): 6623
File Date: 10-16-17
Effective Date: 01-14-18

Proposed Rule(s) Filing Form

Proposed rules are submitted pursuant to T.C.A. §§ 4-5-202, 4-5-207 in lieu of a rulemaking hearing. It is the intent of the Agency to promulgate these rules without a rulemaking hearing unless a petition requesting such hearing is filed within sixty (60) days of the first day of the month subsequent to the filing of the proposed rule with the Secretary of State. To be effective, the petition must be filed with the Agency and be signed by twenty-five (25) persons who will be affected by the amendments, or submitted by a municipality which will be affected by the amendments, or an association of twenty-five (25) or more members, or any standing committee of the General Assembly. The agency shall forward such petition to the Secretary of State.

Agency/Board/Commission:	Tennessee State Board of Education
Division:	
Contact Person:	Elizabeth Taylor
Address:	710 James Robertson Pkwy 1 st floor
Zip:	37243
Phone:	615-253-5707
Email:	Elizabeth.Taylor@tn.gov

Revision Type (check all that apply):

- Amendment
 New
 Repeal

Rule(s) Revised (ALL chapters and rules contained in filing must be listed here. If needed, copy and paste additional tables to accommodate multiple chapters. Please enter only ONE Rule Number/Rule Title per row)

Chapter Number	Chapter Title
0520-02-03	Educator Licensure
Rule Number	Rule Title
0520-02-03-.03	Licensure, Instructional Leader
0520-02-03-.06	Out of State Applicants

Substance of Proposed Rule

**CHAPTER 0520-02-03
EDUCATOR LICENSURE**

0520-02-03-.03 Licensure, Instructional Leader.

- (1) General 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 ~~five~~three (3) - ~~year~~ (5) ~~(35)~~ 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-Beginning (ILL-B). Initial ~~five~~three (3) - ~~year~~ (3) ~~(35)~~ 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-Beginning is renewable.
 - (c) Instructional Leadership License-Professional (ILL-P). ~~Five~~Six (6) - ~~year~~ (65) instructional leader license issued to educators who have met licensure expectations for advancement from the ILL-B. The Instructional Leadership License-Professional is renewable.
 - (d) ~~Instructional Leadership License-Exemplary (ILL-E). Eight-year (8) instructional leader license issued to educators who have held an ILL-P or Professional Administrator License (PAL) for at least two (2) years and are eligible for the ILL-E as stipulated by State Board policy. The Instructional Leadership License-Exemplary is renewable.~~
- (3) License Advancement and Renewal.
 - (a) Instructional Leadership License-Aspiring (ILL-A). ~~At the end of the validity period of the initial ILL-A, if the educator has met licensure expectations, the individual may apply for the ILL license will be advanced to the ILL-B. At the end of the validity period of the initial ILL-A, if the educator has not met licensure expectations, the license will become inactive.~~
 - (b) Instructional Leadership License-Aspiring (ILL-B). ~~At the end of the validity period of the ILL-B, if the educator has met licensure expectations as defined in State Board policy, the individual may apply to license will be advanced to the ILL-P. If the educator has not met licensure expectations by the end of the first validity period of the license, the ILL-B may be renewed, if renewal expectations have been met once. If the educator has not met licensure expectations at the end of the second validity period to advance or renew the license, the license will become inactive.~~
 - (c) Instructional Leadership License-Professional (ILL-P). 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 become inactive.
 - (d) ~~Instructional Leadership License-Professional (ILL-E). At the end of the validity period of the ILL-E, 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 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 or ILL-E 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.

Authority: T.C.A. § 49-1-302.

0520-02-03-.06 Out of State Applicants.

(1) General Requirements.

- (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 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.
- (d) An applicant from a state other than Tennessee must apply directly to the Office of Educator Licensing.
- (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 license or endorsement which requires a Master's Degree or above as part of its requirements 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 practitioner license except those who have been certified by the National Board for Professional Teaching Standards who will be issued a professional license.
- (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 educator license may be advanced to the ILL-B.
- (b) Applicants meeting all requirements will be issued an ILL-B.

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

- (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.

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

Board Member	Aye	No	Abstain	Absent	Signature (if required)
Chancey	X				
Cook	X				
Edwards	X				
Ferguson	X				
Hartgrove	X				
Johnson	X				
Kim	X				
Rolston	X				
Tucker	X				
Troutt	X				

I certify that this is an accurate and complete copy of proposed rules, lawfully promulgated and adopted by the Tennessee State Board of Education (board/commission/other authority) on 01/27/2017 (date as mm/dd/yyyy), and is in compliance with the provisions of T.C.A. § 4-5-222. The Secretary of State is hereby instructed that, in the absence of a petition for proposed rules being filed under the conditions set out herein and in the locations described, he is to treat the proposed rules as being placed on file in his office as rules at the expiration of sixty (60) days of the first day of the month subsequent to the filing of the proposed rule with the Secretary of State.

Date: 9/27/17

Signature: [Signature]

Name of Officer: Elizabeth Taylor

Title of Officer: General Counsel

Subscribed and sworn to before me on: 9/27/17

Notary Public Signature: C. [Signature]

My commission expires on: 3-8-21



State Board of Education Rules
Chapter 0520-02-03 - Educator Licensure
Rule 0520-02-03-.03 - Licensure, Instructional Leader
Rule 0520-02-03-.06 - Out of State Applicants

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 Slatery, III
Attorney General and Reporter

10/5/2017 Date

Department of State Use Only

Filed with the Department of State on: 10-16-17

Effective on: 01-14-18

The Honorable Gregoire Hargett
Gregoire Hargett
Secretary of State

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PUBLICATIONS

G.O.C. STAFF RULE ABSTRACT

DEPARTMENT: State Board of Education

DIVISION:

SUBJECT: Adult Education

STATUTORY AUTHORITY: Tennessee Code Annotated, §§ 49-1-302(a)(4)(A), 49-1-302(a)(11), 49-2-203(b)(3), 49-6-409, and 49-6-501

EFFECTIVE DATES: January 14, 2018 through June 30, 2018

FISCAL IMPACT: This item would generate additional BEP funding for adult education programs that lead to a regular high school diploma.

STAFF RULE ABSTRACT: T.C.A. 49-6-409 provides the Department of Education with the authority to develop alternative methods for adult students to meet the requirements for course credit on a minimum number of contact hours. Currently, the Adult High School Rule provides that adult high schools' Full-Time Enrollment Average Daily Membership funding is based on a 4-hour school day rather than a 6.5-hour school day required for traditional K-12 schools.

These revisions update the funding calculation for Adult education programs that lead to a regular high school diploma so the Full-Time Enrollment Average Daily Membership status is based on a four-hour school day. Including adult education programs will ensure adult education programs have the resources necessary to serve students as they work toward a regular high school diploma.

Regulatory Flexibility Addendum

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

Not applicable

Impact on Local Governments

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

This rule will not have a projected impact on local governments.

Additional Information Required by Joint Government Operations Committee

All agencies, upon filing a rule, must also submit the following pursuant to T.C.A. § 4-5-226(i)(1).

- (A) A brief summary of the rule and a description of all relevant changes in previous regulations effectuated by such rule;

T.C.A. § 49-6-409 provides the Department of Education with the authority to develop alternative methods for adult students to meet the requirements for course credit on a minimum number of contact hours. Currently, the Adult High School Rule provides that adult high schools' Full-Time Enrollment Average Daily Membership funding is based on a 4-hour school day rather than a 6.5-hour school day required for traditional K-12 schools.

These revisions update the funding calculation for Adult education programs that lead to a regular high school diploma so the Full-Time Enrollment Average Daily Membership status is based on a four-hour school day. Including adult education programs will ensure adult education programs have the resources necessary to serve students as they work toward a regular high school diploma.

- (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(a)(4)(A) – The State Board of Education has the duty and power to “[d]evelop and adopt policies, formulas and guidelines for the fair and equitable distribution and use of public funds among public schools and for the funding of all requirements of state laws, rules, regulations and other required expenses, and to regulate expenditures of state appropriations for public education, kindergarten through grade twelve (K-12).”

T.C.A. § 49-1-302(a)(11) – The State Board of Education has the duty and power to “[a]pprove, disapprove or amend rules and regulations prepared by the commissioner to implement policies, standards or guidelines of the board in order to effectuate this section.”

T.C.A. § 49-2-203(b)(3) – Local boards of education have the power to “[e]stablish night schools and part-time schools whenever in the judgment of the board they may be necessary.”

T.C.A. § 49-6-409 – “The department of education shall develop alternative methods by which adult students attending adult high schools may meet requirements that condition the receipt of credit for a course on a minimum number of contact hours. The alternative methods may be in lieu of all or part of the required contact hours.”

T.C.A. § 49-6-501 - Local boards of education may establish night schools for students older than eleven and students suspended for misconduct. “In the apportionment of all state and county school funds, the average number in attendance each night shall form the basis of distribution, and such students shall be recorded as constituting a part of the public school attendance in the same manner as pupils who attend day schools.”

- (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;

Local Boards of Education with adult high schools and Adult Education Programs are most affected by this rule and have urged adoption of it. Moreover, the Department of Education and the State Board of Education urge adoption 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;

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;

This item would generate additional BEP funding for adult education programs that lead to a regular high school diploma.

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

Elizabeth Taylor
1st Floor, Andrew Johnson Tower
710 James Robertson Parkway
Nashville, TN 37243
(615)-253-5707
Elizabeth.Taylor@tn.gov

Nathan James
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710 James Robertson Parkway
Nashville, TN 37243
(615)-532-3528
Nathan.James@tn.gov

Elizabeth Fiveash
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710 James Robertson Parkway
Nashville, TN 37243
Elizabeth.Fiveash@tn.gov
(615) 253-1960

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

Elizabeth Taylor
1st Floor, Andrew Johnson Tower
710 James Robertson Parkway
Nashville, TN 37243
(615)-253-5707
Elizabeth.Taylor@tn.gov

Nathan James
1st Floor, Andrew Johnson Tower
710 James Robertson Parkway
Nashville, TN 37243
(615)-532-3528
Nathan.James@tn.gov

Elizabeth Fiveash
9th Floor, Andrew Johnson Tower
710 James Robertson Parkway
Nashville, TN 37243
Elizabeth.Fiveash@tn.gov
(615) 253-1960

(H) Office address, telephone number, and email address of the agency representative or representatives who will explain the rule at a scheduled meeting of the committees; and

Elizabeth Taylor
1st Floor, Andrew Johnson Tower
710 James Robertson Parkway
Nashville, TN 37243
(615)-253-5707
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Nathan James
1st Floor, Andrew Johnson Tower
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Nathan.James@tn.gov

Elizabeth Fiveash
9th Floor, Andrew Johnson Tower
710 James Robertson Parkway
Nashville, TN 37243
Elizabeth.Fiveash@tn.gov
(615) 253-1960

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

N/A

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Division of Publications**

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Nashville, TN 37243
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For Department of State Use Only

Sequence Number: 10-17-17
Rule ID(s): 6625
File Date: 10-16-17
Effective Date: 01-14-18

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 State Board of Education
Division:	
Contact Person:	Elizabeth Taylor
Address:	710 James Robertson Pkwy 1 st floor Nashville, TN
Zip:	37243
Phone:	615-253-5707
Email:	Elizabeth.Taylor@tn.gov

Revision Type (check all that apply):

- Amendment
 New
 Repeal

Rule(s) (ALL chapters and rules contained in filing must be listed here. If needed, copy and paste additional tables to accommodate multiple chapters. Please make sure that **ALL** new rule and repealed rule numbers are listed in the chart below. Please enter only **ONE** Rule Number/Rule Title per row)

Chapter Number	Chapter Title
0520-01-02	Administrative Rules and Regulations
Rule Number	Rule Title
0520-01-02-.05	Adult High Schools
0520-01-02-.06	Adult Education

RULES
OF
THE TENNESSEE DEPARTMENT OF EDUCATION
THE STATE BOARD OF EDUCATION

CHAPTER 0520-01-02 ADMINISTRATIVE RULES AND REGULATIONS

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0520-01-02-.05 ADULT HIGH SCHOOLS

- (1) Adult high schools may be established and maintained by local boards of education.
- (2) Before the Full-Time Enrollment Average Daily Membership (FTEADM) of any adult high school shall be counted in distribution of state funds, such schools shall meet the standards of an approved school and shall provide without fee all services, such as free textbooks, to which any student of grades nine 9 through twelve (9-12) is entitled under rules and regulations of the State Board of Education, state and federal statutes, and policies of local boards of education, with the exceptions listed below:
 - (a) The computation of the FTEADM of adult high schools shall be on the basis of a four (4) hour day and twenty (20) day school month. The FTEADM for any month shall be determined by dividing the total hours for which persons were enrolled during the month by eighty (80).
 - (b) While in attendance at an adult high school, students may earn all or a portion of the required credits necessary for graduation. Physical education, however, shall not be a requirement for graduation. Students are exempted from state-mandated tests.
 - (c) Adult high schools may operate twelve (12) months per year and provide flexible scheduling necessary for both day and night programs. All terms in a year round operation are considered regular terms.
 - (d) Adult high school students must be at least seventeen (17) years of age.
 - (e) Adult high school students may register for and earn as few as half (1/2) unit of credit per term.

Authority: ~~T.C.A. §§ 49-1-302(a)(4)(A); 49-1-302(a)(11); 49-2-203(b)(3); 49-6-409; and 49-6-501. T.C.A. §§ 49-1-302; 49-2-203(b)(3) and 49-6-501.~~ **Administrative History:** Original rule certified June 10, 1974. Amendment filed June 10, 1974; effective July 10, 1974. Amendment filed June 30, 1975; effective July 30, 1975. Amendment filed July 15, 1976; effective August 16, 1976. Amendment filed February 28, 1978; effective March 30, 1978. Amendment filed January 9, 1979; effective February 23, 1979. Amendment and new rule filed October 15, 1979; effective January 8, 1980. Amendment filed June 4, 1982; effective September 30, 1982. Amendment filed August 17, 1983; effective November 14, 1983. Amendment filed

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

August 20, 1984; effective November 13, 1984. Amendment filed September 26, 1985; effective December 14, 1985. Amendment filed May 8, 1986; effective June 27, 1986. Amendment filed September 20, 1987; effective December 22, 1987. Amendment filed October 18, 1988; effective January 29, 1989. Amendment filed November 9, 1989; effective February 28, 1990. Amendment filed July 11, 1990; effective October 29, 1990. Repeal and new rule filed March 16, 1992; effective June 29, 1992. Repeal and new rule filed December 19, 2011; effective May 30, 2012.

0520-01-02-.06 ADULT EDUCATION PROGRAMS

- (1) Adult education programs that lead to a regular high school diploma, grades 1-12 or any combination, if offered, shall be offered, organized, and operated as a part of the public school program and shall be under the control and management of the local board of education having jurisdiction, and shall comply with rules and regulations prescribed by the State and local boards of education.
- (2) The calculation of Full-Time Enrollment Average Daily Membership Adult (FTEADM) for education programs that lead to a regular high school diploma shall be on the basis of a four (4) hour day.
- (3) Before the Full-Time Enrollment Average Daily Membership (FTEADM) of any adult high education program that leads to a regular high school diploma shall be counted in distribution of state funds, such program shall comply with the rules and regulations prescribed by the state and local boards of education and shall provide without fee all services, such as free textbooks, to which any student of grades nine through twelve (9-12) is entitled under the rules and regulations of the State Board of Education, state and federal statutes, and policies of local boards of education.

Authority: T.C.A. §§ 49-1-302(a)(4)(A); 49-1-302(a)(11); 49-2-203(b)(3); 49-6-409; and 49-6-501. T.C.A. § 49-1-302. **Administrative History:** *Original rule certified June 10, 1974. Amendment filed June 10, 1974; effective July 10, 1974. Amendment filed June 30, 1975; effective July 30, 1975. Amendment filed July 15, 1976; effective August 16, 1976. Amendment filed February 28, 1978; effective March 30, 1978. Amendment filed January 9, 1979; effective February 23, 1979. Amendment and new rule filed October 15, 1979; effective January 8, 1980. Amendment filed November 13, 1982; effective March 16, 1982. Amendment filed June 4, 1982; effective September 30, 1982. Amendment filed August 17, 1983; effective November 14, 1983. Amendment filed June 28, 1984; effective September 11, 1984. Amendment filed August 20, 1984; effective November 13, 1984. Amendment filed September 26, 1986; effective December 14, 1985. Amendment filed May 8, 1986; effective June 27, 1986. Amendment filed September 20, 1987; effective December 22, 1987. Amendment filed October 18, 1988; effective January 29, 1989. Amendment filed November 9, 1989; effective February 28, 1990. Amendment filed July 11, 1990; effective October 29, 1990. Repeal and new rule filed March 16, 1992; effective June 29, 1992.*

State Board of Education Rules
Chapter 0520-01-02 – Administrative Rules and Regulations
Rule 0520-01-02-.05 - Adult High Schools
Rule 0520-01-02-.06 - Adult Education Programs

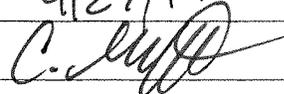
Date: September 27, 2017

Signature: 

Name of Officer: Elizabeth Taylor

Title of Officer: General Counsel

Subscribed and sworn to before me on: 9/27/17

Notary Public Signature: 

My commission expires on: 3-8-21



State Board of Education Rules
Chapter 0520-01-02 – Administrative Rules and Regulations
Rule 0520-01-02-.05 - Adult High Schools
Rule 0520-01-02-.06 - Adult Education Programs

Agency/Board/Commission: Tennessee State Board of Education

Rule Chapter Number(s): 0520-01-02-.05 and 0520-01-02-.06

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. Slatyer III
Herbert H. Slatyer III
Attorney General and Reporter
10/5/2017
Date

Department of State Use Only

Filed with the Department of State on: 10-16-17

Effective on: 01-14-18

Tre Hargett by hand pen memo am
Tre Hargett
Secretary of State

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G.O.C. STAFF RULE ABSTRACT

DEPARTMENT: State Board of Education

DIVISION:

SUBJECT: Minimum Requirements for the Approval of Public Schools

STATUTORY AUTHORITY: Tennessee Code Annotated, Section 49-1-302

EFFECTIVE DATES: January 23, 2018 through June 30, 2018

FISCAL IMPACT: There will be no substantial fiscal impact to state or local governments as a result of these revisions.

STAFF RULE ABSTRACT: Rule 0520-01-03- Minimum Requirements for the Approval of Public Schools describes the minimum rules and regulations that local education agencies must adhere to operate public schools. These revisions remove out of date content and aligning the rule to legislation passed during the 2016 General Assembly. Most notably, these changes update graduation requirements, add requirement for Response to Instruction and Intervention method, update language to align with Public Chapter 882, update requirements for public virtual schools, clarify the requirement for school board and district improvement plans, remove experimental courses and clarify the process for special courses, reduce the percentage that End of Course exams comprise a student's final grade to 5% for the 2016-17 school year, 10% for the 2017-18 school year and between 15% and 25% based on local Board policy in the 2018-19 school year and subsequent school year, and require LEAs to award credit to students that complete college level courses that align to graduation requirement.

Regulatory Flexibility Addendum

Pursuant to T.C.A. §§ 4-5-401 through 4-5-404, prior to initiating the rule making process as described in T.C.A. § 4-5-202(a)(3) and T.C.A. § 4-5-202(a), all agencies shall conduct a review of whether a proposed rule or rule affects small businesses.

Not applicable

Impact on Local Governments

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

Not applicable

Additional Information Required by Joint Government Operations Committee

All agencies, upon filing a rule, must also submit the following pursuant to T.C.A. § 4-5-226(i)(1).

- (A) A brief summary of the rule and a description of all relevant changes in previous regulations effectuated by such rule;

Rule 0520-01-03- Minimum Requirements for the Approval of Public Schools describes the minimum rules and regulations that local education agencies must adhere to operate public schools. These revisions remove out of date content and aligning the rule to legislation passed during the 2016 General Assembly. Most notably, these changes update graduation requirements, add requirement for Response to Instruction and Intervention method, update language to align with Public Chapter 882, update requirements for public virtual schools, clarify the requirement for school board and district improvement plans, remove experimental courses and clarify the process for special courses, reduce the percentage that End of Course exams comprise a student's final grade to 5% for the 2016-17 school year, 10% for the 2017-18 school year and between 15% and 25% based on local Board policy in the 2018-19 school year and subsequent school year, and require LEAs to award credit to students that complete college level courses that align to graduation requirement.

- (B) A citation to and brief description of any federal law or regulation or any state law or regulation mandating promulgation of such rule or establishing guidelines relevant thereto;

Pursuant to T.C.A. § 49-1-302, it is the duty of the State Board, and it has the power to develop and adopt policies for graduation requirements in kindergarten through grade twelve (K-12); review, approval or disapproval and classification of all public schools, kindergarten through grade twelve (K-12), or any combination of these grades.

- (C) Identification of persons, organizations, corporations or governmental entities most directly affected by this rule, and whether those persons, organizations, corporations or governmental entities urge adoption or rejection of this rule;

This rule most directly affects local boards of education and educators who have neither urged adoption nor rejection of this rule. The State Board supports the rule change.

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

None

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

There will be no substantial fiscal impact to state or local governments as a result of these revisions.

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

Elizabeth Taylor
Elizabeth.Taylor@tn.gov

Nathan James
Nathan.James@tn.gov

Elizabeth Fiveash
Elizabeth.Fiveash@tn.gov

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

Elizabeth Taylor
Elizabeth.Taylor@tn.gov

Nathan James
Nathan.James@tn.gov

Elizabeth Fiveash
Elizabeth.Fiveash@tn.gov

(H) Office address, telephone number, and email address of the agency representative or representatives who will explain the rule at a scheduled meeting of the committees; and

Elizabeth Taylor
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Assistant Commissioner Policy & Legislative Affairs, Tennessee Department of Education
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(I) Any additional information relevant to the rule proposed for continuation that the committee requests.

None

**Department of State
Division of Publications**

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Nashville, TN 37243
Phone: 615-741-2650
Email: publications.information@tn.gov

For Department of State Use Only

Sequence Number: 10-24-17
Rule ID(s): 6634
File Date: 10/25/17
Effective Date: 1/23/18

Proposed Rule(s) Filing Form

Proposed rules are submitted pursuant to Tenn. Code Ann. §§ 4-5-202, 4-5-207, and 4-5-229 in lieu of a rulemaking hearing. It is the intent of the Agency to promulgate these rules without a rulemaking hearing unless a petition requesting such hearing is filed within ninety (90) days of the filing of the proposed rule with the Secretary of State. To be effective, the petition must be filed with the Agency and be signed by ten (10) persons who will be affected by the amendments, or submitted by a municipality which will be affected by the amendments, or an association of ten (10) or more members, or any standing committee of the General Assembly. The agency shall forward such petition to the Secretary of State.

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

Agency/Board/Commission:	State Board of Education
Division:	
Contact Person:	Elizabeth Taylor
Address:	Andrew Johnson Tower, 1 st Floor 710 James Robertson Pkwy
Zip:	37243
Phone:	615-253-5707
Email:	Elizabeth.Taylor@tn.gov

Revision Type (check all that apply):

- Amendment
 New
 Repeal

Rule(s) Revised (ALL chapters and rules contained in filing must be listed here. If needed, copy and paste additional tables to accommodate multiple chapters. Please enter only ONE Rule Number/Rule Title per row)

Chapter Number	Chapter Title
0520-01-03	Minimum Requirements for the Approval of Public Schools
Rule Number	Rule Title
0520-01-03-.01	Approval of Schools
0520-01-03-.02	Organization of Schools, Requirement A
0520-01-03-.03	Administration of Schools, Requirement B
0520-01-03-.04	Evaluation of Licensed Personnel, Requirement C
0520-01-03-.05	State Academic Standards, Requirement D
0520-01-03-.06	Graduation, Requirement E
0520-01-03-.07	Library Information Center, Requirement F
0520-01-03-.08	Pupil Personnel Services, Requirement F
0520-01-03-.09	Special Education Program and Services, Requirement G
0520-01-03-.10	Waivers

**RULES
OF
THE STATE BOARD OF EDUCATION**

**CHAPTER 0520-01-03
MINIMUM REQUIREMENTS FOR THE APPROVAL
OF PUBLIC SCHOOLS**

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0520-01-03-.03	Administration of Schools, Requirement B	0520-01-03-.10	Waivers
0520-01-03-.04	Evaluation of Licensed Personnel; <u>Repealed</u>		
0520-01-03-.05	State Academic Standards Requirement C	0520-01-03-.11	
0520-01-03-.06	Graduation, Requirement D Requirement C <u>Repealed</u>		
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	Requirement E0520-01-03-.06	0520-01-03-.13	<u>Repealed</u> 0520-01-03-.13 <u>Repealed</u>
	Graduation, Requirement <u>DE</u>		
0520-01-03-.07	Library Information Center, Requirement <u>EF</u>		

0520-01-03-.01 APPROVAL OF SCHOOLS.

(1) Inspections of Schools.

The Department of Education shall make periodic inspections of the schools under its control. These inspections shall be made to determine the extent to which local school systems operate in compliance with State Board of Education rules and regulations and to verify the information received on reports from local school officials.

(2) Approval Classifications for School Systems.

Each school system shall be classified as approved or non-approved. School systems classified as non-approved by the Commissioner of Education shall receive a written explanation of the reasons for such classification and shall be afforded the opportunity to respond. The Commissioner's notification shall include a time by which corrective action shall be completed by the school system. If such corrective action is not taken within the time specified, the Commissioner shall impose sanctions on the school system which may include withholding part or all of state school funding to the non-approved system.

(3) Reports on School System Compliance with the Rules and Regulations.

The Department of Education shall make an annual report to the State Board of Education regarding each school system's compliance with the rules and regulations. The report shall include the approval status of each local school system, deficiencies identified by school in the approval process, an assessment of action needed to attain approval, local school system response, and sanctions imposed upon systems which do not comply.

(4) Reports on Waivers Granted by the Commissioner of Education.

The Department of Education shall make an annual report to the State Board of Education identifying waivers granted by the Commissioner of Education to local school systems. The report shall include, but shall not be limited to, the name of the system, the party requesting

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

the waiver, the specific rule to which the waiver applies, the rationale for the waiver as presented in the waiver request, the date the waiver was approved, and the number of times the system has received a waiver for the same rule.

(5) Internal Audit.

The Department of Education shall maintain an internal audit function which shall assist the Department in the inspection of schools.— Internal audit reports shall be presented to the Commissioner of Education and the State Board of Education.

Authority: T.C.A. § 49-1-302. **Administrative History:** Original rule certified June 10, 1974. Amendment filed July 15, 1976; effective August 16, 1976. Amendment filed February 28, 1978; effective March 30, 1978. Amendment filed October 1, 1985; effective October 31, 1985. Amendment filed May 28, 1986; effective June 27, 1986. Repeal and new rule filed March 16, 1992; effective June 29, 1992.

0520-01-03-.02 ORGANIZATION OF SCHOOLS, REQUIREMENT A.

(1) Length of School Day for Students.

(a) The minimum length of the school day for students shall be six and one-half (6½) hours.

(b) School systems may provide for professional development during the school day under one of the following options:

1. School systems.— School systems which elect to extend the school day to at least seven (7) hours for the purpose of meeting instructional time requirements missed due to dangerous or extreme weather conditions, may allocate a portion of that extension for the purpose of faculty professional development, M-team meetings, S-team meetings, parent/teacher conferences, or other similar meetings, as permitted in T.C.A. § 49-6-3004(e)(1), under the following conditions:

(i) Prior to the beginning of the school year, the school system shall designate how many days shall be allocated for dangerous or extreme weather conditions and how many shall be allocated for student dismissals for faculty professional development, M-team meetings, S-team meetings, parent/teacher conferences, or other similar meetings.— The total number of days shall not exceed thirteen (13).

(ii) Faculty professional development shall be consistent with standards and guidelines established by the State Board of Education.

(iii) School systems shall submit their plans for the allocation of excess time to the Commissioner of Education for approval.

2. Schools.— School systems may adopt policies providing for individual schools to have school days of at least seven (7) hours in order to accumulate instructional time to be used for periodic early student dismissals for the purpose of faculty professional development. The following conditions shall apply to school systems exercising this option:

(i) Early dismissals shall not exceed the equivalent of thirteen (13) days and shall not exceed three and one-half (3½) hours in any week.

(ii) Students shall attend school one hundred eighty (180) days.

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

(iii) Faculty professional development shall be consistent with standards and guidelines established by the State Board of Education.

(c) ~~Double sessions in any kindergarten program are permitted only if each session is at least four hours in length. The length of the kindergarten day shall not be less than four (4) hours. Double sessions in any kindergarten program may be permitted so long as both sessions meet all legal requirements for kindergarten programs.~~

(d) ~~If one individual teaches kindergarten more than one session per day, the total number of students taught by that teacher in one day shall not exceed the number otherwise permitted by T.C.A. § 49-1-104 for one kindergarten class.~~

Authority: T.C.A. §§ 49-1-302 and 49-6-3004. **Administrative History:** Original rule certified June 10, 1974. Amendment filed July 15, 1976; effective August 16, 1976. Amendment filed February 28, 1978; effective March 30, 1978. Amendment filed January 9, 1979; effective February 23, 1979. Amendment and new rule filed October 15, 1979; effective January 8, 1980. Amendment filed April 14, 1980; effective May 28, 1980. Amendment filed November 13, 1981; effective March 16, 1982. Amendment filed April 13, 1982; effective May 28, 1982. Repeal and new rule filed April 18, 1983; effective May 18, 1983. Amendment filed January 6, 1984; effective April 15, 1984. Amendment filed August 20, 1984; effective November 13, 1984. Amendment filed October 3, 1985; effective January 14, 1986. Amendment filed March 25, 1986; effective June 14, 1986. Amendment filed May 28, 1986; effective June 27, 1986. Amendment filed July 10, 1986; effective October 29, 1986. Amendment filed October 29, 1986; effective December 13, 1986. Amendment filed July 22, 1987; effective October 28, 1987. Amendment filed November 18, 1987; effective February 28, 1988. Amendment filed July 21, 1988; effective October 29, 1988. Repeal and new rule filed March 16, 1992; effective June 29, 1992. Amendment filed November 3, 1993; effective March 30, 1994. Amendment filed March 14, 1995; effective July 28, 1995. Amendment filed April 29, 1996; effective August 28, 1996.

0520-01-03-.03 ADMINISTRATION OF SCHOOLS, REQUIREMENT B.

(1) ~~Teacher Assignment.~~ Teachers shall be on duty at least seven (7) hours per day and such additional time as the administrative organization requires.

(2) Salaries and Licensure for all Licensed Personnel.

(a) The employment standards and licensure requirements established by the State Board of Education shall be applicable to all licensed personnel employed by a local board of education without regard to the source of financial support.

(b) A salary schedule applicable to all licensed personnel shall be approved by the local board of education.

(3) Class Size for Grades Kindergarten through Twelve (12). ~~K-12~~

(a) Local boards of education shall have policies providing for class sizes in grades kindergarten through twelve (12) K-12 in accordance with the following:

Grade Level	Average Class Size	Maximum Class Size
K-3	20	25
4-6	25	30
7-12	30	35
Career and Technical Education	20	25

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

- (b) The average class size for a grade level unit (such as the unit K-3) shall not exceed the stated average, although individual classes within that grade level unit may exceed the average.
 - (c) No class shall exceed the prescribed maximum size.
 - (d) The average class size and the maximum class size shall be based on regular classroom teaching positions, exclusive of principal, assistant principal, counselor, elementary art, elementary music, elementary physical education, librarian, special education, or other specialized positions.
 - (e) Class size limits may be exceeded in such areas as typewriting and instrumental and vocal music classes, provided that the effectiveness of the instructional program in these areas is not impaired.
 - (f) Local school systems shall not establish split-grade classes for the purpose of complying with the provisions of the class size averages and maximums.- However, these provisions do not prevent school systems from using multi-aged classes.
 - (g) Local boards of education must approve the establishment of any split-grade classes for any purpose.
 - (h) The average class size specified for the grade levels involved in split-grade classes will be the maximum size allowed in such classes.
- (4) Planning Time.
- (a) Local boards of education shall provide full-time classroom teachers in grades kindergarten through twelve (12) with individual duty-free planning periods during the established instructional day.
 - (b) Individual planning time shall consist of two and one-half (2½) hours each week during which teachers have no other assigned duties or responsibilities other than planning for instruction. The two and one-half (2½) hours may be divided on a daily or other basis.
 - (c) Individual duty-free planning time shall not occur during any period that teachers are entitled to duty-free lunch.
 - (d) Any school system which is providing an individual duty-free planning period by extending the school day by thirty (30) minutes as of the beginning of the 2000-01 school year may continue such practice and satisfy the planning time requirements.
 - (e) The director of schools shall report annually to the department of education regarding compliance with the individual duty-free planning time requirement.
- (5) Duty Free Lunch Period.- In schools providing a lunch period for students, all teachers shall be provided each day with a lunch period during which they shall not have assigned duties. The lunch period for each teacher shall be at least the same amount of time as that allowed for students.
- (6) Pupil Course Work Load.- All full time students in grades nine through twelve (9-12) shall be enrolled each semester in subjects that produce a minimum of five (5) units of credit for graduation per year. Students with hardships and gifted students may appeal this requirement to the local school superintendent and then to the local board of education.
- (7) Summer Schools.

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

- (a) Summer schools shall be under the control and management of the local board of education having jurisdiction.
- (b) The following shall be required for grades ~~nine through twelve (9-12)~~ 9 through 12:
 1. State curriculum frameworks ~~academic standards~~ shall be used for all courses.
 2. Summer school teachers shall be licensed and hold endorsements in the subject areas in which they are teaching.
 3. Any course work successfully completed in an approved summer school is fully transferable to any other approved school.

~~(8) Correspondence Work. Local boards of education may adopt policies permitting students to pursue correspondence courses for credit for graduation provided that a final examination covering all the terminal objectives of the particular state curriculum framework academic standards is given.~~

~~(89) Student Evaluation in Grades Kindergarten through grade eight (8)8.~~

- (a) The student evaluation program for grades kindergarten through grade eight (8) shall consist of the following:
 1. A criterion-referenced test will be administered in subjects and grade levels in accordance with policy of the State Board of Education.
 2. Based on achievement data from the benchmark years three (3), five (5), and eight (8), there shall be a research-based intervention initiated by the local education agency for students scoring below proficient in reading, language, and mathematics on the criterion referenced portion of the state achievement test. ~~The intervention shall occur during the year following the benchmark assessment data. The Department of Education shall assist systems in the identification of effective intervention programs. Evidence of compliance with this requirement shall become a component of the school improvement plan.~~
 3. An assessment of writing in grades five (5) and eight (8).
- ~~(b) Each student's test data and the student's answer documents, including the test booklets for students using the large-print or Braille editions, will be maintained for a period of one year following test administration. Following this one-year period, individual student test data will then be preserved on storage media.~~
- ~~(bc) State mandated student testing programs shall be undertaken in accordance with procedures published by the Department of Education. Local school systems shall develop local policies regarding security of test administration, consistent with Department of Education guidelines.~~
- ~~(cd) To assist the decision making process and to better inform policy, the State Department shall annually report to the Board of Education the number and percentage of students scoring Below Basic, but have been promoted to the next grade level by school system. This data shall be disaggregated by subgroups similar to those required for federal reporting.~~
- ~~(de) LEAs shall use the Response to Instruction and Intervention (RTI²). RTI² shall include high-quality instruction and interventions tailored to student need where core instructional and intervention decisions are guided by student outcome data. Tiered~~

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

~~interventions in the areas of reading, mathematics, and/or writing shall occur in general education depending on the needs of the student. If a student fails to respond to intensive interventions and is suspected of having a Specific Learning Disability, then the student may require special education interventions.~~

~~Local education agencies are encouraged to intervene with struggling students as needed. However, once BEP 2.0 is fully funded* or specific recurring funding is provided that at least doubles the at-risk funding component for grades K-8 for the average percentage of students scoring Below Basic on TCAP assessments, local education agencies shall provide interventions prior to 1st grade, prior to 5th grade and prior to 9th Grade for students who are not ready for advancement in the education process. For students with identified special needs, the IEP Team shall continue to determine the education program. Evidence of compliance with this requirement shall become a component of the school improvement plan.~~

~~_____ School systems are encouraged and empowered to transition from meeting the requirements of section (a)2 of this rule to meeting the requirements of section (e) of this rule before BEP 2.0 is fully funded or specific funding is provided or specific recurring funding is provided that at least doubles the at-risk funding component for grades K-8 for the average percentage of students scoring Below Basic on TCAP assessments.~~

~~1. _____ Once BEP 2.0 is fully funded or specific recurring funding is provided that at least doubles the at-risk funding component for grades K-8 for the average percentage of students scoring Below Basic on TCAP assessments, schools shall determine the academic and developmental readiness of students for first grade. Students who are found to be either academically or developmentally not ready for first grade shall be provided effective interventions to achieve academic and developmental readiness for the first grade.~~

~~2. _____ Once BEP 2.0 is fully funded or specific recurring funding is provided that at least doubles the at-risk funding component for grades K-8 for the average percentage of students scoring Below Basic on TCAP assessments, fourth grade students will be provided multiple opportunities to demonstrate academic readiness in numeracy and literacy for the fifth grade through a formative assessment process. Students who score Below Basic in the Math or Reading / Language sections of the 4th grade TCAP shall be provided effective interventions to insure those students are ready for success in the middle grades.~~

~~3. _____ Once BEP 2.0 is fully funded or specific recurring funding is provided that at least doubles the at-risk funding component for grades K-8 for the average percentage of students scoring Below Basic on TCAP assessments, eighth grade students who do not demonstrate readiness for the ninth grade by scoring below the Explore Readiness Benchmark Scores in English, Mathematics, Reading, or Science on the Explore examination and who also score Below Basic in corresponding sections on the Math, Reading, Language, or Science sections of the 8th grade TCAP shall be provided effective interventions to insure those students are ready for success in high school.~~

~~4. _____ The determination of student readiness as a result of the interventions prior to the first grade, fifth grade, and ninth grade shall be based upon a formative process which should include a variety of data. The analysis of the data shall be made by a team developed by the local education agency that may consist of teachers across various grade levels and content areas, subject areas specialist, principals, and appropriate others. This team must have representatives that recognize and understand alternative measurements and interpretation for English Language Learners (ELL), especially those students who have been in the United States for three years or less. Following data analysis, the team's recommendation shall be provided to~~

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

~~the school principal. The department of education will provide local education agencies with rubrics and other materials that describe performance at the four (4) achievement levels.~~

~~6. Teaching strategies such as coaching, project learning, e-learning, and tutoring along with other best practices which emphasize real-world connections, teacher professional development, innovative scheduling, accelerated / individualized pacing, and technology are recommended to correct learning deficiencies. The State Department of Education shall assist systems in the identification of effective intervention programs and sharing of best practices. Students should be assessed frequently through a variety of measures to determine if the interventions are being successful or if different interventions are needed.~~

~~6. Existing data will be used diagnostically to analyze and determine individual student needs. Interventions shall be supportive and ensure students attain the knowledge and skills required to be successful. Interventions allow students to learn at different rates and continue to be successful in subsequent school years. Schools will monitor student progress regularly in years following the intervention to make sure students are advancing appropriately and will intervene with those students who are not.~~

~~The phrase "B.E.P. 2.0 is fully funded" means that changes in the components or factors of the Basic Education Program (BEP) implemented under Acts 2007, ch. 369 have been completely phased in.~~

(910) Admission and Enrollment of Students.

- ~~(a) (a) During the 2013-2014 school year, a child entering kindergarten shall be no less than five (5) years of age on or before August 31. For all years thereafter, a child entering kindergarten shall be no less than five (5) years of age on or before August 15. Children entering kindergarten shall be five (5) years of age on or before August 15. However, a child does not have to enroll in school at five (5) years of age, but enrollment must occur no later than the beginning of the academic year following the child's sixth (6th) birthday.~~
- (b) Any transfer student applying for admission who was legally enrolled in an approved kindergarten in another state and who will be five (5) years of age no later than December 31 of the current school year, shall be enrolled.
- (c) A child must attend school until his/her eighteenth (18th) birthday, unless:
1. He or she has received a diploma or other certificate of completion of high school;
 2. He or she is enrolled and making satisfactory progress in a course of instruction leading to a High School Equivalency DiplomaGED; or
 3. He or she is enrolled in a home school and has reached their seventeenth (17th) birthday.

(1014) Students Transferring From One School ~~t~~To Another.

- (a) Students may transfer among public schools or among Category I, II, or III private schools (see Chapter 0520-07-02), without loss of credit for completed work. The

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

school which the student leaves must supply a properly certified transcript showing the student's record of attendance, achievement, and the units of credit earned.

- (b) Principals shall allow credit for work transferred from other schools only when substantiated by official transcripts. Students transferring from schools which ~~that~~ are not approved by the Tennessee State Board of Education or by comparable agencies shall be allowed credit only when they have passed comprehensive written examinations approved, administered, and graded by the principal. Student scores from a recognized standardized test may substitute for the required comprehensive written examinations.
- (c) The examination administered to students in grades one through eight (1-8) shall cover only the last grade completed.
- (d) The examinations administered to students in grades nine through twelve (9-12) shall cover the individual subjects appearing on the official transcripts. The examination for subjects of more than one (1) unit need cover only the last unit completed. A student transferring from one school to another may count for graduation one-half (1/2) unit of credit in courses for which a minimum of one (1) unit is required only if the course is not offered in the school to which he or she is transferring.
- (e) The principal is authorized to transmit transcripts of a student to any school to which the student transfers or applies for admission when the records are requested by the receiving school or institution. The parent or guardian of the student will be notified that the transcript is being sent.
- (f) ~~Local boards of education may admit pupils from outside their respective local school systems at any time. A student may transfer to a school system other than the one in which they live up to two weeks before the beginning of the school year with only the approval of the receiving board of education. If a request to transfer is submitted less than two weeks before the beginning of the receiving district's school year, and the student is currently enrolled in another district during the prior semester, the approval of both the sending and receiving districts must be obtained.~~
- (g) Local boards of education may arrange for the transfer of students residing within their systems to other school systems by establishing agreements with other local boards of education for the admission or transfer of students from one school system to another.
- (h) The receiving board of education may set a time before or during the school year after which it will not accept transfer students. The receiving board of education may charge the non-resident student tuition to attend.
- (i) If a local board of education otherwise permits non-resident students to transfer into its schools, it may not discriminate against any students solely on the grounds of their race, sex, national origin or disability, nor may it charge such students a tuition over and above the usual tuition for non-disabled persons.

(112) Public Virtual Schools.

- (a) Public virtual schools must comply with all applicable Tennessee State Board of Education policies and rules and regulations.
- (b) Public virtual schools shall:
 1. Bbe approved by the local board of education;

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

2. Use technology to deliver a significant portion of instruction to its students via the Internet in a virtual or remote setting;
 3. Review and provide access to a sequential curriculum that meets or exceeds the curriculum standards adopted by the Tennessee State Board of Education;
 4. Meet the equivalent of the one hundred eighty (180) 180 days of instruction and six and one-half (6½) 6.5 hours per day per academic year pursuant to T.C.A. § 49-6-3004;
 5. Monitor participation and progress to ensure students meet participation requirements and make progress toward successful completion of courses;
 6. Administer all state tests required of public school students to students enrolled in a virtual school in a proctored environment consistent with state test administration guidelines;
 7. Be evaluated annually and report the extent to which the school demonstrates increases in student achievement, along with academic, fiscal, and operational performance;
 8. ~~ensure~~ Ensure that students with special needs, including students with disabilities and limited English proficiency are not excluded from enrolling and participating, further, the public virtual school is responsible for providing the services in the student's Individualized Education Program (IEP);
 9. ~~Assign a highly qualified teacher to each student enrolled;~~
 10. ~~Ensure~~ that all teachers employed to provide services to the students are endorsed in their grade or course and qualified to teach in Tennessee;
 11. ~~Ensure~~ access to instructional materials, access to technology such as a computer and printer that may be necessary for participation in the program, and access to an Internet connection used for school work; and
 12. ~~Meet~~ class size standards established by T.C.A. § 49-1-104. An individual virtual school may increase the enrollment in virtual classes by up to twenty-five percent (25%) over the class size standards established by T.C.A. § 49-1-104 if the school demonstrates student achievement growth at a level of "at expectations" or greater, as represented by the Tennessee Value-Added Assessment System (TVAAS) in the prior year.
- (c) ~~Public virtual schools must comply with State Board Rule 0520-01-03-.03(911).~~
1. ~~For a student who is currently enrolled or was enrolled the previous semester in a public school to transfer to a public virtual school after the open transfer time has lapsed:~~
 - a. ~~The student must apply to and be approved for acceptance in the public virtual school; and~~
 - b. ~~Once acceptance has been determined, the public virtual school must obtain permission from the sending district before enrolling the student in the public virtual school. A public virtual school shall not be eligible for state education funds for students who are improperly enrolled.~~

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

~~2. Students not registered in a public school the previous semester but who were enrolled instead in a private school or a home school do not require approval from a sending district.~~

- (d) Public virtual schools must comply with all compulsory attendance requirements including monitoring and reporting as required in T.C.A. § 49-6-3007.

1. The district establishing the public virtual school is required to report truancy to the juvenile court having jurisdiction over that student.

2. On or before August 1 of each year, the public virtual school shall notify all LEAs of the enrollment of students residing within the LEA's jurisdiction. LEAs shall be notified within two (2) weeks when changes occur relative to students residing within the LEA's jurisdiction.

3. Once a non-resident student has been accepted and enrolled in a public virtual school, it shall be the responsibility of the LEA that has established the public virtual school to maintain enrollment of that student until such a time as the student is withdrawn by the parent or guardian. If the student is withdrawn by the parent or guardian, the public virtual school shall send transcripts and other student records to the receiving school in a timely manner.

(123) Records and Reports.

- (a) A cumulative record provided to teachers by local school systems shall be kept up to date for each student, kindergarten through grade twelve (12), and shall remain as local school property.
- (b) Each school shall provide for the storage and safekeeping of all records and reports.
- (c) The maintenance, use, dissemination and confidentiality of information in school records and reports shall be governed by written policies of the local board of education.

(134) School Fees.

- (a) No fees or tuitions shall be required of any student as a condition of attending public schools or using its equipment while receiving educational training. All school fees must be authorized by the local board of education. Local board policy will determine activities during the school day and supplies that are required for participation in courses offered for credit or grade for which the board authorizes the requesting of fees.
- (b) The following school fees may be requested from but not required of any student, regardless of financial status (including eligibility for free or reduced price lunch):
1. Fees for activities that occur during regular school hours (the required ~~one hundred eighty~~ (180) instructional days), including field trips, any portion of which fall within the school day; or for activities outside regular school hours if required for credit or grade;
2. Fees for activities and supplies required to participate in all courses offered for credit or grade, including interscholastic athletics and marching band if taken for credit in accordance with local board policies; and

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

3. Refundable security deposits collected by a school for use of school property for courses offered for credit or grade, including interscholastic athletics and marching band if taken for credit in accordance with local board policies.
- (c) LEAs shall establish a process by which to waive the following school fees for students eligible for free or reduced price school lunches:
1. Fees or tuition applicable to courses taken for credit or grade during the summer by a student; except that non-resident students regularly enrolled in another school system may be required to pay fees or tuition for such summer courses; and
 2. Fees required for graduation ceremonies.
- (d) Fee waiver process for students eligible for free or reduced price lunch. At the beginning of the school year, at the time of enrollment, and/or at the time of requesting school fees, all students and their parents or legal guardians shall be given clear and prominent written notice of authorized fees that may be requested, and notice of the fee waiver process.
1. The parent or legal guardian of a student shall be given the opportunity to pay all or any portion of the school fee if they desire.-- However, if the parent chooses not to pay a fee, the child may not be prevented from participating in the activity or course for which the fee is being requested.
 2. Local education agencies shall provide written notice to parents or legal guardians of approval or denial of requests for fee waivers.-- Any denial shall contain the specific grounds for denial and shall afford the parent or legal guardian the opportunity for a personal meeting with the appropriate school personnel to discuss the validity of the denial.
 3. Local education agencies shall keep copies of any forms, notices and/or instructions used by schools in the waiver of fees and shall keep records of any denials, appeals of denials, and resolution of such appeals.
- (e) LEAs are authorized to require payment of the following fees by all affected students:
1. Fines imposed on all students for late-returned library books; parking or other traffic fines imposed for abuse of parking privileges on school property; or reasonable charges for lost or destroyed textbooks, library books, workbooks or any other property of the school;
 2. Debts incurred pursuant to Rule 0520-01-03-.03(14), Withholding of Student Grades for Debts Owed to the School;
 3. Refundable security deposits collected by a school for use of school property for participation in extracurricular activities;
 4. Costs for extracurricular activities occurring outside the regular school day including sports, optional trips, clubs or social events; and
 5. Non-resident tuition charged of all students attending a school system other than the one serving their place of residence.

(145) Withholding of Student Grades for Debts Owed to the School.

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

- (a) Local education agencies are authorized to withhold all grade cards, diplomas, certificates of progress or transcripts of a student who has taken property which ~~that~~ belongs to a local education agency, or has incurred a debt to a school, until such student makes restitution in full. ~~Unpaid school fees, as defined above, may not be considered debts owed to the school.~~
- (b) No student shall be sanctioned under the provisions of this rule when the student is deemed to be without fault for the debt owed to the local education agency or the school.
- (c) Nothing in this subparagraph authorizes any local education agency to limit the rights of parents to have access to their children's educational records pursuant to the Family Educational Rights and Privacy Act.
- (d) Local education agencies shall afford the student and/or the student's parent the opportunity to appear and be heard if such student and/or the parent disputes the debt, the amount of the debt, or the application of sanctions.

(156) Student Absence in Observance of Religious Holidays.

Any student who misses a class or day of school because of the observance of a day set aside as sacred by a recognized religious denomination of which the student is a member or adherent, where such religion calls for special observances of such day, shall have the absence from that school day or class excused and shall be entitled to make up any school work missed without the imposition of any penalty because of the absence.

(167) School Board, District and School Improvement Planning.

- (a) School Board Improvement Plan. Each local board of education shall develop, maintain, and implement a long-range strategic plan which ~~that~~ addresses at least a five (5)-year period of time. The plan shall be updated every two (2) years and include a mission statement, goals, objectives and strategies, and address the State Board of Education master plan.
- (b) District and School Improvement Plan. Each local board of education shall have each school under its jurisdiction develop, maintain, and implement a school improvement plan. ~~The plan shall be updated every two (2) years and include areas such as curriculum, instruction, professional development, and community partnerships, and address the long-range strategic plan of the local board of education.~~

(178) Multi-Hazard Emergency Preparedness Operations Plans.

- (a) Each local school system shall have a disaster ~~preparedness~~ multi-hazard emergency operations plan to include, but not be limited to, fire, tornado, earthquake, flood, bomb threat, and armed intrusion.
- (b) Each school shall practice emergency safety procedures.
- (c) Each local education agency having jurisdiction that lies entirely or partially within one hundred (100) miles of the New Madrid Fault Line shall implement earthquake preparedness drills in each of the schools administered by such local education agency. ~~Section 4 Earthquake Drills of the~~ The Guidebook for Developing A School Earthquake Safety Program published by the Federal Emergency Management Agency shall serve as the model plan for local education agencies to consider when adopting plans for earthquake preparedness drills. ~~Affected local education agencies shall~~

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

review and consider the entire guidebook to assure that their schools provide the optimal safety conditions for their students.

- (d) Each school administered by a local education agency having jurisdiction that lies entirely or partially within one hundred (100) miles of the New Madrid Fault Line shall conduct at least two earthquake preparedness drills every school year. A record of the earthquake preparedness drills, including the time and date, shall be kept in the respective schools and shall be made available upon request by the Department of Education.
- ~~(e) Each school that utilizes a two-way communication system shall ensure teaches and other personnel are properly and adequately trained on the use of the system.~~
- ~~(f) Alternate schools must maintain a two-way communication system.~~

Authority: T.C.A. §§ 49-1-302, 49-1-302(a)(2) and (13), 49-2-110, 49-2-114, 49-6-101, 49-6-201, 49-6-3001(c) and (c)(1), 49-6-3003, 49-6-3005(a) and (a)(4), 49-6-3104, 49-6-3105, 49-6-6201, and Sections 30, 78 through 80, and 88 of Chapter 535 of the Public Acts of 1992. **Administrative History:** Original rule certified June 10, 1974. Amendment filed February 28, 1978; effective March 30, 1978. Amendment filed April 14, 1980; effective May 28, 1980. Amendment filed July 19, 1982; effective October 13, 1982. Repeal and new rule filed April 18, 1983; effective May 18, 1983. Amendment filed June 10, 1983; effective September 14, 1983. Amendment filed June 27, 1984; effective July 27, 1984. Amendment filed June 28, 1984; effective July 28, 1984. Amendment filed May 28, 1986; effective June 27, 1986. Repeal and new rule filed March 16, 1992; effective June 29, 1992. Amendment filed July 21, 1992; effective October 28, 1992. Amendment filed September 1, 1992; effective December 29, 1992. Amendment filed October 11, 1995; effective February 28, 1996. Amendment filed April 29, 1996; effective August 28, 1996. Amendment filed May 31, 1996; effective September 27, 1996. Amendment filed May 28, 1999; effective September 28, 1999. Amendment filed August 31, 2001; effective December 28, 2001. Amendment filed March 28, 2002; effective July 29, 2002. Amendment filed June 30, 2003; effective October 28, 2003. Amendment filed March 1, 2005; effective July 29, 2005. Amendment filed September 6, 2007; effective January 28, 2008. Amendment filed April 30, 2009; effective August 28, 2009. Amendment filed October 20, 2009; effective March 31, 2010. Amendment filed March 25, 2010; effective August 29, 2010. Amendment filed December 19, 2012; effective May 30, 2012. Amendments filed March 21, 2012; effective August 29, 2012. Amendment filed February 6, 2013; effective July 29, 2013. Amendment to rule 0520-01-03-.03 (4) filed May 22, 2015; effective August 20, 2015.

0520-01-03-.04 REPEALED.

~~0520-01-03-.04 EVALUATION OF LICENSED PERSONNEL, REQUIREMENT C.~~

- ~~(1) Local boards of education shall develop evaluation procedures for all professional school personnel.~~
- ~~(2) Annual evaluation shall be made of non-career ladder educators who have not gained tenure. Non-career ladder educators with tenure shall be evaluated twice every five years on schedules determined locally.~~
- ~~(3) Nothing in this section shall be construed to prevent or limit the number or extent of evaluations of educators conducted locally for any local purpose.~~
- ~~(4) Standards and procedures for the evaluation of all licensed persons employed by local education agencies may be found in Chapter 0520-02-01.~~
- ~~(5) By a date to be determined each year by the State Certification Commission, each local school system shall submit to the Commissioner of Education a description of its evaluation plan and instruments as specified. After approval by the Commissioner, if the evaluation plan~~

(Rule 0520-01-03-.04, continued)

~~or instruments change, the local school system shall submit a statement regarding these changes by July 1 prior to the school year in which they are to be used.~~

Authority: T.C.A. §§ 49-1-302, 49-5-5103, and 49-5-5202. **Administrative History:** Original rule certified June 10, 1974. Amendment filed June 30, 1975; effective July 30, 1975. Amendment filed July 15, 1976; effective August 16, 1976. Amendment filed February 28, 1978; effective March 30, 1978. Amendment filed January 9, 1979; effective February 23, 1979. Amendment filed October 15, 1979; effective January 9, 1980. Amendment filed April 14, 1980; effective May 28, 1980. Amendment filed November 13, 1981; effective December 28, 1981. Amendment filed June 24, 1984; effective July 27, 1984. Amendment filed June 28, 1984; effective July 28, 1984. Amendment filed June 28, 1984; effective September 11, 1984. Amendment filed August 20, 1984; effective November 13, 1984. Amendment filed January 31, 1985; effective April 16, 1985. Amendment filed June 24, 1985; effective September 13, 1985. Amendment filed September 30, 1985; effective December 14, 1985. Amendment filed December 31, 1985; effective March 17, 1986. Amendment filed May 28, 1986; effective June 27, 1986. Amendment filed July 10, 1986; effective October 29, 1986. Amendment filed October 29, 1986; effective December 13, 1986. Amendment filed October, 15, 1986; effective January 27, 1987. Amendment filed April 24, 1987; effective June 8, 1987. Amendment filed April 18, 1988; effective July 27, 1988. Amendment filed May 13, 1988; effective August 29, 1988. Amendment filed November 22, 1988; effective February 28, 1989. Amendment filed October 31, 1989; effective January 29, 1990. Amendment filed October 12, 1990; effective January 29, 1991. Repeal and new rule filed March 16, 1992; effective June 29, 1992. Repealed October 14, 2016.

0520-01-03-.05 STATE ACADEMIC STANDARDS CURRICULUM, REQUIREMENT CD.

(1) Academic Curriculum Standards.

- (a) The State Board of Education shall adopt academic curriculum standards for each subject area, grades kindergarten through twelve (12) K-12. ~~The standards shall specify learning expectations and include performance indicators. The approved standards shall be the basis for planning instructional programs in each local school system.~~
- (b) Adopted textbooks shall be aligned with state academic curriculum standards.
- (c) Instruction in grades kindergarten through twelve (12) K-12 in issues of current concern such as character education, environmental education, economic education, career education, family life education, substance use and abuse, AIDS education, sexual abuse prevention, cardiopulmonary resuscitation, and safety shall be incorporated in appropriate subject areas and grade levels.

(2) Experimental Projects and Special Courses.

- (a) ~~Local school systems may offer special courses not listed in 0520-01-03-.06 on an experimental basis that have been approved by the Department of Education.~~ Each course must be approved in advance each year by the Commissioner ~~of Education~~ Department of Education. ~~After three (3) years the course may become a permanent part of the local school program upon approval by the State Board of Education. Each special course approved by the Department shall be recommended to that state board for an approval period of three (3) or six (6) years.~~
- (b) ~~The Commissioner of Education, in cooperation with the State Board of Education and local school system, shall have the authority to initiate experimental projects to determine the effectiveness of innovations in content or in the administration of instructional programs. The Commissioner of Education shall report the findings of these experimental projects to the State Board of Education on an annual basis.~~

(Rule 0520-01-03-.05, continued)

(3) Grading and Promotion.

- (a) Each school shall evaluate and report in writing to the parent(s) or legal guardian(s) each student's progress in each subject, at least every nine (9) weeks, in accordance with the school system's evaluation plan. A parent or legal guardian will sign or otherwise acknowledge the report and return it to the teacher. Local school systems may choose not to require parental acknowledgement of the grade report for students in grades seven through twelve (7-12). If parental acknowledgement is not required, schools must publish annually the dates and method of reporting student progress and must provide ample opportunities for parents to notify the school of any concerns.
- (b) Local school systems shall develop and implement grading, promotion, and retention policies for grades kindergarten through eight (K-8). The policies shall be communicated annually to students and parents.
- (c) Local school systems shall use the following ~~state board adopted uniform grading system for students enrolled in grades nine through twelve (9-12) for reporting student grades for the determination of eligibility for HOPE scholarships. Students' grades shall be reported for the purposes of application for postsecondary financial assistance administered by the Tennessee Student Assistance Corporation using the uniform grading system.~~

Grading System - Weighting for Advanced Coursework					
	% Range	Honors Courses & National Industry Certification	Statewide Dual Credit Courses	Advanced Placement & International Baccalaureate	
	93 - 100	May include the addition of three (3) percentage points to the grades used to calculate the semester average.	May include the addition of four (4) percentage points to the grades used to calculate the semester average.	May include the addition of five (5) percentage points to the grades used to calculate the semester average.	
	85 - 92				
	75 - 84				
	70 - 74				
	0 - 69				

~~Assigning additional quality points above 4.0 for honors courses, AP, IB, and National Industry Certification courses is not allowed for the purpose of determining eligibility for the lottery scholarships.~~

~~All course types, as defined below, shall be used for reporting student grades for the determination of eligibility for HOPE scholarships.~~

~~(d) State approved courses shall meet all appropriate academic content standards, learning expectations, and performance indicators as approved by the State Board of Education and are eligible for the points listed above.~~

~~(e) Local education agencies may elect to offer honors courses and National Industry Certification (NIC) courses. Local educational agencies electing to offer~~

(Rule 0520-01-03-.05, continued)

~~honors courses will ensure that the approved honors courses substantially exceed the academic content standards, learning expectations, and performance indicators as approved by the State Board of Education. Further, each local education agency offering honors courses will ensure that additional rigor is being provided by implementing the framework of standards for honors courses listed below:~~

~~1. Honors courses will substantially exceed the academic content standards, learning expectations, and performance indicators approved by the State Board of Education. Teachers of honors courses will model instructional approaches that facilitate maximum interchange of ideas among students: independent study, self-directed research and learning, and appropriate use of technology. All honors courses must include multiple assessments exemplifying coursework (such as short answer, constructed response prompts, performance-based tasks, open-ended questions, essays, original or creative interpretations, authentic products, portfolios, and analytical writing). Additionally, an honors course shall include a minimum of five (5) of the following components:~~

~~(i) Extended reading assignments that connect with the specified curriculum.~~

~~(ii) Research-based writing assignments that address and extend the course curriculum.~~

~~(iii) Projects that apply course curriculum to relevant or real-world situations.~~

~~These may include oral presentations, power point, or other modes of sharing findings. Connection of the project to the community is encouraged.~~

~~(iv) Open-ended investigations in which the student selects the questions and designs the research.~~

~~(v) Writing assignments that demonstrate a variety of modes, purposes, and styles.~~

~~(I) Examples of mode include narrative, descriptive, persuasive, expository, and expressive.~~

~~(II) Examples of purpose include to inform, entertain, and persuade.~~

~~(III) Examples of style include formal, informal, literary, analytical, and technical.~~

~~(vi) Integration of appropriate technology into the course of study.~~

~~(vii) Deeper exploration of the culture, values, and history of the discipline.~~

~~(viii) Extensive opportunities for problem solving experiences through imagination, critical analysis, and application.~~

~~(ix) Job shadowing experiences with presentations which connect class study to the world of work.~~

~~All course types which meet the above framework will be classified as honors, eligible for additional percentage point weighting.~~

~~Career and technical courses that offer a National Industry Certification through a nationally recognized examination may be weighted by adding three (3) points to all grades used to calculate the semester average.~~

(Rule 0520-01-03-.05, continued)

~~_____ If honors courses and courses that offer National Industry Certification are offered, the local education agency shall annually approve the list of such courses. This list of National Industry Certification courses and of approved honors courses with a complete syllabus for each course shall be approved by the local education agency and made readily available to the public.~~

~~_____ Each local education agency shall adopt policies for honors courses and career and technical courses that offer national industry certification that may allow for the addition of three (3) points to all grades used to calculate the semester average.~~

~~2._____ A statewide dual credit course is an existing high school course that incorporates postsecondary learning objectives and is aligned with an approved dual credit challenge exam. Students who pass these challenge exams will earn college credit accepted by all Tennessee public postsecondary institutions. Local education agencies must ensure all statewide dual credit courses incorporate the postsecondary learning objectives and that all students sit for the challenge exam. The courses must provide advanced learning opportunities for students. Local education agencies will also ensure that statewide dual credit teachers receive professional development and support to provide the rigorous level of instruction necessary for the courses.~~

~~3._____ Local education agencies may elect to offer Advanced Placement and International Baccalaureate courses. If Advanced Placement and International Baccalaureate courses are offered, the local education agency shall annually approve a list of such courses. This list of approved courses shall be made readily available to the public. Local education agencies will ensure that approved courses substantially incorporate the learning objectives and course descriptions as defined by the College Board or International Baccalaureate Agency.~~

~~_____ Each local education agency shall adopt policies for the approved Advanced Placement courses and International Baccalaureate courses that have end-of-course national examinations that may allow for the addition of five (5) points to all grades used to calculate semester averages. Only Advanced Placement and International Baccalaureate courses that have end-of-course national examinations qualify for the addition of five (5) points.~~

~~(f)_____ In order to ensure fidelity to the Uniform Grading System in the calculation of the Grade Point Average (GPA) to be used in the determination of eligibility for the HOPE Scholarship, the following guidance is given for implementation by each Local Education Agency (LEA):~~

~~1._____ When determining the grade to be awarded, numerical averages with a decimal point of .5 or higher shall be rounded up to a whole number and a decimal point of .49 or lower shall not be rounded up. For example, a numerical average in a course of 92.50 shall be rounded up to a 93 and awarded an A for the GPA calculation. Further, a numerical average of 92.49 shall not be rounded up and awarded a 92 or B for the GPA calculation. This methodology shall apply to reporting period grades as well as semester and/or final average grades.~~

~~2._____ The addition of percentage points to weight honors courses, National Industry Certification, statewide dual credit courses, Advanced Placement courses, Cambridge and International Baccalaureate courses should be made at each reporting period as well as to any semester exam or other grade used to determine the semester average. Do not add to the semester or final average since the points are already in the grade.~~

(Rule 0520-01-03-.05, continued)

Example: An AP class where the semester average is calculated by adding each six-weeks grade twice and adding the semester exam grade once and dividing by 7:

$$\begin{array}{r}
 \text{1st Six Weeks} \quad \text{2nd Six Weeks} \quad \text{3rd Six Weeks} \quad \text{Sem. Exam} \quad \text{Sem. Avg.} \\
 \hline
 88 + 5 = 93 \quad 90 + 5 = 95 \quad 85 + 5 = 90 \quad 89 + 5 = 94 \quad 93 \\
 \\
 93 + 93 \quad + \quad 95 + 95 \quad + \quad 90 + 90 \quad + \quad 94 \quad = \quad 650 \\
 \\
 \hline
 \text{Sem. Avg.} = \frac{650}{7} = 92.8 = 93 = A
 \end{array}$$

3. Calculation of the uniform grading system GPA shall be on a 4.0 scale by assigning the following grade points: A = 4, B = 3, C = 2, D = 1 and F = 0. The GPA is the official method for calculating HOPE Scholarship eligibility, and shall be calculated by multiplying the quality points assigned to each course for the semester, trimester, or final course average (for the block schedule) by the credit available for each course and dividing by the total number of credits available. This calculation shall be based on grades at the end of any semester or trimester, not on a grade that spans the entire school year.

This example represents a student's final average GPA based upon a six-period day with five year-long courses and two semester-long courses

$$\text{GPA} = \frac{\text{Sum of Grade Points for Each Course (per credit)}}{\text{Sum of Credits Available}}$$

$$\text{GPA} = \frac{B+A+A+B+B+B+C}{1+1+1+1+1+1+.5+.5} = \frac{3(1)+4(1)+4(1)+3(1)+3(1)+3(-.5)+2(-.5)}{6}$$

$$\text{GPA} = \frac{19.5}{6} = 3.25 \text{ GPA}$$

4. For purposes of the HOPE Scholarship Eligibility Grade Point Average, a student may repeat any failed course and the failing grade for the first attempt will not be considered in the HOPE Scholarship Eligibility Grade Point Average calculation. The grade of all repeats of the course shall be counted as part of the HOPE Scholarship Eligibility Grade Point Average. LEAs may allow students to replace failed course grades through credit recovery or similar programs without HOPE Scholarship Eligibility Grade Point Average penalty and is not to be considered a repeat.

5. The GPA shall be reported to the nearest 100th. The thousandth digit must be a 5 or higher to round up to the next hundredth. For example, a GPA of 3.296 would round up to 3.30. A GPA of 3.2949 would round down to 3.29.

6. The GPA used to determine eligibility for the HOPE Scholarship shall be reported on the student's transcript as "Hope Scholarship GPA."

7. The Department of Education will provide guidance for LEAs to insure this rule is implemented uniformly across Tennessee.

8. The Department of Education will monitor the calculation of the HOPE Scholarship GPA as part of the routine LEA audits.

(Rule 0520-01-03-.05, continued)

(4) Reserved.

~~(5) Pre-kindergarten, Kindergarten, and Grades 1-3.~~

~~(a) All approved pre-kindergarten and kindergarten programs shall be child-centered, family focused, and developmentally appropriate. Pre-kindergarten programs shall be based on the early childhood education and parent involvement policy of the State Board of Education. Kindergarten programs shall be based on the state curriculum framework.~~

~~1. The programs shall provide daily active learning experiences through exploration and play. Hands-on manipulation of real objects shall be emphasized in the learning experiences in preference to worksheet items.~~

~~2. The programs shall provide an arrangement of the room, equipment, and materials in learning centers which facilitate both small group and individual child use. Such equipment and materials shall be appropriate in size and complexity to the age of the children.~~

~~3. Assessment of pre-kindergarten and kindergarten children shall emphasize the use of observational data and other assessments that support the delivery of an individualized, developmentally appropriate program.~~

~~(i) Standardized or formalized testing may be administered to pre-kindergarten and kindergarten children only for the purposes of diagnosing special educational needs, developing services to support mainstreaming of children with disabilities, and/or for meeting any required federal program eligibility standards.~~

~~(ii) Each local school system shall adopt and implement a comprehensive developmental assessment program for kindergarten children, to be used in developing instructional programs for kindergarten children.~~

~~4. Pre-kindergarten programs shall be staffed by at least one teacher for each 20 children and additional educational assistants or other personnel as are required to meet the adult/child ratio standards specified by the State Department of Human Services and administered by the State Department of Education for child care programs in schools.~~

~~5. Pre-kindergarten programs shall use and maintain transportation services (if provided) and facilities which meet the fire, safety, and health standards specified by the State Department of Human Services and Head Start, and administered by the State Department of Education for child care programs in schools.~~

~~(b) The curriculum and program structure for children in pre-kindergarten, kindergarten, and grades 1-3 shall be organized to support developmentally appropriate practice and may serve children in ungraded (non-graded or multi-age) groups or classes. Ungraded programs may also be developed in other grades.~~

~~(c) A Montessori kindergarten program may be approved if it meets all state requirements for approval as a public school except that compliance of its teachers with the standards and requirements of the Montessori Accreditation Council for Teacher Education (MACTE) and completion of a baccalaureate degree shall satisfy teacher employment standards for teaching in Montessori kindergartens; however, compliance with MACTE standards shall not satisfy employment standards for teaching in public schools.~~

(Rule 0520-01-03-.05, continued)

~~(6) Areas of Instruction:~~

~~(a) Language Arts:~~

~~1. Grades K-8:~~

- ~~(i) The language arts program, provided annually, shall be based on state curriculum academic standards and shall be developmentally appropriate with instruction focusing on receptive and expressive language skills.~~
- ~~(ii) Students whose first language is not English and who are identified as limited English proficient shall be provided with English instruction especially designed for speakers of other languages.~~

~~2. Grades 9-12:~~

- ~~(i) Four units of credit in English language arts shall be required for graduation. Literature shall be drawn from diverse cultures.~~
- ~~(ii) Courses in speech, journalism, competency English, and creative writing may be taken for elective credit but will not satisfy the four units of English language arts required for graduation.~~
- ~~(iii) Students whose first language is not English and who are identified as limited English proficient shall be provided with English instruction especially designed for speakers of other languages. These courses may be used to satisfy the English language requirement for graduation, not to exceed two units.~~

~~3. Foreign Languages:~~

- ~~(i) Grades K-8. Foreign language instruction may be incorporated into the curriculum.~~
- ~~(ii) Grades 9-12. Students who elect the university preparation curriculum shall complete two units in any one foreign language.~~
- ~~(iii) School systems may allow students who are native speakers of languages other than English to complete the graduation requirements for the university preparation curriculum without taking foreign language courses provided oral and written proficiency in the native language can be documented. Such documented native language proficiency will be noted on the Tennessee high school transcript.~~

~~(b) Mathematics:~~

~~1. Grades K-8. The mathematics program, provided annually, shall be based on state curriculum academic standards and shall be developmentally appropriate, with instruction focusing on the use of manipulatives to teach mathematical language skills and concepts.~~

~~2. Grades 9-12. Four units of credit in mathematics shall be required for graduation. Students who enter ninth (9th) grade in 2009-10 and thereafter shall be required to achieve, by the time they graduate, at least the following: Algebra I, Geometry, and Algebra II (or the equivalents) plus one (1) additional mathematics~~

(Rule 0520-01-03-.05, continued)

~~course beyond Algebra I. All students will be enrolled in a math class each year. Students with qualifying disabilities in math as documented in the individualized education program shall be required to achieve at least Algebra I and Geometry (or the equivalent). Three units of credit in mathematics shall be required for graduation. Students shall be required to achieve, by the time they graduate, at least one of the following: Algebra I, Technical Algebra (formerly Math for Technology II), or Integrated Mathematics I. Students who enter high school beginning in 2005-06 will also be required to complete one of the following: Geometry, Technical Geometry, Algebra II, or Integrated Mathematics II as part of the three required units. Calculators shall be provided for use in all mathematics courses.~~

~~(c) Science.~~

~~1. Grades K-8. The science program, provided annually, shall be based on state curriculum academic standards and shall be developmentally appropriate, with instruction focusing on laboratory experiences.~~

~~2. Grades 9-12. Three units of science shall be required for graduation. Students who enter ninth (9th) grade in 2009-10 and thereafter shall be required to achieve, by the time they graduate, at least Biology I and either Chemistry or Physics plus another laboratory science. Students with qualifying disabilities in reading and/or math as documented in the individualized education program shall be required to achieve at least Biology I and two (2) other lab science credits. One unit shall be drawn from the physical sciences and one unit shall be drawn from the life sciences. All science courses shall include laboratory experiences.~~

~~(d) Social Studies.~~

~~1. Grades K-8. The social studies program, provided annually, shall be based on state curriculum academic standards and shall be developmentally appropriate, with instruction focusing on experiences to enable students to learn about themselves and others in the community, state, nation and world.~~

~~2. Grades 9-12. The The social studies program curriculum shall consist of three units and shall include United States history, world history/world geography, economics, and government. The requirement may be met either by combining these subjects or by separate courses.~~

~~3. The curriculum program shall include African-American history and culture.~~

~~4. All social studies programs shall include a multi-cultural perspective.~~

~~(e) Health, Physical Education, and Wellness.~~

~~1. Health and Physical Education, Grades K-8. The health education and physical education programs, provided annually, shall be based on state curriculum academic standards and shall be developmentally appropriate with instruction focusing on activities which will promote good health habits and enhance physical fitness.~~

~~2. Wellness, Grades 9-12.~~

~~(i) Students shall complete 1 unit of wellness. The program shall be based on the state curriculum academic standards and shall integrate concepts from the areas of health and physical fitness.~~

(Rule 0520-01-03-.05, continued)

- ~~(ii) Participation in marching band and interscholastic athletics shall not be substituted for this requirement. Credit earned in two years of JROTC may be substituted for the wellness requirement provided the local board of education has complied with the requirements of the State Board of Education.~~
- ~~(iii) Participation in marching band and interscholastic athletics shall not be substituted for the wellness requirement. Credit earned in two years of JROTC may be substituted for the wellness requirement provided the local board of education has complied with requirements of the State Board of Education.~~
- ~~3. For pupils who have physical disabilities, the physical education program shall be modified based on the annual written recommendation of a physician. The statement of the physician shall indicate the type of disability and include a recommended activity program.~~
- ~~(f) Automobile Driver Education, Grades 9-12.~~
- ~~1. Driver education, when offered, must follow the guidelines of the state curriculum academic standards. The course shall be a one-half unit elective and shall include not fewer than 30 class hours of instruction and six hours of experience behind the wheel. Students shall be permitted to enroll in the program when they have reached the age of 15 years.~~
- ~~(g) Fine Arts. Students who elect the university preparation curriculum shall complete 1 unit of fine arts.~~
- ~~1. Visual Arts, Grades K-12. The visual art program shall be based on the state curriculum academic standards and shall be developmentally appropriate with instruction focusing on activities relating to appreciation and production.~~
- ~~2. Music, Grades K-12. The music program shall be based on the state curriculum academic standards and shall be developmentally appropriate with instruction focusing on activities relating to appreciation and production.~~
- ~~3. Theatre Arts, Grades K-12. The theatre arts program shall be based on the state curriculum academic standards and shall be developmentally appropriate with instruction focusing on activities relating to appreciation and production.~~
- ~~4. Dance, Grades K-12. The dance program shall be based on the state curriculum academic standards and shall be developmentally appropriate with instruction focusing on activities relating to appreciation and production.~~
- ~~5. Fine Arts, Grades K-8. The visual arts and music programs, provided annually, shall be based on state curriculum academic standards and shall be developmentally appropriate. Instruction in theater arts and dance may be incorporated into the curriculum course consistent with state curriculum academic standards.~~
- ~~6. Fine Arts, Grades 9-12. One unit of fine arts shall be required for graduation.~~
- ~~(h) General Education Exploratory Courses, Grades 6-12.~~
- ~~Classes in career and technical education may be offered and shall be based on the state curriculum academic standards.~~

(Rule 0520-01-03-.05, continued)

~~(i) Computer Technology:~~

~~1. Grades K-8. The computer technology program shall be based on the state curriculum academic standards and shall be developmentally appropriate, with instruction focusing on computer literacy and the use of the computer as a productivity tool.~~

~~2. Grades 9-12. Classes in computer technology and computer language may be offered.~~

~~3. School systems shall verify, beginning September 1, 1994, that all graduating seniors have had the equivalent of at least one year (180 hours) of computer education during their K-12 tenure. Students who transfer from another state during their senior year are exempt from this requirement.~~

~~(j) Career and Technical Education:~~

~~1. Grades K-8. Classes in career and technical education may be offered and shall be based on the state curriculum academic standards.~~

~~2. Grades 9-12. Classes in career and technical education may be offered and shall be based on the state curriculum academic standards.~~

~~(7) Curriculum for Children with Disabilities:~~

~~(a) The curriculum for children with disabilities shall be an integral part of the general curriculum of the school. Provision shall be made for instruction in all instructional areas with changes and adaptations, within and/or outside of the regular instructional program, to meet the abilities and needs of the individual child.~~

~~(b) An Individualized Educational Program (IEP) shall be designed for every eligible child. An IEP is a written plan for each eligible child, developed in a multidisciplinary team meeting in accordance with the requirements in 0520-01-03-.09.~~

Authority: T.C.A. §§ 37-1-603, 49-1-204, 49-1-302, 49-1-304, 49-1-404, 49-6-101, 49-6-209(d), 49-6-407, 49-6-1003, 49-6-1005, 49-6-1006, 49-6-1007, 49-6-1008, 49-6-1202, 49-6-1203, 49-6-1204, 49-6-1205, 49-6-1302, 49-6-2202, 49-6-2203, and 49-6-3001(c)(3)(A). **Administrative History:** Original rule certified June 10, 1974. Amendment filed June 30, 1975; effective July 30, 1975. Amendment filed July 15, 1976; effective August 16, 1976. Amendment filed October 3, 1985; effective January 14, 1986. Amendment filed January 17, 1986; effective April 15, 1986. Amendment filed May 28, 1986; effective June 27, 1986. Amendment filed August 26, 1986; effective November 29, 1986. Repeal and new rule filed March 16, 1992; effective June 29, 1992. Amendment filed April 28, 1992; effective July 29, 1992. Amendment filed September 1, 1992; effective December 29, 1992. Amendment filed January 21, 1994; effective May 31, 1994. Amendment filed April 29, 1996; effective August 28, 1996. Amendment filed January 14, 1997; effective May 30, 1997. Amendment filed April 27, 1998; effective August 28, 1998. Amendment filed July 13, 1998; effective November 27, 1998. Amendment filed November 18, 1999; effective March 30, 1999. Amendment filed April 28, 2000; effective August 28, 2000. Amendment filed October 31, 2002; effective February 28, 2003. Amendment filed March 31, 2003; effective July 29, 2003. Amendment filed June 30, 2003; effective October 28, 2003. Amendment filed June 30, 2005; effective October 28, 2005. Amendments filed December 28, 2005; effective April 28, 2006. Amendments filed September 6, 2013; effective February 28, 2014. Amendment filed April 6, 2015; effective July 5, 2015.

(Rule 0520-01-03-.06, continued)

0520-01-03-.06 GRADUATION, REQUIREMENT DE.

- (1) ~~Graduation Requirements - Effective with the ninth (9th) grade class of 2009-2010 and thereafter. All students will have access to a rigorous education that will prepare them for success in postsecondary education and the workforce. All coursework should be aligned to the Tennessee Academic Standards for that subject and course.~~

~~(a) High School Diploma, and Special Education Diploma and Occupational Diploma.~~

~~1. The high school diploma will be awarded to students who (1) earn the specified twenty-two (22) units of credit, and (2) have satisfactory records of attendance and conduct/discipline.~~

~~2. Students with disabilities will be included in regular classes to the degree possible and with appropriate support and accommodations. To earn a regular high school diploma, students with disabilities must earn the prescribed 22-credit minimum. Students failing to earn a yearly grade of 70 in a course that has an end-of-course test and whose disability adversely affects performance in that test will be allowed, through an approved process, to add to their end-of-course assessment scores by demonstrating the state-identified knowledge and skills contained within that course through an alternative performance-based assessment. The necessity for an alternative performance-based assessment must be determined through the student's individualized education plan (IEP). The alternative performance-based assessment will be evaluated using a state-approved rubric.~~

~~3. A special education diploma may be awarded at the end of their fourth year of high school to students with disabilities who have (1) not met the requirements for a high school diploma, (2) have satisfactorily completed an individualized education program, and (3) have satisfactory records of attendance and conduct. Students who obtain the special education diploma may continue to work towards the high school diploma through the end of the school year in which they turn twenty-two (22) years old.~~

~~4. An occupational diploma may be awarded at the end of their fourth year of high school to students with disabilities who:~~

~~(i) Have not met the requirements for a high school diploma;~~

~~(ii) Have satisfactorily completed an individualized education program;~~

~~(iii) Have satisfactory records of attendance and conduct; and~~

~~(iv) Have completed the occupational diploma Skills, Knowledge, and Experience Mastery Assessment (SKEMA) created by the Department of Education and have completed two (2) years of paid or non-paid work experience.~~

~~5. The determination that an occupational diploma is the goal for a student with a disability will be made at the conclusion of the student's tenth (10th) grade year or two (2) academic years prior to the expected graduation date. Students who obtain the occupational diploma may continue to work towards the high school diploma through the end of the school year in which they turn twenty-two (22) years old.~~

(ab) High School Diploma.

(Rule 0520-01-03-.06, continued)

~~1. The following twenty-two (22) units shall be required for graduation for students who enter the ninth (9th) grade in 2009-10 and thereafter.~~

<u>Ready Core Curriculum Units</u>	
English Language Arts	4
Mathematics*	4
Science**	3
Social Studies***	3
Wellness****	1
Physical Education	0.5
Personal Finance	0.5
Foreign Language*****	2
Fine Arts*****	1
Electives Focus	3
Total	22

~~* Students who enter ninth (9th) grade in 2009-10 and thereafter shall be required to achieve, by the time they graduate, at least the following: Algebra I, Geometry, and Algebra II (or the equivalents) plus one (1) additional mathematics course beyond Algebra I. All students will be enrolled in a math class each year. Students with qualifying disabilities in math as documented in the individualized education program shall be required to achieve at least Algebra I and Geometry (or the equivalent).~~

~~The required number of credits in math will be achieved through strategies such as, but not limited to, increased time, appropriate methodologies, and accommodations as determined by the IEP team.~~

~~** Students who enter ninth (9th) grade in 2009-10 and thereafter shall be required to achieve, by the time they graduate, at least Biology I and either Chemistry or Physics plus another laboratory science. Students with qualifying disabilities in reading and/or math as documented in the individualized education program shall be required to achieve at least Biology I and two (2) other lab science credits. The required number of credits in science will be achieved through strategies such as, but not limited to, increased time, appropriate methodologies, and accommodations as determined by the IEP team.~~

~~*** The social studies curriculum shall include United States History, World History/World Geography, Economics, and Government.~~

~~**** If, during high school, a student enlists in a branch of the United States military or in the National Guard through the military delayed entry program, the National Guard split training option or other similar early entry program and completes basic training before graduation from high school, then the student shall receive high school credit towards graduation for basic training. Credit for basic training may be substituted, upon the choice of the student, for the required credit in lifetime wellness and credit in one (1) elective course or for credit in two (2) elective courses.~~

(Rule 0520-01-03-.06, continued)

~~***** In exceptional circumstances, schools may waive the foreign language and fine art requirement for students who are not planning to attend the university to expand and enhance their elective focus.~~

1. The following twenty-two (22) credits shall be required for graduation:

English language arts	4 credits
Mathematics	4 credits
Science	3 credits
Social Studies	3 credits
	Physical Education
and Wellness	1.5
credits	
	Personal Finance
credit	0.5
	Elective Focus
	3 credits
	Foreign Language
	2 credits
	Fine Arts
	1 credit

2. To earn a regular high school diploma, students must (1) earn the prescribed twenty-two (22)-credit minimum, (2) complete the ACT, SAT, or other eleventh (11th) grade assessment as determined by the commissioner of education, and (3) have a satisfactory record of attendance and discipline.

3. Students with disabilities will be included in regular classes to the degree possible and with appropriate support and accommodations. To earn a regular high school diploma, students with disabilities must earn the prescribed twenty-two (22)-credit minimum. Students failing to earn a yearly grade of seventy percent (70%) in a course that has an End of Course examination and whose disability adversely affects performance in that test will be allowed, through an approved process, to add to their End of Course examination scores by demonstrating the state identified knowledge and skills contained within that course through an alternative performance-based assessment. -The necessity for an alternative performance-based assessment must be determined through the student's Individualized Education pPlan (IEP). The alternative performance-based assessment will be evaluated using a state-approved rubric.

A special education diploma may be awarded at the end of their fourth (4th) year of high school to students with disabilities who have (1) not met the requirements for a regular high school diploma, (2) have satisfactorily completed an IEP, and (3) have satisfactory records of attendance and conduct. Students who obtain the special education diploma may continue to work towards thea regular high school diploma through the end of the school year in which they turn twenty-two (22) years old.

4. An occupational diploma may be awarded at the end of their fourth (4th) year of high school to students with disabilities who (1) have not met the requirements for a regular high school diploma, (2) have satisfactorily completed an IEP, (3) have satisfactory records of attendance and conduct, (4) have completed the occupational diploma Skills, Knowledge, and Experience Mastery Assessment (SKEMA) created by the Department of Education, and (5) have completed two (2) years of paid or non-paid work experience. - The determination that an occupational diploma is the goal for a student with a disability will be made at the conclusion of the student's tenth (10th) grade year or two (2) academic years prior to the expected graduation date. -Students who obtain the occupational diploma may

(Rule 0520-01-03-.06, continued)

continue to work towards the high school diploma through the end of the school year in which they turn twenty-two (22) years old.

5. Students must complete four (4) credits of English, including English I, English II, English III, and English IV.

4.6. Students must complete four (4) credits of mathematics including Algebra I and II, Geometry or the equivalent Integrated Math I, II, and III, and another mathematics course beyond Algebra I or Integrated Math I. Students must be enrolled in a mathematics course each school year. Students who complete any of the required math credits prior to the ninth (9th) grade may receive graduation credit for that coursework; however, those students are still required to enroll in math during each high school year.

Students with a qualifying disability who have deficits in mathematics as documented in the individualized education program (IEP) shall be required to achieve at least Algebra I and Geometry (or the equivalent Integrated Math I and Integrated Math II). The required number of credits in math will be achieved through strategies such as, but not limited to, increased time, appropriate methodologies, and accommodations as determined by the IEP team.

7. Students must complete three (3) credits of Science. Students must complete Biology, Chemistry or Physics, and a third lab science. Students with a qualifying disability as documented in the IEP shall be required to achieve at least Biology I and two (2) other lab science credits. The required number of credits in science will be achieved through strategies such as, but not limited to, increased time, appropriate methodologies, and accommodations as determined by the IEP team.

8. Students must complete three (3) credits of Social Studies. The content of the social studies courses will be consistent with Tennessee Academic Standards and with admissions requirements of Tennessee public institutions of higher education. Required courses include United States History and Geography, World History and Geography, Economics, and United States Government and Civics.

9. Students must complete one-half (½) credit in Personal Finance. Three- (3) years of JROTC may be substituted for one-half (½) credit of Personal Finance if the JROTC instructor attends the Personal Finance training.

2.10. Students must complete one (1) credit in wellness. The wellness courses will integrate concepts from health, physical fitness, and wellness and may be taught by a team of teachers from one or more teaching areas, including health, physical education, family and nutrition sciences, and health sciences education. Participation in marching band and interscholastic athletics may not be substituted for this aspect of the graduation requirements. Credit earned in two (2) years of JROTC may be substituted provided the local system has complied with requirements of the State Board of Education.

Credit for basic training may be substituted, upon the choice of the student, for the required credit in lifetime wellness and credit in one (1) elective course or for credit in two (2) elective courses.

3.11. Students must complete one-half (½) credit in physical education. This requirement may be met by substituting a documented and equivalent time of physical activity in marching band, JROTC, cheerleading, interscholastic athletics, school sponsored intramural athletics, and other areas approved by the local board of education.

(Rule 0520-01-03-.06, continued)

12. Students must complete two (2) credits of the same Foreign Language. The credit requirement for foreign language may be waived by the local school district for students, under certain circumstances, to expand and enhance the elective focus.
- 4:13. Students must complete one (1) credit in Fine Arts. The credit requirement for fine arts may be waived by the local school district for students, under certain circumstances, to expand and enhance the elective focus.
14. Students must complete three (3) credits in an elective focus. All students will pursue a focused program of study designed to prepare them for the workforce and postsecondary study. The elective focus may be CTE, science and math, humanities, fine arts, AP/IB, or other areas approved by the local board of education. Students completing a CTE elective focus must complete three (3) credits in the same CTE career cluster or state-approved program of study.
15. Every candidate for graduation must have received a full year of computer education at some point during the candidate's educational career pursuant to T.C.A. § 49-6-1010.

(c)(b)(c) Graduation with Honors, State Honors, and State Distinction.

1. School systems may design student recognition programs that allow students to graduate with honors if they have met the graduation requirements and have obtained an overall grade point average of at least a 3.0 or higher on a 4.0 scale. School systems may set a higher GPA at their discretion.— School systems may specify additional requirements, such as requiring students to demonstrate performance of distinction in one (1) or more areas.

2. Students who score at or above all the subject area readiness benchmarks on the ACT or equivalent score on the SAT will graduate with state honors.

Each local school board shall develop a policy prescribing how students graduating with "state honors" will be noted and recognized.

3. Students will be recognized as graduating with "state distinction" by attaining a B or better average and completing one of the following:

- (i) Eearn a state or nationally recognized industry certification
- (ii) Pparticipate in at least one (1) of the Governor's Schools
- (iii) Pparticipate in one (1) of the state's ALL State musical organizations
- (iv) Bbe selected as a National Merit Finalist or Semi-Finalist
- (v) attain a score of thirty one (31) or higher composite score on the ACT or SAT equivalent
- (vi) Attain a score of three (3) or higher on at least two advanced placement exams
- (vii) Successfully complete the International Baccalaureate Diploma Programme

(Rule 0520-01-03-.06, continued)

- (viii) Earn twelve (12) or more semester hours of transcribed postsecondary credit

Each local school board shall develop a policy prescribing how students graduating with "state distinction" will be noted and recognized.

4. Students that voluntarily complete at least ten (10) hours of community service each semester the student is in attendance at a public high school shall be recognized at their graduation ceremony.

Each local school board shall develop a policy prescribing how these students will be noted and recognized.

(c) Examinations.

1. End-of-Course examinations will be given in English I, English II, English III, Algebra I, Geometry, Algebra II, Integrated Math I, Integrated Math II, Integrated Math III, U.S. History, Biology I, Chemistry, and Physics, upon development. Students are not required to pass any one (1) examination, but instead students must achieve a passing score for the course need to achieve a passing score for the course average in accordance with the State Board of Education's Uniform Grading Policy.

2. The weight of the End of Course examination on the student's second semester average is twenty-five percent (25%). The weight of the end-of-course examination on the student's second semester average is as follows for entering ninth (9th) graders:

- (i) Fall of 2009 and 2010 — twenty percent (20%);
- (ii) Fall of 2011 and 2012 — twenty-five percent (25%); and
- (iii) Fall of 2013 and thereafter — twenty-five percent (25%).

Results of individual student performance from all administered End of Course examinations will be provided in a timely fashion to facilitate the inclusion of these results as part of the student's grade. If a Local Education Agency (LEA) does not receive its students' end-of-course examination scores at least five (5) instructional days before the scheduled end of the course, then the LEA may choose not to include its students' End-of-Course examination scores in the students' second semester average. The department of education shall provide raw score data from the End of Course (EOC) examinations to each local education agency (LEA) for the purpose of including student scores on the EOC examinations into a student's final grade for the course. The weight of the EOC examination on the student's final average shall be ten percent (10%) in the 2016-2017 school year, fifteen percent in the 2017-2018 school year; and shall be determined by the LEA from a range of not less than fifteen percent (15%) and not more than twenty-five percent (25%) in the 2018-2019 school year and thereafter.

Each LEA must establish a local board policy that details the methodology used and the required weighting for incorporating students' scores on EOC examinations into final report card grades.

(Rule 0520-01-03-.06, continued)

Results of individual student performance from all administered EOC examinations will be provided to LEAS in time to facilitate the inclusion of these results as part of the students' grade. If an LEA does not receive its students' EOC examination scores at least (5) instructional days before the scheduled end of the course, then the LEA may choose not to include its students' EOC examination scores in the students' final average.

3. As a strategy for assessing student readiness for postsecondary education, every public school student shall take either the ACT, SAT, or other eleventh (11th) grade assessment as determined by the Commissioner of Education.

4. All LEAs shall implement a project-based assessment in civics at least once in grades nine through twelve (9-12) pursuant to T.C.A. § 49-6-1028.

5. Beginning January 1, 2017, students must participate in the United States civics test during the candidate's high school career pursuant to T.C.A. § 49-6-408.

~~Students with disabilities will be included in regular classes to the degree possible and with appropriate support and accommodations. To earn a regular high school diploma, students with disabilities must earn the prescribed twenty-two (22) credit minimum. Students failing to earn a yearly grade of seventy (70) in a course that has an end-of-course test and whose disability adversely affects performance in that test will be allowed, through an approved process, to add to their end-of-course assessment scores by demonstrating the state-identified core knowledge and skills contained within that course through an alternative performance-based assessment. The necessity for an alternative performance-based assessment must be determined through the student's IEP. The alternative performance-based assessment will be evaluated using a state-approved rubric.~~

~~4. When the mean of the teacher-assigned grades and the mean of the end-of-course assessment results are significantly different as determined by State Board of Education policy, the school must develop and implement strategies in the School Improvement Plan to ameliorate such differences. Until such time that the State Department of Education recommends, based upon an appropriate statistical analysis, and the State Board of Education approves an acceptable measure of disparity, schools and school systems should consider differences between ten (10) and fifteen (15) or more points to be too large and develop and implement strategies through the School Improvement Plan to ameliorate such differences.~~

~~(defe) Academic Program.- All courses listed in State Board of Education Policy 3.205 may be offered for credit in grades nine (9) through twelve (12).~~

~~(efgf) Every local board of education shall develop a policy regarding the minimum and maximum units in any course or subject area for which a student may earn credit toward graduation.~~

(2) Testing for Credit.

(a) Local boards of education may adopt policies permitting students who are enrolled in grades nine (9) through twelve (12) and who have taken the equivalent of high school level courses to earn unit(s) of high school credit for these courses. Students may earn credit toward graduation upon passing a comprehensive written examination in accordance with standards determined by the local board of education.

(b) High school credit may not be given by examination in American History.

(Rule 0520-01-03-.06, continued)

(3) Work-Based Learning Experiences.

- (a) ~~Students will have access to a system of structured work-based learning (WBL) experiences that allows them to apply classroom theories to practical problems and to explore career options. Local boards of education are authorized to implement work-based learning (WBL) experiences, school-based enterprises, and service learning experiences where students learn at the work site, school site or in the community, during and/or outside of normal school hours. These experiences must be integrated with classroom instruction and student plans of study and adhere to the Work-Based Learning Framework requirements (State Board of Education Policy 2.103) to ensure robust application of both academic concepts and employability skills.~~
- (b) ~~In order to ensure that WBL experiences are of high quality, the Department of Education shall develop a Work-Based Learning Framework (State Board of Education Policy 2.103) for approval and adoption by the State Board of Education. The state board's Work-Based Learning Framework will govern all WBL experiences. The Department of Education will also provide school systems, local boards of education with a Work-Based Learning Policy Guide and a Work-Based Learning Implementation Guide to address training requirements, program expectations, and legal requirements. These documents will be reviewed annually by the Department of Education and will be updated as necessary for dissemination to school systems. local boards of education.~~

(4) Enrollment in College Level Courses.

- ~~(a) Local education agencies may elect to award high school credit to students who~~
- (a) ~~successfully complete college level courses prior to graduating high school shall award high school credit to students who successfully complete college level courses aligned to a graduation requirement course, including general education and elective focus courses.~~
- (b) ~~Option #1 Early admission into college may be considered for a twelfth (12th) grade student who has at least a 3.5 grade point average and a minimum ACT composite score of twenty-five (25) (or equivalent SAT score). A student must have written endorsement from the high school principal, counseling staff, and the participating institution of higher learning partnering postsecondary institution. The written agreement shall include a review by the principal of the postsecondary coursework and verification that it is appropriate to substitute for any remaining graduation requirements for the student. Written agreements completed submitted by the student and the parents must be placed on file in the office of the principal.~~
- (b) ~~2. The freshman course work taken at the participating institution will substitute for the courses which the student needed for graduation from high school. The high school principal will determine appropriateness of the content of these courses prior to the student's enrollment in college.~~
- ~~3. A student will be awarded credit for the senior year after having successfully completed the freshman year in college.~~
- (cb) ~~Option #2 A qualified student enrolled in high school may enroll in a postsecondary institution and take college-level courses, which are taught at the high school, postsecondary institution, or online by postsecondary faculty or credentialed adjunct faculty. The student may receive high school credit for participating in such courses in accordance with the policy of the local board of education. Students who take and pass dual enrollment courses at a postsecondary institution shall have their postsecondary credits accepted by their local high school for credit as a substitution for an aligned~~

(Rule 0520-01-03-.06, continued)

~~graduation requirement course, including general education and elective focus courses. State funds to the local school system shall not be diminished because of the student's participation. A qualified student enrolled in high school may enroll in college level courses which are conducted at an institution of higher education or courses provided online by the post-secondary institution. The student may receive high school credit for participating in such courses in accordance with the policy of the local board of education. State funds to the local school system shall not be diminished because of the student's participation.~~

- (de) ~~Option #3. Local boards of education may adopt policies providing for college-level courses to be offered during the school day on the high school campus. Such courses must be taught by a licensed high school teacher or credentialed postsecondary faculty member approved by the local school system and partnering postsecondary institution. These courses are to be considered part of the high school program, with content and instruction subject to the supervision of the school principal and local board of education.~~

~~Local boards of education may adopt policies providing for college level courses to be conducted during the school day on the high school campus. Such courses must be taught by licensed teachers or bona fide college instructors approved by the local school system and the postsecondary institution. These courses are to be considered a part of the school program, with content and instruction subject to the supervision of the principal of the school and the local board of education. Dual credit (high school and college) may be offered under this option.~~

- (5) ~~The General Educational Development (GED) Testing Program and the Issuance of Equivalency Diplomas.~~

- (a) ~~The testing program is operated in accordance with the GED manual of the national GED office and rules established by the Department of Education.~~
- (b) ~~The chief examiners shall ensure that all examinees meet the state requirements for age, residency, proper identification and any other qualifications prior to admission to a testing session.~~
- (c) ~~A candidate must be eighteen (18) years of age before being eligible to take the GED test. A (17) year old may be allowed to take the examination upon the recommendation of the local school superintendent. The superintendent may require written documentation from the applicant to support this recommendation. This rule shall not be used to circumvent participation in the regular high school program.~~
- (d) ~~In order to pass, the average standard score on the GED test shall not be less than forty-five (45) and no score on any one (1) component of the test battery shall be less than thirty-five (35).~~

- (56) ~~The General Educational Development (GED) Testing Program and the Issuance of Equivalency Diplomas.~~

- (a) ~~The testing program is operated in accordance with the GED manual of the national GED office and rules established by the Department of Labor and Workforce Development.~~
- (b) ~~The chief examiners shall ensure that all examinees meet the state requirements for age, residency, proper identification and any other qualifications prior to admission to a testing session.~~

(Rule 0520-01-03-.06, continued)

- ~~(c) A candidate must be eighteen (18) years of age before being eligible to take the GED test. A (17)-year old may be allowed to take the examination upon the recommendation of the local school superintendent. The superintendent may require written documentation from the applicant to support this recommendation. This rule shall not be used to circumvent participation in the regular high school program.~~
- ~~(d) In order to pass, the average standard score on the GED test shall not be less than four hundred fifty (450) and no score on any one (1) component of the test battery shall be less than four hundred ten (410).~~

(567) The High School Equivalency Testing (HiSET) Program and the Issuance of Equivalency Diplomas.

- (a) The testing program is operated in accordance with the HiSET manual of the Education Testing Service and the rules established by the Department of Labor and Workforce Development.
- (b) The chief examiners shall ensure that all examinees meet the state requirements for age, residency, proper identification, and any other qualifications prior to admission to the testing session.
- (c) A candidate must be eighteen (18) years of age before being eligible to take the HiSET test. A seventeen (17) year old may be allowed to take the examination upon recommendation of the local school superintendent. The superintendent may require written documentation from the applicant to support this recommendation. This rule shall not be used to circumvent participation in the regular high school program.
- (d) The HiSET test consists of five (5) core areas that count twenty (20) points each. In order to pass, the total composite score on the HiSET test shall not be less than forty-five (45) and no score on any one (1) core area of the test battery shall be less than eight (8).

Authority: T.C.A. §§ 49-1-302, 49-1-302(a)(2) and (13), 49-6-101, 49-6-201, 49-6-3001(c) and (c)(1), 49-6-3003, 49-6-3005(a) and (a)(4), 49-6-3104, 49-6-3105, 49-6-6001(g), 49-6-6201, and Sections 30, 78 through 80, 88 of Chapter 535 of the Public Acts of 1992, and Public Chapter 448 (2013).

Administrative History: Original rule certified June 10, 1974. Amendment filed July 18, 1974; effective August 17, 1974. Amendment filed June 30, 1975; effective July 30, 1975. Amendment filed July 15, 1976; effective August 16, 1976. Amendment filed February 28, 1978; effective March 30, 1978. Amendment filed January 9, 1979; effective February 23, 1979. Amendment filed October 15, 1979; effective January 8, 1980. Amendment filed April 14, 1980; effective May 28, 1980. Amendment filed April 13, 1982; effective May 28, 1982. Amendment filed September 28, 1982; effective December 15, 1982. Amendment filed January 19, 1983; effective April 18, 1983. Amendment filed September 28, 1983; effective December 14, 1983. Amendment filed January 6, 1984; effective April 15, 1984. Amendment filed June 28, 1984; effective July 28, 1984. Amendment filed June 28, 1984; effective September 11, 1984. Amendment filed May 12, 1985; effective August 13, 1985. Amendment filed October 3, 1985; effective January 14, 1986. Amendment filed March 25, 1986; effective June 14, 1986. Amendment filed May 28, 1986; effective June 27, 1986. Amendment filed July 10, 1987; effective October 28, 1987. Amendment filed July 22, 1987; effective October 28, 1987. Amendment filed September 20, 1987; effective December 29, 1987. Amendment filed November 18, 1987; effective February 28, 1988. Amendment filed April 18, 1988; effective July 27, 1988. Amendment filed May 13, 1988; effective August 29, 1988. Amendment filed October 18, 1988; effective January 29, 1989. Amendment filed November 22, 1988; effective February 28, 1989. Amendment filed November 16, 1989; effective February 28, 1990. Amendment filed June 5, 1990; effective September 26, 1990. Amendment filed October 12, 1990; effective January 29, 1991. Repeal and new rule filed March 16, 1992; effective June 29, 1992. Amendment filed June 24, 1992; effective September 28, 1992.

(Rule 0520-01-03-.06, continued)

Amendment filed July 21, 1992; effective October 28, 1992. Amendment filed September 1, 1992; effective December 29, 1992. Amendment filed April 14, 1993; effective July 28, 1993. Amendment filed August 10, 1993; effective December 29, 1993. Amendment filed October 28, 1993; effective March 1, 1994. Amendment filed January 21, 1994; effective May 31, 1994. Amendment filed January 31, 1995; effective May 31, 1995. Amendment filed March 27, 1995; effective July 28, 1995. Amendment filed May 31, 1996; effective September 27, 1996. Amendment filed April 27, 1998; effective August 28, 1998. Amendment filed July 13, 1998; effective November 27, 1998. Amendment filed November 18, 1999; effective March 30, 1999. Amendment filed May 28, 1999; effective September 28, 1999. Amendment filed November 30, 1999; effective March 29, 2000. Amendment filed April 28, 2000; effective August 28, 2000. Amendment filed July 31, 2000; effective November 28, 2000. Amendment filed October 31, 2000; effective February 28, 2001. Amendment filed August 31, 2001; effective December 28, 2001. Amendment filed December 31, 2001; effective April 30, 2002. Amendment filed March 28, 2002; effective July 29, 2002. Amendment filed October 31, 2002; effective February 28, 2003. Amendment filed March 31, 2003; effective July 29, 2003. Amendment filed June 30, 2003; effective October 28, 2003. Amendment filed August 30, 2004; effective December 29, 2004. Amendments filed May 19, 2005; effective September 28, 2005. Amendments filed June 30, 2005; effective October 28, 2005. Amendment filed June 19, 2007; effective October 26, 2007. Amendments filed September 6, 2007; effective January 28, 2008. Repeal and new rule filed June 11, 2008; effective October 28, 2008. Amendment filed July 17, 2009; effective December 29, 2009. Amendment filed February 24, 2010; effective July 29, 2010. Amendment filed February 6, 2013; effective July 29, 2013. Amendment filed June 18, 2013; effective November 28, 2013. Amendments filed September 6, 2013; effective February 28, 2014. Amendments filed October 7, 2013; to be effective March 31, 2014. However, the State Board of Education filed a withdrawal of the rule. Amendments filed November 27, 2013; effective April 30, 2014. Amendment filed May 8, 2014; effective October 29, 2014. Amendment filed October 13, 2015; effective January 11, 2015. Amendment to rule 0520-01-03-.06 (1)(b) filed May 22, 2015; effective August 20, 2015. Amendment to rule 0520-01-03-.06 (3) filed May 22, 2015; effective August 20, 2015. Amendments filed December 30, 2015; effective March 29, 2016.

0520-01-03-.07 LIBRARY INFORMATION CENTER, REQUIREMENT EF.

(1) School Library Information Center.

- (a) All school libraries shall serve as resources for students, teachers, and community members to strengthen student learning. School library information specialists shall work collaboratively with classroom teachers and school administrators to integrate both curricular concepts and information skills that assist research and other learning activities. The collection and the services of the library shall adequately support the curricular priorities within the school.
- (b) School libraries shall provide an environment that allows efficient access to resources, including both print and electronic. Schools must be organized to allow the library program to operate a flexible schedule that allows students and teachers to access resources at the point of need.
- (c) School libraries shall provide parents and community members access to resources, so that the school library information center serves as a community resource.

(2) Library Information Center Personnel.

- (a) Elementary/Middle Schools: Schools including grades kindergarten through eight (KkK-8) or any combination thereof shall provide library information personnel as follows:

1. A school having a current average daily membership of five hundred fifty (550) or more students shall have a full-time library information specialist with endorsement as a library information specialist.

(Rule 0520-01-03-.07, continued)

2. A school with a current average daily membership of ~~four-hundred-(400)~~ to five hundred-forty-nine-(549) students shall have a half-time library information specialist with endorsement as a library information specialist. During the time that the library is open during regular school hours and the library information specialist is not present, staff member(s) shall be designated to provide supervision to students in the library.

3. In a school with fewer than ~~four-hundred-(400)~~ students, a faculty member shall serve as a library information coordinator. If the library information coordinator is not present during the time that the library is open during regular school hours, staff member(s) shall be designated to provide supervision to students in the library.

4. It is optimal to have the library open outside the regularly scheduled school day and if library personnel specialist or coordinator is not present, appropriate supervision shall be provided to the students in the library.

(b) High Schools: Schools including any high school grade shall provide library information personnel as follows:

1. A school with a current average daily membership of ~~one-thousand-five-hundred-(1,500)~~ or more students shall have two (2) full-time library information specialists, each with endorsement as a library information specialist.

2. A school with a current average daily membership of more than ~~three-hundred-(300)~~ but less than ~~one-thousand-five-hundred-(1,500)~~ students shall have a full-time library information specialist with endorsement as a library information specialist.

3. A school with a current average daily membership of fewer than ~~three-hundred-(300)~~ students shall have a half-time library information specialist. During the time that the library is open during regular school hours and the library information specialist is not present, staff member(s) shall be designated to provide supervision to students in the library.

4. It is optimal to have the library open outside the regularly scheduled school day and if the library information specialist is not present, appropriate supervision shall be provided to the students in the library.

(3) Library Information Center Collection.

The three (3) levels of collection standards for Tennessee school libraries are: Basic, Standard, and Exemplary. The criteria by which school library collections are evaluated are listed below:

(a) Item Count.

Basic collection - Contains a minimum of twelve (12) items per student in Average Daily Membership (ADM);

Standard collection - Contains fifteen (15) items per student in ADM; and

Exemplary collection - Contains eighteen (18) items per students in ADM.

(b) Collection Compilation.

1. Pamphlets, textbooks, class sets, periodicals, out-of-date items, and items in poor physical condition shall neither be counted nor reported in the total collection. No

(Rule 0520-01-03-.07, continued)

more than five (5) copies of the same print title may be counted to meet standards for a minimum number of items per student.

2. Digital resources should be accessible through a school library webpage or Online Public Access Catalog (OPAC) and may comprise fifty percent (50%) of the collection.

3. The library shall provide access to the virtual library administered by the Tennessee State Library and Archives and the library personnel should receive training. These resources may count for up to twenty percent (20%) of the overall collection or, in schools in which the librarian has received official training within the last five (5) years, they may count for up to thirty percent (30%) of the overall collection.

4. The collection shall include access to a current, complete encyclopedia in any format. In secondary schools, the collection shall also include an unabridged dictionary, one (1) foreign language dictionary in the native language of ESL students in attendance at the school, a local newspaper, and one (1) daily newspaper presenting news on both state and national levels. For digital materials, only full text should be counted in the total.

5. The collection should include a balance of fiction and nonfiction with an appropriate level of text complexity. The resources in the collection should be chosen to: complement and augment the most recently adopted curriculum standards, be a motivational springboard for student research, and encourage self-expression and curiosity by offering a variety of recreational reading material.

(c) Age.

Collections meeting the compilation standards are evaluated based on age of the collection as measured in years from the current year:

Basic collection – sixteen (16) years and older;

Standard collection – fifteen (15) years; and

Exemplary collection – fourteen (14) years or less.

(d) Technology - Access to Digital Materials.

1. Workstations with Internet access in the library information center are sufficient to provide access for students. The number of workstations should be no less than the maximum average class size allowable by the state. A workstation may be a desktop, laptop, tablet or similar device, but devices available for checkout should not be counted in the total.

2. School libraries should be equipped with instructional technology, including, but not limited to, LCD projector, screen and/or interactive smart board, document camera, computer, etc., and provide user training for such devices.

3. Separate computers must be maintained for both the library management system/circulation and for the library personnel.

Authority: T.C.A. §§ 49-1-302 and 49-3-305. **Administrative History:** Original rule certified June 10, 1974. Amendment filed June 30, 1985; effective July 30, 1975. Amendment filed July 15, 1976; effective August 16, 1976. Amendment filed February 28, 1978; effective March 30, 1978. Amendment filed January 9, 1979; effective February 23, 1979. Amendment filed October 15, 1979; effective January 8,

(Rule 0520-01-03-.07, continued)

1980. Amendment filed June 27, 1984; effective July 27, 1984. Amendment filed October 1, 1985; effective January 14, 1986. Amendment filed May 28, 1986; effective June 27, 1986. Amendment filed July 22, 1987; effective October 28, 1987. Repeal and new rule filed March 16, 1992; effective June 29, 1992. Amendment filed March 28, 2002; effective July 29, 2002. Repeal and new rule filed May 16, 2014; effective October 29, 2014.

0520-01-03-.08 PUPIL PERSONNEL SERVICES, -REQUIREMENT FG.

- (1) Each local board of education shall develop standards and policies for:
 - (a) Attendance Services
 - (b) Guidance Services
 - (c) School Psychological Services
 - (d) School Social Work Services
 - (e) School Health Services
- (2) The school health services program shall include but not be limited to the following:
 - (a) Each local school system shall have a written policy providing for a physical examination of every child entering school for the first time.— A doctor of medicine, osteopathic physician, physician assistant, certified nurse practitioner, or a properly trained public health nurse shall perform this examination.— No child shall be admitted to school without proof of immunization except those who are exempt by statute as provided in T.C.A. § 49-6-5001.
 - (b) Each local school system shall have a written policy providing for a physical examination of every student participating in interscholastic athletics. A doctor of medicine, osteopathic physician, physician assistant, or certified nurse practitioner shall perform this examination.
 - (c) Each local school system shall have a written policy for excluding pupils with communicable diseases and for readmitting them following recovery. In the case of diseases (listed in Regulations Governing Communicable Diseases in Tennessee: Tennessee Department of Health) the policy shall be in accordance with the recommendations of the State Department of Health as approved by the State Commissioner of Education.
 - (d) Each local school system shall have a written policy for handling drug/alcohol problems that may arise in the schools.
 - (e) Each local school system shall develop procedures for reporting suspected cases of child abuse and neglect as provided in T.C.A. § 37-1-403.
 - (f) After an offer of employment has been made to an applicant and prior to the commencement of the employment duties, each employee shall present a physician's certificate showing a satisfactory health record.— Employees shall present a certificate thereafter at intervals determined by the State Department of Health and approved by the State Commissioner of Education.— The provisions of this subsection shall be administered in a manner consistent with the Americans with Disabilities Act (42 U.S.C.A. § 12101 et. seq) and the associated regulations (29 C.F.R. Part 1630 et. seq).
 - (g) HIV, HIV-Related Illness and AIDS.

(Rule 0520-01-03-.08, continued)

1. All children with HIV, HIV-related illness and AIDS infection who enroll in the public school systems of Tennessee shall attend and participate in educational programs appropriate to meet medical and educational needs.
2. Each local school system shall:
 - (i) Develop a comprehensive local AIDS plan ~~which~~ that addresses appropriate education programs, confidentiality, liability, personnel, safety, curriculum, education, communications and public relations. ~~The plan will be developed in conjunction with public health officials based upon guidelines approved by the State Board of Education.~~
 - (ii) Include in the AIDS plan education/training programs for all school personnel, parents, and board members; and cooperate with other community organizations and state agencies in AIDS education for all citizens.
 - (iii) Include in the AIDS plan a policy for personnel with HIV, HIV-related illness and AIDS infection. Employment conditions will be determined on a case-by-case basis. ~~The review of individual cases will involve at a minimum the superintendent or designee, the employee's physician, and a public health official.~~
3. Information including names, records, reports, and/or correspondence and any other identifying information on HIV, HIV-related illness and AIDS infection status for any individual child or adult shall be maintained in confidence.
4. Local school systems and school personnel shall implement for all children and adults the universal precautions as defined by the State Department of Health for handling blood and other body fluids. Information about universal precautions and related safety procedures shall be distributed by the State Department of Education to all school systems and school personnel in Tennessee.

* ~~_____~~HIV, HIV-related illness and AIDS infection are the three (3) terms used to denote the three (3) medically diagnosed stages of the infection caused by Human Immunodeficiency Virus. (AIDS - Acquired Immune Deficiency Syndrome; ARC - Aids Related Complex; and HIV Infection - Human Immunodeficiency Virus antibodies detected in blood.)

Authority: T.C.A. §§ 49-1-302, 49-1-302(a)(2) and (13). **Administrative History:** Original rule certified June 10, 1974. Amendment filed October 3, 1974; effective November 2, 1974. Amendment filed June 30, 1975; effective July 30, 1975. Amendment filed January 15, 1976; effective April 15, 1976. Amendment filed July 15, 1976; effective August 16, 1976. Amendment filed February 28, 1978; effective March 30, 1978. Amendment filed January 9, 1979; effective February 23, 1979. Amendment filed April 14, 1980; effective May 28, 1980. Amendment filed October 1, 1985; effective January 14, 1986. Amendment filed May 28, 1986; effective June 27, 1986. Amendment filed July 10, 1986; effective October 29, 1986. Amendment filed July 22, 1987; effective October 28, 1987. Amendment filed October 18, 1988; effective January 29, 1989. Amendment filed November 16, 1989; effective February 28, 1990. Repeal and new rule filed March 16, 1992; effective June 29, 1992. Amendment filed October 11, 1995; effective February 28, 1996. Amendment filed April 29, 1996; effective August 28, 1996. Amendment filed November 30, 1999; effective March 29, 2000. Amendment filed April 30, 2001; effective August 28, 2001. Amendment filed April 17, 2006; effective August 28, 2006. Amendment to rule 0520-01-03-.08 filed June 11, 2008; to become effective October 28, 2008; was withdrawn August 4, 2008.

0520-01-03-.09 SPECIAL EDUCATION PROGRAMS AND SERVICES, REQUIREMENT GH.

For Requirement HG, see Chapter 0520-01-09.

Authority: T.C.A. § 49-10-101 et seq. **Administrative History:** Original rule filed June 10, 1974. Amendment filed October 3, 1974; effective November 2, 1974. Amendment filed June 30, 1975; effective July 30, 1975. Amendment filed January 15, 1976; effective April 15, 1976. Amendment filed July 15, 1976; effective August 16, 1976. Amendment filed February 28, 1978; effective March 30, 1978. Amendment filed January 9, 1979; effective February 23, 1979. Amendment filed April 14, 1980; effective May 28, 1980. Amendment filed June 27, 1984; effective July 27, 1984. Amendment filed May 12, 1985; effective August 13, 1985. Amendment filed October 1, 1985; effective January 14, 1986. Amendment filed May 28, 1986; effective June 27, 1986. Amendment filed July 10, 1986; effective October 29, 1986. Repeal and new rule filed March 16, 1992; effective June 29, 1992. Repealed and new rule filed August 18 1993; effective December 29, 1993. Amendment filed June 21, 1995; effective October 27, 1995. Amendment filed August 7, 1995; effective December 29, 1995. (For Requirement H, see Chapter 0520-01-09, per Tennessee State Board of Education letter dated April 29, 1999.)

0520-01-03-.10 WAIVERS.

- (1) The Commissioner of Education is authorized to grant waivers to a school which ~~that~~ does not comply with these rules and regulations only when requested by action of the local board of education.
- (2) For limitation on the Commissioner's authority to waive rules and regulations, see T.C.A. §§ 49-1-104 and 49-1-203.

Authority: T.C.A. §§ 49-1-203 and 49-1-302. **Administrative History:** Original rule certified June 10, 1974. Amendment filed January 9, 1979; effective February 23, 1979. Amendment filed October 15, 1979; effective January 8, 1980. Amendment filed November 13, 1981; effective March 16, 1982. Amendment filed April 13, 1982; effective May 28, 1982. Amendment filed April 12, 1983; effective May 12, 1983. Amendment filed May 7, 1985; effective June 6, 1985. Amendment filed May 28, 1986; effective June 27, 1986. Amendment filed August 26, 1986; effective November 29, 1986. Amendment filed December 30, 1986; effective March 31, 1987. Amendment filed May 21, 1987; effective August 29, 1989. Amendment filed April 18, 1988; effective July 27, 1988. Amendment filed January 23, 1989; effective March 9, 1989. Amendment filed November 16, 1989; effective February 28, 1990. Repeal and new rule filed March 16, 1992; effective June 29, 1992.

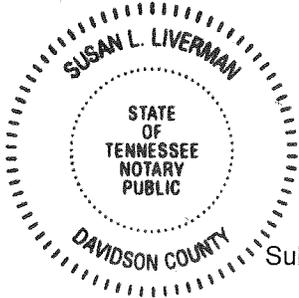
0520-01-03-.11 THROUGH 0520-01-03-.13 REPEALED.

Authority: T.C.A. §§ 49-1-103 and 49-1-302. **Administrative History:** (For history prior to June, 1992, see pages iii-ix). Repeal filed March 16, 1992; effective June 29, 1992.

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

Board Member	Aye	No	Abstain	Absent	Signature (if required)
Chancey	X				
Cook	X				
Edwards	X				
Hartgrove	X				
Johnson	X				
Pearre				X	
Roberts				X	
Rolston	X				
Tucker	X				
Troutt				X	

I certify that this is an accurate and complete copy of proposed rules, lawfully promulgated and adopted by the Tennessee State Board of Education on 10/14/2016 and is in compliance with the provisions of T.C.A. § 4-5-222. The Secretary of State is hereby instructed that, in the absence of a petition for proposed rules being filed under the conditions set out herein and in the locations described, he is to treat the proposed rules as being placed on file in his office as rules at the expiration of ninety (90) days of the filing of the proposed rule with the Secretary of State.



Date: September 29, 2017

Signature: _____

Name of Officer: Elizabeth Taylor

Title of Officer: General Counsel

Subscribed and sworn to before me on: Sept. 29, 2017

Notary Public Signature: Susan L. Liverman

My commission expires on: 8-4-2020

All proposed rules provided for herein have been examined by the Attorney General and Reporter of the State of Tennessee and are approved as to legality pursuant to the provisions of the Administrative Procedures Act, Tennessee Code Annotated, Title 4, Chapter 5.

Herbert H. Slatyer III

Herbert H. Slatyer III
Attorney General and Reporter

10/23/2017

Date

Department of State Use Only

Filed with the Department of State on: 10/25/17

Effective on: 1/23/18

Tre Hargett

Tre Hargett
Secretary of State

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PUBLIC AFFAIRS

G.O.C. STAFF RULE ABSTRACT

DEPARTMENT: Human Services

DIVISION: Adult Protective Services

SUBJECT: Reports of Abuse, Neglect, or Exploitation of Adults

STATUTORY AUTHORITY: None

EFFECTIVE DATES: January 3, 2018 through June 30, 2018

FISCAL IMPACT: Minimal

STAFF RULE ABSTRACT: The attached revisions incorporate a revision pursuant to the new VAPIT law, amend the timeframe to request an appeal for a due process indication to be the same timeframe provided for UAPA appeals, and incorporate a revision to address the situation in which two departments may be investigating the same conduct to avoid duplicative efforts and resources.

Public Hearing Comments

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

No one from the public attended the public hearings concerning the above rules. There were no comments received on the rules either orally or in writing.

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.

For purposes of Acts 2007, Chapter 464, the Regulatory Flexibility Act, the Department of Human Services certifies that these rulemaking hearing rules do not appear to affect small businesses as defined in the Act. These rules do not regulate or attempt to regulate businesses.

Impact on Local Governments

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

These rules will have no projected financial impact on local governments.

Additional Information Required by Joint Government Operations Committee

All agencies, upon filing a rule, must also submit the following pursuant to T.C.A. § 4-5-226(i)(1).

- (A) A brief summary of the rule and a description of all relevant changes in previous regulations effectuated by such rule;

The attached revisions incorporate a revision pursuant to the new VAPIT law, amend the timeframe to request an appeal for a due process indication to be the same timeframe provided for UAPA appeals, and incorporate a revision to address the situation in which two departments may be investigating the same conduct to avoid duplicative efforts and resources.

- (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;

N/A

- (C) Identification of persons, organizations, corporations or governmental entities most directly affected by this rule, and whether those persons, organizations, corporations or governmental entities urge adoption or rejection of this rule;

Persons who may be indicated for abuse or neglect of a vulnerable person would be most impacted by these rules; no one appeared at the public hearings and no written comments were regarding the rule.

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

No opinions exist relevant 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;

Any fiscal impact would be minimal, but would constitute a reduction in APS expenditures to the extent duplicative investigations could be avoided.

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

Rebekah Baker, Deputy General Counsel
400 Deaderick Street
Nashville, TN 37243
(615) 350-4153
Rebekah.A.Baker@tn.gov

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

Rebekah Baker, Deputy 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

Rebekah Baker, Deputy General Counsel
400 Deaderick Street
Nashville, TN 37243
(615) 350-4153
Rebekah.A.Baker@tn.gov

(l) 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: 10-04-17
 Rule ID(s): 6610
 File Date: 10/5/17
 Effective Date: 1/3/18

Rulemaking Hearing Rule(s) Filing Form

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

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

Agency/Board/Commission:	Department of Human Services
Division:	Adult Protective Services
Contact Person:	Renee Bouchillon
Address:	1400 College Park Drive, Suite B, Columbia, TN
Zip:	38401
Phone:	931-380-4636
Email:	Renee.Bouchillon@tn.gov

Revision Type (check all that apply):

- Amendment
 New
 Repeal

Rule(s) (ALL chapters and rules contained in filing must be listed here. If needed, copy and paste additional tables to accommodate multiple chapters. Please make sure that ALL new rule and repealed rule numbers are listed in the chart below. Please enter only ONE Rule Number/Rule Title per row)

Chapter Number	Chapter Title
1240-07-03	Reports of Abuse, Neglect or Exploitation of Adults
Rule Number	Rule Title
1240-07-03-.02	Definitions
1240-07-03-.03	Confidentiality of Records and Release of Information
1240-07-03-.04	Investigation of Reports of Abuse, Neglect, or Exploitation
1240-07-03-.06	Notice To and Administrative Hearings For Indicated Perpetrators

**RULES
OF
TENNESSEE DEPARTMENT OF HUMAN SERVICES**

**CHAPTER 1240-07-03
REPORTS OF ABUSE, NEGLECT OR EXPLOITATION OF ADULTS**

1240-07-03-.01	Scope of Rules	1240-07-03-.05	Emergency Notification of Finding of an Indicated Perpetrator
1240-07-03-.02	Definitions	1240-07-03-.06	Notice to and Administrative Hearings for Indicated Perpetrators
1240-07-03-.03	Confidentiality of Records and Release of Information	1240-07-03-.07	Notice of Perpetrator Status to Third Parties
1240-07-03-.04	Investigation of Reports of Abuse, Neglect, or Exploitation		

1240-07-03-.01 SCOPE OF RULES.

- (1) These rules shall apply to the:
 - (a) Investigation of any report made to the Department of Human Services of a suspected case of abuse, neglect, or exploitation of an adult as defined by the Tennessee Adult Protection Act (the Act) in Title 71, Chapter 6, Part 1 of the Tennessee Code Annotated;
 - (b) Release of information from the Department's adult protective services records; and
 - (c) Department's indication of an individual as a perpetrator of abuse, neglect or exploitation of an adult as defined by the Act and subsequent placement on the Vulnerable Persons Registry contained in Title 68, Chapter 11, Part 10 of the Tennessee Code Annotated; the release of such indication to protect vulnerable persons; and, for the administrative due process procedures associated with that placement or release.
- (2) Administrative Due Process.
 - (a) Administrative due process is provided by these rules to any paid caregiver who has been indicated by the Department as a perpetrator of abuse, neglect, or exploitation of an adult to determine the validity of the indication of such paid caregiver.
 - (b) Administrative due process is not available under these rules for any individual who is indicated in an investigation of alleged abuse, neglect or exploitation, but who is not a paid caregiver; provided, however, if such individual becomes a paid caregiver, the administrative due process procedures of this Chapter shall apply.
 - (c) The administrative due process provisions of this Chapter shall not apply to any release of information authorized pursuant Rule 1240-07-03-.03 except as otherwise specified by Rule 1240-07-03-.03(4) and this Chapter.

Authority: TCA §§4-5-202; 68-11-1004; 71-6-101 et seq.; 71-6-102; 71-6-103(a). **Administrative History:** Chapter 1240-07-03 has been assigned a new control number, removed, and renumbered to Chapter 0250-07-03 filed and effective March 25, 1999. Original rule filed September 20, 2010; effective December 19, 2010.

1240-07-03-.02 DEFINITIONS.

- (1) "Abuse" means the infliction of physical pain, injury, or mental anguish on an adult as defined in this Chapter. Nothing in this Chapter shall be construed to mean a person is abused or neglected or in need of protective services for the sole reason that the person relies on or is being

(Rule 1240-07-03-.02, continued)

furnished treatment by spiritual means through prayer alone in accordance with a recognized religious method of healing in lieu of medical treatment.

- (2) "Adult" means a person eighteen (18) years of age or older who because of mental or physical dysfunctioning or advanced age is unable to manage such person's own resources, carry out the activities of daily living, or protect such person from neglect, hazardous or abusive situations without assistance from others and who has no available, willing, and responsibly able person for assistance and who may be in need of protective services. Provided, however, that a person eighteen (18) years of age or older who is mentally impaired, but still competent, shall be deemed to be a person with a mental dysfunction for the purposes of this Chapter.
- (3) "Advanced Age" means sixty (60) years of age or older.
- (4) "Capacity to consent" means the mental ability to make a rational decision, which includes the ability to perceive, appreciate all relevant facts and to reach a rational judgment upon such facts. A decision itself to refuse services cannot be the sole evidence for finding the person lacks capacity to consent.
- (5) "Caretaker" means an individual or institution who has the responsibility for the care of the adult as a result of family relationship, or who has assumed the responsibility for the care of the adult person voluntarily, or by contract, or agreement.
- (6) "Department (DHS)" means the Department of Human Services.
- (7) "Exploitation" means the improper use by a caretaker of funds that have been paid by a governmental agency to an adult or to the caretaker for the use or care of the adult.
- (8) "Indicated perpetrator" or "indication" means a paid caregiver of an adult has been determined by the Department to have committed or to have caused to be committed abuse, neglect, or exploitation of an adult.
- (9) "Imminent danger" means conditions calculated to and capable of producing within a relatively short period of time a reasonable probability of resultant irreparable physical or mental harm or the cessation of life, or both, if such conditions are not removed or alleviated. However, the Department is not required to assume responsibility for a person in imminent danger pursuant to this Chapter except when, in the Department's determination, sufficient resources exist for the implementation of the Act.
- (10) "Investigation" means, but is not limited to, a personal interview with the individual reported to be abused, neglected, or exploited. When abuse or neglect is allegedly the cause of death, a coroner's or doctor's report shall be examined as part of the investigation.
- (11) "Misappropriation" means any taking, possession or use of the property of a vulnerable person the elements of which constitute any criminal offense involving such property, or which constitute a violation of a fiduciary duty of a caretaker of a vulnerable person.
- (12) "Neglect" means the deprivation of services by a caretaker that are necessary to maintain the health and welfare of an adult or a situation in which an adult is unable to provide or obtain the services that are necessary to maintain that individual's health or welfare.
- (13) "Paid Caregiver" or "Paid Caretaker" means:
 - (a) For purposes of indication of an individual as having committed abuse, neglect or exploitation of an adult, and for the purpose of providing due process prior to the

(Rule 1240-07-03-.02, continued)

release of information regarding such indication of abuse, neglect or exploitation of an adult, and for placement on the Vulnerable Persons Registry, a "paid caregiver" or "paid caretaker" is an individual who, for compensation [;or in kind services including but not limited to room and board and/or meals for caregiver services provided,] provides daily or periodic supervision of an adult or some level of service or activity directed toward meeting the personal needs and care of an adult, including, but not limited to, in-home care or supervision of the adult or housekeeping services for the adult, medical, psychiatric, psychological, health, and/or health-related care or services, or, as part of any aspect of meeting the personal needs and care of the adult, has access to or control of the property of the adult:

1. Through employment or through contractual arrangement with the adult or through another individual or entity;
 2. By written or oral agreement with the adult; or
 3. By course of conduct between such individual and the adult.
- (b) For purposes of protecting vulnerable persons, a paid caretaker or paid caregiver is any person who has been indicated by the Department as a perpetrator of abuse, neglect or exploitation of an adult, who, for compensation, provides daily or periodic supervision of a vulnerable person or some level of service or activity directed toward meeting the personal needs and care of a vulnerable person, including, but not limited to, in-home care or supervision of the vulnerable person or housekeeping, child care or adult day care services for the vulnerable person, medical, psychiatric, psychological, health, and/or health-related care or services, to the vulnerable person, or, as part of any aspect of meeting the personal needs and care of the vulnerable person, has access to or control of the property of the vulnerable person:
1. Through employment or through contractual arrangement with the vulnerable person or through another individual or entity;
 2. By written or oral agreement with the vulnerable person; or
 3. By course of conduct between such individual and the vulnerable person.
- (c) A paid caretaker or paid caregiver does not include individuals who, individually or through employment or by contract with any entity, provide services to the general public that typically consist solely of business-related services, such as, but not limited to, financial services by a bank, credit union, brokerage house, accounting or legal or other business services by individuals licensed or representing themselves to be licensed to provide such services, nor does it include repair or construction work, food services, or professional services by other licensed or unlicensed individuals or by any individual through employment or contract with any entity that does not engage in providing services of the types described in subparagraph (a).
- (d) A financial institution is not a caretaker of funds or other assets, and is not a paid caretaker or paid caregiver of a vulnerable person unless such financial institution has entered into an agreement to act as a trustee of such property or has been appointed by a court of competent jurisdiction to act as a trustee with regard to the property of the adult.
- (14) "Property" means all interests of any type in real property, and any interests of any type in personal property whether in monies or financial instruments of any type, goods, furnishings, and similar property; provided, however, that for purposes of reporting to the registry

(Rule 1240-07-03-.02, continued)

established by T.C.A. 68-11-1001 et seq., property shall only consist of funds paid by a governmental agency to an "adult" as defined in T.C.A. § 71-6-102, if the report of abuse, neglect, exploitation is investigated by the Department of Human Services pursuant to Title 71, Chapter 6, Part 1 of the Tennessee Code Annotated.

- (15) "Protective Services" means services undertaken by the Department with or on behalf of an adult in need of protective services who is being abused, neglected, or exploited. These services may include, but are not limited to, conducting investigations of complaints of possible abuse, neglect, or exploitation to ascertain whether or not the situation and condition of the adult in need of protective services warrants further action; social services aimed at preventing and remedying abuse, neglect, and exploitation; services directed toward seeking legal determination of whether the adult in need of protective services has been abused, neglected or exploited and procurement of suitable care in or out of the adult's home.
- (16) "Sexual Abuse" means the forcing, tricking, threatening or otherwise coercing of an adult, as defined by these rules, by another individual into sexual activity, involuntary exposure to sexually explicit material or language, or sexual contact against such adult's will. Sexual abuse also means sexual activities or contact with another individual when the adult is unable to give consent.
- (17) "Vulnerable person" means anyone who:
- (a) Is under eighteen (18) years of age; or
 - (b) Is eighteen (18) years of age or older and, by reason of advanced age or other physical or mental condition, is vulnerable to or has been determined to have suffered from abuse, neglect or misappropriation or exploitation of property and is or has been:
 1. The subject of any report of harm, abuse, neglect, or exploitation of property made to any state agency or investigative authority with responsibility to investigate those reports pursuant to Tennessee Code Annotated, Title 37, Chapter 1, Parts 1 or 6, Title 71, Chapter 6, Part 1, or pursuant any other provision of law or regulation; or
 2. Receiving protective services from a state agency pursuant to law; or
 3. The victim of any criminal offense that constitutes abuse, neglect, or misappropriation or exploitation of property; or
 4. In the care of either a state agency, an entity that is licensed or regulated by a state agency, or in the care of an entity providing services under the provisions of a contract between that entity and a state agency; or
 5. Receiving services in the person's home from any agency licensed or regulated by or contracted to a state agency, including, but not limited to home and community-based services, home health care, or other health care-related services provided through state or federal funds to assist persons to remain in their homes.
- (18) "Vulnerable Persons Registry" or "Registry" means:
- (a) The registry established by the Department of Health under Tennessee Code Annotated, Title 68, Chapter 11, Part 10, containing the names of individuals who have abused, neglected vulnerable persons, or who have, exploited or misappropriated the property of vulnerable persons; and

(Rule 1240-07-03-.02, continued)

- (b) That is used by employers when making decisions for employees or other service providers for positions which require background checks, such as for child care and adult day care agencies and other services to vulnerable persons, or by any governmental agency to review the status of persons subject to its regulatory oversight authority.

Authority: TCA §§ 4-5-202; 68-11-1004; 71-6-101 et seq.; 71-6-102; 71-6-103(a). **Administrative History:** Chapter 1240-07-03 has been assigned a new control number, removed, and renumbered to Chapter 02500-7-03 filed and effective March 25, 1999. Original rule filed September 20, 2010; effective December 19, 2010.

1240-07-03-.03 CONFIDENTIALITY OF RECORDS AND RELEASE OF INFORMATION.

- (1) Except as otherwise provided pursuant to T.C.A. § 71-6-118 and these rules, all reports to the Department of abuse, neglect, or exploitation of an adult and the records of investigations of such reports are confidential.
- (2) A release of information from the records of the Department pursuant to these rules resulting from a report of abuse, neglect or exploitation of an adult, shall be for purposes directly connected with the administration of Title 71, Chapter 6, Part 1, of the Tennessee Code Annotated, including the administrative processes associated with designation of an individual as an indicated perpetrator of abuse, neglect or exploitation on the Vulnerable Persons Registry established by Title 68, Chapter 11, Part 10.
- (3) Information from the files, records and reports of the Department may be released for the following purposes:
 - (a) The use by authorized personnel of the Department for purposes directly connected with the administration of the Tennessee Adult Protection Act (the Act). Such purposes shall include, but are not limited to, the release of information by Department personnel to any other persons or entities who or which should, as determined by the Department, receive information regarding an adult from an adult protective service record, limited to the extent that is necessary, when:
 1. Conducting an investigation of abuse, neglect or exploitation of an adult, including an investigation of alleged abuse, neglect or exploitation of an adult by law enforcement officials;
 2. Providing protective services to the adult, including, but not limited to, medical, mental health, or rehabilitative care, public assistance eligibility determination, or other services necessary to protect the adult, or for the purpose of securing medical or mental, or other, evaluations to determine the adult caretaker's ability to provide adequate care for the adult;
 3. Providing information or services necessary for the purpose of implementing the processes required by the Vulnerable Persons Registry (the Registry) established by Title 68, Chapter 11, Part 10 to protect vulnerable persons. It shall not be a prerequisite to the release of information for the protection of vulnerable persons that the person's indication as a perpetrator of abuse, neglect or exploitation of an adult has resulted in placement on the Registry if the release of such information is consistent with the emergency release procedures under Rule 1240-07-03-.05; or

(Rule 1240-07-03-.03, continued)

4. Conducting legal proceedings on behalf of the adult, pursuant to T.C.A. §§ 71-6-101 et seq., the conservatorship laws, or pursuant to other laws affecting the status of an adult, including disclosure to any attorney, attorney ad litem or guardian ad litem retained by or appointed for such person or other litigants.
 - [5. Operating and coordinating investigations under the vulnerable adult protective investigative team (VAPIT) pursuant to T.C.A. § 71-6-125.]
 - (b) The disclosure of information from the Department's records to an employer or licensing authority of a paid caregiver that the person has been indicated as a perpetrator of abuse, neglect or exploitation of an adult for the purpose of preventing further abuse, neglect or exploitation of vulnerable persons; provided, however, the release of such information to an employer or licensing authority shall be consistent with the administrative due process provisions established by this Chapter.
 - (c) Release of information, including the identity of an alleged or indicated perpetrator of abuse, neglect or exploitation of an adult, to:
 1. Any state or federal law enforcement agency(ies), District Attorney or United States Attorney investigating or prosecuting a case of reported abuse, neglect, or exploitation of an adult; or
 2. Any state or federal grand jury by subpoena of such grand jury; or
 3. Presentation of evidence through Department staff by the District Attorney or United States Attorney to such grand jury regarding abuse, neglect, or exploitation of any adult;
 - (d) Release of information, including the identity of an alleged or indicated perpetrator, to any state or federal social service agency or other agencies investigating cases of abuse, neglect, or exploitation of an adult or providing treatment or care for alleged or known adult victims of abuse, neglect, exploitation or misappropriation of property; or
 - (e) Release of information, including the identity of an alleged or indicated perpetrator, to the court or administrative board or other tribunal, the officials or employees thereof in the performance of their duties, to the parties, or their legal representatives in any judicial or administrative proceeding or before any board, and to any administrative law judge or hearing officer in the course of their duties in any legal action involving the Department of Human Services before such courts, board or tribunal concerning the protection of vulnerable persons from abuse, neglect, or exploitation; provided that, in a situation when such court, administrative board, administrative law judge or hearing officer, other than the Department of Human Services, is adjudicating a case affecting the alleged perpetrator's ability to remain or become employed or licensed, such information shall be released only by order of the court, administrative law judge or hearing officer.
- (4) Release of the Identity of Alleged Perpetrator of Abuse, Neglect or Exploitation.
- (a) Except as provided by Rules 1240-07-03-.03(3), 1240-07-03-.05 or 1240-07-03-.06(7)(e), prior to completion of the administrative hearing process for an indicated perpetrator provided for in Rule 1240-07-03-.06, the Department may only confirm that:
 1. An investigation of abuse, neglect, or exploitation of an adult has commenced or has been completed; and

(Rule 1240-07-03-.03, continued)

2. A hearing involving the alleged perpetrator is currently pending if a timely request by the alleged perpetrator for an administrative hearing has been received by the Department.
- (b) Following the completion of administrative due process that upholds the Department's indication of a paid caregiver as a perpetrator or abuse, neglect or exploitation of an adult, the Department will disclose the identity of the indicated perpetrator as otherwise permitted by these Rules to any employer of the perpetrator who is a paid caretaker of a vulnerable person or to any licensing authority that licenses the paid caretaker of a vulnerable person, and to the Department of Health for placement of the perpetrator's name on that department's registry.

Authority: TCA §§.4-5-202; 68-11-1004; 71-6-103(a) **Administrative History:** Chapter 1240-07-03 has been assigned a new control number, removed, and renumbered to Chapter 0250-07-03 filed and effective March 25, 1999. Original rule filed September 20, 2010; effective December 19, 2010.

1240-07-03-.04 INVESTIGATION OF REPORTS OF ABUSE, NEGLECT, OR EXPLOITATION.

- (1) Investigation of a report of abuse, neglect, or exploitation of an adult as defined under the Adult Protection Act contained in Title 71, Chapter 6, Part 1 of the Tennessee Code Annotated, shall be the responsibility of the Department's Adult Protective Services Division.
- (2) The process employed by Department staff for investigation and indication of an alleged perpetrator of abuse, neglect and exploitation of an adult under the Adult Protection Act contained in the Investigation Chapter and the Classification Chapter of the Policy and Procedures Manual of the Adult Protective Services Division of the Tennessee Department of Human Services, is incorporated herein by reference. The Policy and Procedures Manual is available to the public on the Department's website at <http://www.state.tn.us/humanserv/adfam/aps-manual.pdf>.
- ~~(3) In appropriate circumstances, to be determined by the Adult Protective Services Division, the investigation of abuse, neglect, or exploitation of an adult may be conducted in conjunction with the Department's Division of Adult and Child Care Licensing, as well as, but not limited to, other licensing and law enforcement authorities as appropriate.~~
- [(3) When a paid caregiver is suspected of abuse, neglect, or exploitation of an adult person and the paid caregiver was providing services in a facility funded or regulated by another department such as Health or the Department of Intellectual and Developmental Disabilities and the other department has an active investigation of the paid caregiver who has provided services in a facility funded or regulated by their agency and under their rules, Adult Protective Services may suspend any attempt to place the paid caregiver on the Abuse Registry in deference to the other agency. In appropriate circumstances, to be determined by Adult Protective Services, the investigation of abuse, neglect, or exploitation of an adult may be conducted in conjunction with the Department's Division of Adult and Child Care Licensing, as well as, but not limited to, other licensing and law enforcement authorities as appropriate.]
- (4) The Report of Abuse, Neglect or Exploitation.
 - (a) A report of abuse, neglect, or exploitation of a particular adult shall include, to the extent available, the following information:
 1. For the adult, caretaker (if any), and alleged perpetrator:
 - (i) Name, street address, email address, phone number;

(Rule 1240-07-03-.04, continued)

- (ii) Date of birth and social security number;
 - 2. The gender, race, and ethnicity of the adult;
 - 3. The nature and extent of the abuse, neglect, or exploitation, including any evidence of previous abuse, neglect, or exploitation;
 - 4. The identity of the complainant, if possible; and
 - 5. Any other information that the individual believes might be helpful in proving the abuse, neglect, or exploitation.
- (b) Notification of a report of abuse, neglect or exploitation of an adult shall be made by the Department to the appropriate:
- 1. Law enforcement agency in all cases in which the report involves abuse, neglect or exploitation of the adult by another person or persons; and
 - 2. Licensing authority if the report concerns an adult who is, or at the time of the alleged harm was, receiving services from a facility that is required by law to be licensed under Title 63 of the Tennessee Code Annotated.
- (c) Following an investigation of a report of abuse, neglect, or exploitation of a particular adult, a subsequent allegation of abuse, neglect, or exploitation regarding the same adult shall only constitute a new report requiring investigation and provision of services if the allegation is based upon new information, as specified in subparagraph (4)(a) above, which was not alleged in the prior report.
- (5) If, upon investigation, a report leads to the indication of a paid caregiver as a perpetrator of abuse, neglect, or exploitation, the Department shall provide a notice to the indicated perpetrator pursuant to 1240-07-03-.05 or 1240-07-03-.06.

Authority: TCA §§ 4-5-202; 71-6-101 et seq.; 71-6-103(a). **Administrative History:** Chapter 1240-07-03 has been assigned a new control number, removed, and renumbered to Chapter 0250-07-03 filed and effective March 25, 1999. Original rule filed September 20, 2010; effective December 19, 2010.

1240-07-03-.05 EMERGENCY NOTIFICATION OF FINDING OF AN INDICATED PERPETRATOR.

- (1) If the Department finds that a paid caregiver indicated as a perpetrator of abuse, neglect, or exploitation of an adult poses an immediate threat to the health, safety or welfare of a vulnerable person to whom the alleged perpetrator has access as a paid caregiver, the Department shall provide written notice of this finding as soon as practicable to the indicated individual and any organization(s) or individual(s) with whom the individual is associated as a paid caregiver or any authority which licenses or otherwise regulates the indicated perpetrator's ability to engage in an occupation or profession in which the person is a paid caregiver.
- (2) Notice to the indicated individual of the emergency release of the indication shall be in addition to the notice required by 1240-07-03-.04(5) and 1240-07-03-.06.
- (3) Notice to organizations or individuals with whom the indicated perpetrator is associated shall contain the following information:

(Rule 1240-07-03-.04, continued)

- (a) The organization or individual shall ensure that the indicated individual is not a threat to the health, safety or welfare of any vulnerable person in their care; and
 - (b) The indicated perpetrator has been notified of his / her rights to an administrative hearing on the allegations, and that the organization or individual shall be notified of the final decision; and
 - (c) The Department will seek injunctive relief pursuant to T.C.A. § 71-6-104 to prevent any violation of the requirements of this notice.
- (4) The indicated perpetrator shall continue to have the right to appeal the indication as specified in Rule 1240-07-03-.06 after emergency notification is sent pursuant to this rule.

Authority: TCA §§ 4-5-202; 71-6-101 et seq.; 71-6-103(a); 71-6-104. **Administrative History:** Chapter 1240-07-03 has been assigned a new control number, removed, and renumbered to Chapter 0250-07-03 filed and effective March 25, 1999. Original rule filed September 20, 2010; effective December 19, 2010.

1240-07-03-.06 NOTICE TO AND ADMINISTRATIVE HEARINGS FOR INDICATED PERPETRATORS.

- (1) Notice to paid caregivers who have been indicated as perpetrators following the investigation of abuse, neglect or exploitation shall contain the following:
- (a) The paid caregiver has been indicated as the perpetrator of abuse, neglect, or exploitation of an adult in a report investigated by the Department and a summary of the basis for the indication;
 - (b) The indicated perpetrator may, within ~~ten (10) business~~ [thirty (30) calendar] days of the date of the notice, request an administrative hearing by submitting a written request for an administrative hearing to the Tennessee Department of Human Services, Appeals and Hearings Division;
 - (c) Subject to the requirements of the Uniform Administrative Procedures Act, Tennessee Code Annotated, §§ 4-5-301 et seq., a decision resulting from the administrative hearing that upholds the Department's indication of the individual as a perpetrator will result in the placement of the indicated perpetrator's name on the Vulnerable Persons Registry, and that the Department may also, as a result of such decision, release the fact that the paid caregiver has been found to be a perpetrator of abuse, neglect or exploitation of an adult, and, as a result, such finding, placement of the individual's name on the Vulnerable Persons Registry and release of information regarding the finding, the paid caregiver's ability to provide care, supervision, treatment or other related services to vulnerable persons as a paid caregiver may be adversely impacted; and
 - (d) That failure to submit a written request for an administrative hearing within ~~ten (10) business~~ [thirty (30) calendar] days, absent a showing of good cause, shall be a waiver of the right to the administrative due process proceeding and shall cause the indication of the paid caregiver as a perpetrator to become final and qualified for disclosure for any purposes necessary to protect vulnerable persons.
- (2) Except as specified in paragraph (10) below and Rules 1240-07-03-.03(3) and 1240-07-03-.05, an administrative hearing shall be available to all paid caregivers who have been indicated by the Department as a perpetrator of abuse, neglect or exploitation of an adult prior to:

(Rule 1240-07-03-.06, continued)

- (a) The release of any information to the Department of Health for purposes of placement of the name of the perpetrator on the Vulnerable Persons Registry; or
 - (b) The release by the Department of any information as to the perpetrator's indicated status to any organization(s) or individual(s) with whom the indicated perpetrator is associated as a paid caregiver.
- (3) To initiate a timely appeal of the notice of indication as a perpetrator of abuse, neglect, or exploitation, an indicated perpetrator shall submit a written request for an administrative hearing to the Tennessee Department of Human Services, Appeals and Hearings Division, within ~~ten (10) business~~ [thirty (30) calendar] days of the date of the notice from the Department notifying the alleged perpetrator of the indication.
- (4) If the indicated perpetrator timely requests a hearing, the Department shall schedule a hearing and give the indicated perpetrator adequate notice of the hearing, as provided by Rule 1240-05-04-.01(2)(h).
- (5) An indicated perpetrator who fails to timely request a hearing may still be granted a hearing upon a showing of good cause, which shall be limited to:
- (a) Proof by the indicated perpetrator of failure to receive the notice required by paragraph (1) above;
 - (b) Severe illness of the perpetrator or severe illness or death of a close family member that prevented the indicated perpetrator from timely requesting a hearing; or
 - (c) Some other circumstance that clearly prevented the indicated perpetrator from making a timely request for a hearing.
- (6) If the indicated perpetrator fails to request a hearing, or fails to show good cause pursuant to paragraph (5) above, the indicated perpetrator's right to a hearing is waived. The Department's indication of the person as a perpetrator of abuse, neglect or exploitation shall then be available for dissemination for purposes consistent with this Chapter.
- (7) Stay of the Administrative Process.
- (a) The Department may stay all administrative proceedings under these rules if, prior to entry of a final order by the Department:
 - 1. The indicated perpetrator has been arrested or indicted for, or otherwise charged with, any criminal offense derived from the same allegations that led to the indication by the Department of abuse, neglect or exploitation by the alleged perpetrator; or
 - 2. The indicated perpetrator is the subject of other administrative or civil judicial proceedings that are derived from the same allegations that led to the indication of abuse, neglect or exploitation by the Department in which a determination is to be made about whether the indicated perpetrator abused, neglected or exploited the adult who was the subject of the report to the Department.
 - (b) The stay, if entered, shall remain in effect until final resolution (including appeals) of the other judicial or administrative proceedings, unless the hearing officer determines, upon motion of a party to the case, that the proceeding should continue, or the stay is otherwise lifted pursuant to subparagraph (d).

(Rule 1240-07-03-.06, continued)

- (c) Upon issuance of the stay, the Department shall notify the indicated perpetrator of the following:
1. That the administrative process has been stayed pending the final outcome of judicial or other administrative proceedings concerning allegations of abuse, neglect, or exploitation of an adult involving the indicated perpetrator;
 2. That the administrative process will be reinstated at the point it was stayed only if the indicated perpetrator requests reinstatement in writing to the Department's Appeals and Hearings Division within thirty (30) days of the entry of a final order by the court or administrative tribunal or a verdict or other order by a criminal court which has adjudicated the same allegation that led to the indication of abuse, neglect or exploitation by the Department, subject to the limitations of subparagraph (g) and paragraph (10) below;
 3. That, if the indicated perpetrator fails to timely make such a written request, he or she shall waive his or her rights to an administrative hearing in regard to the report, and the indication of the individual as a perpetrator shall be disseminated as otherwise permitted pursuant to this Chapter.

(d) Lifting of Stay on Motion of the Parties.

If notification pursuant to subparagraph (c) is provided, and the indicated perpetrator has previously timely appealed the notice of indication, then, notwithstanding any other rule of the Department to the contrary, the indicated perpetrator or the Department may move that the administrative proceedings adjudicating the issue of abuse, neglect or exploitation of an adult by the indicated perpetrator be set for hearing, and the hearing officer may lift such stay and proceed with the determination of the issue of whether the indicated perpetrator committed abuse, neglect, or exploitation of a adult.

(e) Release of Information During Stay.

During the stay, other than to disclose that the alleged perpetrator has pending administrative or judicial proceedings to adjudicate the allegations of abuse, neglect or exploitation of a adult, and except as provided pursuant to 1240-07-03-.03(3), or, unless the circumstances of subparagraph (f) exist, no information regarding the status of the indication will be released by the Department.

(f) Emergency Release of Information During Stay and Notice of Emergency Release.

If, during the stay, the Department's staff determine that the indicated perpetrator poses an immediate threat to the health, safety or welfare of a vulnerable person to whom the indicated perpetrator has access, then, pursuant to 1240-07-03-.05, the Department will notify the indicated individual of such determination and any organization(s) or individual(s) with whom the individual is associated as a paid caregiver.

(g) Conclusion or Reinstatement of the Administrative Process.

1. If the same or similar evidence on which the paid caregiver was indicated by the Department as a perpetrator of abuse, neglect, or exploitation of an adult results in a criminal conviction or guilty or no contest plea for an offense against a adult, or, if the indicated perpetrator is otherwise adjudicated by a preponderance of the evidence in a civil or administrative proceeding as having perpetrated abuse, neglect or exploitation against the adult who was the subject of the report to the

(Rule 1240-07-03-.06, continued)

Department, then, following resolution of any appeals of such conviction, plea, and/or adjudication, will be conclusive evidence that the individual is the perpetrator indicated in the report. In this event, the individual will no longer have a right to a hearing under these rules with respect to that particular report. The administrative process will not be reinstated, and the Department may release information about the perpetrator as permitted under these rules.

2. If the other proceedings do not result in the conviction or finding specified in part 1 above, then, upon request of the individual in writing within thirty (30) days of the entry of a final order by the court or other administrative tribunal, or entry of a verdict by a criminal court, the administrative process will be reinstated at the point at which it was stayed.
3. If the indicated perpetrator fails to make the written request specified in part 2 above within thirty (30) days from entry of a final order in the other proceedings (including appeals), the indicated perpetrator shall waive his or her rights to an administrative hearing in regard to the report, and the indication of the individual as a perpetrator shall become final and disseminated as otherwise permitted pursuant to this Chapter.

(8) Hearing Process.

- (a) The hearing shall be conducted by a hearing officer in the Appeals and Hearings Division of the Department of Human Services in accordance with the provisions of the Uniform Administrative Procedures Act, T.C.A. §§ 4-5-301 et seq., this Chapter and Chapter 1240-05 of the rules of the Department of Human Services.
 - (b) The only issue for the hearing officer to determine shall be whether the preponderance of the evidence, in light of the entire hearing record, proves that the indicated perpetrator committed abuse, neglect, or exploitation of an adult.
 - (c) The hearing shall be held and a final order entered within ninety (90) days of the receipt of the request for an administrative hearing, unless the administrative process is stayed pursuant to Rule 1240-07-03-.06(7).
- (9) Review of the Department's decision is available as provided in the Uniform Administrative Procedures Act, T.C.A. §§ 4-5-301 et seq.
- (10) Nothing in this Chapter shall be construed to require the expunction of any information from internal case records maintained by the Department based upon any finding contrary to the Department's indication of a person as a perpetrator of abuse, neglect or exploitation.

Authority: TCA §§ 4-5-202; 4-5-301 et seq.; 71-6-101 et seq.; 71-6-103(a). **Administrative History:** Chapter 1240-07-03 has been assigned a new control number, removed, and renumbered to Chapter 0250-07-03 filed and effective March 25, 1999. Original rule filed November 20, 2010; effective December 19, 2010.

1240-07-03-.07 NOTICE OF PERPETRATOR STATUS TO THIRD PARTIES.

- (1) Organizations and Individuals with Whom the Indicated Perpetrator is Associated as a Paid Caregiver.
 - (a) Prior to completion of administrative due process, information regarding the indication can only be provided to third parties as permitted by Rules 1240-07-03-.03, 1240-07-03-.05 or 1240-07-03-.06(7)(e) and (f).

(Rule 1240-07-03-.07, continued)

- (b) Following final resolution of the case, whether by administrative hearing order, court order, or waiver by the indicated individual, notice of the final outcome shall be provided as specified below:
1. If the indication of the paid caregiver as a perpetrator of abuse, neglect, or exploitation of an adult was upheld, the organization or individual has a continuing obligation to assure that the indicated perpetrator is not a threat to the safety of vulnerable persons in their care;
 2. If notice was previously provided pursuant to Rule 1240-07-03-.05, that the indication of the paid caregiver as a perpetrator was not upheld the organization or individual no longer has a continuing obligation pursuant to the previously provided notice to assure that the paid caregiver is not a threat to the safety of any vulnerable person in their care; and
 3. If the indication of the paid caregiver as a perpetrator of abuse, neglect, or exploitation of an adult was upheld, the Department may provide notice of the person's status as an indicated perpetrator of abuse, neglect or exploitation to any organization or to any individual with which or with whom the person is associated as a paid caregiver or to any licensing authority of such person or the licensing authority of such organization or individual with which or with whom the person is associated as a paid caregiver.

(2) Vulnerable Persons Registry of the Department of Health.

- (a) If, upon final resolution of the case, whether by administrative hearing order, court order, or waiver by the indicated individual, the indication of the paid caregiver as a perpetrator is upheld, the Department shall provide notification of this finding to the Department of Health to have the name of the indicated perpetrator included on the Vulnerable Persons Registry pursuant to the criteria established by T.C.A. § 68-11-1004.
1. Notification shall consist of a copy of a final administrative order, a judicial order, or other evidence verifying that the Department or other tribunal has afforded the indicated perpetrator an opportunity for an administrative or judicial due process hearing regarding allegations of abuse, neglect or exploitation of a adult who was the subject of a report and investigation under T.C. A. §§ 71-6-101 et seq.
 2. Notification shall also include the individual's last known mailing address, the definition of abuse, neglect, or exploitation as specified in Rule 1240-07-03-.02 above, and any other information that the Department of Health determines is necessary to adequately identify such individual for purposes of administrative hearings provided by T.C.A. § 68-11-1004 or to adequately identify such individual when inquiry to the Registry is made.
- (b) If the indication of the paid caregiver as a perpetrator is upheld based upon a criminal adjudication, the Department shall provide to the Department of Health a copy of the criminal disposition from the Tennessee Bureau of Investigation, other federal, state or local law enforcement agency, court, or criminal justice agency, verifying that a criminal disposition against the named individual was the result of an offense against a adult for whom an investigation was also conducted by the Department of Human Services pursuant to T.C.A. §§ 71-6-101 et seq.

(Rule 1240-07-03-.07, continued)

Authority: TCA §§4-5-202; 68-11-1004; 71-6-101 et seq., 71-6-103(a). **Administrative History:** Chapter 1240-07-03 has been assigned a new control number, removed, and renumbered to Chapter 0250-07-03 filed and effective March 25, 1999. Original rule filed September 20, 2010; effective December 19, 2010.

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the Department of Human Services (board/commission/ other authority) on September 8, 2017 (mm/dd/yyyy), and is in compliance with the provisions of T.C.A. § 4-5-222.

I further certify the following:

Notice of Rulemaking Hearing filed with the Department of State on: July 3, 2017

Rulemaking Hearing(s) Conducted on: (add more dates). August 23, 2017



Date: September 8, 2017

Signature: Cherrell Campbell-Street

Name of Officer: Cherrell Campbell-Street

Title of Officer: Deputy Commissioner, Programs and Services

Subscribed and sworn to before me on: 9/8/17

Notary Public Signature: Michael T. Donegan

My commission expires on: 7/6/2020

Agency/Board/Commission: Tennessee Department of Human Services

Rule Chapter Number(s): 1240-07-03

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
10/3/2017
Date

Department of State Use Only

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Filed with the Department of State on: 10/5/17

Effective on: 11/3/18

Tre Hargett
Tre Hargett
Secretary of State

G.O.C. STAFF RULE ABSTRACT

DEPARTMENT: Human Services

DIVISION: Community and Social Services

SUBJECT: Low Income Energy Assistance Program; Weatherization Assistance Program

STATUTORY AUTHORITY: None

EFFECTIVE DATES: January 3, 2018 through June 30, 2018

FISCAL IMPACT: None

STAFF RULE ABSTRACT: These are revisions to delete the LIHEAP and Weatherization rules as the Department no longer administers these programs.

Public Hearing Comments

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

No one from the public attended the public hearings concerning the above rules. There were no comments received on the rules either orally or in writing.

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.

For purposes of Acts 2007, Chapter 464, the Regulatory Flexibility Act, the Department of Human Services certifies that these rulemaking hearing rules do not appear to affect small businesses as defined in the Act. These rules do not regulate or attempt to regulate businesses.

Impact on Local Governments

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

These rules will have no projected financial impact on local governments.

Additional Information Required by Joint Government Operations Committee

All agencies, upon filing a rule, must also submit the following pursuant to T.C.A. § 4-5-226(i)(1).

- (A) A brief summary of the rule and a description of all relevant changes in previous regulations effectuated by such rule;

These are revisions to delete the LIHEAP and Weatherization rules as the Department no longer administers these programs.

- (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;

N/A

- (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;

N/A as the rules are not currently utilized.

- (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;

N/A

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

Rebekah A. Baker, Deputy General Counsel
15th Floor, One Citizens Plaza Building
400 Deaderick Street
Nashville, TN 37243
(615) 350-4153
Rebekah.A.Baker@tn.gov

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

Rebekah A. Baker, Deputy General Counsel
15th Floor, One Citizens Plaza Building
400 Deaderick Street
Nashville, TN 37243
(615) 350-4153
Rebekah.A.Baker@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

Rebekah A. Baker, Deputy General Counsel
15th Floor, One Citizens Plaza Building
400 Deaderick Street

Nashville, TN 37243
(615) 350-4153
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- (I) Any additional information relevant to the rule proposed for continuation that the committee requests.

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Sequence Number: 10-05-17
Rule ID(s): 6611-6612
File Date: 10/5/17
Effective Date: 1/3/18

Rulemaking Hearing Rule(s) Filing Form

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

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

Agency/Board/Commission:	Department of Human Services
Division:	Community and Social Services Division
Contact Person:	Jeffrey Blackshear
Address:	Citizen's Plaza Building, 400 Deaderick Street, Nashville, TN
Zip:	37243
Phone:	615-313-5711
Email:	Jeffrey.Blackshear@tn.gov

Revision Type (check all that apply):

- Amendment
 New
 Repeal

Rule(s) (ALL chapters and rules contained in filing must be listed here. If needed, copy and paste additional tables to accommodate multiple chapters. Please make sure that **ALL** new rule and repealed rule numbers are listed in the chart below. Please enter only **ONE** Rule Number/Rule Title per row)

Chapter Number	Chapter Title
1240-07-01	Low Income Energy Assistance Program
Rule Number	Rule Title
1240-07-01-.01	Definitions
1240-07-01-.02	Eligibility Requirements
1240-07-01-.03	Application Process
1240-07-01-.04	Ineligible Households
1240-07-01-.05	Benefit Levels
1240-07-01-.06	Weatherization
1240-07-01-.07	Right to Appeal

Chapter Number	Chapter Title
1240-07-02	Weatherization Assistance Program
Rule Number	Rule Title
1240-07-02-.01	Eligibility Requirements
1240-07-02-.02	Benefit Levels
1240-07-02-.03	Application Process
1240-07-02-.04	Additional Program Requirements

**RULES
OF
TENNESSEE DEPARTMENT OF HUMAN SERVICES
COMMUNITY AND FIELD SERVICES DIVISION**

**CHAPTER 1240-7-1
LOW INCOME HOME ENERGY ASSISTANCE PROGRAM**

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1240-7-1-.01	Definitions	1240-7-1-.05	Benefit Levels
1240-7-1-.02	Eligibility Requirements	1240-7-1-.06	Weatherization
1240-7-1-.03	Application Process	1240-7-1-.07	Right to Appeal
1240-7-1-.04	Ineligible Households		

~~1240-7-1-.01~~ **DEFINITIONS.** For purposes of this chapter and for the administration of the LIEAP Program, the following definitions shall apply:

- ~~(1) *Administrative Appeal.* An appeal to the local contracting agency for a hearing, which may be requested by an applicant who is dissatisfied with the disposition of his/her application for LIEAP assistance, except when the application is denied due to a lack of funds available.~~
- ~~(2) *Department.* Tennessee Department of Human Services.~~
- ~~(3) *Elderly.* An individual who is 60 years of age or older.~~
- ~~(4) *Handicapped.* Any person who has a physical or mental impairment which substantially limits one or more major life activities such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, or working.~~
- ~~(5) *Home-Delivered Energy Supplier.* Energy suppliers who deliver coal, wood, fuel oil, kerosene, and L.P. gas to households.~~
- ~~(6) *Home Energy.* A source of heating or cooling in residential dwellings.~~
- ~~(7) *Household.* Any individual or group of individuals living together as one economic unit and responsible for their residential home energy.~~
- ~~(8) *Household Income.* Total annual cash receipts before taxes from all sources; money wages and salaries before any deductions; net receipts from nonfarm or farm self-employment (receipts from a person's own business or from an owned or rented farm after deductions for business or farm expenses); regular payments from social security, railroad retirement, unemployment compensation, strike benefits from union funds, workers' compensation, veteran's payments, training stipends, alimony, child support, and military family allotments or other regular support from an absent family member or someone not living in the household; private pensions, government employment pensions (including military retirement pay), and regular insurance or annuity payments; college or university scholarships, grants, fellowships, and assistantships; and dividends, interest, net rental income, net royalties, periodic receipts from estates or trusts, and net gambling or lottery winnings. Also, Black Lung benefits will be considered income, except for the first twenty dollars of each monthly benefits. Specifically, excluded from income are utility allowances provided to public housing and Section 8 tenants; capital gains; any assets drawn down as withdrawals from a bank, sales of property, a house, or a car; one-time payments from a welfare agency to a family or person who is in temporary financial difficulty; tax refunds, gifts, loans, lump-sum inheritances, one-time insurance payments, or compensation for injury. Also excluded are noncash benefits, such as the employer-paid or union-paid portion of health insurance or other employee fringe benefits, food or housing received in lieu of wages, the value of food and fuel produced and consumed on farms, the imputed value of rent from owner-occupied nonfarm or farm housing, and such Federal noncash benefit programs as Medicare.~~

(Rule 1240-7-1-.01, continued)

~~Food Stamps, school lunches, and housing assistance. The earnings of a child under fourteen years of age; payments to Vista volunteers; income received under Title V of the Older Americans Act; direct benefits received by participants in the Foster Grandparents Program; and the value of child care services paid by the Department of Human Services and received by client households are also excluded from income. Finally, no assets test will be used to determine income eligibility.~~

- ~~(9) *LIEAP.* Created by the Omnibus Budget Reconciliation Act of 1981 (Public Law 97-35), as amended; the Low Income Energy Assistance Program is designed to provide assistance to offset the high rise in energy costs to eligible low income households.~~
- ~~(10) *Local Contract Agency.* Any local public or private non-profit agency which receives funds for the Low Income Home Energy Assistance Program under contract with the Tennessee Department of Human Services.~~
- ~~(11) *Owners.* Households who own or are purchasing their dwelling unit and who are responsible for their own energy costs and are making direct payments to home energy suppliers for energy.~~
- ~~(12) *Prioritization.* A system used by the contract agency to ensure that the lowest of income household receives assistance first.~~
- ~~(13) *Poverty Level.* Households whose incomes are at or below the 125% of the current poverty guidelines established by the US Office of Management and Budget.~~
- ~~(14) *Renters.* Households who are renting their dwelling and who are responsible for paying their own energy costs to home energy suppliers or for making payments for actual energy consumption as an undesignated portion of their rent. The household may live in a single dwelling unit or multi-family unit.~~
- ~~(15) *State Plan.* Document issued each fiscal year of operation by the Department of Human Services which includes the policies and procedures for the administration of the Low Income Energy Assistance Program.~~
- ~~(16) *Tenants.* Households who reside in public housing units or subsidized housing.~~
- ~~(17) *Weatherization.* Making home repairs and energy saving improvements for households to minimize heat loss and improve thermal efficiency. Components include repairs to stop heat loss through air infiltration; and the installation of a balanced combination of energy saving home improvements, including attic and floor insulation and storm windows.~~

Authority: TCA §§4-5-202; 71-1-105; 71-1-105(12); 71-5-401 et seq.; Public Acts of 1984; Chapter 852; 42 USC §8621 et seq. *Administrative History:* Original rule filed October 17, 1984; effective November 16, 1984. Amendment filed January 9, 1990; effective May 1, 1990. Amendment filed July 26, 2000; effective October 9, 2000.

1240-7-1-.02 ELIGIBILITY REQUIREMENTS. To be eligible for assistance under the Low Income Energy Assistance Program as administered by the Department of Human Services, the following requirements must be met:

- ~~(1) *General Eligibility Requirements.* To be eligible, all applicants must meet the following requirements:

 - ~~(a) *Residency.* The applicant must be a current resident of the State of Tennessee.~~
 - ~~(b) *Income.* The applicant's household's total gross income must not exceed 125% of the poverty income guideline for a household of the same size, as established by the Federal Office of Management and Budget. The applicant must provide proper documentation to verify household income.~~~~

(Rule 1240-7-1-.02, continued)

- (c) ~~Responsible Party.~~ The applicant must provide the name of the household's home energy supplier and the household's account number with said supplier, or satisfactory documentation of actual energy consumption.
 - (d) ~~Providing Information.~~ The applicant must provide all relevant information within his/her knowledge regarding the household's energy needs, consumption, and supplier as requested by the Department.
 - (e) ~~Disconnected Utilities.~~ Assistance to emergency heating applicants with disconnected utility service resulting from past due bills is prohibited, unless the LIEAP assistance in combination with other resources will provide for the reconnection of the utility service.
 - (f) ~~Level of Assistance.~~ Applicants may only receive heating assistance (i.e., regular or emergency heating assistance), and summer crisis intervention assistance on a one-time basis during any fiscal year which shall begin on July 1 and end on the following June 30.
- (2) ~~Special Eligibility Requirements For Summer Crisis Intervention Assistance And Emergency Heating Assistance.~~ In addition to the general eligibility requirements, applicants for summer crisis intervention assistance and emergency heating assistance must meet the special eligibility requirements established in the LIEAP State Plan. These requirements are subject to change based on revisions in applicable federal regulations, federal funding levels, and comments received during annual public hearings.

Authority : TCA §§4-5-202; 71-1-105; 71-1-105(12); 71-5-401; Public Acts of 1984; Chapter 852; 42 USC §8621 et seq. **Administrative History:** Original rule filed October 17, 1984; effective November 16, 1984. Amendment filed September 19, 1985; effective December 14, 1985. Amendment filed January 9, 1990; effective May 1, 1990. Amendment filed July 26, 2000; effective October 9, 2000.

~~1240-7-1-.03 APPLICATION PROCESS.~~ All individuals wishing to do so shall be allowed to apply in writing for benefits and/or Weatherization assistance. A written application, on a form provided by the Department, must be completed by the applicant prior to a determination of eligibility. The policies and procedures for application intake, including the dates during which applications are received, are included in the LIEAP State Plan. These policies and procedures are subject to change based on revisions in applicable federal regulations, federal funding levels, and comments received during public hearings.

Authority: TCA §§14-1-105, 14-21-101, 71-1-105(12), and 71-21-101; Public Acts of 1984, Chapter 852; 42 USC §§8621 et seq. **Administrative History:** Original rule filed October 17, 1984; effective November 16, 1984. Amendment filed September 19, 1985; effective December 14, 1985. Amendment filed January 9, 1990; effective May 1, 1990.

~~1240-7-1-.04 INELIGIBLE HOUSEHOLDS.~~ The following households/individuals are not eligible for LIEAP assistance:

- (1) ~~SSI recipients living in "congregate" care or "dormiciliary" care facilities or foster care placements who receive SSI state supplements which correspond to these living arrangements;~~
- (2) ~~Individuals In Public Or Private Institutions Whose Living Costs Are Subsidized By State Or Local Government. Examples of such individuals include, but are not limited to:~~
 - (a) ~~Residents of vocational education facilities whose living costs are subsidized; and~~
 - (b) ~~Persons in nursing homes or medical institutions for whom Medicaid pays over 50% of costs.~~
- (3) ~~Residents Of Group Living Facilities.~~

(Rule 1240-7-1-.04, continued)

Authority: TCA §14-1-105; Public Acts of 1984, Chapter 852; 42 USC §§8621 et seq. *Administrative History:* Original rule filed October 17, 1984; effective November 16, 1984. Amendment filed September 19, 1985; effective December 14, 1985. Amendment filed January 9, 1990; effective May 1, 1990.

~~1240-7-1-.05 BENEFIT LEVELS.~~ Benefit levels shall be based upon four (4) factors—total household income; energy burden (i.e., percent of household income expended for home energy costs); number of household members; and presence of vulnerable household members (i.e., frail elderly, disabled and infants).—The policies and procedures concerned with benefit levels are included in the LIHEAP State Plan.—These policies and procedures are subject to change based on revisions in applicable federal regulations, federal funding levels, and comments received during annual public hearings.

Authority: TCA §§4-5-202; 71-1-105; 71-1-105(12); 71-5-401; Public Acts of 1984; Chapter 852; 42 USC §8621 et seq. *Administrative History:* Original rule filed October 17, 1984; effective November 16, 1984. Amendment filed September 19, 1985; effective December 14, 1985. Amendment filed January 9, 1990; effective May 1, 1990. Amendment filed July 26, 2000; effective October 9, 2000.

1240-7-1-.06 WEATHERIZATION.

- (1) ~~Local contracting agencies are required to refer LIHEAP applicants to the Department's Weatherization Assistance Program (WAP) if they indicate an interest in and willingness to apply for WAP assistance.~~
- (2) ~~All LIHEAP referrals to the WAP must be made in accordance with the Department's policies.~~

Authority: TCA §§14-1-105, 14-21-101, 71-1-105, and 71-21-101; Public Acts of 1984, Chapter 852; 42 USC §§8621 et seq. *Administrative History:* Original rule filed October 17, 1984; effective November 16, 1984. Amendment filed September 19, 1985; effective December 14, 1985. Amendment filed January 9, 1990; effective May 1, 1990.

1240-7-1-.07 RIGHT TO APPEAL.

- (1) ~~Any applicant who feels he/she has been aggrieved by a decision of the Department or of a local contracting agency may file an administrative appeal with the local contracting agency, provided, however, that an applicant may not appeal if the application is denied due to a lack of funds available.~~
- (2) ~~Each local contracting agency shall establish procedures for granting administrative appeals and conducting hearings pursuant to this section. An applicant shall follow such procedures in pursuing his/her appeal.~~
- (3) ~~If the applicant is not satisfied with the decision of the local contracting agency following the administrative appeal, or is denied an administrative appeal pursuant to paragraph (1), he/she may appeal to the Department for a fair hearing in accordance with Chapter 1240-5-3.~~

Authority: TCA §14-1-105; Public Acts of 1984, Chapter 852; 42 USC §§8621 et seq. *Administrative History:* Original rule filed October 17, 1984; effective November 16, 1984.

**RULES
OF
TENNESSEE DEPARTMENT OF HUMAN SERVICES
COMMUNITY AND FIELD SERVICES DIVISION**

**CHAPTER 1240-7-2
WEATHERIZATION ASSISTANCE PROGRAM**

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1240-7-2-.02	Benefit Levels	1240-7-2-.04	Additional Program Requirements

~~1240-7-2-.01 ELIGIBILITY REQUIREMENTS.~~ To be eligible for assistance under the Weatherization Assistance Program (WAP) as administered by the Department of Human Services, the following requirements must be met:

- ~~(1) Residency.~~ The applicant must be a current resident of the State of Tennessee.
- ~~(2) Income.~~ The household's income must not exceed 125% of the poverty income guidelines as established by the Federal Office of Management and Budget, or the household contains a member who has received cash assistance payments under Tennessee's Families First Program or the Supplemental Security Income (SSI) Program during the current or previous month relative to eligibility determination.
- ~~(3) Dwelling Unit.~~ A building containing more than four dwelling units will not be eligible for weatherization assistance due to the limited funds available.
 - ~~(a)~~ Before a two, three, or four-unit building can be weatherized, at least fifty percent (50%) of the dwelling units must be eligible dwelling units or will become eligible units within 180 days under a federal, state, or local government program for rehabilitating or making similar improvements to the building.
 - ~~(b)~~ Before any rental dwelling unit can be weatherized, the written permission of the owner or his agent must be obtained.

Authority: TCA §§4-5-202; 71-1-105; 71-1-105(12); 71-5-401; 42 USC §6851 et seq. *Administrative History:* Original rule filed September 30, 1985; effective December 14, 1985. Amendment filed July 26, 2000; effective October 9, 2000.

~~1240-7-2-.02 BENEFIT LEVELS.~~

- ~~(1) Benefit levels shall be determined by the following:~~
 - ~~(a)~~ Recommendations of weatherization measures contained in energy survey reports prepared by the State certified staff of local contract agencies, or by eligible contractors employed by local contract agencies through a competitive bidding system;
 - ~~(b)~~ Priority weatherization measures identified in the WAP State Plan prepared by the Department of Human Services for each fiscal year of operation; and
 - ~~(c)~~ The maximum benefit levels identified in the WAP State Plan prepared by the Department of Human Services for each fiscal year of operation.

(Rule 1240-7-2-.02, continued)

- (2) ~~Priority will be given to identifying and providing weatherization assistance to elderly and handicapped low income persons, single family dwelling units, and other high energy consuming dwelling units according to the Priority Points System included in the WAP State Plan prepared by the Department of Human Services for each fiscal year of operation.~~

Authority: TCA §§4-5-202; 71-1-105; 71-1-105(12); 71-5-401; 42 USC §6851 et seq. *Administrative History:* Original rule filed September 30, 1985; effective December 14, 1985. Amendment filed January 9, 1990; effective May 1, 1990. Amendment filed July 26, 2000; effective October 9, 2000.

1240-7-2-.03 APPLICATION PROCESS. All individuals wishing to do so shall be allowed to apply in writing for weatherization assistance under the program. A written application must be completed by the applicant prior to a determination of eligibility. Only that information minimally necessary to determine eligibility will be required on the application.

Authority: TCA §§14-1-105, 14-21-101; 42 USC §§6851 et seq. *Administrative History:* Original rule filed September 30, 1985; effective December 14, 1985.

1240-7-2-.04 ADDITIONAL PROGRAM REQUIREMENTS.

- (1) ~~The Department of Human Services' WAP contracting agencies are responsible for conducting outreach activities, application intake, eligibility determination, notification in writing of actions taken on all applications, prioritization of eligible applicants, protection of client records, and assisting in the investigation of program fraud or abuse.~~
- (2) ~~Each agency's Board of Directors is responsible for establishing in writing a process for client appeals. The agency is responsible for including information concerning this process in all client notification letters. An appeal to the agency will not interfere with the client's right to request and receive a fair hearing, pursuant to Chapter 1240-5-1.~~
- (3) ~~Contracting agencies are responsible for adhering to each county's allocation of WAP funds by weatherizing a proportional number of units within each county of its service area in relation to its total agency WAP allocation.~~
- (4) ~~Financial assistance provided through the WAP will be used to supplement, and not supplant, state or local funds and to the maximum extent practicable as determined by the Department of Energy to increase the amounts of these funds that would be made available in the absence of federal funds provided under WAP.~~
- (5) ~~To the maximum extent practicable, contracting agencies will secure the services of volunteers, training participants, and public service employment workers, pursuant to the Job Training Partnership Act, to work under the supervision of qualified supervisors and foremen.~~
- (6) ~~To the maximum extent practicable, the use of weatherization assistance shall be coordinated with other federal, state, local, or privately funded programs in order to improve energy efficiently and to conserve energy.~~
- (7) ~~The low income members of an Indian tribe shall receive benefits equivalent to the assistance provided to other low income persons within Tennessee.~~
- (8) ~~No dwelling unit may be reported to the Department of Human Services as completed until a state certified local contract agency representative, or eligible private contractor employed by a local contract agency, has performed a final inspection and certified that all applicable work has been completed in a workmanlike manner and in accordance with the survey policies and procedures identified in the WAP State Plan. All work must pass inspection before payment is made by local~~

(Rule 1240-7-2-.04, continued)

~~contract agencies to private weatherization contractors. The Department of Human Services will not reimburse local contract agencies for any work which has not passed a final inspection.~~

- ~~(9) All local contract agencies are responsible for adhering to the procedures and policies contained in the WAP State Plan for the administration of the program. The policies and procedures in the WAP State Plan are subject to change based on revisions in applicable federal regulations, changes in federal funding levels, and comments received during annual public hearings.~~

Authority: TCA §§4-5-202, 71-1-105; 71-1-105(12), 71-5-401 and 42 USC §6851 et seq. **Administrative History:** Original rule filed September 30, 1985; effective December 14, 1985. Amendment filed January 9, 1990; effective May 1, 1990. Amendment filed July 26, 2000; effective October 9, 2000.

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the Department of Human Services (board/commission/ other authority) on September 7, 2017, 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: July 3, 2017

Rulemaking Hearing(s) Conducted on: (add more dates). August 25, 2017



Date: September 8, 2017

Signature: Cherrell Campbell-Street

Name of Officer: Cherrell Campbell-Street

Title of Officer: Deputy Commissioner, Programs and Services

Subscribed and sworn to before me on: 9/8/17

Notary Public Signature: Michael T. Donegan

My commission expires on: 7/6/2020

Agency/Board/Commission: Tennessee Department of Human Services

Rule Chapter Number(s): 1240-07-01, 1240-07-02

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

10/5/2017

Date

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Filed with the Department of State on: 10/5/17

Effective on: 11/3/18

Tre Hargett

Tre Hargett
Secretary of State

G.O.C. STAFF RULE ABSTRACT

DEPARTMENT: Human Services

DIVISION: Vocational Rehabilitation Services

SUBJECT: General Rules; Administration; Services to Individuals; Services to Groups; Personal Care Assistance Program; and Supported Employment Services Program

STATUTORY AUTHORITY: Public Law 113-128

EFFECTIVE DATES: January 3, 2018 through June 30, 2018

FISCAL IMPACT: None

STAFF RULE ABSTRACT: The Vocational Rehabilitation Rules revisions include amendments and modifications to the provisions regarding Vocational Rehabilitation Services to streamline the rules, removing any unnecessary provisions, and to include provisions regarding competitive integrated employment as required by the Workforce Innovation and Opportunity Act, Public Law 113-128.

Public Hearing Comments

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

No one from the public attended the public hearings concerning the above rules. There were no comments received on the rules either orally or in writing.

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.

For purposes of Acts 2007, Chapter 464, the Regulatory Flexibility Act, the Department of Human Services certifies that these rulemaking hearing rules do not appear to affect small businesses as defined in the Act. These rules do not regulate or attempt to regulate businesses.

Impact on Local Governments

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

These rules will have no projected financial impact on local governments.

Additional Information Required by Joint Government Operations Committee

All agencies, upon filing a rule, must also submit the following pursuant to T.C.A. § 4-5-226(i)(1).

- (A) A brief summary of the rule and a description of all relevant changes in previous regulations effectuated by such rule;

The Vocational Rehabilitation Rules Revisions include amendments and modifications to the provisions regarding Vocational Rehabilitation Services to streamline the rules, removing any unnecessary provisions, and to include provisions regarding competitive integrated employment as required by the Workforce Innovation and Opportunity Act, Public Law 113-128.

- (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 revisions regarding competitive integrated employment were made in compliance with the Workforce Innovation and Opportunity Act, Public Law 113-128.

- (C) Identification of persons, organizations, corporations or governmental entities most directly affected by this rule, and whether those persons, organizations, corporations or governmental entities urge adoption or rejection of this rule;

This rule may have some impact on vocational rehabilitation clients, but any such impact will be positive, as the employment outcomes should be in competitive, integrated employment environments. No comments were received on the rules revisions from any party.

- (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;

N/A

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

Rebekah Baker

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

Rebekah Baker

- (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

Rebekah Baker, Deputy General Counsel, Department of Human Services
15th Floor Citizens Plaza Building
400 Deaderick Street
Nashville, TN 37243
(615) 350-4153
Rebekah.a.baker@tn.gov

(l) 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: 10-06-17
Rule ID(s): 6613-6620
File Date: 10/5/17
Effective Date: 11/3/18

Rulemaking Hearing Rule(s) Filing Form

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

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

Agency/Board/Commission:	Tennessee Department of Human Services
Division:	Vocational Rehabilitation Services
Contact Person:	Kevin Wright
Address:	One Citizen's Plaza, 400 Deaderick Street, Nashville, TN
Zip:	37243
Phone:	(615) 741-3599
Email:	Kevin.R.Wright@tn.gov

Revision Type (check all that apply):

- Amendment
 New
 Repeal

Rule(s) (ALL chapters and rules contained in filing must be listed here. If needed, copy and paste additional tables to accommodate multiple chapters. Please make sure that **ALL** new rule and repealed rule numbers are listed in the chart below. Please enter only **ONE** Rule Number/Rule Title per row)

Chapter Number	Chapter Title
1240-08-02	General Rules
Rule Number	Rule Title
1240-08-02-.01	Purpose
1240-08-02-.02	Definitions
1240-08-02-.03	Repealed
1240-08-02-.04	Procedures
1240-08-02-.05	Legal Basis

Chapter Number	Chapter Title
1240-08-03	Administration
Rule Number	Rule Title
1240-08-03-.01	State and Local Organization and Administration
1240-08-03-.02	Financial Need Assessment
1240-08-03-.03	Staff Development and Training

Chapter Number	Chapter Title
1240-08-04	Services to Individuals
Rule Number	Rule Title

1240-08-04-.01	Referrals and Applications for VR Services
1240-08-04-.02	Individualized Plan for Employment
1240-08-04-.03	Counseling, Guidance, and Referral Services
1240-08-04-.04	Vocational Rehabilitation Services
1240-08-04-.05	Standards for Closing Cases
1240-08-04-.06	Post-Employment Services

Chapter Number	Chapter Title
1240-08-05	Services to Individuals: Related Provisions
Rule Number	Rule Title
1240-08-05-.01	Order of Selection and Priority for Services
1240-08-05-.03	Consideration of Comparable Services or Benefits and Subrogation
1240-08-05-.04	Confidentiality
1240-08-05-.05	Repealed
1240-08-05-.06	Tennessee Rehabilitation Center
1240-08-05-.07	Community Tennessee Rehabilitation Centers

Chapter Number	Chapter Title
1240-08-06	Services to Groups
Rule Number	Rule Title
1240-08-06-.01	Repealed

Chapter Number	Chapter Title
1240-08-07	Repealed
Rule Number	Rule Title
1240-08-07-.01	Repealed

Chapter Number	Chapter Title
1240-08-10	Personal Care Assistance Program
Rule Number	Rule Title
1240-08-10-.09	Rate of Payment for PCA Services

Chapter Number	Chapter Title
1240-08-11	Supported Employment Services Program
Rule Number	Rule Title
1240-08-11-.02	Definitions
1240-08-11-.03	Eligibility for Supported Employment
1240-08-11-.04	Provision of Services

**RULES
OF
TENNESSEE DEPARTMENT OF HUMAN SERVICES
REHABILITATION SERVICES DIVISION**

**CHAPTER 1240-08-02
GENERAL RULES**

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1240-08-02-.01 Purpose	1240-08-02-.04 Procedures
1240-08-02-.02 Definitions	1240-08-02-.05 Legal Basis
1240-08-02-.03 Scope of Services	

1240-08-02-.01 PURPOSE.

~~The Department of Human Services, Division of Rehabilitation Services is the designated State unit that is primarily concerned with vocational and other rehabilitation of individuals with physical and mental disabilities. The Division of Rehabilitation Services (the Division) is responsible for the vocational rehabilitation program which includes the determination of eligibility, the determination of the nature and scope of services, and the provision of rehabilitation services for individuals consistent with their strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice so that they may prepare for and engage in employment.~~

[The Department of Human Services, Division of Rehabilitation Services is the designated State unit that is primarily concerned with vocational and other rehabilitation of individuals with physical, mental and sensory disabilities. The Division of Rehabilitation Services (the Division) is responsible for the Vocational Rehabilitation Program (VR Program) which includes the determination of eligibility, the determination of the nature and scope of services, and the provision of rehabilitation services for individuals consistent with their strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice so that they may prepare for and engage in employment.]

Authority: T.C.A. §§4-5-202; 71-1-104; 71-1-105(12); 49-11-601 et seq.; 34 C.F.R. Part 361; Executive Order No. 43. **Administrative History:** Original rule filed September 30, 1985; effective October 30, 1985. Amendment filed July 12, 2002; effective September 25, 2002. Repeal and new rule filed June 30, 2009; effective September 13, 2009.

1240-08-02-.02 DEFINITIONS.

The words and terms as used herein have the following meanings:

- (1) ~~"Act" means the Rehabilitation Act of 1973, as amended (29 U.S.C. §§ 720 et seq.). Words and terms defined in federal law and regulations are adopted by reference into these rules;~~
- (2) ~~"Applicant" means an individual who applies to the Division for vocational rehabilitation services;~~
- (3) ~~"Assistant Commissioner" means the chief administrative officer for the Division of Rehabilitation Services;~~
- (4) ~~"Blind" means a person who had been determined to have not more than 20/200 vision acuity in the better eye with best correction, or an equally disabling loss of the visual field as evidenced by a limitation to the field of vision in the better eye to such a degree that its widest diameter subtends an angle of no greater than 20 degrees;~~
- (5) ~~"Commissioner" means the executive head of the Department of Human Services;~~

(Rule 1240-08-02-.02, continued)

- (6) ~~“Competitive Employment” means work in the competitive labor market that is performed on a full-time or part-time basis in an integrated setting and for which an individual is compensated at or above the minimum wage, but not less than the customary wage and level of benefits paid by the employer for the same or similar work performed by individuals who are not disabled;~~
- (7) ~~“Counselor” means an employee of the Tennessee Division of Rehabilitation Services who is designated in the job description as a counselor;~~
- (8) ~~“Department” means the Tennessee Department of Human Services;~~
- (9) ~~“Designated State Unit” means the Division of Rehabilitation Services, which is primarily concerned with vocational and other rehabilitation of individuals with disabilities and is responsible for the administration of the State’s vocational rehabilitation program;~~
- (10) ~~“Division” means the Division of Rehabilitation Services (the Division or DRS);~~
- (11) ~~“Employment Outcome” means entering or retaining full-time or, if appropriate, part-time competitive employment in an integrated labor market to the greatest extent practicable; supported employment; or any other type of employment that is consistent with an individual’s strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice;~~
- (12) ~~“Fair Hearing” shall mean a contested case proceeding before an impartial hearing officer designated by the Commissioner of the Department of Human Services who shall afford the individual and the Division, or their authorized representatives, the opportunity to present their case, with or without witnesses, to determine whether action or inaction by the county, area, regional, district, or state office is erroneous and should be corrected. Each party has an opportunity to disclose all relevant facts and issues, respond to and present evidence, conduct cross-examination, and submit rebuttal evidence as permitted under the Uniform Administrative Procedures Act, T.C.A. §§ 4-5-301 et seq. Hearings may be conducted by telephone, television, or other electronic means, and shall be open to public observation unless otherwise provided by state or federal law. Hearings are conducted in accordance with the Uniform Administrative Procedures Act codified at T.C.A. § 4-5-101 et seq. An aggrieved party may obtain a review of any final order by appealing to chancery court in Nashville, or the county where he or she resides, in accordance with T.C.A. § 4-5-322. If dissatisfied with the chancery court’s decision, the individual may appeal further to the court of appeals of Tennessee, in accordance with T.C.A. § 4-5-323.~~
- (13) ~~“Individual” means a person who has been referred or has applied for services and/or determined eligible for and receives services from the Division;~~
- (14) ~~“Maximum Effort” means a specific method or action to achieve a particular benefit to pay for specified rehabilitation services. It may consist of a set policy or process which may be applied in appropriate cases. For example, the Division could have a cooperative agreement with State university officials for financial assistance officers to interview and evaluate the financial need of all Division of Rehabilitation Services sponsored students;~~
- (15) ~~“State Plan” means the plan for vocational rehabilitation services submitted by the Division to the Rehabilitation Services Administration in compliance with Title I, Rehabilitation Act of 1973, as amended.~~

[The words and terms as used herein have the following meanings.]

(Rule 1240-08-02-.02, continued)

- (1) "Act" means the Rehabilitation Act of 1973, as amended by the Workforce Innovation and Opportunity Act of 2014, 29 U.S.C. §§ 720 et seq. Words and terms defined in federal law and regulations are adopted by reference into these rules;
- (2) "Applicant" means an individual who applies to the Division for vocational rehabilitation services;
- (3) "Blind" means a person who had been determined to have not more than 20/200 vision acuity in the better eye with best correction, or an equally disabling loss of the visual field as evidenced by a limitation to the field of vision in the better eye to such a degree that its widest diameter subtends an angle of no greater than 20 degrees;
- (4) "Combined/Unified State Plan" means the plan for vocational rehabilitation services submitted by the Division to the Rehabilitation Services Administration in compliance with Title I, Rehabilitation Act of 1973, as amended by the Workforce Innovation and Opportunity Act of 2014.
- (5) "Commissioner" means the executive head of the Department of Human Services;
- (6) "Competitive Integrated Employment" means work that:
 - (a) Is performed on a full-time or part-time basis (including self-employment) and for which an individual is compensated at a rate that:
 1. Is not less than the higher of the rate specified in section 6(a)(1) of the Fair Labor Standards Act of 1938 (29 U.S.S. 206 (a)(1)) or the rate required under the applicable State or local minimum wage law for the place of employment;
 2. Is not less than the customary rate paid by the employer for the same or similar work performed by other employees who are not individuals with disabilities and who are similarly situated in similar occupations by the same employer and who have similar training, experience, and skills; and
 3. In the case of an individual who is self-employed, yields an income that is comparable to the income received by other individuals who are not individuals with disabilities and who are self-employed in similar occupations or on similar tasks and who have similar training, experience, and skills; and
 4. Is eligible for the level of benefits provided to other employees; and
 - (b) Is at a location:
 1. Typically found in the community; and
 2. Where the employee with a disability interacts for the purpose of performing the duties of the position with the employees with the particular work unit and the entire work site, and, as appropriate to the work performed, other persons (e.g. customers and vendors), who are not individuals with disabilities (not including supervisory personnel or individuals who are providing services to such employee) to the same extent that employees who are not individuals with disabilities and who are in comparable positions interacts with these persons; and
 - (c) Presents, as appropriate, opportunities for advancement that are similar to those for other employees who are not individuals with disabilities and who have similar positions.

(Rule 1240-08-02-.02, continued)

- (7) "Contributing Services" means services that help or cause to bring about the rehabilitation of an individual's functional limitations in order to achieve an employment objective, but do not include support services.
- (8) "Counselor" means an employee of the Tennessee Division of Rehabilitation Services who is designated in the job description as a counselor;
- (9) "Department" means the Tennessee Department of Human Services;
- (10) "Designated State Unit" means the Division of Rehabilitation Services, which is primarily concerned with vocational and other rehabilitation of individuals with disabilities and is responsible for the administration of the State's VR program;
- (11) "Division" means the Division of Rehabilitation Services (the Division or DRS);
- (12) "Employment Outcome" means 12 entering or retaining full-time or, if appropriate, part-time competitive employment in an integrated labor market to the greatest extent practicable; that meets the definition for competitive integrated employment; including supported, customized and self-employment employment; or any other type of employment that is consistent with an individual's strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice;
- (13) "Fair Hearing" shall mean a contested case proceeding before an impartial hearing officer designated by the Commissioner of the Department of Human Services who shall afford the individual and the Division, or their authorized representatives, the opportunity to present their case, with or without witnesses, to determine whether action or inaction by the county, area, regional, district, or state office is erroneous and should be corrected. Each party has an opportunity to disclose all relevant facts and issues, respond to and present evidence, conduct cross-examination, and submit rebuttal evidence as permitted under the Uniform Administrative Procedures Act, T.C.A. §§ 4-5-301 et seq. Hearings may be conducted by telephone, television, or other electronic means, and shall be open to public observation unless otherwise provided by state or federal law. Hearings are conducted in accordance with the Uniform Administrative Procedures Act codified at T.C.A. § 4-5-101 et seq. An aggrieved party may obtain a review of any final order by appealing to chancery court in Davidson County, the county of the official residence of the commissioner, or the county where one or more of the petitioners resides, in accordance with T.C.A. § 4-5-322. If dissatisfied with the chancery court's decision, the individual may appeal further to the court of appeals of Tennessee, in accordance with T.C.A. § 4-5-323.
- (14) "Individual" means a person who has been referred or has applied for services and/or determined eligible for and receives services from the Division;
- (15) "Maximum Effort" means a specific method or action to achieve a particular benefit to pay for specified rehabilitation services. It may consist of a set policy or process which may be applied in appropriate cases. For example, the Division could have a cooperative agreement with State university officials for financial assistance officers to interview and evaluate the financial need of all Division of Rehabilitation Services sponsored students;
- (16) "Qualified Personnel" means possessing those specific qualifications and/or credentials for persons providing a function for which such qualifications are required;
- (17) "Recipient" means an individual that is receiving Pre-Employment Transition Services. This individual is eligible or potentially eligible for VR services.
- (18) "Student with disability" means an individual with a disability who is no younger than 14 and no older than 22. The individual must be participating in an educational program.

(Rule 1240-08-02-.02, continued)

- (19) "Youth with disability" means an individual with a disability who is no younger than 14 and no older than 24. The individual may or may not be participating in an educational program.]

Authority: T.C.A. §§4-5-202; 4-5-301 et seq. 71-1-104; 71-1-105(12); 49-11-601 et seq.; 29 U.S.C. §§ 720 et seq.; 34 C.F.R. Part 361; 34 C.F.R. §§ 370.1 et seq.; and Executive Order No. 43. **Administrative History:** Original rule filed September 30, 1985; effective October 30, 1985. Amendment filed July 12, 2002; effective September 25, 2002. Repeal and new rule filed June 30, 2009; effective September 13, 2009. Amendment filed November 10, 2009; effective April 30, 2010.

~~1240-08-02-.03 SCOPE OF SERVICES.~~

The following vocational rehabilitation services are available to individuals if appropriate to the vocational rehabilitation needs of each individual:

- ~~(1) Evaluation or assessment, including diagnostic and related services incidental to the determination of eligibility, priority for services, and the nature and scope of services to be provided;~~
- ~~(2) Counseling, guidance and referral services necessary to help individuals secure needed services from other entities;~~
- ~~(3) Physical and mental restoration services necessary to correct or substantially modify a physical or mental condition which is stable or slowly progressive;~~
- ~~(4) Vocational and other training services, including personal and vocational adjustment, books, tools, and other training materials except that no training or training services in institutions of higher education (universities, colleges, community junior colleges, vocational schools, technical institutes, or hospital schools of nursing) may be paid with funds under this part unless maximum efforts have been made by the Division and the individual to secure grant assistance in whole or in part from other sources. Awards and scholarships based on merit are excepted from this provision;~~
- ~~(5) Maintenance payments for subsistence that are in excess of the normal living expense of the individual and may be provided at any time in support of other rehabilitation services being provided. Maintenance covers an individual's basic living expenses, such as food, shelter, clothing, and other subsistence expenses which are necessitated by the individual's participation in a program of vocational rehabilitation services;~~
- ~~(6) Transportation, including necessary travel and related expenses and subsistence during travel in connection with transporting individuals and their attendants or escorts for the purpose of supporting and deriving the full benefit of other vocational rehabilitation services. Transportation may include relocation and moving expenses necessary for achieving an employment outcome;~~
- ~~(7) Services for family members of an applicant or eligible individual if necessary to enable the individual to achieve an employment outcome;~~
- ~~(8) Interpreter services and note taking services for individuals who are deaf, including tactile interpreting for deaf blind individuals;~~
- ~~(9) Reader services, rehabilitation services, note taking services and orientation and mobility services for individuals who are blind;~~

(Rule 1240-08-02-.03, continued)

- ~~(10) Rehabilitation technology including telecommunications, sensory and other technological aids and devices;~~
- ~~(11) Recruitment and training services to provide new employment opportunities in the fields of rehabilitation, health, welfare, public safety, law enforcement and other appropriate public services employment;~~
- ~~(12) Personal assistance services designed to assist the individual to perform daily living activities that are necessary for the achievement of an employment outcome. This service may be provided only while the individual is actually receiving a major service as outlined in the Individualized Plan for Employment (IPE). Attendant service is not provided during vacation time from training, or while an individual is not actively participating in other rehabilitation services;~~
- ~~(13) Employment services;~~
- ~~(14) Supported employment services as appropriate for individuals with a most significant disability;~~
- ~~(15) Post-employment services necessary to maintain employment consistent with the individual's strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice;~~
- ~~(16) Occupational licenses (including any license, permit or other written authority required by a state, city or other governmental unit to be obtained in order to enter an occupation or enter a small business), tools, equipment, initial stocks (including livestock) and supplies;~~
- ~~(17) Other goods and services determined necessary for an individual with a disability to achieve an employment outcome.~~

Authority: ~~T.C.A. §§ 4-5-202; 71-1-104; 71-1-105(12); 49-11-601 et seq.; 29 U.S.C.A. § 720 et seq.; 34 C.F.R. §§ 361.48; 361.5. **Administrative History:** Original rule filed September 30, 1985; effective October 30, 1985. Amendment filed July 12, 2002; effective September 25, 2002. Repeal and new rule filed June 30, 2009; effective September 13, 2009.~~

1240-08-02-.04 PROCEDURES.

Procedures governing the provision of services are developed by the Division of Rehabilitation Services in accordance with these rules and the Rehabilitation Act of 1973, as amended [by the Workforce Innovation and Opportunity Act].

Authority: ~~T.C.A. §§4-5-202; 71-1-105(12); 49-11-601 et seq.; 29 U.S.C. §§ 720 et seq.; 34 C.F.R. Part 361. **Administrative History:** Original rule filed September 30, 1985; effective October 30, 1985. Amendment filed July 12, 2002; effective September 25, 2002. Repeal and new rule filed June 30, 2009; effective September 13, 2009.~~

1240-08-02-.05 LEGAL BASIS.

The Tennessee Department of Human Services, Division of Rehabilitation Services, is the sole state entity designated to administer the vocational rehabilitation program and is authorized to submit a plan as a condition for receipt of federal funds under Title I of the Rehabilitation Act of 1973, as amended, and agrees to administer the program in accordance with the State Plan, the Act, and all applicable regulations, policies, and procedures established by the Secretary.

(Rule 1240-08-02-.05, continued)

[The Tennessee Department of Human Services, Division of Rehabilitation Services, is the sole state entity designated to administer the State's VR Program and is authorized to submit the VR Services portion of the combined/unified plan as a condition for receipt of federal funds under Title I of the Rehabilitation Act of 1973, as amended by the Workforce Innovation and Opportunity Act, and agrees to administer the VR program in accordance with the Combined/Unified State Plan, the Act, and all applicable regulations, policies, and procedures established by the Secretary.]

Authority: T.C.A. §§4-5-202; 71-1-105(12); 49-11-601 et seq.; 29 U.S.C.A. § 720 et seq.; 34 C.F.R. § 361.13; Executive Order No. 43. **Administrative History:** New rule filed July 12, 2002; effective September 25, 2002. (Formerly 1240-08-02-.04). Repeal and new rule filed June 30, 2009; effective September 13, 2009.

**RULES
OF
TENNESSEE DEPARTMENT OF HUMAN SERVICES
DIVISION OF REHABILITATION SERVICES**

**CHAPTER 1240-08-03
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1240-08-03-.01 STATE AND LOCAL ORGANIZATION AND ADMINISTRATION.

- (1) It is the responsibility of the Division of [Vocational] Rehabilitation Services [VR Program] to provide services necessary for the rehabilitation and habilitation of individuals with disabilities of Tennessee.
- (2) The authority and responsibility for administration of the p[VR P]rogram affecting eligibility for, the nature and scope of available vocational rehabilitation services, and the provision of these services, is vested in the head of the designated State Division of Rehabilitation Services. This responsibility may not be delegated to any other entity or individual.
- (3) Supervisors are assigned to supervise the work of [vocational] rehabilitation counselors, Tennessee Business Enterprise counselors, and rehabilitation teachers.
- (4) Any person who believes he or she may be eligible for vocational rehabilitation services may contact any Division [VR] office or employee for assistance. Also, individuals may seek assistance from the Client Assistance Program (CAP) established under 34 C.F.R. § 370.1 et seq.
- ~~(5) Counselors have the assigned responsibility to make the initial eligibility determination for vocational rehabilitation services and to provide such services in accordance with policies and procedures of the Division.~~
- [(5) Vocational rehabilitation counselors have the assigned responsibility to make the initial eligibility determination for vocational rehabilitation services or for the provision of Pre-Employment Transition Services and to provide such services in accordance with the policies and procedures of the Division's VR Program.]
- (6) Affirmative action for equal employment opportunity:
 - (a) Executive Order No. 8, an Order pertaining to Equal Employment Opportunity, is provided to all employees of the combined state entity of general and blind services. The Department of Human Services fully supports the policy of achieving equal employment opportunity for persons of every race, color, sex, religion, creed, or physical or mental impairment;
 - (b) Services of Tennessee's Division of Rehabilitation Services within the Department of Human Services are provided on a non-discriminatory basis without regard to disability, race, color, sex, religion, creed, or national origin in compliance with Title VI of the Civil Rights Act of 1964 and Title V of the Vocational Rehabilitation Act of 1973, as amended.

(Rule 1240-08-03-.01, continued)

Authority: T.C.A. §§4-5-202; 71-1-105(12); 49-11-601 et seq.; 34 C.F.R. Part 361; Executive Order No. 43; 34 C.F.R. 370.1 et seq. **Administrative History:** Original rule filed September 30, 1985; effective October 30, 1985. Amendment filed July 12, 2002; effective September 25, 2002. Repeal and new rule filed June 30, 2009; effective September 13, 2009.

1240-08-03-.02 PARTICIPATION OF INDIVIDUALS IN COST OF SERVICES BASED ON FINANCIAL NEED [ASSESSMENT].

- (1) ~~The Division will consider the financial need of each individual in determining the extent of his or her participation in the cost of specific services. The resources of the individual's family unit will be reviewed and assessed each twelve (12) months. Prior to expenditure of agency funds, the eligible individual's financial circumstances must be reviewed and documented to determine the extent of the individual's participation in the cost of those services that require such participation.~~
- (a) ~~Participation in the cost of tuition and fees at a post-secondary institution participating in federal financial aid programs is based on the expected family contribution (EFC) as determined by that institution's financial aid office. The EFC is based on the individual's Free Application for Federal Student Aid (FAFSA) and reported to the college or university on the individual's Student Aid Report (SAR).~~
1. ~~Participation in the cost of tuition and fees is waived, regardless of EFC level, for clients with an IPE in place on or before October 1, 2009 that includes as vocational rehabilitation services tuition and fees at a post-secondary institution participating in federal financial aid programs until one of the following conditions is met, whichever occurs first:~~
- (i) ~~The client has received the Division's sponsorship for a total of twelve (12) full academic semesters or the institution's equivalent over the course of the client's vocational rehabilitation case; or~~
- (ii) ~~The client's IPE identifies only an associate's degree and the client has received the Division's sponsorship for a total number of attempted academic hours equal to the institution's academic hour requirement for the associate's degree specified in the IPE or subsequent IPE amendments; or~~
- (iii) ~~The client's IPE identifies a bachelor's degree and the client has received the Division's sponsorship for a total number of attempted academic hours equal to the institution's academic hour requirement for the bachelor's degree specified in the IPE or subsequent IPE amendments; or~~
- (iv) ~~The client's IPE identifies a graduate degree and the client has received the Division's sponsorship for a total of attempted academic hours equal to the institution's academic hour requirement for the degree specified in the IPE.~~
2. ~~Additional exceptions for clients in part 1 may be granted at the Commissioner's discretion based on significant extenuating circumstances that are disability-related and under which a client would be effectively denied post-secondary education services necessary to achieve the client's employment objective if such exception were not granted.~~
- (b) ~~Participation in the cost of services required under this Rule, other than for those clients seeking DRS assistance only for tuition and fees at a post-secondary institution participating in federal financial aid programs described in 1240-08-03-.02(1)(a), is determined according to the following formula:~~

(Rule 1240-08-03-.02, continued)

- ~~1. Determine individual's adjusted gross income based on the prior year Federal income tax return;~~
 - ~~2. Subtract non-reimbursed medical and dental expenses paid during the prior calendar year; court-ordered payments other than alimony; and post-secondary educational loans being repaid by the client to obtain the available household resources;~~
 - ~~3. Compare the Low Income Home Energy Assistance Program (LIHEAP) levels established by the Federal Department of Health and Human Services for the current Federal fiscal year with the available household resources to determine the financial exemption level;~~
 - ~~4. Subtract the financial exemption level from the available household resources;~~
 - ~~5. If the client participation level is above zero, the client must participate in the cost of services at the amount of the client participation level;~~
 - ~~6. If the client participation level is zero or below, the client is not required to participate in the cost of services.~~
- ~~(c) Clients who have an EFC pursuant to subparagraph (1)(a) above and a financial participation level pursuant to subparagraph (1)(b) above are required to participate in the total cost of their services required under this Rule at the level of the EFC or the financial participation level, whichever is greater.~~
- ~~(d) No requirement for financial participation of the individual may be applied as a condition for furnishing any vocational rehabilitation service if the individual has been determined eligible for Social Security disability benefits (SSDI) or Supplemental Security Income disability benefits (SSI).~~
- ~~(2) All expenditures for client services must be consistent with the vocational rehabilitation needs of the individual and directly connected to achievement of the employment outcome identified in the Individualized Plan for Employment (IPE).~~
 - ~~(3) All expenditures for client services must be consistent with the purchasing procedures of the Division of Rehabilitation Services.~~
 - ~~(4) Any vendor who accepts the authorization of the Division of Rehabilitation Services must agree not to charge an individual with a disability or his/her family for any balance after the Division of Rehabilitation Services has paid for those services.~~
 - ~~(5) The Division does not require the financial participation of an individual as a condition for furnishing the following vocational rehabilitation services:~~
 - ~~(a) Assessment for determining eligibility and priority for services, except those non-assessment services that are provided to an individual with a significant disability during either an exploration of the individual's abilities, capabilities, and capacity to perform in work situations through the use of trial work experiences or an extended evaluation.~~
 - ~~(b) Assessment for determining vocational rehabilitation needs;~~
 - ~~(c) Vocational rehabilitation counseling and guidance, including information and support services to assist an individual in exercising an informed choice;~~

(Rule 1240-08-03-.02, continued)

- ~~(d) Referral and other services necessary to assist applicants and eligible individuals to secure needed services from other entities, including other components of the statewide workforce investment system and to advise those individuals about client assistance programs;~~
 - ~~(e) Job-related services including job search and placement assistance, job retention, follow-up, and follow-along services;~~
 - ~~(f) Personal assistance services provided by one or more persons designed to assist an individual with a disability to perform daily living activities on or off the job that an individual would typically perform without assistance if the individual did not have a disability. The services must be necessary to the achievement of an employment outcome and may be provided only while the individual is receiving other vocational rehabilitation services. The services may include training in managing, supervising and directing personal assistance services;~~
 - ~~(g) Any auxiliary service such as an interpreter, reader, or orientation and mobility services, required under Section 504 of the Act or the Americans with Disabilities Act necessary to participate in vocational rehabilitation services;~~
 - ~~(h) Training and related services provided through the Tennessee Rehabilitation Center in Smyrna, any of the community Tennessee Rehabilitation Centers, or equivalent services through community rehabilitation providers.~~
- ~~(6) The Division requires the financial participation of an individual as a condition for furnishing the following vocational rehabilitation services: There is no requirement of financial participation for an eligible individual using personal resources if the individual has been determined eligible to receive Social Security disability benefits (SSDI) or Supplemental Security Income disability benefits (SSI) based on the individual's own disability or Families First (TANF) cash benefits.~~
- ~~(a) Physical and mental restoration services, including medical care for acute conditions;~~
 - ~~(b) Maintenance and transportation costs for all non-assessment services, including, without limitation, services provided under an IPE for trial work experiences or extended evaluation;~~
 - ~~(c) Tuition and related fees for post-secondary training at universities, community and junior colleges, vocational/technical schools, trade or business schools, or any other type of school accredited by a nationally recognized accrediting association and/or registered with the State's Higher Education Commission to confer the degrees, certificates, or diplomas that are offered;~~
 - ~~(d) Books, training supplies and tools including, without limitation, computers;~~
 - ~~(e) Assistive technology services and devices;~~
 - ~~(f) Rehabilitation technology services and devices, including rehabilitation engineering and vehicle modifications, except as necessary to determine eligibility for vocational rehabilitation services or the nature and scope of services;~~
 - ~~(g) Initial stock, supplies, and all other goods approved for self-employment or vending stands;~~
 - ~~(h) Wardrobes, professional licenses, tools, and incidental expenses;~~

(Rule 1240-08-03-.02, continued)

~~(i) All other goods and services.~~~~(7) Exceptions to the Financial Participation Requirements:~~~~(a) Exceptions to the financial participation requirements may be granted only, if and to the extent necessary, to ensure that the level of an individual's participation in the cost of vocational rehabilitation services is:~~~~1. Reasonable;~~~~2. Based on the individual's financial need, including consideration of any disability-related expenses paid by the individual; and~~~~3. Not so high as to effectively deny the individual a necessary service.~~~~(b) No financial participation shall be required if the individual in need of services has been determined eligible for Social Security benefits under Titles II or XVI of the Social Security Act.~~

(1) The Division's Vocational Rehabilitation (VR) Program will consider the financial need of each individual in determining the extent of his or her participation in the cost of specific services. The resources of the individual's family unit will be assessed annually or sooner if necessary. Prior to expenditure of agency funds for services that are based on financial need (except as may be required for assessments), VR must conduct a financial need assessment to determine the extent of an eligible individual's participation in the cost of those services that require such participation.

(2) There is no requirement of financial participation for an eligible individual using personal resources if the individual has been determined eligible to receive Social Security disability benefits (SSDI) or Supplemental Security Income disability benefits (SSI) based on the individual's own disability or Families First (TANF) cash benefits.]

Authority: T.C.A. §§4-5-202; 71-1-105(12); 49-11-601 et seq.; 29 U.S.C. §§ 720 et seq.; 34 C.F.R. § 361.54. **Administrative History:** Original rule filed September 30, 1985; effective October 30, 1985. Amendment filed July 12, 2002; effective September 25, 2002. Repeal and new rule filed June 30, 2009; effective September 13, 2009.

1240-08-03-.03 STAFF DEVELOPMENT AND TRAINING.

(1) The purpose of staff development, for all staff positions, is to ensure the availability of qualified rehabilitation personnel. The Division will, to the degree possible:

(a) Provide systematic training programs to improve staff effectiveness and qualifications;

(b) Orient new staff; and

(c) Provide appropriate training to all classes of personnel consistent with their needs.

(2) Training plans and curricula are developed by a ~~DRS Program Manager~~ [the Office of Learning and Professional Development within the Department] with consultation from:

(a) The DRS State Office staff;

(b) The State Rehabilitation Council;

(Rule 1240-08-03-.03, continued)

- (c) Regional supervisory staff; and
- (d) Individual employees.

Authority: T.C.A. §§4-5-202; 71-1-105(12); 49-11-601 et seq.; 29 U.S.C. §§ 720 et seq.; 34 C.F.R. §§ 361.16; 361.18. **Administrative History.** Original rule filed September 30, 1985; effective October 30, 1985. Amendment filed July 12, 2002; effective September 25, 2002. Repeal and new rule filed June 30, 2009; effective September 13, 2009.

RULE 1240-08-03-.04 REPEALED.

Authority: T.C.A. §§ 4-5-202; 71-1-105(12); 49-11-601 et seq.; 29 U.S.C. §§ 720 et seq.; 34 C.F.R. §§ 361 et seq. **Administrative History:** Original rule filed September 30, 1985; effective October 30, 1985. Amendment filed July 12, 2002; effective September 25, 2002. Repeal filed June 30, 2009; effective September 13, 2009.

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**CHAPTER 1240-08-04
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1240-08-04-.01 REFERRALS AND APPLICATIONS FOR VR SERVICES.

- (1) The Division's Vocational Rehabilitation Program will receive referrals of individuals from any source by any means as long as the individual is present in the State. The referral source must provide the individual's name and contact information.
- (2) An individual who has been referred to VR will be considered an applicant when the individual has completed and signed a VR application form or has otherwise requested services from VR and has provided VR information necessary to initiate an assessment to determine eligibility and priority for services and is available to complete the assessment process.

Authority: T.C.A. §§4-5-202; 71-1-105(12); 49-11-601 et seq.; 29 U.S.C. §§ 720 et seq.; 34 C.F.R. §§ 361.30; 361.41; Executive Order No. 43. **Administrative History:** Original rule filed September 30, 1985; effective October 30, 1985. Amendment filed July 12, 2002; effective September 25, 2002. Repeal and new rule filed June 30, 2009; effective September 13, 2009.

1240-08-04-.02 INDIVIDUALIZED PLAN FOR EMPLOYMENT.

- (1) An Individualized Plan for Employment (IPE) is initiated for each eligible individual in an open priority category and reviewed annually and amended as needed. Vocational rehabilitation (VR) services are provided in accordance with the approved IPE.
- (2) The IPE is developed by the eligible individual or, as appropriate, his or her representative, with assistance available, to the extent determined appropriate by the eligible individual, from the vocational rehabilitation counselor or through other technical assistance. A copy of the IPE will be provided to each individual.
- (3) The IPE must be designed to achieve a specific employment outcome that is selected by the individual that is consistent with the individual's unique strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice, and that will result in competitive integrated employment.
- (4) For students with disabilities, the IPE will include coordination with the goals, objectives and pre-employment transition services identified by the individualized education program determined necessary to contribute towards obtaining competitive integrated employment and a projected post-school employment outcome.

Authority: T.C.A. §§ 4-5-202; 71-1-104; 71-1-105(12); 49-11-601 et seq.; 29 U.S.C. §§ 720 et seq.; 34 C.F.R. §§ 361.45; 361.46; 361.5; Executive Order No. 43. **Administrative History:** Original rule filed September 30, 1985; effective October 30, 1985. Amendment filed July 12, 2002; effective September 25, 2002. Repeal and new rule filed June 30, 2009; effective September 13, 2009.

1240-08-04-.03 COUNSELING, GUIDANCE, AND REFERRAL SERVICES.

- (1) An individual with a disability is provided counseling, guidance, and referral services that are necessary to develop or implement his or her vocational rehabilitation (VR) program.
- (2) Counseling and guidance is provided by the VR Counselor throughout the life of a case to facilitate the provision of services and achievement of competitive integrated employment. It is a process in which a vocational rehabilitation counselor works one-to-one with an individual with a disability.
- (3) Referral means directing the individual to other entities for assistance and/or services not available from VR.

Authority: T.C.A. §§4-5-202; 71-1-104; 71-1-105(12); 49-11-601 et seq.; 29 U.S.C. §§ 720 et seq.; 34 C.F.R. §§ 361.37; 361.48; Executive Order No. 43. **Administrative History:** Original rule filed September 30, 1985; effective October 30, 1985. Amendment filed July 12, 2002; effective September 25, 2002. Repeal and new rule filed June 30, 2009; effective September 13, 2009.

1240-08-04-.04 VOCATIONAL REHABILITATION SERVICES.

- (1) The provision of vocational rehabilitation (VR) services and support needs is based on the vocational rehabilitation and support needs of the individual consistent with the individual's strengths, resources, priorities, concerns, abilities, capabilities, interests, informed choice and VR policy and procedures as determined by an appropriate assessment conducted by the appropriate staff and identified in the individual's Individualized Plan for Employment.
- (2) VR services comprise services that contribute to the achievement of competitive integrated employment and support services that enable an eligible individual to participate in contributing services.
- (3) VR services must be provided in accordance with VR policy and procedure.
- (4) Prior to providing VR services, a determination must be made by VR as to the availability of comparable services and benefits and the extent to which the comparable services or benefits can be utilized to provide or pay for the VR services.
- (5) The provision of some VR services is based on the financial need of the individual as determined by VR in accordance with Rule 1240-08-03-.02. Based on the FNA some individuals must participate in the cost of some VR services

Authority: T.C.A. §§4-5-202; 71-1-104; 71-1-105(12); 49-11-601 et seq.; 29 U.S.C. §§ 720 et seq.; 34 C.F.R. §§ 361.48; 361.5; Executive Order No. 43. **Administrative History:** Original rule filed September 30, 1985; effective October 30, 1985. Amendment filed July 12, 2002; effective September 25, 2002. Repeal and new rule filed June 30, 2009; effective September 13, 2009.

1240-08-04-.05 STANDARDS FOR CLOSING CASES.

- (1) The Division's VR Program may close a case from applicant status prior to making an eligibility determination if the applicant declines to participate in, or is unavailable to complete, an assessment for determining eligibility and priority for services, and VR has made a reasonable number of attempts to contact the applicant or, if appropriate, the applicant's representative, to encourage the applicant's participation.
- (2) VR may close a case from trial work experiences if there is clear and convincing evidence that the individual is incapable of benefiting from vocational rehabilitation services in terms of an

employment outcome due to the severity of an individual's disability.

- (3) VR may close a case because of a determination that applicant is ineligible for vocational rehabilitation services or that an eligible individual receiving services under an IPE is no longer eligible for services.
- (4) VR may close a case of an individual who has achieved a successful employment outcome if all of the following requirements are met:
 - (a) The individual has achieved competitive integrated employment described in the individual's IPE that is: consistent with the individual's strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice and is at a location typically found in the community (in the competitive labor market) where the client:
 1. Is compensated at not less than the legal minimum wage or at the customary rate for the same or similar work performed by employees who are not individuals with disabilities;
 2. Is eligible for the level of benefits provided to other employees who are not individuals with disabilities;
 3. Interacts with fellow employees for the purpose of performing the job duties within the work unit who are not individuals with disabilities;
 4. Has the opportunity for advancement that is similar for other employees who are not individuals with disabilities and who have similar positions.
 - (b) The employment outcome has been maintained for an appropriate period of time, but not less than ninety (90) days, to ensure the stability of the employment outcome; and the individual no longer needs vocational rehabilitation services;
 - (c) At the end of the appropriate period described in (b), the individual and the VR counselor consider the employment outcome to be satisfactory and agree that the individual is performing well in the employment; and
 - (d) The individual is informed through appropriate modes of communication of the availability of post-employment services.

Authority: T.C.A. §§4-5-202; 71-1-104; 71-1-105(12); 49-11-601 et seq.; 29 U.S.C. §§ 720 et seq.; 34 C.F.R. §§ 361.44; 361.55; 361.56; Executive Order No. 43. **Administrative History:** Original rule filed September 30, 1985; effective October 30, 1985. Amendment filed July 12, 2002; effective September 25, 2002. Repeal and new rule filed June 30, 2009; effective September 13, 2009.

1240-08-04-.06 POST-EMPLOYMENT SERVICES.

- (1) Post-employment services are one or more vocational rehabilitation services that are provided subsequent to the achievement of a successful employment outcome that are necessary for an individual to maintain, regain, or advance in employment, consistent with the individual's strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice.
- (2) Post-employment services must be provided under the terms of an Individualized Plan for Employment (IPE).
- (3) Post-employment services are subject to the same requirements as services leading to employment, including the requirement to consider and seek comparable benefits and

services available under other programs and for a financial assessment.

Authority: T.C.A. §§4-5-202; 71-1-104; 71-1-105(12); 49-11-601 et seq.; 29 U.S.C. §§ 720 et seq.; 34 C.F.R. §§ 361.48; 361.5; and Executive Order No. 43. **Administrative History:** Original rule filed September 30, 1985; effective October 30, 1985. Amendment filed July 12, 2002; effective September 25, 2002. Repeal and new rule filed June 30, 2009; effective September 13, 2009.

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~~1240-08-04-.01 INTAKE: REFERRALS AND APPLICATIONS.~~

- ~~(1) The Division of Rehabilitation Services (DRS) will receive referrals of individuals from any source by any means as long as the individual is present in the State and the following information is received:
 - ~~(a) Name and address;~~
 - ~~(b) Age and sex;~~
 - ~~(c) Date of referral;~~
 - ~~(d) Source of referral;~~
 - ~~(e) Nature of disability.~~~~
- ~~(2) An individual who has been referred to the Division will be considered an applicant when the individual has completed and signed a DRS application form or has otherwise requested services from DRS.~~

~~**Authority:** T.C.A. §§4-5-202; 71-1-105(12); 49-11-601 et seq.; 29 U.S.C. §§ 720 et seq.; 34 C.F.R. §§ 361.30; 361.41; Executive Order No. 43. **Administrative History:** Original rule filed September 30, 1985; effective October 30, 1985. Amendment filed July 12, 2002; effective September 25, 2002. Repeal and new rule filed June 30, 2009; effective September 13, 2009.~~

~~1240-08-04-.02 ASSESSMENT FOR DETERMINING ELIGIBILITY AND PRIORITY FOR SERVICES.~~

- ~~(1) An evaluation or assessment will be conducted by DRS to determine whether an individual is eligible for services and to determine the individual's priority category under an order of selection.~~
- ~~(2) The evaluation or assessment will be based on a review of existing data, including counselor observation and information provided by the individual. Additional data may be required to the~~

(Rule 1240-08-04-.02, continued)

~~extent that existing data does not describe current functioning or is deemed to be insufficient or inappropriate for determination of eligibility or priority for services.~~

- ~~(3) DRS will make a decision on eligibility as soon as possible, but not to exceed sixty (60) days after an individual has submitted an application for vocational rehabilitation services, unless exceptional and unforeseen circumstances beyond the control of DRS preclude a determination and the individual agrees to an extension of time, or unless a period of trial work experiences is deemed necessary.~~
- ~~(4) Prior to any determination that an individual with a disability is incapable of benefiting from vocational rehabilitation services in terms of an employment outcome because of the severity of the individual's disability explore, through a period of trial work or, in limited circumstances, extended evaluation, the individual's abilities, capabilities, and capacity to perform in realistic work situations to determine whether or not there is clear and convincing evidence to support such a determination.~~
- ~~(a) DRS must develop a written plan to provide trial work experiences, which must be provided in the most integrated settings possible, consistent with the informed choice and rehabilitation needs of the individual.~~
- ~~(b) Trial work experiences include supported employment, on the job training, and other experiences using realistic work settings.~~
- ~~(c) 1. There is sufficient evidence to conclude that the individual can benefit from the provision of vocational rehabilitation services in terms of an employment outcome; or~~
- ~~2. There is clear and convincing evidence that the individual is incapable of benefiting from vocational rehabilitation services in terms of an employment outcome due to the severity of the individual's disability.~~
- ~~(d) DRS must provide appropriate support services, including assistive technology devices and services, and personal assistance services, to accommodate the rehabilitation needs of the individual during the trial work experiences.~~
- ~~(e) If, under limited circumstances, an individual with a significant disability cannot take advantage of trial work experiences or if options for trial work experiences have been exhausted before DRS is able to determine eligibility, DRS must conduct an extended evaluation to make these determinations.~~
- ~~1. During the extended evaluation period, vocational rehabilitation services must be provided in the most integrated settings possible, consistent with the informed choice and rehabilitation needs of the individual.~~
- ~~2. During the extended evaluation period, DRS must develop a written plan for providing services necessary to make a determination of eligibility.~~
- ~~3. During the extended evaluation period, DRS will provide only those services necessary to determine eligibility. DRS must terminate extended evaluation services when the eligibility determination is completed.~~

Authority: ~~T.C.A. §§4-5-202; 71-1-104; 71-1-105(12); 49-11-601 et seq.; 29 U.S.C. §§ 720 et seq.; 34 C.F.R. §§ 361.41; 361.42; Executive Order No. 43. **Administrative History:** Original rule filed September 30, 1985; effective October 30, 1985. Amendment filed July 12, 2002; effective September 25, 2002. Repeal and new rule filed June 30, 2009; effective September 13, 2009.~~

(Rule 1240-08-04-.02, continued)

1240-08-04-.03 ELIGIBILITY.

- (1) ~~After evaluation of data or a period of trial work experiences or extended evaluation, eligibility for vocational rehabilitation services is determined by applying the following criteria:~~
- (a) ~~The presence of a physical or mental impairment which for the individual constitutes or results in a substantial impediment to employment;~~
 - (b) ~~The individual can benefit from the provision of vocational rehabilitation services; and~~
 - (c) ~~The individual requires vocational rehabilitation services to prepare for, secure, retain, or regain employment consistent with the individual's strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice.~~
- (2) ~~Any applicant who has been determined eligible for Social Security benefits under Title II or Title XVI of the Social Security Act is presumed eligible for vocational rehabilitation services, provided that he or she intends to achieve an employment outcome, unless there is clear and convincing evidence that the individual is incapable of benefiting due to the severity of the disability.~~
- (3) ~~Certification of eligibility will be completed, signed, and dated the rehabilitation counselor when it is determined that the individual meets the criteria for eligibility. Even though an individual meets the eligibility criteria, services may not be available due to funding or priorities for services under an order of selection.~~

~~**Authority:** T.C.A. §§4-5-202; 71-1-104; 71-1-105(12); 49-11-601 et seq.; 29 U.S.C. §§ 720 et seq.; 34 C.F.R. §§ 361.41; 361.42; 361.43; Executive Order No. 43. **Administrative History:** Original rule filed September 30, 1985; effective October 30, 1985. Amendment filed July 12, 2002; effective September 25, 2002. Repeal and new rule filed June 30, 2009; effective September 13, 2009.~~

1240-08-04-.04 INELIGIBILITY.

- (1) ~~If it is determined that an applicant is ineligible based on the conditions in Rule 1240-08-04-.03 or the individual, after receiving services, is determined no longer eligible for services, the case will be closed as ineligible provided that the following conditions are met:~~
- (a) ~~This decision is made only after providing an opportunity for consultation with the individual or, as appropriate, his or her parent or guardian or other representative;~~
 - (b) ~~The individual is provided the basis of the decision in writing (supplemented as necessary by other appropriate modes of communication consistent with the informed choice of the individual); and~~
 - (c) ~~The individual is provided with a description of the services available from the state's client assistance program and is referred to other training or employment-related programs that are part of the One-Stop service delivery system under the Workforce Investment Act.~~
- (2) ~~In cases in which the client is determined ineligible because the individual is incapable of achieving an employment outcome, there will be a review of the ineligibility decision within twelve (12) months and annually thereafter if such a review is requested by the individual or the individual's representative. This review need not be conducted in situations in which the individual has refused a periodic review, has left the state, has unknown whereabouts, or has a medical condition that is rapidly progressive or terminal.~~

(Rule 1240-08-04-.04, continued)

- ~~(3) The rationale for the ineligibility decision shall be recorded in the record certifying that the individual is not eligible or is no longer eligible for services.~~
- ~~(4) All applicants determined to be ineligible shall be notified of their right to appeal the decision through an administrative review or a fair hearing.~~

Authority: ~~T.C.A. §§4-5-202; 71-1-104; 71-1-105(12); 49-11-601 et seq.; 29 U.S.C. §§ 720 et seq.; 34 C.F.R. §§ 361.43; 361.47; 361.5(b)(5); Executive Order No. 43. **Administrative History:** Original rule filed September 30, 1985; effective October 30, 1985. Amendment filed July 12, 2002; effective September 25, 2002. Repeal and new rule filed June 30, 2009; effective September 13, 2009.~~

1240-08-04-.05 INDIVIDUALIZED PLAN FOR EMPLOYMENT.

- ~~(1) An Individualized Plan for Employment (IPE) is initiated and periodically updated for each eligible individual. Vocational rehabilitation services are provided in accordance with the written plan.~~
- ~~(2) The IPE is developed by the eligible individual or, as appropriate, his or her representative, with assistance available, to the extent determined appropriate by the eligible individual, from the vocational rehabilitation counselor or through other technical assistance. A copy of the written plan will be provided to each individual.~~
- ~~(3) The IPE must be designed to achieve a specific employment outcome that is selected by the individual that is consistent with the individual's unique strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice, and that will, to the maximum extent appropriate, result in employment in an integrated setting. As appropriate, it must include:
 - ~~(a) The specific employment outcome chosen by the eligible individual, resulting, to the maximum extent appropriate, in employment in an integrated setting;~~
 - ~~(b) A description of the specific vocational rehabilitation services that are needed to achieve the employment outcome, provided in the most integrated setting appropriate for the service involved and consistent with the informed choice of the individual;~~
 - ~~(c) Timelines for the achievement of the employment outcome and for the initiation of services;~~
 - ~~(d) A description of the entity chosen by the eligible individual to provide the services, and the methods used to procure such services;~~
 - ~~(e) A description of criteria used to evaluate progress toward achievement of the employment outcome;~~
 - ~~(f) The terms and conditions of the IPE, including: the responsibilities of DRS; the responsibilities of the eligible individual, including responsibilities of the eligible individual in relation to the employment outcome, financial participation in costs of services if applicable, and applying for and securing comparable benefits; and the responsibilities of other entities through comparable benefits;~~
 - ~~(g) For individuals with the most significant disabilities who need a supported employment setting, information regarding the extended services needed and the source of the services;~~
 - ~~(h) As necessary, a statement of projected need for post-employment services;~~~~

(Rule 1240-08-04-.05, continued)

- (i) ~~As appropriate, a statement of any need for personal care assistance or rehabilitation technology services;~~
- (j) ~~The rights of the individual and the means by which the individual may seek remedy for any dissatisfaction;~~
- (k) ~~The availability of a client assistance program.~~

~~**Authority:** T.C.A. §§ 4-5-202; 71-1-104; 71-1-105(12); 49-11-601 et seq.; 29 U.S.C. §§ 720 et seq.; 34 C.F.R. §§ 361.45; 361.46; 361.5; Executive Order No. 43. **Administrative History:** Original rule filed September 30, 1985; effective October 30, 1985. Amendment filed July 12, 2002; effective September 25, 2002. Repeal and new rule filed June 30, 2009; effective September 13, 2009.~~

~~1240-08-04-.06 COUNSELING, GUIDANCE, AND REFERRAL SERVICES.~~

- (1) ~~The individual with a disability is provided counseling, guidance, and referral services that are necessary to develop or implement a rehabilitation program. Counseling is a process in which a vocational rehabilitation counselor works face-to-face with an individual with a disability to help clarify the best possible vocational, personal, and social adjustment, considering the functional limitations of the individual and the potentials for success. Referral means directing the individual to other entities for assistance not available from the Division of Rehabilitation Services.~~
- (2) ~~As a minimum, each applicant will receive counseling and guidance as an essential service while determining eligibility, while providing services in accordance with the IPE, and after job placement to provide follow-along counseling for at least ninety (90) days.~~

~~**Authority:** T.C.A. §§ 4-5-202; 71-1-104; 71-1-105(12); 49-11-601 et seq.; 29 U.S.C. §§ 720 et seq.; 34 C.F.R. §§ 361.37; 361.48; Executive Order No. 43. **Administrative History:** Original rule filed September 30, 1985; effective October 30, 1985. Amendment filed July 12, 2002; effective September 25, 2002. Repeal and new rule filed June 30, 2009; effective September 13, 2009.~~

~~1240-08-04-.07 PHYSICAL AND MENTAL RESTORATION SERVICES.~~

~~DRS provides physical or mental restoration services to individuals served when restoration services are expected to eliminate, reduce or contain the disabling condition within a reasonable length of time. "Restoration Services," in this context, refers to a variety of corrective medical, surgical, psychiatric or other therapeutic treatment that aids the client to be restored to an improved physical or mental condition.~~

~~**Authority:** T.C.A. §§ 4-5-202; 71-1-104; 71-1-105(12); 49-11-601 et seq.; 29 U.S.C. §§ 720 et seq.; 34 C.F.R. §§ 361.48; 361.5; Executive Order No. 43. **Administrative History:** Original rule filed September 30, 1985; effective October 30, 1985. Amendment filed July 12, 2002; effective September 25, 2002. Repeal and new rule filed June 30, 2009; effective September 13, 2009.~~

~~1240-08-04-.08 PHYSICIANS' SERVICES AND MEDICAL DIAGNOSIS.~~

- (1) ~~These services are provided by duly licensed physicians who provide diagnostic and/or treatment services under a DRS program.~~
- (2) ~~Medical assessment, as appropriate, will be obtained to assist in determining the extent of an individual's disability in order to make an eligibility determination.~~
- (3) ~~The disabling conditions for which restoration services are rendered must be stable or slowly progressive.~~

(Rule 1240-08-04-.06, continued)

Authority: ~~T.C.A. §§4-5-202; 71-1-104; 71-1-105(12); 49-11-601 et seq.; 29 U.S.C. §§ 720 et seq.; 34 C.F.R. § 361.48; Executive Order No. 43. **Administrative History:** Original rule filed September 30, 1985; effective October 30, 1985. Amendment filed July 12, 2002; effective September 25, 2002. Repeal and new rule filed June 30, 2009; effective September 13, 2009.~~

~~1240-08-04-.09 HOSPITAL AND CLINIC SERVICES.~~

- ~~(1) Hospitals licensed by the State of Tennessee may be used for in-patient and out-patient services if they accept the rates specified in the Delegated Purchase Authority, through which the State Department of Finance and Administration gives approval to a state entity to purchase services for an individual program, within specified limits and guidelines.~~
- ~~(2) The attending physician has the right to choose the hospital or clinic of choice if the hospital or clinic accepts the rates specified in the Delegated Purchase Authority.~~
- ~~(3) All in-patient and out-patient hospitalization, whether for diagnostic or treatment purposes, must be approved by the DRS state office.~~

Authority: ~~T.C.A. §§4-5-202; 71-1-104; 71-1-105(12); 49-11-601 et seq.; 29 U.S.C. §§ 720 et seq.; 34 C.F.R. § 361.48; Executive Order No. 43. **Administrative History:** Original rule filed September 30, 1985; effective October 30, 1985. Amendment filed July 12, 2002; effective September 25, 2002. Repeal and new rule filed June 30, 2009; effective September 13, 2009.~~

~~1240-08-04-.10 DENTAL DIAGNOSIS AND SERVICES.~~

- ~~(1) Dental services may be provided under the following conditions:

 - ~~(a) When eligibility has been established due to another disability and following provision of service for the disability, the individual cannot secure remunerative employment due to the condition of the teeth, gums, or jaws.~~
 - ~~(b) When eligibility has been established due to another disability and there is medical evidence documenting that the condition of the teeth or gums is causing or contributing to the major disability.~~
 - ~~(c) In certain cases involving dysfunction of the temporomandibular joint, in which there is evidence of severe pain, muscle spasm, and difficulty in opening the mouth.~~
 - ~~(d) As medical care for acute conditions when the program of services for another disability is likely to be interrupted due to an acute dental problem.~~~~
- ~~(2) Dental diagnoses and services that are cosmetic in nature and do not cause sufficient functional limitation to be considered a substantial impediment to employment are not provided. Such diagnoses include, without limitation, smallness of the jaw, protrusion of the jaw, or crooked teeth in need of straightening.~~

Authority: ~~T.C.A. §§4-5-202; 71-1-104; 71-1-105(12); 49-11-601 et seq.; 29 U.S.C. §§ 720 et seq.; 34 C.F.R. § 361.48; Executive Order No. 43. **Administrative History:** Original rule filed September 30, 1985; effective October 30, 1985. Amendment filed July 12, 2002; effective September 25, 2002. Repeal and new rule filed June 30, 2009; effective September 13, 2009.~~

~~1240-08-04-.11 EYEGLASSES AND VISUAL SERVICES.~~

(Rule 1240-08-04-.13, continued)

- (1) ~~The range of visual services includes examinations and refractions, eye surgery and treatment, visual training, orthoptics and pleoptics, conventional lenses, telescopic and microscopic devices, other special aids and prosthetic devices.~~
- (2) ~~Glasses may be furnished when eligibility has been established on the basis of a visual limitation and glasses will help correct the visual loss. Glasses may also be furnished to individuals whose eligibility is based on another disability and glasses are necessary to achieve the rehabilitation plan.~~
- (3) ~~Artificial eyes may be furnished when the provision of such will result in improved appearance necessary for improving the individual's chances of finding employment.~~

~~**Authority:** T.C.A. §§4-5-202; 71-1-104; 71-1-105(12); 49-11-601 et seq.; 29 U.S.C. §§ 720 et seq.; 34 C.F.R. § 361.48; Executive Order No. 43. **Administrative History:** Original rule filed September 30, 1985; effective October 30, 1985. Amendment filed July 12, 2002; effective September 25, 2002. Repeal and new rule filed June 30, 2009; effective September 13, 2009.~~

~~1240-08-04-.12 MEDICAL CARE FOR ACUTE CONDITIONS.~~

~~Medical care for acute conditions, which are sudden in onset and may not be related to the disabling condition, may be provided if the individual with a disability is eligible on the basis of economic need, does not have comparable benefits to cover the cost of services, and the acute condition arose during the course of the IPE and is expected to interfere with evaluation of rehabilitation potential, or the achievement of the employment outcome.~~

~~**Authority:** T.C.A. §§4-5-202; 71-1-104; 71-1-105(12); 49-11-601 et seq.; 34 C.F.R. § 361.48; Executive Order No. 43. **Administrative History:** Original rule filed September 30, 1985; effective October 30, 1985. Amendment filed July 12, 2002; effective September 25, 2002. Repeal and new rule filed June 30, 2009; effective September 13, 2009.~~

~~1240-08-04-.13 TRAINING SERVICES.~~

- (1) ~~Training may be furnished to eligible individuals to the extent necessary to achieve a vocational rehabilitation goal. An applicant or eligible individual qualifies for training services when he or she has the necessary capacity and ability to directly benefit from the training that provides skills for suitable remunerative employment and may include: vocational, pre-vocational, and/or personal adjustment training.~~
- (2) ~~Training may be provided by public or private facilities or other vendors to meet minimum standards and:

 - (a) ~~Financial participation criteria will be applied to all post-secondary training services at universities, community and junior colleges, vocational/technical schools, trade or business schools or any other type of school accredited by a nationally recognized accrediting association and/or registered with the State's Higher Education Commission to confer the degrees, certificates, or diplomas that are offered.~~
 - (b) ~~DRS may limit the length of training or the rate of payment for tuition, maintenance, transportation, and other expenses associated with training.~~
 - (c) ~~Eligible individuals in training will be expected to maintain progress toward achieving a vocational goal by taking a specified number of hours and maintaining passing grades. Failure to achieve progress may result in discontinuing the training program.~~~~

(Rule 1240-08-04-.13, continued)

- (d) ~~Comparable benefits are to be utilized in all cases where training services are planned so that DRS expenditures are reduced. All eligible individuals must apply for grant funds when appropriate in post-secondary training, but are not required to apply for awards and scholarships based on merit.~~

~~**Authority:** T.C.A. §§4-5-202; 71-1-104; 71-1-105(12); 49-11-601 et seq.; 29 U.S.C. §§ 720 et seq.; 34 C.F.R. § 361.48; Executive Order No. 43. **Administrative History:** Original rule filed September 30, 1985; effective October 30, 1985. Amendment filed July 12, 2002; effective September 25, 2002. Repeal and new rule filed June 30, 2009; effective September 13, 2009.~~

1240-08-04-.14 MAINTENANCE.

- (1) ~~Maintenance, as defined in rule 1240-08-02-.03(5), is a support service and may be provided only to enable an eligible individual to participate in and be fully involved in the vocational rehabilitation program. Maintenance services may be provided at any time when the living expenses exceed the normal expenses of the individual that are necessitated by the individual's participation in the rehabilitation program.~~
- (2) ~~In accordance with 1240-08-03-.02, individuals must participate in the cost of maintenance, except in situations where maintenance services are needed to determine eligibility for rehabilitation services or to determine the nature and scope of services to be provided under the Individualized Plan for Employment (IPE).~~

~~**Authority:** T.C.A. §§4-5-202; 71-1-104; 71-1-105(12); 49-11-601 et seq.; 29 U.S.C. §§ 720 et seq.; 34 C.F.R. §§ 361.48; 361.5; Executive Order No. 43. **Administrative History:** Original rule filed September 30, 1985; effective October 30, 1985. Amendment filed July 12, 2002; effective September 25, 2002. Repeal and new rule filed June 30, 2009; effective September 13, 2009.~~

1240-08-04-.15 TRANSPORTATION.

- (1) ~~Transportation is provided as necessary to applicants or eligible individuals in conjunction with other vocational rehabilitation services.~~
- (2) ~~Transportation includes necessary travel and related expenses including subsistence during travel in connection with transporting individuals with disabilities and their attendants and escorts for the purpose of providing the full benefit of the other vocational rehabilitation service.~~
- (3) ~~Transportation includes relocation and moving expenses necessary for achieving a vocational rehabilitation objective.~~
- (4) ~~In accordance with 1240-08-03-.02, individuals must participate in the cost of transportation services except in determining eligibility for rehabilitation services or the nature and scope of services to be provided under an IPE.~~
- (5) ~~Transportation assistance following placement will not exceed thirty (30) days beyond employment or after the individual with a disability receives the first paycheck, whichever comes first.~~

~~**Authority:** T.C.A. §§4-5-202; 71-1-104; 71-1-105(12); 49-11-601 et seq.; 29 U.S.C. §§ 720 et seq.; 34 C.F.R. § 361.48; Executive Order No. 43. **Administrative History:** Original rule filed September 30, 1985; effective October 30, 1985. Amendment filed July 12, 2002; effective September 25, 2002. Repeal and new rule filed June 30, 2009; effective September 13, 2009.~~

(Rule 1240-08-04-.15, continued)

~~1240-08-04-.16 INTERPRETER SERVICES FOR THE DEAF.~~

- ~~(1) Interpreter services are provided to deaf individuals when such services will assist in the attainment of the rehabilitation objective.~~
- ~~(2) The interpreter must abide by the "Interpreter Code of Ethics" promulgated by the National Registry of Interpreters for the Deaf, as revised. This Code represents standards of ethical practice, including an emphasis on confidentiality, impartiality, non-paternalism, and the continued development of skills.~~
- ~~(3) DRS will arrange to have staff or other individuals available to communicate with applicants for service and eligible individuals who rely on special modes of communication.~~

~~**Authority:** T.C.A. §§4-5-202; 71-1-104; 71-1-105(12); 49-11-601 et seq.; 29 U.S.C. §§ 720 et seq.; 34 C.F.R. § 361.48; Executive Order No. 43. **Administrative History:** Original rule filed September 30, 1985; effective October 30, 1985. Amendment filed July 12, 2002; effective September 25, 2002. Repeal and new rule filed June 30, 2009; effective September 13, 2009.~~

~~1240-08-04-.17 READER, TEACHING, ORIENTATION AND MOBILITY SERVICES.~~

- ~~(1) Reader services, rehabilitation teaching services, note taking services, and orientation and mobility services for the blind are provided to the individual with a disability when such services are helpful in reaching the rehabilitation objective.~~
- ~~(2) Rehabilitation teaching services aid visually-impaired persons to manage their own lives and reach the vocational objective.~~
- ~~(3) Orientation and Mobility Services train visually-impaired individuals in the use of dog guides, canes, vision aids, and other aids that help individuals with disabilities reach optimum levels of independence.~~

~~**Authority:** T.C.A. §§4-5-202; 71-1-104; 71-1-105(12); 49-11-601 et seq.; 29 U.S.C. §§ 720 et seq.; 34 C.F.R. § 361.48; Executive Order No. 43. **Administrative History:** Original rule filed September 30, 1985; effective October 30, 1985. Amendment filed July 12, 2002; effective September 25, 2002. Repeal and new rule filed June 30, 2009; effective September 13, 2009.~~

~~1240-08-04-.18 TELECOMMUNICATIONS, SENSORY AND OTHER TECHNOLOGICAL AIDS AND DEVICES.~~

~~DRS provides telecommunications systems to improve vocational rehabilitation service delivery methods and may develop appropriate programming to meet the particular needs of individuals with disabilities, including telephone, television, video description services, satellite, tactile-vibratory devices, and similar systems, as appropriate.~~

~~**Authority:** T.C.A. §§4-5-202; 71-1-104; 71-1-105(12); 49-11-601 et seq.; 29 U.S.C. §§ 720 et seq.; 34 C.F.R. § 361.48; Executive Order No. 43. **Administrative History:** Original rule filed September 30, 1985; effective October 30, 1985. Amendment filed July 12, 2002; effective September 25, 2002. Repeal and new rule filed June 30, 2009; effective September 13, 2009.~~

~~1240-08-04-.19 SERVICES TO FAMILY MEMBERS.~~

- ~~(1) DRS provides services to family members if necessary to enable the applicant or eligible individual to achieve an employment outcome.~~

(Rule 1240-08-04-.18, continued)

- (a) ~~Services are provided only after a determination of eligibility, and must be provided under an Individualized Plan for Employment (IPE).~~
 - (b) ~~Such services should be supportive of the vocational rehabilitation needs of the eligible individual and contribute toward achievement of the employment outcome.~~
 - (c) ~~Such services are provided only to family members. "Family member" means any relative, by blood or marriage, of an eligible individual, and any other individual living in the same household for whom the eligible individual has responsibility for care.~~
- (2) ~~The counselor must fully consider comparable benefits and services available under other programs before providing services to family members.~~

~~**Authority:** T.C.A. §§4-5-202; 71-1-104; 71-1-105(12); 49-11-601 et seq.; 29 U.S.C. §§ 720 et seq.; 34 C.F.R. §§ 361.48; 361.5; Executive Order No. 43. **Administrative History:** Original rule filed September 30, 1985; effective October 30, 1985. Amendment filed July 12, 2002; effective September 25, 2002. Repeal and new rule filed June 30, 2009; effective September 13, 2009.~~

~~1240-08-04-.20 STANDARDS FOR CLOSING CASES.~~

- (1) ~~DRS may close a case from applicant status prior to making an eligibility determination if the applicant declines to participate in, or is unavailable to complete, an assessment for determining eligibility and priority for services, and DRS has made a reasonable number of attempts to contact the applicant or, if appropriate, the applicant's representative, to encourage the applicant's participation.~~
- (2) ~~DRS may close a case from trial work experiences or extended evaluation if:~~
 - (a) ~~There is sufficient evidence to conclude that the individual can benefit from the provision of vocational rehabilitation services in terms of an employment outcome; or~~
 - (b) ~~There is clear and convincing evidence that the individual is incapable of benefiting from vocational rehabilitation services in terms of an employment outcome due to the severity of the individual's disability.~~
- (3) ~~DRS may close a case because of a determination that applicant is ineligible for vocational rehabilitation services or that an eligible individual receiving services under an IPE is no longer eligible for services.~~
- (4) ~~To determine that an individual has achieved a successful employment outcome, all of the following conditions must be met:~~
 - (a) ~~The individual has achieved the employment outcome described in the individual's IPE that is:~~
 - 1. ~~Consistent with the individual's strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice; and~~
 - 2. ~~In the most integrated setting possible, consistent with the individual's informed choice.~~
 - (b) ~~The employment outcome has been maintained for an appropriate period of time, but not less than ninety (90) days, to ensure the stability of the employment outcome; and the individual no longer needs vocational rehabilitation services;~~

(Rule 1240-08-04-.20, continued)

- (c) ~~At the end of the appropriate period described in (b), the individual and the DRS counselor consider the employment outcome to be satisfactory and agree that the individual is performing well in the employment; and~~
- (d) ~~The individual is informed through appropriate modes of communication of the availability of post-employment services.~~

~~**Authority:** T.C.A. §§4-5-202; 71-1-104; 71-1-105(12); 49-11-601 et seq.; 29 U.S.C. §§ 720 et seq.; 34 C.F.R. §§ 361.44; 361.55; 361.56; Executive Order No. 43. **Administrative History:** Original rule filed September 30, 1985; effective October 30, 1985. Amendment filed July 12, 2002; effective September 25, 2002. Repeal and new rule filed June 30, 2009; effective September 13, 2009.~~

~~1240-08-04-.21 POST-EMPLOYMENT SERVICES.~~

- (1) ~~Post-employment services are one or more vocational rehabilitation services that are provided subsequent to the achievement of an employment outcome that are necessary for an individual to maintain, regain, or advance in employment, consistent with the individual's strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice.~~
- (2) ~~Post-employment services must be provided under the terms of an Individualized Plan for Employment (IPE).~~
- (3) ~~Post-employment services are subject to the same requirements as services leading to employment, including the requirement to consider and seek comparable benefits and services available under other programs.~~

~~**Authority:** T.C.A. §§4-5-202; 71-1-104; 71-1-105(12); 49-11-601 et seq.; 29 U.S.C. §§ 720 et seq.; 34 C.F.R. §§ 361.48; 361.5; and Executive Order No. 43. **Administrative History:** Original rule filed September 30, 1985; effective October 30, 1985. Amendment filed July 12, 2002; effective September 25, 2002. Repeal and new rule filed June 30, 2009; effective September 13, 2009.~~

~~1240-08-04-.22 LICENSES, TOOLS, EQUIPMENT, INITIAL STOCKS AND SUPPLIES.~~

~~Occupational licenses, tools, equipment, initial stocks and supplies are provided to eligible individuals if needed for achievement of a successful employment outcome.~~

~~**Authority:** T.C.A. §§4-5-202; 71-1-104; 71-1-105(12); 49-11-601 et seq.; 29 U.S.C. §§ 720 et seq.; 34 C.F.R. § 361.48; Executive Order No. 43. **Administrative History:** Original rule filed September 30, 1985; effective October 30, 1985. Amendment filed July 12, 2002; effective September 25, 2002. Repeal and new rule filed June 30, 2009; effective September 13, 2009.~~

~~1240-08-04-.23 OTHER GOODS AND SERVICES.~~

~~Other goods and services determined necessary for the eligible individual to achieve an employment outcome may be provided.~~

~~**Authority:** T.C.A. §§4-5-202; 71-1-104; 71-1-105(12); 49-11-601 et seq.; 29 U.S.C. §§ 720 et seq.; 34 C.F.R. § 361.48; Executive Order No. 43. **Administrative History:** Original rule filed September 30, 1985; effective October 30, 1985. Amendment filed July 12, 2002; effective September 25, 2002. Repeal and new rule filed June 30, 2009; effective September 13, 2009.~~

~~1240-08-04-.24 RESERVED FOR FUTURE USE.~~

(Rule 1240-08-04-.24, continued)

~~**Authority:** T.C.A. §§4-5-202; 71-1-105(12). **Administrative History:** Original rule filed September 30, 1985; effective October 30, 1985. Amendment filed July 12, 2002; effective September 25, 2002. Repeal and new rule filed June 30, 2009; effective September 13, 2009.~~

~~**1240-08-04-.25 REPEALED.**~~

~~**Authority:** T.C.A. §§14-1-104, 14-1-105, and 49-11-601 et seq., 34 CFR 361.42(a)(15), Executive Order No. 43. **Administrative History:** Original rule filed September 30, 1985; effective October 30, 1985. Repeal filed July 12, 2002; effective September 25, 2002.~~

~~**1240-08-04-.26 REPEALED.**~~

~~**Authority:** T.C.A. §§14-1-104, 14-1-105, and 49-11-601 et seq., 34 CFR Part 361, Executive Order No. 43. **Administrative History:** Original rule filed September 30, 1985; effective October 30, 1985. Repeal filed July 12, 2002; effective September 25, 2002.~~

**RULES
OF
TENNESSEE DEPARTMENT OF HUMAN SERVICES
REHABILITATION SERVICES DIVISION**

**CHAPTER 1240-08-05
SERVICES TO INDIVIDUALS: RELATED PROVISIONS**

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1240-08-05-.01 ORDER OF SELECTION AND PRIORITY CATEGORIES[FOR SERVICES].

- ~~(1) The purpose of the Order of Selection is to provide an organized method of serving selected groups of individuals if resources are not available to serve all eligible individuals who apply. The Division director shall determine when and if the Order of Selection will be implemented. Individuals previously declared eligible for vocational rehabilitation services and receiving services under an Individualized Plan for Employment (IPE) are not affected when the Order of Selection is implemented. The Order of Selection shall not regulate the provision or authorization of diagnostic evaluations or post-employment services.~~
- ~~(2) An eligible individual in a closed priority category must be referred to other federal and state programs, including other components of the Workforce Investment System.~~
- ~~(3) After implementation of an Order of Selection, each individual determined eligible for services must be placed into a priority category with consideration of the following:~~
- ~~(a) Each eligible individual will be placed into the highest category justified, according to the provisions in paragraph (4).~~
 - ~~(b) A rationale for the priority will be documented in each individual's case record.~~
 - ~~(c) An eligible individual may be placed into a higher priority category as circumstances justify the reclassification; however, individuals will not be reclassified into a lower priority category once services are developed in an IPE and agreed to by the individual by obtaining his or her signature.~~
 - ~~(d) Each eligible individual who is assigned a priority category that is closed will be notified in writing.~~
 - ~~(e) If the Division of Rehabilitation Services cannot continue to serve all new cases in Priority Category 1, services will be provided to new Priority Category 1 cases based upon date of application.~~
 - ~~(f) If the Division is able to open a closed priority category but is unable to serve all eligible individuals on the waiting list, services will be provided based upon the date of application.~~
- ~~(4) The Order of Selection Priority Categories is as follows; the lowest numerical category is the highest priority:~~
- ~~(a) Category I:~~

(Rule 1240-08-05-.01, continued)

~~_____ Eligible individuals who have the most significant disabilities.~~

~~(b) _____ Category II:~~

~~_____ Eligible individuals who have significant disabilities.~~

~~(c) _____ Category III:~~

~~_____ Eligible individuals who do not have significant disabilities, but whose vocational rehabilitation is expected to require multiple vocational rehabilitation services.~~

~~(d) _____ Category IV:~~

~~_____ Eligible individuals who do not have significant disabilities who cannot be classified into a higher priority category.~~

~~(5) _____ An individual who receives SSI or SSDI based on disability or blindness is presumed to be an individual with a significant disability.~~

~~(6) _____ When an Order of Selection is implemented, those individuals who are placed into an open priority category may be served under an IPE. Those individuals who are placed in a closed priority category may not be served until the Order of Selection is lifted.~~

~~(7) _____ Definitions of terms in an Order of Selection:~~

~~(a) _____ "Order of Selection" means an organized equitable method for serving individuals when all eligible individuals who apply cannot be served due to limited funds.~~

~~(b) _____ "Priority Category" means the classification of eligible individuals according to priority for receipt of vocational rehabilitation services under an Order of Selection.~~

~~(c) _____ "Significant Disability" means an individual's disability meets the three (3) following criteria:~~

~~1. _____ The individual has a severe physical or mental disability which seriously limits at least one functional capacity (such as mobility, communication, self-care, self-direction, interpersonal skills, work tolerance, or work skills) in terms of an employment outcome;~~

~~2. _____ The individual's vocational rehabilitation can be expected to require multiple vocational rehabilitation services over an extended period of time; and~~

~~3. _____ The individual has one or more physical or mental disabilities resulting from amputation, arthritis, autism, blindness, burn injury, cancer, cerebral palsy, cystic fibrosis, deafness, head injury, heart disease, hemiplegia, hemophilia, respiratory or pulmonary dysfunction, mental retardation, mental illness, multiple sclerosis, muscular dystrophy, musculo-skeletal disorders, neurological disorders (including stroke and epilepsy), spinal cord conditions (including paraplegia and quadriplegia), sickle cell anemia, specific learning disability, end-stage renal disease, or another disability or combination of disabilities determined on the basis of an assessment for determining eligibility and vocational rehabilitation needs to cause comparable substantial functional limitation.~~

(Rule 1240-08-05-.01, continued)

- (d) ~~“Most Significant Disability” means an individual’s disability meets the criteria for significant disability in (c) but has a physical or mental disability that seriously limits two (2) or more functional capacities.~~
- (e) ~~“Non Significant Disability” means an individual’s disability does not meet the criteria for significant disability or the criteria for most significant disability.~~
- (f) ~~“Multiple Vocational Rehabilitation Services” means two (2) or more major vocational rehabilitation services, i.e. physical or mental restoration, training, counseling and guidance, or placement. Excluded are support services such as transportation, maintenance, and the routine counseling and guidance that should take place in every case.~~
- (g) ~~“Extended Period of Time” means six (6) months or more from the date services are initiated.~~
- [(1) The purpose of an Order of Selection is to provide an organized method of prioritizing eligible individuals that may be provided Vocational Rehabilitation (VR) services if resources are not available to serve all eligible individuals who apply. The Division’s VR Program shall determine when and if an Order of Selection will be implemented.
- (2) Individuals previously determined eligible for vocational rehabilitation services and receiving services under an Individualized Plan for Employment (IPE) are not affected when an Order of Selection is implemented. An Order of Selection shall not regulate the provision or authorization of diagnostic assessments.
- (3) After implementation of an Order of Selection, each individual determined eligible for services will be placed into the highest category justified according to paragraph (4).
- (4) Each eligible individual who is assigned a priority category that is closed will be notified in writing and must be referred to other federal and state programs, including programs that are part of the one-stop service delivery system under the Workforce Innovation and Opportunity Act.
- (a) If VR cannot continue to serve all new cases in Priority Category 1, services will be provided to new Priority Category 1 cases based upon date of application.
- (b) If VR is able to open a closed priority category but is unable to serve all eligible individuals on the waiting list, services will be provided based upon the date of application.
- (5) The Order of Selection Priorities is determined by VR based on the federal definition and is as follows, with the lowest numerical category being the highest priority:
- (a) Category I:
Eligible individuals who have the most significant disabilities.
- (b) Category II:
Eligible individuals who have significant disabilities.
- (c) Category III:
Eligible individuals who do not have significant disabilities, but whose vocational rehabilitation is expected to require multiple vocational rehabilitation services.

(Rule 1240-08-05-.01, continued)

(d) Category IV:

Eligible individuals who do not have significant disabilities who cannot be classified into a higher priority category.

- (6) An individual who is eligible to receive SSI or SSDI based on disability or blindness is presumed to be an individual with a significant disability.
- (7) When an Order of Selection is implemented, those individuals who are placed into an open priority category may be served under an IPE. Those individuals who are placed in a closed priority category may not be served until the Order of Selection is lifted or the category is opened.]

Authority: T.C.A. §§4-5-202; 71-1-104; 71-1-105(12); 49-11-601 et seq.; 29 U.S.C. §§ 720 et seq.; 34 C.F.R. §§ 361.5; 361.36; Executive Order No. 43. **Administrative History:** Original rule filed September 30, 1985; effective October 30, 1985. Amendment filed July 12, 2002; effective September 25, 2002. Repeal and new rule filed June 30, 2009; effective September 13, 2009.

1240-08-05-.02 RESERVED FOR FUTURE USE.

Authority: T.C.A. §§4-5-202; 71-5-105(12). **Administrative History:** Original rule filed September 30, 1985; effective October 30, 1985. Amendment filed July 12, 2002; effective September 25, 2002. Repeal and new rule filed June 30, 2009; effective September 13, 2009.

1240-08-05-.03 CONSIDERATION OF COMPARABLE SERVICES OR BENEFITS AND SUBROGATION.

- ~~(1) In determining what services are provided to an individual and the scope of such services, the Division of Rehabilitation Services will consider the availability of comparable services from other sources. If comparable services exist, they must be used to meet, in whole or in part, the cost of rehabilitation services. Such services to be considered must be adequate, timely, and not delay services to an individual who is at extreme medical risk.~~
- [(1) In determining what services are provided to an individual and the scope of such services, the Division's VR Program will consider the availability of comparable services or benefits from other sources, except as exempt by law. If comparable services or benefits exist, they must be used to meet, in whole or in part, the cost of VR rehabilitation services. Such comparable services or benefits to be considered must be adequate, timely, and not delay the provision of VR services.]
- (2) Vocational and other training services in institutions of higher education may not be paid for with funds under this part unless maximum efforts have been made by the state entity and the individual to secure grant assistance in whole or in part from other sources to pay for the training. Institutions of higher education include universities, colleges, community/junior colleges, vocational schools, technical institutes, or hospital schools of nursing. Comparable [services and] benefits do not include awards and scholarships based on merit.
- (3) When the eligible individual is entitled to money or benefits in compensation for an accident which caused or contributed to the vocational rehabilitation eligibility, the entity requires reimbursement for the cost of rehabilitation services, except as exempt by law.
- (4) When DRS [VR] funds are expended on behalf of an individual for goods or services that a third party is or becomes legally obligated to pay, the Division is subrogated to the rights of

(Rule 1240-08-05-.03, continued)

the individual to receive such payment. By accepting or receiving such DRS [VR] funds, the individual is deemed to have agreed to and authorized such subrogation.

- (5) The following services are exempt from a determination of comparable services:
- (a) Evaluation to determine eligibility, rehabilitation needs, or priority for services;
 - (b) Counseling, guidance, and referral services;
 - (c) Vocational and other training, including vocational adjustment training, books, tools, and other training materials not provided in institutions of higher education;
 - (d) Placement services;
 - (e) Rehabilitation engineering services;
 - (f) Post-employment services consisting of the services listed in (a) through (e) above.

Authority: T.C.A. §§4-5-202; 71-1-104; 71-1-105(12); 71-1-123; 49-11-601 et seq.; 29 U.S.C. §§ 720 et seq.; 34 C.F.R. § 361.53; Executive Order No.43. **Administrative History:** Original rule filed September 30, 1985; effective October 30, 1985. Amendment filed July 12, 2002; effective September 25, 2002. Repeal and new rule filed June 30, 2009; effective September 13, 2009.

1240-08-05-.04 CONFIDENTIALITY.

- (1) All information as to personal facts involving individuals applying for or receiving services given or made available to DRS employees, in the course of the administration of the ~~vocational-rehabilitation~~ [VR] program, is confidential. Confidentiality extends to electronic information, photographs, and lists of names.
- (2) The use of such information and records is limited to purposes directly connected with the administration of the ~~vocational-rehabilitation~~ [VR] program.
- (3) Information is not to be disclosed directly or indirectly, other than in the administration of the ~~vocational-rehabilitation~~ [VR] program, unless the informed consent of the individual has been obtained in writing.
- (4) The Division[~~'s VR Program~~] of ~~Rehabilitation Services~~ shall, upon the individual's written request, release all information in the individual's record to the individual or the individual's representative, except that medical, psychological or other information deemed harmful to the individual will only be released to the individual through a designated third party. If the information comes from a separate entity, the state must follow the conditions for release of such information established by that entity.
- (5) DRS [VR] may release confidential information, including medical and psychological data, without the written consent of the individual when the person or entity receiving the information is providing a DRS [VR] sponsored service to the individual and provides assurances that:
 - (a) The confidential nature of the information shall be preserved;
 - (b) The information is used for the purpose for which it was made available; and
 - (c) The use of the information is related to the purpose and functions of the entity to which it is given.

(Rule 1240-08-05-.04, continued)

- (6) DRS [VR] may release information to an individual or organization engaged in research when the purpose is directly connected with the administration of the state vocational rehabilitation program, and only after the individual or organization has furnished satisfactory assurances that the information shall be used only for the purpose it was provided, and:
 - (a) It shall not be released to persons not connected with the study under consideration, and
 - (b) The final product of the research shall not reveal any information that may identify any person who did not provide written consent to release the information.
- (7) Reports, surveys, case studies, research projects, and other information released to entities/organizations and individuals by counselors and other DRS personnel may contain statistical information and data essential to the advancement of the program, but no information identifiable with any individual shall be included without the written consent of that individual.
- (8) Release of Personal Information.
 - (a) DRS [VR] may release personal information to an organization, state entity, or individual engaged in audit, evaluation, or research for purposes directly connected with the administration of the vocational rehabilitation program, or for purposes that would significantly improve the quality of life for applicants and eligible individuals, and only if the organization, entity, or individual assures that:
 1. The information will be used only for the purposes for which it is being provided;
 2. The information will be released only to individuals officially connected with the audit, evaluation, or research;
 3. The information will not be released to the involved individual, but will be managed in a manner to safeguard confidentiality; and
 4. The final product will not reveal any personal identifying information without the informed written consent of the involved individual or the individual's representative.
 - (b) Personal information will be released in response to investigations in connection with law enforcement, fraud, or abuse, unless expressly prohibited by federal or state laws or regulations, or in response to an order issued by a judge, magistrate, or other authorized judicial officer.
 - (c) Personal information may be released in order to protect the individual or others if the individual poses a threat to his or her safety or to the safety of others.
- (9) All documents containing information about the individual and possessed by the Division are property of the Division of Rehabilitation Services.
- (10) An individual who believes that information in the record is inaccurate or misleading may request that the record be amended. If the information is not amended, the request for amendment must be documented in the record.
- (11) The Division may charge a reasonable fee for providing copies of records for purposed other than those of the rehabilitation program in accordance with the rules of the Department at Chapter 1240-09 and state law.

(Rule 1240-08-05-.04, continued)

Authority: T.C.A. §§4-5-202; 71-1-104; 71-1-105(12); 49-11-601 et seq.; 29 U.S.C. §§ 720 et seq.; 34 C.F.R. §§ 361.38; Executive Order No. 43. **Administrative History:** Original rule filed September 30, 1985; effective October 30, 1985. Amendment filed July 12, 2002; effective September 25, 2002. Repeal and new rule filed June 30, 2009; effective September 13, 2009.

~~1240-08-05-.05 REVIEW OF EXTENDED EMPLOYMENT IN REHABILITATION FACILITIES.~~

~~DRS annually reviews and reevaluates the status of individuals with a disability served under the vocational rehabilitation program who have entered extended employment within a community rehabilitation program or in any other employment setting in which the individual is compensated in accordance with section 14(c) of the Fair Labor Standards Act codified at 29 U.S.C.A. § 214. These reviews are conducted for two (2) years after the individual achieves the employment outcome and thereafter, if requested by the individual or the individual's representative, to determine the interests, priorities and needs of the individual with respect to competitive employment or training for competitive employment.~~

~~**Authority:** T.C.A. §§4-5-202; 71-1-104; 71-1-105(12); 49-11-601 et seq.; 29 U.S.C. § 214; 29 U.S.C. §§ 720 et seq.; 34 C.F.R. § 361.55; 29 C.F.R. § 525 et seq.; Executive Order No. 43. **Administrative History:** Original rule filed September 30, 1985; effective October 30, 1985. Amendment filed July 12, 2002; effective September 25, 2002. Repeal and new rule filed June 30, 2009; effective September 13, 2009.~~

~~1240-08-05-.06 TENNESSEE REHABILITATION CENTER.~~

- ~~(1) The Tennessee Rehabilitation Center is a statewide comprehensive rehabilitation and training center for individuals receiving services from the Division of Rehabilitation Services. The residential facility provides services including, but not limited to, physical and occupational therapy, medical services, vocational evaluation, personal and social evaluation, personal adjustment training, work adjustment training, vocational training, and counseling.~~
- ~~(2) Generally, referrals to the Center will consist of applicants or eligible individuals from the Division of Rehabilitation Services. The DRS counselor is responsible for initiating referrals to the Center. The counselor will complete a TRC application form and send it with the referral information to the TRC Admissions Office. The Admissions Office staff reviews the referral information and makes a decision to accept or deny the application or to request further information. [Referrals to TRC are evaluated by the Admissions Office based on information provided by the VR counselor and on TRC admission criteria. Referrals may be denied because of inadequate referral information or admissions criteria are not met.]~~
- ~~(3) Eligibility Criteria.~~
 - ~~— Clients eligible for admission to programs of services at the Tennessee Rehabilitation Center must:~~
 - ~~(a) Be medically and emotionally stable,~~
 - ~~(b) Pose no threat to self or others,~~
 - ~~(c) Not require one-to-one supervision,~~
 - ~~(d) Be able to adjust to a group living experience, and~~
 - ~~(e) Have needs for services that existing staff and facilities can meet.~~

(Rule 1240-08-05-.06, continued)

- [(1) The Tennessee Rehabilitation Center ("TRC") is a statewide comprehensive rehabilitation and training center for applicants and eligible individuals receiving services from the Division's Vocational Rehabilitation Program.
- (2) TRC is a residential facility that provides services including, but not limited to, cognitive, physical and occupational therapy, medical services, employment and life skills, vocational evaluation, vocational training and counseling, and pre-employment transition services.]

Authority: T.C.A. §§4-5-202; 71-1-104; 71-1-105(12); 49-11-601 et seq.; 29 U.S.C. §§ 720 et seq.; 34 C.F.R. § 361.51; Executive Order No. 43. **Administrative History:** Original rule filed September 30, 1985; effective October 30, 1985. Amendment filed July 12, 2002; effective September 25, 2002. Repeal and new rule filed June 30, 2009; effective September 13, 2009.

1240-08-05-.07 COMMUNITY TENNESSEE REHABILITATION CENTERS.

- ~~(1) The Community Tennessee Rehabilitation Centers are comprised of centers in rural areas that provide an array of services including, but not limited to, comprehensive vocational evaluation, employee development services, and community employment service.~~
- ~~(2) Generally, referrals are made by the vocational rehabilitation counselor and consist of applicants or eligible individuals from the Division of Rehabilitation Services.~~
- ~~(3) Applicants or eligible individuals referred must:~~
 - ~~(a) Be medically and emotionally stable,~~
 - ~~(b) Pose no threat to self or others,~~
 - ~~(c) Not require one-to-one supervision,~~
 - ~~(d) Be able to adjust to a group training/work environment, and~~
 - ~~(e) Have needs for services that existing staff and facilities can meet.~~
- ~~(4) The Community Tennessee Rehabilitation Centers offer services to employers including, but not limited to, marketability, recruitment, industry outsourcing, internships, and services to injured workers.~~
- [(1) The Community Tennessee Rehabilitation Centers are comprised of centers located across the state that provide an array of services including, but not limited to, comprehensive vocational evaluation, employee development services, and community employment services.
- (2) Generally, referrals are made by the vocational rehabilitation counselor and consist of applicants, individuals receiving Pre-Employment Transition Services, or individuals determined eligible by VR.
- (3) The Community Tennessee Rehabilitation Centers maintain standards for the provision of services.
- (4) The Community Tennessee Rehabilitation Centers offer services to employers including, but not limited to, marketability, recruitment, industry outsourcing, internships, and services to injured workers.]

Authority: T.C.A. §§4-5-202; 71-1-104; 71-1-105(12); 49-11-601 et seq.; 49-11-701 et seq.; 29 U.S.C. §§ 720 et seq.; 34 C.F.R. § 361.51; Executive Order No. 43. **Administrative History:** Original rule filed

(Rule 1240-08-05-.07, continued)

September 30, 1985; effective October 30, 1985. Amendment filed July 12, 2002; effective September 25, 2002. Repeal and new rule filed June 30, 2009; effective September 13, 2009.

**RULES
OF
TENNESSEE DEPARTMENT OF HUMAN SERVICES
REHABILITATION SERVICES DIVISION**

**CHAPTER 1240-08-11
SUPPORTED EMPLOYMENT SERVICES PROGRAM**

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1240-08-11-.01 PURPOSE.

The Department of Human Services, Division of Rehabilitation Services (DRS), is the designated state entity for the administration of the Supported Employment Services Program. This chapter sets forth the guidelines of the Tennessee Division of Rehabilitation Services (DRS) to be used for administering the State's Supported Employment Services Program.

Authority: T.C.A. §§4-5-202; 71-1-105(12); PL 93-112, as amended by PL 99-506; 34 C.F.R. §§ 361; 363.1 et seq. **Administrative History:** Original rule filed August 22, 1988; effective November 29, 1988. Amendment filed July 12, 2002; effective September 25, 2002. Repeal and new rule filed June 30, 2009; effective September 13, 2009.

1240-08-11-.02 DEFINITIONS.

- (1) ~~“Competitive Employment” means work that is performed on a full-time basis or part-time basis in an integrated setting and for which an individual is compensated at or above minimum wage, but not less than the customary or usual wage paid by the employer for the same or similar work performed by individuals who do not have a disability.~~
- (2) ~~“Integrated Setting” means:~~
- ~~(a) A work setting typically found in the community in which an individual with a most significant disability interacts with individuals who do not have disabilities to the same extent that individuals without disabilities in comparable employment interact with other persons; or~~
 - ~~(b) A work setting where a small work group of not more than eight (8) individuals with disabilities have regular contact with workers without disabilities (e.g., breaks and lunch time), other than staff providing support services, in the immediate work area.~~
- (3) ~~“Supported Employment” means competitive employment in an integrated work setting with ongoing support services for individuals determined by DRS to have the most significant disabilities.~~
- ~~These are individuals:~~
- ~~(a) For whom competitive employment has not traditionally occurred or has been interrupted or intermittent as a result of significant disabilities; and~~
 - ~~(b) Who, because of the nature and severity of their disabilities, need intensive supported employment and extended services after transitioning from DRS services in order to perform this work; or~~

(Rule 1240-08-11-.02, continued)

- ~~(c) Who require transitional employment for individuals with the most significant disabilities due to mental illness.~~
- ~~(4) "Most Significant Disability" means an individual meets the following three (3) criteria:~~
- ~~(a) The individual has a severe physical or mental disability which seriously limits two (2) or more functional capacities (such as mobility, communication, self-care, self-direction, interpersonal skills, work tolerance, or work skills) in terms of an employment outcome;~~
- ~~(b) The individual's vocational rehabilitation can be expected to require multiple vocational rehabilitation services over an extended period of time; and~~
- ~~(c) The individual has one or more physical or mental disabilities resulting from amputation, arthritis, autism, blindness, burn injury, cancer, cerebral palsy, cystic fibrosis, deafness, head injury, heart disease, hemiplegia, hemophilia, respiratory or pulmonary dysfunction, mental retardation, mental illness, multiple sclerosis, muscular dystrophy, musculo-skeletal disorders, neurological disorders (including stroke and epilepsy), spinal cord conditions (including paraplegia and quadriplegia), sickle cell anemia, specific learning disability, end-stage renal disease, or other disability or combination of disabilities determined on the basis of an assessment for determining eligibility and vocational rehabilitation needs to cause substantial functional limitation.~~
- ~~(5) Transitional employment means a series of continuing sequential job placements, leading to job permanency, in competitive employment in an integrated work setting with ongoing supports for individuals with a most significant disability due to mental illness.~~
- ~~(6) "Extended services" means services that are provided by another State entity, private nonprofit organization, employer, or any other appropriate resource other than DRS that are needed to maintain an individual with a most significant disability in supported employment after transition from DRS services.~~
- ~~[(1) "Competitive Integrated Employment" means work that:~~
- ~~(a) Is performed on a full-time or part-time basis (including self-employment) and for which an individual is compensated at a rate that:~~
- ~~1. Is not less than the higher of the rate specified in section 6(a)(1) of the Fair Labor Standards Act of 1938 (29 U.S.C. 206(a)(1)) or the rate required under the applicable State or local minimum wage law for the place of employment;~~
 - ~~2. Is not less than the customary rate paid by the employer for the same or similar work performed by other employees who are not individuals with disabilities and who are similarly situated in similar occupations by the same employer and who have similar training experience and skills; and~~
 - ~~3. In the case of an individual who is self-employed, yields an income that is comparable to the income received by other individuals who are not individuals with disabilities and who are self-employed in similar occupations or on similar tasks and who have similar training experience, and skills; and~~
 - ~~4. Is eligible for the level of benefits provided to other employees; and~~
- ~~(b) Is at a location:~~
- ~~1. Typically found in the community; and~~

(Rule 1240-08-11-.02, continued)

2. Where the employee with a disability interacts for the purpose of performing the duties of the position with other employees within the particular work unit and the entire work site, and, as appropriate to the work performed, other persons (e.g., customers and vendors), who are not individuals with disabilities (not including supervisory personnel or individuals who are providing services to such employee) to the same extent that employees who are not individuals with disabilities and who are in comparable positions interact with these persons; and
 - (c) Presents, as appropriate, opportunities for advancement that are similar to those for other employees who are not individuals with disabilities and who have similar positions.
- (2) "Supported employment" means competitive integrated employment including customized employment, or employment in an integrated work setting in which an individual with a most significant disability, including a youth with a most significant disability, is working on a short-term basis toward competitive integrated employment that is individualized, and customized, consistent with the unique strengths, abilities, interests, and informed choice of the individual, including with ongoing support services for individuals with the most significant disabilities.

These are individuals:

- (a) For whom competitive integrated employment has not historically occurred, or for whom competitive integrated employment has been interrupted or intermittent as a result of a significant disability; and
 - (b) Who, because of the nature and severity of their disabilities, need intensive supported employment and extended services after the transition from support provided by Vocational Rehabilitation, in order to perform this work.
- (3) "Extended services" means services that are provided by other public agencies, private nonprofit organizations, or other sources, including employers and other natural supports, following the provision of authorized supported employment services of Vocational Rehabilitation that are needed to maintain an individual with a most significant disability in supported employment.]

Authority: T.C.A. §§4-5-202; 71-1-105(12); PL 93-112, as amended by PL 99-506; 34 C.F.R. §§ 361; 361.5; 363.6. **Administrative History:** Original rule filed August 22, 1988; effective November 29, 1988. Amendment filed July 12, 2002; effective September 25, 2002. Repeal and new rule filed June 30, 2009; effective September 13, 2009.

1240-08-11-.03 ELIGIBILITY FOR SUPPORTED EMPLOYMENT.

The rehabilitation counselor determines eligibility for supported employment based on an exploration, including a review of existing information, of the individual's abilities, capabilities, and capacity to perform in work situations.

- (1) An individual who is eligible for supported employment must meet the eligibility criteria for vocational rehabilitation services:
 - (a) The individual has a physical or mental impairment that constitutes or results in a substantial impediment to employment;
 - (b) The individual requires vocational rehabilitation services to prepare for, secure, retain, or regain employment consistent with the applicant's unique strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice; and

(Rule 1240-08-11-.03, continued)

- (c) The individual can benefit in terms of an employment outcome from the provision of vocational rehabilitation services; and
- (2) Must be an individual with a most significant disability:
 - (a) For whom competitive employment has not traditionally occurred or has been interrupted or intermittent as a result of significant disabilities; and
 - (b) Who, because of the nature and severity of their disabilities, needs intensive supported employment and extended services after transitioning from DRS [VR] services in order to perform this work; or
 - (c) Who requires transitional employment for individuals with the most significant disabilities due to mental illness.

Authority: T.C.A. §§4-5-202; 71-1-105(12); PL 93-112, as amended by PL 99-506; 34 C.F.R. §§ 361; 361.5; 363.1 et seq. **Administrative History:** Original rule filed August 22, 1988; effective November 29, 1988. Amendment filed July 12, 2002; effective September 25, 2002. Repeal and new rule filed June 30, 2009; effective September 13, 2009.

1240-08-11-.04 PROVISION OF SERVICES.

- (1) Supported employment services may be provided by DRS [VR] for a period of time not to exceed ~~eighteen (18)~~ [twenty-four (24)] months unless, under special circumstances, the eligible individual and the rehabilitation counselor jointly agree to extend the time to achieve the employment outcome identified in the IPE.
- (2) Supported employment services include:
 - (a) Evaluation to determine rehabilitation needs and to develop the Individualized Plan for Employment (IPE);
 - (b) Job placement, job training, stabilization, and other intensive services;
 - (c) Ongoing support services, defined as:
 - 1. Services needed to support and maintain an individual with a most significant disability in supported employment;
 - 2. Services based on a determination by DRS [VR] of the individual's needs;
 - 3. Services identified in an Individualized Plan for Employment (IPE);
 - 4. Services furnished by DRS from the time of job placement until transition from DRS [VR] services (transition occurs when ongoing support needs are minimal and job stability is maintained); and/or
 - 5. Services that consist of:
 - (i) At a minimum, twice-monthly monitoring at the worksite, or under specific circumstances, off-site monitoring, of each individual in supported employment to assess employment stability and to provide for the coordination and provision of specific services at or away from the worksite that are needed to maintain employment stability;

(Rule 1240-08-11-.04, continued)

- (ii) Particularized assessments to determine rehabilitation needs;
 - (iii) Services provided by skilled job trainers and job developers;
 - (iv) Social skills training and regular observation or supervision of the individual;
 - (v) Follow-up services to reinforce and stabilize the job placement;
 - (vi) Facilitation of natural supports at the worksite; and
 - (vii) Any other service within the scope of vocational rehabilitation services.
- (d) Transitional employment;
- (e) Extended services.

Authority: T.C.A. §§4-5-202; 71-1-105(12); PL 93-112, as amended by PL 99-506; 34 C.F.R. §§ 361; 361.5; 363.1 et seq. **Administrative History:** Original rule filed August 22, 1988; effective November 29, 1988. Amendment filed July 12, 2002; effective September 25, 2002. Repeal and new rule filed June 30, 2009; effective September 13, 2009.

1240-08-11-.05 CASE CLOSURE.

- (1) An individual who is receiving supported employment services is considered to be successfully rehabilitated if the individual maintains a supported employment placement for ninety (90) days after making the transition from DRS services.
- (2) The decision for closing a case will be made on an individual client basis by DRS. DRS services shall end at case closure unless post-employment services are necessary and can be provided in accordance with DRS policy.

Authority: T.C.A. §§4-5-202; 71-1-105(12); PL 93-112, as amended by PL 99-506; 34 C.F.R. §§ 361; 363.1 et seq. **Administrative History:** Original rule filed August 22, 1988; effective November 29, 1988. Amendment filed July 12, 2002; effective September 25, 2002. Repeal and new rule filed June 30, 2009; effective September 13, 2009.

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the Department of Human Services (board/commission/ other authority) on September 8, 2017, 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: July 3, 2017

Rulemaking Hearing(s) Conducted on: (add more dates). August 24, 2017

Date: September 8, 2017

Signature: Cherrell Campbell-Street

Name of Officer: Cherrell Campbell-Street

Title of Officer: Deputy Commissioner, Programs and Services



Subscribed and sworn to before me on: 9/8/17

Notary Public Signature: Michael T. Donegan

My commission expires on: 7/6/2020

Agency/Board/Commission: Department of Human Services

Rule Chapter Number(s): 1240-04-08-02, 1240-08-03, 1240-08-04, 1240-08-05, 1240-08-06, 1240-08-07, 1240-08-10, 1240-08-11.

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

10/3/2017

Date

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Filed with the Department of State on: 10/5/17

Effective on: 11/3/18

Tre Hargett

Tre Hargett
Secretary of State

G.O.C. STAFF RULE ABSTRACT

DEPARTMENT: Environment and Conservation

DIVISION: Solid Waste Management

SUBJECT: Hazardous Waste Management

STATUTORY AUTHORITY: These rules are being promulgated under the authority of Tenn. Code Ann. §§ 68-212-101 et seq. The federal requirements adopted are compiled in 40 CFR Parts 260 and 261.

EFFECTIVE DATES: August 7, 2017 through June 30, 2018

FISCAL IMPACT: This rulemaking makes additional recycling options available to generators of hazardous secondary materials. A decrease in fee revenue is anticipated but it will take a few years before the recycling infrastructure develops to enable the full benefits of the rulemaking to be realized by the regulated community. When fully realized, the Department estimates a decrease in fee revenue up to approximately \$284,000.

STAFF RULE ABSTRACT: This rulemaking hearing rule is primarily designed to amend the current hazardous waste rules in order to revise the definition of solid waste and its related variances, exclusions and exemptions. The Department has been authorized by EPA to administer the hazardous waste program in Tennessee in lieu of the federal government. As an authorized state, Tennessee is required to amend these rules to incorporate the more stringent requirements adopted by the EPA. This rulemaking incorporates those more stringent requirements, which consist of codifying the definition of legitimate recycling, the prohibition of sham recycling and the additional recordkeeping requirement associated with speculative accumulation. This rulemaking also incorporates the additional variances, exclusions and exemptions associated with recycling hazardous waste and hazardous secondary materials allowed by the EPA. These variances, exclusions and exemptions are not mandatory but are available if a qualified generator or recycler wishes to obtain them.

On April 8, 2015, in compliance with orders issued by the U.S. Court of Appeals, EPA deleted the regulations associated with the comparable fuels exclusion and the gasification exclusion. This rulemaking makes the complying revisions (deleting those exclusions) to prevent these rules from being less stringent than the federal rules.

In accordance with the federal decision to regulate coal combustion residues under the solid waste program instead of the hazardous waste program, on April 17, 2015, EPA amended 40 CFR 261.4(b)(4) to exempt from the hazardous waste regulation wastes generated primarily from processes that support the combustion of coal or other fossil fuels that are co-disposed with excluded fly ash waste, bottom ash waste, slag waste, and flue gas emission control waste generated primarily from the combustion of coal or other fossil fuels. This rulemaking proposes to amend subpart (1)(d)(2)(iv) of Rule 0400-12-01-.02 to also exempt these same wastes from hazardous waste regulation.

Public Hearing Comments

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

The comments that followed urged adoption of the rules, expressed appreciation for clarifying language added by the Board to the regulations as promulgated by the federal Environmental Protection Agency (EPA), requested that the Board add more clarifying language to the rules, suggested corrections to errors in the rules, and requested that the Board respond to various potential applications of the rules.

Comment: A commenter recommended amending the Commissioner's verification procedure for hazardous secondary material reclaimers and intermediate facilities since it was intended to be a form of operating status similar to a permittee or licensee. The commenter was concerned that the proposed rule did not make it sufficiently clear that the Commissioner's verification was a form of license under the Uniform Administrative Procedures Act, which could be revoked for cause and was subject to enforcement action for non-compliance with the conditions determined to be necessary by the Commissioner.

Response: The Board agrees with the commenter and has modified the rule to include the recommended clarifications. The rules have been changed to indicate that the Commissioner will issue a Certificate to Operate to an owner or operator of a hazardous secondary material reclamation or intermediate facility instead of a verification determination to make its operating status clear. The rules were modified to reflect the change from a verification determination to the issuing of a Certificate to Operate. Paragraph (4) of Rule 0400-12-01-.01 has been modified by adding subparagraphs (h) and (i) to address causes for terminating the Certificate to Operate and for taking enforcement actions for non-compliance with the conditions in the certificate.

Comment: A commenter pointed out that the new definition of "hazardous secondary material generator" includes a reference to item (1)(b)1(ii)(II) of Rule 0400-12-01-.02 in the last sentence and should be deleted since the item was being reserved in the rules.

Response: The Board agrees and has deleted the reference to item (1)(b)1(ii)(II) of Rule 0400-12-01-.02 from the definition of "hazardous secondary material generator."

Comment: A commenter was concerned that the lack of clarity on the part of writers of the federal regulations has resulted in a federal definition of solid waste that could well jeopardize hundreds of millions of dollars of products, all of which are made with recycled hazardous secondary materials. The commenter supports the Board's efforts to propose rules that add clarity to this complex issue.

Response: The Board agrees that the issue of determining when a secondary material is discarded is very complex. The addition of clarifications in the rules will help the Department and all interested parties reach a common understanding of how these rules will be implemented, so the benefits of legitimate recycling will be realized while protecting public health and the environment.

Comment: The Tennessee Chamber of Commerce and Industry (TCCI) believes it is critical that Tennessee retain authorization for making solid and hazardous waste determinations and encourages the adoption of these rules with the clarifications that will assist the regulated community and the Department enforcement personnel in the implementation of these rules.

Response: The Board agrees that it is critical that Tennessee retain authorization for making solid and hazardous waste determinations. We agree that the addition of clarifications in the rules will help the Department and all interested parties reach a common understanding of how these rules will be implemented, so the benefits of legitimate recycling will be realized while protecting public health and the environment.

Comment: TCCI specifically supports the regulatory clarifications as follows:

- The inclusion of definitions critical to the understanding of this rule in 0400-12-01-.01: "analogous raw material", "contained", "hazardous secondary material", "intermediate", and "intermediate facility". For example, the federal rule applies a different compliance method for "analogous" and "non-analogous material" but does not define either in the rule. The Tennessee version recognizes the importance of clarity in rulemaking.
- The further clarification of the term "non-analogous" products and clarification that process knowledge is an acceptable method to demonstrate legitimacy in Rule 0400-12-01-.01(5)(d) – legitimate recycling of hazardous secondary materials.
- The additional requirements associated with EPA's "verified recycler exclusion" and "generator controlled exclusion" concept. In fact, Board's requirements that the Commissioner "verify" the recyclers associated with the new variance option in the EPA rule, including the hazardous secondary material acceptance plan, are prescriptive but not unreasonable, allowing a more complete compliance plan for both the Department and the facility. For example, rules' requirement for public participation removes the uncertainty associated with the EPA version of the rule requiring the recycler to address risk to nearby communities without clarifying how that is to be done.
- The clarification of the terms "by-product", "spent material" and "co-product" as used in Rule 0400-12-01-.02(1)(a)3.
- The footnote associated with Table 1 in 0400-12-01-.02(1)(b) clarifying that the exclusion from the definition of solid waste for commercial chemical products when recycled is applicable not only to listed commercial chemical products but to commercial chemical products and unused manufactured items that are not listed but exhibit a characteristic of a hazardous waste.
- The clarification included in the "closed loop recycle" exclusion referenced in Rule 0400-12-01-.02(1)(d)1(viii) with inclusion of the note clarifying the term "production process".

Response: The Board agrees that the addition of clarifications in the rules will help the Department and all interested parties to reach a common understanding of how these rules will be implemented, so the benefits of legitimate recycling will be realized while protecting public health and the environment.

Comment: When stating their support for the clarification included in Rule 0400-12-01-.02(1)(d)1(viii) through the note clarifying the term "production process", TCCI and Dow indicated that their understanding is that the "closed loop recycle" aspect used in that subpart is not exclusive and that other legitimate recycling such as recycling that uses containers instead of or in addition to tanks or by-product returns to carry the material from the customer to the generating facility are allowed if that use is within the "production process" described as "those activities that tie directly into the manufacturing operation or those activities that are the primary operation at an establishment."

Response: In the interest of clarity, the Board cautions the commenters that subpart (1)(d)1(viii) of Rule 0400-12-01-.02 is often referred to as "closed loop recycling" but the subpart does not use the term; "closed loop recycle" and does not apply to all methods of returning hazardous secondary materials back to the production process. Its conditions are very limited and are not expanded by the clarifying note. In contrast, the legitimate recycling criteria of subitem (5)(d)1(iv)(II) of Rule 0400-12-01-.01, which applies when there is no analogous product, recognizes that the methods described in the comment are authorized for returning the hazardous secondary material to the original process or processes from which they were generated to be reused. Production process is described the same way in both subitem (5)(d)1(iv)(II) of Rule 0400-12-01-.01 and subpart (1)(d)1(viii) of Rule 0400-12-01-.02.

Comment: TCCI pointed out that on March 31, 2015, EPA published a document referenced as Response to Frequently Asked Questions. Item 6, sub-item 2, in that document states that no testing or documentation is required for recycled products meeting the widely-recognized commodity specification and states, "for specialty products such as specialty batch chemicals or specialty metal alloys, customer specification would be sufficient." TCCI believes it is appropriate to include this as a clarifying note at 0400-12-01.01(5)(d)1(iv)(II)l.

Response: The Board agrees with the EPA and the commenter and is adding the note as requested.

Comment: The federal rule states that sham recycling is prohibited and that all recycling must be legitimate and meet the four legitimacy factors, including with respect to material that is recycled pursuant to pre-2008 exclusions. However, the Preamble and guidance state that:

- EPA is not altering or amending the pre-2008 recycling exclusions;
- EPA is not requiring facilities that use pre-2008 exclusions to submit or even maintain documentation of compliance with legitimacy factors;
- EPA conducted significant legitimacy analysis during promulgation of the pre-2008 exclusions and did not find damage resulting from the use of these exclusions; and
- EPA believes that so long as the conditions of the pre-2008 exclusions are met, then the subject material is legitimately recycled and meets the legitimacy factors.

Over time, TCCI is concerned that these fundamental findings by EPA will be lost if not clarified in the Tennessee rules. A future interpretation that documentation is required would not be consistent with the intent as described in the preamble. As such, TCCI requests that a "presumption" of legitimacy be included in these rules.

- Include a specific provision in the Tennessee Rules at the end of 0400-12-01-.01(5)(d) stating the following:

(Note: Persons who meet the specific provisions included in 0400-12-01-.02(1)(b)3 Table 1, 0400-12-01-.02(1)(b)5, 0400-12-01-.02(1)(d)1(vi) through (xxii), 0400-12-01-.02(1)(f)1(ii)(III) and (IV), and 0400-12-01-.02(1)(f)1(iii)(I), are presumed to conduct legitimate recycling.)

Response: The legitimacy criteria proposed to be adopted by this rulemaking is consistent with the legitimacy criteria used by the Department to date. Provided all the regulatory or approval conditions are being met, we believe prior determinations and the regulatory exemptions adopted continue to be valid until the Department has a reason to believe otherwise, except in those rare cases involving levels of constituents that are not comparable to a legitimate product or intermediate where the recycling is legitimate, but it is necessary to document legitimacy in accordance with item (5)(d)1(iv)(III) of Rule 0400-12-01-.01. The Board agrees that it would be helpful to add the requested clarifying note to subparagraph (5)(d) of Rule 0400-12-01-.01, but with additional clarifications to read as follows:

(Note: A person who meets the specific provisions included in 0400-12-01-.02(1)(b)3 Table 1, 0400-12-01-.02(1)(b)5, 0400-12-01-.02(1)(d)1(vi) through (xxii), 0400-12-01-.02(1)(f)1(ii)(III) and (IV), and 0400-12-01-.02(1)(f)1(iii)(I), are presumed to conduct legitimate recycling, except in those rare cases when it is necessary to document legitimacy in accordance with item 1(iv)(III) of this subparagraph. If, at any time, the Commissioner suspects that sham recycling may be occurring, in accordance with part (1)(b)6 of Rule 0400-12-01-.02, the Commissioner may require a person to demonstrate that the recycling in question is legitimate in accordance with this subparagraph.)

Comment: TCCI and Dow request that Tennessee consider a phased approach for the implementation of the rule. This is particularly important in reference to the new recordkeeping requirements applicable to pre-2008 exclusions concerning speculative accumulation. Recycling in accordance with the conditions of the pre-2008 exclusions has been used prior to and after promulgation of these exclusions in 1985. In order to educate the regulated community and provide time for development of adequate compliance methods, TCCI and Dow asks that the effective date be extended to 12 months after the rule is final. TCCI and Dow also asks the Board to consider an extended effective date for existing "verified recyclers" if capital improvements are required to comply with the new requirements and to obtain state verification.

Response: Some commenters on these amendments believed that it is critical for Tennessee to retain program authorization for making solid and hazardous waste determinations. Delaying the effective date of the new recordkeeping requirements applicable to speculative accumulation provisions would complicate that result. EPA's new recordkeeping requirement was published on January 13, 2015, and became effective in non-authorized states on July 13, 2015. Tennessee is an authorized state and this requirement does not become immediately effective until this

rulemaking becomes effective, which will be well over a year after it was published as a final regulation by EPA in the Federal Register. The Board believes that the regulated community is aware of this pending requirement and hopes that the regulated community is acting now to become educated on this requirement and to develop compliance methods.

Since there is no existing "verified recycler" in Tennessee no extension of the effective date is appropriate.

Comment: TCCI and Dow believe that the regulated community would be greatly assisted if the pre-2008 exclusions that are not subject to speculative accumulation requirements are included in the rule or as a footnote to 0400-12-01-.02(1)(a)3(viii) and Dow suggested that the subpart be amended for further clarification.

Response: The Board believes that it would be helpful to provide a clarifying note to subpart (1)(a)3(viii) of Rule 0400-12-01-.02 alerting persons that the speculative accumulation requirements contained in the subpart are only applicable when specifically referenced by the exclusion or exemption conditions and will provide some helpful examples. The Board will add the following note to subpart (1)(a)3(viii) of Rule 0400-12-01-.02:

(Note: The speculative accumulation requirements contained in this subpart are only applicable when specifically referenced by the exclusion or exemption conditions contained in this rule and Rule 0400-12-01-.09. For example, subparts (d)1(viii), (xiii), and (xxvi) of this paragraph do not require compliance with this subpart as a condition of the exclusions; however subparts (d)1(vi) and (vii) of this paragraph and part (6)(a)3 of Rule 0400-12-01-.09 do require compliance with the subpart as a condition of the exclusion or exemption.)

The Board does not agree that amending the subpart (1)(a)3(viii) of Rule 0400-12-01-.02 is needed. The Department will confirm that even if a hazardous secondary material is being accumulated for longer than one year, the hazardous secondary material will not be considered speculatively accumulated if the person accumulating it can show that at least 75% of the hazardous secondary material in inventory on January 1 of the previous year was recycled during the previous year.

Comment: TCCI understands that EPA is going to publish additional guidance in the form of "Frequently Asked Questions" and asks that the Board incorporate clarifications that are useful in the future interpretation of this rule including clarification that the term "contained" does not require full RCRA permitted containment as defined in 0400-12-01-.01(1) – Contained – Item 4. In addition, TCCI expects EPA to clarify that an infrequent release from a unit (emergency vent relief, failure of overflow alarms etc.) would not automatically disqualify the unit as a method of containment.

Response: The Board is also monitoring EPA's interpretations of their regulations that are similar to the rules proposed in this rulemaking. Tennessee will give careful consideration to EPA's future interpretations and, upon request, issue a corresponding interpretation of Tennessee's rules. Also, additional clarification can be added to the rules if needed.

Comment: TCCI and Dow understand from numerous statements in the preamble of the federal rule that documentation for pre-2008 exclusions is NOT required. However, in the event TDEC finds flaw with the recycling process or specifically requires documentation that constituents are statistically comparable to "virgin" material, the comparisons can be made as follows:

- The hazardous secondary material that is being recycled directly (i.e., without reclamation) versus the virgin raw material or ingredient that the hazardous secondary material is replacing; or
- The hazardous secondary material after reclamation that is being recycled versus the virgin raw material or ingredient that the reclaimed hazardous secondary material is replacing; or
- The product/intermediate that results from recycling the hazardous secondary material versus the product/intermediate that results from using the virgin raw material or ingredient that the hazardous secondary material is replacing; or
- The product/intermediate that results from recycling the hazardous secondary material versus a substitute product/intermediate that is made without the hazardous secondary material by a

different company or by the same company at a different site or through a different process.

Response: The Board agrees that these comparisons seem valid and reasonable; however, legitimacy determinations will be made on a case specific basis.

Comment: Dow understands EPA interprets 40 CFR § 260.43(a)(4)(i)(B) criteria by stating that: "One company does not know whether another company produces an analogous product or intermediate made from virgin materials" and recommended that Tennessee add a new definition for "analogous product" to clarify EPA's intent.

Response: The Board does not agree that a definition should be added to the regulations to clarify EPA's intent. The Board will confirm that to determine whether there is an analogous product or intermediate made with virgin raw materials, and in order to determine whether the criteria of item (5)(d)1(iv)(I) or (II) of Rule 0400-12-01-.01 applies, the hazardous secondary material recycler may use a good faith understanding of whether other companies produce the product or intermediate only with virgin materials. The recycler is not expected to know how all other analogous products are made.

Comment: Dow recommends that the Board consider allowing companies to perform legitimacy evaluations on groups of specific streams that are managed in the same industry and recycled in the same manner. This may include streams from various plants making the same product(s).

Response: Legitimacy determinations should be made on a case specific basis because there are many ways in which streams may vary. The recycler must ensure that the legitimacy evaluation addresses the hazardous secondary material being recycled. In addition, to obtain a Certificate to Operate, the reclaimer or intermediate facility will be required to develop the acceptance plan with sufficient detail to ensure that all materials being reclaimed are legitimately recycled.

Comment: Dow suggested that a clarification be added to the rules regarding the definition of "contained" stating that individual leak events are not a reason to lose the "contained" status. Overall unit integrity will be the governing factor to determine whether a unit meets the "contained" criteria and requested that the Board adopt EPA's thoughts on "contained".

Response: The Board does not agree that the requested clarification to the definition of contained should be added to the rules to clarify the intent. A single release does not presumptively negate the ability of the hazardous secondary material to meet subpart (5)(d)1(iiii) of Rule 0400-12-01-.01. The Department realizes that despite best management practices releases of materials, including valuable raw materials, do occur from time to time. When a release occurs, the recycler's response to the release is a critical factor to be considered. If the recycler does not manage the hazardous secondary material as it would a valuable commodity, the hazardous secondary materials might not be legitimately recycled.

Comment: Dow recommends Tennessee add clarifications as to what is required for various aspects of complying with the legitimacy criteria and evaluations. Dow offers some text below to present clarifications that will assist the regulated community in application of these rules.

Define "Pre-2008 Exclusions" -- "Pre-2008 Exclusions" mean the exclusions from the definition of solid waste and hazardous waste exemptions in effect prior to EPA's 2008 promulgation of revisions to the definition of solid waste to exclude certain hazardous secondary materials from hazardous waste regulation in 73 Fed. Reg. 64668, et seq., October 30, 2008, effective December 29, 2008.

Response: The Board believes adding the suggested definition to the rules would be confusing to the regulated community. The effective dates for the inclusions of exemptions to Tennessee's rules do not correspond with EPA's dates.

Comment: Dow recommends Tennessee add clarifications as to what is required for various aspects of complying with the legitimacy criteria and evaluations. Clarify legitimacy compliance requirements for the pre-2008 exclusions:

- A. All four legitimacy factors of § 260.43(a) apply to the pre-2008 exclusions.
- B. Documentation of legitimacy is not required for the pre-2008 exclusions, except in the rare case where the recycling is legitimate, but does not meet legitimacy factor 4 in § 260.43. (In such case, documentation, certification, and notice are required.)
- C. Except as noted in B above, pre-2008 exclusions are not subject to the notification requirements of § 260.42.
- D. Except as noted below, materials subject to the pre-2008 exclusions do not have to be contained, as defined in § 260.10. Hazardous secondary materials that have no analogous raw material, even if subject to one or more of the pre-2008 exclusions, must be contained.
- E. The requirement that a recycling facility be verified under § 261.4(a)(24) applies to recycling of those hazardous secondary materials that would otherwise be regulated as hazardous waste and does not apply to materials excluded under one or more of the pre-2008 exclusions.
- F. If a hazardous secondary material is subject to material-specific management conditions in § 261.4(a) when reclaimed, such a material is not eligible for exclusion under § 261.4(a)(23) or (24). The exclusions in § 261.4(a) that are subject to material-specific management conditions when reclaimed and are thus not eligible for exclusion under § 261.4(a)(23) or (24) are those for (1) spent wood preserving solutions (§ 261.4(a)(9)) if recycled on-site, (2) shredded circuit boards (§ 261.4(a)(14)), (3) mineral processing spent materials (§ 261.4(a)(17)), (4) spent caustic solutions from petroleum refining liquid treating processes (§ 261.4(a)(19)), (5) cathode ray tubes (§ 261.4(a)(22)).

Response:

- A. The four legitimacy factors of part (5)(d)1 of Rule 0400-12-01-.01 apply to all recycling exclusions or exemptions. (Equivalent Tennessee rule citations used in response.)
- B. Documentation of legitimacy is not required for persons claiming a recycling exclusion or exemption existing prior to the effective date of these amendments, except in those rare cases when it is necessary to document legitimacy in accordance with item (5)(d)1(iv)(III) of Rule 0400-12-01-.01. If, at any time, the Commissioner suspects that sham recycling may be occurring, in accordance with part (1)(b)6 of Rule 0400-12-01-.02, the Commissioner may require a person to demonstrate that the recycling in question is legitimate in accordance with this subparagraph. (Equivalent Tennessee rule citations used in response.)
- C. Persons managing hazardous secondary material under subparagraph (4)(b) of Rule 0400-12-01-.01, or under subparts (1)(d)1(xxiii), (xxiv) or (xxvii) of Rule 0400-12-01-.02 are required to notify in accordance with subparagraph (5)(c) of Rule 0400-12-01-.01. Persons required to document legitimacy in accordance with item (5)(d)1(iv)(III) of Rule 0400-12-01-.01, are required to notify the Commissioner. (Equivalent Tennessee rule citations used in response.)
- D. To be legitimate recycling, subpart (5)(d)1(iii) of Rule 0400-12-01-.01 requires any recycler to manage the hazardous secondary material as a valuable commodity when it is under the recycler's control. If there is an analogous raw material, the hazardous secondary material must be managed, at a minimum, in a manner consistent with the management of the raw material or in an equally protective manner. If there is no analogous raw material, the hazardous secondary material must be contained. (Equivalent Tennessee rule citations used in response.)
- E. The requirement that a reclamation facility be verified under subpart (1)(d)1(xxiv) of Rule 0400-12-01-.02 [§ 261.4(a)(24)] does not apply to hazardous secondary materials subject to material specific management conditions under part (1)(d)1 of Rule 0400-12-01-.02 or is a spent lead-acid battery. See item (1)(d)1(xxiv)(III) of Rule 0400-12-01-.02. The same would be true for hazardous secondary materials that are not waste when legitimately

reclaimed as specified in subpart (1)(b)3(iii) of Rule 0400-12-01-.02 (i.e., non-listed sludges exhibiting a characteristic of hazardous waste, non-listed by-products exhibiting a characteristic of hazardous waste, and listed or characteristic unused commercial chemical products or unused manufactured articles). (Equivalent Tennessee rule citations used in response.)

- F. The legitimate reclamation exclusion is not applicable under subparts (1)(d)1(xxiii) and (xxiv) of Rule 0400-12-01-.02 if the hazardous secondary materials are subject to material specific management conditions under part (1)(d)1 of Rule 0400-12-01-.02 or are spent lead-acid batteries. See subitem (1)(d)1(xxiii)(II)IV and item (1)(d)1(xxiv)(III) of Rule 0400-12-01-.02. The same would be true for hazardous secondary materials that are not waste when legitimately reclaimed as specified in subpart (1)(b)3(iii) of Rule 0400-12-01-.02 (i.e., non-listed sludges exhibiting a characteristic of hazardous waste, non-listed by-products exhibiting a characteristic of hazardous waste, and listed or characteristic unused commercial chemical products or unused manufactured articles). (Equivalent Tennessee rule citations used in response.)

Comment: Dow requested clarification on general compliance with the Legitimate Recycling criteria under § 260.43(a)(4) [Rule 0400-12-01-.01(5)(d)1(iv)].

- A. Testing is not generally required under § 260.43 [Rule 0400-12-01-.01(5)d)]. As with any solid and hazardous waste determination, a person may use knowledge of the materials he uses; the hazardous secondary material, product, or intermediate he recycles; and of the recycling process to make legitimate recycling determinations.
- B. Specifically, recycling meets legitimacy factor 4 of § 260.43 [Rule 0400-12-01-.01(5)(d)1(iv)] with no testing or further demonstration of meeting this legitimacy factor required under any of the following circumstances:
1. The hazardous secondary materials are returned to the original process or processes from which they were generated, such as in concentrating metals in minerals processing.
 2. The recycled product meets widely-recognized commodity specifications and there is no analogous product made from raw materials (such as scrap metal being reclaimed into metal commodities). For specialty products such as specialty batch chemicals or specialty metal alloys, customer specifications would be sufficient.
 3. The recycled product has an analogous product made from virgin materials, but meets widely-recognized commodity specifications which address the hazardous constituents (such as spent solvents being reclaimed into solvent products). (This is in contrast to B.2, where the specifications do not need to specifically address the hazardous constituents.)
 4. The person recycling has the necessary knowledge, such as knowledge about the incoming hazardous secondary material and the recycling process, to be able to demonstrate that the product of recycling does not exhibit a hazardous characteristic and contains hazardous constituents at levels comparable to or lower than those in products made from virgin materials.
- C. The Board believes that the above statements will apply to the majority of recycling and thus, the need to test in order to determine compliance with legitimacy factor 4 of § 260.43 [Rule 0400-12-01-.01(5)(d)] will be infrequent.
- D. If the hazardous secondary materials are being returned to the original production process, then there is no analogous product and legitimacy factor 4 of § 260.43 [Rule 0400-12-01-.01(5)(d)1(iv)] is met. The person conducting the recycling does not need to do any further analysis for the purpose of determining compliance with this factor. For example, recycling that takes place under the closed loop recycling exclusion at § 261.4(a)(8) [Rule 0400-12-01-.02(1)(d)1(viii)] is an example of manufacturing that consistently includes the hazardous secondary material being returned to the original process from which it was generated and that would, therefore, automatically meet legitimacy factor 4 of § 260.43 [Rule 0400-12-01-

.02(1)(d)1(viii)]. Another example includes primary metals production where hazardous secondary materials are returned to the production process to ensure that all the valuable metals are extracted from the ore. This would be another process that would meet legitimacy factor 4 of § 260.43 [Rule 0400-12-01-.02(1)(d)1(viii)] with no further analysis needed.

- E. For the purposes of § 260.43(a)(4)(i) [Rule 0400-12-01-.01(5)(d)1(iv)(I)], analogous products or intermediates include common products or intermediates found in wide-spread markets, which may be secondary markets; such markets typically are well-known, recognized, established, mature, and large.
- F. If a chemical product made from hazardous secondary material has an analogous product made from raw materials and does not exhibit a hazardous characteristic that the analogous product does not and the concentration of hazardous constituents are comparable to those in analogous products, the fourth legitimacy factor is met (§ 260.43(a)(4)(i)) [Rule 0400-12-01-.01(5)(d)1(iv)(I)]. For example, weak acid by-products that are concentrated into stronger acids and undergo extensive QA/QC processes to assure the quality of the concentrated acids.
- G. For the purposes of § 260.43(a)(4)(i)(B) [Rule 0400-12-01-.01(5)(d)1(iv)(II)], widely-recognized commodity standards and specifications include only those standards and specifications that are publicly available; e.g., in safety data sheets (SDSs), on-line vendor specifications, sales literature, and the like. The department considers the following scenarios to be valid comparisons for the purpose of § 260.43(a)(4)(i)(B):
 - 1. The hazardous secondary material that is being recycled directly (i.e., without reclamation) as compared to the virgin raw material or ingredient that the hazardous secondary material is replacing;
 - 2. The hazardous secondary material after reclamation that is being recycled as compared to the virgin raw material or ingredient that the reclaimed hazardous secondary material is replacing;
 - 3. The product/intermediate that results from recycling the hazardous secondary material as compared to the product/intermediate that results from using the virgin raw material or ingredient that the hazardous secondary material is replacing;
 - 4. The product/intermediate that results from recycling the hazardous secondary material as compared to a substitute product/intermediate that is made without the hazardous secondary material by a different company or by the same company at a different site or through a different process.
- H. If a chemical product made from a hazardous secondary material has no analogous product made from raw materials, the fourth legitimacy factor is met if the product meets widely recognized standards (§ 260.43(a)(4)(ii)(A)) [Rule 0400-12-01-.01(5)(d)1(iv)(II)]. For example, recycled methanol that is integrated into the production of a certain polymer when that polymer is a recognized commodity, or oil-bearing secondary materials used to make petroleum products, meets the requirement.
- I. The reference in § 260.43(a)(4)(ii)(B) [Rule 0400-12-01-.01(5)(d)1(iv)(II)] to hazardous secondary materials returned to the original process is not limited to closed-loop recycling, nor must the hazardous secondary material be returned to the same unit in which it was generated. For the purposes of § 260.43(a)(4)(ii)(B) [Rule 0400-12-01-.01(5)(d)1(iv)(II)], a hazardous secondary material is returned to the original process if it is returned to the same production process or processes where it was generated; if it is returned to other production processes from which it was derived; if it is returned via closed-loop or open-loop; if it is returned from on-site or off-site; if it is returned from second, third, or later generation use of the hazardous secondary material, product, or intermediate; or if it is returned as part of the long-established recycling of such hazardous secondary material in connection with the manufacturing or use, both on-site and off-site, of a product or intermediate made with the hazardous secondary material. Production process or processes include those activities that

tie directly into the manufacturing operation or those activities that are the primary operation at the establishment.

- J. Recycling meets legitimacy factor 4 of § 260.43 [Rule 0400-12-01-.01(5)(d)1(iv)] if the hazardous secondary material is returned to the original production process to produce a product.
- K. The Board recognizes that there may still be instances where recycling is legitimate, but the hazardous secondary material is unable to meet the technical provisions of legitimacy factor 4 of § 260.43 [Rule 0400-12-01-.01(5)(d)1(iv)] as it is written because the product of the recycling process has levels that are not comparable to analogous products or because the product of the recycling process cannot be compared to an analogous product. In this case, the recycler can document legitimacy by demonstrating that, based on lack of exposure from toxics in the product, lack of the bioavailability of the toxics in the product, or other relevant considerations that show that the recycled product does not contain levels of hazardous constituents that pose a significant human health or environmental risk, the recycling is legitimate. The recycler must also notify the Department in this case.
- L. Consider revising the language in § 260.43(a)(4) [Rule 0400-12-01-.01(5)(d)1(iv)] introduction to reduce confusion:

(a) Recycling of hazardous secondary materials for the purpose of the exclusions or exemptions from the hazardous waste regulations must be legitimate. ... The recycling can be shown to be legitimate based on lack of exposure from toxics in the product, lack of the bioavailability of the toxics in the product, or other relevant considerations which show that the recycled product made using recycled material does not contain levels of hazardous constituents that pose a significant human health or environmental risk.

- Response:
- A. The Board agrees with the commenter. See clarifying note at the end of subparagraph (5)(d) of Rule 0400-12-01-.01.
 - B. The Board agrees with these statements.
 - C. The Board agrees with this statement.
 - D. The Board agrees with this statement, however, please see response on page 271 relative to the term closed-loop recycling.
 - E. The Board agrees with this statement.
 - F. The Board agrees with this statement.
 - G. The Board partially agrees with this statement. By "widely-recognized commodity standard," we mean a standard that is used throughout an industry to describe a certain product and that is widely-available to anyone producing the product. It is important to avoid the potential that the analogous product could be substituted with the recycled product without full disclosure of potential toxics at levels of concern. The Board is concerned that safety data sheets (SDSs), on-line vendor specifications, sales literature, and the like may not be detailed enough to satisfy this concern.
 - H. The Board agrees with this statement, but would need more details before it can agree with the examples given.
 - I. This statement is consistent with the Board intent, but more specific information about the many scenarios will be needed to give a definitive response.
 - J. The Board agrees with this general statement, but more specific information about the many different scenarios that could arise would be needed to give a definitive response.

K. The Board agrees with this statement.

L. The Board agrees that the suggested language change if made to item (5)(d)1(iv)(III) of Rule 0400-12-01-01 instead of the introductory language to subpart (5)(d)1(iv) of Rule 0400-12-01-01 would clarify its meaning and has amended that item accordingly.

Comment: Dow recommends changing the order of steps for determining if a recycling scenario meets Factor 4 (§ 260.43(a)(4)(i-iii)) [Rule 0400-12-01-.01(5)(d)1(iv)(I) – (III)] by switching the order of (i)-(analogous) and (ii) – (return to the generator and commodity specifications). The change is recommended to help the generator more effectively determine if it meets one of the simpler criteria before undertaking more complex reviews. This change does not change the stringency of the requirements, simply the order. And, for further clarification, Dow recommends Tennessee add a fourth statement ((§ 260.43(a)(4)(iv)) [Rule 0400-12-01-.01(5)(d)1(iv)(IV)] stating:

"The product of the recycling process is comparable to a legitimate product or intermediate if the requirements of paragraph (a)(4)(i) or (ii) or (iii) of this section are met. Once the requirements of one of these subparagraphs are met, there is no need to determine whether the requirements of any other of these subparagraphs are also met."

Response: The Board disagrees that the order of items (5)(d)1(iv)(I) through (III) needs to be rearranged or that a new item needs to be added. The order given is the same order as the EPA regulations and will be familiar to interested parties who are accustomed to dealing with EPA regulations and want to easily find comparable Tennessee rules. The operation of item (5)(d)1(iv)(I) is predicated on the existence of an analogous product or intermediate with which to compare the recycled product or intermediate. The operation of item (5)(d)1(iv)(II) is predicated on the lack of an analogous product or intermediate with which to compare the recycled product or intermediate. Therefore, the Board does not believe that the requested statement is necessary.

Regulatory Flexibility Addendum

Pursuant to T.C.A. §§ 4-5-401 through 4-5-404, prior to initiating the rule making process as described in T.C.A. § 4-5-202(a)(2) and T.C.A. § 4-5-203(a), all agencies shall conduct a review of whether a proposed rule or rule affects small businesses.

This rulemaking is primarily designed to amend the current hazardous waste regulations in order to revise the definition of solid waste and its related variances, exclusions and exemptions. It also deletes the exemption associated with the comparable fuels exclusion and the gasification exclusion to prevent these rules from being less stringent than the federal rules. The Department has been authorized by EPA to administer the hazardous waste program in Tennessee in lieu of the federal government. As an authorized state, Tennessee is required to amend these rules to incorporate the more stringent requirements adopted by the EPA. This rulemaking incorporates those more stringent requirements, which consist of codifying the definition of legitimate recycling, the prohibition of sham recycling, and the additional recordkeeping requirement associated with speculative accumulation. In accordance with Tenn. Code Ann. § 4-5-404, since these amendments are federally mandated, they are not included in the review below.

This rulemaking also incorporates the additional recycling variances, exclusions and exemptions associated with recycling hazardous waste and hazardous secondary materials allowed by the EPA, and exempts from being managed as hazardous waste those wastes generated primarily from processes that support the combustion of coal or other fossil fuels that are co-disposed with excluded fly ash waste, bottom ash waste, slag waste, and flue gas emission control waste generated primarily from the combustion of coal or other fossil fuels. These variances, exclusions and exemptions are less stringent than the current rules and are not federally mandated, and, therefore are included in this review. The variances, exclusions and exemptions are available to qualified persons that elect to obtain them, but no person is required to pursue any variance, exclusion or exemption.

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

The Department estimates that 546 businesses generating hazardous waste have the greatest potential to recycle hazardous waste or hazardous secondary material in compliance with the new variances, exclusions or exemptions. The Department estimates that about 173 of those businesses will attempt to benefit from the additional variances, exclusions and exemptions. Approximately 60 of those 173 businesses are believed to be small businesses. The additional variances, exclusions and exemptions are not mandatory and do not impose additional costs on small businesses. The Department does not believe any small business would be generating wastes primarily from processes that support the combustion of coal or other fossil fuels.

- (2) The projected reporting, recordkeeping, and other administrative costs required for compliance with the proposed rule, including the type of professional skills necessary for preparation of the report or record.

These amendments do not mandate any additional reporting, recordkeeping or administrative costs.

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

These amendments make available additional variances, exclusions or exemptions that could result in significant savings for qualified generators and recyclers and conserve valuable resources.

- (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.

These amendments do not mandate any additional requirements and substantially mirror the federal program but with clarifying notes.

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

These amendments will make Tennessee's program comparable to the federal program and relative to states that do not adopt the additional variances, exclusions or exemptions, those states will be more stringent than necessary to protect public health and the environment.

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

These amendments do not mandate any additional requirements 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://state.tn.us/sos/acts/106/pub/pc1070.pdf>) of the 2010 Session of the General Assembly)

The Department anticipates that this rulemaking will not result in an increase in expenditures or decrease in revenues for 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 rulemaking is primarily designed to amend the current hazardous waste rules in order to revise the definition of solid waste and its related variances, exclusions and exemptions. The Department has been authorized by EPA to administer the hazardous waste program in Tennessee in lieu of the federal government. As an authorized state, Tennessee is required amend these rules to incorporate the more stringent requirements adopted by the EPA. This rulemaking incorporates those more stringent requirements, which consist of codifying the definition of legitimate recycling, the prohibition of sham recycling and the additional recordkeeping requirement associated with speculative accumulation. This rulemaking also incorporates the additional variances, exclusions and exemptions associated with recycling hazardous waste and hazardous secondary materials allowed by the EPA. These variances, exclusions and exemptions are not mandatory but are available if a qualified generator or recycler wishes to obtain them.

On April 8, 2015, in compliance with orders issued by the U.S. Court of Appeals, EPA deleted the regulations associated with the comparable fuels exclusion and the gasification exclusion. This rulemaking makes the complying revisions (deleting those exclusions) to prevent these rules from being less stringent than the federal rules.

In accordance with the federal decision to regulate coal combustion residues under the solid waste program instead of the hazardous waste program, on April 17, 2015, EPA amended 40 CFR 261.4(b)(4) to exempt from the hazardous waste regulation wastes generated primarily from processes that support the combustion of coal or other fossil fuels that are co-disposed with excluded fly ash waste, bottom ash waste, slag waste, and flue gas emission control waste generated primarily from the combustion of coal or other fossil fuels. This rulemaking proposes to amend subpart (1)(d)2(iv) of Rule 0400-12-01-.02 to also exempt these same wastes from hazardous waste regulation.

- (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;

These rules are being promulgated under the authority of Tenn. Code Ann. §§ 68-212-101 et seq. The federal requirements adopted are compiled in 40 CFR Parts 260 and 261.

- (C) Identification of persons, organizations, corporations or governmental entities most directly affected by this rule, and whether those persons, organizations, corporations or governmental entities urge adoption or rejection of this rule;

All generators and recyclers of hazardous waste and hazardous secondary materials are directly affected by this rulemaking. The Board has been encouraged to adopt these amendments.

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

The comparable fuels federal regulation was vacated by *Natural Resources Defense Council v. EPA*, 755 F.3d 1010 (June 27, 2014) and the gasification federal regulation was vacated by *Sierra Club v. EPA*, 755 F. 3d 968 (June 27, 2014).

- (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 rulemaking makes additional recycling options available to generators of hazardous secondary materials. A decrease in fee revenue is anticipated but it will take a few years before the recycling infrastructure develops to enable the full benefits of the rulemaking to be realized by the regulated community. When fully realized, the

Department estimates a decrease in fee revenue up to approximately \$284,000.

- (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;

Lucian Geise
Senior Counsel for Legislative Affairs
Office of General Counsel

- (H) Office address, telephone number, and email address of the agency representative or representatives who will explain the rule at a scheduled meeting of the committees; and

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

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

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Rulemaking Hearing Rule(s) Filing Form

*Rulemaking Hearing Rules are rules filed after and as a result of a rulemaking hearing (Tenn. Code Ann. § 4-5-205).**Pursuant to Tenn. Code Ann. § 4-5-229, any new fee or fee increase promulgated by state agency rule shall take effect on July 1, following the expiration of the ninety (90) day period as provided in § 4-5-207. This section shall not apply to rules that implement new fees or fee increases that are promulgated as emergency rules pursuant to § 4-5-208(a) and to subsequent rules that make permanent such emergency rules, as amended during the rulemaking process. In addition, this section shall not apply to state agencies that did not, during the preceding two (2) fiscal years, collect fees in an amount sufficient to pay the cost of operating the board, commission or entity in accordance with § 4-29-121(b).*

Agency/Board/Commission:	Environment and Conservation
Division:	Solid Waste Management
Contact Person:	Jackie Okoreeh-Baah
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Revision Type (check all that apply):

- Amendment
 New
 Repeal

Rule(s) Revised (ALL chapters and rules contained in filing must be listed here. If needed, copy and paste additional tables to accommodate multiple chapters. Please enter only ONE Rule Number/Rule Title per row)

Chapter Number	Chapter Title
0400-12-01	Hazardous Waste Management
Rule Number	Rule Title
0400-12-01-.01	Hazardous Waste Management System: General
0400-12-01-.02	Identification and Listing of Hazardous Waste
0400-12-01-.03	Notification Requirements and Standards Applicable to Generators of Hazardous Waste
0400-12-01-.05	Interim Status Standards for Owners and Operators of Existing Hazardous Waste Treatment, Storage, and Disposal Facilities
0400-12-01-.06	Standards for Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities
0400-12-01-.07	Permitting of Hazardous Waste Treatment, Storage, and Disposal Facilities
0400-12-01-.08	Fee System for Transporters, Storers, Treaters, Disposers, and Certain Generators of Hazardous Waste and For Certain Used Oil Facilities or Transporters
0400-12-01-.09	Standards for the Management of Specific Hazardous Wastes and Specific Types of Hazardous Waste Management Facilities

(Place substance of rules and other info here. Statutory authority must be given for each rule change. For information on formatting rules go to <http://state.tn.us/sos/rules/1360/1360.htm>)

Chapter 0400-12-01
Hazardous Waste Management

Amendments

Rule 0400-12-01-.01 Hazardous Waste Management System: General is amended by deleting it in its entirety and substituting instead the following:

0400-12-01-.01 HAZARDOUS WASTE MANAGEMENT SYSTEM: GENERAL.

(1) General

(a) Purpose, Scope, and Applicability

This rule provides definitions of terms, general standards and procedures, and overview information applicable to these rules.

(b) Use of Number and Gender

As used in these rules:

1. Words in the masculine gender also include the feminine and neuter genders; and
2. Words in the singular include the plural; and
3. Words in the plural include the singular.

(c) Rule Structure

These rules are organized, numbered, and referenced according to the following outline form:

(1) paragraph

(a) subparagraph

1. part

(i) subpart

(I) item

I. subitem

A. section

(A) subsection

(2) Definitions and References

(a) Definitions

When used in Rules 0400-12-01-.01 through .12, the following terms have the meanings given below unless otherwise specified:

"Above ground tank" means a device meeting the definition of "tank" in this subparagraph and that is situated in such a way that the entire surface area of the tank is completely above the

plane of the adjacent surrounding surface and the entire surface area of the tank (including the tank bottom) is able to be visually inspected.

"Accumulated speculatively" means accumulated speculatively as defined in subpart (1)(a)3(viii) of Rule 0400-12-01-.02.

"Act" means the Tennessee Hazardous Waste Management Act, as amended, Tennessee Code Annotated (T.C.A.) §§ 68-212-101 et seq.

"Active life" of a facility means the period from the initial receipt of hazardous waste at the facility until the Commissioner receives certification of final closure.

"Active portion" means that portion of a facility where treatment, storage, or disposal operations are being or have been conducted after the date one or more of the hazardous wastes handled by the facility first became subject to regulation under rules promulgated under the Act and which is not a closed portion. (See also "closed portion" and "inactive portion".)

"Administrator" means the Administrator of the Environmental Protection Agency, or his designee.

"Analogous raw material" means a material for which a hazardous secondary material substitutes and which serves the same function and has similar physical and chemical properties as the hazardous secondary material.

"Ancillary equipment" means any device including, but not limited to, such devices as piping, fittings, flanges, valves, and pumps, that is used to distribute, meter, or control the flow of hazardous waste from its point of generation to a storage or treatment tank(s), between hazardous waste storage and treatment tanks to a point of disposal onsite, or to a point of shipment for disposal off-site.

"Application" means the EPA standards national forms for applying for a permit, including any additions, revisions or modifications to the forms; or forms approved by EPA for use in approved States, including any approved modifications or revisions. Application also includes the information required by the Commissioner under subparagraph (5)(a) through paragraph (6) of Rule 0400-12-01-.07 (contents of Part B of the hazardous waste management permit application).

"Approved program or approved State" means a State which has been approved or authorized by EPA under 40 CFR Part 271.

"Aquifer" means a geologic formation, group of formations, or part of a formation capable of yielding a significant amount of ground water to wells or springs.

"ASTM" means the American Society for Testing and Materials.

"Authorized representative" means the person responsible for the overall operation of a facility or an operational unit (i.e., part of a facility), e.g., the plant manager, superintendent or person of equivalent responsibility.

"Battery" means a device consisting of one or more electrically connected electrochemical cells which is designed to receive, store, and deliver electric energy. An electrochemical cell is a system consisting of an anode, cathode, and an electrolyte, plus such connections (electrical and mechanical) as may be needed to allow the cell to deliver or receive electrical energy. The term battery also includes an intact, unbroken battery from which the electrolyte has been removed.

"Board" means the Underground Storage Tanks and Solid Waste Disposal Control Board established by T.C.A. §68-211-111.

"Boiler" means an enclosed device using controlled flame combustion and having the following characteristics:

1.
 - (i) The unit must have physical provisions for recovering and exporting thermal energy in the form of steam, heated fluids, or heated gases; and
 - (ii) The unit's combustion chamber and primary energy recovery section(s) must be of integral design. To be of integral design, the combustion chamber and the primary energy recovery section(s) (such as waterwalls and superheaters) must be physically formed into one manufactured or assembled unit. A unit in which the combustion chamber and the primary energy recovery section(s) are joined only by ducts or connections carrying flue gas is not integrally designed; however, secondary energy recovery equipment (such as economizers or air preheaters) need not be physically formed into the same unit as the combustion chamber and the primary energy recovery section. The following units are not precluded from being boilers solely because they are not of integral design: process heaters (units that transfer energy directly to a process stream), and fluidized bed combustion units; and
 - (iii) While in operation, the unit must maintain a thermal energy recovery efficiency of at least 60 percent, calculated in terms of the recovered energy compared with the thermal value of the fuel; and
 - (iv) The unit must export and utilize at least 75 percent of the recovered energy, calculated on an annual basis. In this calculation, no credit shall be given for recovered heat used internally in the same unit (examples of internal use are the preheating of fuel or combustion air, and the driving of induced or forced draft fans or feedwater pumps); or
2. The unit is one which the Commissioner has determined, on a case-by-case basis, to be a boiler, after considering the standards in subparagraph ~~(5)(a)~~ (4)(d) of this rule.

"By-product" means by-product as defined in subpart (1)(a)3(iii) of Rule 0400-12-01-.02.

"Carbon dioxide stream" means carbon dioxide that has been captured from an emission source (e.g., power plant), plus incidental associated substances derived from the source materials and the capture process, and any substances added to the stream to enable or improve the injection process.

"Carbon regeneration unit" means any enclosed thermal treatment device used to regenerate spent activated carbon.

"Cathode ray tube" or CRT means a vacuum tube, composed primarily of glass, which is the visual or video display component of an electronic device. A used, intact CRT means a CRT whose vacuum has not been released. A used, broken CRT means glass removed from its housing or casing whose vacuum has been released.

"Certification" means a statement of professional opinion based upon knowledge and belief.

"CFR" means the Code of Federal Regulations.

"Closed portion" means that portion of a facility which an owner or operator has closed in accordance with the approved facility closure plan and all applicable closure requirements. (See also "active portion" and "inactive portion".)

"Commissioner" means the Commissioner of the Tennessee Department of Environment and Conservation (formerly the Tennessee Department of Health and Environment) or his authorized representative.

"Component" means any constituent part of a unit or any group of constituent parts of a unit assembled to perform a specific function (e.g., a pump seal, pump, kiln liner, kiln thermocouple) when used in Rule 0400-12-01-.07 and, when used otherwise in these rules, means either the tank or ancillary equipment of a tank system.

"Confined aquifer" means an aquifer bounded above and below by impermeable beds or by beds of distinctly lower permeability than that of the aquifer itself; an aquifer containing confined ground water.

"Conglomerate Waste Stream" means the mixture of individual wastewater streams at the point of entry into either the headworks of an on-site wastewater treatment plant or the sewer system that leads to a publicly owned treatment works (POTW).

"Contained" means held in a unit (including a land-based unit as defined in this subparagraph) that meets the following criteria:

1. The unit is in good condition, with no leaks or other continuing or intermittent unpermitted releases of the hazardous secondary materials to the environment, and is designed, as appropriate for the hazardous secondary materials, to prevent releases of hazardous secondary materials to the environment. Unpermitted releases are releases that are not covered by a permit (such as a permit to discharge to water or air) and may include, but are not limited to, releases through surface transport by precipitation runoff, releases to soil and groundwater, wind-blown dust, fugitive air emissions, and catastrophic unit failures;
2. The unit is properly labeled or otherwise has a system (such as a log) to immediately identify the hazardous secondary materials in the unit; and
3. The unit holds hazardous secondary materials that are compatible with other hazardous secondary materials placed in the unit and is compatible with the materials used to construct the unit and addresses any potential risks of fires or explosions.

(Note: As used in this definition, "compatible" means that the commingling with other hazardous secondary materials will not produce heat or pressure, fire or explosion, violent reaction, toxic dusts, mists, fumes, or gases, or flammable fumes or gases; or that the placement in a particular unit will not cause detectable corrosion or decay of containment materials (e.g., container inner liners or tank walls.)

4. Hazardous secondary materials in units that meet the applicable requirements of Rule 0400-12-01-.05 or Rule 0400-12-01-.06 are presumptively contained.

"Container" means any portable device in which a material is stored, transported, treated, disposed of, or otherwise handled.

"Containment building" means a hazardous waste management unit that is used to store or treat hazardous waste under the provisions of Rule 0400-12-01-.06(33) and 0400-12-01-.05(30).

"Contingency plan" means a document setting out an organized, planned, and coordinated course of action to be followed in case of a fire, explosion, or release of hazardous waste or hazardous waste constituents which could threaten public health or the environment.

"Corrective action management unit" or "CAMU" means an area within a facility that is used only for managing remediation wastes for implementing corrective action or cleanup at the facility.

"Corrosion expert" means a person who, by reason of his knowledge of the physical sciences and the principles of engineering and mathematics, acquired by a professional education and related practical experience, is qualified to engage in the practice of corrosion control on buried or submerged metal piping systems and metal tanks. Such a person must be certified as being qualified by the National Association of Corrosion Engineers (NACE) or be a registered professional engineer who has certification or licensing that includes education and experience in corrosion control on buried or submerged metal piping systems and metal tanks.

"CRT collector" means a person who receives used, intact CRTs for recycling, repair, resale, or donation.

"CRT exporter" means any person in the United States who initiates a transaction to send used CRTs outside the United States or its territories for recycling or reuse, or any intermediary in the United States arranging for such export.

"CRT glass manufacturer" means an operation or part of an operation that uses a furnace to manufacture CRT glass.

"CRT processing" means conducting all of the following activities:

1. Receiving broken or intact CRTs; and
2. Intentionally breaking intact CRTs or further breaking or separating broken CRTs; and
3. Sorting or otherwise managing glass removed from CRT monitors.

"CWA" means the Clean Water Act (formerly referred to as the Federal Water Pollution Act or Federal Water Pollution Control Act amendments of 1972) Pub. L. 92-500, as amended by Publ. L. 92-217 and Publ. L. 95-576; 33 U.S. C. 1251 et seq.

"Department" means the Tennessee Department of Environment and Conservation (formerly Tennessee Department of Health and Environment).

"Designated facility" means:

1. A hazardous waste treatment, storage, or disposal facility which:
 - (i) Has received a permit (or interim status) in accordance with the requirements of Rule 0400-12-01-.07; or
 - (ii) Has received a permit (or interim status) from a State authorized in accordance with 40 CFR 271; or
 - (iii) Is regulated under subpart (1)(f)3(ii) of Rule 0400-12-01-.02 or paragraph (6) of Rule 0400-12-01-.09; and
 - (iv) Has been designated on the manifest by the generator pursuant to subparagraph (3)(a) of Rule 0400-12-01-.03.
2. Designated facility also means a generator site designated on the manifest to receive its waste as a return shipment from a facility that has rejected the waste in accordance with part (5)(c)6 of Rule 0400-12-01-.05 or Rule 0400-12-01-.06.
3. If a waste is destined to a facility in an authorized State which has not yet obtained authorization to regulate that particular waste as hazardous, then the designated facility must be a facility allowed by the receiving State to accept such waste.

"Destination facility" means a facility that treats, disposes of, or recycles a particular category of universal waste, except those management activities described in parts (2)(d)1 and 3 and (3)(d)1 and 3 of Rule 0400-12-01-.12. A facility at which a particular category of universal waste is only accumulated, is not a destination facility for purposes of managing that category of universal waste.

"Dike" means an embankment or ridge of either natural or man-made materials used to prevent the movement of liquids, sludges, solids, or other materials.

"Dioxins and furans" (D/F) means tetra-, penta-, hexa-, hepta-, and octa-chlorinated dibenzo dioxins and furans.

"Discharge" or "hazardous waste discharge" means the accidental or intentional spilling, leaking, pumping, pouring, emitting, emptying, or dumping of hazardous waste into or on any land or water.

"Disposal" means the discharge, deposit, injection, dumping, spilling, leaking, or placing of any hazardous waste into or on any land, water or air so that such hazardous waste or any constituent thereof may enter the environment or be emitted into the air or discharged into any waters, including ground waters.

"Disposal facility" means a facility or part of a facility at which hazardous waste is intentionally placed into or on any land or water, and at which waste will remain after closure. The term disposal facility does not include a corrective action management unit into which remediation wastes are placed.

"Division Director" or "Director" means the Director of the Division of Solid Waste Management of the Department, or his designee. This person also serves as the Technical Secretary to the Board, and functions as the chief of staff to both the Commissioner and the Board in matters relating to these rules and their implementation.

"DOT" means the U.S. Department of Transportation.

"Drip pad" is an engineered structure consisting of a curbed, free-draining base, constructed of non-earthen materials and designed to convey preservative kick-back or drippage from treated wood, precipitation, and surface water run-on to an associated collection system at wood preserving plants.

"Electronic manifest" or "e-Manifest" means the electronic format of the hazardous waste manifest that is obtained from EPA's national e-Manifest system and transmitted electronically to the system, and that is the legal equivalent of EPA Forms 8700-22 (Manifest) and 8700-22A (Continuation Sheet).

"Electronic manifest system" or "e-Manifest system" means EPA's national information technology system through which the electronic manifest may be obtained, completed, transmitted, and distributed to users of the electronic manifest and to regulatory agencies.

"Elementary neutralization unit" means a device which:

1. Is used for neutralizing wastes that are hazardous only because they exhibit the corrosivity characteristic defined in Rule 0400-12-01-.02(3)(c), or they are listed in Rule 0400-12-01-.02(4) only for this reason; and
2. Meets the definition of tank, tank system, container, transport vehicle, or vessel in this subparagraph.

"Emergency permit" means a hazardous waste management permit issued in accordance with Rule 0400-12-01-.07(1)(d).

"EPA" means the U.S. Environmental Protection Agency.

"EPA Identification Number" is synonymous with "Installation Identification Number."

"EPA region" means the states and territories found in any one of the following ten regions:

Region I - Maine, Vermont, New Hampshire, Massachusetts, Connecticut, and Rhode Island.

Region II - New York, New Jersey, Commonwealth of Puerto Rico, and the U.S. Virgin Islands.

Region III - Pennsylvania, Delaware, Maryland, West Virginia, Virginia, and the District of Columbia.

Region IV - Kentucky, Tennessee, North Carolina, Mississippi, Alabama, Georgia, South Carolina, and Florida.

Region V - Minnesota, Wisconsin, Illinois, Michigan, Indiana, and Ohio.

Region VI - New Mexico, Oklahoma, Arkansas, Louisiana, and Texas.

Region VII - Nebraska, Kansas, Missouri, and Iowa.

Region VIII - Montana, Wyoming, North Dakota, South Dakota, Utah, and Colorado.

Region IX - California, Nevada, Arizona, Hawaii, Guam, American Samoa, Commonwealth of the Northern Mariana Islands.

Region X - Washington, Oregon, Idaho, and Alaska.

"Equivalent method" means any testing or analytical method approved by the Commissioner under Rule 0400-12-01-.01(3).

"Existing hazardous waste management facility" or "existing facility" means a facility which was in operation, or for which construction had commenced, on or before the date on which one or more of the hazardous wastes handled or to be handled by the facility first became subject to regulation under rules promulgated under the Act. Construction has commenced if:

1. The owner or operator has obtained all necessary Federal, State, and local preconstruction approvals or permits; and either
2. (i) A continuous physical, on-site construction program has begun; or
(ii) The owner or operator has entered into contractual obligations -- which cannot be canceled or modified without substantial loss -- for construction of the facility to be completed within a reasonable time.

"Existing portion" means that land surface area of an existing waste management unit, included in the original Part A permit application, on which wastes have been placed prior to the issuance of a permit.

"Existing tank system" or "existing component" means a tank system or component that is used for the storage or treatment of hazardous waste and that is in operation, or for which installation has commenced on or prior to July 14, 1986. Installation will be considered to have commenced if the owner or operator has obtained all Federal, State, and local approvals or permits necessary to begin physical construction of the site or installation of the tank system and if either (1) a continuous on-site physical construction or installation program has begun, or (2) the owner or operator has entered into contractual obligations - which cannot be canceled or modified without substantial loss - for physical construction of the site or installation of the tank system to be completed within a reasonable time.

"Explosives or munitions emergency" means a situation involving the suspected or detected presence of unexploded ordnance (UXO), damaged or deteriorated explosives or munitions, an improvised explosive device (IED), other potentially explosive material or device, or other potentially harmful military chemical munitions or device, that creates an actual or potential imminent threat to human health, including safety, or the environment, including property, as determined by an explosives or munitions emergency response specialist. Such situations may require immediate and expeditious action by an explosives or munitions emergency response specialist to control, mitigate, or eliminate the threat.

"Explosives or munitions emergency response" means all immediate response activities by an explosives and munitions emergency response specialist to control, mitigate, or eliminate the actual or potential threat encountered during an explosives or munitions emergency. An explosives or munitions emergency response may include in-place render-safe procedures, treatment or destruction of the explosives or munitions and/or transporting those items to another location to be rendered safe, treated, or destroyed. Any reasonable delay in the completion of an explosives or munitions emergency response caused by a necessary, unforeseen, or uncontrollable circumstance will not terminate the explosives or munitions emergency. Explosives and munitions emergency responses can occur on either public or private lands and are not limited to responses at RCRA facilities.

"Explosives or munitions emergency response specialist" means an individual trained in chemical or conventional munitions or explosives handling, transportation, render-safe procedures, or destruction techniques. Explosives or munitions emergency response specialists include Department of Defense (DOD) emergency explosive ordnance disposal (EOD), technical escort unit (TEU), and DOD-certified civilian or contractor personnel; and other Federal, State, or local government, or civilian personnel similarly trained in explosives or munitions emergency responses.

"Facility" means:

1. All contiguous land, and structures, other appurtenances, and improvements on the land, used for treating, storing, or disposing of hazardous waste, or for managing hazardous secondary materials prior to reclamation. A facility may consist of several treatment, storage, or disposal operational units (e.g., one or more landfills, surface impoundments, or combinations of them).
2. For the purpose of implementing corrective action under Rule 0400-12-01-.06(6)(l), all contiguous property under the control of the owner or operator seeking a permit under the Tennessee Hazardous Waste Management Act, T.C.A. §§ 68-212-101 et seq. This definition also applies to facilities implementing corrective action under T.C.A. § 68-212-111.
3. Notwithstanding part 2 of this definition, a remediation waste management site is not a facility that is subject to Rule 0400-12-01-.06(6)(l), but is subject to corrective action requirements if the site is located within such a facility.

"Facility mailing list" means the mailing list for a facility maintained by the Department in accordance with Rule 0400-12-01-.07(7)(e)3(i)(V).

"Federal agency" means any department, agency, or other instrumentality of the Federal Government, any independent agency or establishment of the Federal Government including any Government corporation, and the Government Printing Office.

"Federal, State and local approvals or permits necessary to begin physical construction" means permits and approvals required under Federal, State or local hazardous waste control statutes, regulations or ordinances.

"FIFRA" means the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. 136-136y).

"Final authorization" means approval by EPA of a State program which has met the requirements of Section 3006(b) of RCRA and the applicable requirements of 40 CFR Part 271, Subpart A.

"Final closure" means the closure of all hazardous waste management units at the facility in accordance with all applicable closure requirements so that hazardous waste management activities under Rules 0400-12-01-.05 and 0400-12-01-.06 are no longer conducted at the facility unless subject to the provisions in Rule 0400-12-01-.03(4)(e).

"Food-chain crops" means tobacco, crops grown for human consumption, and crops grown for feed for animals whose products are consumed by humans.

"Freeboard" means the vertical distance between the top of a tank or surface impoundment dike, and the surface of the waste contained therein.

"Free liquids" means liquids which readily separate from the solid portion of a waste under ambient temperature and pressure.

"Functionally equivalent component" means a component which performs the same function or measurement and which meets or exceeds the performance specifications of another component.

"Furans" – see "Dioxins and furans".

~~"Gasification" for the purpose of complying with Rule 0400-12-01-.02(1)(d)1(xii) means a process, conducted in an enclosed device or system, designed and operated to process petroleum feedstock, including oil-bearing hazardous secondary materials through a series of highly controlled steps utilizing thermal decomposition, limited oxidation, and gas clearing to yield a synthesis gas composed primarily of hydrogen and carbon monoxide gas.~~

"Generation" means the act or process of producing hazardous wastes.

"Generator" means any person, by site, whose act or process produces hazardous waste identified or listed in Rule 0400-12-01-.02 or whose act first causes a hazardous waste to become subject to regulation.

"Ground water" means water below the land surface in a zone of saturation.

"Hazardous secondary material" means a secondary material (e.g., spent material, by-product, or sludge) that, when discarded, would be identified as hazardous waste under Rule 0400-12-01-.02.

"Hazardous secondary material acceptance plan" means the plan used by the verified reclaimer or the verified intermediate facility that identifies the physical and chemical data necessary to determine if a hazardous secondary material is being legitimately reclaimed.

"Hazardous secondary material generator" means any person whose act or process produces hazardous secondary materials at the generating facility. For purposes of this definition, "generating facility" means all contiguous property owned, leased, or otherwise controlled by the hazardous secondary material generator. For the purposes of subpart (1)(d)1(xxiii) of Rule 0400-12-01-.02, a facility that collects hazardous secondary materials from other persons is not the hazardous secondary material generator.

"Hazardous waste" means a hazardous waste as defined in Rule 0400-12-01-.02(1)(c).

"Hazardous waste code" means the code assigned by the Department to each hazardous waste listed in Rule 0400-12-01-.02(4) and to each characteristic identified in Rule 0400-12-01-.02(3), and any derivation of such codes which may be assigned by the Department to an individual waste or class of wastes.

"Hazardous waste constituent" means a constituent that caused the Board to list the hazardous waste in Rule 0400-12-01-.02(4), or a constituent listed in Table 1 of Rule 0400-12-01-.02(3)(e).

"Hazardous waste management unit" is a contiguous area of land on or in which hazardous waste is placed, or the largest area in which there is significant likelihood of mixing hazardous waste constituents in the same area. Examples of hazardous waste management units include a surface impoundment, a waste pile, a land treatment area, a landfill cell, an incinerator, a tank and its associated piping and underlying containment system, and a container storage area. A container alone does not constitute a unit; the unit includes containers and the land or pad upon which they are placed.

"HWM facility" means Hazardous Waste Management facility.

"Inactive portion" means that portion of a facility which is not operated after the date one or more of the hazardous wastes handled by the facility first became subject to regulation under rules promulgated under the Act. (See also "active portion" and "closed portion".)

"Incinerator" means any enclosed device that:

1. Uses controlled flame combustion and neither meets the criteria for classification as a boiler, sludge dryer, or carbon regeneration unit, nor is listed as an industrial furnace; or
2. Meets the definition of infrared incinerator or plasma arc incinerator.

"Incompatible waste" means a hazardous waste which is unsuitable for:

1. Placement in a particular device or facility because it may cause corrosion or decay of containment materials (e.g., container inner liners or tank walls); or
2. Commingling with another waste or material under uncontrolled conditions because the commingling might produce heat or pressure, fire or explosion, violent reaction, toxic dusts, mists, fumes, or gases, or flammable fumes or gases.

(See Appendix V at Rule 0400-12-01-.05(53) and at Rule 0400-12-01-.06(57) for examples.)

"Individual generation site" means the contiguous site at or on which one or more hazardous wastes are generated. An individual generation site, such as a large manufacturing plant, may have one or more sources of hazardous waste but is considered a single or individual generation site if the site or property is contiguous.

"Industrial furnace" means any of the following enclosed devices that are integral components of manufacturing processes and that use thermal treatment to accomplish recovery of materials or energy:

1. Cement kilns
2. Lime kilns
3. Aggregate kilns
4. Phosphate kilns
5. Coke ovens
6. Blast furnaces
7. Smelting, melting and refining furnaces (including pyrometallurgical devices such as cupolas, reverberator furnaces, sintering machines, roasters, and foundry furnaces)
8. Titanium dioxide chloride process oxidation reactors
9. Methane reforming furnaces
10. Pulping liquor recovery furnaces
11. Combustion devices used in the recovery of sulfur values from spent sulfuric acid
12. Halogen acid furnaces (HAFs) for the production of acid from halogenated hazardous waste generated by chemical production facilities where the furnace is located on the site of a chemical production facility, the acid product has a halogen acid content of at least 3%, the acid product is used in a manufacturing process, and, except for hazardous

waste burned as fuel, hazardous waste fed to the furnace has a minimum halogen content of 20% as-generated.

13. Such other devices as the Commissioner may, after notice and comment, add to this list on the basis of one or more of the following factors:
- (i) The design and use of the device primarily to accomplish recovery of material products;
 - (ii) The use of the device to burn or reduce raw materials to make a material product;
 - (iii) The use of the device to burn or reduce secondary materials as effective substitutes for raw materials, in processes using raw materials as principal feedstocks;
 - (iv) The use of the device to burn or reduce secondary materials as ingredients in an industrial process to make a material product;
 - (v) The use of the device in common industrial practice to produce a material product; and
 - (vi) Other factors, as appropriate.

"Infrared incinerator" means any enclosed device that uses electric powered resistance heaters as a source of radiant heat followed by an afterburner using controlled flame combustion and which is not listed as an industrial furnace.

"Inground tank" means a device meeting the definition of "tank" in this subparagraph whereby a portion of the tank wall is situated to any degree within the ground, thereby preventing visual inspection of that external surface area of the tank that is in the ground.

"Injection well" means a well into which fluids are injected. "Class I" injection wells include wells used by generators of hazardous wastes or owners or operators of hazardous waste management facilities to inject hazardous waste, other than Class IV wells. "Class IV" injection wells include wells used by generators of hazardous wastes or owners or operators of hazardous waste management facilities to dispose of hazardous wastes into or above a formation which within one quarter mile of the well contains an underground source of drinking water. (See also "underground injection".)

"Inner liner" means a continuous layer of material placed inside a tank or container which protects the construction materials of the tank or container from the contained waste or reagents used to treat the waste.

"In operation" refers to a facility which is treating, storing, or disposing of hazardous waste.

"Installation identification number" ("EPA Identification Number") means the number assigned to each generator, transporter, and treatment, storage, or disposal facility by the Department or EPA. For generators and facilities in this state, and for transporters who pick up hazardous waste from, or deliver hazardous waste to, locations in this state, references in these rules to their installation identification number shall mean the number assigned by the Department. For other generators, transporters, and facilities, such references shall mean the number assigned by EPA.

"Installation inspector" means a person who, by reason of his knowledge of the physical sciences and the principles of engineering, acquired by a professional education and related practical experience, is qualified to supervise the installation of tank systems.

"Interim authorization" means approval by EPA of State hazardous waste program which has met the requirements of Section 3006(g)(2) of RCRA and applicable requirements of 40 CFR Part 271, Subpart B.

"Intermediate" when used in the context of a chemical reaction means a chemical substance either formed by chemical reaction or is purchased and quantitatively introduced in a chemical reaction to support the formation of a product. Multiple intermediates may be associated with a chemical reaction.

"Intermediate facility" means any facility that stores hazardous secondary materials for more than 10 days, other than a hazardous secondary material generator or reclaimer of such material.

"International shipment" means the transportation of hazardous waste into or out of the jurisdiction of the United States.

"Lamp," also referred to as "universal waste lamp," is defined as the bulb or tube portion of an electric lighting device. A lamp is specifically designed to produce radiant energy, most often in the ultraviolet, visible, and infra-red regions of the electromagnetic spectrum. Examples of common universal waste electric lamps include, but are not limited to, fluorescent, high intensity discharge, neon, mercury vapor, high pressure sodium, and metal halide lamps.

"Land-based unit" means an area where hazardous secondary materials are placed in or on the land before recycling. This definition does not include land-based production units.

"Land Disposal" when used with respect to a specified hazardous waste, shall be deemed to include, but not be limited to, any placement of such hazardous waste in a landfill, surface impoundment, waste pile, injection well, land treatment facility, salt dome formation, salt bed formation, or underground mine or cave.

"Landfill" means a disposal facility or part of a facility where hazardous waste is placed in or on land and which is not a pile, a land treatment facility, a surface impoundment, an underground injection well, a salt dome formation, a salt bed formation, an underground mine, a cave, or a corrective action management unit.

"Landfill cell" means a discrete volume of a hazardous waste landfill which uses a liner to provide isolation of wastes from adjacent cells or wastes. Examples of landfill cells are trenches and pits.

"Land treatment facility" means a facility or part of a facility at which hazardous waste is applied onto or incorporated into the soil surface; such facilities are disposal facilities if the waste will remain after closure.

"Large Quantity Handler of Universal Waste" means a universal waste handler (as defined in this subparagraph) who accumulates 5,000 kilograms or more total of universal waste (batteries, pesticides, thermostats, or lamps calculated collectively) at any time. This designation as a large quantity handler of universal waste is retained through the end of the calendar year in which 5,000 kilograms or more total of universal waste is accumulated.

"Leachate" means any liquid, including any suspended components in the liquid, that has percolated through or drained from hazardous waste.

"Leak-detection system" means a system capable of detecting the failure of either the primary or secondary containment structure or the presence of a release of hazardous waste or accumulated liquid in the secondary containment structure. Such a system must employ operational controls (e.g., daily visual inspections for releases into the secondary containment system of aboveground tanks) or consist of an interstitial monitoring device designed to detect continuously and automatically the failure of the primary or secondary containment structure or the presence of a release of hazardous waste into the secondary containment structure.

"Liner" means a continuous layer of natural or man-made materials, beneath or on the sides of a surface impoundment, landfill, or landfill cell, which restricts the downward or lateral escape of hazardous waste, hazardous waste constituents, or leachate.

"Major facility" means any facility or activity classified as such by the Regional Administrator, or, in the case of approved State programs, the Regional Administrator in conjunction with the State Director.

"Management" or "waste management" or "hazardous waste management" means the orderly control of storage, transportation, treatment, and disposal of hazardous waste.

"Manifest" means the shipping document EPA Form 8700-22 (including if necessary, EPA Form 8700-22A), or the electronic manifest originated and signed in accordance with the applicable requirements of Rules 0400-12-01-.03 through 0400-12-01-.06.

"Manifest tracking number" means the alphanumeric identification number (i. e., a unique three letter suffix preceded by nine numerical digits), which is pre-printed in Item 4 of the Manifest by a registered source.

Mercury-containing equipment" means a device or part of a device (including thermostats, but excluding batteries and lamps) that contains elemental mercury integral to its function.

"Military munitions" means all ammunition products and components produced or used by or for the U.S. Department of Defense or the U.S. Armed Services for national defense and security, including military munitions under the control of the Department of Defense, the U.S. Coast Guard, the U.S. Department of Energy (DOE), and National Guard personnel. The term military munitions includes: confined gaseous, liquid, and solid propellants, explosives, pyrotechnics, chemical and riot control agents, smokes, and incendiaries used by DOD components, including bulk explosives and chemical warfare agents, chemical munitions, rockets, guided and ballistic missiles, bombs, warheads, mortar rounds, artillery ammunition, small arms ammunition, grenades, mines, torpedoes, depth charges, cluster munitions and dispensers, demolition charges, and devices and components thereof. Military munitions do not include wholly inert items, improvised explosive devices, and nuclear weapons, nuclear devices, and nuclear components thereof. However, the term does include non-nuclear components of nuclear devices, managed under DOE's nuclear weapons program after all required sanitization operations under the Atomic Energy Act of 1954, as amended, have been completed.

"Mining overburden returned to the mine site" means any material overlying an economic mineral deposit which is removed to gain access to that deposit and is then used for reclamation of a surface mine.

"Miscellaneous unit" means a hazardous waste management unit where hazardous waste is treated, stored, or disposed of and that is not a container, tank, surface impoundment, pile, land treatment unit, landfill, incinerator, boiler, industrial furnace, underground injection well with appropriate technical standards under 40 CFR part 146 (as that Federal Regulation exists on the effective date of these rules), containment building, corrective action management unit, unit eligible for a research, development, and demonstration permit under Rule 0400-12-01-.07(1)(g), or staging pile.

"Movement" means that hazardous waste transported to a facility in an individual vehicle.

"National Pollutant Discharge Elimination System" means the national program for issuing, modifying, revoking and reissuing, termination, monitoring and enforcing permits, and imposing and enforcing pretreatment requirements, under sections 307, 402, 318, and 405 of the CWA. The term includes an approved program.

"New hazardous waste management facility" or "new facility" means a facility which began operation, or for which construction commenced after October 31, 1980. (See also "existing hazardous waste management facility".)

"New tank system" or "new tank component" means a tank system or component that will be used for the storage or treatment of hazardous waste and for which installation has commenced after July 14, 1986; except, however, for purposes of Rules 0400-12-01-.05(10)(d)7(ii) and

.06(10)(d)7(ii), a new tank system is one for which construction commences after July 14, 1986. (See also "existing tank system.")

"No free liquids," as used in subparts ~~(1)(d)1(xxv)~~ (1)(d)1(xxvi) and ~~(1)(d)2(xvii)~~ (1)(d)2(xviii) of Rule 0400-12-01-.02, means that solvent-contaminated wipes may not contain free liquids as determined by Method 9095B (Paint Filter Liquids Test), included in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods" (EPA Publication SW-846), which is incorporated by reference in subparagraph (b) of this paragraph, and that there is no free liquid in the container holding the wipes.

"NPDES" means National Pollutant Discharge Elimination System.

"Off-site" means any site which is not on-site.

"On ground tank" means a device meeting the definition of "tank" in this subparagraph and that is situated in such a way that the bottom of the tank is on the same level as the adjacent surrounding surface so that the external tank bottom cannot be visually inspected.

"On-site" means the same or geographically contiguous property which may be divided by public or private right-of-way, provided the entrance and exit between the properties is at a cross-roads intersection, and access is by crossing as opposed to going along the right-of-way. Non-contiguous properties owned by the same person but connected by a right-of-way which he controls and to which the public does not have access, are also considered on-site property.

"Open burning" means the combustion of any material without the following characteristics:

1. Control of combustion air to maintain adequate temperature for efficient combustion,
2. Containment of the combustion-reaction in an enclosed device to provide sufficient residence time and mixing for complete combustion, and
3. Control of emission of the gaseous combustion products. (See also "incineration" and "thermal treatment".)

"Operator" means the person responsible for the overall operation of a facility.

"Owner" means the person who owns a facility or part of a facility.

"Partial closure" means the closure of a hazardous waste management unit in accordance with the applicable closure requirements of Rules 0400-12-01-.05 and 0400-12-01-.06 at a facility that contains other active hazardous waste management units. For example, partial closure may include the closure of a tank (including its associated piping and underlying containment systems), landfill cell, surface impoundment, waste pile, or other hazardous waste management unit, while other units of the same facility continue to operate.

"Permit" means an authorization, license, or equivalent control document issued by EPA or an approved State ~~the Commissioner~~ to implement the requirements of Rule 0400-12-01-.07. Permit includes permit-by-rule (Rule 0400-12-01-.07(1)(c)), and emergency permit (Rule 0400-12-01-.07(1)(d)). Permit does not include interim status (Rule 0400-12-01-.07(3)), or any permit which has not been the subject of final agency action, such as a draft permit or a proposed permit.

"Permit-by-rule" means a provision of these regulations stating that a facility or activity is deemed to have a permit if it meets the requirements of the provision.

"Person" means an individual, trust, firm, joint stock company, corporation (including a government corporation), partnership, association, state, municipality, commission, political subdivision of a state, any interstate body, and governmental agency of this state and any department, agency, or instrumentality of the executive, legislative, and judicial branches of the federal government.

"Personnel" or "facility personnel" means all persons who work at, or oversee the operations of, a hazardous waste facility, and whose actions or failure to act may result in noncompliance with the requirements of Rules 0400-12-01-.05 or 0400-12-01-.06.

"Pesticide" means any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest, or intended for use as a plant regulator, defoliant, or desiccant, other than any article that:

1. Is a new animal drug under FFDCFA section 201(w), or
2. Is an animal drug that has been determined by regulation of the Secretary of Health and Human Services not to be a new animal drug, or
3. Is an animal feed under FFDCFA section 201(x) that bears or contains any substances described by parts 1 or 2 of this definition.

"Physical construction" means excavation, movement of earth, erection of forms or structures, or similar activity to prepare an HWM facility to accept hazardous waste.

"Pile" means any non-containerized accumulation of solid, nonflowing hazardous waste that is used for treatment or storage and that is not a containment building.

"Plasma arc incinerator" means any enclosed device using a high intensity electrical discharge or arc as a source of heat followed by an afterburner using controlled flame combustion and which is not listed as an industrial furnace.

"Point source" means any discernible, confined, and discrete conveyance, including, but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, or vessel or other floating craft, from which pollutants are or may be discharged. This term does not include return flows from irrigated agriculture.

"Pollution Prevention" means source reduction as defined under the Pollution Prevention Act (42 U. S. C. 13101-13109). The definition is as follows:

1. Source reduction is any practice that:
 - (i) Reduces the amount of any hazardous substance, pollutant, or contaminant entering any waste stream or otherwise released into the environment (including fugitive emissions) prior to recycling, treatment or disposal; and
 - (ii) Reduces the hazards to public health and the environment associated with the release of such substances, pollutants, or contaminants.
2. The term source reduction includes equipment or technology modifications, process or procedure modifications, reformulation or redesign of products, substitutions of raw materials, and improvements in housekeeping, maintenance, training, or inventory control.
3. The term source reduction does not include any practice that alters the physical, chemical, or biological characteristics or the volume of a hazardous substance, pollutant, or contaminant through a process or activity which itself is not integral to and necessary for the production of a product or the providing of a service.

"PSC" which means the Tennessee Public Service Commission, was abolished. Pertinent functions are now handled by the "Tennessee Regulatory Commission."

"Publicly owned treatment works" or "POTW" means any device or system used in the treatment (including recycling and reclamation) of municipal sewage or industrial wastes of a liquid nature which is owned by the "State" or a "municipality" (as defined by Section 502(4) of CWA). This

definition includes sewers, pipes, or other conveyances only if they convey wastewater to a POTW providing treatment.

"Qualified Ground-Water Scientist" means a scientist or engineer who has received a baccalaureate or post-graduate degree in the natural sciences or engineering, and has sufficient training and experience in ground-water hydrology and related fields as may be demonstrated by state registration, professional certifications, or completion of accredited university courses that enable that individual to make sound professional judgments regarding ground-water monitoring and contaminant fate and transport.

"RCRA" means the Solid Waste Disposal Act as amended by the Resource Conservation and Recovery Act of 1976 (Pub. L. 94-580, as amended by Pub. L. 95-609 and Pub. L. 96-482, 42 U.S.C. 6901 et seq.)

"Reclaimed" means reclaimed as defined in subpart (1)(a)3(iv) of Rule 0400-12-01-.02.

"Recycled" means recycled as defined in subpart (1)(a)3(vii) of Rule 0400-12-01-.02.

"Regional Administrator" means the Regional Administrator for the EPA Region in which the facility is located, or his designee.

"Registered engineer" or "registered professional engineer" refers to a person authorized to perform engineering in Tennessee pursuant to Tennessee Code Annotated, Title 62, Chapter 2.

"Remanufacturing" means processing a higher-value hazardous secondary material in order to manufacture a product that serves a similar functional purpose as the original commercial-grade material. For the purpose of this definition, a hazardous secondary material is considered higher-value if it was generated from the use of a commercial-grade material in a manufacturing process and can be remanufactured into a similar commercial-grade material.

"Remedial Action Plan (RAP)" means a special form of RCRA permit that a facility owner or operator may obtain instead of a permit issued under paragraphs (1), (2), and (4)-(9) of Rule 0400-12-01-.07, to authorize the treatment, storage or disposal of hazardous remediation waste (as defined in this subparagraph) at a remediation waste management site.

"Remediation waste" means all solid and hazardous wastes, and all media (including groundwater, surface water, soils, and sediments) and debris, that are managed for implementing cleanup.

"Remediation waste management site" means a facility where an owner or operator is or will be treating, storing or disposing of hazardous remediation wastes. A remediation waste management site is not a facility that is subject to corrective action under Rule 0400-12-01-.06(6)(l), but is subject to corrective action requirements if the site is located in such a facility.

"Replacement unit" means a landfill, surface impoundment, or waste pile unit (1) from which all or substantially all of the waste is removed, and (2) that is subsequently reused to treat, store, or dispose of hazardous waste. "Replacement unit" does not apply to a unit from which waste is removed during closure, if the subsequent reuse solely involves the disposal of waste from that unit and other closing units or corrective action areas at the facility, in accordance with an approved closure plan or EPA or State approved corrective action.

"Representative sample" means a sample of a universe or whole (e.g., waste pile, lagoon, ground water) which can be expected to exhibit the average properties of the universe or whole.

"Run-off" means any rainwater, leachate, or other liquid that drains over land from any part of a facility.

"Run-on" means any rainwater, leachate, or other liquid that drains over land onto any part of a facility.

"Saturated zone" or "zone of saturation" means that part of the earth's crust in which all voids are filled with water.

"Schedule of compliance" means a schedule of remedial measures included in a permit, including an enforceable sequence of interim requirements (for example, actions, operations, or milestone events) leading to compliance with the Act and regulations.

"SDWA" means the Safe Drinking Water Act (Pub. L. 95-523, as amended by Pub. L. 95-1900; 42 U.S.C. 3001 et seq.)

"Site" means the land or water area where any facility or activity is physically located or conducted, including adjacent land used in connection with the facility or activity.

"Sludge" means any solid, semi-solid, or liquid waste generated from a municipal, commercial, or industrial wastewater treatment plant, water supply treatment plant, or air pollution control facility exclusive of the treated effluent from a wastewater treatment plant.

"Sludge dryer" means any enclosed thermal treatment device that is used to dehydrate sludge and that has a maximum total thermal input, excluding the heating value of the sludge itself, of 2,500 Btu/lb of sludge treated on a wet-weight basis.

"Small Quantity Generator" means a generator who generates less than 1000 kg of hazardous waste in a calendar month.

"Small Quantity Handler of Universal Waste" means a universal waste handler (as defined in this subparagraph) who does not accumulate more than 5,000 kilograms total of universal waste (batteries, pesticides, thermostats, or lamps calculated collectively) at any time.

"Solid waste" means a waste as defined in Rule 0400-12-01-.02(1)(b).

"Solvent-contaminated wipe" means:

1. A wipe that, after use or after cleaning up a spill, either:
 - (i) Contains one or more of the F001 through F005 solvents listed in subparagraph (4)(b) of Rule 0400-12-01-.02 or the corresponding P- or U- listed solvents found in subparagraph (4)(d) of Rule 0400-12-01-.02;
 - (ii) Exhibits a hazardous characteristic found in paragraph (3) of Rule 0400-12-01-.02 when that characteristic results from a solvent listed in paragraph (4) of Rule 0400-12-01-.02; and/or
 - (iii) Exhibits only the hazardous waste characteristic of ignitability found in subparagraph (3)(b) of Rule 0400-12-01-.02 due to the presence of one or more solvents that are not listed in paragraph (4) of Rule 0400-12-01-.02.
2. Solvent-contaminated wipes that contain listed hazardous waste other than solvents, or exhibit the characteristic of toxicity, corrosivity, or reactivity due to contaminants other than solvents, are not eligible for the exclusions at subparts ~~(1)(d)1(xxv)~~ (1)(d)1(xxvi) and ~~(1)(d)2(xvii)~~ (1)(d)2(xviii) of Rule 0400-12-01-.02.

"Sorbent" means a material that is used to soak up free liquids by either adsorption or absorption, or both. Sorb means to either adsorb or absorb, or both.

"Spent material" means spent material as defined in subpart (1)(a)3(i) of Rule 0400-12-01-.02.

"Staging pile" means an accumulation of solid, non-flowing remediation waste "as defined in this subparagraph) that is not a containment building and that is used only during remedial operations for temporary storage at a facility. Staging piles must be designated by the Director according to the requirements of Rule 0400-12-01-.06(22)(e).

"State" means the State of Tennessee.

"State/EPA Agreement" means an agreement between the Regional Administrator and the State which coordinates EPA and State activities, responsibilities and programs.

"Storage" means the containment of hazardous waste in such a manner as not to constitute disposal of such hazardous waste.

"Sump" means any pit or reservoir that meets the definition of tank and those troughs/trenches connected to it that serve to collect hazardous waste for transport to hazardous waste storage, treatment, or disposal facilities; except that as used in the landfill, surface impoundment, and waste pile rules, "sump" means any lined pit or reservoir that serves to collect liquids drained from a leachate collection and removal system or leak detection system for subsequent removal from the system.

"Surface impoundment" or "impoundment" means a facility or part of a facility which is a natural topographic depression, man-made excavation, or diked area formed primarily of earthen materials (although it may be lined with man-made materials), which is designed to hold an accumulation of liquid wastes or wastes containing free liquids, and which is not an injection well. Examples of surface impoundments are holding, storage, settling, and aeration pits, ponds, and lagoons.

"Tank" means a stationary device, designed to contain an accumulation of hazardous waste which is constructed primarily of non-earthen materials (e.g., wood, concrete, steel, plastic) which provide structural support.

"Tank system" means a hazardous waste storage or treatment tank and its associated ancillary equipment and containment system.

"T.C.A." means Tennessee Code Annotated.

"Tennessee Air Quality Act" means the Tennessee Air Quality Act, as amended, T.C.A §§ 68-201-101 et seq.

"Tennessee Regulatory Commission (TRC)" means the agency now handling pertinent functions formerly handled by the PSC.

"TEQ" means toxicity equivalence, the international method of relating the toxicity of various dioxin/furan congeners to the toxicity of 2, 3, 7, 8-tetrachlorodibenzo-p-dioxin.

"Thermal treatment" means the treatment of hazardous waste in a device which uses elevated temperatures as the primary means to change the chemical, physical, or biological character or composition of the hazardous waste. Examples of thermal treatment processes are incineration, molten salt, pyrolysis, calcination, wet air oxidation, and microwave discharge. (See also "incinerator" and "open burning".)

"Totally enclosed treatment facility" means a facility for the treatment of hazardous waste which is directly connected to an industrial production process and which is constructed and operated in a manner which prevents the release of any hazardous waste or any constituent thereof into the environment during treatment. An example is a pipe in which waste acid is neutralized.

"Transfer facility" means any transportation related facility, including loading docks, parking areas, storage areas and other similar areas where shipments of hazardous waste or hazardous secondary materials are held during the normal course of transportation.

"Transportation" means the movement of hazardous waste by air, rail, highway, or water.

"Transporter" means any person engaged in the transportation of hazardous waste.

"Transport vehicle" means a motor vehicle or rail car used for the transportation of cargo by any mode. Each cargo-carrying body (trailer, railroad freight car, etc.) is a separate transport vehicle.

"Treatability Study" means a study in which a hazardous waste is subjected to a treatment process to determine: (1) Whether the waste is amenable to the treatment process, (2) what pretreatment (if any) is required, (3) the optimal process conditions needed to achieve the desired treatment, (4) the efficiency of a treatment process for a specific waste or wastes, or (5) the characteristics and volumes of residuals from a particular treatment process. Also included in this definition for the purpose of Rule 0400-12-01-.02(1)(d)5 and 6 exemptions are liner compatibility, corrosion, and other material compatibility studies and toxicological and health effects studies. A "treatability study" is not a means to commercially treat or dispose of hazardous waste.

"Treatment" means any method, technique, or process, including neutralization, designed to change the physical, chemical, or biological character or composition of any hazardous waste so as to neutralize such waste, or so as to recover energy or material resources from the waste, or so as to render such waste non-hazardous, or less hazardous; safer to transport, store, or dispose of; or amenable for recovery, amenable for storage, or reduced in volume.

"Treatment zone" means a soil area of the unsaturated zone of a land treatment unit within which hazardous waste constituents are degraded, transformed, or immobilized.

"24-hour, 25-year storm" means a storm of 24-hour duration with a probable recurrence interval of once in 25 years.

"UIC" means the Underground Injection Control Program under Part C of the Safe Drinking Water Act, including an approved program.

"Underground injection" means the subsurface emplacement of fluids through a bored, drilled or driven well; or through a dug well, where the depth of the dug well is greater than the largest surface dimension. (See also "injection well".)

"Underground source of drinking water (USDW)" means an aquifer or its portion:

1. (i) Which supplies any public water system; or
- (ii) Which contains a sufficient quantity of ground water to supply a public water system; and
 - (I) Currently supplies drinking water for human consumption; or
 - (II) Contains fewer than 10,000 mg/l total dissolved solids; and
2. Which is not an exempted aquifer.

"Underground tank" means a device meeting the definition of "tank" in this subparagraph whose entire surface area is totally below the surface of and covered by the ground.

"Unfit-for-use tank system" means a tank system that has been determined through an integrity assessment or other inspection to be no longer capable of storing or treating hazardous waste without posing a threat of release of hazardous waste to the environment.

"United States" means the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, the U.S. Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands.

"Universal Waste" means any of the hazardous wastes listed in Rule 0400-12-01-.12(1)(a) that are managed under the universal waste requirements of Rule 0400-12-01-.12.

"Universal Waste Handler":

1. Means:

- (i) A generator (as defined in this subparagraph) of universal waste; or
- (ii) The owner or operator of a facility, including all contiguous property, that receives universal waste from other universal waste handlers, accumulates universal waste, and sends universal waste to another universal waste handler, to a destination facility, or to a foreign destination.

2. Does not mean:

- (i) A person who treats (except under the provisions of Rule 0400-12-01-.12(2)(d)1 or 3, or Rule 0400-12-01-.12(3)(d)1 or 3), disposes of, or recycles universal waste; or
- (ii) A person engaged in the off-site transportation of universal waste by air, rail, highway, or water, including a universal waste transfer facility.

"Universal Waste Transfer Facility" means any transportation-related facility including loading docks, parking areas, storage areas and other similar areas where shipments of universal waste are held during the normal course of transportation for ten days or less.

"Universal Waste Transporter" means a person engaged in the off-site transportation of universal waste by air, rail, highway, or water.

"Unsaturated zone" or "zone of aeration" means the zone between the land surface and the water table.

"Uppermost aquifer" means the geologic formation nearest the natural ground surface that is an aquifer, as well as lower aquifers that are hydraulically interconnected with this aquifer within the facility's property boundary.

"Used oil" means any oil that has been refined from crude oil, or any synthetic oil, that has been used and as a result of such use is contaminated by physical or chemical impurities.

"User of the electronic manifest system" means a hazardous waste generator, a hazardous waste transporter, an owner or operator of a hazardous waste treatment, storage, recycling, or disposal facility, or any other person that:

1. Is required to use a manifest to comply with:

- (i) Any federal or state requirement to track the shipment, transportation, and receipt of hazardous waste or other waste material that is shipped from the site of generation to an off-site designated facility for treatment, storage, recycling, or disposal; or
- (ii) Any federal or state requirement to track the shipment, transportation, and receipt of rejected wastes or regulated container residues that are shipped from a designated facility to an alternative facility, or returned to the generator; and

2. Elects to use the system to obtain, complete and transmit an electronic manifest format supplied by the EPA electronic manifest system, or

3. Elects to use the paper manifest form and submits to the system for data processing purposes a paper copy of the manifest (or data from such a paper copy), in accordance with item (5)(b)1(ii)(V) of Rule 0400-12-01-.05 or item (5)(b)1(ii)(V) of Rule 0400-12-01-.06. These paper copies are submitted for data exchange purposes only and are not the official copies of record for legal purposes.

"Verified intermediate facility" means an intermediate facility located in the United States that:

1. If located in the state of Tennessee, has been issued a Certificate to Operate by the Commissioner in accordance with part (4)(b)2 of this rule; and
2. If not located in the state of Tennessee, has been verified by EPA, in accordance with 40 CFR 260.30, 260.31(d) and 260.33, or verified by an EPA authorized state.

"Verified reclamation facility" means a reclamation facility located in the United States that:

1. If located in the state of Tennessee, has been issued a Certificate to Operate by the Commissioner in accordance with part (4)(b)2 of this rule; and
2. If not located in the state of Tennessee, has been verified by EPA, in accordance with 40 CFR 260.30, 260.31(d) and 260.33, or verified by an EPA authorized state.

"Vessel" includes every description of watercraft, used or capable of being used as a means of transportation on the water.

"Waste" means a solid waste as defined in Rule 0400-12-01-.02(1)(b).

"Wastewater treatment unit" means a device which:

1. Is part of a wastewater treatment facility that is subject to regulation under either section 402 or 307(b) of the Clean Water Act; and
2. Receives and treats or stores an influent wastewater that is a hazardous waste as defined in Rule 0400-12-01-.02(1)(c) or generates and accumulates a wastewater treatment sludge which is a hazardous waste as defined in Rule 0400-12-01-.02(1)(c), or treats or stores a wastewater treatment sludge which is a hazardous waste as defined in Rule 0400-12-01-.02(1)(c); and
3. Meets the definition of tank or tank system in this subparagraph.

"On-site wastewater treatment units" are those which receive solely wastes generated on-site (according to the definition of "on-site" found in this subparagraph). "Off-site wastewater treatment units" are those which receive wastes generated by facilities that are not on-site.

"Water (bulk shipment)" means the bulk transportation of hazardous waste which is loaded or carried on board a vessel without containers or labels.

"Water Quality Control Act" means the Water Quality Control Act of 1977, as amended, T.C.A §§ 69-3-101 et seq.

"Well" means any shaft or pit dug or bored into the earth, generally of a cylindrical form, and often walled with bricks or tubing to prevent the earth from caving in.

"Well injection": (See "underground injection".)

"Wipe" means a woven or non-woven shop towel, rag, pad, or swab made of wood pulp, fabric, cotton, polyester blends, or other material.

"Zone of engineering control" means an area under the control of the owner/operator that, upon detection of a hazardous waste release, can be readily cleaned up prior to the release of hazardous waste or hazardous constituents to ground water or surface water.

(b) References [40 CFR 260.11 and 40 CFR 270.6]

1. Here is a list of publications/materials referred to in these rules and where they may be obtained as set forth by EPA in 40 CFR 260.11 and 40 CFR 270.6.

2. These materials are listed as they exist on the effective date of these regulations.

(Note: 40 CFR 260.11 provides that:

- (a) When used in parts 260 through 268 and 278 of this chapter, the following publications are incorporated by reference. These incorporations by reference were approved by the Director of the Federal Register pursuant to 5 U.S.C. 552(a) and 1 CFR part 51. These materials are incorporated as they exist on the date of approval and a notice of any change in these materials will be published in the Federal Register. Copies may be inspected at the Library, U.S. Environmental Protection Agency, 1200 Pennsylvania Ave., NW. (3403T), Washington, DC 20460, libraryhq@epa.gov; or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202-741-6030, or go to:
http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.
- (b) The following materials are available for purchase from the American Society for Testing and Materials, 100 Barr Harbor Drive, P.O. Box C700, West Conshohocken, PA 19428-2959.
- (1) ASTM D-93-79 or D-93-80, "Standard Test Methods for Flash Point by Pensky-Martens Closed Cup Tester," IBR approved for §261.21.
 - (2) ASTM D-1946-82, "Standard Method for Analysis of Reformed Gas by Gas Chromatography," IBR approved for §§264.1033, 265.1033.
 - (3) ASTM D 2267-88, "Standard Test Method for Aromatics in Light Naphthas and Aviation Gasolines by Gas Chromatography," IBR approved for §264.1063.
 - (4) ASTM D 2382-83, "Standard Test Method for Heat of Combustion of Hydrocarbon Fuels by Bomb Calorimeter (High-Precision Method)," IBR approved for §§264.1033, 265.1033.
 - (5) ASTM D 2879-92, "Standard Test Method for Vapor Pressure—Temperature Relationship and Initial Decomposition Temperature of Liquids by Isoteniscope," IBR approved for §265.1084.
 - (6) ASTM D-3278-78, "Standard Test Methods for Flash Point for Liquids by Setaflash Closed Tester," IBR approved for §261.21(a).
 - (7) ASTM E 168-88, "Standard Practices for General Techniques of Infrared Quantitative Analysis," IBR approved for §264.1063.
 - (8) ASTM E 169-87, "Standard Practices for General Techniques of Ultraviolet-Visible Quantitative Analysis," IBR approved for §264.1063.
 - (9) ASTM E 260-85, "Standard Practice for Packed Column Gas Chromatography," IBR approved for §264.1063.
 - (10) ASTM E 926-88, "Standard Test Methods for Preparing Refuse-Derived Fuel (RDF) Samples for Analyses of Metals," Test Method C—Bomb, Acid Digestion Method.
- (c) The following materials are available for purchase from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161; or for purchase from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 512-1800.

- (1) "APTI Course 415: Control of Gaseous Emissions," EPA Publication EPA-450/2-81-005, December 1981, IBR approved for §§264.1035 and 265.1035.
- (2) Method 1664, n-Hexane Extractable Material (HEM; Oil and Grease) and Silica Gel Treated n-Hexane Extractable Material SGT-HEM; Non-polar Material) by Extraction and Gravimetry:
 - (i) Revision A, EPA-821-R-98-002, February 1999, IBR approved for Part 261, Appendix appendix IX.
 - (ii) Revision B, EPA-821-R-10-001, February 2010, IBR approved for Part 261, Appendix appendix IX.
- (3) The following methods as published in the test methods compendium known as "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," EPA Publication SW-846, Third Edition. A suffix of "A" in the method number indicates revision one (the method has been revised once). A suffix of "B" in the method number indicates revision two (the method has been revised twice). A suffix of "C" in the method number indicates revision three (the method has been revised three times). A suffix of "D" in the method number indicates revision four (the method has been revised four times).
 - (i) Method 0010, dated September 1986 and in the Basic Manual, IBR approved for part 261, appendix IX.
 - (ii) Method 0020, dated September 1986 and in the Basic Manual, IBR approved for part 261, appendix IX.
 - (iii) Method 0030, dated September 1986 and in the Basic Manual, IBR approved for part 261, appendix IX.
 - (iv) Method 1320, dated September 1986 and in the Basic Manual, IBR approved for part 261, appendix IX.
 - (v) Method 1311, dated September 1992 and in Update I, IBR approved for part 261, appendix IX, and §§261.24, 268.7, 268.40.
 - (vi) Method 1330A, dated September 1992 and in Update I, IBR approved for part 261, appendix IX.
 - (vii) Method 1312 dated September 1994 and in Update III, IBR approved for part 261, appendix IX and § 278.3(b)(1).
 - (viii) Method 0011, dated December 1996 and in Update III, IBR approved for part 261, appendix IX, and part 266, appendix IX.
 - (ix) Method 0023A, dated December 1996 and in Update III, IBR approved for part 261, appendix IX, part 266, appendix IX, and §266.104.
 - (x) Method 0031, dated December 1996 and in Update III, IBR approved for part 261, appendix IX.
 - (xi) Method 0040, dated December 1996 and in Update III, IBR approved for part 261, appendix IX.

- (xii) Method 0050, dated December 1996 and in Update III, IBR approved for part 261, appendix IX, part 266, appendix IX, and §266.107.
- (xiii) Method 0051, dated December 1996 and in Update III, IBR approved for part 261, appendix IX, part 266, appendix IX, and §266.107.
- (xiv) Method 0060, dated December 1996 and in Update III, IBR approved for part 261, appendix IX, §266.106, and part 266, appendix IX.
- (xv) Method 0061, dated December 1996 and in Update III, IBR approved for part 261, appendix IX, §266.106, and part 266, appendix IX.
- (xvi) Method 9071B, dated April 1998 and in Update IIIA, IBR approved for part 261, appendix IX.
- (xvii) Method 1010A, dated November 2004 and in Update IIIB, IBR approved for part 261, appendix IX.
- (xviii) Method 1020B, dated November 2004 and in Update IIIB, IBR approved for part 261, appendix IX.
- (xix) Method 1110A, dated November 2004 and in Update IIIB, IBR approved for §261.22 and part 261, appendix IX.
- (xx) Method 1310B, dated November 2004 and in Update IIIB, IBR approved for part 261, appendix IX.
- (xxi) Method 9010C, dated November 2004 and in Update IIIB, IBR approved for part 261, appendix IX and §§268.40, 268.44, 268.48.
- (xxii) Method 9012B, dated November 2004 and in Update IIIB, IBR approved for part 261, appendix IX and §§268.40, 268.44, 268.48.
- (xxiii) Method 9040C, dated November 2004 and in Update IIIB, IBR approved for part 261, appendix IX and §261.22.
- (xxiv) Method 9045D, dated November 2004 and in Update IIIB, IBR approved for part 261, appendix IX.
- (xxv) Method 9060A, dated November 2004 and in Update IIIB, IBR approved for part 261, appendix IX, and §§264.1034, 264.1063, 265.1034, 265.1063.
- (xxvi) Method 9070A, dated November 2004 and in Update IIIB, IBR approved for part 261, appendix IX.
- (xxvii) Method 9095B, dated November 2004 and in Update IIIB, IBR approved, part 261, appendix IX, and §§264.190, 264.314, 265.190, 265.314, 265.1081, 267.190(a), 268.32.

(d) The following materials are available for purchase from the National Fire Protection Association, 1 Batterymarch Park, P.O. Box 9101, Quincy, MA 02269–9101.

- (1) "Flammable and Combustible Liquids Code" (1977 or 1981), IBR approved for §§264.198, 265.198, 367.202(b).
 - (2) [Reserved]
- (e) The following materials are available for purchase from the American Petroleum Institute, 1220 L Street, Northwest, Washington, DC 20005.
- (1) API Publication 2517, Third Edition, February 1989, "Evaporative Loss from External Floating-Roof Tanks," IBR approved for §265.1084.
 - (2) [Reserved]
- (f) The following materials are available for purchase from the Environmental Protection Agency, Research Triangle Park, NC.
- (1) "Screening Procedures for Estimating the Air Quality Impact of Stationary Sources, Revised", October 1992, EPA Publication No. EPA-450/R-92-019, IBR approved for part 266, appendix IX.
 - (2) [Reserved]
- (g) The following materials are available for purchase from the Organisation for Economic Co-operation and Development, Environment Directorate, 2 rue Andre Pascal, 75775 Paris Cedex 16, France.
- (1) OECD Green List of Wastes (revised May 1994), Amber List of Wastes and Red List of Wastes (both revised May 1993) as set forth in Appendix 3, Appendix 4 and Appendix 5, respectively, to the OECD Council Decision C(92)39/FINAL (Concerning the Control of Transfrontier Movements of Wastes Destined for Recovery Operations), IBR approved for 262.89 of this chapter.
 - (2) [Reserved]

(Note: 40 CFR 270.6 provides that:

- (a) When used in part 270 of this chapter, the following publications are incorporated by reference. These incorporations by reference were approved by the Director of the Federal Register pursuant to 5 U.S.C. 552(a) and 1 CFR part 51. These materials are incorporated as they exist on the date of approval and a notice of any change in these materials will be published in the Federal Register. Copies may be inspected at the Library, U.S. Environmental Protection Agency, 1200 Pennsylvania Ave., NW., (3403T), Washington, DC 20460, libraryhq@epa.gov; or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202-741-6030, or go to:

http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.

- (b) The following materials are available for purchase from the National Technical Information Service (NTIS), 5285 Port Royal Road, Springfield, VA 22161, (703) 605-6000 or (800) 553-6847; or for purchase from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 512-1800:
 - (1) "APTI Course 415: Control of Gaseous Emissions," EPA Publication EPA-450/2-81-005, December 1981, IBR approved for §§270.24 and 270.25.

(2) [Reserved]

(3) Petitions for Regulatory Exclusions or Variances

~~(a)~~ Requirements for Regulatory Exclusions

4-(a) General [40 CFR 260.20]

- ~~(i)~~1. Any person may petition the Commissioner for a regulatory exclusion from any provision in Rules 0400-12-01-.01 through 0400-12-01-.06, 0400-12-01-.09, 0400-12-01-.10 and 0400-12-01-.12. This ~~part~~ subparagraph sets forth general requirements which apply to all such petitions. ~~Part 2~~ Subparagraph (b) sets forth additional requirements for petitions to add a testing or analytical method to Rule 0400-12-01-.02, 0400-12-01-.05 or 0400-12-01-.06. ~~Part 3~~ Subparagraph (c) sets forth additional requirements for petitions to exclude a waste or waste-derived material at a particular facility from subparagraph (1)(c) of Rule 0400-12-01-.02 or the lists of hazardous wastes in paragraph (4) of Rule 0400-12-01-.02. ~~Part 4~~ Subparagraph (d) sets forth additional requirements for petitions to amend Rule 0400-12-01-.12 to include additional hazardous wastes or categories of hazardous waste as universal waste.
- ~~(ii)~~2. Each petition must be submitted to the Commissioner by certified mail and must include:
- ~~(i)~~(i) The petitioner's name and address;
- ~~(ii)~~(ii) A statement of the petitioner's interest in the proposed action;
- ~~(iii)~~(iii) A description of the proposed action, including (where appropriate) suggested language; and
- ~~(iv)~~(iv) A statement of the need and justification for the proposed action, including any supporting tests, studies, or other information.
- ~~(iii)~~3. Except for petitions submitted in accordance with ~~parts 2 and 3 of this subparagraph~~ subparagraphs (b) and (c) of this paragraph, the Commissioner will make a tentative decision to grant or deny a petition and shall notify the petitioner of such tentative decision. If the Commissioner's tentative decision is to grant the petition, the Commissioner, with the concurrence of the board, shall initiate a rulemaking in accordance with T.C.A. § 4-5-201 et seq.
- ~~(iv)~~4. Petitions submitted in accordance with parts 2 and 3 of this subparagraph ~~subparagraphs (b) and (c) of this paragraph~~ shall be forwarded to EPA by the Commissioner for a determination.
- ~~(v)~~5. A determination made by EPA pursuant to 40 CFR 260.21 Petitions for Equivalent Testing or Analytical Methods or 40 CFR 260.22 Petitions to Amend Part 261 to Exclude a Waste Produced at a Particular Facility shall be effective in Tennessee on the effective date of the EPA decision.

2-(b) Petitions for Equivalent Testing or Analytical Methods [40 CFR 260.21]

Petitions received by the Commissioner regarding Equivalent Testing or Analytical Methods shall be forwarded to EPA for a determination.

(Note: The authority for implementing this ~~part~~ subparagraph remains with the U.S. Environmental Protection Agency.)

3-(c) Petitions to Exclude a Waste Produced at a Particular Facility as Nonhazardous [40 CFR 260.22]

Petitions received by the Commissioner regarding Excluding a Waste Produced at a Particular Facility as Nonhazardous shall be forwarded to EPA for a determination.

(Note: The authority for implementing this part subparagraph remains with the U.S. Environmental Protection Agency.)

4.(d) Petitions to Amend Rule 0400-12-01-.12 to Include Additional Hazardous Wastes as Universal Wastes [40 CFR 260.23]

- ~~(i)~~1. Any person seeking to add a hazardous waste or a category of hazardous waste to the universal waste regulations of Rule 0400-12-01-.12 may petition for a regulatory amendment under this part subparagraph, ~~part 1~~ of this subparagraph (a) of this paragraph and Rule 0400-12-01-.12(7).
- ~~(ii)~~2. To be successful, the petitioner must demonstrate to the satisfaction of the Commissioner that regulation under the universal waste regulations of Rule 0400-12-01-.12 is appropriate for the waste or category of waste; will improve management practices for the waste or category of waste; and will improve implementation of the hazardous waste program. The petition must include the information required by ~~subpart 1(ii)~~ of this subparagraph part (a)2 of this paragraph. The petition should also address as many of the factors listed in Rule 0400-12-01-.12(7)(b) as are appropriate for the waste or category of waste addressed in the petition.
- ~~(iii)~~3. The Commissioner shall consider the factors listed in Rule 0400-12-01-.12(7)(b).
- ~~(iv)~~4. The Commissioner may request additional information needed to evaluate the merits of the petition.
- ~~(v)~~5. The Commissioner shall make a tentative decision. The tentative decision will be based on the weight of evidence showing that regulation under Rule 0400-12-01-.12 is appropriate for the waste or category of waste, will improve management practices for the waste or category of waste, and will improve implementation of the hazardous waste program.
- ~~(vi)~~6. The Commissioner shall comply with the requirements of ~~subpart 1(iii)~~ of this subparagraph part (a)3 of this paragraph regarding the tentative decision.

(4) Variances, Certificates to Operate, and Procedures

~~(3)~~ ~~(b)~~(a) Requirements for General Variances

1. Any person may petition the Commissioner for a variance from any provision in these rules. This subparagraph sets forth general requirements which apply to all such petitions.
2. Each petition must be submitted to the Commissioner by certified mail and must include:
 - (i) The petitioner's name and address;
 - (ii) A statement of the petitioner's interest in the proposed action;
 - (iii) A description of the proposed action, including (where appropriate) suggested language; and
 - (iv) A statement written description of the need and justification for the proposed action, including any supporting tests, studies, or other information.

(Note: See paragraph (9) of Rule 0400-12-01-.08 for the appropriate fee to be submitted along with the petition for a general variance.)

3. The Commissioner will make a tentative decision to grant or deny a petition and will notify the petitioner of this tentative decision. If the Commissioner makes a tentative decision

to grant the petition, the Commissioner will give public notice of such tentative decision for written public comment. The public notice shall be published by the petitioner as required by the Commissioner.

4. Upon the written request of any interested person, the Commissioner may, at his discretion, hold an informal public hearing to consider oral comments on the tentative decision. A person requesting a hearing must state the issues to be raised and explain why written comments would not suffice to communicate the person's views. The Commissioner may in any case decide on his own motion to hold an informal public hearing. Notice of the public hearing shall be published by the petitioner as required by the Commissioner.
5. After evaluating all public comments the Commissioner will make a final decision to either grant or deny the petition, and will give a public notice of such decision. The petitioner shall publish this public notice as required by the Commissioner.
6. Any variance granted pursuant to this subparagraph may be rescinded if it is discovered and determined by the Commissioner that:
 - (i) The variance has resulted or may result in a significant hazard to public health or the environment;
 - (ii) The factual basis for which the variance was granted has significantly changed;
 - (iii) The regulations, as amended, no longer support the variance;
 - (iv) The conditions issued by the Commissioner for the variance's approval have been violated; or
 - (v) The variance threatens program authorization with EPA.
7. Any variance granted pursuant to this subparagraph shall remain valid as specified by the Commissioner, not to exceed five (5) years, or until rescinded in accordance with part 6 of this subparagraph.
8. Any person with a valid variance granted in accordance with this subparagraph shall submit to the Commissioner:
 - (i) No later than March 1 of each year, a certification that the factual basis for which the variance was granted remains unchanged, the regulations, as amended, continue to support it and the conditions for its approval have not been violated; or
 - (ii) Within thirty (30) days of its discovery, a detailed description of any change in the factual basis for which the variance was granted, the impact any amended regulation has on the variance, or any noncompliance with a condition for its approval.

~~(4) — Variance from Classification as a Waste [40 CFR 260.30]~~

~~(a)(b) General Non-waste determinations, and variances from classification as a solid waste and Certificates to Operate for a hazardous secondary material reclamation facility or intermediate facility [40 CFR 260.30]~~

1. In accordance with the standards and criteria in subparagraph (b) subparagraphs (c) and (e) of this paragraph and the procedures in subparagraph (e) (g) of this paragraph, the Commissioner may determine on a case-by-case basis that the following recycled materials are not solid wastes:

- 4-(i) Materials that are accumulated speculatively without sufficient amounts being recycled (as defined in Rule 0400-12-01-.02(1)(a)3(viii));
- 2-(ii) Materials that are reclaimed and then reused within the original production process in which they were generated;
- 3-(iii) Materials that have been reclaimed but must be reclaimed further before the materials are completely recovered;
- 4-(iv) Hazardous secondary materials that are reclaimed in a continuous industrial process; and
- 5-(v) Hazardous secondary materials that are indistinguishable in all relevant aspects from a product or intermediate.

2. In accordance with the standards and criteria in subparagraph (f) of this paragraph and the procedures in subparagraph (g) of this paragraph, the Commissioner may, on a case-by-case basis, issue a Certificate to Operate for a hazardous secondary material reclamation facility or intermediate facility where the management of the hazardous secondary materials is not addressed under a Part B permit issued under Rule 0400-12-01-.07 or the interim status standards of Rule 0400-12-01-.05.

(b)(c) Standards and Criteria for Variances from Classification as a Solid Waste [40 CFR 260.31]

1. The Commissioner may grant requests for a variance from classifying as a solid waste those materials that are accumulated speculatively without sufficient amounts being recycled if the applicant demonstrates that sufficient amounts of the material will be recycled or transferred for recycling in the following year. If a variance is granted, it is valid only for the following year, but can be renewed, on an annual basis, by filing a new application. The Commissioner's decision will be based on the following criteria:
 - (i) The manner in which the material is expected to be recycled, when the material is expected to be recycled, and whether this expected disposition is likely to occur (for example, because of past practice, market factors, the nature of the material, or contractual arrangements for recycling);
 - (ii) The reason that the applicant has accumulated the material for one or more years without recycling 75 percent of the volume accumulated at the beginning of the year;
 - (iii) The quantity of material already accumulated and the quantity expected to be generated and accumulated before the material is recycled;
 - (iv) The extent to which the material is handled to minimize loss; and
 - (v) Other relevant factors.
2. The Commissioner may grant requests for a variance from classifying as a solid waste those materials that are reclaimed and then reused as feedstock within the original production process in which the materials were generated if the reclamation operation is an essential part of the production process. This determination will be based on a description of the reclamation operation and the following criteria:
 - (i) How economically viable the production process would be if it were to use virgin materials, rather than reclaimed materials;
 - (ii) The extent to which the material is handled before reclamation to minimize loss;
 - (iii) The time periods between generating the material and its reclamation, and between reclamation and return to the original primary production process;

- (iv) The location of the reclamation operation in relation to the production process;
- (v) Whether the reclaimed material is used for the purpose for which it was originally produced when it is returned to the original process, and whether it is returned to the process in substantially its original form;
- (vi) Whether the person who generates the material also reclaims it; and
- (vii) Other relevant factors.

3. The Commissioner may grant requests for a variance from classifying as a solid waste those hazardous secondary materials that have been partially reclaimed, but must be reclaimed further before recovery is completed if, after initial reclamation, the resulting material is commodity-like (even though it is not yet a commercial product, and has to be reclaimed further). This determination will be based on the following factors: completed, if the partial reclamation has produced a commodity-like material. A determination that a partially-reclaimed material for which the variance is sought is commodity-like will be based on whether the hazardous secondary material is legitimately recycled as specified in subparagraph (5)(d) of this rule and on whether all of the following decision criteria are satisfied:

- (i) The Whether the degree of processing partial reclamation the material has undergone and the degree of further processing that is required is substantial as demonstrated by using a partial reclamation process other than the process that generated the hazardous waste;
- (ii) The value of the material after it has been reclaimed Whether the partially-reclaimed material has sufficient economic value that it will be purchased for further reclamation;
- (iii) The degree to which the reclaimed material is like an analogous raw material Whether the partially-reclaimed material is a viable substitute for a product or intermediate produced from virgin or raw materials which is used in subsequent production steps;
- (iv) The extent to which an end market for the reclaimed material is guaranteed Whether there is a market for the partially-reclaimed material as demonstrated by known customer(s) who are further reclaiming the material (e.g., records of sales and/or contracts and evidence of subsequent use, such as bills of lading); and
- (v) The extent to which Whether the partially-reclaimed material is handled to minimize loss;
- (vi) ~~Other relevant factors.~~

~~(d) Any variance granted pursuant to this paragraph may be rescinded if it is discovered and determined by the Commissioner that:~~

- ~~1. The variance has resulted or may result in a significant hazard to public health or the environment;~~
- ~~2. The factual basis for which the variance was granted has significantly changed;~~
- ~~3. The regulations, as amended, no longer support the variance;~~
- ~~4. The conditions issued by the Commissioner for the variance's approval have been violated; or~~
- ~~5. The variance threatens program authorization with EPA.~~

~~(e) Any variance granted pursuant to this paragraph shall remain valid until rescinded in accordance with subparagraph (d) of this paragraph.~~

~~(f) Any person with a valid variance granted pursuant to this paragraph shall submit to the Commissioner:~~

~~1. No later than March 1 of each year, a certification that the factual basis for which the variance was granted remains unchanged, the regulations, as amended, continue to support it and the conditions for its approval have not been violated; or~~

~~2. Within thirty (30) days of its discovery, a detailed description of any change in the factual basis for which the variance was granted, the impact any amended regulation has on the variance, or any noncompliance with a condition for its approval.~~

~~(5) (a)(d) Variance to be classified as a boiler [40 CFR 260.32]~~

In accordance with the standards and criteria in subparagraph (2)(a) of this rule (definition of "boiler") and the procedures in subparagraph ~~(b)(g)~~ of this paragraph, the Commissioner may determine on a case-by-case basis that certain enclosed devices using controlled flame combustion are boilers, even though they do not otherwise meet the definition of boiler contained in subparagraph (2)(a) of this rule, after considering the following criteria:

1. The extent to which the unit has provisions for recovering and exporting thermal energy in the form of steam, heated fluids, or heated gases; and
2. The extent to which the combustion chamber and energy recovery equipment are of integral design; and
3. The efficiency of energy recovery, calculated in terms of the recovered energy compared with the thermal value of the fuel; and
4. The extent to which exported energy is utilized; and
5. The extent to which the device is in common and customary use as a "boiler" functioning primarily to produce steam, heated fluids, or heated gases; and
6. Other factors, as appropriate.

~~(e) Standards and criteria for non-waste determinations [40 CFR 260.34]~~

~~1. An applicant may apply to the Commissioner for a formal determination that a hazardous secondary material is not discarded and therefore not a solid waste. The determinations will be based on the criteria contained in parts 2 and 3 of this subparagraph, as applicable. If an application is denied, the hazardous secondary material might still be eligible for a solid waste variance or exclusion (for example, one of the solid waste variances under subparagraph (c) of this paragraph).~~

~~2. The Commissioner may grant a non-waste determination for hazardous secondary material which is reclaimed in a continuous industrial process if the applicant demonstrates that the hazardous secondary material is a part of the production process and is not discarded. The determination will be based on whether the hazardous secondary material is legitimately recycled as specified in subparagraph (5)(d) of this rule and on the following criteria:~~

~~(i) The extent that the management of the hazardous secondary material is part of the continuous primary production process and is not waste treatment;~~

~~(ii) Whether the capacity of the production process would use the hazardous secondary material in a reasonable time frame and ensure that the hazardous~~

secondary material will not be abandoned (for example, based on past practices, market factors, the nature of the hazardous secondary material, or any contractual arrangements);

(iii) Whether the hazardous constituents in the hazardous secondary material are reclaimed rather than released to the air, water or land at significantly higher levels from either a statistical or from a health and environmental risk perspective than would otherwise be released by the production process; and

(iv) Other relevant factors that demonstrate the hazardous secondary material is not discarded, including why the hazardous secondary material cannot meet, or should not have to meet, the conditions of an exclusion under subparagraph (1)(b) or (d) of Rule 0400-12-01-.02.

3. The Commissioner may grant a non-waste determination for hazardous secondary material which is indistinguishable in all relevant aspects from a product or intermediate if the applicant demonstrates that the hazardous secondary material is comparable to a product or intermediate and is not discarded. The determination will be based on whether the hazardous secondary material is legitimately recycled as specified in subparagraph (5)(d) of this rule and on the following criteria:

(i) Whether market participants treat the hazardous secondary material as a product or intermediate rather than a waste (for example, based on the current positive value of the hazardous secondary material, stability of demand, or any contractual arrangements);

(ii) Whether the chemical and physical identity of the hazardous secondary material is comparable to commercial products or intermediates;

(iii) Whether the capacity of the market would use the hazardous secondary material in a reasonable time frame and ensure that the hazardous secondary material will not be abandoned (for example, based on past practices, market factors, the nature of the hazardous secondary material, or any contractual arrangements);

(iv) Whether the hazardous constituents in the hazardous secondary material are reclaimed rather than released to the air, water or land at significantly higher levels from either a statistical or from a health and environmental risk perspective than would otherwise be released by the production process; and

(v) Other relevant factors that demonstrate the hazardous secondary material is not discarded, including why the hazardous secondary material cannot meet, or should not have to meet, the conditions of an exclusion under subparagraph (1)(b) or (d) of Rule 0400-12-01-.02.

(f) The Commissioner may issue a Certificate to Operate for a hazardous secondary material reclamation facility or intermediate facility where the management of the hazardous secondary materials is not addressed under a Part B permit issued under Rule 0400-12-01-.07 or the interim status standards of Rule 0400-12-01-.05.

1. The Commissioner's decision will be based on the following criteria:

(i) The reclamation facility or intermediate facility must demonstrate that the reclamation process for the hazardous secondary materials is legitimate pursuant to subparagraph (5)(d) of this rule and its hazardous secondary material acceptance plan;

(ii) The reclamation facility or intermediate facility must satisfy the financial assurance condition in subitem (1)(d)1(xxiv)(VI)VI of Rule 0400-12-01-.02;

- (iii) The reclamation facility or intermediate facility must not be subject to a formal enforcement action in the previous three years and not be classified as a significant non-complier under Rule Chapter 0400-12-01 or RCRA Subtitle C, or must provide credible evidence that the facility will manage the hazardous secondary materials properly. Credible evidence may include a demonstration that the facility has taken remedial steps to address the violations and prevent future violations, or that the violations are not relevant to the proper management of the hazardous secondary materials;
- (iv) The intermediate or reclamation facility must have the equipment and trained personnel needed to safely manage the hazardous secondary material and must meet emergency preparedness and response requirements under paragraph (13) of Rule 0400-12-01-.02;
- (v) If residuals are generated from the reclamation of the excluded hazardous secondary materials, the reclamation facility must have the permits required (if any) to manage the residuals, have a contract with an appropriately permitted facility to dispose of the residuals or present credible evidence that the residuals will be managed in a manner that is protective of human health and the environment; and
- (vi) The intermediate or reclamation facility must address the potential for risk to proximate populations from unpermitted releases of the hazardous secondary material to the environment (i.e., releases that are not covered by a permit, such as a permit to discharge to water or air), which may include, but are not limited to, potential releases through surface transport by precipitation runoff, releases to soil and groundwater, wind-blown dust, fugitive air emissions, and catastrophic unit failures, and must include consideration of potential cumulative risks from other nearby potential stressors.

2. To evaluate the criteria of subpart 1(vi) of this subparagraph, the Commissioner will require the petitioner to comply with subparts (i) and (ii) of this part.

(i) Prior to applying for a Certificate to Operate, the petitioner must hold at least one meeting with the public in order to solicit questions from the community and inform the community of proposed hazardous secondary material management activities.

(I) At the meeting, the petitioner must:

I. Post a sign-in sheet or otherwise provide a voluntary opportunity for attendees to provide their names and addresses; and

II. Provide a community impact statement that includes the following:

A. A description of the hazardous secondary materials to be received at the facility, including quantities and methods of management;

B. A description of security procedures proposed for the facility;

C. Information on hazard prevention and preparedness, including a summary of the arrangements with local emergency authorities;

D. A description of procedures, structures or equipment used to prevent employee exposure, hazards during

unloading, runoff from handling areas, and contamination of water supplies;

E. A description of traffic patterns, traffic volume and control, condition of access roads, and the adequacy of traffic control signals; and

F. A description of the facility location information relative to flood plain and seismic activity.

(II) The petitioner must submit documentation to the Commissioner of the public notices, the community impact statement, a summary of the meeting, along with the list of attendees and their addresses, and copies of any written comments or materials submitted at the meeting.

(III) The owner or operator must provide public notice of the community meeting at least thirty (30) days prior to the meeting.

(IV) The public notice required by item (III) of this subpart must contain language approved by the Commissioner and published in a manner specified by the Commissioner.

(ii) The petitioner must describe how the facility is designed, constructed, operated and maintained to ensure protection of human health and the environment. Protection of human health and the environment includes, but is not limited to:

(I) Prevention of any releases that may have adverse effects on human health or the environment due to migration of hazardous constituents in the ground water or subsurface environment, considering:

I. The volume and physical and chemical characteristics of the hazardous secondary material to be managed at the facility, including its potential for migration through soil, liners, or other containing structures;

II. The hydrologic and geologic characteristics of the management units at the facility and the surrounding area;

III. The existing quality of ground water, including other sources of contamination and their cumulative impact on the ground water;

IV. The quantity and direction of ground-water flow;

V. The proximity to and withdrawal rates of current and potential ground-water users;

VI. The patterns of land use in the region;

VII. The potential for deposition or migration of hazardous constituents into subsurface physical structures, and into the root zone of food-chain crops and other vegetation;

VIII. The potential for health risks caused by human exposure to hazardous constituents; and

IX. The potential for damage to domestic animals, wildlife, crops, vegetation, and physical structures caused by exposure to hazardous constituents.

- (II) Prevention of any releases that may have adverse effects on human health or the environment due to migration of hazardous constituents in surface water, or wetlands, or on the soil surface considering:
- I. The volume and physical and chemical characteristics of the hazardous secondary material to be managed at the facility;
 - II. The effectiveness and reliability of containing, confining, and collecting systems and structures in preventing migration;
 - III. The hydrologic characteristics of the facility and the surrounding area, including the topography of the land around the facility;
 - IV. The patterns of precipitation in the region;
 - V. The quantity, quality, and direction of ground-water flow;
 - VI. The proximity of the unit to surface waters;
 - VII. The current and potential uses of nearby surface waters and any water quality standards established for those surface waters;
 - VIII. The existing quality of surface waters and surface soils, including other sources of contamination and their cumulative impact on surface waters and surface soils;
 - IX. The patterns of land use in the region;
 - X. The potential for health risks caused by human exposure to hazardous constituents; and
 - XI. The potential for damage to domestic animals, wildlife, crops, vegetation, and physical structures caused by exposure to hazardous constituents.
- (III) Prevention of any releases that may have adverse effects on human health or the environment due to migration of hazardous constituents in the air, considering:
- I. The volume and physical and chemical characteristics of the hazardous secondary materials to be managed at the facility, including its potential for the emission and dispersal of gases, aerosols and particulates;
 - II. The effectiveness and reliability of systems and structures to reduce or prevent emissions of hazardous constituents to the air;
 - III. The operating characteristics of the units managing hazardous secondary materials;
 - IV. The atmospheric, meteorologic, and topographic characteristics of the units to be managing hazardous secondary materials at the facility and the surrounding area;
 - V. The existing quality of the air, including other sources of contamination and their cumulative impact on the air;
 - VI. The potential for health risks caused by human exposure to hazardous constituents; and

VII. The potential for damage to domestic animals, wildlife, crops, vegetation, and physical structures caused by exposure to hazardous constituents.

(e)(g) Procedures for variances from classification as a solid waste, for issuing a Certificate to Operate for a hazardous secondary material reclamation facility or intermediate facility, for variances to be classified as a boiler, and for non-waste determinations [40 CFR 260.33]

The Commissioner will use the following procedures in evaluating applications for variances from classification as a waste: applications for obtaining a Certificate to Operate for a hazardous secondary material reclamation facility or intermediate facility, applications to classify particular enclosed controlled flame combustion devices as boilers, and applications for non-waste determinations.

1. The applicant must apply to the Commissioner, and for the variance, the Certificate to Operate or non-waste determination. The application must address the relevant criteria contained in subparagraph (b) subparagraph (c), (d), (e) or (f) of this paragraph, as applicable.
2. The Commissioner will evaluate the application and make a tentative decision to grant or deny the application and shall notify the petitioner of this tentative decision. If the Commissioner makes a tentative decision to grant the petition, the Commissioner shall give public notice of such tentative decision for written public comment. The public notice shall be provided by the applicant as prepared and required by the Commissioner in a newspaper advertisement and or radio broadcast in the locality where the recycler is located. The applicant shall provide proof of the completion of all notice requirements to the Commissioner within ten days following conclusion of the public notice procedures. The Commissioner will accept comment on the tentative decision for thirty (30) days, and may also hold a public hearing upon request or at his discretion. Notice of the public hearing shall be given by the applicant and prepared as required by the Commissioner. The Commissioner will issue a final decision after receipt of comments and after the hearing (if any).
3. (i) Except for the change described in subpart (ii) of this part, in the event of a change in circumstances that affects how a hazardous secondary material meets the relevant criteria contained in subparagraph (c), (d), (e) or (f) of this paragraph upon which a variance, Certificate to Operate or non-waste determination has been based, the applicant must send a description of the change in circumstances to the Commissioner. The Commissioner may issue a determination that the hazardous secondary material continues to meet the relevant criteria of the variance, Certificate to Operate, or non-waste determination or may require the facility to re-apply for the variance, Certificate to Operate or non-waste determination.
(ii) Any change made to the hazardous secondary material acceptance plan required under item (4)(d)1(xxiv)(VI)VIII of Rule 0400-12-01-02 must be approved and the Certificate to Operate modified by the Commissioner after considering the applicable criteria of subparagraph (f) of this paragraph and following the procedures of this subparagraph prior to the change being implemented.
4. Variances, Certificates to Operate and non-waste determinations shall be effective for a fixed term not to exceed ten (10) years. No later than six (6) months prior to the end of this term, facilities must re-apply for a variance, Certificate to Operate, or non-waste determination. If a facility re-applies for a variance, verification or non-waste determination within six (6) months, the facility may continue to operate under an expired variance, Certificate to Operate or non-waste determination until receiving a decision on the facility's re-application from the Commissioner.

5. Facilities receiving a variance, Certificate to Operate or non-waste determination must provide notification as required by subparagraph (5)(c) of this rule.

(h) Causes for Termination of the Certificate to Operate

1. Failure of the owner or operator to comply with any condition of the Certificate to Operate;
2. The owner or operator's failure in the application or during the issuance process to disclose fully all relevant facts, or the owner or operator's misrepresentation of any relevant facts at any time;
3. A determination by the Commissioner that continuing the authorized activity endangers human health or the environment;
4. Failure of the owner or operator to timely pay the annual maintenance fees in accordance with Rule 0400-12-01-.08; or
5. At the request of the owner or operator, provided all hazardous secondary materials and residues have been removed to the satisfaction of the Commissioner.

(i) Duty to Comply with the Certificate to Operate

1. The owner or operator of the hazardous secondary material reclamation or intermediate facility shall comply with the conditions of the Certificate to Operate as determined necessary by the Commissioner.
2. Failure to comply with the conditions of the Certificate to Operate issued by the Commissioner shall subject the owner or operator of the hazardous secondary material reclamation or intermediate facility to an enforcement action, including, if applicable, operating a hazardous waste treatment, storage or disposal facility without a permit.

~~(5) Variance to be Classified as a Boiler [40 CFR 260.32]~~

~~(a) General/Criteria~~

~~In accordance with the standards and criteria in subparagraph (2)(a) of this rule (definition of "boiler") and the procedures in subparagraph (b) of this paragraph, the Commissioner may determine on a case-by-case basis that certain enclosed devices using controlled flame combustion are boilers, even though they do not otherwise meet the definition of boiler contained in subparagraph (2)(a) of this rule, after considering the following criteria:~~

- ~~1. The extent to which the unit has provisions for recovering and exporting thermal energy in the form of steam, heated fluids, or heated gases; and~~
- ~~2. The extent to which the combustion chamber and energy recovery equipment are of integral design; and~~
- ~~3. The efficiency of energy recovery, calculated in terms of the recovered energy compared with the thermal value of the fuel; and~~
- ~~4. The extent to which exported energy is utilized; and~~
- ~~5. The extent to which the device is in common and customary use as a "boiler" functioning primarily to produce steam, heated fluids, or heated gases; and~~
- ~~6. Other factors, as appropriate.~~

~~(b) Procedures [40 CFR 260.33]~~

~~The Commissioner will use the following procedures in evaluating applications to classify particular enclosed controlled flame combustion devices as boilers:~~

- ~~1. The applicant must apply to the Commissioner for the variance, and the application must address the relevant criteria contained in subparagraph (a) of this paragraph.~~
 - ~~2. The Commissioner will evaluate the application and make a tentative decision to grant or deny the application and shall notify the petitioner of this tentative decision. If the Commissioner makes a tentative decision to grant the petition, the Commissioner shall give public notice of such a tentative decision for written comment. The public notice shall be provided by the applicant as prepared and required by the Commissioner in a newspaper advertisement and radio broadcast in the locality where the recycler is located. The applicant shall provide proof of the completion of all notice requirements to the Commissioner within ten days following conclusion of the public notice procedures. The Commissioner will accept comment on the tentative decision for 30 days, and may also hold a public hearing upon request or at his discretion. Notice of the public hearing shall be given by the applicant and prepared as required by the Commissioner. The Commissioner will issue a final decision after receipt of comments and after the hearing (if any).~~
- ~~(c) Any variance granted pursuant to this paragraph may be rescinded if it is discovered and determined by the Commissioner that:~~
- ~~1. The variance has resulted or may result in a significant hazard to public health or the environment;~~
 - ~~2. The factual basis for which the variance was granted has significantly changed;~~
 - ~~3. The regulations, as amended, no longer support the variance;~~
 - ~~4. The conditions issued by the Commissioner for the variance's approval have been violated; or~~
 - ~~5. The variance threatens program authorization with EPA.~~
- ~~(d) Any variance granted pursuant to this paragraph shall remain valid until rescinded in accordance with subparagraph (c) of this paragraph.~~
- ~~(e) Any person with a valid variance granted pursuant to this paragraph shall submit to the Commissioner:~~
- ~~1. No later than March 1 of each year, a certification that the factual basis for which the variance was granted remains unchanged, the regulations, as amended, continue to support it and the conditions for its approval have not been violated; or~~
 - ~~2. Within thirty (30) days of its discovery, a detailed description of any change in the factual basis for which the variance was granted, the impact any amended regulation has on the variance, or any noncompliance with a condition for its approval.~~

~~(6) Additional Regulation of Certain Hazardous Waste Recycling Activities on a Case-by-Case Basis [40 CFR 260.40]~~

(5) Additional Requirements

(a) General Additional Regulation of Certain Hazardous Waste Recycling Activities on a Case-by-Case Basis [40 CFR 260.40]

The Commissioner may decide on a case-by-case basis that persons accumulating or storing the recyclable materials described in Rule 0400-12-01-.02(1)(f)1(ii)(III) should be regulated under Rule 0400-12-01-.02(1)(f)2 and 3. The basis for this decision is that the materials are being

accumulated or stored in a manner that does not protect human health and the environment because the materials or their toxic constituents have not been adequately contained, or because the materials being accumulated or stored together are incompatible. In making this decision, the Commissioner will consider the following factors:

1. The types of materials accumulated or stored and the amounts accumulated or stored;
2. The method of accumulation or storage;
3. The length of time the materials have been accumulated or stored before being reclaimed;
4. Whether any contaminants are being released into the environment, or are likely to be so released; and
5. Other relevant factors.

The procedures for this decision are set forth in subparagraph (b) of this paragraph.

(b) Procedures for Case-by-Case Regulation of Hazardous Waste Recycling Activities [40 CFR 260.41]

The Commissioner will use the following procedures when determining whether to regulate hazardous waste recycling activities described in Rule 0400-12-01-.02(1)(f)1(ii)(III) under the provisions of Rule 0400-12-01-.02(1)(f)2 and 3, rather than under the provisions of Rule 0400-12-01-.09(6).

1. If a generator is accumulating the waste, the Commissioner will issue a notice, published by the owner or operator, as prepared and required by the Commissioner, setting forth the factual basis for the decision and stating that the person must comply with the applicable requirements of paragraphs (1), (4), (5), and (6) of Rule 0400-12-01-.03. The notice will become final within 30 days, unless the person served requests a public hearing to challenge the decision. Upon receiving such a request, the Commissioner will hold a public hearing. The Commissioner will provide notice, published by the owner or operator as prepared and required by the Commissioner, of the hearing to the public and allow public participation at the hearing. The owner or operator shall provide proof of the completion of all notice requirements to the Commissioner within ten days following conclusion of the public notice procedures. The Commissioner will issue a final order after the hearing stating whether or not compliance with Rule 0400-12-01-.03 is required. The order becomes effective 30 days after service of the decision unless the Commissioner specifies a later date or unless review by the Board is requested. The order may be appealed to the Board by any person who participated in the public hearing. The Board may choose to grant or to deny the appeal. Final Department action occurs when a final order is issued and Department review procedures are exhausted.
2. If the person is accumulating the recyclable material as a storage facility, the notice will state that the person must obtain a permit in accordance with all applicable provisions of Rule 0400-12-01-.07. The owner or operator of the facility must apply for a permit within no less than 60 days and no more than six months of notice, as specified in the notice. If the owner or operator of the facility wishes to challenge the Commissioner's decision, he may do so in his permit application, in a public hearing held on the draft permit, or in comments filed on the draft permit, or on the notice of intent to deny the permit. The fact sheet accompanying the permit will specify the reasons for the determination. The question of whether the Commissioner's decision was proper will remain open for consideration during the public comment period discussed under Rule 0400-12-01-.07(7)(e) and in any subsequent hearing.

(c) Notification requirement for hazardous secondary materials. [40 CFR 260.42]

1. Facilities managing hazardous secondary materials under subparagraph (4)(b) of this rule, or subpart (1)(d)1(xxiii), (xxiv) or (xxvii) of Rule 0400-12-01-.02 must send a notification prior to operating under the regulatory provision and by March 1 of each even-numbered year thereafter to the Commissioner using forms provided by the department that include the following information:

- (i) The name, address, and EPA ID number (if applicable) of the facility;
- (ii) The name and telephone number of a contact person;
- (iii) The NAICS code of the facility;
- (iv) The regulation under which the hazardous secondary materials will be managed;
- (v) When the facility began or expects to begin managing the hazardous secondary materials in accordance with the regulation;
- (vi) A list of hazardous secondary materials that will be managed according to the regulation (reported as hazardous waste codes that would apply if the hazardous secondary materials were managed as hazardous wastes);
- (vii) For each hazardous secondary material, whether the hazardous secondary material, or any portion thereof, will be managed in a land-based unit;
- (viii) The quantity of each hazardous secondary material to be managed annually; and
- (ix) The certification (included in the forms provided by the department) signed and dated by an authorized representative of the facility.

2. If a facility managing hazardous secondary materials has submitted a notification, but then subsequently stops managing hazardous secondary materials in accordance with subparagraph (4)(b) of this rule, or subpart (1)(d)1(xxiii), (xxiv) or (xxvii) of Rule 0400-12-01-.02 the facility must notify the Commissioner within thirty (30) days using forms provided by the department. For purposes of this part, a facility has stopped managing hazardous secondary materials if the facility no longer generates, manages and/or reclaims hazardous secondary materials under subparagraph (4)(b) of this rule, or subpart (1)(d)1(xxiii), (xxiv) or (xxvii) of Rule 0400-12-01-.02 and does not expect to manage any amount of hazardous secondary materials for at least one (1) year.

(d) Legitimate recycling of hazardous secondary materials [40 CFR 260.43]

1. Recycling of hazardous secondary materials for the purpose of the exclusions or exemptions from the hazardous waste regulations must be legitimate. Hazardous secondary material that is not legitimately recycled is discarded material and is a solid waste. In determining if their recycling is legitimate, persons must address all the requirements of this part.

- (i) Legitimate recycling must involve a hazardous secondary material that provides a useful contribution to the recycling process or to a product or intermediate of the recycling process. The hazardous secondary material provides a useful contribution if it:
 - (I) Contributes valuable ingredients to a product or intermediate; or
 - (II) Replaces a catalyst or carrier in the recycling process; or
 - (III) Is the source of a valuable constituent recovered in the recycling process; or
 - (IV) Is recovered or regenerated by the recycling process; or

- (V) Is used as an effective substitute for a commercial product.
- (ii) The recycling process must produce a valuable product or intermediate. The product or intermediate is valuable if it is:
 - (I) Sold to a third party; or
 - (II) Used by the recycler or the generator as an effective substitute for a commercial product or as an ingredient or intermediate in an industrial process.
- (iii) The generator and the recycler must manage the hazardous secondary material as a valuable commodity when it is under their control. Where there is an analogous raw material, the hazardous secondary material must be managed, at a minimum, in a manner consistent with the management of the raw material or in an equally protective manner. Where there is no analogous raw material, the hazardous secondary material must be contained. Hazardous secondary materials that are released to the environment and are not recovered immediately are discarded.
- (iv) The product of the recycling process must be comparable to a legitimate product or intermediate:
 - (I) Where there is an analogous product or intermediate, the product of the recycling process is comparable to a legitimate product or intermediate if:
 - I. The product of the recycling process does not exhibit a hazardous characteristic (as defined in paragraph (3) of Rule 0400-12-01-.02) that analogous products do not exhibit, and
 - II. The concentrations of any hazardous constituents found in appendix VIII of paragraph (30) of Rule 0400-12-01-.02 that are in the product or intermediate are at levels that are comparable to or lower than those found in analogous products or at levels that meet widely-recognized commodity standards and specifications, in the case where the commodity standards and specifications include levels that specifically address those hazardous constituents.
 - (II) Where there is no analogous product, the product of the recycling process is comparable to a legitimate product or intermediate if:
 - I. The product of the recycling process is a commodity that meets widely recognized commodity standards and specifications (e.g., commodity specification grades for common metals), or

(Note: For specialty products such as specialty batch chemicals or specialty metal alloys, customer specifications would be sufficient.)
 - II. The hazardous secondary materials being recycled are returned to the original process or processes from which they were generated to be reused (e.g., closed loop recycling).

(Note: There is no analogous product when the hazardous secondary material is recycled by being returned to the original production process or processes. Production process or processes includes those activities that tie directly into the

manufacturing operation or those activities that are the primary operation at an establishment.)

(III) If the product of the recycling process has levels of hazardous constituents that are not comparable to or unable to be compared to a legitimate product or intermediate per item (I) or (II) of this subpart, the recycling still may be shown to be legitimate, if it meets the following specified requirements. The person performing the recycling must conduct the necessary assessment and prepare documentation showing why the recycling is, in fact, still legitimate. The recycling can be shown to be legitimate based on lack of exposure from toxics in the product, lack of the bioavailability of the toxics in the product, or other relevant considerations which show that the product made using recycled material does not contain levels of hazardous constituents that pose a significant human health or environmental risk. The documentation must include a certification statement that the recycling is legitimate and must be maintained on-site for three years after the recycling operation has ceased. The person performing the recycling must notify the Commissioner of this activity using forms provided by the department.

(Note: To comply with the requirements of this subpart, a generator of the hazardous secondary material, product or intermediate may use its knowledge of the materials it recycles and of the recycling process to make legitimacy determinations.)

(Note: A person who meets the specific provisions included in 0400-12-01-.02(1)(b)3 Table 1, 0400-12-01-.02(1)(b)5, 0400-12-01-.02(1)(d)1(vi) through (xxii), 0400-12-01-.02(1)(f)1(ii)(III) and (IV), and 0400-12-01-.02(1)(f)1(iii)(I), are presumed to conduct legitimate recycling, except in those rare cases when it is necessary to document legitimacy in accordance with item 1(iv)(III) of this subparagraph. If, at any time, the Commissioner suspects that sham recycling may be occurring, in accordance with part (1)(b)6 of Rule 0400-12-01-.02, the Commissioner may require a person to demonstrate that the recycling in question is legitimate in accordance with this subparagraph.)

2. Reserved

3. Reserved

(6) Reserved

(7) **Proprietary Information**

(a) **General**

1. **Purpose, Scope, and Applicability**

Except as provided under subparts (i) and (ii) of this part, any information which is supplied to the Department by persons who are subject to these rules and which is designated as proprietary information (as defined in subpart 2(viii) of this subparagraph) shall be handled by the Department as specified in this paragraph to assure that its confidentiality is maintained. Unless it is claimed or designated as proprietary, any information supplied to the Department under or relating to these rules shall be available for public review at any time during the State's normal business hours.

(i) After the effective date of these rules, no claim of business confidentiality may be asserted by any person with respect to information entered on a Hazardous Waste Manifest (EPA Form 8700-22), a Hazardous Waste Manifest Continuation Sheet (EPA Form 8700-22A), or an electronic manifest format that may be

prepared and used in accordance with subpart (3)(a)1(iii) of Rule 0400-12-01-.03.

- (ii) The Department will make any electronic manifest that is prepared and used in accordance with subpart (3)(a)1(iii) of Rule 0400-12-01-.03, or any paper manifest that is submitted to the system under item (5)(b)1(ii)(V) of Rule 0400-12-01-.05 or item (5)(b)1(ii)(V) of Rule 0400-12-01-.06 available to the public under this paragraph when the electronic or paper manifest is a complete and final document. Electronic manifests and paper manifests submitted to the system are considered by the Department to be complete and final documents and publicly available information after 90 days have passed since the delivery to the designated facility of the hazardous waste shipment identified in the manifest.

(Note: See 40 CFR 260.2(b) for additional requirements.)

2. Definitions

The following terms shall be defined as indicated for the purposes of this paragraph and this paragraph only:

- (i) "Access" is the ability and opportunity to gain knowledge of Proprietary Information in any manner whatsoever.
- (ii) "Authorized person" is any person, including members of the Board, authorized to receive Proprietary Information. Except for members of the Board, such authorization shall be granted in writing by the Commissioner.
- (iii) "Document" is any recorded information regardless of its physical form or characteristics, including, but not limited to, written or printed material; processing cards and tapes; maps; charts; paintings; drawings; engravings; sketches; working papers and notes; reproduction of such things by any means or process; and sound, voice, or electronic recordings in any form.
- (iv) "Document Control Number" is the unique number assigned by the document control officer to any document containing Proprietary Information.
- (v) "Document Control Officer" is the individual authorized by the Commissioner in writing to be responsible for all incoming and outgoing documents identified as containing Proprietary Information.
- (vi) "Information" is knowledge which can be communicated by any means.
- (vii) "Instruction" is fully informing individuals in writing of their responsibilities for safeguarding Proprietary Information and the security procedures they shall follow.
- (viii) "Proprietary Information" means any confidential information that relates to a trade secret, product, apparatus, process, operation, style of work, or financial information which is owned (not necessarily exclusively) by or licensed to a person and claimed by that person to be proprietary and confidential; provided that the claim is accompanied by a written statement from such person relating the reasons why such information should be held confidential. Such information may be submitted to the Department by the owner/licensee of the trade secret, product, etc.; or by another governmental agency which has obtained the information. If submitted by the owner/licensee, the written statement accompanying the information claimed proprietary must, at a minimum, answer the questions in items (I) through (IV) of this subpart. If submitted by another governmental agency, the written statement need include only the accompanying statements/reasons obtained by that agency.

- (I) Will disclosure of the information be likely to substantially harm your competitive position? If so, what would the harm be, and why should it be viewed as substantial? What is the relationship between disclosure and the harm?
- (II) What measures have you taken to guard against undesired disclosure of the information to others?
- (III) To what extent has the information been disclosed to others, and what precautions have you taken in connection with that disclosure?
- (IV) Has the U.S. Environmental Protection Agency or any other Federal or State of Tennessee agency made a pertinent confidentiality determination? (If so, please include a copy of this determination, if available.)

3. Policy

Department employees are prohibited from disclosing, in any manner and to any extent not authorized by law or regulations, any Proprietary Information coming to them in the course of their employment or official duties. Proprietary Information is to be held in confidence, protected in accordance with the procedures described in this paragraph, and released only to authorized persons.

(b) Responsibilities

1. Commissioner

The Commissioner is responsible for:

- (i) Designating a document control officer;
- (ii) Assuring that all Department employees receiving and handling Proprietary Information receive instruction as to their responsibilities for controlling Proprietary Information;
- (iii) Maintaining a record which lists all employees who have authorized access to Proprietary Information;
- (iv) Obtaining a "Confidentiality Agreement" from all employees having access to Proprietary Information;
- (v) Obtaining a "Confidentiality Agreement upon Transfer or Termination" from all employees having access to Proprietary Information in the event such employees decide to terminate employment or are transferred to a position not requiring such access;
- (vi) Assuring that the appropriate requirements for storage and use are met, including control of access to keys and combinations;
- (vii) Taking appropriate disciplinary action concerning any Department employees who fail to comply with the requirements of this paragraph; and
- (viii) Notifying the person submitting Proprietary Information which has been disclosed in violation of the requirements of this paragraph of such occurrence.

2. Document Control Officer

The Document Control Officer is responsible for the maintenance, control and distribution of all Proprietary Information received by the Department as follows:

- (i) Logging of all Proprietary Information as received by the Department, both incoming and outgoing;
- (ii) Assigning a document control number to each document received containing Proprietary Information;
- (iii) Maintaining a system which identifies employees authorized to receive Proprietary Information;
- (iv) Releasing Proprietary Information only to persons from whom the confidentiality agreements of subparts 1(iv) and (v) of this subparagraph have been obtained;
- (v) Maintaining a system to insure that any Proprietary Information transmitted to field locations is received;
- (vi) Maintaining at Department offices a system for retrieval of documents that are furnished to other program offices;
- (vii) Authorizing and supervising the reproduction and destruction of Proprietary Information; and
- (viii) Assuring that recipients of Proprietary Information have proper storage capability prior to release of such documents, or, if they do not, requiring return of the released Proprietary Information the same day.

3. Employees

Employees are responsible for:

- (i) Controlling all Proprietary Information entrusted to them;
- (ii) Only discussing Proprietary Information with authorized persons;
- (iii) Never leaving the Proprietary Information unattended when not properly stored;
- (iv) Never discussing Proprietary Information over the telephone except upon approval of the document control officer should the Proprietary Information be needed in an emergency situation;
- (v) Storing the Proprietary Information as specified in part (c)5 of this paragraph when not in use and at the close of business;
- (vi) Not reproducing Proprietary Information documents. Additional copies must be obtained through the document control officer; and
- (vii) Reporting immediately possible violations of these regulations to the Commissioner.

(c) Procedures

1. Receipt and Handling

The document control officer shall:

- (i) Receive all information claimed as proprietary and confidential which is submitted to the Department;
- (ii) Log in all Proprietary Information received by the Department;
- (iii) Assign a document control number to all Proprietary Information;

- (iv) Attach a Proprietary Information cover sheet to the document;
- (v) Release Proprietary Information only to authorized persons; and
- (vi) Review the claim and, using the written statement accompanying the information claimed proprietary, the answers to the questions at items (a)2(viii)(I) through (IV) of this paragraph and other information as may be required, determine whether to approve or deny it, in part or in whole.

2. Transmission

- (i) Proprietary Information must be transmitted in a double envelope by Registered Mail, Return Receipt Requested. The inner envelope must reflect the address of the recipient with the following additional wording on the front side of the inner envelope:

"Confidential Business - To Be Opened By Document Control Officer Only."

The outer envelope must reflect the normal address without the additional wording.

- (ii) All requests to the document control officer for Proprietary Information must be in writing and signed by the requesting employee.
- (iii) Proprietary Information may be hand carried to other Department facilities by authorized persons providing the dispatching document control officer maintains a record and obtains a receipt from the receiving document control officer. Information being hand carried should be packaged as described in subpart (i) of this part.
- (iv) Proprietary Information within a Department office shall be hand delivered only by an authorized person. At no time shall Proprietary Information be transmitted through inner office mailing channels.

3. Reproduction

Proprietary Information shall not be reproduced except upon approval by and under the supervision of the document control officer. Any reproduction shall be limited by a document control system and be subject to the same control requirements as for the original.

4. Destruction

Proprietary Information shall not be destroyed except upon approval by and under the supervision of the document control officer. The document control officer shall keep a record of destruction in the appropriate log and notify the person submitting the Proprietary Information.

5. Storage

- (i) Documents containing Proprietary Information must be stored within a locked cabinet so as to limit access to authorized persons.
- (ii) Keys and/or combinations to cabinets and/or rooms where the data is stored must be issued only to an authorized person.

(d) Transmittal Outside Department Offices

Proprietary Information shall not be transmitted outside Department offices without the approval of the Commissioner and such information must be transmitted by the document control officer

in accordance with part (c)2 of this paragraph. The person submitting the Proprietary Information shall be notified when such occurs.

(e) Release to EPA

Notwithstanding any requirement of this paragraph seemingly to the contrary, Proprietary Information may be released to the U.S. Environmental Protection Agency in connection with the Commissioner's or Board's implementation or his or its responsibilities pursuant to the Act or as necessary to comply with federal law. Any such release of Proprietary Information to EPA, however, will be made with a confidentiality claim and shall be accompanied by the written statement received by the Department pursuant to subpart (a)2(viii) of this paragraph. Any transmittal of Proprietary Information to EPA shall be subject to the requirements of subparagraph (d) of this paragraph. The Commissioner shall notify the submitter of Proprietary Information of the release of such information to EPA as soon as practicable - to be no later than 5 days after such release - following receipt of EPA's request for the information.

(8) Availability of Information

- (a) The Division will respond to all requests for records within 20 days after the date of receipt of such requests.
- (b) If a facility does not assert a claim of proprietary information at the first opportunity provided by the Division, the Division may release the information without further notice to the facility. In addition, in the case of any information submitted in connection with a permit, permit application or interim status under Rules 0400-12-01-.05, .06, and .07, any facility proprietary information claim must be asserted at the time of submission of the information to the Division.
- (c) If a proprietary information claim is asserted and cannot be resolved in the time period provided for the Division's response to a request, the requestor will be notified of the proprietary information claim within the maximum 20-day time limit provided for the Division's response. In addition, the requestor must be told that the Division has denied the request in order to resolve the proprietary information claim.

(9) Retention of Records

- (a) In order to protect public health, safety and welfare, to prevent degradation of the environment, conserve natural resources and provide a coordinated statewide hazardous waste management program it is necessary to manage and retain records. These records shall be managed in accordance with Chapter 1210-01 Rules of Public Records Commission.
- (b) As defined by paragraph (2) of Rule 1210-01-.02, permanent records have permanent administrative, fiscal, historical or legal value. The following types of records generated by or received by the Department while fulfilling its duties under T.C.A. §§ 68-212-101 et seq., and Chapter 0400-12-01 Hazardous Waste Management shall be managed as permanent records:

1. All records containing information, by site, of hazardous wastes or hazardous secondary materials that have been generated, treated, stored, disposed of and/or recycled, or hazardous waste or hazardous secondary material activities that have been conducted at the site, shall be managed as a permanent record. These records have historic value since there is a risk that these hazardous waste activities may have caused contamination that remains undetected for many years. When an exposure occurs these records would be required in order to facilitate an effective response. These records include, but are not limited to:
 - (i) Generator notifications, waste stream pages and annual reports;
 - (ii) Hazardous waste permits and permit applications;
 - (iii) Hazardous Waste Inspection reports and enforcement actions; and

(iv) Recycling determinations and investigations.

2. All records regarding hazardous waste or hazardous substance remedial action sites managed by the Division shall be managed as permanent records. Records regarding site characterization, monitoring, remedial actions, risk determination and enforcement actions have historic value since the long term ~~affects~~ effects of hazardous waste, hazardous waste constituents or hazardous substances are uncertain and could lead to future exposures. When an exposure occurs, these records would be required in order to facilitate an effective response.
3. All records regarding unregulated hazardous waste sites where unlawful hazardous waste treatment, storage, disposal or recycling was documented shall be managed as permanent records. These records have historic value since the long term ~~affects~~ effects of hazardous waste, hazardous waste constituents or hazardous substances are uncertain and could lead to future exposures. When an exposure occurs, these records would be required in order to facilitate an effective response.

Authority: T.C.A. §§ 68-212-101 et seq. and 4-5-201 et seq.

Paragraph (1) of Rule 0400-12-01-.02 Identification and Listing of Hazardous Waste is amended by deleting it in its entirety and substituting instead the following:

(1) General [40 CFR 261 Subpart A]

(a) Purpose and Scope [40 CFR 261.1]

1. This rule identifies those solid wastes which are subject to regulation as hazardous wastes under Rules 0400-12-01-.03 through .07 and .10. In this rule:
 - (i) Paragraph (1) defines the terms "solid waste" and "hazardous waste", identifies those wastes which are excluded from regulation under Rules 0400-12-01-.03 through .07, .09 and .10 and establishes special management requirements for hazardous waste produced by conditionally exempt small quantity generators and hazardous waste which is recycled.
 - (ii) Paragraph (2) sets forth the criteria used by the Board to identify characteristics of hazardous waste and to list particular hazardous wastes.
 - (iii) Paragraph (3) identifies characteristics of hazardous waste.
 - (iv) Paragraph (4) lists particular hazardous wastes.
2.
 - (i) The definition of solid waste contained in this rule applies only to wastes that also are hazardous for purposes of the regulations implementing T.C.A. Title 68, Chapter 212. For example it does not apply to materials (such as non-hazardous scrap, paper, textiles, or rubber) that are not otherwise hazardous wastes and that are recycled.
 - (ii) This rule identifies only some of the materials which are solid wastes and hazardous wastes under T.C.A. Sections 68-212-105, 68-212-107, 68-212-111, 68-212-114 and 68-212-115. A material which is not defined as a solid waste in this rule, or is not a hazardous waste identified or listed in this rule, is still a solid waste and a hazardous waste for purposes of these statutory sections if:
 - (I) In the case of T.C.A. Section 68-212-107, the Commissioner has reason to believe that the material may be a solid waste within the meaning of T.C.A. Section 68-212-104(19) and a hazardous waste within the meaning of T.C.A. Section 68-212-104(8); or
 - (II) In the case of T.C.A. Sections 68-212-105, 68-212-111, 68-212-114 and

68-212-115, the statutory definition of a waste and a hazardous waste are established.

3. For the purposes of subparagraphs (b) and (f) of this paragraph:

- (i) A "spent material" is any material that has been used and as a result of contamination can no longer serve the purpose for which it was produced without processing.

(Note: The term "spent material" includes any material that has been used and is no longer fit for use without being regenerated, reclaimed or otherwise reprocessed.)

(Note: As used in the definition of spent materials, "contamination" includes any impurity, factor, or circumstance which causes the material to be taken out of service.)

- (ii) "Sludge" has the same meaning used in Rule 0400-12-01-.01(2)(a);

- (iii) A "by-product" is a material that is not one of the primary products of a production process and is not solely or separately produced by the production process. Examples are process residues such as slags or distillation column bottoms. The term does not include a co-product that is produced for the general public's use and is ordinarily used in the form it is produced by the process.

(Note: The term "by-product" includes residues that result from manufacturing or other operations that are not one of the primary products that are produced.)

(Note: The term "co-product" means a material produced for use by the general public and suitable for end use essentially as-is.)

- (iv) A material is "reclaimed" if it is processed to recover a usable product, or if it is regenerated. Examples are recovery of lead values from spent batteries and regeneration of spent solvents. In addition, for purposes of subparts (d)1(xxiii) and (xxiv) of this paragraph, smelting, melting and refining furnaces are considered to be solely engaged in metals reclamation if the metal recovery from the hazardous secondary materials meets the same requirements as those specified for metals recovery from hazardous waste found in subparts (8)(a)4(i) through (iii) of Rule 0400-12-01-.09, and if the residuals meet the requirements specified in subparagraph (8)(m) of Rule 0400-12-01-.09.

- (v) A material is "used or reused" if it is either:

(I) Employed as an ingredient (including use as an intermediate) in an industrial process to make a product (for example, distillation bottoms from one process used as feedstock in another process). However, a material will not satisfy this condition if distinct components of the material are recovered as separate end products (as when metals are recovered from metal-containing secondary materials); or

(II) Employed in a particular function or application as an effective substitute for a commercial product (for example, spent pickle liquor used as phosphorous precipitant and sludge conditioner in wastewater treatment).

- (vi) "Scrap metal" is bits and pieces of metal parts (e.g., bars, turnings, rods, sheets, wire) or metal pieces that may be combined together with bolts or soldering (e.g., radiators, scrap automobiles, railroad box cars), which when worn or superfluous can be recycled.

- (vii) A material is "recycled" if it is used, reused, or reclaimed.
- (viii) A material is "accumulated speculatively" if it is accumulated before being recycled. A material is not accumulated speculatively, however, if the person accumulating it can show that the material is potentially recyclable and has a feasible means of being recycled; and that -- during the calendar year (commencing on January 1) -- the amount of material that is recycled, or transferred to a different site for recycling, equals at least 75 percent by weight or volume of the amount of that material accumulated at the beginning of the period. Materials must be placed in a storage unit with a label indicating the first date that the material began to be accumulated. If placing a label on the storage unit is not practicable, the accumulation period must be documented through an inventory log or other appropriate method. In calculating the percentage of turnover, the 75 percent requirement is to be applied to each material of the same type (e.g., slags from a single smelting process) that is recycled in the same way (i.e., from which the same material is recovered or that is used in the same way). Materials accumulating in units that would be exempt from regulation under subpart (d)3(i) of this paragraph are not to be included in making the calculation. (Materials that are already defined as solid wastes also are not to be included in making the calculation.) Materials are no longer in this category once they are removed from accumulation for recycling, however.

(Note: The speculative accumulation requirements contained in this subpart are only applicable when specifically referenced by the exclusion or exemption conditions contained in this rule and Rule 0400-12-01-.09. For example, subparts (d)1(viii), (xiii), and (xxvi) of this paragraph do not require compliance with this subpart as a condition of the exclusions; subparts (d)1(vi) and (vii) of this paragraph and part (6)(a)3 of Rule 0400-12-01-.09 do require compliance with the subpart as a condition of the exclusion or exemption.)

- (ix) "Excluded scrap metal" is processed scrap metal, unprocessed home scrap metal, and unprocessed prompt scrap metal.
- (x) "Processed scrap metal" is scrap metal which has been manually or physically altered to either separate it into distinct materials to enhance economic value or to improve the handling of materials. Processed scrap metal includes, but is not limited to scrap metal which has been baled, shredded, sheared, chopped, crushed, flattened, cut, melted, or separated by metal type (i.e., sorted), and, fines, drosses and related materials which have been agglomerated. (Note: shredded circuit boards being sent for recycling are not considered processed scrap metal. They are covered under the exclusion from the definition of solid waste for shredded circuit boards being recycled (Rule 0400-12-01-.02(1)(d)1~~(xvi)~~(xiv)).
- (xi) "Home scrap metal" is scrap metal as generated by steel mills, foundries, and refineries such as turnings, cuttings, punchings, and borings.
- (xii) "Prompt scrap metal" is scrap metal as generated by the metal working/fabrication industries and includes such scrap metal as turnings, cuttings, punchings, and borings. Prompt scrap is also known as industrial or new scrap metal.

(b) Definition of Solid Waste [40 CFR 261.2]

- 1. (i) A "solid waste" is any discarded material that is not excluded by part (d)1 of this paragraph or that is not excluded by variance granted under Rule 0400-12-01-.01(4)(a) and (b) subparagraphs (4)(b) and (c) of Rule 0400-12-01-.01 or that is not excluded by a non-waste determination under subparagraphs (4)(b) and (e) of Rule 0400-12-01-.01.

- (ii) (I) _____ A "discarded material" is any material which is:
 - (I) I. "Abandoned", as explained in part 2 of this paragraph; or
 - (II) II. "Recycled", as explained in part 3 of this paragraph; or
 - (III) III. Considered "inherently waste-like", as explained in part 4 of this subparagraph; or
 - (IV) IV. A military munition identified as a solid waste in subparagraph (13)(c) of Rule 0400-12-01-.09(13)(e).
- (II) _____ Reserved

2. Materials are solid waste if they are "abandoned" by being:

- (i) Disposed of; or
- (ii) Burned or incinerated; or
- (iii) Accumulated, stored, or treated (but not recycled) before or in lieu of being abandoned by being disposed of, burned, or incinerated; or
- (iv) Sham recycled, as explained in part 7 of this subparagraph.

3. Materials are solid wastes if they are "recycled" -- or accumulated, stored, or treated before recycling -- as specified in subparts (i) through (iv) of this part:

- (i) "Used in a manner constituting disposal".
 - (I) Materials noted with a "*" in Column 1 of Table 1 are solid wastes when they are:
 - I. Applied to or placed on the land in a manner that constitutes disposal; or
 - II. Used to produce products that are applied to or placed on the land or are otherwise contained in products that are applied to or placed on the land (in which cases the product itself remains a solid waste).
 - (II) However, commercial chemical products listed in subparagraph (4)(d) of this rule are not solid wastes if they are applied to the land and that is their ordinary manner of use.
- (ii) "Burning for energy recovery"
 - (I) Materials noted with a "*" in column 2 of Table 1 are solid wastes when they are:
 - I. Burned to recover energy;
 - II. Used to produce a fuel or are otherwise contained in fuels (in which cases the fuel itself remains a solid waste).
 - (II) However, commercial chemical products listed in subparagraph (4)(d) of this rule are not solid wastes if they are themselves fuels.
- (iii) "Reclaimed"

Materials noted with a "*" "—" in column 3 of Table 1 are not solid wastes when reclaimed (except as provided under subpart (d)1(xix) of this paragraph). Materials noted with a "*" "*" in column 3 of Table 1 are not solid wastes when reclaimed unless they meet the requirements of subparts (d)1(xvii), (xxiii), (xxiv) or (xxvii) of this paragraph.

(iv) "Accumulated speculatively"

Materials noted with a "*" in column 4 of Table 1 are solid wastes when accumulated speculatively.

Table 1

	Use constituting disposal (Rule 0400-12-01-.02 subpart (1)(b)3(i) of this rule)	Energy recovery/fuel (Rule 0400-12-01-.02 subpart (1)(b)3(ii) of this rule)	Reclamation (Rule 0400-12-01-.02 subpart (1)(b)3(iii) of this rule) (except as provided in Rule 0400-12-01-.02(1)(d)1 (xix) for mineral processing secondary materials subpart (1)(d)1(xvii), (xxiii), (xxiv) or (xxvii) of this rule)	Speculative accumulation (Rule 0400-12-01-.02 subpart (1)(b)3 (iv) of this rule)
	(1)	(2)	(3)	(4)
Spent Materials	(*)	(*)	(*)	(*)
Sludges [listed in Rule 0400-12-01-.02(4)(b) or (c)]	(*)	(*)	(*)	(*)
Sludges exhibiting a characteristic of hazardous waste	(*)	(*)	-	(*)
By-products [listed in Rule 0400-12-01-.02(4)(b) or (c)]	(*)	(*)	(*)	(*)
By-products exhibiting a characteristic of hazardous waste	(*)	(*)	-	(*)
Commercial chemical products listed in Rule 0400-12-01-.02(4)(d)	(*)	(*)	-	-
Scrap metal that is not excluded under Rule 0400-12-01-.02(1)(d)1(xv)(xxiii)	(*)	(*)	(*)	(*)

(Note: The terms "spent materials", "sludges", "by-products", "scrap metal" and "processed scrap metal" are defined in subparagraph part (1)(a)3 of this rule.)

(Note: Unused commercial chemical products and unused manufactured articles, which are not listed in

subparagraph (4)(d) of this rule, that exhibit a characteristic of hazardous waste in accordance with paragraph (3) of this rule shall have the same status as commercial chemical products listed in subparagraph (4)(d) of this rule when reclaimed. These non-listed commercial chemical products or manufactured articles are not solid waste when legitimately recycled except when they are recycled in ways that differ from their normal manner of use.)

4. "Inherently waste-like materials"

The following materials are solid wastes when they are recycled in any manner:

- (i) Hazardous Waste Codes F020, F021 (unless used as an ingredient to make a product at the site of generation), F022, F023, F026, and F028.
- (ii) Secondary materials fed to a halogen acid furnace that exhibit a characteristic of a hazardous waste or are listed as a hazardous waste as defined in paragraph (3) or (4) of this rule, except for brominated material that meets the following criteria:
 - (I) The material must contain a bromine concentration of at least 45%; and
 - (II) The material must contain less than a total of 1% of toxic organic compounds listed in paragraph ~~(5)~~ (30) Appendix VIII of this rule; and
 - (III) The material is processed continually on-site in the halogen acid furnace via direct conveyance (hard piping).
- (iii) The Board will use the following criteria to add wastes to that list:
 - (I) I. The materials are ordinarily disposed of, burned, or incinerated; or
 - II. The materials contain toxic constituents listed in paragraph ~~(5)~~ (30) Appendix VIII of this rule and these constituents are not ordinarily found in raw materials or products for which the materials substitute (or are found in raw materials or products in smaller concentrations) and are not used or reused during the recycling process; and
 - (II) The material may pose a substantial hazard to human health and the environment when recycled.

5. "Materials that are not solid waste when recycled"

- (i) Materials are not solid wastes when they can be shown to be recycled by being:
 - (I) Used or reused as ingredients in an industrial process to make a product, provided the materials are not being reclaimed; or
 - (II) Used or reused as effective substitutes for commercial products; or
 - (III) Returned to the original process from which they are generated, without first being reclaimed or land disposed. The material must be returned as a substitute for feedstock materials. In cases where the original process to which the material is returned is a secondary process, the materials must be managed such that there is no placement on the land. In cases where the materials are generated and reclaimed within the primary mineral processing industry, the conditions of the exclusion found at subpart ~~(d)1(xix)~~ (d)1(xvii) of this paragraph apply rather than this item.
- (ii) The following materials are solid wastes, even if the recycling involves use, reuse, or return to the original process (described in items (i)(I) through (III) of

this part):

- (I) Materials used in a manner constituting disposal, or used to produce products that are applied to the land; or
 - (II) Materials burned for energy recovery, used to produce a fuel, or contained in fuels; or
 - (III) Materials accumulated speculatively; or
 - (IV) Materials listed in subparts 4(i) and 4(ii) of this subparagraph.
6. "Documentation of claims that materials are not solid wastes or are conditionally exempt from regulation".

Respondents in actions to enforce regulations implementing the Act and Chapter 0400-12-01 who raise a claim that a certain material is not a solid waste, or is conditionally exempt from regulation, must demonstrate that there is a known market or disposition for the material, and that they meet the terms of the exclusion or exemption. In doing so, they must provide appropriate documentation (such as contracts showing that a second person uses the material as an ingredient in a production process) to demonstrate that the material is not a waste, or is exempt from regulation. In addition, owners or operators of facilities claiming that they actually are recycling materials must show that they have the necessary equipment to do so.

7. Sham recycling.

A hazardous secondary material found to be sham recycled is considered discarded and a solid waste. Sham recycling is recycling that is not legitimate recycling as defined in subparagraph (5)(d) of Rule 0400-12-01-.01.

(c) Definition of Hazardous Waste [40 CFR 261.3]

1. A solid waste, as defined in subparagraph (b) of this paragraph, is a hazardous waste if:
- (i) It is not excluded from regulation as a hazardous waste under part (d)2 of this paragraph; and
 - (ii) It meets any of the following criteria:
 - (I) It exhibits any of the characteristics of hazardous waste identified in paragraph (3) of this rule. However, any mixture of a waste from the extraction, beneficiation, and processing of ores and minerals excluded under subpart ~~(d)2(xv)~~ (d)2(vii) of this paragraph and any other solid waste exhibiting a characteristic of hazardous waste under paragraph (3) of this rule is a hazardous waste only if it exhibits a characteristic that would not have been exhibited by the excluded waste alone if such mixture had not occurred or if it continues to exhibit any of the characteristics exhibited by the non-excluded wastes prior to mixture. Further, for the purposes of applying the Toxicity Characteristic to such mixtures, the mixture is also a hazardous waste if it exceeds the maximum concentration for any contaminant listed in Table 1 to subparagraph (3)(e) of this rule that would not have been exceeded by the excluded waste alone if the mixture had not occurred or if it continues to exceed the maximum concentration for any contaminant exceeded by the nonexempt waste prior to mixture.
 - (II) It is listed in paragraph (4) of this rule and has not been excluded from the lists in paragraph (4) of this rule under Rule 0400-12-01-.01(3)(a) and (c).

(III) (RESERVED) [261.3(a)(2)(iii)]

(IV) It is a mixture of solid waste and one or more hazardous wastes listed in paragraph (4) of this rule and has not been excluded from ~~this~~ ~~subpart 4(ii) of this subparagraph~~ under Rule 0400-12-01-.01(3)(a) and (c), parts 7 or 8 of this subparagraph; however, the following mixtures of solid wastes and hazardous wastes listed in paragraph (4) of this rule are not hazardous wastes (except by application of items (I) or (II) of this subpart) if the generator can demonstrate that the mixture consists of wastewater the discharge of which is subject to regulation under T.C.A. §§ 69-3-101 et seq. (including wastewater at facilities which have eliminated the discharge of wastewater) and:

- I. One or more of the following spent solvents listed in subparagraph (4)(b) of this rule--benzene, carbon tetrachloride, tetrachloroethylene, trichloroethylene or the scrubber waters derived from the combustion of these spent solvents - provided that (1) the maximum total weekly usage of these solvents (other than the amounts that can be demonstrated not to be discharged to wastewater) divided by the average weekly flow of wastewater into the headworks of the facility's wastewater treatment or pretreatment system does not exceed 1 part per million or (2) the total measured concentration of these solvents entering the headworks of the facility's wastewater treatment system (at facilities subject to regulation under the Clean Air Act, as amended, at 40 CFR parts 60, 61, or 63, or the Tennessee Air Quality Act and Rule Division 1200-03 or at facilities subject to an enforceable limit in a federal or state operating permit that minimizes fugitive emissions), does not exceed 1 part per million on an average weekly basis. Any facility that uses benzene as a solvent and claims this exemption must use an aerated biological wastewater treatment system and must use only lined surface impoundments or tanks prior to secondary clarification in the wastewater treatment system. Facilities that choose to measure concentration levels must file a copy of their sampling and analysis plan with the Division Director, as defined in Rule 0400-12-01-.01(2)(a). A facility must file a copy of a revised sampling and analysis plan only if the initial plan is rendered inaccurate by changes in the facility's operations. The sampling and analysis plan must include the monitoring point location (headworks), the sampling frequency and methodology, and a list of constituents to be monitored. A facility is eligible for the direct monitoring option once they receive confirmation that the sampling and analysis plan has been received by the Director. The Director may reject the sampling and analysis plan if he/she finds that, the sampling and analysis plan fails to include the above information; or the plan parameters would not enable the facility to calculate the weekly average concentration of these chemicals accurately. If the Director rejects the sampling and analysis plan or if the Director finds that the facility is not following the sampling and analysis plan, the Director shall notify the facility to cease the use of the direct monitoring option until such time as the bases for rejection are corrected; or
- II. One or more of the following spent solvents listed in subparagraph (4)(b) of this rule --methylene chloride, 1,1,1-trichloroethane, chlorobenzene, o-dichlorobenzene, cresols, cresylic acid, nitrobenzene, toluene, methyl ethyl ketone, carbon disulfide, isobutanol, pyridine, spent chlorofluorocarbon solvents,

2-ethoxyethanol, or the scrubber waters derived from the combustion of these spent solvents - provided that (1) the maximum total weekly usage of these solvents (other than the amounts that can be demonstrated not to be discharged to wastewater) divided by the average weekly flow of wastewater into the headworks of the facility's wastewater treatment or pretreatment system does not exceed 25 parts per million or (2) the total measured concentration of these solvents entering the headworks of the facility's wastewater treatment system (at facilities subject to regulation under the Clean Air Act, as amended, at 40 CFR parts 60, 61, or 63, or the Tennessee Air Quality Act and Rule Division 1200-03 or at facilities subject to an enforceable limit in a federal or state operating permit that minimizes fugitive emissions) does not exceed 25 parts per million on an average weekly basis. Facilities that choose to measure concentration levels must file a copy of their sampling and analysis plan with the Division Director, as defined in Rule 0400-12-01-.01(2)(a). A facility must file a copy of a revised sampling and analysis plan only if the initial plan is rendered inaccurate by changes in the facility's operations. The sampling and analysis plan must include the monitoring point location (headworks), the sampling frequency and methodology, and a list of constituents to be monitored. A facility is eligible for the direct monitoring option once they receive confirmation that the sampling and analysis plan has been received by the Director. The Director may reject the sampling and analysis plan if he/she finds that, the sampling and analysis plan fails to include the above information; or the plan parameters would not enable the facility to calculate the weekly average concentration of these chemicals accurately. If the Director rejects the sampling and analysis plan or if the Director finds that the facility is not following the sampling and analysis plan, the Director shall notify the facility to cease the use of the direct monitoring option until such time as the bases for rejection are corrected; or

- III. One of the following wastes listed in subparagraph (4)(c) of this rule, provided that the wastes are discharged to the refinery oil recovery sewer before primary oil/water/solids separation - heat exchanger bundle cleaning sludge from the petroleum refining industry (Hazardous Waste Code K050), crude oil storage tanks sediment from petroleum refining operations (Hazardous Waste Code K169), clarified slurry oil tank sediment and/or in-line filter/separation solids from petroleum refining operations (Hazardous Waste Code K170), spent hydrotreating catalyst (Hazardous Waste Code K171), and spent hydrorefining catalyst (Hazardous Waste Code K172); or
- IV. A discarded hazardous waste, commercial chemical product, or chemical intermediate listed in subparagraphs (4)(b) through (4)(d) of this rule, arising from de minimis losses of these materials. For purposes of this subitem, de minimis losses are inadvertent releases to a wastewater treatment system, including those from normal material handling operations (e. g., spills from the unloading or transfer of materials from bins or other containers, leaks from pipes, valves or other devices used to transfer materials); minor leaks of process equipment, storage tanks or containers; leaks from well maintained pump packings and seals; sample purgings; relief device discharges; discharges from safety showers and rinsing and cleaning of personal safety equipment; and rinsate from empty containers or from containers

that are rendered empty by that rinsing. Any manufacturing facility that claims an exemption for de minimis quantities of wastes listed in subparagraphs (4)(b) through (4)(c) of this rule or any nonmanufacturing facility that claims an exemption for de minimis quantities of wastes listed in paragraph (4) of this rule must either have eliminated the discharge of wastewaters or have included in its Clean Water Act or Tennessee Water Quality Control Act permit application or submission to its pretreatment control authority the constituents for which each waste was listed in Appendix VII of paragraph ~~(5)~~ (30) of this rule; and the constituents in the table "Treatment Standards for Hazardous Wastes" in Rule 0400-12-01-.10(3)(a) for which each waste has a treatment standard (i.e., Land Disposal Restriction constituents). A facility is eligible to claim the exemption once the permit writer or control authority has been notified of possible de minimis releases via the Clean Water Act or Tennessee Water Quality Control Act permit application or the pretreatment control authority submission. A copy of the Clean Water Act or Tennessee Water Quality Control Act permit application or the submission to the pretreatment control authority must be placed in the facility's on-site files; or

- V. Wastewater resulting from laboratory operations containing toxic (T) wastes listed in paragraph (4) of this rule, provided that the annualized average flow of laboratory wastewater does not exceed one percent of total wastewater flow into the headworks of the facility's wastewater treatment or pre-treatment system, or provided the wastes, combined annualized average concentration does not exceed one part per million in the headworks of the facility's wastewater treatment or pre-treatment facility. Toxic (T) wastes used in laboratories that are demonstrated not to be discharged to wastewater are not to be included in this calculation; or
- VI. One or more of the following wastes listed in subparagraph (4)(c) of this rule -- wastewaters from the production of carbamates and carbamoyl oximes (Hazardous Waste Code No. K157)- - provided that (1) the maximum weekly usage of formaldehyde, methyl chloride, methylene chloride, and triethylamine (including all amounts that cannot be demonstrated to be reacted in the process, destroyed through treatment, or is recovered, i.e., what is discharged or volatilized) divided by the average weekly flow of process wastewater prior to any dilution into the headworks of the facility's wastewater treatment system does not exceed a total of 5 parts per million by weight or (2) the total measured concentration of these chemicals entering the headworks of the facility's wastewater treatment system (at facilities subject to regulation under the Clean Air Act, as amended, at 40 CFR parts 60, 61, or 63, or the Tennessee Air Quality Act and Rule Division 1200-03 or at facilities subject to an enforceable limit in a federal or state operating permit that minimizes fugitive emissions) does not exceed 5 parts per million on an average weekly basis. Facilities that choose to measure concentration levels must file a copy of their sampling and analysis plan with the Division Director, as defined in Rule 0400-12-01-.01(2)(a). A facility must file a copy of a revised sampling and analysis plan only if the initial plan is rendered inaccurate by changes in the facility's operations. The sampling and analysis plan must include the monitoring point location (headworks), the sampling frequency and methodology, and a list of constituents to be monitored. A

facility is eligible for the direct monitoring option once they receive confirmation that the sampling and analysis plan has been received by the Director. The Director may reject the sampling and analysis plan if he/she finds that, the sampling and analysis plan fails to include the above information; or the plan parameters would not enable the facility to calculate the weekly average concentration of these chemicals accurately. If the Director rejects the sampling and analysis plan or if the Director finds that the facility is not following the sampling and analysis plan, the Director shall notify the facility to cease the use of the direct monitoring option until such time as the bases for rejection are corrected; or

VII. Wastewaters derived from the treatment of one or more of the following wastes listed in subparagraph (4)(c) of this rule -- organic waste (including heavy ends, still bottoms, light ends, spent solvents, filtrates, and decantates) from the production of carbamates and carbamoyl oximes (Hazardous Waste Code No. K156)—provided that (1) the maximum concentration of formaldehyde, methyl chloride, methylene chloride, and triethylamine prior to any dilutions into the headworks of the facility's wastewater treatment system does not exceed a total of 5 milligrams per liter or (2) the total measured concentration of these chemicals entering the headworks of the facility's wastewater treatment system (at facilities subject to regulation under the Clean Air Act, as amended, at 40 CFR parts 60, 61, or 63, or the Tennessee Air Quality Act and Rule Division 1200-03 or at facilities subject to an enforceable limit in a federal or state operating permit that minimizes fugitive emissions) does not exceed 5 milligrams per liter on an average weekly basis. Facilities that choose to measure concentration levels must file a copy of their sampling and analysis plan with the Division Director, as defined in Rule 0400-12-01-.01(2)(a). A facility must file a copy of a revised sampling and analysis plan only if the initial plan is rendered inaccurate by changes in the facility's operations. The sampling and analysis plan must include the monitoring point location (headworks), the sampling frequency and methodology, and a list of constituents to be monitored. A facility is eligible for the direct monitoring option once they receive confirmation that the sampling and analysis plan has been received by the Director. The Director may reject the sampling and analysis plan if he/she finds that, the sampling and analysis plan fails to include the above information; or the plan parameters would not enable the facility to calculate the weekly average concentration of these chemicals accurately. If the Director rejects the sampling and analysis plan or if the Director finds that the facility is not following the sampling and analysis plan, the Director shall notify the facility to cease the use of the direct monitoring option until such time as the bases for rejection are corrected.

(V) Rebuttable presumption for used oil

Used oil containing more than 1000 ppm total halogens is presumed to be a hazardous waste because it has been mixed with halogenated hazardous waste listed in paragraph (4) of this rule. Persons may rebut this presumption by demonstrating that the used oil does not contain hazardous waste (for example, to show that the used oil does not contain significant concentrations of halogenated hazardous constituents listed in appendix VIII of paragraph ~~(5)~~ (30) of this rule).

- I. The rebuttable presumption does not apply to metalworking oils/fluids containing chlorinated paraffins, if they are processed, through a tolling agreement, to reclaim metalworking oils/fluids. The presumption does apply to metalworking oils/fluids if such oils/fluids are recycled in any other manner, or disposed.
 - II. The rebuttable presumption does not apply to used oils contaminated with chlorofluorocarbons (CFCs) removed from refrigeration units where the CFCs are destined for reclamation. The rebuttable presumption does apply to used oils contaminated with CFCs that have been mixed with used oil from sources other than refrigeration units.
2. A solid waste which is not excluded from regulation under part (d)2 of this paragraph becomes a hazardous waste when any of the following events occur:
- (i) In the case of a waste listed in paragraph (4) of this rule, when the waste first meets the listing description set forth in paragraph (4) of this rule.
 - (ii) In the case of a mixture of solid waste and one or more listed hazardous wastes, when a hazardous waste listed in paragraph (4) of this rule is first added to the solid waste.
 - (iii) In the case of any other waste (including a waste mixture), when the waste exhibits any of the characteristics identified in paragraph (3) of this rule.
3. Unless and until it meets the criteria of part 4 below:
- (i) A hazardous waste will remain a hazardous waste.
 - (ii)
 - (I) Except as otherwise provided in item (II) of this subpart, part 7 or part 8 of this subparagraph, any solid waste generated from the treatment, storage, or disposal of a hazardous waste, including any sludge, spill residue, ash, emission control dust, or leachate (but not including precipitation run-off) is a hazardous waste. (However, materials that are reclaimed from solid wastes and that are used beneficially are not solid wastes and hence are not hazardous wastes under this provision unless the reclaimed material is burned for energy recovery or used in a manner constituting disposal.)
 - (II) The following solid wastes are not hazardous even though they are generated from the treatment, storage, or disposal of a hazardous waste, unless they exhibit one or more of the characteristics of hazardous waste:
 - I. Waste pickle liquor sludge generated by lime stabilization of spent pickle liquor from the iron and steel industry (SIC Codes 331 and 332).
 - II. Waste from burning any of the materials exempted from regulation by items (f)1(iii)(III) and (IV) of this paragraph.
 - III. A. Nonwastewater residues, such as slag, resulting from high temperature metals recovery (HTMR) processing of K061, K062 or F006 waste, in units identified as rotary kilns, flame reactors, electric furnaces, plasma arc furnaces, slag reactors, rotary hearth furnace/electric furnace combinations or industrial furnaces (as defined in items (vi), (vii) and (xiii) of the definition for "Industrial

furnace" in Rule 0400-12-01-.01(2)(a) that are disposed in a Class I or Class II Disposal Facility subject to a permit issued in accordance with Chapter 0400-11-01, provided that these residues meet the generic exclusion levels identified in the tables in this paragraph for all constituents, and exhibit no characteristics of hazardous waste. Testing requirements must be incorporated in a facility's waste analysis plan or a generator's self-implementing waste analysis plan; at a minimum, composite samples of residues must be collected and analyzed quarterly and/or when the process or operation generating the waste changes. Persons claiming this exclusion in an enforcement action will have the burden of proving by clear and convincing evidence that the material meets all of the exclusion requirements.

Constituent	Maximum for any single composite sample-TCLP (mg/l)
Generic exclusion levels for K061 and K062 nonwastewater HTMR residues	
Antimony	0.10
Arsenic	0.50
Barium	7.6
Beryllium	0.010
Cadmium	0.050
Chromium (total)	0.33
Lead	0.15
Mercury	0.009
Nickel	1.0
Selenium	0.16
Silver	0.30
Thallium	0.020
Zinc	70
Generic exclusion levels for F006 nonwastewater HTMR residues	
Antimony	0.10
Arsenic	0.50
Barium	7.6
Beryllium	0.010
Cadmium	0.050
Chromium (total)	0.33
Cyanide (total) (mg/kg)	1.8
Lead	0.15
Mercury	0.009

Nickel	1.0
Selenium	0.16
Silver	0.30
Thallium	0.020
Zinc	70

B. A one-time notification and certification must be placed in the facility's files and sent to the Division Director for K061, K062 or F006 HTMR residues that meet the generic exclusion levels for all constituents and do not exhibit any characteristics that are sent to a Class I or Class II Disposal Facility subject to a permit issued in accordance with Chapter 0400-11-01. The notification and certification that is placed in the generators or treaters files must be updated if the process or operation generating the waste changes and/or if the Class I or Class II Disposal Facility receiving the waste changes. However, the generator or treater need only notify the Division Director on an annual basis if such changes occur. Such notification and certification should be sent to the Division Director by the end of the calendar year, but no later than December 31. The notification must include the following information: The name and address of the Class I or Class II Disposal Facility receiving the waste shipments; the Hazardous Waste Code(s) and treatability group(s) at the initial point of generation; and, the treatment standards applicable to the waste at the initial point of generation. The certification must be signed by an authorized representative and must state as follows: "I certify under penalty of law that the generic exclusion levels for all constituents have been met without impermissible dilution and that no characteristic of hazardous waste is exhibited. I am aware that there are significant penalties for submitting a false certification, including the possibility of fine and imprisonment. As specified in Tennessee Code Annotated Section 39-16-702(a)(4), this declaration is made under penalty of perjury."

IV. Biological treatment sludge from the treatment of one of the following wastes listed in subparagraph (4)(c) - organic waste (including heavy ends, still bottoms, light ends, spent solvents, filtrates, and decantates) from the production of carbamates and carbamoyl oximes (Hazardous Waste Code K156), and wastewaters from the production of carbamates and carbamoyl oximes (Hazardous Waste Code K157).

V. Catalyst inert support media separated from one of the following wastes listed in subparagraph (4)(c) of this rule -- Spent hydrotreating catalyst (Hazardous Waste Code K171) and Spent hydrotreating catalyst (Hazardous Waste Code K172).

4. Any solid waste described in part 3 of this subparagraph is not a hazardous waste if it meets the following criteria:

(i) In the case of any solid waste, it does not exhibit any of the characteristics of hazardous waste identified in paragraph (3) of this rule. (However, wastes that

exhibit a characteristic at the point of generation may still be subject to the requirements of Rule 0400-12-01-.10, even if they no longer exhibit a characteristic at the point of land disposal.)

- (ii) In the case of a waste which is a listed waste under paragraph (4) of this rule, contains a waste listed under paragraph (4) of this rule or is derived from a waste listed in paragraph (4) of this rule, it also has been excluded from part 3 of this subparagraph under Rule 0400-12-01-.01(3)(a) and (c).
5. (RESERVED) [40 CFR 261.3(e)]
6. Notwithstanding parts 1 through 4 of this subparagraph and provided the debris as defined in Rule 0400-12-01-.10 does not exhibit a characteristic identified at paragraph (3) of this rule, the following materials are not subject to regulation under Rules 0400-12-01-.01 through .07, .09 and .10:
- (i) Hazardous debris as defined in Rule 0400-12-01-.10 that has been treated using one of the required extraction or destruction technologies specified in Table 1 of Rule 0400-12-01-.10(3)(f); persons claiming this exclusion in an enforcement action will have the burden of proving by clear and convincing evidence that the material meets all of the exclusion requirements; or
 - (ii) Debris as defined in Rule 0400-12-01-.10 ~~of this chapter~~ that the Commissioner, considering the extent of contamination, has determined is no longer contaminated with hazardous waste.
7. (i) A hazardous waste that is listed in paragraph (4) of this rule solely because it exhibits one or more characteristics of ignitability as defined under subparagraph (3)(b) of this rule, corrosivity as defined under subparagraph (3)(c) of this rule, or reactivity as defined under subparagraph (3)(d) of this rule is not a hazardous waste, if the waste no longer exhibits any characteristic of hazardous waste identified in paragraph (3) of this rule.
- (ii) The exclusion described in subpart (i) of this part also pertains to:
- (I) Any mixture of a solid waste and a hazardous waste listed in paragraph (4) of this rule solely because it exhibits the characteristics of ignitability, corrosivity, or reactivity as regulated under item 1(ii)(IV) of this subparagraph; and
 - (II) Any solid waste generated from treating, storing, or disposing of a hazardous waste listed in paragraph (4) of this rule solely because it exhibits the characteristics of ignitability, corrosivity, or reactivity as regulated under item 3(ii)(I) of this subparagraph.
- (iii) Wastes excluded under this part are subject to Rule 0400-12-01-.10 (as applicable), even if they no longer exhibit a characteristic at the point of land disposal.
- (iv) Any mixture of a solid waste excluded from regulation under ~~Rule 0400-12-01-.02(1)(d)2(xv)~~ subpart (d)2(vii) of this paragraph and a hazardous waste listed in paragraph (4) of this rule solely because it exhibits one or more of the characteristics of ignitability, corrosivity, or reactivity as regulated under ~~Rule 0400-12-01-.02(1)(e)1(iii)(IV)~~ item 1(ii)(IV) of this subparagraph is not a hazardous waste, if the mixture no longer exhibits any characteristic of hazardous waste identified in paragraph (3) of this rule for which the hazardous waste listed in paragraph (4) of this rule was listed.
8. (i) Hazardous waste containing radioactive waste is no longer a hazardous waste when it meets the eligibility criteria and conditions of paragraph (14) of Rule

0400-12-01-.09 ("eligible radioactive mixed waste").

- (ii) The exemption described in subpart 8(i) of this subparagraph part also pertains to:
 - (I) Any mixture of a solid waste and an eligible radioactive waste; and
 - (II) Any solid waste generated from treating, storing, or disposing of an eligible radioactive mixed waste.
- (iii) Waste exempted under this part must meet the eligibility criteria and specified conditions in part (14)(b)6 of Rule 0400-12-01-.09 and part (14)(b)11 of Rule 0400-12-01-.09 (for storage and treatment) and in part (14)(m)1 of Rule 0400-12-01-.09 and part (14)(n)1 of Rule 0400-12-01-.09 (for transportation and disposal). Waste that fails to satisfy these eligibility criteria and conditions is regulated as hazardous waste.

(d) Exclusions [40 CFR 261.4] & [40 CFR 262.70]

1. Materials which are not solid wastes. The following materials are not solid wastes for the purpose of this rule:

- (i) (I) Domestic sewage; and
- (II) Any mixture of domestic sewage and other wastes that passes through a sewer system to a publicly-owned treatment works (POTW) for treatment. "Domestic sewage" means untreated sanitary wastes that pass through a sewer system.

(Comment: This exclusion does not exclude waste/wastewaters while they are being generated, collected, stored, or treated before entering the sewer system. This exclusion applies when the material enters the sewer system where it will mix with sanitary wastes at any point before reaching the POTW whereupon this material is regulated under water pollution statutes and regulations. This material is subject to all applicable reporting, monitoring, and permitting requirements of the T.C.A. §§ 68-221-101, 69-3-101, et seq. and the associated regulations. Management of this material must be in compliance with all applicable authorization (permits, etc.) associated with disposal into a POTW for subsequent treatment.)

- (ii) Industrial wastewater discharges that are point source discharges subject to regulation under section 402 of the Clean Water Act, as amended or under the Water Quality Control Act.

(Comment: This exclusion applies only to the actual point source discharge. It does not exclude industrial wastewaters while they are being collected, stored or treated before discharge, nor does it exclude sludges that are generated by industrial wastewater treatment.)

- (iii) Irrigation return flows.
- (iv) Source, special nuclear or by-product material as defined by the Atomic Energy Act of 1954, as amended, 42 U.S.C. 2011 et seq.
- (v) Materials subjected to in-situ mining techniques which are not removed from the ground as part of the extraction process.
- (vi) Pulping liquors (i.e., black liquor) that are reclaimed in a pulping liquor recovery furnace and then reused in the pulping process, unless it is accumulated

speculatively as defined in subpart (a)3(viii) of this paragraph.

- (vii) Spent sulfuric acid used to produce virgin sulfuric acid, unless it is accumulated speculatively as defined in subpart (a)3(viii) of this paragraph.
- (viii) Secondary materials that are reclaimed and returned to the original process or processes in which they were generated where they are reused in the production process provided:
 - (I) Only tank storage is involved, and the entire process through completion of reclamation is closed by being entirely connected with pipes or other comparable enclosed means of conveyance;
 - (II) Reclamation does not involve controlled flame combustion (such as occurs in boilers, industrial furnaces, or incinerators);
 - (III) The secondary materials are never accumulated in such tanks for over twelve months without being reclaimed; and
 - (IV) The reclaimed material is not used to produce a fuel, or used to produce products that are used in a manner constituting disposal.

(Note: As used in this subpart, "production process" includes those activities that tie directly into the manufacturing operation or those activities that are the primary operation at an establishment.)

- (ix)
 - (I) Spent wood preserving solutions that have been reclaimed and are reused for their original intended purpose;
 - (II) Wastewaters from the wood preserving process that have been reclaimed and are reused to treat wood; and
 - (III) Prior to reuse, the wood preserving wastewaters and spent wood preserving solutions described in item (I) and (II) of this subpart, so long as they meet all of the following conditions:
 - I. The wood preserving wastewaters and spent wood preserving solutions are reused on-site at water borne plants in the production process for their original intended purpose;
 - II. Prior to reuse, the wastewaters and spent wood preserving solutions are managed to prevent release to either land or groundwater or both;
 - III. Any unit used to manage wastewaters and/or spent wood preserving solutions prior to reuse can be visually or otherwise determined to prevent such releases;
 - IV. Any drip pad used to manage the wastewaters and/or spent wood preserving solutions prior to reuse complies with the standards in Rule 0400-12-01-.05(23), regardless of whether the plant generates a total of less than 100 kg/month of hazardous waste; and
 - V. Prior to operating pursuant to this exclusion, the plant owner or operator prepares a one-time notification stating that the plant intends to claim the exclusion, giving the date on which the plant intends to begin operating under the exclusion, and containing the following language: "I have read the applicable regulation establishing an exclusion for wood preserving wastewaters and

spent wood preserving solutions and understand it requires me to comply at all times with the conditions set out in the regulation." The plant must maintain a copy of that document in its on-site records until closure of the facility. The exclusion applies only so long as the plant meets all of the conditions. If the plant goes out of compliance with any condition, it may apply to the Commissioner for reinstatement. The Commissioner may reinstate the exclusion upon finding that the plant has returned to compliance with all conditions and that violations are not likely to recur.

- (x) Hazardous Waste Codes K060, K087, K141, K142, K143, K144, K145, K147, and K148, and any wastes from the coke by-products processes that are hazardous only because they exhibit the Toxicity Characteristic (TC) specified in subparagraph (3)(e) of this rule when, subsequent to generation, these materials are recycled to coke ovens, to the tar recovery process as a feedstock to produce coal tar, or mixed with coal tar prior to the tar's sale or refining. This exclusion is conditioned on there being no land disposal of the wastes from the point they are generated to the point they are recycled to coke ovens or tar recovery or refining processes, or mixed with coal tar.
- (xi) Nonwastewater splash condenser dross residue from the treatment of K061 in high temperature metals recovery units, provided it is shipped in drums (if shipped) and not land disposed before recovery.
- (xii)
 - (I) Oil-bearing hazardous secondary materials (i.e., sludges, byproducts, or spent materials) that are generated at a petroleum refinery (SIC code 2911) and are inserted into the petroleum refining process (SIC code 2911 - including, but not limited to distillation, catalytic cracking, fractionation, gasification (as defined in Rule 0400-12-01-01(2)(a)), or thermal cracking units (i.e., cokers)) unless the material is placed on the land, or speculatively accumulated before being so recycled. Materials inserted into thermal cracking units are excluded under this item provided that the coke product also does not exhibit a characteristic of hazardous waste. Oil-bearing hazardous secondary materials may be inserted into the same petroleum refinery where they are generated, or sent directly to another petroleum refinery, and still be excluded under this provision. Except as provided in item (II) of this subpart, oil-bearing hazardous secondary materials generated elsewhere in the petroleum industry (i.e., from sources other than petroleum refineries) are not excluded under this subpart. Residuals generated from processing or recycling materials excluded under this item (I) of this subpart, where such materials as generated would have otherwise met a listing under paragraph (4) of this rule, are designated as F037 listed wastes when disposed of or intended for disposal.
 - (II) Recovered oil that is recycled in the same manner and with the same conditions as described in item (I) of this subpart. Recovered oil is oil that has been reclaimed from secondary materials (including wastewater generated from normal petroleum industry practices, including refining, exploration and production, bulk storage, and transportation incident thereto (SIC codes 1311, 1321, 1381, 1382, 1389, 2911, 4612, 4613, 4922, 4923, 4789, 5171, and 5172)). Recovered oil does not include oil-bearing hazardous wastes listed in paragraph (4) of this rule; however, oil recovered from such wastes may be considered recovered oil. Recovered oil does not include used oil as defined in subparagraph (1)(a) of Rule 0400-12-01-.11(1)(a).
- ~~(xiii) Petroleum tank bottom waters (the water phase which accumulates in operating petroleum tanks) removed from petroleum tanks at retail, government or private~~

outlets, bulk petroleum plants and terminals, or petroleum pipeline breakout tankage that contain recoverable petroleum product provided:

- ~~(I) The petroleum product is being or shall be legitimately recycled;~~
- ~~(II) The owner or operator of the petroleum facility maintains adequate records which document:
 - ~~I. The dates and amounts of material removed from the petroleum tanks;~~
 - ~~II. The dates the materials were either recycled on-site or shipped off-site to a legitimate recycler; and~~
 - ~~III. If shipped off-site for recycling, the names of recyclers and transporters used;~~~~
- ~~(III) If accumulated on-site before being recycled, the material is accumulated in suitable tanks or containers; and:
 - ~~I. Each tank or container is appropriately labeled or marked as to its contents;~~
 - ~~II. The material is not accumulated on-site at retail government or private outlets for more than 30 days from the date that a total of 55 gallons has accumulated after removal from the petroleum tank before being recycled on-site or shipped off-site to a legitimate recycling facility; or~~
 - ~~III. The material is not accumulated on-site at all other petroleum facilities for more than 90 days from the date it was removed from the petroleum tank before being recycled on-site or shipped off-site to a legitimate recycling facility; and~~
 - ~~IV. Each tank or container is managed in such a manner as to minimize threats to public health and the environment, (e.g., keeping containers closed during storage, etc.).~~~~
- ~~(IV) These materials are not, at any time, accumulated or stored in earthen vessels (including, but not limited to inground or aboveground ponds, lagoons, or surface impoundments).~~
- ~~(xiv) Petroleum tank bottom waters (the water phase which accumulates in operating petroleum tanks) removed from petroleum tanks at retail, government or private outlets, bulk petroleum plants or terminals, or petroleum pipeline breakout tankage that contain recoverable petroleum product and which are received at recycling facilities for product reclamation provided that:
 - ~~(I) The petroleum product is being or shall be legitimately recycled; and~~
 - ~~(II) The owner or operator of the recycling facility maintains adequate records which document:
 - ~~I. The generators and transporters names and addresses, and the dates and amounts of material received by the facility from off-site for recycling;~~
 - ~~II. The recovered quantities of product; and~~
 - ~~III. If the recovered product is shipped off-site, the names of the~~~~~~

~~transporter(s) used and the dates and quantities of recovered product shipped off-site after recovery.~~

~~(III) These materials are not, at any time, accumulated or stored in earthen vessels (including, but not limited to inground or aboveground ponds, lagoons, or surface impoundments).~~

~~(xv)(xiii)~~ Excluded scrap metal (processed scrap metal, unprocessed home scrap metal, and unprocessed prompt scrap metal) being recycled.

~~(xv)(xiv)~~ Shredded circuit boards being recycled provided that they are:

(I) Stored in containers sufficient to prevent a release to the environment prior to recovery; and

(II) Free of mercury switches, mercury relays and nickel-cadmium batteries and lithium batteries.

~~(xvii)(xv)~~ Condensates derived from the overhead gases from kraft mill steam strippers that are used to comply with 40 CFR 63.446(e). The exemption applies only to combustion at the mill generating the condensates.

~~(xviii)(xvi)~~ Reserved. ~~Comparable fuels or comparable syngas fuels (i.e., comparable/syngas fuels) that meet the requirements of paragraph (6) of this rule.~~

~~(xix)(xvii)~~ Spent materials (as defined in subparagraph (a) of this paragraph) (other than hazardous wastes listed in paragraph (4) of this rule) generated within the primary mineral processing industry from which minerals, acids, cyanide, water or other values are recovered by mineral processing or by beneficiation, provided that:

(I) The spent material is legitimately recycled to recover minerals, acids, cyanide, water or other values.

(II) The spent material is not accumulated speculatively.

(III) Except as provided in item (IV) of this subpart, the spent material is stored in tanks, containers, or buildings meeting the following minimum integrity standards: a building must be an engineered structure with a floor, walls, and a roof all of which are made of non-earthen materials providing structural support (except smelter buildings may have partially earthen floors provided the secondary material is stored on the non-earthen portion), and have a roof suitable for diverting rainwater away from the foundation; a tank must be free standing, not be a surface impoundment (as defined in subparagraph (2)(a) of Rule 0400-12-01-.01), and be manufactured of a material suitable for containment of its contents; a container must be free standing and be manufactured of a material suitable for containment of its contents. If tanks or containers contain any particulate which may be subject to wind dispersal, the owner/operator must operate these units in a manner which controls fugitive dust. Tanks, containers, and buildings must be designed, constructed and operated to prevent significant releases to the environment of these materials.

(IV) The Commissioner may make a site-specific determination, after public review and comment, that only solid mineral processing spent materials may be placed on pads, rather than in tanks, containers, or buildings. Solid mineral processing spent materials do not contain any free liquid. The decision-maker must affirm that pads are designed, constructed and

operated to prevent significant releases of the spent material into the environment. Pads must provide the same degree of containment afforded by the tanks, containers and buildings eligible for exclusion as provided in item (III) of this subpart.

- I. The decision-maker must also consider if storage on pads poses the potential for significant releases via groundwater, surface water, and air exposure pathways. Factors to be considered for assessing the groundwater, surface water, air exposure pathways are: the volume and physical and chemical properties of the spent material, including its potential for migration off the pad; the potential for human or environmental exposure to hazardous constituents migrating from the pad via each exposure pathway, and the possibility and extent of harm to human and environmental receptors via each exposure pathway.
 - II. Pads must meet the following minimum standards: be designed of non-earthen material that is compatible with the chemical nature of the mineral processing spent material, capable of withstanding physical stresses associated with placement and removal, have run-on/runoff controls, be operated in a manner which controls fugitive dust, and have integrity assurance through inspections and maintenance programs.
 - III. Before making a determination under this subpart, the Commissioner must provide public notice and the opportunity for comment to all persons potentially interested in the determination. This shall be accomplished by the owner or operator placing a notice as prepared and required by the Commissioner, of this action in local newspapers, or broadcasting notice over local radio stations. The owner or operator shall provide proof of the completion of all notice requirements to the Commissioner within ten days following conclusion of the public notice procedures.
- (V) The owner or operator provides notice to the Commissioner, providing the following information: the types of materials to be recycled; the type and location of the storage units and recycling processes; and the annual quantities expected to be placed in land-based units. This notification must be updated when there is a change in the type of materials recycled or the location of the recycling process.
- (VI) For purposes of subpart ~~2(xv)~~ 2(vii) of this subparagraph, mineral processing spent materials must be the result of mineral processing and may not include any listed hazardous wastes. Listed hazardous wastes and characteristic hazardous wastes generated by non-mineral processing industries are not eligible for the conditional exclusion from the definition of solid waste.

~~(xx)~~(xviii) Petrochemical recovered oil from an associated organic chemical manufacturing facility, where the oil is to be inserted into the petroleum refining process (SIC code 2911) along with normal petroleum refinery process streams, provided:

- (I) The oil is hazardous only because it exhibits the characteristic of ignitability (as defined in subparagraph (3)(b) of this rule) and/or toxicity for benzene (subparagraph (3)(e) of this rule, waste code D018); and
- (II) The oil generated by the organic chemical manufacturing facility is not placed on the land, or speculatively accumulated before being recycled into the petroleum refining process. An "associated organic chemical

manufacturing facility" is a facility where the primary SIC code is 2869, but where operations may also include SIC codes 2821, 2822, and 2865; and is physically co-located with a petroleum refinery; and where the petroleum refinery to which the oil being recycled is returned also provides hydrocarbon feedstocks to the organic chemical manufacturing facility. "Petrochemical recovered oil" is oil that has been reclaimed from secondary materials (i.e., sludges, byproducts, or spent materials, including wastewater) from normal organic chemical manufacturing operations, as well as oil recovered from organic chemical manufacturing processes.

~~(xxi)~~(xix) Spent caustic solutions from petroleum refining liquid treating processes used as a feedstock to produce cresylic or naphthenic acid unless the material is placed on the land, or accumulated speculatively as defined in ~~part~~ subpart (1)(a)3(viii) of this rule.

~~(xxii)~~(xx) Hazardous secondary materials used to make zinc fertilizers, provided that the conditions specified below are satisfied:

- (I) Hazardous secondary materials used to make zinc micronutrient fertilizers must not be accumulated speculatively, as defined in subpart (1)(a)3(viii) of this rule.
- (II) Generators and intermediate handlers of zinc-bearing hazardous secondary materials that are to be incorporated into zinc fertilizers must:
 - I. Submit a one-time notice to the Commissioner which contains the name, address and installation identification number of the generator or intermediate handler facility, provides a brief description of the secondary material that will be subject to the exclusion, and identifies when the manufacturer intends to begin managing excluded, zinc-bearing hazardous secondary materials under the conditions specified in this subpart.
 - II. Store the excluded secondary material in tanks, containers, or buildings that are constructed and maintained in a way that prevents releases of the secondary materials into the ~~environment~~ environment. At a minimum, any building used for this purpose must be an engineered structure made of non-earthen materials that provide structural support, and must have a floor, walls and a roof that prevent wind dispersal and contact with rainwater. Tanks used for this purpose must be structurally sound and, if outdoors, must have roofs or covers that prevent contact with wind and rain. Containers used for this purpose must be kept closed except when it is necessary to add or remove material, and must be in sound condition. Containers that are stored outdoors must be managed within storage areas that:
 - A. Have containment ~~structures~~ structures or systems sufficiently impervious to contain leaks, spills and accumulated precipitation; and
 - B. Provide for effective drainage and removal of leaks, spills and accumulated precipitation; and
 - C. Prevent run-on into the containment system.
 - III. With each off-site shipment of excluded hazardous secondary materials, provide written notice to the receiving facility that the

material is subject to the conditions of this subpart.

- IV. Maintain at the generator's or intermediate handler's facility for no less than three years records of all shipments of excluded hazardous secondary materials. For each shipment these records must at a minimum contain the following information:
 - A. Name of the transporter and date of the shipment;
 - B. Name and address of the facility that received the excluded material, and documentation confirming receipt of the shipment; and
 - C. Type and quantity of excluded secondary material in each shipment.
- (III) Manufacturers of zinc fertilizers or zinc fertilizer ingredients made from excluded hazardous secondary materials must:
 - I. Store excluded hazardous secondary materials in accordance with the storage requirements for generators and intermediate handlers, as specified in subitem (II) of this subpart.
 - II. Submit a one-time notification to the Commissioner that, at a minimum, specifies the name, address and installation identification number of the manufacturing facility, and identifies when the manufacturer intends to begin managing excluded, zinc-bearing hazardous secondary materials under the conditions specified in this subpart.
 - III. Maintain for a minimum of three (3) years records of all shipments of excluded hazardous secondary materials received by the manufacturer, which must at a minimum identify for each shipment the name and address of the generating facility, name of the transporter and the date the materials were received, the quantity received, and a brief description of the industrial process that generated the material.
 - IV. Submit to the Commissioner an annual report that identifies the total quantities of all excluded hazardous secondary materials that were used to manufacture zinc fertilizers or zinc fertilizer ingredients in the previous year, the name and address of each generating facility, and the industrial process(es) from which they were generated.
- (IV) Nothing in this subpart preempts, overrides or otherwise negates the provision in subparagraph (1)(b) of Rule 0400-12-01-.03(1)(b) which requires any person who generates a solid waste to determine if that waste is a hazardous waste.
- (V) Interim status and permitted storage units that have been used to store only zinc-bearing hazardous wastes prior to the submission of the one-time notice described in subitem (II) of this subpart, and that afterward will be used only to store hazardous secondary materials excluded under this subpart, are not subject to the closure requirements of Rules 0400-12-01-.05 and .06.

~~(xxiii)~~(xxi) Zinc fertilizers made from hazardous wastes, or hazardous secondary materials that are excluded under subpart ~~(xxii)~~ (xx) of this part, provided that:

(I) The fertilizers meet the following contaminate limits:

I. For metal contaminants:

Constituent	Maximum Allowable Total Concentration in Fertilizer, per Unit (1%) of Zinc (ppm)
Arsenic	0.3
Cadmium	1.4
Chromium	0.6
Lead	2.8
Mercury	0.3

II. For dioxin contaminants the fertilizer must contain no more than eight (8) parts per trillion of dioxin, measured as toxic equivalent (TEQ).

(II) The manufacturer performs sampling and analysis of the fertilizer product to determine compliance with the contaminant limits for metals no less than every six months, and for dioxins no less than every twelve months. Testing must also be performed whenever changes occur to manufacturing processes or ingredients that could significantly affect the amounts of contaminants in the fertilizer product. The manufacturer may use any reliable analytical method to demonstrate that no constituent of concern is present in the product at concentrations above the applicable limits. It is the responsibility of the manufacturer to ensure that the sampling and analysis are unbiased, precise, and representative of the product(s) introduced into commerce.

(III) The manufacturer maintains for no less than three years records of all sampling and analyses performed for purposes of determining compliance with the requirements of item (II) of this subpart. Such records must at a minimum include:

- I. The dates and times product samples were taken, and the dates the samples were analyzed;
- II. The names and qualifications of the person(s) taking the samples;
- III. A description of the methods and equipment used to take the samples;
- IV. The name and address of the laboratory facility at which analyses of the samples were performed;
- V. A description of the analytical methods used, including any cleanup and sample preparation methods; and
- VI. All laboratory analytical results used to determine compliance with the contaminant limits specified in this subpart.

~~(xxiv)~~(xxii) Used cathode ray tubes (CRTs)

(I) Used, intact CRTs as defined in subparagraph (2)(a) of Rule 0400-12-01-.01(2)(a) are not solid wastes within the United States unless they are disposed, or unless they are speculatively accumulated as defined in subpart (1)(a)3(viii) of this rule by CRT collectors or glass processors.

(II) Used, intact CRTs as defined in subparagraph (2)(a) of Rule 0400-12-

01-.01(2)(a) are not solid wastes when exported for recycling provided that they meet the requirements of subparagraph (6)(e) (5)(c) of this rule.

(III) Used, broken CRTs as defined in subparagraph (2)(a) of Rule 0400-12-01-.01(2)(a) are not solid wastes provided that they meet the requirements of subparagraph (6)(5)(b) of this rule.

(IV) Glass removed from CRTs is not a solid waste provided that it meets the requirements of part (6)(5)(b)3 of this rule.

(xxiii) Hazardous secondary material generated and legitimately reclaimed within the United States or its territories and under the control of the generator, provided that the material complies with items (I) and (II) of this subpart:

(I) I. The hazardous secondary material is generated and reclaimed at the generating facility (for purposes of this definition, generating facility means all contiguous property owned, leased, or otherwise controlled by the hazardous secondary material generator); or

II. The hazardous secondary material is generated and reclaimed at different facilities, if the reclaiming facility is controlled by the generator or if both the generating facility and the reclaiming facility are controlled by a person as defined in subparagraph (2)(a) of Rule 0400-12-01-.01, and if the generator provides one of the following certifications: "on behalf of [insert generator facility name], I certify that this facility will send the indicated hazardous secondary material to [insert reclaimer facility name], which is controlled by [insert generator facility name] and that [insert name of either facility] has acknowledged full responsibility for the safe management of the hazardous secondary material; and as specified in Tennessee Code Annotated Section 39-16-702(a)(4), this declaration is made under penalty of perjury," or "on behalf of [insert generator facility name], I certify that this facility will send the indicated hazardous secondary material to [insert reclaimer facility name], that both facilities are under common control, and that [insert name of either facility] has acknowledged full responsibility for the safe management of the hazardous secondary material; and as specified in Tennessee Code Annotated Section 39-16-702(a)(4), this declaration is made under penalty of perjury." For purposes of this subitem, "control" means the power to direct the policies of the facility, whether by the ownership of stock, voting rights, or otherwise, except that contractors who operate facilities on behalf of a different person as defined in subparagraph (2)(a) of Rule 0400-12-01-.01 shall not be deemed to "control" such facilities. The generating and receiving facilities must both maintain at their facilities for no less than three years records of hazardous secondary materials sent or received under this exclusion. In both cases, the records must contain the name of the transporter, the date of the shipment, and the type and quantity of the hazardous secondary material shipped or received under the exclusion. These requirements may be satisfied by routine business records (e.g., financial records, bills of lading, copies of DOT shipping papers, or electronic confirmations); or

III. The hazardous secondary material is generated pursuant to a written contract between a tolling contractor and a toll manufacturer and is reclaimed by the tolling contractor, if the

tolling contractor certifies the following: "On behalf of [insert tolling contractor name], I certify that [insert tolling contractor name] has a written contract with [insert toll manufacturer name] to manufacture [insert name of product or intermediate] which is made from specified unused materials, and that [insert tolling contractor name] will reclaim the hazardous secondary materials generated during this manufacture. On behalf of [insert tolling contractor name], I also certify that [insert tolling contractor name] retains ownership of, and responsibility for, the hazardous secondary materials that are generated during the course of the manufacture, including any releases of hazardous secondary materials that occur during the manufacturing process. As specified in Tennessee Code Annotated Section 39-16-702(a)(4), this declaration is made under penalty of perjury." The tolling contractor must maintain at its facility for no less than three years records of hazardous secondary materials received pursuant to its written contract with the tolling manufacturer, and the tolling manufacturer must maintain at its facility for no less than three years records of hazardous secondary materials shipped pursuant to its written contract with the tolling contractor. In both cases, the records must contain the name of the transporter, the date of the shipment, and the type and quantity of the hazardous secondary material shipped or received pursuant to the written contract. These requirements may be satisfied by routine business records (e.g., financial records, bills of lading, copies of DOT shipping papers, or electronic confirmations). For purposes of this subitem, tolling contractor means a person who arranges for the production of a product or intermediate made from specified unused materials through a written contract with a toll manufacturer. Toll manufacturer means a person who produces a product or intermediate made from specified unused materials pursuant to a written contract with a tolling contractor.

- (II) I. The hazardous secondary material is contained as defined in subparagraph (2)(a) of Rule 0400-12-01-.01. A hazardous secondary material released to the environment is discarded and a solid waste unless it is immediately recovered for the purpose of reclamation. Hazardous secondary material managed in a unit with leaks or other continuing or intermittent unpermitted releases is discarded and a solid waste.
- II. The hazardous secondary material is not speculatively accumulated, as described in subpart (a)3(viii) of this paragraph.
- III. Notice is provided as required by subparagraph (5)(c) of Rule 0400-12-01-.01.
- IV. The material is not otherwise subject to material-specific management conditions under part 1 of this subparagraph when reclaimed, and it is not a spent lead-acid battery (see subparagraph (7)(a) of Rule 0400-12-01-.09 and subparagraph (1)(d) of Rule 0400-12-01-.12).
- V. Persons performing the recycling of hazardous secondary materials under this exclusion must maintain documentation of their legitimacy determination on-site. Documentation must be a written description of how the recycling meets all four factors in part (5)(d)1 of Rule 0400-12-01-.01. Documentation must be

maintained for three years after the recycling operation has ceased.

VI. The emergency preparedness and response requirements found in paragraph (13) of this rule are met.

(xxiv) Hazardous secondary material that is generated and then transferred to a verified reclamation facility, as defined in subparagraph (2)(a) of Rule 0400-12-01-.01, for the purpose of reclamation is not a solid waste, provided that:

(I) The material is not speculatively accumulated, as defined in subpart (a)3(viii) of this paragraph;

(II) The material is not handled by any person or facility other than the hazardous secondary material generator, the transporter, an intermediate facility or a reclaimer, and, while in transport, is not stored for more than ten (10) days at a transfer facility, as defined in subparagraph (2)(a) of Rule 0400-12-01-.01, and is packaged according to applicable Department of Transportation regulations at 49 CFR parts 173, 178, and 179 while in transport;

(III) The material is not otherwise subject to material-specific management conditions under part 1 of this subparagraph when reclaimed, and it is not a spent lead-acid battery (see subparagraph (7)(a) of Rule 0400-12-01-.09 and subparagraph (1)(d) of Rule 0400-12-01-.12);

(IV) The reclamation of the material is legitimate, as specified under subparagraph (5)(d) of Rule 0400-12-01-.01;

(V) The hazardous secondary material generator satisfies all of the following conditions:

I. The material must be contained as defined in subparagraph (2)(a) of Rule 0400-12-01-.01. A hazardous secondary material released to the environment is discarded and a solid waste unless it is immediately recovered for the purpose of recycling. Hazardous secondary material managed in a unit with leaks or other continuing releases is discarded and a solid waste.

II. The hazardous secondary material generator must arrange for transport of hazardous secondary materials to a verified reclamation facility (or facilities), as defined in subparagraph (2)(a) of Rule 0400-12-01-.01, in the United States or to a reclamation facility where the management of the hazardous secondary materials is addressed under a Part B permit issued under Rule 0400-12-01-.07 or interim status standards under Rule 0400-12-01-.05 or, if not in Tennessee, under a RCRA Part B permit or interim status standards in another state. If the hazardous secondary material will be passing through an intermediate facility, the intermediate facility must be a verified intermediate facility, as defined in subparagraph (2)(a) of Rule 0400-12-01-.01, or the management of the hazardous secondary materials at that facility must be addressed under a Part B permit issued under Rule 0400-12-01-.07 or interim status standards under Rule 0400-12-01-.05, or, if not in Tennessee, under a RCRA Part B permit or interim status standards in another state, and the hazardous secondary material generator must make contractual arrangements with the intermediate facility to ensure that the hazardous secondary material is sent to the reclamation facility identified by the hazardous secondary material generator.

- III. The hazardous secondary material generator must maintain at the generating facility for no less than three (3) years records of all off-site shipments of hazardous secondary materials. For each shipment, these records must, at a minimum, contain the following information:
- A. Name of the transporter and date of the shipment;
 - B. Name and address of each reclaimer and, if applicable, the name and address of each intermediate facility to which the hazardous secondary material was sent; and
 - C. The type and quantity of hazardous secondary material in the shipment.
- IV. The hazardous secondary material generator must maintain at the generating facility for no less than three (3) years confirmations of receipt from each reclaimer and, if applicable, each intermediate facility for all off-site shipments of hazardous secondary materials. Confirmations of receipt must include the name and address of the reclaimer (or intermediate facility), the type and quantity of the hazardous secondary materials received and the date which the hazardous secondary materials were received. This requirement may be satisfied by routine business records (e.g., financial records, bills of lading, copies of DOT shipping papers, or electronic confirmations of receipt);
- V. The hazardous secondary material generator must comply with the emergency preparedness and response conditions in paragraph (13) of this rule.
- (VI) Reclaimers of hazardous secondary material excluded from regulation under this exclusion and verified intermediate facilities, as defined in subparagraph (2)(a) of Rule 0400-12-01-.01, satisfy all of the following conditions:
- I. The reclaimer and intermediate facility must maintain at its facility for no less than three (3) years records of all shipments of hazardous secondary material that were received at the facility and, if applicable, for all shipments of hazardous secondary materials that were received and subsequently sent off-site from the facility for further reclamation. For each shipment, these records must at a minimum contain the following information:
 - A. Name of the transporter and date of the shipment;
 - B. Name and address of the hazardous secondary material generator and, if applicable, the name and address of the reclaimer or intermediate facility which the hazardous secondary materials were received from;
 - C. The type and quantity of hazardous secondary material in the shipment; and
 - D. For hazardous secondary materials that, after being received by the reclaimer or intermediate facility, were subsequently transferred off-site for further reclamation, the name and address of the (subsequent) reclaimer and, if applicable, the name and address of each

intermediate facility to which the hazardous secondary material was sent.

- II. The intermediate facility must send the hazardous secondary material to the reclaimer(s) designated by the hazardous secondary materials generator.
- III. The reclaimer and intermediate facility must send to the hazardous secondary material generator confirmations of receipt for all off-site shipments of hazardous secondary materials, within thirty (30) days of receipt. Confirmations of receipt must include the name and address of the reclaimer (or intermediate facility), the type and quantity of the hazardous secondary materials received and the date which the hazardous secondary materials were received. This requirement may be satisfied by routine business records (e.g., financial records, bills of lading, copies of DOT shipping papers, or electronic confirmations of receipt).
- IV. The reclaimer and intermediate facility must manage the hazardous secondary material in a manner that is at least as protective as that employed for analogous raw material and must be contained. An "analogous raw material" is a raw material for which a hazardous secondary material is a substitute and serves the same function and has similar physical and chemical properties as the hazardous secondary material.
- V. Any residuals that are generated from reclamation processes will be managed in a manner that is protective of human health and the environment. If any residuals exhibit a hazardous characteristic according to paragraph (3) of this rule, or if they themselves are specifically listed in paragraph (4) of this rule, such residuals are hazardous wastes and must be managed in accordance with the applicable requirements of Rules 0400-12-01-.01 through 0400-12-01-.10.
- VI. The reclaimer and intermediate facility have financial assurance as required under paragraph (8) of this rule.
- VII. The reclaimer and intermediate facility have been issued a Certificate to Operate under part (4)(b)2 of Rule 0400-12-01-.01 or have a Part B permit issued under Rule 0400-12-01-.07 or interim status standards under Rule 0400-12-01-.05 that address the management of the hazardous secondary materials;
- VIII. If not operating under a Part B permit issued under Rule 0400-12-01-.07 or interim status standards under Rule 0400-12-01-.05 that address the management of the hazardous secondary materials, the reclaimer and intermediate facility develops and maintains a hazardous secondary material acceptance plan. The reclaimer only accepts hazardous secondary materials for reclamation that comply with the hazardous waste acceptance plan as approved by the Commissioner under part (4)(b)2 of Rule 0400-12-01-.01; and

(VII) All persons claiming the exclusion under this subpart provide notification as required under subparagraph (5)(c) of Rule 0400-12-01-.01.

(xxv) Reserved

~~(xxv)~~(xxvi) Solvent-contaminated wipes that are sent for cleaning and reuse are not solid wastes from the point of generation, provided that:

- (I) The solvent-contaminated wipes, when accumulated, stored, and transported, are contained in non-leaking, closed containers that are labeled "Excluded Solvent-Contaminated Wipes." The containers shall be able to contain free liquids, should free liquids occur. During accumulation, a container is considered closed when there is complete contact between the fitted lid and the rim, except when it is necessary to add or remove solvent-contaminated wipes. When the container is full, or when the solvent-contaminated wipes are no longer being accumulated, or when the container is being transported, the container shall be sealed with all lids properly and securely affixed to the container and all openings tightly bound or closed sufficiently to prevent leaks and emissions;
- (II) The solvent-contaminated wipes are accumulated by the generator for no more than 180 days from the start date of accumulation for each container prior to being sent for cleaning;
- (III) At the point of being sent for cleaning on-site or at the point of being transported off-site for cleaning, the solvent-contaminated wipes must contain no free liquids as defined in paragraph (2) of Rule 0400-12-01-.01;
- (IV) Free liquids removed from the solvent-contaminated wipes or from the container holding the wipes shall be managed according to the applicable regulations found in Rules 0400-12-01-.01 through 0400-12-01-.12;
- (V) Generators shall maintain at their site the following documentation:
 - I. Name and address of the laundry or dry cleaner that is receiving the solvent-contaminated wipes;
 - II. Documentation that the 180-day accumulation time limit in item (II) of this subpart is being met;
 - III. Description of the process the generator is using to ensure the solvent-contaminated wipes contain no free liquids at the point of being laundered or dry cleaned on-site or at the point of being transported off-site for laundering or dry cleaning; and
- (VI) The solvent-contaminated wipes are sent to a laundry or dry cleaner whose discharge, if any, is regulated under T.C.A. §§ 69-3-101 et seq., or sections 301 and 402 or section 307 of the Clean Water Act.

(xxvii) Hazardous secondary material that is generated and then transferred to another person for the purpose of remanufacturing is not a solid waste, provided that:

- (I) The hazardous secondary material consists of one or more of the following spent solvents: Toluene, xylenes, ethylbenzene, 1,2,4-trimethylbenzene, chlorobenzene, n-hexane, cyclohexane, methyl tert-butyl ether, acetonitrile, chloroform, chloromethane, dichloromethane, methyl isobutyl ketone, NN-dimethylformamide, tetrahydrofuran, n-butyl alcohol, ethanol, and/or methanol;
- (II) The hazardous secondary material originated from using one or more of the solvents listed in item (I) of this subpart in a commercial grade for reacting, extracting, purifying, or blending chemicals (or for rinsing out

the process lines associated with these functions) in the pharmaceutical manufacturing (NAICS 325412), basic organic chemical manufacturing (NAICS 325199), plastics and resins manufacturing (NAICS 325211), and/or the paints and coatings manufacturing sectors (NAICS 325510);

(III) The hazardous secondary material generator sends the hazardous secondary material spent solvents listed in item (I) of this subpart to a remanufacturer in the pharmaceutical manufacturing (NAICS 325412), basic organic chemical manufacturing (NAICS 325199), plastics and resins manufacturing (NAICS 325211), and/or the paints and coatings manufacturing sectors (NAICS 325510);

(IV) After remanufacturing one or more of the solvents listed in item (I) of this subpart, the use of the remanufactured solvent shall be limited to reacting, extracting, purifying, or blending chemicals (or for rinsing out the process lines associated with these functions) in the pharmaceutical manufacturing (NAICS 325412), basic organic chemical manufacturing (NAICS 325199), plastics and resins manufacturing (NAICS 325211), and the paints and coatings manufacturing sectors (NAICS 325510) or to using them as ingredients in a product. These allowed uses correspond to chemical functional uses enumerated under the Chemical Data Reporting Rule of the Toxic Substances Control Act (40 CFR parts 704, 710-711), including Industrial Function Codes U015 (solvents consumed in a reaction to produce other chemicals) and U030 (solvents become part of the mixture);

(V) After remanufacturing one or more of the solvents listed in item (I) of this subpart, the use of the remanufactured solvent does not involve cleaning or degreasing oil, grease, or similar material from textiles, glassware, metal surfaces, or other articles. (These disallowed continuing uses correspond to chemical functional uses in Industrial Function Code U029 under the Chemical Data Reporting Rule of the Toxics Substances Control Act.); and

(VI) Both the hazardous secondary material generator and the remanufacturer must:

I. Notify EPA or the State Director, if the state is authorized for the program, and update the notification every two years per subparagraph (5)(c) of Rule 0400-12-01-.01;

II. Develop and maintain an up-to-date remanufacturing plan which identifies:

A. The name, address and EPA ID number of the generator(s) and the remanufacturer(s);

B. The types and estimated annual volumes of spent solvents to be remanufactured;

C. The processes and industry sectors that generate the spent solvents;

D. The specific uses and industry sectors for the remanufactured solvents; and

E. A certification from the remanufacturer stating "on behalf of [insert remanufacturer facility name], I certify that this facility is a remanufacturer under pharmaceutical manufacturing (NAICS 325412), basic organic chemical

manufacturing (NAICS 325199), plastics and resins manufacturing (NAICS 325211), and/or the paints and coatings manufacturing sectors (NAICS 325510), and will accept the spent solvent(s) for the sole purpose of remanufacturing into commercial-grade solvent(s) that will be used for reacting, extracting, purifying, or blending chemicals (or for rinsing out the process lines associated with these functions) or for use as product ingredient(s). I also certify that the remanufacturing equipment, vents, and tanks are equipped with and are operating air emission controls in compliance with the appropriate Tennessee Air Quality Act regulations under Rule Division 1200-03, or, absent such Air Quality Act standards for the particular operation or piece of equipment covered by the remanufacturing exclusion, are in compliance with the appropriate standards in paragraphs (27) (vents), (28) (equipment) and (29) (tank storage).";

- III. Maintain records of shipments and confirmations of receipts for a period of three years from the dates of the shipments;
- IV. Prior to remanufacturing, store the hazardous spent solvents in tanks or containers that meet technical standards found in paragraphs (9) and (10) of this rule, with the tanks and containers being labeled or otherwise having an immediately available record of the material being stored;
- V. During remanufacturing, and during storage of the hazardous secondary materials prior to remanufacturing, the remanufacturer certifies that the remanufacturing equipment, vents, and tanks are equipped with and are operating air emission controls in compliance with the appropriate Tennessee Air Quality Act regulations under Rule Division 1200-03; or, absent such Air Quality Act standards for the particular operation or piece of equipment covered by the remanufacturing exclusion, are in compliance with the appropriate standards in paragraphs (27) (vents), (28) (equipment) and (29) (tank storage); and
- VI. Meet the requirements prohibiting speculative accumulation per subpart (a)3(viii) of this paragraph.

2. Wastes Which Are Not Hazardous Wastes

The following wastes are not hazardous wastes:

- (i) Household waste, including household waste that has been collected, transported, stored, treated, disposed, recovered (e.g., refuse-derived fuel) or reused. "Household waste" means any material (including garbage, trash and sanitary wastes in septic tanks) derived from households (including single and multiple residences, hotels and motels, bunkhouses, ranger stations, crew quarters, campgrounds, picnic grounds and day-use recreation areas). A resource recovery facility managing municipal waste shall not be deemed to be treating, storing, disposing of, or otherwise managing hazardous wastes for the purposes of regulation under Chapter 0400-12-01, if such facility:
 - (l) Receives and burns only
 - I. Household waste (from single and multiple dwellings, hotels, motels, and other residential sources) and

- II. Waste from commercial or industrial sources that does not contain hazardous waste; and
- (II) Such facility does not accept hazardous wastes and the owner or operator of such facility has established contractual requirements or other appropriate notification or inspection procedures to assure that hazardous wastes are not received at or burned in such facility.
- (ii) The following wastes generated within a farm and incidental to the operation of that farm:
 - (I) Wastes from the growing and harvesting of agricultural crops or from the raising of animals (including animal manures), which are returned to the soil as fertilizers; and [40 CFR 261.4(b)(2)]
 - (II) Waste pesticides, provided the farmer triple-rinses each emptied pesticide container (using a capable solvent) and disposes of the pesticide residues on his own farm in a manner consistent with the disposal instructions on the pesticide label. [40 CFR 262.70]
- (iii) Mining overburden returned to the mine site.
- ~~(xiii)(iv) (I)~~ Fly ash waste, bottom ash waste, slag waste, and flue gas emission control waste, generated primarily from the combustion of coal or other fossil fuels, except as provided by subparagraph (8)(m) of Rule 0400-12-01-.09(8)(m) for facilities that burn or process hazardous waste.
- ~~(II)~~ The following wastes generated primarily from processes that support the combustion of coal or other fossil fuels that are co-disposed with the wastes in item (I) of this subpart, except as provided by subparagraph (8)(m) of Rule 0400-12-01-.09 for facilities that burn or process hazardous waste:
 - ~~I.~~ Coal pile run-off. For purposes of this this subitem, coal pile run-off means any precipitation that drains off coal piles.
 - ~~II.~~ Boiler cleaning solutions. For purposes of this subitem, boiler cleaning solutions means water solutions and chemical solutions used to clean the fire-side and water-side of the boiler.
 - ~~III.~~ Boiler blowdown. For purposes of subitem, boiler blowdown means water purged from boilers used to generate steam.
 - ~~IV.~~ Process water treatment and demineralizer regeneration wastes. For purposes of this subitem, process water treatment and demineralizer regeneration wastes means sludges, rinses, and spent resins generated from processes to remove dissolved gases, suspended solids, and dissolved chemical salts from combustion system process water.
 - ~~V.~~ Cooling tower blowdown. For purposes of this subitem, cooling tower blowdown means water purged from a closed cycle cooling system. Closed cycle cooling systems include cooling towers, cooling ponds, or spray canals.
 - ~~VI.~~ Air heater and precipitator washes. For purposes of this subitem, air heater and precipitator washes means wastes from cleaning air preheaters and electrostatic precipitators.

VII. Effluents from floor and yard drains and sumps. For purposes of this subitem, effluents from floor and yard drains and sumps means wastewaters, such as wash water, collected by or from floor drains, equipment drains, and sumps located inside the power plant building; and wastewaters, such as rain runoff, collected by yard drains and sumps located outside the power plant building.

VIII. Wastewater treatment sludges. For purposes of this subitem, wastewater treatment sludges refers to sludges generated from the treatment of wastewaters specified in subitems I through VI of this item.

~~(xiv)~~(v) Drilling fluids, produced waters, and other wastes associated with the exploration, development, or production of crude oil, natural gas or geothermal energy.

~~(v)~~(vi) (I) Wastes which fail the test for the Toxicity Characteristic because chromium is present or are listed in paragraph (4) of this rule due to the presence of chromium, which do not fail the test for the Toxicity Characteristic for any other constituent or are not listed due to the presence of any other constituent, and which do not fail the test for any other characteristic, if a waste generator demonstrates to the satisfaction of the Director, by submitting an evaluation request and supporting documentation, that:

- I. The chromium in the waste is exclusively (or nearly exclusively) trivalent chromium; and
- II. The waste generated from an industrial process is trivalent chromium exclusively (or nearly exclusively) and the process does not contain more than minimal amounts of hexavalent chromium¹; and
- III. The waste is managed by the waste generator in non-oxidizing environments.

(II) The waste generator shall also submit to the Department a Chromium Evaluation Review Fee identified in Rule 0400-12-01-.08(11) prior to the Director's review of the submitted documentation.

(III) This exemption shall be effective only after approval in writing by the Director. Waste generators who obtain this ~~exemption~~ exemption shall:

- I. Annually recertify the accuracy of the information in a letter to the Director that there has been no change in the waste stream or the process generating the waste since the Director determined that waste satisfies the conditions for the exemption;
- II. Submit all recertifications as required by subitem I of this item by March 1 of each succeeding year following the Director's determination that the waste satisfies the conditions of the exemption; and
- III. Submit a new evaluation and review fee to the Director within 30 days, if a change in the waste stream or the process generating the waste has occurred since the Director's determination.

~~(vi)~~(IV) Specific wastes which meet the standard in subpart ~~(v)~~ of this part item (I) of this subpart (so long as they do not fail the test for the toxicity characteristic for any other constituent, and do not exhibit any other characteristic) are:

~~(i)~~ I. Chrome (blue) trimmings generated by the following subcategories of the leather tanning and finishing industry: Hair pulp/chrome tan/retan/wet finish; hair save/chrome tan/retan/wet finish; retan/wet finish; no beamhouse; through-the-blue; and shearling.

~~(ii)~~ II. Chrome (blue) shavings generated by the following subcategories of the leather tanning and finishing industry: Hair pulp/chrome tan/retan/wet finish; hair save/chrome tan/retan/wet finish; retan/wet finish; no beamhouse; through-the-blue; shearling.

~~(iii)~~ III. Buffing dust generated by the following subcategories of the leather tanning and finishing industry: Hair pulp/chrome tan/retan/wet finish; hair save/chrome tan/retan/wet finish; retan/wet finish; no beamhouse; through-the-blue.

~~(iv)~~ IV. Sewer screenings generated by the following subcategories of the leather tanning and finishing industry: Hair pulp/chrome tan/retan/wet finish; hair save/chrome tan/retan/wet finish; retan/wet finish; no beamhouse; through-the-blue; and shearling.

~~(v)~~ V. Wastewater treatment sludges generated by the following subcategories of the leather tanning and finishing industry: Hair pulp/chrome tan/retan/wet finish; hair save/chrome tan/retan/wet finish; retan/wet finish; no beamhouse; through-the-blue; and shearling.

~~(vi)~~ VI. Wastewater treatment sludges generated by the following subcategories of the leather tanning and finishing industry: Hair pulp/chrome tan/retan/wet finish; hair save/chrome tan/retan/wet finish; and through-the-blue.

~~(vii)~~ VII. Waste scrap leather from the leather tanning industry, the shoe manufacturing industry, and other leather product manufacturing industries.

~~(viii)~~ VIII. Wastewater treatment sludges from the production of TiO₂ pigment using chromium-bearing ores by the chloride process.

~~(ix)~~(vii) Solid waste from the extraction, beneficiation, and processing of ores and minerals (including coal, phosphate rock and overburden from the mining of uranium ore), except as provided by Rule 0400-12-01-.09(8)(m) for facilities that burn or process hazardous waste.

(I) For purposes of this subpart, beneficiation of ores and minerals is restricted to the following activities: crushing; grinding; washing; dissolution; crystallization; filtration; sorting; sizing; drying; sintering; pelletizing; briquetting; calcining to remove water and/or carbon dioxide; roasting, autoclaving, and/or chlorination in preparation for leaching (except where the roasting (and/or autoclaving and/or chlorination)/leaching sequence produces a final or intermediate product that does not undergo further beneficiation or processing); gravity concentration; magnetic separation; electrostatic separation; flotation; ion exchange; solvent extraction; electrowinning; precipitation;

amalgamation; and heap, dump, vat, tank, and in situ leaching.

- (II) For the purpose of this subpart, solid waste from the processing of ores and minerals includes only the following wastes as generated:
- I. Slag from primary copper processing;
 - II. Slag from primary lead processing;
 - III. Red and brown muds from bauxite refining;
 - IV. Phosphogypsum from phosphoric acid production;
 - V. Slag from elemental phosphorus production;
 - VI. Gasifier ash from coal gasification;
 - VII. Process wastewater from coal gasification;
 - VIII. Calcium sulfate wastewater treatment plant sludge from primary copper processing;
 - IX. Slag tailings from primary copper processing;
 - X. Fluorogypsum from hydrofluoric acid production;
 - XI. Process wastewater from hydrofluoric acid production;
 - XII. Air pollution control dust/sludge from iron blast furnaces;
 - XIII. Iron blast furnace slag;
 - XIV. Treated residue from roasting/leaching of chrome ore;
 - XV. Process wastewater from primary magnesium processing by the anhydrous process;
 - XVI. Process wastewater from phosphoric acid production;
 - XVII. Basic oxygen furnace and open hearth furnace air pollution control dust/sludge from carbon steel production;
 - XVIII. Basic oxygen furnace and open hearth furnace slag from carbon steel production;
 - XIX. Chloride process waste solids from titanium tetrachloride production;
 - XX. Slag from primary zinc processing.
- (III) A residue derived from co-processing mineral processing secondary materials with normal beneficiation raw materials or with normal mineral processing raw materials remains excluded under this part if the owner or operator:
- I. Processes at least 50 percent by weight normal beneficiation raw materials or normal mineral processing raw materials; and,
 - II. Legitimately reclaims the secondary mineral processing materials.

- ~~(xvi)~~(viii) Cement kiln dust waste, except as provided by Rule 0400-12-01-.09(8)(m) for facilities that burn or process hazardous waste.
- ~~(iv)~~(ix) Waste which consists of discarded arsenical-treated wood or wood products which fails the test for the Toxicity Characteristic for Hazardous Waste Codes D004 through D017 and which is not a hazardous waste for any other reason if the waste is generated by persons who utilize the arsenical-treated wood and wood products for these materials' intended end use.
- ~~(vii)~~(x) Petroleum-contaminated media and debris that fail the test for the Toxicity Characteristic of subparagraph (3)(e) of this rule (Hazardous Waste Codes D018 through D043 only) and are subject to the corrective action regulations under 40 CFR Part 280 or Chapter 0400-18-01 (as those Federal ~~these~~ regulations exist on the effective date of these rules).
- ~~(viii)~~(xi) Injected groundwater that is hazardous only because it exhibits the Toxicity Characteristic (Hazardous Waste Codes D018 through D043 only) in subparagraph (3)(e) of this rule that is reinjected through an underground injection well pursuant to free phase hydrocarbon recovery operations undertaken at petroleum refineries, petroleum marketing terminals, petroleum bulk plants, petroleum pipelines, and petroleum transportation spill sites until January 25, 1993. This extension applies to recovery operations in existence, or for which contracts have been issued, on or before March 25, 1991. New operations involving injection wells (beginning after March 25, 1991) will qualify for this compliance date extension (until January 25, 1993) only if operations are performed pursuant to a written state agreement issued under the Tennessee Water Quality Control Act (T.C.A. §69-3-101 et seq.) that includes a provision to assess the groundwater and the need for further remediation once the free phase recovery is completed.
- ~~(ix)~~(xii) Used chlorofluorocarbon refrigerants from totally enclosed heat transfer equipment, including mobile air conditioning systems, mobile refrigeration, and commercial and industrial air conditioning and refrigeration systems that use chlorofluorocarbons as the heat transfer fluid in a refrigeration cycle, provided the refrigerant is reclaimed for further use.
- ~~(x)~~(xiii) Non-terne plated used oil filters that are not mixed with wastes listed in paragraph (4) of this rule if these oil filters have been gravity hot-drained using one of the following methods:
- (I) Puncturing the filter anti-drain back valve or the filter dome end and hot-draining;
 - (II) Hot-draining and crushing;
 - (III) Dismantling and hot-draining; or
 - (IV) Any other equivalent hot-draining method which will remove used oil.
- ~~(xi)~~(xiv) Used oil re-refining distillation bottoms that are used as feedstock to manufacture asphalt products.
- ~~(xii)~~(xv) Leachate or gas condensate collected from landfills where certain solid wastes have been disposed, provided that:
- (I) The solid wastes disposed would meet one or more of the listing descriptions for hazardous Waste Codes K169, K170, K171, K172, K174, K175, K176, K177, K178, and K181 if these wastes had been generated after the effective date of the listing;

- (II) The solid wastes described in item (I) of this subpart were disposed prior to the effective date of the listing;
- (III) The leachate or gas condensate do not exhibit any characteristic of hazardous waste nor are derived from any other listed hazardous waste;
- (IV) Discharge of the leachate or gas condensate, including leachate or gas condensate transferred from the landfill to a POTW by truck, rail, or dedicated pipe, is subject to regulation under sections 307(b) or 402 of the Clean Water Act, as amended or under the Water Quality Control Act; and
- (V) As of February 13, 2001, leachate or gas condensate derived from K169-K172 is no longer exempt if it is stored or managed in a surface impoundment prior to discharge. As of November 21, 2003, leachate or gas condensate derived from K176, K177, and K178 is no longer exempt if it is stored or managed in a surface impoundment prior to discharge. After February 26, 2007, leachate or gas condensate derived from K181 will no longer be exempt if it is stored or managed in a surface impoundment prior to discharge. There is one exception: if the surface impoundment is used to temporarily store leachate or gas condensate in response to an emergency situation (e. g., shutdown of wastewater treatment system), provided the impoundment has a double liner, and provided the leachate or gas condensate is removed from the impoundment and continues to be managed in compliance with the conditions of this item (V) after the emergency ends.

(xvi) Reserved

(xvii) Reserved

~~(xvii)~~(xviii) Solvent-contaminated wipes, except for wipes that are hazardous waste due to the presence of trichloroethylene, that are sent for disposal are not hazardous wastes from the point of generation provided that:

- (I) The solvent-contaminated wipes, when accumulated, stored, and transported, are contained in non-leaking, closed containers that are labeled "Excluded Solvent-Contaminated Wipes." The containers shall be able to contain free liquids, should free liquids occur. During accumulation, a container is considered closed when there is complete contact between the fitted lid and the rim, except when it is necessary to add or remove solvent-contaminated wipes. When the container is full, or when the solvent-contaminated wipes are no longer being accumulated, or when the container is being transported, the container shall be sealed with all lids properly and securely affixed to the container and all openings tightly bound or closed sufficiently to prevent leaks and emissions;
- (II) The solvent-contaminated wipes are accumulated by the generator for no more than 180 days from the start date of accumulation for each container prior to being sent for disposal;
- (III) At the point of being transported for disposal, the solvent-contaminated wipes must contain no free liquids as defined in paragraph (2) of Rule 0400-12-01-.01;
- (IV) Free liquids removed from the solvent-contaminated wipes or from the container holding the wipes shall be managed according to the applicable regulations found in Rules 0400-12-01-.01 through 0400-12-

01-.12;

(V) Generators shall maintain at their site the following documentation:

- I. Name and address of the landfill or combustor that is receiving the solvent-contaminated wipes;
- II. Documentation that the 180 day accumulation time limit in item (II) of this subpart is being met;
- III. Description of the process the generator is using to ensure solvent-contaminated wipes contain no free liquids at the point of being transported for disposal; and

(VI) The solvent-contaminated wipes are sent for disposal:

- I. To a municipal solid waste landfill regulated under Chapter 0400-11-01, including Rule 0400-11-01-.04 regarding a Class I disposal facility, or to a hazardous waste landfill regulated under Rules 0400-12-01-.05 or 0400-12-01-.06; or
- II. To a municipal waste combustor or other combustion facility regulated under T.C.A. §§ 68-201-101 et seq. or to a hazardous waste combustor, boiler, or industrial furnace regulated under Rules 0400-12-01-.05 or 0400-12-01-.06 or paragraph (8) of Rule 0400-12-01-.09.

3. Hazardous Wastes Which Are Exempted From Certain Regulations

- (i) A hazardous waste which is generated in a product or raw material storage tank, a product or raw material transport vehicle or vessel, a product or raw material pipeline, or in a manufacturing process unit or an associated non-waste-treatment manufacturing unit, is not subject to regulation under these rules except as specified in subpart (ii) of this part until it exits the unit in which it was generated, unless the unit is a surface impoundment, or unless the hazardous waste remains in the unit more than 90 days after the unit ceases to be operated for manufacturing, or for storage or transportation of product or raw materials.
- (ii) A hazardous waste as described in subpart (i) of this part shall be subject to the generator notification requirement of Rule 0400-12-01-.03(2), and shall be subject to such requirement irrespective of how the waste is managed after it exits the units in which it was generated (e.g., even if it exits directly into a domestic sewer system), except as provided otherwise in Rule 0400-12-01-.03(2)(a)2. Such a waste shall also be subject to the annual reporting requirements of Rule 0400-12-01-.03(5)(b) for the years in which it is removed from the units in which it was generated.

4. Samples

- (i) Except as provided in subpart (ii) of this part, a sample of solid waste or a sample of water, soil, or air, which is collected for the sole purpose of testing to determine its characteristics or composition, is not subject to any requirements of these rules when:
 - (I) The sample is being transported to a laboratory for the purpose of testing; or
 - (II) The sample is being transported back to the sample collector after testing; or

- (III) The sample is being stored by the sample collector before transport to a laboratory for testing; or
 - (IV) The sample is being stored in a laboratory before testing; or
 - (V) The sample is being stored in a laboratory after testing but before it is returned to the sample collector; or
 - (VI) The sample is being stored temporarily in the laboratory after testing for a specific purpose (for example, until the conclusion of a court case or enforcement action where further testing of the sample may be necessary).
- (ii) In order to qualify for the exemption in items (i)(I) and (II) of this part a sample collector shipping samples to a laboratory and a laboratory returning samples to a sample collector must:
- (I) Comply with U.S. Department of Transportation (DOT), U.S. Postal Service (USPS), or any other applicable shipping requirements; or
 - (II) Comply with the following requirements if the sample collector determines that DOT, USPS, or other shipping requirements do not apply to the shipment of the sample:
 - I. Assure that the following information accompanies the sample:
 - A. The sample collector's name, mailing address, and telephone number;
 - B. The laboratory's name, mailing address, and telephone number;
 - C. The quantity of the sample;
 - D. The date of shipment; and
 - E. A description of the sample.
 - II. Package the sample so that it does not leak, spill, or vaporize from its packaging.
- (iii) This exemption does not apply if the laboratory determines that the waste is hazardous but the laboratory is no longer meeting any of the conditions stated in subpart (i) of this part.

5. Treatability Study Samples

- (i) Except as provided in subpart (ii) of this part, persons who generate or collect samples for the purpose of conducting treatability studies as defined in Rule 0400-12-01-.01(2)(a), are not subject to any requirement of Rule 0400-12-01-.02, .03 and .04, nor are such samples included in the quantity determinations of paragraph (e) of this rule and Rule 0400-12-01-.03(4)(e)6 when:
 - (I) The sample is being collected and prepared for transportation by the generator or sample collector; or
 - (II) The sample is being accumulated or stored by the generator or sample collector prior to transportation to a laboratory or testing facility; or

- (III) The sample is being transported to the laboratory or testing facility for the purpose of conducting a treatability study.
- (ii) The exemption in subpart (i) of this part is applicable to samples of hazardous waste being collected and shipped for the purpose of conducting treatability studies provided that:
 - (I) The generator or sample collector uses (in "treatability studies") no more than 10,000 kg of media contaminated with non-acute hazardous waste, 1000 kg of non-acute hazardous waste other than contaminated media, 1 kg of acute hazardous waste, 2500 kg of media contaminated with acute hazardous waste for each process being evaluated for each generated waste stream; and
 - (II) The mass of each sample shipment does not exceed 10,000 kg; the 10,000 kg quantity may be all media contaminated with non-acute hazardous waste, or may include 2500 kg of media contaminated with acute hazardous waste, 1000 kg of hazardous waste, and 1 kg of acute hazardous waste; and
 - (III) The sample must be packaged so that it will not leak, spill, or vaporize from its packaging during shipment and the requirements of subitem I or II of this part are met.
 - I. The transportation of each sample shipment complies with U.S. Department of Transportation (DOT), U.S. Postal Service (USPS), or any other applicable shipping requirements; or
 - II. If the DOT, USPS, or other shipping requirements do not apply to the shipment of the sample, the following information must accompany the sample:
 - A. The name, mailing address, and telephone number of the originator of the sample;
 - B. The name, address, and telephone number of the facility that will perform the treatability study;
 - C. The quantity of the sample;
 - D. The date of shipment; and
 - E. A description of the sample, including its Hazardous Waste Code.
 - (IV) The sample is shipped to a laboratory or testing facility which is exempt under part 6 of this subparagraph or has an appropriate permit or interim status.
 - (V) The generator or sample collector maintains the following records for a period ending 3 years after completion of the treatability study:
 - I. Copies of the shipping documents;
 - II. A copy of the contract with the facility conducting the treatability study;
 - III. Documentation showing:
 - A. The amount of waste shipped under this exemption;

- B. The name, address, and Installation Identification Number of the laboratory or testing facility that received the waste;
- C. The date the shipment was made; and
- D. Whether or not unused samples and residues were returned to the generator.

(VI) The generator reports the information required under subitem (V)III of this subpart in its annual report.

(iii) The Commissioner may grant requests on a case-by-case basis for up to an additional two years for treatability studies involving bioremediation. The Commissioner may grant requests on a case-by-case basis for quantity limits in excess of those specified in items (ii)(I) and (II) of this part and subpart 6(iv) of this subparagraph, for up to an additional 5000 kg of media contaminated with non-acute hazardous waste, 500 kg of non-acute hazardous waste, 2500 kg of media contaminated with acute hazardous waste and 1 kg of acute hazardous waste:

(I) In response to requests for authorization to ship, store and conduct treatability studies on additional quantities in advance of commencing treatability studies. Factors to be considered in reviewing such requests include the nature of the technology, the type of process (e.g., batch versus continuous), size of the unit undergoing testing (particularly in relation to scale-up considerations), the time/quantity of material required to reach steady state operating conditions, or test design considerations such as mass balance calculations.

(II) In response to requests for authorization to ship, store and conduct treatability studies on additional quantities after initiation or completion of initial treatability studies, when: There has been an equipment or mechanical failure during the conduct of a treatability study; there is a need to verify the results of a previously conducted treatability study; there is a need to study and analyze alternative techniques within a previously evaluated treatment process; or there is a need to do further evaluation of an ongoing treatability study to determine final specifications for treatment.

(III) The additional quantities and timeframes allowed in items (I) and (II) of this subpart are subject to all the provisions in subpart (i) and items (III) through (VI) of subpart (ii) of this part. The generator or sample collector must apply to the Commissioner and provide in writing the following information:

I. The reason why the generator or sample collector requires additional time or quantity of sample for treatability study evaluation and the additional time or quantity needed;

II. Documentation accounting for all samples of hazardous waste from the waste stream which have been sent for or undergone treatability studies including the date each previous sample from the waste stream was shipped, the quantity of each previous shipment, the laboratory or testing facility to which it was shipped, what treatability study processes were conducted on each sample shipped, and the available results on each treatability study;

- III. A description of the technical modifications or change in specifications which will be evaluated and the expected results;
- IV. If such further study is being required due to equipment or mechanical failure, the applicant must include information regarding the reason for the failure or breakdown and also include what procedures or equipment improvements have been made to protect against further breakdowns; and
- V. Such other information that the Commissioner considers necessary.

6. Samples Undergoing Treatability Studies at Laboratories and Testing Facilities

Samples undergoing treatability studies and the laboratory or testing facility conducting such treatability studies (to the extent such facilities are not otherwise subject to the requirements under this Chapter) are not subject to any requirement of this Chapter provided that the conditions of subparts (i) through (xi) of this part are met. A mobile treatment unit (MTU) may qualify as a testing facility subject to subparts (i) through (xi) of this part. Where a group of MTUs are located at the same site, the limitations specified in subparts (i) through (xi) of this part apply to the entire group of MTUs collectively as if the group were one MTU.

- (i) No less than 45 days before conducting treatability studies, unless a shorter period is approved by the Commissioner, the facility notifies the Commissioner, in writing that it intends to conduct treatability studies under this paragraph.
- (ii) The laboratory or testing facility conducting the treatability study has an Installation Identification Number.
- (iii) No more than a total of 10,000 kg of "as received" media contaminated with non-acute hazardous waste, 2500 kg of media contaminated with acute hazardous waste or 250 kg of other "as received" hazardous waste is subject to initiation of treatment in all treatability studies in any single day. "As received" waste refers to the waste as received in the shipment from the generator or sample collector.
- (iv) The quantity of "as received" hazardous waste stored at the facility for the purpose of evaluation in treatability studies does not exceed 10,000 kg, the total of which can include 10,000 kg of media contaminated with non-acute hazardous waste, 2500 kg of media contaminated with acute hazardous waste, 1000 kg of non-acute hazardous wastes other than contaminated media, and 1 kg of acute hazardous waste. This quantity limitation does not include treatment materials (including nonhazardous solid waste) added to "as received" hazardous waste.
- (v) No more than 90 days have elapsed since the treatability study for the sample was completed, or no more than one year (two years for treatability studies involving bioremediation) have elapsed since the generator or sample collector shipped the sample to the laboratory or testing facility, whichever date first occurs. Up to 500 kg of treated material from a particular waste stream from treatability studies may be archived for future evaluation up to five years from the date of initial receipt. Quantities of materials archived are counted against the total storage limit for the facility.
- (vi) The treatability study does not involve the placement of hazardous waste on the land or open burning of hazardous waste.
- (vii) The facility maintains records for 3 years following completion of each study that show compliance with the treatment rate limits and the storage time and quantity limits. The following specific information must be included for each treatability study conducted:

- (I) The name, address, and Installation Identification Number of the generator or sample collector of each waste sample;
 - (II) The date the shipment was received;
 - (III) The quantity of waste accepted;
 - (IV) The quantity of "as received" waste in storage each day;
 - (V) The date the treatment study was initiated and the amount of "as received" waste introduced to treatment each day;
 - (VI) The date the treatability study was concluded;
 - (VII) The date any unused sample or residues generated from the treatability study were returned to the generator or sample collector or, if sent to a designated facility, the name of the facility and the Installation Identification Number.
- (viii) The facility keeps, on-site, a copy of the treatability study contract and all shipping papers associated with the transport of treatability study samples to and from the facility for a period ending 3 years from the completion date of each treatability study.
- (ix) The facility prepares and submits a report to the Commissioner by March 15 of each year that includes the following information for the previous calendar year:
- (I) The name, address, and Installation Identification Number of the facility conducting the treatability studies;
 - (II) The types (by process) of treatability studies conducted;
 - (III) The names and addresses of persons for whom studies have been conducted (including their Installation Identification Numbers);
 - (IV) The total quantity of waste in storage each day;
 - (V) The quantity and types of waste subjected to treatability studies;
 - (VI) When each treatability study was conducted;
 - (VII) The final disposition of residues and unused sample from each treatability study.
- (x) The facility determines whether any unused sample or residues generated by the treatability study are hazardous waste under subparagraph (1)(c) of this rule and, if so, are subject to Chapter 0400-12-01, unless the residues and unused samples are returned to the sample originator under exemption under part 5 of this subparagraph.
- (xi) The facility notifies the Commissioner by letter when the facility is no longer planning to conduct any treatability studies at the site.

7. Dredged material that is not a hazardous waste. Dredged material that is subject to the requirements of a permit that has been issued under 404 of the Federal Water Pollution Control Act (33 U.S.C. 1344) or section 103 of the Marine Protection, Research, and Sanctuaries Act of 1972 (33 U.S.C. 1413) is not a hazardous waste. For this part 7, the following definitions apply:

- (i) The term "dredged material" has the same meaning as defined in 40 CFR 232.2;
 - (ii) The term "permit" means:
 - (I) A permit issued by the U.S. Army Corps of Engineers (Corps) or an approved State under section 404 of the Federal Water Pollution Control Act (33 U.S.C. 1344);
 - (II) A permit issued by the Corps under section 103 of the Marine Protection, Research, and Sanctuaries Act of 1972 (33 U.S.C. 1413); or
 - (III) In the case of Corps civil works projects, the administrative equivalent of the permits referred to in items (ii)(I) and (II) of this part, as provided for in Corps regulations (for example, see 33 CFR 336.1, 336.2, and 337.6).
8. Carbon dioxide stream injected for geologic sequestration. Carbon dioxide streams that are captured and transported for purposes of injection into an underground injection well subject to the requirements for Class VI Underground Injection Control wells, including the requirements in 40 CFR Parts 144 and 146 of the Underground Injection Control Program of the Safe Drinking Water Act and Chapter 0400-45-06 Underground Injection Control, are not a hazardous waste, provided the following conditions are met:
- (i) Transportation of the carbon dioxide stream shall be in compliance with U.S. Department of Transportation requirements, including the pipeline safety laws (49 U.S.C. 60101 et seq.) and regulations (49 CFR Parts 190-199) of the U.S. Department of Transportation, and pipeline safety regulations adopted and administered by a state authority pursuant to a certification under 49 U.S.C. 60105, as applicable;
 - (ii) Injection of the carbon dioxide stream shall be in compliance with the applicable requirements for Class VI Underground Injection Control wells, including the applicable requirements in 40 CFR Parts 144 and 146 and Tennessee Chapter 0400-45-06;
 - (iii) No hazardous wastes shall be mixed with, or otherwise co-injected with, the carbon dioxide stream; and
 - (iv) (I) Any generator of a carbon dioxide stream, who claims that a carbon dioxide stream is excluded under this part, shall have an authorized representative (as defined in subparagraph (2)(a) of Rule 0400-12-01-.01) sign a certification statement worded as follows:

"I certify under penalty of law that the carbon dioxide stream that I am claiming to be excluded under part (1)(d)8 of Rule 0400-12-01-.02 has not been mixed with hazardous wastes, and I have transported the carbon dioxide stream in compliance with (or have contracted with a pipeline operator or transporter to transport the carbon dioxide stream in compliance with) Department of Transportation requirements, including the pipeline safety laws (49 U.S.C. 60101 et seq.) and regulations (49 CFR Parts 190-199) of the U.S. Department of Transportation, and the pipeline safety regulations adopted and administered by a state authority pursuant to a certification under 49 U.S.C. 60105, as applicable, for injection into a well subject to the requirements for the Class VI Underground Injection Control Program of the Safe Drinking Water Act and Tennessee Chapter 0400-45-06. As specified in Tennessee Code Annotated Section 39-16-702(a)(4), this declaration is made under penalty of perjury."
 - (II) Any Class VI Underground Injection Control well owner or operator, who claims that a carbon dioxide stream is excluded under this part, shall

have an authorized representative (as defined in subparagraph (2)(a) of Rule 0400-12-01-.01) sign a certification statement worded as follows:

"I certify under penalty of law that the carbon dioxide stream that I am claiming to be excluded under part (1)(d)8 of Rule 0400-12-01-.02 has not been mixed with, or otherwise co-injected with, hazardous waste at the Underground Injection Control (UIC) Class VI permitted facility, and that injection of the carbon dioxide stream is in compliance with the applicable requirements for UIC Class VI wells, including the applicable requirements in 40 CFR Parts 144 and 146 and Tennessee Chapter 0400-45-06. As specified in Tennessee Code Annotated Section 39-16-702(a)(4), this declaration is made under penalty of perjury."

- (III) The signed certification statement shall be kept on-site for no less than three years, and shall be made available within 72 hours of a written request from the Commissioner. The signed certification statement shall be renewed every year that the exclusion is claimed, by having an authorized representative (as defined in subparagraph (2)(a) of Rule 0400-12-01-.01) annually prepare and sign a new copy of the certification statement within one year of the date of the previous statement. The signed certification statement shall also be readily accessible on the facility's publicly-available website (if such website exists) as a public notification with the title of "Carbon Dioxide Stream Certification" at the time the exclusion is claimed.

(e) Special Requirements For Hazardous Waste Generated By Conditionally Exempt Small Quantity Generators [40 CFR 261.5]

1. A generator is a conditionally exempt small quantity generator in a calendar month if he generates no more than 100 kilograms of hazardous waste in that month.
2. Except for those wastes identified in parts 5, 6, 7, and 10 of this subparagraph, a conditionally exempt small quantity generator's hazardous wastes are not subject to regulation under Rules 0400-12-01-.03 through .10, provided the generator complies with the requirements of parts 6, 7 and 10 of this subparagraph.
3. When making the quantity determinations of this rule and Rule 0400-12-01-.03, the generator must include all hazardous waste that it generates, except hazardous waste that:
 - (i) Is exempt from regulation under parts (d)3 through 6 subparts (f)1(iii), subpart (g)1(i), or subparagraph (h) of this paragraph; or
 - (ii) Is managed immediately upon generation only in on-site elementary neutralization units, wastewater treatment units, or totally enclosed treatment facilities as defined in Rule 0400-12-01-.01(2)(a); or
 - (iii) Is recycled, without prior storage or accumulation, only in an on-site process subject to regulation under subpart (f)3(ii) of this paragraph; or
 - (iv) Is used oil managed under the requirements of subpart (f)1(iv) of this paragraph and Rule 0400-12-01-.11; or
 - (v) Is spent lead-acid batteries managed under the requirements of Rule 0400-12-01-.09(7); or
 - (vi) Is universal waste managed under Rule 0400-12-01-.02(1)(j) and Rule 0400-12-01-.12; or
 - (vii) Is a hazardous waste that is an unused commercial chemical product (listed in

Paragraph (4) of this rule or exhibiting one or more characteristics in paragraph (3) of this rule) that is generated solely as a result of a laboratory clean-out conducted at an eligible academic entity pursuant to paragraph (12) of Rule 0400-12-01-.03. For purposes of this provision, the term eligible academic entity shall have the meaning as defined in paragraph (12) of Rule 0400-12-01-.03.

- (viii) Is managed immediately upon generation in a collection system (sewer system) where the wastewaters will mix with sanitary wastes at any point before reaching a publicly owned treatment works (POTW).
4. In determining the quantity of hazardous waste generated, a generator need not include:
- (i) Hazardous waste when it is removed from on-site storage; or
 - (ii) Hazardous waste produced by on-site treatment (including reclamation) of his hazardous waste, so long as the hazardous waste that is treated was counted once; or
 - (iii) Spent materials that are generated, reclaimed, and subsequently reused on-site, so long as such spent materials have been counted once.
5. If a generator generates acute hazardous waste in a calendar month in quantities greater than set forth below, all quantities of that acute hazardous waste are subject to full regulation under Chapter 0400-12-01:
- (i) A total of one kilogram of acute hazardous wastes listed in subparagraph (4)(b) or part (4)(d)5 of this rule.
 - (ii) A total of 100 kilograms of any residue or contaminated soil, waste, or other debris resulting from the cleanup of a spill, into or on any land or water, of any acute hazardous wastes listed in subparagraph (4)(b) or part (4)(d)5 of this rule.

(Comment: "Full regulation" means those regulations applicable to generators of 1000 kg or greater of hazardous waste in a calendar month.)

6. In order for acute hazardous wastes generated by a generator of acute hazardous wastes in quantities equal to or less than those set forth in subparts 5(i) or (ii) of this subparagraph to be excluded from full regulation under this subparagraph, the generator must comply with the following requirements:
- (i) The generator must perform the hazardous waste determination of Rule 0400-12-01-.03(1)(b) and keep records thereof as required by Rule 0400-12-01-.03(5)(a)3;
 - (ii) The generator may accumulate acute hazardous waste on-site. If he accumulates at any time acute hazardous wastes in quantities greater than those set forth in subparts 5(i) or 5(ii) of this subparagraph, all of those accumulated wastes are subject to regulation under Chapter 0400-12-01. The time period of Rule 0400-12-01-.03(4)(e)2, for accumulation of wastes on-site, begins when the accumulated wastes exceed the applicable exclusion limit.
 - (iii) A conditionally exempt small quantity generator may either treat or dispose of his acute hazardous waste in an on-site facility or ensure delivery to an off-site treatment, storage or disposal facility, either of which, if located in the U.S., is:
 - (I) Permitted under Rule 0400-12-01-.07;
 - (II) In interim status under Rule 0400-12-01-.05 and 0400-12-01-.07;
 - (III) Authorized to manage hazardous waste by a State with a hazardous

waste management program approved under 40 CFR Part 271;

- (IV) Permitted, licensed, or registered by a State to manage municipal solid waste and, if managed in a municipal solid waste landfill, is subject to 40 CFR Part 258;
- (V) Permitted, licensed, or registered by a State to manage non-municipal non-hazardous waste and, if managed in a non-municipal non-hazardous waste disposal unit after January 1, 1998, is subject to the requirements in 40 CFR Parts 257.5 through 257.30; or
- (VI) A facility which:
 - I. Beneficially uses or reuses, or legitimately recycles or reclaims its waste; or
 - II. Treats its waste prior to beneficial use or reuse, or legitimate recycling or reclamation; or
- (VII) For universal waste managed under Rule 0400-12-01-.12, a universal waste handler or destination facility subject to the requirements of Rule 0400-12-01-.12.

7. In order for hazardous waste generated by a conditionally exempt small quantity generator in quantities of 100 kilograms or less of hazardous waste during a calendar month to be excluded from full regulation under this subparagraph, the generator must comply with the following requirements:

- (i) The conditionally exempt small quantity generator must perform the hazardous waste determination of Rule 0400-12-01-.03(1)(b) and keep records thereof as required by Rule 0400-12-01-.03(5)(a)3.
- (ii) The conditionally exempt small quantity generator may accumulate hazardous waste on-site. If he accumulates at any time more than a total of 1000 kilograms of his hazardous wastes, all of those accumulated wastes are subject to regulation under the special provisions of Rule 0400-12-01-.03 applicable to generators of greater than 100 kg and less than 1000 kg of hazardous waste in a calendar month as well as the requirements of Rule 0400-12-01-.04 through 0400-12-01-.10. The time period of Rule 0400-12-01-.03(4)(e)6 for accumulation of wastes on-site begins for a conditionally exempt small quantity generator when the accumulated wastes exceed 1000 kilograms;
- (iii) A conditionally exempt small quantity generator may either treat or dispose of his hazardous waste in an on-site facility or ensure delivery to an off-site treatment, storage or disposal facility, either of which, if located in the U.S., is:
 - (I) Permitted under Rule 0400-12-01-.07;
 - (II) In interim status under Rules 0400-12-01-.05 and 0400-12-01-.07;
 - (III) Authorized to manage hazardous waste by a State with a hazardous waste management program approved under 40 CFR Part 271;
 - (IV) Permitted, licensed, or registered by a State to manage municipal solid waste and, if managed in a municipal solid waste landfill, is subject to 40 CFR Part 258;
 - (V) Permitted, licensed, or registered by a State to manage non-municipal non-hazardous waste and, if managed in a non-municipal non-hazardous waste disposal unit after January 1, 1998, is subject to the requirements

in 40 CFR Parts 257.5 through 257.30; or

(VI) A facility which:

I. Beneficially uses or reuses or legitimately recycles or reclaims its waste; or

II. Treats its waste prior to beneficial use or reuse, or legitimate recycling or reclamation; or

(VII) For universal waste managed under Rule 0400-12-01-.12, a universal waste handler or destination facility subject to the requirements of Rule 0400-12-01-.12.

(iv) Management of Containers with Liquids

(I) A container holding hazardous waste volatile liquids must always be closed during storage, except when it is necessary to add or remove waste.

(II) A container holding hazardous waste liquids must not be opened, handled, or stored in a manner which may rupture the container or cause it to leak.

(III) The facility may take reasonable measures that deviate from this standard if required for safety due to the intrinsic nature of the container's contents.

8. Hazardous waste subject to the reduced requirements of this subparagraph may be mixed with non-hazardous waste and remain subject to these reduced requirements even though the resultant mixture exceeds the quantity limitations identified in this subparagraph, unless the mixture meets any of the characteristics of hazardous waste identified in paragraph (3) of this rule.

9. If any person mixes a solid waste with a hazardous waste that exceeds a quantity exclusion level of this subparagraph, the mixture is subject to full regulation.

10. If a conditionally exempt small quantity generator's wastes are mixed with used oil, the mixture is subject to Rule 0400-12-01-.11 provided the resultant mixture does not exhibit the characteristic of ignitability, corrosivity or reactivity in accordance with subparagraphs (3)(b), (c) or (d) of this rule.

(i) Any material derived from such non-hazardous mixture by processing, blending, or other treatment is also regulated under part (2)(a)5 of Rule 0400-12-01-.11; and

(ii) If the resultant mixture exhibits the characteristic of ignitability, corrosivity or reactivity, in accordance with subparagraphs (3)(b), (c) or (d) of this rule, and if the resultant hazardous waste mixture exceeds the quantity limitations identified in this subparagraph, then the mixture is no longer conditionally exempt under this subparagraph and is subject to regulation under Rules 0400-12-01-.03 through .10.

(NOTE: Any used oil that is not recycled is a solid waste subject to a hazardous waste determination per Rule 0400-12-01-.03(1)(b).)

(f) Requirements for recyclable material [40 CFR 261.6]

1. (i) Hazardous wastes that are recycled are subject to the requirements for generators, transporters, and storage facilities of parts 2 and 3 of this

subparagraph, except for the materials listed in subparts (ii) and (iii) of this part. Hazardous wastes that are recycled will be known as "recyclable materials."

- (ii) The following recyclable materials are not subject to the requirements of this subparagraph but are regulated under paragraphs (3), (6), (7), (8), (13) and (14) of Rule 0400-12-01-.09 and all applicable provisions in Rules 0400-12-01-.07 and 0400-12-01-.10:
 - (I) Recyclable materials used in a manner constituting disposal (Rule 0400-12-01-.09(3));
 - (II) Hazardous wastes burned (as defined in Rule 0400-12-01-.09(8)(a)1) in boilers and industrial furnaces that are not regulated under paragraph (15) of Rule 0400-12-01-.05 or Rule 0400-12-01-.06;
 - (III) Recyclable materials from which precious metals are reclaimed (Rule 0400-12-01-.09(6));
 - (IV) Spent lead-acid batteries that are being reclaimed (Rule 0400-12-01-.09(7)).
- (iii) The following recyclable materials are not subject to regulation under Chapter 0400-12-01:
 - (I) Industrial ethyl alcohol that is reclaimed except that, unless provided otherwise in an international agreement as specified in Rule 0400-12-01-.03(6)(i):
 - I. A person initiating a shipment for reclamation in a foreign country, and any intermediary arranging for the shipment, must comply with the requirements applicable to a primary exporter in Rule 0400-12-01-.03(6)(d), (g)1(i) through (iv) and (vi), (g)2, and (h), export such materials only upon consent of the receiving country and in conformance with the EPA Acknowledgment of Consent as defined in Rule 0400-12-01-.03(6), and provide a copy of the EPA Acknowledgment of Consent to the shipment to the transporter transporting the shipment for export;
 - II. Transporters transporting a shipment for export may not accept a shipment if he knows the shipment does not conform to the EPA Acknowledgment of Consent, must ensure that a copy of the EPA Acknowledgment of Consent accompanies the shipment and must ensure that it is delivered to the facility designated by the person initiating the shipment.
 - (II) Scrap metal that is not excluded under subpart ~~(d)1(xv)~~ (d)1(xiii) of this paragraph;
 - (III) Fuels produced from the refining of oil-bearing hazardous waste along with normal process streams at a petroleum refining facility if such wastes result from normal petroleum refining, production, and transportation practices (this exemption does not apply to fuels produced from oil recovered from oil-bearing hazardous waste, where such recovered oil is already excluded under Rule 0400-12-01-.02(1)(d)1(xii));
 - (IV) I. Hazardous waste fuel produced from oil-bearing hazardous wastes from petroleum refining, production, or transportation practices, or produced from oil reclaimed from such hazardous wastes, where such hazardous wastes are reintroduced into a process that does not use distillation or does not produce

products from crude oil so long as the resulting fuel meets the used oil specification under Rule 0400-12-01-.11(2)(b) and so long as no other hazardous wastes are used to produce the hazardous waste fuel;

- II. Hazardous waste fuel produced from oil-bearing hazardous waste from petroleum refining production, and transportation practices, where such hazardous wastes are reintroduced into a refining process after a point at which contaminants are removed, so long as the fuel meets the used oil fuel specification under Rule 0400-12-01-.11(2)(b); and
 - III. Oil reclaimed from oil-bearing hazardous wastes from petroleum refining, production, and transportation practices, which reclaimed oil is burned as a fuel without reintroduction to a refining process, so long as the reclaimed oil meets the used oil fuel specification under Rule 0400-12-01-.11(2)(b).
- (iv) Used oil that is recycled and is also a hazardous waste solely because it exhibits a hazardous characteristic is not subject to the requirements of Rule 0400-12-01-.01 through .06, .09, and .10, but is regulated under Rule 0400-12-01-.11. Used oil that is recycled includes any used oil which is reused, following its original use, for any purpose (including the purpose for which the oil was originally used). Such term includes, but is not limited to, oil which is re-refined, reclaimed, burned for energy recovery, or reprocessed.
- (v) (Reserved) [40 CFR 261.6(a)(5)]
2. Generators and transporters of recyclable materials are subject to the applicable requirements of Rule 0400-12-01-.03 and .04, except as provided in part 1 of this subparagraph.
 3.
 - (i) Owners and operators of facilities that store recyclable materials before they are recycled are regulated under all applicable provisions of paragraphs (1) through (12), (27), (28) and (29) of Rule 0400-12-01-.05 and paragraphs (1) through (12), (30), (31) and (32) of Rule 0400-12-01-.06, and under Rules 0400-12-01-.07, .09, and .10, and the notification requirements under Rule 0400-12-01-.07(2)(b) and (d), except as provided in part 1 of this subparagraph. (The recycling process itself is exempt from regulation except as provided in ~~Rule 0400-12-01-.02(1)(f)~~ part 4 of this subparagraph.)
 - (ii) Owners or operators of facilities that recycle recyclable materials without storing them before they are recycled are subject to the following requirements, except as provided in part 1 of this subparagraph:
 - (I) Such owners or operators must notify the Division Director of their activities using forms provided by the Department and completed per accompanying instructions;
 - (II) Such owners or operators must comply with Rule 0400-12-01-.05(5)(b) and (c) (dealing with the use of the manifest and manifest discrepancies);
 - (III) Rule 0400-12-01-.02(1)(f)4.
 4. Owners or operators of facilities subject to the permitting requirements with hazardous waste management units that recycle hazardous wastes are subject to the requirements of paragraphs (27) and (28) of Rule 0400-12-01-.05 and paragraphs (30) and (31) of Rule 0400-12-01-.06.

5. Generators of recyclable materials must notify the Department describing the recyclable materials they generate, how such materials are generated, and how they are managed. Such notifications must be filed with the Department within 90 days of the effective date of this part (for existing generators) or within 90 days of the date a generator first becomes subject to this subparagraph (for new generators). Such notification must be submitted on forms provided by the Department. The form must be completed according to the accompanying instructions.

(g) Residues of hazardous waste in empty containers [40 CFR 261.7]

1. (i) Any hazardous waste remaining in either (1) an empty container or (2) an inner liner removed from an empty container, as defined in part 2 of this subparagraph, is not subject to regulation under these rules.
- (ii) Any hazardous waste in either (1) a container that is not empty or (2) an inner liner removed from a container that is not empty, as defined in part 2 of this subparagraph, is subject to regulation under these rules.
2. (i) A container or an inner liner removed from a container that has held any hazardous waste, except a waste that is a compressed gas or that is identified as an acute hazardous waste listed in subparagraph (4)(b) or part (4)(d)5 of this rule is empty if:
 - (I) All wastes have been removed that can be removed using the practices commonly employed to remove materials from that type of container, e.g., pouring, pumping, and aspirating, and
 - (II) No more than 2.5 centimeters (one inch) of residue remain on the bottom of the container or inner liner, or
 - (III) I. No more than 3 percent by weight of the total capacity of the container remains in the container or inner liner if the container is less than or equal to 119 gallons in size, or
II. No more than 0.3 percent by weight of the total capacity of the container remains in the container or inner liner if the container is greater than 119 gallons in size.
- (ii) A container that has held a hazardous waste that is a compressed gas is empty when the pressure in the container approaches atmospheric.
- (iii) A container or an inner liner removed from a container that has held an acute hazardous waste listed in subparagraph (4)(b) or part (4)(d)5 of this subparagraph is empty if:
 - (I) The container or inner liner has been triple rinsed using a solvent capable of removing the commercial chemical product or manufacturing chemical intermediate;
 - (II) The container or inner liner has been cleaned by another method that has been shown in the scientific literature, or by tests conducted by the generator, to achieve equivalent removal; or
 - (III) In the case of a container, the inner liner that prevented contact of the commercial chemical product or manufacturing chemical intermediate with the container, has been removed.

(h) PCB wastes regulated under Toxic Substance Control Act [40 CFR 261.8]

The disposal of PCB-containing dielectric fluid and electric equipment containing such fluid

authorized for use and regulated under part 761 and that are hazardous only because they fail the test for the Toxicity Characteristic (Hazardous Waste Codes D018 through D043 only) are exempt from regulation under Rule 0400-12-01-.02 through .08 and .10.

(i) Management of Excluded Wastes

Nothing in these rules shall exclude persons whose waste is nonhazardous or otherwise excluded from these rules from the requirements of the "Tennessee Solid Waste Disposal Act" (T.C.A. §68-211-101 et seq.) and applicable regulations or from other applicable State, local or Federal laws.

(j) Requirements for Universal Waste [40 CFR 261.9]

The wastes listed in Rule 0400-12-01-.12(1)(a) are exempt from regulation under Rules 0400-12-01-.03 through .07, .09 and .10 except as specified in Rule 0400-12-01-.12 and, therefore, are not fully regulated as hazardous waste.

Authority: T.C.A. §§ 68-212-101 et seq. and 4-5-201 et seq.

Paragraphs (5) and (6) of Rule 0400-12-01-.02 Identification and Listing of Hazardous Waste are amended by deleting them in their entirety and substituting instead the following:

~~(6)~~(5) Exclusion/Exemptions [40 CFR 261.38 Subpart E]

(a) Reserved. ~~Exclusion of comparable fuel and syngas fuel.~~ [40 CFR 261.38]

~~1. Specifications for excluded fuels.~~

~~Wastes that meet the specifications for comparable fuel or syngas fuel under subpart (i) or (ii) of this part, respectively, and the other requirements of this subparagraph, are not solid wastes.~~

~~(i) Comparable fuel specifications.~~

~~(I) Physical specifications.~~

~~I. Heating value. The heating value must exceed 5,000 Btu/lbs. (11,500 J/g).~~

~~II. Viscosity. The viscosity must not exceed 50 cS, as fired.~~

~~(II) Constituent specifications. For compounds listed in Table 1 to this subparagraph, the specification levels and, where non-detect is the specification, minimum required detection limits are: (see Table 1 of this subparagraph).~~

~~(ii) Synthesis gas fuel specifications.~~

~~Synthesis gas fuel (i.e., syngas fuel) that is generated from hazardous waste must:~~

~~(I) Have a minimum Btu value of 100 Btu/Scf;~~

~~(II) Contain less than 1 ppmv of total halogen;~~

~~(III) Contain less than 300 ppmv of total nitrogen other than diatomic nitrogen (N₂);~~

~~(IV) Contain less than 200 ppmv of hydrogen sulfide; and~~

- ~~(v) Contain less than 1 ppmv of each hazardous constituent in the target list of appendix VIII constituents in paragraph (5) of this rule.~~
- ~~(iii) Blending to meet the specifications.~~
- ~~(i) Hazardous waste shall not be blended to meet the comparable fuel specification under subpart (i) of this part, except as provided by item (ii) of this subpart.~~
- ~~(ii) Blending to meet the viscosity specification. A hazardous waste blended to meet the viscosity specification for comparable fuel shall:~~
- ~~I. As generated and prior to any blending, manipulation, or processing, meet the constituent and heating value specifications of subitem (i)(I) and item (i)(II) of this part;~~
- ~~II. Be blended at a facility that is subject to the applicable requirements of Rules 0400-12-01-.05 and .06, or subparagraph (4)(e) of Rule 0400-12-01-.03; and~~
- ~~III. Not violate the dilution prohibition of subpart (vi) of this part.~~
- ~~(iv) Treatment to meet the comparable fuel specifications.~~
- ~~(i) A hazardous waste may be treated to meet the specifications for comparable fuel set forth in subpart (i) of this part provided the treatment:~~
- ~~I. Destroys or removes the constituents listed in the specification or raises the heating value by removing or destroying hazardous constituents or materials;~~
- ~~II. Is performed at a facility that is subject to the applicable requirements of Rules 0400-12-01-.05 and .06, or subparagraph (4)(e) of Rule 0400-12-01-.03; and~~
- ~~III. Does not violate the dilution prohibition of subpart (vi) of this part.~~
- ~~(ii) Residuals resulting from the treatment of a hazardous waste listed in paragraph (4) of this rule to generate a comparable fuel remain a hazardous waste.~~
- ~~(v) Generation of a syngas fuel.~~
- ~~(i) A syngas fuel can be generated from the processing of hazardous wastes to meet the exclusion specifications of subpart (ii) of this part provided the processing:~~
- ~~I. Destroys or removes the constituents listed in the specification or raises the heating value by removing or destroying constituents or materials;~~
- ~~II. Is performed at a facility that is subject to the applicable requirements of Rules 0400-12-01-.05 and .06, or subparagraph (4)(e) of Rule 0400-12-01-.03 or is an exempt recycling unit pursuant to part (1)(f)3 of this rule; and~~
- ~~III. Does not violate the dilution prohibition of subpart (vi) of this part.~~

~~(II) Residuals resulting from the treatment of a hazardous waste listed in paragraph (4) of this rule to generate a syngas fuel remain a hazardous waste.~~

~~(vi) Dilution prohibition.~~

~~No generator, transporter, handler, or owner or operator of a treatment, storage, or disposal facility shall in any way dilute a hazardous waste to meet the specifications of subitem (i)(I) and item (i)(II) of this part for comparable fuel, or subpart (ii) of this part for syngas.~~

~~2. Implementation.~~

~~(i) General.~~

~~(I) Wastes that meet the specifications provided by part 1 of this subparagraph for comparable fuel or syngas fuel are excluded from the definition of solid waste provided that the conditions under this subparagraph are met. For purposes of this subparagraph, such materials are called excluded fuel; the person claiming and qualifying for the exclusion is called the excluded fuel generator and the person burning the excluded fuel is called the excluded fuel burner.~~

~~(II) The person who generates the excluded fuel must claim the exclusion by complying with the conditions of this subparagraph and keeping records necessary to document compliance with those conditions.~~

~~(ii) Notices.~~

~~(I) Notices to the Commissioner.~~

~~1. The generator must submit a one time notice, except as provided by subitem III of this item, to the Commissioner or to the Regional or State RCRA and CAA Directors, in whose jurisdiction the exclusion is being claimed and where the excluded fuel will be burned, certifying compliance with the conditions of the exclusion and providing the following documentation:~~

~~A. The name, address, and RCRA ID number of the person/facility claiming the exclusion;~~

~~B. The applicable EPA Hazardous Waste Code(s) that would otherwise apply to the excluded fuel;~~

~~C. The name and address of the units meeting the requirements of subpart (iii) of this part and part 3 of this subparagraph, that will burn the excluded fuel;~~

~~D. An estimate of the average and maximum monthly and annual quantity of material for which an exclusion would be claimed, except as provided by subitem III of this item; and~~

~~E. The following statement, which shall be signed and submitted by the person claiming the exclusion or his authorized representative:~~

~~"Under penalty of criminal and civil prosecution for making or submitting false statements, representations,~~

~~or omissions, I certify that the requirements of subparagraph (6)(a) of Rule 0400-12-01-.02 have been met for all comparable fuels identified in this notification. Copies of the records and information required at subpart (6)(a)2(viii) of Rule 0400-12-01-.02 are available at the generator's facility. Based on my inquiry of the individuals immediately responsible for obtaining the information, the information is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations. As specified in Tennessee Code Annotated Section 39-16-702(a)(4), this declaration is made under penalty of perjury."~~

~~ii. If there is a substantive change in the information provided in the notice required under this subpart, the generator must submit a revised notification.~~

~~iii. Excluded fuel generators must include an estimate of the average and maximum monthly and annual quantity of material for which an exclusion would be claimed only in notices submitted after December 19, 2008 for newly excluded fuel or for revised notices as required by subitem ii of this item.~~

~~(ii) Public notice.~~

~~Prior to burning an excluded fuel, the burner must publish in a major newspaper of general circulation local to the site where the fuel will be burned, a notice entitled "Notification of Burning a Fuel Excluded Under the Resource Conservation and Recovery Act" and containing the following information:~~

~~i. Name, address, and RCRA ID number of the generating facility(ies);~~

~~ii. Name and address of the burner and identification of the unit(s) that will burn the excluded fuel;~~

~~iii. A brief, general description of the manufacturing, treatment, or other process generating the excluded fuel;~~

~~iv. An estimate of the average and maximum monthly and annual quantity of the excluded fuel to be burned; and~~

~~v. Name and mailing address of the Commissioner or the Regional or State Directors to whom the generator submitted a claim for the exclusion.~~

~~(iii) Burning.~~

~~The exclusion applies only if the fuel is burned in the following units that also shall be subject to Federal/State/local air emission requirements, including all applicable requirements implementing section 112 of the Clean Air Act or the Tennessee Air Quality Act:~~

~~(i) Industrial furnaces as defined in subparagraph (2)(a) of Rule 0400-12-01-.01;~~

~~(II) Boilers, as defined in subparagraph (2)(a) of Rule 0400-12-01-.01, that are further defined as follows:~~

~~I. Industrial boilers located on the site of a facility engaged in a manufacturing process where substances are transformed into new products, including the component parts of products, by mechanical or chemical processes; or~~

~~II. Utility boilers used to produce electric power, steam, heated or cooled air, or other gases or fluids for sale;~~

~~(III) Hazardous waste incinerators subject to regulation under paragraph (15) of Rule 0400-12-01-.05 or Rule 0400-12-01-.06 and applicable CAA MACT standards or the comparable standard under the Tennessee Air Quality Act.~~

~~(IV) Gas turbines used to produce electric power, steam, heated or cooled air, or other gases or fluids for sale.~~

~~(iv) Fuel analysis plan for generators.~~

~~The generator of an excluded fuel shall develop and follow a written fuel analysis plan which describes the procedures for sampling and analysis of the material to be excluded. The plan shall be followed and retained at the site of the generator claiming the exclusion.~~

~~(I) At a minimum, the plan must specify:~~

~~I. The parameters for which each excluded fuel will be analyzed and the rationale for the selection of those parameters;~~

~~II. The test methods which will be used to test for those parameters;~~

~~III. The sampling method which will be used to obtain a representative sample of the excluded fuel to be analyzed;~~

~~IV. The frequency with which the initial analysis of the excluded fuel will be reviewed or repeated to ensure that the analysis is accurate and up to date; and~~

~~V. If process knowledge is used in the determination, any information prepared by the generator in making such determination.~~

~~(II) For each analysis, the generator shall document the following:~~

~~I. The dates and times that samples were obtained, and the dates the samples were analyzed;~~

~~II. The names and qualifications of the person(s) who obtained the samples;~~

~~III. A description of the temporal and spatial locations of the samples;~~

~~IV. The name and address of the laboratory facility at which analyses of the samples were performed;~~

- V. ~~A description of the analytical methods used, including any clean-up and sample preparation methods;~~
- VI. ~~All quantitation limits achieved and all other quality control results for the analysis (including method blanks, duplicate analyses, matrix spikes, etc.), laboratory quality assurance data, and the description of any deviations from analytical methods written in the plan or from any other activity written in the plan which occurred;~~
- VII. ~~All laboratory results demonstrating whether the exclusion specifications have been met; and~~
- VIII. ~~All laboratory documentation that support the analytical results, unless a contract between the claimant and the laboratory provides for the documentation to be maintained by the laboratory for the period specified in subpart (ix) of this part and also provides for the availability of the documentation to the claimant upon request.~~

~~(III) Syngas fuel generators shall submit for approval, prior to performing sampling, analysis, or any management of an excluded syngas fuel, a fuel analysis plan containing the elements of item (I) of this subpart to the Commissioner. The approval of fuel analysis plans must be stated in writing and received by the facility prior to sampling and analysis to demonstrate the exclusion of a syngas. The approval of the fuel analysis plan may contain such provisions and conditions as the Commissioner deems appropriate.~~

~~(v) Excluded fuel sampling and analysis.~~

~~(I) General.~~

~~For wastes for which an exclusion is claimed under the specifications provided by subpart 1(i) or (ii) of this subparagraph, the generator of the waste must test for all the constituents in appendix VIII in paragraph (5) of this rule, except those that the generator determines, based on testing or knowledge, should not be present in the fuel. The generator is required to document the basis of each determination that a constituent with an applicable specification should not be present. The generator may not determine that any of the following categories of constituents with a specification in Table 1 to this subparagraph should not be present:~~

- ~~I. A constituent that triggered the toxicity characteristic for the constituents that were the basis for listing the hazardous secondary material as a hazardous waste, or constituents for which there is a treatment standard for the waste code in subparagraph (3)(a) of Rule 0400-12-01-.10;~~
- ~~II. A constituent detected in previous analysis of the waste;~~
- ~~III. Constituents introduced into the process that generates the waste; or~~
- ~~IV. Constituents that are byproducts or side reactions to the process that generates the waste.~~

~~(Note: Any claim under this subpart must be valid and accurate for all hazardous constituents; a determination not to test for a hazardous constituent will not~~

shield a generator from liability should that constituent later be found in the excluded fuel above the exclusion specifications.)

~~(II) Use of process knowledge. For each waste for which the comparable fuel or syngas exclusion is claimed where the generator of the excluded fuel is not the original generator of the hazardous waste, the generator of the excluded fuel may not use process knowledge pursuant to item (I) of this subpart and must test to determine that all of the constituent specifications of subparts 1(i) and (ii) of this subparagraph, as applicable, have been met.~~

~~(III) The excluded fuel generator may use any reliable analytical method to demonstrate that no constituent of concern is present at concentrations above the specification levels. It is the responsibility of the generator to ensure that the sampling and analysis are unbiased, precise, and representative of the excluded fuel. For the fuel to be eligible for exclusion, a generator must demonstrate that:~~

~~I. The 95% upper confidence limit of the mean concentration for each constituent of concern is not above the specification level; and~~

~~II. The analyses could have detected the presence of the constituent at or below the specification level.~~

~~(IV) Nothing in this subpart preempts, overrides or otherwise negates the provision in subparagraph (1)(b) of Rule 0400-12-01.03, which requires any person who generates a solid waste to determine if that waste is a hazardous waste.~~

~~(V) In an enforcement action, the burden of proof to establish conformance with the exclusion specification shall be on the generator claiming the exclusion.~~

~~(VI) The generator must conduct sampling and analysis in accordance with the fuel analysis plan developed under subpart (iv) of this part.~~

~~(VII) Viscosity condition for comparable fuel:~~

~~I. Excluded comparable fuel that has not been blended to meet the kinematic viscosity specification shall be analyzed as generated.~~

~~II. If hazardous waste is blended to meet the kinematic viscosity specification for comparable fuel, the generator shall:~~

~~A. Analyze the hazardous waste as generated to ensure that it meets the constituent and heating value specifications of subpart 1(i) of this subparagraph; and~~

~~B. After blending, analyze the fuel again to ensure that the blended fuel meets all comparable fuel specifications.~~

~~(VIII) Excluded fuel must be re-tested, at a minimum, annually and must be retested after a process change that could change its chemical or physical properties in a manner that may affect conformance with the specifications.~~

~~(vi) Reserved~~

~~(vii) Speculative accumulation.~~

~~Excluded fuel must not be accumulated speculatively, as defined in subpart (1)(b)3(viii) of this rule.~~

~~(viii) Operating record.~~

~~The generator must maintain an operating record on-site containing the following information:~~

- ~~(I) All information required to be submitted to the implementing authority as part of the notification of the claim:
 - ~~I. The owner/operator name, address, and the facility Installation ID number of the person claiming the exclusion;~~
 - ~~II. For each excluded fuel, the hazardous waste codes that would be applicable if the material were discarded; and~~
 - ~~III. The certification signed by the person claiming the exclusion or his authorized representative.~~~~
- ~~(II) A brief description of the process that generated the excluded fuel. If the comparable fuel generator is not the generator of the original hazardous waste, provide a brief description of the process that generated the hazardous waste;~~
- ~~(III) The monthly and annual quantities of each fuel claimed to be excluded;~~
- ~~(IV) Documentation for any claim that a constituent is not present in the excluded fuel as required under item (v)(1) of this part;~~
- ~~(V) The results of all analyses and all detection limits achieved as required under subpart (iv) of this part;~~
- ~~(VI) If the comparable fuel was generated through treatment or blending, documentation of compliance with the applicable provisions of subparts 1(iii) and (iv) of this subparagraph;~~
- ~~(VII) If the excluded fuel is to be shipped off-site, a certification from the burner as required under subpart (x) of this part;~~
- ~~(VIII) The fuel analysis plan and documentation of all sampling and analysis results as required by subpart (iv) of this part; and~~
- ~~(IX) If the generator ships excluded fuel off site for burning, the generator must retain for each shipment the following information on-site:
 - ~~I. The name and address of the facility receiving the excluded fuel for burning;~~
 - ~~II. The quantity of excluded fuel shipped and delivered;~~
 - ~~III. The date of shipment or delivery;~~
 - ~~IV. A cross-reference to the record of excluded fuel analysis or other information used to make the determination that the excluded fuel meets the specifications as required under subpart (iv) of this part; and~~~~

~~V. A one-time certification by the burner as required under subpart (x) of this part.~~

~~(ix) Records retention.~~

~~Records must be maintained for a period of three years.~~

~~(x) Burner certification to the generator.~~

~~Prior to submitting a notification to the Commissioner, a generator of excluded fuel who intends to ship the excluded fuel off site for burning must obtain a one-time written, signed statement from the burner:~~

~~(I) Certifying that the excluded fuel will only be burned in an industrial furnace, industrial boiler, utility boiler, or hazardous waste incinerator, as required under subpart (iii) of this part;~~

~~(II) Identifying the name and address of the facility that will burn the excluded fuel; and~~

~~(III) Certifying that the State in which the burner is located is authorized to exclude wastes as excluded fuel under the provisions of this subparagraph.~~

~~(xi) Ineligible waste codes.~~

~~Wastes that are listed as hazardous waste because of the presence of dioxins or furans, as set out in appendix VII in paragraph (5) of this rule, are not eligible for these exclusions, and any fuel produced from or otherwise containing these wastes remains a hazardous waste subject to the full hazardous waste management requirements.~~

~~(xii) Regulatory status of boiler residues.~~

~~Burning excluded fuel that was otherwise a hazardous waste listed subparagraphs (4)(b) through (d) of this rule does not subject boiler residues, including bottom ash and emission control residues, to regulation as derived from hazardous wastes.~~

~~(xiii) Residues in containers and tank systems upon cessation of operations.~~

~~(I) Liquid and accumulated solid residues that remain in a container or tank system for more than 90 days after the container or tank system ceases to be operated for storage or transport of excluded fuel product are subject to regulation under Rules 0400-12-01-03 through 0400-12-01-10.~~

~~(II) Liquid and accumulated solid residues that are removed from a container or tank system after the container or tank system ceases to be operated for storage or transport of excluded fuel product are solid wastes subject to regulation as hazardous waste if the waste exhibits a characteristic of hazardous waste under subparagraphs (3)(b) through (e) of this rule or if the fuel were otherwise a hazardous waste listed under subparagraphs (4)(b) through (d) of this rule when the exclusion was claimed.~~

~~(III) Liquid and accumulated solid residues that are removed from a container or tank system and which do not meet the specifications for exclusion under subpart 1(i) or (ii) of this subparagraph are solid wastes subject to regulation as hazardous waste if:~~

- I. ~~The waste exhibits a characteristic of hazardous waste under subparagraphs (3)(b) through (d) of this rule; or~~
- II. ~~The fuel were otherwise a hazardous waste listed under subparagraphs (4)(b) through (d) of this rule. The hazardous waste code for the listed waste applies to these liquid and accumulated solid residues.~~

~~(xiv) Waiver of RCRA Closure Requirements.~~

~~Interim status and permitted storage and combustion units, and generator storage units exempt from the permit requirements under subparagraph (4)(e) of Rule 0400-12-01-03, are not subject to the closure requirements of Rules 0400-12-01-05 and 0400-12-01-06 provided that the storage and combustion unit has been used to manage only hazardous waste that is subsequently excluded under the conditions of this subparagraph, and that afterward will be used only to manage fuel excluded under this subparagraph.~~

~~(xv) Spills and leaks.~~

~~(I) Excluded fuel that is spilled or leaked and that therefore no longer meets the conditions of the exclusion is discarded and must be managed as a hazardous waste if it exhibits a characteristic of hazardous waste under subparagraphs (3)(b) through (d) of this rule or if the fuel were otherwise a hazardous waste listed in subparagraphs (4)(b) through (d) of this rule.~~

~~(II) For excluded fuel that would have otherwise been a hazardous waste listed in subparagraphs (4)(b) through (d) of this rule and which is spilled or leaked, the hazardous waste code for the listed waste applies to the spilled or leaked material.~~

~~(xvi) Nothing in this part preempts, overrides, or otherwise negates the provisions in CERCLA Section 103, which establish reporting obligations for releases of hazardous substances, or the Department of Transportation requirements for hazardous materials in 49 CFR parts 171 through 180.~~

~~3. Failure to comply with the conditions of the exclusion.~~

~~An excluded fuel loses its exclusion if any person managing the fuel fails to comply with the conditions of the exclusion under this subparagraph, and the material must be managed as hazardous waste from the point of generation. In such situations, EPA or the Commissioner may take enforcement action under RCRA section 3008(a), or the Commissioner may take enforcement action under T.C.A. §§ 68-212-101 et seq.~~

Table 1: Detection and Detection Limit Values for Comparable Fuel Specification

Chemical Name	CAS No.	Concentration limit (mg/kg at 10,000 BTU/lb)	Minimum required detection limit (mg/kg)
Total Nitrogen as N	NA	4900	
Total Halogens as Cl	NA	540	
Total Organic Halogens as Cl	NA	(*)	
Polychlorinated biphenyls total [Aroclors, total]	1336-36-3	ND	1.4
Cyanide, total	57-12-5	ND	1
Metals:			
-Antimony, total	7440-36-0	12	
-Arsenic, total	7440-38-2	0.23	
-Barium, total	7440-39-3	23	
-Beryllium, total	7440-41-7	1.2	

-Cadmium, total	7440-43-9		1.2
-Chromium, total	7440-47-3	2.3	
-Cobalt	7440-48-4	4.6	
-Lead, total	7439-92-1	31	
-Manganese	7439-96-5	1.2	
-Mercury, total	7439-97-6	0.25	
-Nickel, total	7440-02-0	58	
-Selenium, total	7782-49-2	0.23	
-Silver, total	7440-22-4	2.3	
-Thallium, total	7440-28-0	23	
Hydrocarbons:			
-Benzo[a]anthracene	56-55-3	2400	
-Benzene	71-43-2	4100	
-Benzo[b]fluoranthene	205-99-2	2400	
-Benzo[k]fluoranthene	207-08-9	2400	
-Benzo[a]pyrene	50-32-8	2400	
-Chrysene	218-01-9	2400	
-Dibenzo[a, h]anthracene	53-70-3	2400	
-7, 12-Dimethylbenz[a]anthracene	57-97-6	2400	
-Fluoranthene	206-44-0	2400	
-Indeno(1, 2, 3-cd)pyrene	193-39-5	2400	
-3-Methylcholanthrene	56-49-5	2400	
-Naphthalene	91-20-3	3200	
-Toluene	108-88-3	36000	
Oxygenates:			
-Acetophenone	98-86-2	2400	
-Acrolein	107-02-8	39	
-Allyl alcohol	107-18-6	30	
-Bis(2-ethylhexyl) phthalate [Di-2-ethylhexyl phthalate]	117-81-7	2400	
-Butyl benzyl phthalate	85-68-7	2400	
-o-Cresol [2-Methyl phenol]	95-48-7	2400	
-m-Cresol [3-Methyl phenol]	108-39-4	2400	
-p-Cresol [4-Methyl phenol]	106-44-5	2400	
-Di-n-butyl phthalate	84-74-2	2400	
-Diethyl phthalate	84-66-2	2400	
-2, 4-Dimethylphenol	105-67-9	2400	
-Dimethyl phthalate	131-11-3	2400	
-Di-n-octyl phthalate	117-84-0	2400	
-Endothall	145-73-3	100	
-Ethyl methacrylate	97-63-2	39	
-2-Ethoxyethanol [Ethylene glycol monoethyl ether]	110-80-5	100	
-Isobutyl alcohol	78-83-1	39	
-Isosafrole	120-58-1	2400	
-Methyl ethyl ketone [2-Butanone]	78-93-3	39	
-Methyl methacrylate	80-62-6	39	
-1, 4-Naphthoquinone	130-15-4	2400	
-Phenol	108-95-2	2400	
-Propargyl alcohol [2-Propyn-1-ol]	107-19-7	30	
-Safrole	94-59-7	2400	
Sulfonated Organics:			
-Carbon disulfide	75-15-0	ND	39
-Disulfoton	298-04-4	ND	2400
-Ethyl methanesulfonate	62-50-0	ND	2400
-Methyl methanesulfonate	66-27-3	ND	2400
-Phorate	298-02-2	ND	2400
-1, 3-Propane sultone	1120-71-4	ND	100
-Tetraethyldithiopyrophosphate [Sulfotopp]	3689-24-5	ND	2400

-Thiophenol [Benzenethiol]	108-98-5	ND	30
-O, O, O-Triethyl phosphorothioate	126-69-1	ND	2400
Nitrogenated Organics:			
-Acetonitrile [Methyl cyanide]	75-05-8	ND	39
-2-Acetylaminofluorene [2-AAF]	53-96-3	ND	2400
-Acrylonitrile	107-13-1	ND	39
-4-Aminobiphenyl	92-67-1	ND	2400
-4-Aminopyridine	504-24-5	ND	100
-Aniline	62-53-3	ND	2400
-Benzidine	92-87-5	ND	2400
-Dibenz[a, j]acridine	224-42-0	ND	2400
-O, O-Diethyl-O-pyrazinyl-Phosphorothioate [Thionazin]	297-97-2	ND	2400
-Dimethoate	60-51-5	ND	2400
-p-(Dimethylamino)-azobenzene-[4-dimethylaminoazobenzene]			
-3,3'-Dimethylbenzidine	60-11-7	ND	2400
- α , α -Dimethylphenethylamine	119-93-7	ND	2400
	122-09-8	ND	2400
-3,3'-Dimethoxybenzidine	119-90-4	ND	100
-1,3-Dinitrobenzene [m-Dinitrobenzene]	99-65-0	ND	2400
-4,6-Dinitro-o-cresol	534-52-1	ND	2400
-2,4-Dinitrophenol	51-28-5	ND	2400
-2,4-Dinitrotoluene	121-14-2	ND	2400
-2,6-Dinitrotoluene	606-20-2	ND	2400
-Dinoseb [2-sec-Butyl-4,6-dinitrophenol]	88-85-7	ND	2400
-Diphenylamine	122-39-4	ND	2400
-Ethyl carbamate [Urethane]	51-79-6	ND	100
-Ethylenethiourea (2-Imidazolidinethione)	96-45-7	ND	110
-Famphur	52-85-7	ND	2400
-Methacrylonitrile	126-98-7	ND	39
-Methacrylonitrile	91-80-5	ND	2400
-Methomyl	16752-77-5	ND	57
-2-Methylacetonitrile, [Acetone cyanohydrin]	75-86-5	ND	100
-Methyl parathion	298-00-0	ND	2400
-MNNG (N-Methyl-N-nitroso-N[prime]-nitroguanidine)	70-25-7	ND	110
-1-Naphthylamine, [α -Naphthylamine]	134-32-7	ND	2400
-2-Naphthylamine, [β -Naphthylamine]	91-59-8	ND	2400
-Nicotine	54-11-5	ND	100
-4-Nitroaniline, [p-Nitroaniline]	100-01-6	ND	2400
-Nitrobenzene	98-95-3	ND	2400
-p-Nitrophenol, [p-Nitrophenol]	100-02-7	ND	2400
-5-Nitro-o-toluidine	99-55-8	ND	2400
-N-Nitrosodi-n-butylamine	924-16-3	ND	2400
-N-Nitrosodiethylamine	55-18-5	ND	2400
-N-Nitrosodiphenylamine, [Diphenylnitrosamine]	86-30-6	ND	2400
-N-Nitroso-N-methylethylamine	10595-95-6	ND	2400
-N-Nitrosomorpholine	59-89-2	ND	2400
-N-Nitrosopiperidine	100-75-4	ND	2400
-N-Nitrosopyrrolidine	930-55-2	ND	2400
-2-Nitropropane	79-46-9	ND	30
-Parathion	56-38-2	ND	2400
-Phenacetin	62-44-2	ND	2400
-1,4-Phenylene diamine, [p-Phenylenediamine]	106-50-3	ND	2400
-N-Phenylthiourea	103-85-5	ND	57
-2-Picoline (alpha-Picoline)	109-06-8	ND	2400
-Propylthioracil, [6-Propyl-2-thiouracil]	51-52-5	ND	100
-Pyridine	110-86-1	ND	2400
-Strychnine	57-24-9	ND	100
-Thioacetamide	62-55-5	ND	57
-Thiofanox	39196-18-4	ND	100

-Thiourea	62-56-6	ND	57
-Toluene-2,4-diamine [2,4-Diaminotoluene]	95-80-7	ND	57
-Toluene-2,6-diamine [2,6-Diaminotoluene]	823-40-5	ND	57
-o-Toluidine	95-53-4	ND	2400
-p-Toluidine	106-49-0	ND	100
-1,3,5-Trinitrobenzene, [sym-Trinitrobenzene]	99-35-4	ND	2400
Halogenated Organics:			
-Allyl chloride	107-05-1	ND	39
-Aramite	140-57-8	ND	2400
-Benzal chloride [Dichloromethyl benzene]	98-87-3	ND	100
-Benzyl chloride	100-44-77	ND	100
-bis(2-Chloroethyl)ether [Dichloroethyl ether]	111-44-4	ND	2400
-Bromoform [Tribromomethane]	75-25-2	ND	39
-Bromomethane [Methyl bromide]	74-83-9	ND	39
-4-Bromophenyl phenyl ether [p-Bromo diphenyl ether]	101-55-3	ND	2400
-Carbon tetrachloride	56-23-5	ND	39
-Chlordane	57-74-9	ND	14
-p-Chloroaniline	106-47-8	ND	2400
-Chlorobenzene	108-90-7	ND	39
-Chlorobenzilate	510-15-6	ND	2400
-p-Chloro-m-cresol	59-50-7	ND	2400
-2-Chloroethyl vinyl ether	110-75-8	ND	39
-Chloroform	67-66-3	ND	39
-Chloromethane [Methyl chloride]	74-87-3	ND	39
-2-Chloronaphthalene [beta-Chloronaphthalene]	91-58-7	ND	2400
-2-Chlorophenol [o-Chlorophenol]	95-57-8	ND	2400
-Chloroprene [2-Chloro-1,3-butadiene]	1126-99-8	ND	39
-2,4-D [2,4-Dichlorophenoxyacetic acid]	94-75-7	ND	7
-Diallate	2303-16-4	ND	2400
-1,2-Dibromo-3-chloropropane	96-12-8	ND	39
-1,2-Dichlorobenzene [o-Dichlorobenzene]	95-50-1	ND	2400
-1,3-Dichlorobenzene [m-Dichlorobenzene]	541-73-1	ND	2400
-1,4-Dichlorobenzene [p-Dichlorobenzene]	106-46-7	ND	2400
-3,3[prime]-Dichlorobenzidine	91-94-1	ND	2400
-Dichlorodifluoromethane [CFC-12]	75-71-8	ND	39
-1,2-Dichloroethane [Ethylene dichloride]	107-06-2	ND	39
-1,1-Dichloroethylene [Vinylidene chloride]	75-35-4	ND	39
-Dichloromethoxy ethane [Bis(2-chloroethoxy)methane]	111-91-1	ND	2400
-2,4-Dichlorophenol	120-83-2	ND	2400
-2,6-Dichlorophenol	87-65-0	ND	2400
-1,2-Dichloropropane [Propylene dichloride]	78-87-5	ND	39
-cis-1,3-Dichloropropylene	10061-01-5	ND	39
-trans-1,3-Dichloropropylene	10061-02-6	ND	39
-1,3-Dichloro-2propanol	96-23-1	ND	30
-Endosulfan I	959-98-8	ND	1.4
-Endosulfan II	33213-65-9	ND	1.4
-Endrin	72-20-8	ND	1.4
-Endrin aldehyde	7421-93-4	ND	1.4
-Endrin Ketone	53494-70-5	ND	1.4
-Epichlorohydrin [1-Chloro-2,3-epoxy propane]	106-89-8	ND	30
-Ethylidene dichloride [1,1-Dichloroethane]	75-34-3	ND	39
-2-Fluoroacetamide	640-19-7	ND	100
-Heptachlor	76-44-8	ND	1.4
-Heptachlor epoxide	1024-57-3	ND	2.8
-Hexachlorobenzene	118-74-1	ND	2400
-Hexachloro-1,3-butadiene [Hexachlorobutadiene]	87-68-3	ND	2400
-Hexachlorocyclopentadiene	77-47-4	ND	2400
-Hexachloroethane	67-72-1	ND	2400
-Hexachlorophene	70-30-4	ND	59000

-Hexachloropropene [Hexachloropropylene]	1888-71-7	ND	2400
-Isodrin	465-73-6	ND	2400
-Kepone [Chlordecone]	143-50-0	ND	4700
-Lindane [gamma-BHC] [gammaHexachlorocyclohexane]	58-89-9	ND	1.4
-Methylene chloride [Dichloromethane]	75-09-2	ND	39
-4, 4'-Methylene-bis(2-chloroaniline)	101-14-4	ND	100
-Methyl iodide [Iodomethane]	74-88-4	ND	39
-Pentachlorobenzene	608-93-5	ND	2400
-Pentachloroethane	76-01-7	ND	39
-Pentachloronitrobenzene [PCNB] [Quintobenzene] [Quintozene]	82-68-8	ND	2400
-Pentachlorophenol	87-86-5	ND	2400
-Pronamide	23950-58-5	ND	2400
-Silvex [2, 4, 5-Trichlorophenoxypropionic acid]	93-72-1	ND	7.0
-2, 3, 7, 8-Tetrachlorodibenzo-p-dioxin [2, 3, 7, 8-TCDD]	1746-01-6	ND	30
-1, 2, 4, 5-Tetrachlorobenzene	95-94-3	ND	2400
-1, 1, 2, 2-Tetrachloroethane	79-34-5	ND	39
-Tetrachloroethylene [Perchloroethylene]	127-18-4	ND	39
-2, 3, 4, 6-Tetrachlorophenol	58-90-2	ND	2400
-1, 2, 4-Trichlorobenzene	120-82-1	ND	2400
-1, 1, 1-Trichloroethane [Methyl chloroform]	71-55-6	ND	39
-1, 1, 2-Trichloroethane [Vinyl trichloride]	79-00-5	ND	39
-Trichloroethylene	79-01-6	ND	39
-Trichlorofluoromethane [Trichloromonofluoromethane]	75-69-4	ND	39
-2, 4, 5-Trichlorophenol	95-95-4	ND	2400
-2, 4, 6-Trichlorophenol	88-06-2	ND	2400
-1, 2, 3-Trichloropropane	96-18-4	ND	39
-Vinyl Chloride	75-01-4	ND	39

Notes:

NA—Not Applicable.

ND—Nondetect.

[†]25 or individual halogenated organics listed below.

(b) Conditional Exclusion for Used, Broken Cathode Ray Tubes (CRTs) and Processed CRT Glass Undergoing Recycling [40 CFR 261.39]

Used, broken CRTs are not solid wastes if they meet the following conditions:

1. Prior to processing:

These materials are not solid wastes if they are destined for recycling and if they meet the following requirements:

(i) Storage

The broken CRTs must be either:

(I) Stored in a building with a roof, floor, and walls, or

(II) Placed in a container (i.e., a package or a vehicle) that is constructed, filled, and closed to minimize releases to the environment of CRT glass (including fine solid materials).

(ii) Labeling

Each container in which the used, broken CRT is contained must be labeled or marked clearly with one of the following phrases: "Used cathode ray tube(s)-contains leaded glass" or "Leaded glass from televisions or computers." It must also be labeled: "Do not mix with other glass materials."

(iii) Transportation

The used, broken CRTs must be transported in a container meeting the requirements (i)(II) and subpart (ii) of this part.

(iv) Speculative accumulation and use constituting disposal

The used, broken CRTs are subject to the limitations on speculative accumulation as defined in subpart (1)(a)3(viii) of this rule. If they are used in a manner constituting disposal, they must comply with the applicable requirements of Rule 0400-12-01-.09(3) instead of the requirements of this subparagraph.

(v) Exports

[Note: The implementation of this subpart (Rule 0400-12-01-.02(6)(5)(b)1(v) Exports) remains the responsibility of EPA.]

In addition to the applicable conditions specified in subparts (i) through (iv) of this part, exporters of used, broken CRTs must comply with the following requirements:

- (I) Notify EPA of an intended export before the CRTs are scheduled to leave the United States. A complete notification should be submitted sixty (60) days before the initial shipment is intended to be shipped off-site. This notification may cover export activities extending over a twelve (12) month or lesser period. The notification must be in writing, signed by the exporter, and include the following information:
 - I. Name, mailing address, telephone number and EPA ID number (if applicable) of the exporter of the CRTs.
 - II. The estimated frequency or rate at which the CRTs are to be exported and the period of time over which they are to be exported.
 - III. The estimated total quantity of CRTs specified in kilograms.
 - IV. All points of entry to and departure from each foreign country through which the CRTs will pass.
 - V. A description of the means by which each shipment of the CRTs will be transported (e.g., mode of transportation vehicle (air, highway, rail, water, etc.), type(s) of container (drums, boxes, tanks, etc.)).
 - VI. The name and address of the recycler or recyclers and the estimated quantity of used CRTs to be sent to each facility, as well as the names of any alternate recycler.
 - VII. A description of the manner in which the CRTs will be recycled in the foreign country that will be receiving the CRTs.
 - VIII. The name of any transit country through which the CRTs will be sent and a description of the approximate length of time the CRTs will remain in such country and the nature of their handling while there.
- (II) Notifications submitted by mail should be sent to the following mailing address: Office of Enforcement and Compliance Assurance, Office of Federal Activities, International Compliance Assurance Division, (Mail

Code 2254A), Environmental Protection Agency, 1200 Pennsylvania Ave., N.W., Washington, D.C. 20460. Hand-delivered notifications should be sent to: Office of Enforcement and Compliance Assurance, Office of Federal Activities, International Compliance Assurance Division, (Mail Code 2254A), Environmental Protection Agency, Ariel Rios Bldg., Room 6144, 1200 Pennsylvania Ave., N.W., Washington, D.C. In both cases, the following shall be prominently displayed on the front of the envelope: "Attention: Notification of Intent to Export CRTs."

- (III) Upon request by EPA, the exporter shall furnish to EPA any additional information which a receiving country requests in order to respond to a notification.
- (IV) EPA will provide a complete notification to the receiving country and any transit countries. A notification is complete when EPA receives a notification which EPA determines satisfies the requirements of item (I) of this subpart. Where a claim of confidentiality is asserted with respect to any notification information required by item (I) of this subpart, EPA may find the notification not complete until any such claim is resolved in accordance with 40 CFR 260.2.
- (V) The export of CRTs is prohibited unless the receiving country consents to the intended export. When the receiving country consents in writing to the receipt of the CRTs, EPA will forward an Acknowledgment of Consent to Export CRTs to the exporter. Where the receiving country objects to receipt of the CRTs or withdraws a prior consent, EPA will notify the exporter in writing. EPA will also notify the exporter of any responses from transit countries.
- (VI) When the conditions specified on the original notification change, the exporter must provide EPA with a written renotification of the change, except for changes to the telephone number in subitem ~~4(v)(I)~~ of this subparagraph subpart and decreases in the quantity indicated pursuant to subitem 4(v)(I)III of this subparagraph subpart. The shipment cannot take place until consent of the receiving country to the changes has been obtained (except for changes to information about points of entry and departure and transit countries pursuant to subitem subitems 4(v)(I) IV and subitem 4(v)(I) VIII of this subparagraph subpart and the exporter of CRTs receives from EPA a copy of the Acknowledgment of Consent to Export CRTs reflecting the receiving country's consent to the changes.
- (VII) A copy of the Acknowledgment of Consent to Export CRTs must accompany the shipment of CRTs. The shipment must conform to the terms of the Acknowledgment.
- (VIII) If a shipment of CRTs cannot be delivered for any reason to the recycler or the alternate recycler, the exporter of CRTs must renotify EPA of a change in the conditions of the original notification to allow shipment to a new recycler in accordance with item ~~4(v)~~ (VI) of this subparagraph subpart and obtain another Acknowledgment of Consent to Export CRTs.
- (IX) Exporters must keep copies of notifications and Acknowledgments of Consent to Export CRTs for a period of three years following receipt of the Acknowledgment.
- (X) CRT exporters must file with EPA no later than March 1 of each year, an annual report summarizing the quantities (in kilograms), frequency of shipment, and ultimate destination(s) (i.e., the facility or facilities where the recycling occurs) of all used CRTs exported during the previous calendar year. Such reports must also include the following:

- I. The name, EPA ID number (if applicable), and mailing and site address of the exporter;
- II. The calendar year covered by the report; and
- III. A certification signed by the CRT exporter that states:

"I certify under penalty of law that I have personally examined and am familiar with the information submitted in this and all attached documents and that, based on my inquiry of those individuals immediately responsible for obtaining this information, I believe that the submitted information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment."

- (XI) Annual reports must be submitted to the office specified in item (II) of this subpart. Exporters must keep copies of each annual report for a period of at least three years from the due date of the report.

2. Requirements for used CRT processing

Used, broken CRTs undergoing CRT processing as defined in subparagraph (2)(a) of Rule 0400-12-01-.01(2)(a) are not solid wastes if they meet the following requirements:

(i) Storage

Used, broken CRTs undergoing processing are subject to the requirement of subpart 1(iv) of this subparagraph.

(ii) Processing

(I) All activities specified in paragraphs (2) and (3) parts 2 and 3 of the definition of "CRT processing" in subparagraph (2)(a) of Rule 0400-12-01-.01(2)(a) must be performed within a building with a roof, floor, and walls; and

(II) No activities may be performed that use temperatures high enough to volatilize lead from CRTs.

3. Processed CRT glass sent to CRT glass making or lead smelting

Glass from used CRTs that is destined for recycling at a CRT glass manufacturer or a lead smelter after processing is not a solid waste unless it is speculatively accumulated as defined in subpart (1)(a)3(viii) of this rule.

4. Use constituting disposal

Glass from used CRTs that is used in a manner constituting disposal must comply with the requirements of paragraph (3) of Rule 0400-12-01-.09(3) instead of the requirements of this subparagraph.

- (c) Conditional Exclusion for Used, Intact Cathode Ray Tubes (CRTs) Exported for Recycling [40 CFR 261.40]

[Note: The implementation of this subparagraph remains the responsibility of EPA.]

Used, intact CRTs exported for recycling are not solid wastes if they meet the notice and consent conditions of subpart (b)1(v) of this paragraph, and if they are not speculatively accumulated as

defined in subpart (1)(a)3(viii) of this rule.

(d) Notification and Recordkeeping for Used, Intact Cathode Ray Tubes (CRTs) Exported for Reuse [40 CFR 261.41]

[Note: The implementation of this subparagraph remains the responsibility of EPA.]

1. CRT exporters who export used, intact CRTs for reuse must send a notification to EPA. This notification may cover export activities extending over a twelve (12) month or lesser period.
 - (i) The notification must be in writing, signed by the exporter, and include the following information:
 - (I) Name, mailing address, telephone number, and EPA ID number (if applicable) of the exporter of the used, intact CRTs;
 - (II) The estimated frequency or rate at which the used, intact CRTs are to be exported for reuse and the period of time over which they are to be exported;
 - (III) The estimated total quantity of used, intact CRTs specified in kilograms;
 - (IV) All points of entry to and departure from each transit country through which the used, intact CRTs will pass, a description of the approximate length of time the used, intact CRTs will remain in such country, and the nature of their handling while there;
 - (V) A description of the means by which each shipment of the used, intact CRTs will be transported (e.g., mode of transportation vehicle (air, highway, rail, water, etc.), type(s) of container (drums, boxes, tanks, etc.));
 - (VI) The name and address of the ultimate destination facility or facilities where the used, intact CRTs will be reused, refurbished, distributed, or sold for reuse and the estimated quantity of used, intact CRTs to be sent to each facility, as well as the name of any alternate destination facility or facilities;
 - (VII) A description of the manner in which the used, intact CRTs will be reused (including reuse after refurbishment) in the foreign country that will be receiving the used, intact CRTs; and
 - (VIII) A certification signed by the CRT exporter that states:

"I certify under penalty of law that the CRTs described in this notice are intact and fully functioning or capable of being functional after refurbishment and that the used CRTs will be reused or refurbished and reused. I certify under penalty of law that I have personally examined and am familiar with the information submitted in this and all attached documents and that, based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the submitted information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment."
 - (ii) Notifications submitted by mail should be sent to the following mailing address: Office of Enforcement and Compliance Assurance, Office of Federal Activities, International Compliance Assurance Division, (Mail Code 2254A), Environmental Protection Agency, 1200 Pennsylvania Ave. N.W., Washington, D.C. 20460.

Hand-delivered notifications should be sent to: Office of Enforcement and Compliance Assurance, Office of Federal Activities, International Compliance Assurance Division, (Mail Code 2254A), Environmental Protection Agency, William Jefferson Clinton Building, Room 6144, 1200 Pennsylvania Ave. N.W., Washington, D.C. 20004. In both cases, the following shall be prominently displayed on the front of the envelope: "Attention: Notification of Intent to Export CRTs."

2. CRT exporters of used, intact CRTs sent for reuse must keep copies of normal business records, such as contracts, demonstrating that each shipment of exported used, intact CRTs will be reused. This documentation must be retained for a period of at least three years from the date the CRTs were exported. If the documents are written in a language other than English, CRT exporters of used, intact CRTs sent for reuse must provide both the original, non-English version of the normal business records as well as a third-party translation of the normal business records into English within 30 days upon request by EPA.

(6)-(7) Reserved [40 CFR Subparts F-- G]

(8) Financial Requirements for Management of Excluded Hazardous Secondary Material [40 CFR 261 Subpart H]

(a) Applicability. [40 CFR 261.140]

1. The requirements of this paragraph apply to owners or operators of reclamation and intermediate facilities managing hazardous secondary materials excluded under subpart (1)(d)(xxiv) of this rule, except as provided otherwise in part 2 of this subparagraph.
2. States and the federal government are exempt from the financial assurance requirements of this subpart.

(b) Definitions of terms as used in this paragraph. [40 CFR 261.141]

The terms defined in parts (8)(b)5, 7, 8 and 9 of Rule 0400-12-01-.05 have the same meaning in this paragraph as they do in subparagraph (8)(b) of Rule 0400-12-01-.05.

(c) Cost estimate. [40 CFR 261.142]

1. The owner or operator must have a detailed written estimate, in current dollars, of the cost of disposing of any hazardous secondary material as listed or characteristic hazardous waste, and the potential cost of closing the facility as a treatment, storage, and disposal facility.

(Note: To determine the potential cost of closing the facility as a treatment, storage and disposal facility, the Commissioner expects the owner or operator to develop and provide the information consistent with information required in a closure plan developed in accordance with part (7)(c)2 of Rule 0400-12-01-.05.)

- (i) The estimate must equal the cost of conducting the activities described in this part at the point when the extent and manner of the facility's operation would make these activities the most expensive; and
- (ii) The cost estimate must be based on the costs to the owner or operator of hiring a third party to conduct these activities. A third party is a party who is neither a parent nor a subsidiary of the owner or operator. (See definition of parent corporation in part (8)(b)5 of Rule 0400-12-01-.05.) The owner or operator may use costs for on-site disposal in accordance with applicable requirements if he can demonstrate that on-site disposal capacity will exist at all times over the life of the facility.

(iii) The cost estimate may not incorporate any salvage value that may be realized with the sale of hazardous secondary materials, or hazardous or non-hazardous wastes if applicable under part (7)(d)4 of Rule 0400-12-01-.05, facility structures or equipment, land, or other assets associated with the facility.

(iv) The owner or operator may not incorporate a zero cost for hazardous secondary materials, or hazardous or non-hazardous wastes if applicable under (7)(d)4 of Rule 0400-12-01-.05 that might have economic value.

2. During the active life of the facility, the owner or operator must adjust the cost estimate for inflation within 60 days prior to the anniversary date of the establishment of the financial instrument(s) used to comply with subparagraph (d) of this paragraph. For owners and operators using the financial test or corporate guarantee, the cost estimate must be updated for inflation within 30 days after the close of the firm's fiscal year and before submission of updated information to the Commissioner as specified in subpart (d)5(iii) of this paragraph. The adjustment may be made by recalculating the cost estimate in current dollars, or by using an inflation factor derived from the most recent Implicit Price Deflator for Gross National Product published by the U.S. Department of Commerce in its Survey of Current Business, as specified in subparts (i) and (ii) of this part. The inflation factor is the result of dividing the latest published annual Deflator by the Deflator for the previous year.

(i) The first adjustment is made by multiplying the cost estimate by the inflation factor. The result is the adjusted cost estimate.

(ii) Subsequent adjustments are made by multiplying the latest adjusted cost estimate by the latest inflation factor.

3. During the active life of the facility, the owner or operator must revise the cost estimate no later than 30 days after a change in a facility's operating plan or design that would increase the costs of conducting the activities described in part 1 of this subparagraph or no later than 60 days after an unexpected event which increases the cost of conducting the activities described in part 1 of this subparagraph. The revised cost estimate must be adjusted for inflation as specified in part 2 of this subparagraph.

4. The owner or operator must keep the following at the facility during the operating life of the facility: The latest cost estimate prepared in accordance with parts 1 and 3 and, when this estimate has been adjusted in accordance with part 2 of this subparagraph, the latest adjusted cost estimate.

(d) Financial assurance condition. [40 CFR 261.143]

Per subitem (1)(d)1(xxiv)(VI)VI of this rule, an owner or operator of a reclamation or intermediate facility must have financial assurance as a condition of the exclusion as required under subpart (1)(d)1(xxiv). He must choose from the options as specified in parts 1 through 7 of this subparagraph. The Commissioner may accept alternative financial assurance mechanisms proposed by the owner or operator in writing, if the Commissioner determines that such mechanisms will provide protection to human health and the environment that is equivalent to other allowable financial assurance mechanisms.

1. Trust fund.

(i) An owner or operator may satisfy the requirements of this subparagraph by establishing a trust fund which conforms to the requirements of this part and submitting an originally signed duplicate of the trust agreement to the Commissioner. The trustee must be an entity which has the authority to act as a trustee and whose trust operations are regulated and examined by a federal or state agency.

(ii) The wording of the trust agreement must be identical to the wording specified in

subpart (l)1(i) of this paragraph, and the trust agreement must be accompanied by a formal certification of acknowledgment (for example, see subpart (l)1(ii) of this paragraph). Schedule A of the trust agreement must be updated within 60 days after a change in the amount of the current cost estimate covered by the agreement.

(iii) The trust fund must be funded for the full amount of the current cost estimate before it may be relied upon to satisfy the requirements of this part.

(iv) Whenever the current cost estimate changes, the owner or operator must compare the new estimate with the trustee's most recent annual valuation of the trust fund. If the value of the fund is less than the amount of the new estimate, the owner or operator, within 60 days after the change in the cost estimate, must either deposit an amount into the fund so that its value after this deposit at least equals the amount of the current cost estimate, or obtain other financial assurance as specified in this subparagraph to cover the difference.

(v) If the value of the trust fund is greater than the total amount of the current cost estimate, the owner or operator may submit a written request to the Commissioner for release of the amount in excess of the current cost estimate.

(vi) If an owner or operator substitutes other financial assurance as specified in this subparagraph for all or part of the trust fund, he may submit a written request to the Commissioner for release of the amount in excess of the current cost estimate covered by the trust fund.

(vii) Within 60 days after receiving a request from the owner or operator for release of funds as specified in subpart (v) or (vi) of this part, the Commissioner will instruct the trustee to release to the owner or operator such funds as the Commissioner specifies in writing. If the owner or operator begins final closure under paragraph (7) of Rules 0400-12-01-.05 or 0400-12-01-.06, an owner or operator may request reimbursements for partial or final closure expenditures by submitting itemized bills to the Commissioner. The owner or operator may request reimbursements for partial closure only if sufficient funds are remaining in the trust fund to cover the maximum costs of closing the facility over its remaining operating life. No later than 60 days after receiving bills for partial or final closure activities, the Commissioner will instruct the trustee to make reimbursements in those amounts as the Commissioner specifies in writing, if the Commissioner determines that the partial or final closure expenditures are in accordance with the approved closure plan, or otherwise justified. If the Commissioner has reason to believe that the maximum cost of closure over the remaining life of the facility will be significantly greater than the value of the trust fund, he may withhold reimbursements of such amounts as he deems prudent until he determines, in accordance with part (8)(d)3 of Rule 0400-12-01-.05 that the owner or operator is no longer required to maintain financial assurance for final closure of the facility. If the Commissioner does not instruct the trustee to make such reimbursements, he will provide to the owner or operator a detailed written statement of reasons.

(viii) The Commissioner will agree to termination of the trust when:

(I) An owner or operator substitutes alternate financial assurance as specified in this subparagraph; or

(II) The Commissioner releases the owner or operator from the requirements of this part in accordance with part 11 of this subparagraph.

2. Surety bond guaranteeing payment.

(i) An owner or operator may satisfy the requirements of this subparagraph by obtaining a surety bond which conforms to the requirements of this part and

submitting the bond to the Commissioner. The surety company issuing the bond must, at a minimum, be licensed to do business as a surety in Tennessee and must be among those listed as acceptable sureties on federal bonds in Circular 570 of the U.S. Department of the Treasury.

- (ii) The wording of the surety bond must be identical to the wording specified in part (l)2 of this paragraph.
- (iii) Under the terms of the bond, the surety will become liable on the bond obligation when the operator fails to perform as guaranteed by the bond. Following a written determination by the Commissioner that the hazardous secondary materials do not meet the conditions of the exclusion under subpart (1)(d)1(xxiv) the surety will forfeit the amount of the penal sum to, and as directed by, the Commissioner.
- (iv) The bond must guarantee that the owner or operator will provide alternate financial assurance as specified in this part, and obtain the Commissioner's written approval of the assurance provided, within 90 days after receipt by both the owner or operator and the Commissioner of a notice of cancellation of the bond from the surety;
- (v) The penal sum of the bond must be in an amount at least equal to the current cost estimate, except as provided in part 8 of this subparagraph.
- (vi) Whenever the current cost estimate increases to an amount greater than the penal sum, the owner or operator, within 60 days after the increase, must either cause the penal sum to be increased to an amount at least equal to the current cost estimate and submit evidence of such increase to the Commissioner, or obtain other financial assurance as specified in this part to cover the increase. Whenever the current cost estimate decreases, the penal sum may be reduced to the amount of the current cost estimate following written approval by the Commissioner.
- (vii) Under the terms of the bond, the surety may cancel the bond by sending notice of cancellation by certified mail to the owner or operator and to the Commissioner. Cancellation may not occur, however, during the 120 days beginning on the date of receipt of the notice of cancellation by both the owner or operator and the Commissioner, as evidenced by the return receipts.
- (viii) The owner or operator may cancel the bond if the Commissioner has given prior written consent based on his receipt of evidence of alternate financial assurance as specified in this part.

3. Letter of credit.

- (i) An owner or operator may satisfy the requirements of this subparagraph by obtaining an irrevocable standby letter of credit which conforms to the requirements of this part and submitting the letter to the Commissioner. The issuing institution must be an entity which has the authority to issue letters of credit and whose letter-of-credit operations are regulated and examined by a federal or state agency.
- (ii) The wording of the letter of credit must be identical to the wording specified in part (l)3 of this paragraph.
- (iii) The letter of credit must be accompanied by a letter from the owner or operator referring to the letter of credit by number, issuing institution, and date, and providing the following information: The EPA Identification Number (if any issued), name, and address of the facility, and the amount of funds assured for the facility by the letter of credit.

- (iv) The letter of credit must be irrevocable and issued for a period of at least 1 year. The letter of credit must provide that the expiration date will be automatically extended for a period of at least 1 year unless, at least 120 days before the current expiration date, the issuing institution notifies both the owner or operator and the Commissioner by certified mail of a decision not to extend the expiration date. Under the terms of the letter of credit, the 120 days will begin on the date when both the owner or operator and the Commissioner have received the notice, as evidenced by the return receipts.
- (v) The letter of credit must be issued in an amount at least equal to the current cost estimate, except as provided in part 8 of this subparagraph.
- (vi) Whenever the current cost estimate increases to an amount greater than the amount of the credit, the owner or operator, within 60 days after the increase, must either cause the amount of the credit to be increased so that it at least equals the current cost estimate and submit evidence of such increase to the Commissioner, or obtain other financial assurance as specified in this subparagraph to cover the increase. Whenever the current cost estimate decreases, the amount of the credit may be reduced to the amount of the current cost estimate following written approval by the Commissioner.
- (vii) Following a determination by the Commissioner that the hazardous secondary materials do not meet the conditions of the exclusion under subpart (1)(d)1(xxiv), the Commissioner may draw on the letter of credit.
- (viii) If the owner or operator does not establish alternate financial assurance as specified in this part and obtain written approval of such alternate assurance from the Commissioner within 90 days after receipt by both the owner or operator and the Commissioner of a notice from the issuing institution that it has decided not to extend the letter of credit beyond the current expiration date, the Commissioner may draw on the letter of credit. The Commissioner may delay the drawing if the issuing institution grants an extension of the term of the credit. During the last 30 days of any such extension the Commissioner will draw on the letter of credit if the owner or operator has failed to provide alternate financial assurance as specified in this subparagraph and obtain written approval of such assurance from the Commissioner.
- (ix) The Commissioner will return the letter of credit to the issuing institution for termination when:
 - (i) An owner or operator substitutes alternate financial assurance as specified in this subparagraph; or
 - (ii) The Commissioner releases the owner or operator from the requirements of this part in accordance with part 11 of this subparagraph.

4. Insurance.

- (i) An owner or operator may satisfy the requirements of this subparagraph by obtaining insurance which conforms to the requirements of this part. The owner or operator must submit a signed duplicate original of the Hazardous Secondary Material Facility Endorsement to the Commissioner. If requested by the Commissioner, the owner or operator must provide a signed duplicate original of the insurance policy. The insurer must be licensed to transact the business of insurance, or eligible to provide insurance as an excess or surplus lines insurer, in the State of Tennessee and have an A. M. Best rating of at least A or A- or have special approval from the Commissioner. An insurer that is a "captive insurance company", as that term is used in T.C.A. §§ 56-13-106 through 56-13-133, may not be utilized unless the Commissioner determines that such captive

insurance company offers coverage that is equivalent in protection to other insurance companies or other allowable financial assurance mechanisms.

- (ii) Each insurance policy must be amended by attachment of the Hazardous Secondary Material Facility Endorsement. The wording of the endorsement must be identical to the wording specified in part (I)4 of this paragraph.
- (iii) The insurance policy must be issued for a face amount at least equal to the current cost estimate, except as provided in part 8 of this subparagraph. The term "face amount" means the total amount the insurer is obligated to pay under the policy. Actual payments by the insurer will not change the face amount, although the insurer's future liability will be lowered by the amount of the payments.
- (iv) The insurance policy must guarantee that funds will be available whenever needed to pay the cost of removal of all hazardous secondary materials from the unit, to pay the cost of decontamination of the unit, to pay the costs of the performance of activities required under paragraph (7) of Rule 0400-12-01-.05 or 0400-12-01-.06, as applicable, for the facilities covered by this policy. The policy must also guarantee that once funds are needed, the insurer will be responsible for paying out funds, up to an amount equal to the face amount of the policy, upon the direction of the Commissioner, to such party or parties as the Commissioner specifies.
- (v) After beginning partial or final closure under Rule 0400-12-01-.05 or 0400-12-01-.06, as applicable, an owner or operator or any other authorized person may request reimbursements for closure expenditures by submitting itemized bills to the Commissioner. The owner or operator may request reimbursements only if the remaining value of the policy is sufficient to cover the maximum costs of closing the facility over its remaining operating life. Within 60 days after receiving bills for closure activities, the Commissioner will instruct the insurer to make reimbursements in such amounts as the Commissioner specifies in writing if the Commissioner determines that the expenditures are in accordance with the approved plan or otherwise justified. If the Commissioner has reason to believe that the maximum cost over the remaining life of the facility will be significantly greater than the face amount of the policy, he may withhold reimbursement of such amounts as he deems prudent until he determines, in accordance with part 11 of this subparagraph, that the owner or operator is no longer required to maintain financial assurance for the particular facility. If the Commissioner does not instruct the insurer to make such reimbursements, he will provide to the owner or operator a detailed written statement of reasons.
- (vi) The owner or operator must maintain the policy in full force and effect until the Commissioner consents to termination of the policy by the owner or operator as specified in subpart (x) of this part. Failure to pay the premium, without substitution of alternate financial assurance as specified in this part, will constitute a significant violation of these regulations warranting such remedy as the Commissioner deems necessary. Such violation will be deemed to begin upon receipt by the Commissioner of a notice of future cancellation, termination, or failure to renew due to nonpayment of the premium, rather than upon the date of expiration.
- (vii) Each policy must contain a provision allowing assignment of the policy to a successor owner or operator. Such assignment may be conditional upon consent of the insurer, provided such consent is not unreasonably refused.
- (viii) The policy must provide that the insurer may not cancel, terminate, or fail to renew the policy except for failure to pay the premium. The automatic renewal of the policy must, at a minimum, provide the insured with the option of renewal at the face amount of the expiring policy. If there is a failure to pay the premium, the

insurer may elect to cancel, terminate, or fail to renew the policy by sending notice by certified mail to the owner or operator and the Commissioner. Cancellation, termination, or failure to renew may not occur, however, during the 120 days beginning with the date of receipt of the notice by both the Commissioner and the owner or operator, as evidenced by the return receipts. Cancellation, termination, or failure to renew may not occur and the policy will remain in full force and effect in the event that on or before the date of expiration:

- (I) The Commissioner deems the facility abandoned; or
 - (II) Conditional exclusion or interim status is lost, terminated, or revoked; or
 - (III) Closure is ordered by the Commissioner or a U.S. district court or other court of competent jurisdiction; or
 - (IV) The owner or operator is named as debtor in a voluntary or involuntary proceeding under Title 11 (Bankruptcy), U.S. Code; or
 - (V) The premium due is paid.
- (ix) Whenever the current cost estimate increases to an amount greater than the face amount of the policy, the owner or operator, within 60 days after the increase, must either cause the face amount to be increased to an amount at least equal to the current cost estimate and submit evidence of such increase to the Commissioner, or obtain other financial assurance as specified in this subparagraph to cover the increase. Whenever the current cost estimate decreases, the face amount may be reduced to the amount of the current cost estimate following written approval by the Commissioner.
- (x) The Commissioner will give written consent to the owner or operator that he may terminate the insurance policy when:
- (i) An owner or operator substitutes alternate financial assurance as specified in this subparagraph; or
 - (ii) The Commissioner releases the owner or operator from the requirements of this subparagraph in accordance with part 11 of this subparagraph.

5. Financial test and corporate guarantee.

- (i) An owner or operator may satisfy the requirements of this subparagraph by demonstrating that he passes a financial test as specified in this part. To pass this test the owner or operator must meet the criteria of either item (I) or (II) of this subpart:
- (I) The owner or operator must have:
 - I. Two of the following three ratios: A ratio of total liabilities to net worth less than 2.0; a ratio of the sum of net income plus depreciation, depletion, and amortization to total liabilities greater than 0.1; and a ratio of current assets to current liabilities greater than 1.5; and
 - II. Net working capital and tangible net worth each at least six times the sum of the current cost estimates; and
 - III. Tangible net worth of at least \$10 million; and

- IV. Assets located in the United States amounting to at least 90 percent of total assets or at least six times the sum of the current cost estimates.
- (II) The owner or operator must have:
 - I. A current rating for his most recent bond issuance of AAA, AA, A, or BBB as issued by Standard and Poor's or Aaa, Aa, A, or Baa as issued by Moody's; and
 - II. Tangible net worth at least six times the sum of the current cost estimates; and
 - III. Tangible net worth of at least \$10 million; and
 - IV. Assets located in the United States amounting to at least 90 percent of total assets or at least six times the sum of the current cost estimates.
- (ii) The phrase "current cost estimates" as used in subpart (i) of this part refers to the cost estimates required to be shown in paragraphs 1 through 9 of the letter from the owner's or operator's chief financial officer (part (I)5 of this paragraph).
- (iii) To demonstrate that he meets this test, the owner or operator must submit the following items to the Commissioner:
 - (I) A letter signed by the owner's or operator's chief financial officer and worded as specified in part (I)5 of this paragraph; and
 - (II) A copy of the independent certified public accountant's report on examination of the owner's or operator's financial statements for the latest completed fiscal year; and
 - (III) If the chief financial officer's letter providing evidence of financial assurance includes financial data showing that the owner or operator satisfies item 5(i)(I) of this subparagraph that are different from the data in the audited financial statements referred to in item (II) of this subpart or any other audited financial statement or data filed with the SEC, then a special report from the owner's or operator's independent certified public accountant to the owner or operator is required. The special report shall be based upon an agreed upon procedures engagement in accordance with professional auditing standards and shall describe the procedures performed in comparing the data in the chief financial officer's letter derived from the independently audited, year-end financial statements for the latest fiscal year with the amounts in such financial statements, the findings of the comparison, and the reasons for any differences.
- (iv) The owner or operator may obtain an extension of the time allowed for submission of the documents specified in subpart (iii) of this part if the fiscal year of the owner or operator ends during the 90 days prior to the effective date of these regulations and if the year-end financial statements for that fiscal year will be audited by an independent certified public accountant. The extension will end no later than 90 days after the end of the owner's or operator's fiscal year. To obtain the extension, the owner's or operator's chief financial officer must send, by the effective date of these rules, a letter to the Commissioner. This letter from the chief financial officer must:
 - (I) Request the extension;

- (II) Certify that he has grounds to believe that the owner or operator meets the criteria of the financial test;
- (III) Specify for each facility to be covered by the test the EPA Identification Number (if any issued), name, address, and current cost estimates to be covered by the test;
- (IV) Specify the date ending the owner's or operator's last complete fiscal year before the effective date of these rules in this paragraph;
- (V) Specify the date, no later than 90 days after the end of such fiscal year, when he will submit the documents specified in subpart (iii) of this part; and
- (VI) Certify that the year-end financial statements of the owner or operator for such fiscal year will be audited by an independent certified public accountant.
- (v) After the initial submission of items specified in subpart (iii) of this part, the owner or operator must send updated information to the Commissioner within 90 days after the close of each succeeding fiscal year. This information must consist of all three items specified in subpart (iii) of this part.
- (vi) If the owner or operator no longer meets the requirements of subpart (i) of this part, he must send notice to the Commissioner of intent to establish alternate financial assurance as specified in this subparagraph. The notice must be sent by certified mail within 90 days after the end of the fiscal year for which the year-end financial data show that the owner or operator no longer meets the requirements. The owner or operator must provide the alternate financial assurance within 120 days after the end of such fiscal year.
- (vii) The Commissioner may, based on a reasonable belief that the owner or operator may no longer meet the requirements of subpart (i) of this part, require reports of financial condition at any time from the owner or operator in addition to those specified in subpart (iii) of this part. If the Commissioner finds, on the basis of such reports or other information, that the owner or operator no longer meets the requirements of subpart (i) of this part, the owner or operator must provide alternate financial assurance as specified in this subparagraph within 30 days after notification of such a finding.
- (viii) The Commissioner may disallow use of this test on the basis of qualifications in the opinion expressed by the independent certified public accountant in his report on examination of the owner's or operator's financial statements (see item (iii)(II) of this part). An adverse opinion or a disclaimer of opinion will be cause for disallowance. The Commissioner will evaluate other qualifications on an individual basis. The owner or operator must provide alternate financial assurance as specified in this subparagraph within 30 days after notification of the disallowance.
- (ix) The owner or operator is no longer required to submit the items specified in subpart (iii) of this part when:
 - (I) An owner or operator substitutes alternate financial assurance as specified in this subparagraph; or
 - (II) The Commissioner releases the owner or operator from the requirements of this part in accordance with part 11 of this subparagraph.
- (x) An owner or operator may meet the requirements of this part by obtaining a written guarantee. The guarantor must be the direct or higher-tier parent

corporation of the owner or operator, a firm whose parent corporation is also the parent corporation of the owner or operator, or a firm with a "substantial business relationship" with the owner or operator. The guarantor must meet the requirements for owners or operators in subparts (i) through (viii) of this part and must comply with the terms of the guarantee. The wording of the guarantee must be identical to the wording specified in subpart (1)7(i) of this paragraph. A certified copy of the guarantee must accompany the items sent to the Commissioner as specified in subpart (iii) of this part. One of these items must be the letter from the guarantor's chief financial officer. If the guarantor's parent corporation is also the parent corporation of the owner or operator, the letter must describe the value received in consideration of the guarantee. If the guarantor is a firm with a "substantial business relationship" with the owner or operator, this letter must describe this "substantial business relationship" and the value received in consideration of the guarantee. The terms of the guarantee must provide that:

- (I) Following a determination by the Commissioner that the hazardous secondary materials at the owner or operator's facility covered by this guarantee do not meet the conditions of the exclusion under subpart (1)(d)1(xxiv) of this rule, the guarantor will dispose of any hazardous secondary material as hazardous waste and close the facility in accordance with closure requirements found in Rule 0400-12-01-.05 or 0400-12-01-.06, as applicable, or establish a trust fund as specified in part 1 of this subparagraph in the name of the owner or operator in the amount of the current cost estimate.
- (II) The corporate guarantee will remain in force unless the guarantor sends notice of cancellation by certified mail to the owner or operator and to the Commissioner. Cancellation may not occur, however, during the 120 days beginning on the date of receipt of the notice of cancellation by both the owner or operator and the Commissioner, as evidenced by the return receipts.
- (III) If the owner or operator fails to provide alternate financial assurance as specified in this subparagraph and obtain the written approval of such alternate assurance from the Commissioner within 90 days after receipt by both the owner or operator and the Commissioner of a notice of cancellation of the corporate guarantee from the guarantor, the guarantor will provide such alternate financial assurance in the name of the owner or operator.

6. Personal Bond Supported by Certificate of Deposit

- (i) An owner or operator may satisfy the requirements of this subparagraph by filing his or her personal performance guarantee accompanied by collateral in the form of a certificate of deposit.
- (ii) The wording of the personal bond must be identical to the wording specified in subparagraph (I) of this paragraph.
- (iii) The certificate of deposit must be in an amount at least equal to the current cost estimate, except as provided in part 8 of this subparagraph.
- (iv) The certificate of deposit shall meet the following requirements:
 - (I) The certificate of deposit shall be registered as follows, except that the phrase "Corporation XYZ" should be replaced by the name of the owner/operator: "Corporation XYZ and Tennessee Department of Environment and Conservation or Tennessee Department of Environment and Conservation".

- (II) The institution holding the funds shall be a commercial financial institution regulated by a federal agency or regulated by the Tennessee Department of Financial Institutions.
- (III) The certificate of deposit shall be automatically annually renewed with the earned interest released to the principal as accrued.
- (IV) The original certificate of deposit or safekeeping receipt of the deposit shall be submitted to and held by the Division of Financial Responsibility of the Tennessee Department of Environment and Conservation.
- (V) Accompanying the certificate of deposit or safekeeping receipt shall be a letter from an officer of the issuing financial institution on the institution's letterhead that contains the certificate of deposit number, the name of the owner/operator, the date the certificate of deposit was issued, and the following statement:

"Notwithstanding any contrary term or condition of the above described Certificate of Deposit, [INSERT NAME OF FINANCIAL INSTITUTION] (the "Financial Institution") hereby covenants, warrants and represents that said Certificate of Deposit shall not be subject to any right, charge, security interest, lien or claim of any kind in favor of the Financial Institution. The Financial Institution further agrees that it shall not release the Certificate of Deposit or the proceeds thereof to anyone other than to the Tennessee Department of Environment and Conservation (the "Department") without the written consent of the Department."

7. Personal Bond Supported by Cash

- (i) An owner or operator may satisfy the requirements of this subparagraph by filing his or her personal performance guarantee accompanied by collateral in the form of cash deposited with the treasurer of the state of Tennessee.
- (ii) The cash deposit must be in an amount at least equal to the current cost estimate, except as provided in part 8 of this subparagraph.
- (iii) The wording of the personal bond must be identical to the wording specified in subparagraph (i) of this paragraph.

8. Use of multiple financial mechanisms. An owner or operator may satisfy the requirements of this subparagraph by establishing more than one financial mechanism per facility. These mechanisms are limited to trust funds, surety bonds, letters of credit, insurance, and personal bonds. The mechanisms must be as specified in parts 1 through 4, 6 or 7 of this subparagraph, respectively, except that it is the combination of mechanisms, rather than the single mechanism, which must provide financial assurance for an amount at least equal to the current cost estimate. The Commissioner may use any or all of the mechanisms to provide for the facility.

9. Use of a financial mechanism for multiple facilities. An owner or operator may use a financial assurance mechanism specified in this subparagraph to meet the requirements of this subparagraph for more than one facility. Evidence of financial assurance submitted to the Commissioner must include a list showing, for each facility, the EPA Identification Number (if any issued), name, address, and the amount of funds assured by the mechanism. The amount of funds available through the mechanism must be no less than the sum of funds that would be available if a separate mechanism had been established and maintained for each facility. In directing funds available through the mechanism for any of the facilities covered by the mechanism, the Commissioner may direct only the amount of funds designated for that facility, unless the owner or operator agrees to the use of additional funds available under the mechanism.

10. Removal and Decontamination Plan for Release

- (i) An owner or operator of a reclamation facility or an intermediate facility who wishes to be released from his financial assurance obligations under subitem (1)(d)1(xxiv)(VI)VI of this rule must submit a plan for removing all hazardous secondary material residues to the Commissioner at least 180 days prior to the date on which he expects to cease to operate under the exclusion.
- (ii) The plan must include, at least:
 - (I) For each hazardous secondary materials storage unit subject to financial assurance requirements under subitem (1)(d)1(xxiv)(VI)VI of this rule, a description of how all excluded hazardous secondary materials will be recycled or sent for recycling, and how all residues, contaminated containment systems (liners, etc.), contaminated soils, subsoils, structures, and equipment will be removed or decontaminated as necessary to protect human health and the environment, and
 - (II) A detailed description of the steps necessary to remove or decontaminate all hazardous secondary material residues and contaminated containment system components, equipment, structures, and soils including, but not limited to, procedures for cleaning equipment and removing contaminated soils, methods for sampling and testing surrounding soils, and criteria for determining the extent of decontamination necessary to protect human health and the environment; and
 - (III) A detailed description of any other activities necessary to protect human health and the environment during this timeframe, including, but not limited to, leachate collection, run-on and run-off control, etc.; and
 - (IV) A schedule for conducting the activities described which, at a minimum, includes the total time required to remove all excluded hazardous secondary materials for recycling and decontaminate all units subject to financial assurance under subitem (1)(d)1(xxiv)(VI)VI of this rule and the time required for intervening activities which will allow tracking of the progress of decontamination.
- (iii) The Commissioner will provide the owner or operator and the public, through a newspaper notice, the opportunity to submit written comments on the plan and request modifications to the plan no later than 30 days from the date of the notice. He will also, in response to a request or at his discretion, hold a public hearing whenever such a hearing might clarify one or more issues concerning the plan. The Commissioner will give public notice of the hearing at least 30 days before it occurs. (Public notice of the hearing may be given at the same time as notice of the opportunity for the public to submit written comments, and the two notices may be combined.) The Commissioner will approve, modify, or disapprove the plan within 90 days of its receipt. If the Commissioner does not approve the plan, he shall provide the owner or operator with a detailed written statement of reasons for the refusal and the owner or operator must modify the plan or submit a new plan for approval within 30 days after receiving such written statement. The Commissioner will approve or modify this plan in writing within 60 days. If the Commissioner modifies the plan, this modified plan becomes the approved plan. The Commissioner must assure that the approved plan is consistent with this part. A copy of the modified plan with a detailed statement of reasons for the modifications must be mailed to the owner or operator.
- (iv) Within 60 days of completion of the activities described for each hazardous secondary materials management unit, the owner or operator must submit to the Commissioner, by registered mail, a certification that all hazardous secondary

materials have been removed from the unit and the unit has been decontaminated in accordance with the specifications in the approved plan. The certification must be signed by the owner or operator and by a qualified Professional Engineer. Documentation supporting the Professional Engineer's certification must be furnished to the Commissioner, upon request, until he releases the owner or operator from the financial assurance requirements for subitem (1)(d)1(xxiv)(VI)VI of this rule.

11. Release of the owner or operator from the requirements of this subparagraph. Within 60 days after receiving certifications from the owner or operator and a qualified Professional Engineer that all hazardous secondary materials have been removed from the facility or a unit at the facility and the facility or a unit has been decontaminated in accordance with the approved plan per part 10 of this subparagraph, the Commissioner will notify the owner or operator in writing that he is no longer required under subitem (1)(d)1(xxiv)(VI)VI of this rule to maintain financial assurance for that facility or a unit at the facility, unless the Commissioner has reason to believe that all hazardous secondary materials have not been removed from the facility or unit at a facility or that the facility or unit has not been decontaminated in accordance with the approved plan. The Commissioner shall provide the owner or operator a detailed written statement of any such reason to believe that all hazardous secondary materials have not been removed from the unit or that the unit has not been decontaminated in accordance with the approved plan.
12. In meeting the requirements of this paragraph, an owner or operator may substitute alternate financial assurance meeting the requirements of this paragraph for the financial assurance already filed with the Commissioner for the facility. However, the existing financial assurance shall not be released by the Commissioner until the substitute financial assurance has been received and approved by him or her.
13. When a transfer of ownership or operational control occurs, the previous owner or operator of the facility shall comply with the financial security requirements of this paragraph until the new owner or operator has demonstrated that he or she is complying with the requirements of this paragraph. Upon demonstration to the Commissioner by the new owner or operator of compliance with this paragraph, the Commissioner shall notify the previous owner or operator that he or she no longer needs to comply with this rule as of the date of demonstration.
14. Procedures for Forfeiture of Financial Assurance
 - (i) Upon receipt of a notice of cancelation or non-renewal of a financial instrument from the issuing institution, the owner or operator will have 90 days from the Commissioner's and the owner's or operator's receipt of such notice to provide alternate financial assurance. If the owner or operator has failed to provide alternate financial assurance and obtain written approval of such financial assurance from the Commissioner during the 90 days following receipt of such notice by the Commissioner, the financial institution will forfeit the amount of such financial assurance to the Department as directed by the Commissioner; or
 - (ii) Upon his or her determination that the hazardous secondary materials at the facility covered by financial assurance do not meet the conditions of the exclusion under subpart (1)(d)1(xxiv) of Rule 0400-12-01-.02, the Division Director shall cause a notice of non-compliance to be served upon the owner or operator. Such notice shall be hand delivered or forwarded by certified mail. The notice of non-compliance shall specify in what respects the owner or operator has failed to perform as required, and shall establish a schedule of compliance leading to compliance as soon as possible.
 - (iii) If the Division Director determines that the owner or operator has failed to perform as specified in the notice of non-compliance, or as specified in any subsequent compliance agreement which may have been reached by the owner

or operator and the Division Director, the Division Director shall cause a notice of show cause meeting to be served upon the owner or operator. Such notice shall be signed by the Division Director and either hand-delivered or forwarded by certified mail to the owner or operator. The notice of show cause meeting shall establish the date, time, and location of a meeting scheduled to provide the owner or operator with the opportunity to show cause why the Division Director should not pursue forfeiture of the financial assurance filed to guarantee such performance.

- (iv) If no mutual compliance agreement is reached at the show cause meeting, or upon the Division Director's determination that the owner or operator has failed to perform as specified in the mutual compliance agreement, the Division Director shall request the Commissioner or Board, as appropriate, to order forfeiture of the financial assurance filed to guarantee such performance.
- (v) The Commissioner or Board, as appropriate, shall order forfeiture of the financial assurance upon his/her or its validation of the Division Director's determinations and upon his/her or its determination that the procedures of this subparagraph have been followed. The Commissioner or Board may, however, at his/her or its discretion, provide opportunity for the owner or operator to be heard before issuing such order. Upon issuance, a copy of the order shall be hand delivered or forwarded by certified mail to the owner or operator. Any such order issued by the Commissioner or Board shall become effective 30 days after receipt by the owner or operator unless it is appealed to the Board as provided in T.C.A. § 68-212-113 of the Act.
- (vi) If necessary, upon the effective date of the order of forfeiture, the Commissioner shall give notice to the State Attorney General who shall collect the forfeiture.
- (vii) All forfeited funds shall be deposited in a special account entitled "the hazardous waste trust fund," for use by the Commissioner as set forth in T.C.A. § 68-212-108(c)(6) of the Act.

(e) - (g) Reserved [40 CFR 261.144-261.146]

(h) Liability requirements [40 CFR 261.147]

1. Coverage for sudden accidental occurrences

An owner or operator of a hazardous secondary material reclamation facility or an intermediate facility subject to financial assurance requirements under subitem (1)(d)1(xxiv)(VI)VI of this rule, or a group of such facilities, must demonstrate financial responsibility for bodily injury and property damage to third parties caused by sudden accidental occurrences arising from operations of the facility or group of facilities. The owner or operator must have and maintain liability coverage for sudden accidental occurrences in the amount of at least \$1 million per occurrence with an annual aggregate of at least \$2 million, exclusive of legal defense costs. This liability coverage may be demonstrated as specified in subpart (i), (ii), (iii), (iv), (v) or (vi) of this part:

- (i) An owner or operator may demonstrate the required liability coverage by having liability insurance as specified in this subpart.
- (l) Each insurance policy must be amended by attachment of the Hazardous Secondary Material Facility Liability Endorsement. The wording of the endorsement must be identical to the wording specified in part (l)8 of this paragraph. The owner or operator must submit a signed duplicate original of the endorsement to the Commissioner. If requested by the Commissioner, the owner or operator must provide a signed duplicate original of the insurance policy.

- (II) The insurer must be licensed to transact the business of insurance, or eligible to provide insurance as an excess or surplus lines insurer, in the state of Tennessee and have an A. M. Best rating of at least A or A- or have special approval from the Commissioner. An insurer that is a "captive insurance company", as that term is used in T.C.A. §§ 56-13-106 through 56-13-133, may not be utilized unless the Commissioner determines that such captive insurance company offers coverage that is equivalent in protection to other insurance companies or other allowable financial assurance mechanisms.

- (ii) An owner or operator may meet the requirements of this part by passing a financial test or using the guarantee for liability coverage as specified in parts 6 and 7 of this subparagraph.
- (iii) An owner or operator may meet the requirements of this part by obtaining a letter of credit for liability coverage as specified in part 8 of this subparagraph.
- (iv) An owner or operator may meet the requirements of this part by obtaining a surety bond for liability coverage as specified in part 9 of this subparagraph.
- (v) An owner or operator may meet the requirements of this part by obtaining a trust fund for liability coverage as specified in part 10 of this subparagraph.
- (vi) An owner or operator may demonstrate the required liability coverage through the use of combinations of insurance, financial test, guarantee, letter of credit, surety bond, and trust fund, except that the owner or operator may not combine a financial test covering part of the liability coverage requirement with a guarantee unless the financial statement of the owner or operator is not consolidated with the financial statement of the guarantor. The amounts of coverage demonstrated must total at least the minimum amounts required by this part. If the owner or operator demonstrates the required coverage through the use of a combination of financial assurances under this subpart, the owner or operator shall specify at least one such assurance as "primary" coverage and shall specify other assurance as "excess" coverage.
- (vii) An owner or operator shall notify the Commissioner in writing within 30 days whenever:
 - (i) A claim results in a reduction in the amount of financial assurance for liability coverage provided by a financial instrument authorized in subparts (i) through (vi) of this part; or
 - (ii) A Certification of Valid Claim for bodily injury or property damages caused by a sudden or non-sudden accidental occurrence arising from the operation of a hazardous secondary material reclamation facility or intermediate facility is entered between the owner or operator and third-party claimant for liability coverage under subparts (i) through (vi) of this part; or
 - (iii) A final court order establishing a judgment for bodily injury or property damage caused by a sudden or non-sudden accidental occurrence arising from the operation of a hazardous secondary material reclamation facility or intermediate facility is issued against the owner or operator or an instrument that is providing financial assurance for liability coverage under subparts (i) through (vi) of this part.

2. Coverage for nonsudden accidental occurrences

An owner or operator of a hazardous secondary material reclamation facility or intermediate facility with land-based units, as defined in subparagraph (2)(a) of Rule

0400-12-01-.01, which are used to manage hazardous secondary materials excluded under subpart (1)(d)1(xxiv) of this rule or a group of such facilities, must demonstrate financial responsibility for bodily injury and property damage to third parties caused by nonsudden accidental occurrences arising from operations of the facility or group of facilities. The owner or operator must have and maintain liability coverage for nonsudden accidental occurrences in the amount of at least \$3 million per occurrence with an annual aggregate of at least \$6 million, exclusive of legal defense costs. An owner or operator who must meet the requirements of this part may combine the required per-occurrence coverage levels for sudden and nonsudden accidental occurrences into a single per-occurrence level, and combine the required annual aggregate coverage levels for sudden and nonsudden accidental occurrences into a single annual aggregate level. Owners or operators who combine coverage levels for sudden and nonsudden accidental occurrences must maintain liability coverage in the amount of at least \$4 million per occurrence and \$8 million annual aggregate. This liability coverage may be demonstrated as specified in subpart (i), (ii), (iii), (iv), (v), or (vi) of this part:

- (i) An owner or operator may demonstrate the required liability coverage by having liability insurance as specified in this part.
 - (I) Each insurance policy must be amended by attachment of the Hazardous Secondary Material Facility Liability Endorsement. The wording of the endorsement must be identical to the wording specified in part (I)8 of this paragraph. The owner or operator must submit a signed duplicate original of the endorsement or the certificate of insurance to the Commissioner. If requested by the Commissioner, the owner or operator must provide a signed duplicate original of the insurance policy.
 - (II) The insurer must be licensed to transact the business of insurance, or eligible to provide insurance as an excess or surplus lines insurer, in the state of Tennessee and have an A. M. Best rating of at least A or A- or have special approval from the Commissioner. An insurer that is a "captive insurance company", as that term is used in T.C.A. §§ 56-13-106 through 56-13-133, may not be utilized unless the Commissioner determines that such captive insurance company offers coverage that is equivalent in protection to other insurance companies or other allowable financial assurance mechanisms.
- (ii) An owner or operator may meet the requirements of this part by passing a financial test or using the guarantee for liability coverage as specified in parts 6 and 7 of this subparagraph.
- (iii) An owner or operator may meet the requirements of this part by obtaining a letter of credit for liability coverage as specified in part 8 of this subparagraph.
- (iv) An owner or operator may meet the requirements of this part by obtaining a surety bond for liability coverage as specified in part 9 of this subparagraph.
- (v) An owner or operator may meet the requirements of this part by obtaining a trust fund for liability coverage as specified in part 10 of this subparagraph.
- (vi) An owner or operator may demonstrate the required liability coverage through the use of combinations of insurance, financial test, guarantee, letter of credit, surety bond, and trust fund, except that the owner or operator may not combine a financial test covering part of the liability coverage requirement with a guarantee unless the financial statement of the owner or operator is not consolidated with the financial statement of the guarantor. The amounts of coverage demonstrated must total at least the minimum amounts required by this part. If the owner or operator demonstrates the required coverage through the use of a combination of financial assurances under this subpart, the owner or operator shall specify at

least one such assurance as "primary" coverage and shall specify other assurance as "excess" coverage.

(vii) An owner or operator shall notify the Commissioner in writing within 30 days whenever:

(I) A claim results in a reduction in the amount of financial assurance for liability coverage provided by a financial instrument authorized in subparts (i) through (vi) of this part; or

(II) A Certification of Valid Claim for bodily injury or property damages caused by a sudden or non-sudden accidental occurrence arising from the operation of a hazardous secondary material treatment and/or storage facility is entered between the owner or operator and third-party claimant for liability coverage under subparts (i) through (vi) of this part; or

(III) A final court order establishing a judgment for bodily injury or property damage caused by a sudden or non-sudden accidental occurrence arising from the operation of a hazardous secondary material treatment and/or storage facility is issued against the owner or operator or an instrument that is providing financial assurance for liability coverage under parts (i) through (vi) of this part.

3. Request for variance

If an owner or operator can demonstrate to the satisfaction of the Commissioner that the levels of financial responsibility required by part 1 or 2 of this subparagraph are not consistent with the degree and duration of risk associated with treatment and/or storage at the facility or group of facilities, the owner or operator may obtain a variance from the Commissioner. The request for a variance must be submitted in writing to the Commissioner. If granted, the variance will take the form of an adjusted level of required liability coverage, such level to be based on the Commissioner's assessment of the degree and duration of risk associated with the ownership or operation of the facility or group of facilities. The Commissioner may require an owner or operator who requests a variance to provide such technical and engineering information as is deemed necessary by the Commissioner to determine a level of financial responsibility other than that required by part 1 or 2 of this subparagraph.

4. Adjustments by the Commissioner

If the Commissioner determines that the levels of financial responsibility required by part 1 or 2 of this subparagraph are not consistent with the degree and duration of risk associated with treatment and/or storage at the facility or group of facilities, the Commissioner may adjust the level of financial responsibility required under part 1 or 2 of this subparagraph as may be necessary to protect human health and the environment. This adjusted level will be based on the Commissioner's assessment of the degree and duration of risk associated with the ownership or operation of the facility or group of facilities. In addition, if the Commissioner determines that there is a significant risk to human health and the environment from nonsudden accidental occurrences resulting from the operations of a facility that is not a surface impoundment, pile, or land treatment facility, he may require that an owner or operator of the facility comply with part 2 of this subparagraph. An owner or operator must furnish to the Commissioner, within a reasonable time, any information which the Commissioner requests to determine whether cause exists for such adjustments of level or type of coverage.

5. Period of coverage

Within 60 days after receiving certifications from the owner or operator and a qualified Professional Engineer that all hazardous secondary materials have been removed from

the facility or a unit at the facility and the facility or a unit has been decontaminated in accordance with the approved plan per part (d)8 of this paragraph, the Commissioner will notify the owner or operator in writing that he is no longer required under item (1)(d)1(xxiv)(VI)VI of this rule to maintain liability coverage for that facility or a unit at the facility, unless the Commissioner has reason to believe that that all hazardous secondary materials have not been removed from the facility or unit at a facility or that the facility or unit has not been decontaminated in accordance with the approved plan.

6. Financial test for liability coverage

(i) An owner or operator may satisfy the requirements of this subparagraph by demonstrating that he passes a financial test as specified in this part. To pass this test the owner or operator must meet the criteria of item (I) or (II) of this subpart:

(I) The owner or operator must have:

I. Net working capital and tangible net worth each at least six times the amount of liability coverage to be demonstrated by this test; and

II. Tangible net worth of at least \$10 million; and

III. Assets in the United States amounting to either:

A. At least 90 percent of his total assets; or

B. At least six times the amount of liability coverage to be demonstrated by this test.

(II) The owner or operator must have:

I. A current rating for his most recent bond issuance of AAA, AA, A, or BBB as issued by Standard and Poor's, or Aaa, Aa, A, or Baa as issued by Moody's; and

II. Tangible net worth of at least \$10 million; and

III. Tangible net worth at least six times the amount of liability coverage to be demonstrated by this test; and

IV. Assets in the United States amounting to either:

A. At least 90 percent of his total assets; or

B. At least six times the amount of liability coverage to be demonstrated by this test.

(ii) The phrase "amount of liability coverage" as used in subpart (i) of this part refers to the annual aggregate amounts for which coverage is required under parts 1 and 2 of this subparagraph and the annual aggregate amounts for which coverage is required under parts (8)(n)1 and 2 of Rules 0400-12-01-.05 and 0400-12-01-.06.

(iii) To demonstrate that he meets this test, the owner or operator must submit the following three items to the Commissioner:

(I) A letter signed by the owner's or operator's chief financial officer and worded as specified in part (l)6 of this paragraph. If an owner or operator is using the financial test to demonstrate both assurance as specified by

part (d)5 of this paragraph, and liability coverage, he must submit the letter specified in part (l)6 of this paragraph to cover both forms of financial responsibility; a separate letter as specified in part (l)5 of this paragraph is not required.

(II) A copy of the independent certified public accountant's report on examination of the owner's or operator's financial statements for the latest completed fiscal year.

(III) If the chief financial officer's letter providing evidence of financial assurance includes financial data showing that the owner or operator satisfies item (i)(l) of this part that are different from the data in the audited financial statements referred to in item (II) of this subpart or any other audited financial statement or data filed with the SEC, then a special report from the owner's or operator's independent certified public accountant to the owner or operator is required. The special report shall be based upon an agreed upon procedures engagement in accordance with professional auditing standards and shall describe the procedures performed in comparing the data in the chief financial officer's letter derived from the independently audited, year-end financial statements for the latest fiscal year with the amounts in such financial statements, the findings of the comparison, and the reasons for any difference.

(iv) The owner or operator may obtain a one-time extension of the time allowed for submission of the documents specified in subpart (iii) of this part if the fiscal year of the owner or operator ends during the 90 days prior to the effective date of these rules and if the year-end financial statements for that fiscal year will be audited by an independent certified public accountant. The extension will end no later than 90 days after the end of the owner's or operator's fiscal year. To obtain the extension, the owner's or operator's chief financial officer must send, by the effective date of these rules, a letter to the Commissioner. This letter from the chief financial officer must:

(I) Request the extension;

(II) Certify that he has grounds to believe that the owner or operator meets the criteria of the financial test;

(III) Specify for each facility to be covered by the test the EPA Identification Number, name, address, the amount of liability coverage and, when applicable, current closure and post-closure cost estimates to be covered by the test;

(IV) Specify the date ending the owner's or operator's last complete fiscal year before the effective date of these regulations;

(V) Specify the date, no later than 90 days after the end of such fiscal year, when he will submit the documents specified in subpart (iii) of this part; and

(VI) Certify that the year-end financial statements of the owner or operator for such fiscal year will be audited by an independent certified public accountant.

(v) After the initial submission of items specified in subpart (iii) of this part, the owner or operator must send updated information to the Commissioner within 90 days after the close of each succeeding fiscal year. This information must consist of all three items specified in subpart (iii) of this part.

- (vi) If the owner or operator no longer meets the requirements of subpart (i) of this part, he must obtain insurance, a letter of credit, a surety bond, a trust fund, or a guarantee for the entire amount of required liability coverage as specified in this part. Evidence of liability coverage must be submitted to the Commissioner within 90 days after the end of the fiscal year for which the year-end financial data show that the owner or operator no longer meets the test requirements.
- (vii) The Commissioner may disallow use of this test on the basis of qualifications in the opinion expressed by the independent certified public accountant in his report on examination of the owner's or operator's financial statements (see item (iii)(II) of this part). An adverse opinion or a disclaimer of opinion will be cause for disallowance. The Commissioner will evaluate other qualifications on an individual basis. The owner or operator must provide evidence of insurance for the entire amount of required liability coverage as specified in this part within 30 days after notification of disallowance.

7. Guarantee for liability coverage

(i) Subject to subpart (ii) of this part, an owner or operator may meet the requirements of this subparagraph by obtaining a written guarantee, hereinafter referred to as "guarantee." The guarantor must be the direct or higher-tier parent corporation of the owner or operator, a firm whose parent corporation is also the parent corporation of the owner or operator, or a firm with a "substantial business relationship" with the owner or operator. The guarantor must meet the requirements for owners or operators in subparts 7(i) through (vi) of this subparagraph. The wording of the guarantee must be identical to the wording specified in subpart (I)7(ii) of this paragraph. A certified copy of the guarantee must accompany the items sent to the Commissioner as specified in subpart 7(iii) of this subparagraph. One of these items must be the letter from the guarantor's chief financial officer. If the guarantor's parent corporation is also the parent corporation of the owner or operator, this letter must describe the value received in consideration of the guarantee. If the guarantor is a firm with a "substantial business relationship" with the owner or operator, this letter must describe this "substantial business relationship" and the value received in consideration of the guarantee.

(I) If the owner or operator fails to satisfy a judgment based on a determination of liability for bodily injury or property damage to third parties caused by sudden or nonsudden accidental occurrences (or both as the case may be), arising from the operation of facilities covered by this corporate guarantee, or fails to pay an amount agreed to in settlement of claims arising from or alleged to arise from such injury or damage, the guarantor will do so up to the limits of coverage.

(II) Reserved

(ii) (I) In the case of corporations incorporated in the United States, a guarantee may be used to satisfy the requirements of this part only if the Attorneys General or Insurance Commissioners of:

I. The state in which the guarantor is incorporated; and

II. Each state in which a facility covered by the guarantee is located has submitted a written statement to the Commissioner and the EPA that a guarantee executed as described in this part and subpart (I)7(ii) of this paragraph is a legally valid and enforceable obligation in that state.

(II) In the case of corporations incorporated outside the United States, a guarantee may be used to satisfy the requirements of this section only if:

I. The non-U.S. corporation has identified a registered agent for service of process in each state in which a facility covered by the guarantee is located and in the state in which it has its principal place of business; and if

II. The Attorney General or Insurance Commissioner of each state in which a facility covered by the guarantee is located and the state in which the guarantor corporation has its principal place of business, has submitted a written statement to the Commissioner and the EPA that a guarantee executed as described in this part and subpart (I)7(ii) of this paragraph is a legally valid and enforceable obligation in that state.

8. Letter of credit for liability coverage

(i) An owner or operator may satisfy the requirements of this subparagraph by obtaining an irrevocable standby letter of credit that conforms to the requirements of this part and submitting a copy of the letter of credit to the Commissioner.

(ii) The financial institution issuing the letter of credit must be an entity that has the authority to issue letters of credit and whose letter of credit operations are regulated and examined by a federal or state agency.

(iii) The wording of the letter of credit must be identical to the wording specified in part (I)9 of this paragraph.

9. Surety bond for liability coverage

(i) An owner or operator may satisfy the requirements of this subparagraph by obtaining a surety bond that conforms to the requirements of this part and submitting a copy of the bond to the Commissioner.

(ii) The surety company issuing the bond must be licensed to do business as a surety in Tennessee and must be among those listed as acceptable sureties on federal bonds in the most recent Circular 570 of the U.S. Department of the Treasury.

(iii) The wording of the surety bond must be identical to the wording specified in part (I)10 of this paragraph.

(iv) A surety bond may be used to satisfy the requirements of this subparagraph only if the Attorneys General or Insurance Commissioners of:

(I) The state in which the surety is incorporated; and

(II) Each state in which a facility covered by the surety bond is located has submitted a written statement to the Commissioner and the EPA that a surety bond executed as described in this part and part (I)10 of this paragraph is a legally valid and enforceable obligation in that state.

10. Trust fund for liability coverage

(i) An owner or operator may satisfy the requirements of this subparagraph by establishing a trust fund that conforms to the requirements of this part and submitting an originally signed duplicate of the trust agreement to the Commissioner.

(ii) The trustee must be an entity which has the authority to act as a trustee and whose trust operations are regulated and examined by a federal or state agency.

(iii) The trust fund for liability coverage must be funded for the full amount of the liability coverage to be provided by the trust fund before it may be relied upon to satisfy the requirements of this subparagraph. If at any time after the trust fund is created the amount of funds in the trust fund is reduced below the full amount of the liability coverage to be provided, the owner or operator, by the anniversary date of the establishment of the Fund, must either add sufficient funds to the trust fund to cause its value to equal the full amount of liability coverage to be provided, or obtain other financial assurance as specified in this subparagraph to cover the difference. For purposes of this paragraph, "the full amount of the liability coverage to be provided" means the amount of coverage for sudden and/or nonsudden occurrences required to be provided by the owner or operator by this subparagraph, less the amount of financial assurance for liability coverage that is being provided by other financial assurance mechanisms being used to demonstrate financial assurance by the owner or operator.

(iv) The wording of the trust fund must be identical to the wording specified in part (l)11 of this paragraph.

(i) Incapacity of owners or operators, guarantors, or financial institutions

1. An owner or operator must notify the Commissioner by certified mail of the commencement of a voluntary or involuntary proceeding under Title 11 (Bankruptcy), U.S. Code, naming the owner or operator as debtor, within 10 days after commencement of the proceeding. A guarantor of a corporate guarantee as specified in part (d)5 of this paragraph must make such a notification if he is named as debtor, as required under the terms of the corporate guarantee.

2. An owner or operator who fulfills the requirements of subparagraph (d) or (h) by obtaining a trust fund, surety bond, letter of credit, or insurance policy will be deemed to be without the required financial assurance or liability coverage in the event of bankruptcy of the trustee or issuing institution, or a suspension or revocation of the authority of the trustee institution to act as trustee or of the institution issuing the surety bond, letter of credit, or insurance policy to issue such instruments. The owner or operator must establish other financial assurance or liability coverage within 60 days after such an event.

(i) Reserved [40 CFR 261.149]

(k) Reserved [40 CFR, 261.150]

(l) Wording of the instruments

The wording of the financial instruments must be as follows or otherwise approved for use by the Commissioner:

1. (i) A trust agreement for a trust fund, as specified in part (d)1 of this paragraph, must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

Trust Agreement

Trust Agreement, the "Agreement," entered into as of [date] by and between [name of the owner or operator], a [name of State] [insert "corporation," "partnership," "association," or "proprietorship"], the "Grantor," and [name of corporate trustee], [insert "incorporated in the State of _____" or "a national bank"], the "Trustee."

Whereas, the Underground Storage Tanks and Solid Waste Disposal Control Board, an agency of the State of Tennessee, has established certain rules applicable to the Grantor, requiring that an owner or operator of a facility regulated under Rule 0400-12-01-05, or 0400-12-01-06, or satisfying the conditions of the exclusion under

subpart (1)(d)1(xxiv) of Rule 0400-12-01-.02 shall provide assurance that funds will be available if needed for care of the facility under paragraph (7) of Rule 0400-12-01-.05 or 0400-12-01-.06, as applicable,

Whereas, the Grantor has elected to establish a trust to provide all or part of such financial assurance for the facilities identified herein,

Whereas, the Grantor, acting through its duly authorized officers, has selected the Trustee to be the trustee under this agreement, and the Trustee is willing to act as trustee,

Now, Therefore, the Grantor and the Trustee agree as follows:

Section 1. Definitions.

As used in this Agreement:

- (a) The term "Grantor" means the owner or operator who enters into this Agreement and any successors or assigns of the Grantor.
- (b) The term "Trustee" means the Trustee who enters into this Agreement and any successor Trustee.
- (c) The term "Commissioner" means the Commissioner of the Tennessee Department of Environment and Conservation.

Section 2. Identification of Facilities and Cost Estimates.

This Agreement pertains to the facilities and cost estimates identified on attached Schedule A [on Schedule A, for each facility list the EPA Identification Number (if available), name, address, and the current cost estimates, or portions thereof, for which financial assurance is demonstrated by this Agreement].

Section 3. Establishment of Fund.

The Grantor and the Trustee hereby establish a trust fund, the "Fund," for the benefit of the Tennessee Department of Environment and Conservation in the event that the hazardous secondary materials of the grantor no longer meet the conditions of the exclusion under subpart (1)(d)1(xxiv) of Rule 0400-12-01-.02. The Grantor and the Trustee intend that no third party have access to the Fund except as herein provided. The Fund is established initially as consisting of the property, which is acceptable to the Trustee, described in Schedule B attached hereto. Such property and any other property subsequently transferred to the Trustee is referred to as the Fund, together with all earnings and profits thereon, less any payments or distributions made by the Trustee pursuant to this Agreement. The Fund shall be held by the Trustee, IN TRUST, as hereinafter provided. The Trustee shall not be responsible nor shall it undertake any responsibility for the amount or adequacy of, nor any duty to collect from the Grantor, any payments necessary to discharge any liabilities of the Grantor established by the Commissioner.

Section 4. Payments from the Fund.

The Trustee shall make payments from the Fund as the Commissioner shall direct, in writing, to provide for the payment of the costs of the performance of activities required under paragraph (7) of Rules 0400-12-01-.05 or 0400-12-01-.06 for the facilities covered by this Agreement. The Trustee shall reimburse the Grantor or other persons as specified by the Commissioner from the Fund for expenditures for such activities in such amounts as the beneficiary shall direct in writing. In addition, the Trustee shall refund to the Grantor such amounts as the Commissioner specifies in writing. Upon refund, such funds shall no longer constitute part of the Fund as defined herein.

Section 5. Payments Comprising the Fund.

Payments made to the Trustee for the Fund shall consist of cash or securities acceptable to the Trustee.

Section 6. Trustee Management.

The Trustee shall invest and reinvest the principal and income of the Fund and keep the Fund invested as a single fund, without distinction between principal and income, in accordance with general investment policies and guidelines which the Grantor may communicate in writing to the Trustee from time to time, subject, however, to the provisions of this section. In investing, reinvesting, exchanging, selling, and managing the Fund, the Trustee shall discharge his duties with respect to the trust fund solely in the interest of the beneficiary and with the care, skill, prudence, and diligence under the circumstances then prevailing which persons of prudence, acting in a like capacity and familiar with such matters, would use in the conduct of an enterprise of a like character and with like aims; except that:

- (i) Securities or other obligations of the Grantor, or any other owner or operator of the facilities, or any of their affiliates as defined in the Investment Company Act of 1940, as amended, 15 U.S.C. 80a-2.(a), shall not be acquired or held, unless they are securities or other obligations of the Federal or a state government;
- (ii) The Trustee is authorized to invest the Fund in time or demand deposits of the Trustee, to the extent insured by an agency of the Federal or a state government; and
- (iii) The Trustee is authorized to hold cash awaiting investment or distribution uninvested for a reasonable time and without liability for the payment of interest thereon.

Section 7. Commingling and Investment.

The Trustee is expressly authorized in its discretion:

- (a) To transfer from time to time any or all of the assets of the Fund to any common, commingled, or collective trust fund created by the Trustee in which the Fund is eligible to participate, subject to all of the provisions thereof, to be commingled with the assets of other trusts participating therein; and
- (b) To purchase shares in any investment company registered under the Investment Company Act of 1940, 15 U.S.C. 80a-1 et seq., including one which may be created, managed, underwritten, or to which investment advice is rendered or the shares of which are sold by the Trustee. The Trustee may vote such shares in its discretion.

Section 8. Express Powers of Trustee.

Without in any way limiting the powers and discretions conferred upon the Trustee by the other provisions of this Agreement or by law, the Trustee is expressly authorized and empowered:

- (a) To sell, exchange, convey, transfer, or otherwise dispose of any property held by it, by public or private sale. No person dealing with the Trustee shall be bound to see to the application of the purchase money or to inquire into the validity or expediency of any such sale or other disposition;
- (b) To make, execute, acknowledge, and deliver any and all documents of transfer and conveyance and any and all other instruments that may be necessary or appropriate to carry out the powers herein granted;
- (c) To register any securities held in the Fund in its own name or in the name of a nominee and to hold any security in bearer form or in book entry, or to combine certificates representing such securities with certificates of the same issue held by the Trustee in other fiduciary capacities, or to deposit or arrange for the deposit of such securities in a qualified central depository even though, when so deposited, such securities may be merged and held in bulk in the name of the nominee of such depository with other securities deposited therein by another person, or to deposit or arrange for the deposit of any securities issued by the United States Government, or any agency or instrumentality thereof, with a Federal Reserve bank, but the books and records of the Trustee shall at all times show that all such securities are part of the Fund;
- (d) To deposit any cash in the Fund in interest-bearing accounts maintained or savings certificates issued by the Trustee, in its separate corporate capacity, or in any other banking institution affiliated with the Trustee, to the extent insured by an agency of the Federal or a state government; and
- (e) To compromise or otherwise adjust all claims in favor of or against the Fund.

Section 9. Taxes and Expenses.

All taxes of any kind that may be assessed or levied against or in respect of the Fund and all brokerage commissions incurred by the Fund shall be paid from the Fund. All other expenses incurred by the Trustee in connection with the administration of this Trust, including fees for legal services rendered to the Trustee, the compensation of the Trustee to the extent not paid directly by the Grantor, and all other proper charges and disbursements of the Trustee shall be paid from the Fund.

Section 10. Annual Valuation.

The Trustee shall annually, at least 30 days prior to the anniversary date of establishment of the Fund, furnish to the Grantor and to the Commissioner a statement confirming the value of the Trust. Any securities in the Fund shall be valued at market value as of no more than 60 days prior to the anniversary date of establishment of the Fund. The failure of the Grantor to object in writing to the Trustee within 90 days after the statement has been furnished to the Grantor and the Commissioner shall constitute a conclusively binding assent by the Grantor, barring the Grantor from asserting any claim or liability against the Trustee with respect to matters disclosed in the statement.

Section 11. Advice of Counsel.

The Trustee may from time to time consult with counsel, who may be counsel to the Grantor, with respect to any question arising as to the construction of this Agreement or any action to be taken hereunder. The Trustee shall be fully protected, to the extent permitted by law, in acting upon the advice of counsel.

Section 12. Trustee Compensation.

The Trustee shall be entitled to reasonable compensation for its services as agreed upon in writing from time to time with the Grantor.

Section 13. Successor Trustee.

The Trustee may resign or the Grantor may replace the Trustee, but such resignation or replacement shall not be effective until the Grantor has appointed a successor trustee and this successor accepts the appointment. The successor trustee shall have the same powers and duties as those conferred upon the Trustee hereunder. Upon the successor trustee's acceptance of the appointment, the Trustee shall assign, transfer, and pay over to the successor trustee the funds and properties then constituting the Fund. If for any reason the Grantor cannot or does not act in the event of the resignation of the Trustee, the Trustee may apply to a court of competent jurisdiction for the appointment of a successor trustee or for instructions. The successor trustee shall specify the date on which it assumes administration of the trust in a writing sent to the Grantor, the Commissioner, and the present Trustee by certified mail 10 days before such change becomes effective. Any expenses incurred by the Trustee as a result of any of the acts contemplated by this Section shall be paid as provided in Section 9.

Section 14. Instructions to the Trustee.

All orders, requests, and instructions by the Grantor to the Trustee shall be in writing, signed by such persons as are designated in the attached Exhibit A or such other designees as the Grantor may designate by amendment to Exhibit A. The Trustee shall be fully protected in acting without inquiry in accordance with the Grantor's orders, requests, and instructions. All orders, requests, and instructions by the Commissioner to the Trustee shall be in writing, signed by the Commissioner or their designee, and the Trustee shall act and shall be fully protected in acting in accordance with such orders, requests, and instructions. The Trustee shall have the right to assume, in the absence of written notice to the contrary, that no event constituting a change or a termination of the authority of any person to act on behalf of the Grantor or the Commissioner hereunder has occurred. The Trustee shall have no duty to act in the absence of such orders, requests, and instructions from the Grantor and/or the Commissioner, except as provided for herein.

Section 15. Amendment of Agreement.

This Agreement may be amended by an instrument in writing executed by the Grantor, the Trustee, and the Commissioner, or by the Trustee and the Commissioner if the Grantor ceases to exist.

Section 16. Irrevocability and Termination.

Subject to the right of the parties to amend this Agreement as provided in Section 16, this Trust shall be irrevocable and shall continue until terminated at the written agreement of the Grantor, the Trustee, and the Commissioner, or by the Trustee and the Commissioner, if the Grantor ceases to exist. Upon termination of the Trust, all remaining trust property, less final trust administration expenses, shall be delivered to the Grantor.

Section 17. Immunity and Indemnification.

The Trustee shall not incur personal liability of any nature in connection with any act or omission, made in good faith, in the administration of this Trust, or in carrying out any directions by the Grantor or the Commissioner issued in accordance with this Agreement. The Trustee shall be indemnified and saved harmless by the Grantor or from the Trust Fund, or both, from and against any personal liability to which the Trustee may be subjected by reason of any act or conduct in its official capacity, including all expenses reasonably incurred in its defense in the event the Grantor fails to provide such defense.

Section 18. Choice of Law.

This Agreement shall be administered, construed, and enforced according to the laws of the state of [insert name of state].

Section 19. Interpretation.

As used in this Agreement, words in the singular include the plural and words in the plural include the singular. The descriptive headings for each Section of this Agreement shall not affect the interpretation or the legal efficacy of this Agreement.

In Witness Whereof the parties have caused this Agreement to be executed by their respective officers duly authorized and their corporate seals to be hereunto affixed and attested as of the date first above written: The parties below certify that the wording of this Agreement is identical to the wording specified in subpart (8)(l)1(i) of Rule 0400-12-01-.02 as such rules were constituted on the date first above written.

[Signature of Grantor]

[Title]

Attest:

[Title]

[Seal]

[Signature of Trustee]

Attest:

[Title]

[Seal]

(ii) The following is an example of the certification of acknowledgment which must accompany the trust agreement for a trust fund as specified in part (d)1 of this paragraph.

State of _____ County of _____

On this [date], before me personally came [owner or operator] to me known, who, being by me duly sworn, did depose and say that she/he resides at [address], that she/he is [title] of [corporation], the corporation described in and which executed the above instrument; that she/he knows the seal of said corporation; that the seal affixed to such instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said corporation, and that she/he signed her/his name thereto by like order.

[Signature of Notary Public]

2. A surety bond, as specified in part (d)2 of this paragraph, must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

Financial Guarantee Bond

Date bond executed:

Effective date:

Principal: [legal name and business address of owner or operator]

Type of Organization: [insert "individual," "joint venture," "partnership," or "corporation"]

State of incorporation:

Surety(ies): [name(s) and business address(es)]

EPA Identification Number, name, address and amount(s) for each facility guaranteed by this bond:

Total penal sum of bond: \$

Surety's bond number:

Know All Persons By These Presents, That we, the Principal and Surety(ies) are firmly bound to the Tennessee Department of Environment and Conservation in the event that the hazardous secondary materials at the reclamation or intermediate facility listed below no longer meet the conditions of the exclusion under subpart (1)(d)1(xxiv) of Rule 0400-12-01-.02, in the above penal sum for the payment of which we bind ourselves, our heirs, executors, administrators, successors, and assigns jointly and severally; provided that, where the Surety(ies) are corporations acting as co-sureties, we, the Sureties, bind ourselves in such sum "jointly and severally" only for the purpose of allowing a joint action or actions against any or all of us, and for all other purposes each Surety binds itself, jointly and severally with the Principal, for the payment of such sum only as is set forth opposite the name of such Surety, but if no limit of liability is indicated, the limit of liability shall be the full amount of the penal sum.

Whereas said Principal is required, under the Tennessee Hazardous Waste Management Act, to have a permit or interim status in order to own or operate each facility identified above, or to meet conditions under subpart (1)(d)1(xxiv) of Rule 0400-12-01-.02; and

Whereas said Principal is required to provide financial assurance as a condition of permit or interim status or as a condition of an exclusion under subpart (1)(d)1(xxiv) of Rule 0400-12-01-.02;

Now, Therefore, the conditions of the obligation are such that if the Principal shall faithfully satisfy all the conditions established for exclusion of hazardous secondary materials from coverage as solid waste under subpart (1)(d)1(xxiv) of Rule 0400-12-01-.02,

Or, if the Principal shall provide alternate financial assurance, as specified in paragraph (8) of Rule 0400-12-01-.02, as applicable, and obtain the Commissioner's written approval of such assurance, within 90 days after the date notice of cancellation is received by both the Principal and the Commissioner from the Surety(ies), then this obligation shall be null and void; otherwise it is to remain in full force and effect.

The Surety(ies) shall become liable on this bond obligation only when the Principal has failed to fulfill the conditions described above. Upon notification by the Commissioner that the Principal has failed to perform as guaranteed by this bond, the Surety(ies) shall forfeit all or a portion of the penal sum of this bond to the Department.

Upon notification by the Commissioner that the Principal has failed to provide alternate financial assurance as specified in paragraph (8) of rule 0400-12-01-.02, and obtain written approval of such assurance from the Commissioner during the 90 days following receipt by both the Principal and the Commissioner of a notice of cancellation of the bond, the Surety(ies) shall forfeit the penal sum of this bond to the Department.

The liability of the Surety(ies) shall not be discharged by any payment or succession of payments hereunder, unless and until such payment or payments shall amount in the aggregate to the penal sum of the bond, but in no event shall the obligation of the Surety(ies) hereunder exceed the amount of said penal sum.

The Surety(ies) may cancel the bond by sending notice of cancellation by certified mail to the Principal and to the Commissioner, provided, however, that cancellation shall not occur during the 120 days beginning on the date of receipt of the notice of cancellation by both the Principal and the Commissioner, as evidenced by the return receipts.

The Principal may terminate this bond by sending written notice to the Surety(ies), provided, however, that no such notice shall become effective until the Surety(ies) receive(s) written authorization for termination of the bond by the Commissioner.

[The following paragraph is an optional rider that may be included but is not required.]

Principal and Surety(ies) hereby agree to adjust the penal sum of the bond yearly so that it guarantees a new amount, provided that the penal sum does not increase by more than 20 percent in any one year, and no decrease in the penal sum takes place without the written permission of the Commissioner.

In Witness Whereof, the Principal and Surety(ies) have executed this Financial Guarantee Bond and have affixed their seals on the date set forth above.

The persons whose signatures appear below hereby certify that they are authorized to execute this surety bond on behalf of the Principal and Surety(ies) and that the wording of this surety bond is identical to the wording specified in part (8)(1)2 of Rule 0400-12-01-.02 as such rules were constituted on the date this bond was executed.

Principal

[Signature(s)]

[Name(s)]

[Title(s)]

[Corporate seal]

Corporate Surety(ies)

[Name and address]

State of incorporation: _____

Liability limit:

\$ _____

[Signature(s)]

[Name(s) and title(s)]

[Corporate seal]

[For every co-surety, provide signature(s), corporate seal, and other information in the same manner as for Surety above.]

Bond premium: \$ _____

3. A letter of credit, as specified in part (d)3 of this paragraph, must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

Irrevocable Standby Letter of Credit

Commissioner

Tennessee Department of Environment and Conservation

Dear Sir or Madam: We hereby establish our Irrevocable Standby Letter of Credit No. _____ in your favor, in the event that the hazardous secondary materials at the covered reclamation or intermediary facility(ies) no longer meet the conditions of the exclusion under subpart (1)(d)1(xxiv) of Rule 0400-12-01-.02, at the request and for the account of [owner's or operator's name and address] up to the aggregate amount of [in words] U.S. dollars \$ _____, available upon presentation of

(1) your sight draft, bearing reference to this letter of credit No. _____, and

(2) your signed statement reading as follows: "I certify that the amount of the draft is payable pursuant to rules issued under authority of T.C.A §§ 68-212-101 et seq."

This letter of credit is effective as of [date] and shall expire on [date at least 1 year later], but such expiration date shall be automatically extended for a period of [at least 1 year] on [date] and on each successive expiration date, unless, at least 120 days before the current expiration date, we notify both you and [owner's or operator's name] by certified mail that we have decided not to extend this letter of credit beyond the current expiration date. In the event you are so notified, any unused portion of the credit shall be available upon presentation of your sight draft for 120 days after the date of receipt by both you and [owner's or operator's name], as shown on the signed return receipts.

Whenever this letter of credit is drawn on under and in compliance with the terms of this credit, we shall duly honor such draft upon presentation to us, and we shall pay the amount of the draft to the State of Tennessee in accordance with your instructions.

We certify that the wording of this letter of credit is identical to the wording specified in part (8)(l)3 of Rule 0400-12-01-.02 as such rules were constituted on the date shown immediately below.

[Signature(s) and title(s) of official(s) of issuing institution] [Date]

This credit is subject to [insert "the most recent edition of the Uniform Customs and Practice for Documentary Credits, published and copyrighted by the International Chamber of Commerce," or "the Uniform Commercial Code"].

4. A hazardous secondary material reclamation/intermediate facility endorsement, as specified in part (d)5 of this paragraph, must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

Hazardous Secondary Material Reclamation/Intermediate Facility Endorsement

This endorsement certifies that the policy to which the endorsement is attached provides insurance to provide financial assurance so that in accordance with applicable rules all hazardous secondary materials can be removed from the facility or any unit at the facility and the facility or any unit at the facility can be decontaminated at the facilities identified above. The Insurer further warrants that such policy conforms in all respects with the requirements of part (8)(d)4 of Rule 0400-12-01-.02 as applicable and as such rules were constituted on the effective date of this endorsement. It is agreed that any provision of the policy inconsistent with such rules is hereby amended to eliminate such inconsistency. The coverage applies at [list EPA Identification Number (if any issued), name, and address for each facility]. The limits of liability are [insert the dollar amount], exclusive of legal defense costs.

Whenever requested by the Commissioner of the Tennessee Department of Environment and Conservation, the Insurer agrees to furnish to the Commissioner a duplicate original of the policy listed above, including all endorsements thereon.

I hereby certify that the wording of this endorsement is identical to the wording specified in part (8)(l)4 of Rule 0400-12-01-.02 as such rules were constituted on the date shown immediately below.

[Authorized signature for Insurer]

[Name of person signing]

[Title of person signing]

Signature of witness or notary: _____

[Date]

5. A letter from the chief financial officer, as specified in part (d)5 of this paragraph, must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

Letter From Chief Financial Officer

[Address to the Commissioner of the Tennessee Department of Environment and Conservation].

I am the chief financial officer of [name and address of firm]. This letter is in support of this firm's use of the financial test to demonstrate financial assurance, as specified in paragraph (8) of Rule 0400-12-01-.02.

[Fill out the following nine paragraphs regarding facilities and associated cost estimates. If your firm has no facilities that belong in a particular paragraph, write "None" in the space indicated. For each facility, include its EPA Identification Number (if any issued), name, address, and current cost estimates.]

1. This firm is the owner or operator of the following facilities for which financial assurance is demonstrated through the financial test specified in paragraph (8) of Rule 0400-12-01-.02. The current cost estimates covered by the test are shown for each facility: _____.
2. This firm guarantees, through the guarantee specified in paragraph (8) of Rule 0400-12-01-.02, the following facilities owned or operated by the guaranteed party. The current cost estimates so guaranteed are shown for each facility: _____ . The firm identified above is [insert one or more: (1) The direct or higher-tier parent corporation of the owner or operator; (2) owned by the same parent corporation as the parent corporation of the owner or operator, and receiving the following value in consideration of this guarantee _____, or (3) engaged in the following substantial business relationship with the owner or operator _____, and receiving the following value in consideration of this guarantee _____].
[Attach a written description of the business relationship or a copy of the contract establishing such relationship to this letter].
3. In states other than Tennessee, this firm, as owner or operator or guarantor, is demonstrating financial assurance for the following facilities through the use of a test equivalent or substantially equivalent to the financial test specified in paragraph (8) of Rule 0400-12-01-.02. The current cost estimates covered by such a test are shown for each facility: _____.
4. This firm is the owner or operator of the following hazardous secondary materials management facilities for which financial assurance is required but has not been demonstrated either to EPA or a state through the financial test or any other financial assurance mechanism specified in paragraph (8) of Rule 0400-12-01-.02 or equivalent or substantially equivalent state mechanisms. The current cost estimates not covered by such financial assurance are shown for each facility: _____.
5. In states other than Tennessee, this firm, as owner and/or operator or guarantor, is demonstrating financial assurance to the EPA or other federal agency under federal statute or rules, or to a state under substantially equivalent state rules, for the following facilities through the use of a test equivalent or substantially equivalent to the financial test specified herein, including but not limited to hazardous waste Treatment, Storage and Disposal Facilities ("TSDF") under 40 CFR Part 265, Solid Waste Landfill ("SWLF") facilities under 40 CFR Part 264, Underground Storage Tank ("UST") facilities under 40 CFR Part 280, Underground Injection Control ("UIC") sites under 40 CFR Part 144, the decommissioning of materials facilities licensed by the Nuclear

Regulatory Commission under 10 CFR Parts 30, 40, 70, and 72 ("NRC"), and CERCLA settlements under CERCLA § 108(b). The total dollar amount of such financial assurance covered by a financial test is equal, in the aggregate, to [\$ _____], and is shown for each facility as follows: _____.

6. This firm is the owner or operator of the following facilities for which financial assurance for closure or post-closure care is demonstrated through the financial test specified in paragraph (8) of Rules 0400-12-01-.05 and 0400-12-01-.06. The current closure and/or post-closure cost estimates covered by the test are shown for each facility: _____.
7. This firm guarantees, through the guarantee specified in paragraph (8) of Rules 0400-12-01-.05 and 0400-12-01-.06, the closure or post-closure care of the following facilities owned or operated by the guaranteed party. The current cost estimates for the closure or post-closure care so guaranteed are shown for each facility: _____. The firm identified above is [insert one or more: (1) The direct or higher-tier parent corporation of the owner or operator; (2) owned by the same parent corporation as the parent corporation of the owner or operator, and receiving the following value in consideration of this guarantee _____; or (3) engaged in the following substantial business relationship with the owner or operator _____, and receiving the following value in consideration of this guarantee _____]. [Attach a written description of the business relationship or a copy of the contract establishing such relationship to this letter].
8. In states other than Tennessee, this firm, as owner or operator or guarantor, is demonstrating financial assurance for the closure or post-closure care of the following facilities through the use of a test equivalent or substantially equivalent to the financial test specified in paragraph (8) of Rules 0400-12-01-.05 and 0400-12-01-.06. The current closure and/or post-closure cost estimates covered by such a test are shown for each facility: _____.
9. This firm is the owner or operator of the following SWLF, TSD, UST, UIC, CERCLA, or NRC facilities for which financial assurance is required but has not been demonstrated either to the EPA or other federal agency or to a state through the financial test or any other financial assurance mechanism. The total dollar amount not covered by such financial assurance is shown for each facility: _____.

This firm [insert "is required" or "is not required"] to file a Form 10-K with the Securities and Exchange Commission (SEC) for the latest fiscal year.

The fiscal year of this firm ends on [month, day]. The figures for the following items marked with an asterisk are derived from this firm's independently audited, year-end financial statements for the latest completed fiscal year, ended [date].

[Fill in Alternative I if the criteria of item (d)5(i)(I) of Rule 0400-12-01-.02 are used. Fill in Alternative II if the criteria of item (d)5(i)(II) of Rule 0400-12-01-.02 are used.]

Alternative I

1. Sum of current cost estimates [total of all cost estimates shown in the nine paragraphs above] \$ _____
- *2. Total liabilities [if any portion of the cost estimates is included in total liabilities, you may deduct the amount of that portion from this line and add that amount to lines 3 and 4] \$ _____
- *3. Tangible net worth \$ _____
- *4. Net worth \$ _____
- *5. Current assets \$ _____
- *6. Current liabilities \$ _____
7. Net working capital [line 5 minus line 6] \$ _____
- *8. The sum of net income plus depreciation, depletion, and amortization \$ _____
- *9. Total assets in U.S. (required only if less than 90% of firm's assets are located in the U.S.) \$ _____

10. Is line 3 at least \$10 million? (Yes/No) _____
11. Is line 3 at least 6 times line 1? (Yes/No) _____
12. Is line 7 at least 6 times line 1? (Yes/No) _____
- *13. Are at least 90% of firm's assets located in the U.S.? If not, complete line 14 (Yes/No) _____
14. Is line 9 at least 6 times line 1? (Yes/No) _____
15. Is line 2 divided by line 4 less than 2.0? (Yes/No) _____
16. Is line 8 divided by line 2 greater than 0.1? (Yes/No) _____
17. Is line 5 divided by line 6 greater than 1.5? (Yes/No) _____

Alternative II

1. Sum of current cost estimates [total of all cost estimates shown in the eight paragraphs above] \$ _____
2. Current bond rating of most recent issuance of this firm and name of rating service _____
3. Date of issuance of bond _____
4. Date of maturity of bond _____
- *5. Tangible net worth [if any portion of the cost estimates is included in "total liabilities" on your firm's financial statements, you may add the amount of that portion to this line] \$ _____
- *6. Total assets in U.S. (required only if less than 90% of firm's assets are located in the U.S.) \$ _____
7. Is line 5 at least \$10 million? (Yes/No) _____
8. Is line 5 at least 6 times line 1? (Yes/No) _____
- *9. Are at least 90% of firm's assets located in the U.S.? If not, complete line 10 (Yes/No) _____
10. Is line 6 at least 6 times line 1? (Yes/No) _____

I hereby certify that the wording of this letter is identical to the wording specified in part (8)(l)5 of Rule 0400-12-01-.02 as such rules were constituted on the date shown immediately below.

[Signature] _____

[Name] _____

[Title] _____

[Date] _____

6. A letter from the chief financial officer, as specified in part (h)6 of this paragraph, must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted.

Letter from Chief Financial Officer

[Address to the Commissioner of the Tennessee Department of Environment and Conservation].

I am the chief financial officer of [firm's name and address]. This letter is in support of the use of the financial test to demonstrate financial responsibility for liability coverage under subparagraph (h) [insert "and costs assured under part (d)5" if applicable] as specified in paragraph (8) of Rule 0400-12-01-.02.

[Fill out the following paragraphs regarding facilities and liability coverage. If there are no facilities that belong in a particular paragraph, write "None" in the space indicated. For each facility, include its EPA Identification Number (if any issued), name, and address].

The firm identified above is the owner or operator of the following facilities for which liability coverage for [insert "sudden" or "nonsudden" or "both sudden and nonsudden"] accidental occurrences is being demonstrated through the financial test specified in paragraph (8) of Rule 0400-12-01-.02: _____

The firm identified above guarantees, through the guarantee specified in paragraph (8) of Rule 0400-12-01-.02, liability coverage for [insert "sudden" or "nonsudden" or "both sudden and nonsudden"] accidental occurrences at the following facilities owned or operated by the following: _____. The firm identified above is [insert one or more: (1) The direct or higher-tier parent corporation of the owner or operator; (2) owned by the same parent corporation as the parent corporation of the owner or operator, and receiving the following value in consideration of this guarantee _____; or (3) engaged in the following substantial business relationship with the owner or operator _____, and receiving the following value in consideration of this guarantee _____]. [Attach a written description of the business relationship or a copy of the contract establishing such relationship to this letter.]

The firm identified above is the owner or operator of the following facilities for which liability coverage for [insert "sudden" or "nonsudden" or "both sudden and nonsudden"] accidental occurrences is being demonstrated through the financial test specified in paragraph (8) of Rules 0400-12-01-.05 and 0400-12-01-.06: _____

The firm identified above guarantees, through the guarantee specified in paragraph (8) of Rules 0400-12-01-.05 and 0400-12-01-.06, liability coverage for [insert "sudden" or "nonsudden" or "both sudden and nonsudden"] accidental occurrences at the following facilities owned or operated by the following: _____. The firm identified above is [insert one or more: (1) The direct or higher-tier parent corporation of the owner or operator; (2) owned by the same parent corporation as the parent corporation of the owner or operator, and receiving the following value in consideration of this guarantee _____; or (3) engaged in the following substantial business relationship with the owner or operator _____, and receiving the following value in consideration of this guarantee _____]. [Attach a written description of the business relationship or a copy of the contract establishing such relationship to this letter.]

[If you are using the financial test to demonstrate coverage of both liability and costs assured under part (8)(d)5 of Rule 0400-12-01-.02 or closure or post-closure care costs under subparagraph (8)(g) of Rule 0400-12-01-.05 or 0400-12-01-.06, fill in the following nine paragraphs regarding facilities and associated cost estimates. If there are no facilities that belong in a particular paragraph, write "None" in the space indicated. For each facility, include its EPA identification number (if any issued), name, address, and current cost estimates.]

1. This firm is the owner or operator of the following facilities for which financial assurance is demonstrated through the financial test specified in paragraph (8) of Rule 0400-12-01-.02. The current cost estimates covered by the test are shown for each facility: _____.
2. This firm guarantees, through the guarantee specified in paragraph (8) of Rule 0400-12-01-.02, the following facilities owned or operated by the guaranteed party. The current cost estimates so guaranteed are shown for each facility: _____. The firm identified above is [insert one or more: (1) The direct or higher-tier parent corporation of the owner or operator; (2) owned by the same parent corporation as the parent corporation of the owner or operator, and receiving the following value in consideration of this guarantee _____, or (3) engaged in the following substantial business relationship with the owner or operator _____, and receiving the following value in consideration of this guarantee _____]. [Attach a written description of the business relationship or a copy of the contract establishing such relationship to this letter].
3. In states other than Tennessee, this firm, as owner or operator or guarantor, is demonstrating financial assurance for the following facilities through the use of a test equivalent or substantially equivalent to the financial test specified in paragraph (8) of Rule 0400-12-01-.02. The current cost estimates covered by such a test are shown for each facility: _____.

4. This firm is the owner or operator of the following hazardous secondary materials management facilities for which financial assurance is required but has not been demonstrated either to EPA or a state through the financial test or any other financial assurance mechanism specified in paragraph (8) of Rule 0400-12-01-.02 or equivalent or substantially equivalent State mechanisms. The current cost estimates not covered by such financial assurance are shown for each facility: _____.
5. In states other than Tennessee, this firm, as owner and/or operator or guarantor, is demonstrating financial assurance to the EPA or other federal agency under federal statute or rules, or to a state under substantially equivalent state rules, for the following facilities through the use of a test equivalent or substantially equivalent to the financial test specified herein, including but not limited to hazardous waste Treatment, Storage and Disposal Facilities ("TSDF") under 40 CFR Part 265, Solid Waste Landfill ("SWLF") facilities under 40 CFR Part 264, Underground Storage Tank ("UST") facilities under 40 CFR Part 280, Underground Injection Control ("UIC") sites under 40 CFR Part 144, the decommissioning of materials facilities licensed by the Nuclear Regulatory Commission under 10 CFR Parts 30, 40, 70, and 72 ("NRC"), and CERCLA settlements under CERCLA § 108(b). The total dollar amount of such financial assurance covered by a financial test is equal, in the aggregate, to \$ _____, and is shown for each facility as follows: _____.
6. This firm is the owner or operator of the following facilities for which financial assurance for closure or post-closure care is demonstrated through the financial test specified in paragraph (8) of Rules 0400-12-01-.05 and 0400-12-01-.06. The current closure and/or post-closure cost estimates covered by the test are shown for each facility: _____.
7. This firm guarantees, through the guarantee specified in paragraph (8) of Rules 0400-12-01-.05 and 0400-12-01-.06, the closure or post-closure care of the following facilities owned or operated by the guaranteed party. The current cost estimates for the closure or post-closure care so guaranteed are shown for each facility: _____. The firm identified above is [insert one or more: (1) The direct or higher-tier parent corporation of the owner or operator; (2) owned by the same parent corporation as the parent corporation of the owner or operator, and receiving the following value in consideration of this guarantee _____; or (3) engaged in the following substantial business relationship with the owner or operator _____, and receiving the following value in consideration of this guarantee _____].

[Attach a written description of the business relationship or a copy of the contract establishing such relationship to this letter].

8. In states other than Tennessee, this firm, as owner or operator or guarantor, is demonstrating financial assurance for the closure or post-closure care of the following facilities through the use of a test equivalent or substantially equivalent to the financial test specified in paragraph (8) of Rules 0400-12-01-.05 and 0400-12-01-.06. The current closure and/or post-closure cost estimates covered by such a test are shown for each facility: _____.
9. This firm is the owner or operator of the following SWLF, TSDF, UST, UIC, CERCLA, or NRC facilities for which financial assurance is required but has not been demonstrated either to the EPA or other federal agency or to a state through the financial test or any other financial assurance mechanism. The total dollar amount not covered by such financial assurance is shown for each facility: _____.

This firm [insert "is required" or "is not required"] to file a Form 10-K with the Securities and Exchange Commission (SEC) for the latest fiscal year.

The fiscal year of this firm ends on [month, day]. The figures for the following items marked with an asterisk are derived from this firm's independently audited, year-end financial statements for the latest completed fiscal year, ended [date].

Part A. Liability Coverage for Accidental Occurrences

[Fill in Alternative I if the criteria of item (h)6(i)(I) of Rule 0400-12-01-.02 are used. Fill in Alternative II if the criteria of item (h)6(i)(II) of Rule 0400-12-01-.02 are used.]

Alternative I

1. Amount of annual aggregate liability coverage to be demonstrated \$ _____.

*2. Current assets \$ _____.

*3. Current liabilities \$ _____.

4. Net working capital (line 2 minus line 3) \$ _____.

*5. Tangible net worth \$ _____.

*6. If less than 90% of assets are located in the U.S., give total U.S. assets \$ _____.

7. Is line 5 at least \$10 million? (Yes/No) _____.

8. Is line 4 at least 6 times line 1? (Yes/No) _____.

9. Is line 5 at least 6 times line 1? (Yes/No) _____.

*10. Are at least 90% of assets located in the U.S.? (Yes/No) _____. If not, complete line 11.

11. Is line 6 at least 6 times line 1? (Yes/No) _____.

Alternative II

1. Amount of annual aggregate liability coverage to be demonstrated \$ _____.

2. Current bond rating of most recent issuance and name of rating service _____.

3. Date of issuance of bond _____.

4. Date of maturity of bond _____.

*5. Tangible net worth \$ _____.

*6. Total assets in U.S. (required only if less than 90% of assets are located in the U.S.) \$ _____.

7. Is line 5 at least \$10 million? (Yes/No) _____.

8. Is line 5 at least 6 times line 1? _____.

9. Are at least 90% of assets located in the U.S.? If not, complete line 10. (Yes/No) _____.

10. Is line 6 at least 6 times line 1? _____.

[Fill in part B if you are using the financial test to demonstrate assurance of both liability coverage and costs assured under part (8)(d)5 of Rule 0400-12-01-.02 or closure or post-closure care costs under subparagraph (g) of Rule 0400-12-01-.05 or 0400-12-01-.06.]

Part B. Facility Care and Liability Coverage

[Fill in Alternative I if the criteria of item (8)(d)5(i)(I) and item (8)(h)6(i)(I) of Rule 0400-12-01-.02 are used. Fill in Alternative II if the criteria of item (8)(d)5(i)(II) and item (8)(h)6(i)(II) of Rule 0400-12-01-.02 are used.]

Alternative I

1. Sum of current cost estimates (total of all cost estimates listed above) \$ _____.

2. Amount of annual aggregate liability coverage to be demonstrated \$ _____.

3. Sum of lines 1 and 2 \$ _____.

*4. Total liabilities (if any portion of your cost estimates is included in your total liabilities, you may deduct that portion from this line and add that amount to lines 5 and 6) \$ _____

*5. Tangible net worth \$ _____

*6. Net worth \$ _____

*7. Current assets \$ _____

*8. Current liabilities \$ _____

9. Net working capital (line 7 minus line 8) \$ _____

*10. The sum of net income plus depreciation, depletion, and amortization \$ _____

*11. Total assets in U.S. (required only if less than 90% of assets are located in the U.S.) \$ _____

12. Is line 5 at least \$10 million? (Yes/No) _____

13. Is line 5 at least 6 times line 3? (Yes/No) _____

14. Is line 9 at least 6 times line 3? (Yes/No) _____

*15. Are at least 90% of assets located in the U.S.? (Yes/No) If not, complete line 16. _____

16. Is line 11 at least 6 times line 3? (Yes/No) _____

17. Is line 4 divided by line 6 less than 2.0? (Yes/No) _____

18. Is line 10 divided by line 4 greater than 0.1? (Yes/No) _____

19. Is line 7 divided by line 8 greater than 1.5? (Yes/No) _____

Alternative II

1. Sum of current cost estimates (total of all cost estimates listed above) \$ _____

2. Amount of annual aggregate liability coverage to be demonstrated \$ _____

3. Sum of lines 1 and 2 \$ _____

4. Current bond rating of most recent issuance and name of rating service _____

5. Date of issuance of bond _____

6. Date of maturity of bond _____

*7. Tangible net worth (if any portion of the cost estimates is included in "total liabilities" on your financial statements you may add that portion to this line) \$ _____

*8. Total assets in the U.S. (required only if less than 90% of assets are located in the U.S.) \$ _____

9. Is line 7 at least \$10 million? (Yes/No) _____

10. Is line 7 at least 6 times line 3? (Yes/No) _____

*11. Are at least 90% of assets located in the U.S.? (Yes/No) If not complete line 12. _____

12. Is line 8 at least 6 times line 3? (Yes/No) _____

I hereby certify that the wording of this letter is identical to the wording specified in part (8)(l)6 of Rule 0400-12-01-.02 as such rules were constituted on the date shown immediately below.

[Signature] _____

[Name] _____

[Title] _____

[Date] _____

7. (i) A corporate guarantee, as specified in part (d)5 of this paragraph, must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

Corporate Guarantee for Facility Care

Guarantee made this [date] by [name of guaranteeing entity], a business corporation organized under the laws of the state of Tennessee, herein referred to as guarantor. This guarantee is made on behalf of the [owner or operator] of [business address], which is [one of the following: "our subsidiary"; "a subsidiary of [name and address of common parent corporation], of which guarantor is a subsidiary"; or "an entity with which guarantor has a substantial business relationship, as defined in part (8)(b)9 of Rules 0400-12-01-.05 and 0400-12-01-.06" to the Tennessee Department of Environment and Conservation.

Recitals

1. Guarantor meets or exceeds the financial test criteria and agrees to comply with the reporting requirements for guarantors as specified in part (8)(d)5 of Rule 0400-12-01-.02.
2. [Owner or operator] owns or operates the following facility(ies) covered by this guarantee: [List for each facility: EPA Identification Number (if any issued), name, and address].
3. "Closure plans" as used below refer to the plans maintained as required by paragraph (8) of Rule 0400-12-01-.02 for the care of facilities as identified above.
4. For value received from [owner or operator], guarantor guarantees that in the event of a determination by the Commissioner that the hazardous secondary materials at the owner or operator's facility covered by this guarantee do not meet the conditions of the exclusion under subpart (1)(d)1(xxiv) of Rule 0400-12-01-.02, the guarantor will dispose of any hazardous secondary material as hazardous waste, and close the facility in accordance with closure requirements found in Rule 0400-12-01-.05 or 0400-12-01-.06, as applicable, or establish a trust fund as specified in part (8)(d)1 of Rule 0400-12-01-.02 in the name of the owner or operator in the amount of the current cost estimate.
5. Guarantor agrees that if, at the end of any fiscal year before termination of this guarantee, the guarantor fails to meet the financial test criteria, guarantor shall send within 90 days, by certified mail, notice to the Commissioner and to [owner or operator] that he intends to provide alternate financial assurance as specified in paragraph (8) of Rule 0400-12-01-.02, as applicable, in the name of [owner or operator]. Within 120 days after the end of such fiscal year, the guarantor shall establish such financial assurance unless [owner or operator] has done so.
6. The guarantor agrees to notify the Commissioner by certified mail, of a voluntary or involuntary proceeding under Title 11 (Bankruptcy), U.S. Code, naming guarantor as debtor, within 10 days after commencement of the proceeding.
7. Guarantor agrees that within 30 days after being notified by the Commissioner of a determination that guarantor no longer meets the financial test criteria or that he is disallowed from continuing as a guarantor, he shall establish alternate financial assurance as specified in Rule 0400-12-01-.05, Rule 0400-12-01-.06, or paragraph (8) of Rule 0400-12-01-.02, as applicable, in the name of [owner or operator] unless [owner or operator] has done so.

8. Guarantor agrees to remain bound under this guarantee notwithstanding any or all of the following: amendment or modification of the closure plan, the extension or reduction of the time of performance, or any other modification or alteration of an obligation of the owner or operator pursuant to Rule 0400-12-01-.05, Rule 0400-12-01-.06, or paragraph (8) of Rule 0400-12-01-.02.
9. Guarantor agrees to remain bound under this guarantee for as long as [owner or operator] must comply with the applicable financial assurance requirements of Rules 0400-12-01-.05 and 0400-12-01-.06 or the financial assurance condition of subitem (1)(d)1(xxiv)(IV)IV of Rule 0400-12-01-.02 for the above-listed facilities, except as provided in paragraph 10 of this agreement.
10. [Insert the following language if the guarantor is (a) a direct or higher-tier corporate parent, or (b) a firm whose parent corporation is also the parent corporation of the owner or operator]:

Guarantor may terminate this guarantee by sending notice by certified mail to the Commissioner and to [owner or operator], provided that this guarantee may not be terminated unless and until [the owner or operator] obtains, and the Commissioner approves, alternate coverage complying with subparagraph (8)(d) of Rule 0400-12-01-.02.

[Insert the following language if the guarantor is a firm qualifying as a guarantor due to its "substantial business relationship" with the owner or operator]

Guarantor may terminate this guarantee 120 days following the receipt of notification, through certified mail, by the Commissioner and by [the owner or operator].

11. Guarantor agrees that if [owner or operator] fails to provide alternate financial assurance as specified in Rule 0400-12-01-.05, 0400-12-01-.06, or paragraph (8) of Rule 0400-12-01-.02, as applicable, and obtain written approval of such assurance from the Commissioner within 90 days after a notice of cancellation by the guarantor is received by Commissioner from guarantor, guarantor shall provide such alternate financial assurance in the name of [owner or operator].
12. Guarantor expressly waives notice of acceptance of this guarantee by the Commissioner or by [owner or operator]. Guarantor also expressly waives notice of amendments or modifications of the closure plan and of amendments or modifications of the applicable requirements of Rule 0400-12-01-.05, 0400-12-01-.06, or paragraph (8) of Rule 0400-12-01-.02.

I hereby certify that the wording of this guarantee is identical to the wording specified in subpart (8)(l)7(i) of Rule 0400-12-01-.02 as such rules were constituted on the date first above written.

Effective date: _____

[Name of guarantor] _____

[Authorized signature for guarantor] _____

[Name of person signing] _____

[Title of person signing] _____

Signature of witness or notary: _____

- (ii) A guarantee, as specified in part (8)(h)7 of Rule 0400-12-01-.02, must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

Guarantee for Liability Coverage

Guarantee made this [date] by [name of guaranteeing entity], a business corporation organized under the laws of [if incorporated within the United States insert "the state of _____" and insert name of state; if incorporated outside the United States insert the name of the country in which incorporated, the principal place of

business within the United States, and the name and address of the registered agent in the state of the principal place of business], herein referred to as guarantor. This guarantee is made on behalf of [owner or operator] of [business address], which is one of the following: "our subsidiary;" "a subsidiary of [name and address of common parent corporation], of which guarantor is a subsidiary;" or "an entity with which guarantor has a substantial business relationship, as defined in [either part (8)(b)9 of Rule 0400-12-01-.05 or part (8)(b)9 of Rule 0400-12-01-.06], to any and all third parties who have sustained or may sustain bodily injury or property damage caused by [sudden and/or nonsudden] accidental occurrences arising from operation of the facility(ies) covered by this guarantee.

Recitals

1. Guarantor meets or exceeds the financial test criteria and agrees to comply with the reporting requirements for guarantors as specified in part (8)(h)7 of Rule 0400-12-01-.02.

2. [Owner or operator] owns or operates the following facility(ies) covered by this guarantee: [List for each facility:

EPA identification number (if any issued), name, and address; and if guarantor is incorporated outside the United States list the name and address of the guarantor's registered agent in each state.] This corporate guarantee satisfies the paragraph (8) of Rule 0400-12-01-.02 third-party liability requirements for [insert "sudden" or "nonsudden" or "both sudden and nonsudden"] accidental occurrences in above-named owner or operator facilities for coverage in the amount of [insert dollar amount] for each occurrence and [insert dollar amount] annual aggregate.

3. For value received from [owner or operator], guarantor guarantees to any and all third parties who have sustained or may sustain bodily injury or property damage caused by [sudden and/or nonsudden] accidental occurrences arising from operations of the facility(ies) covered by this guarantee that in the event that [owner or operator] fails to satisfy a judgment or award based on a determination of liability for bodily injury or property damage to third parties caused by [sudden and/or nonsudden] accidental occurrences, arising from the operation of the above-named facilities, or fails to pay an amount agreed to in settlement of a claim arising from or alleged to arise from such injury or damage, the guarantor will satisfy such judgment(s), award(s) or settlement agreement(s) up to the limits of coverage identified above.

4. Such obligation does not apply to any of the following:

(a) Bodily injury or property damage for which [insert owner or operator] is obligated to pay damages by reason of the assumption of liability in a contract or agreement. This exclusion does not apply to liability for damages that [insert owner or operator] would be obligated to pay in the absence of the contract or agreement.

(b) Any obligation of [insert owner or operator] under a workers' compensation, disability benefits, or unemployment compensation law or any similar law.

(c) Bodily injury to:

(1) An employee of [insert owner or operator] arising from, and in the course of, employment by [insert owner or operator]; or

(2) The spouse, child, parent, brother, or sister of that employee as a consequence of, or arising from, and in the course of employment by [insert owner or operator]. This exclusion applies:

(A) Whether [insert owner or operator] may be liable as an employer or in any other capacity; and

(B) To any obligation to share damages with or repay another person who must pay damages because of the injury to persons identified in paragraphs (1) and (2).

(d) Bodily injury or property damage arising out of the ownership, maintenance, use, or entrustment to others of any aircraft, motor vehicle or watercraft.

(e) Property damage to:

- (1) Any property owned, rented, or occupied by [insert owner or operator];
 - (2) Premises that are sold, given away or abandoned by [insert owner or operator] if the property damage arises out of any part of those premises;
 - (3) Property loaned to [insert owner or operator];
 - (4) Personal property in the care, custody or control of [insert owner or operator];
 - (5) That particular part of real property on which [insert owner or operator] or any contractors or subcontractors working directly or indirectly on behalf of [insert owner or operator] are performing operations, if the property damage arises out of these operations.
5. Guarantor agrees that if, at the end of any fiscal year before termination of this guarantee, the guarantor fails to meet the financial test criteria, guarantor shall send within 90 days, by certified mail, notice to the Commissioner and to [owner or operator] that he intends to provide alternate liability coverage as specified in subparagraph (8)(h) of Rule 0400-12-01-.02, as applicable, in the name of [owner or operator]. Within 120 days after the end of such fiscal year, the guarantor shall establish such liability coverage unless [owner or operator] has done so.
6. The guarantor agrees to notify the Commissioner by certified mail of a voluntary or involuntary proceeding under title 11 (Bankruptcy), U.S. Code, naming guarantor as debtor, within 10 days after commencement of the proceeding. Guarantor agrees that within 30 days after being notified by the Commissioner of a determination that guarantor no longer meets the financial test criteria or that he is disallowed from continuing as a guarantor, he shall establish alternate liability coverage as specified in subparagraph (8)(h) of Rule 0400-12-01-.02 in the name of [owner or operator], unless [owner or operator] has done so.
7. Guarantor reserves the right to modify this agreement to take into account amendment or modification of the liability requirements set by subparagraph (8)(h) of Rule 0400-12-01-.02, provided that such modification shall become effective only if the Commissioner does not disapprove the modification within 30 days of receipt of notification of the modification.
8. Guarantor agrees to remain bound under this guarantee for so long as [owner or operator] must comply with the applicable requirements of subparagraph (8)(h) of Rule 0400-12-01-.02 for the above-listed facility(ies), except as provided in paragraph 10 of this agreement.
9. [Insert the following language if the guarantor is (a) a direct or higher-tier corporate parent, or (b) a firm whose parent corporation is also the parent corporation of the owner or operator]:
10. Guarantor may terminate this guarantee by sending notice by certified mail to the Commissioner and to [owner or operator], provided that this guarantee may not be terminated unless and until [the owner or operator] obtains, and the Commissioner approves, alternate liability coverage complying with subparagraph (8)(h) of Rule 0400-12-01-.02.
- [Insert the following language if the guarantor is a firm qualifying as a guarantor due to its "substantial business relationship" with the owner or operator]:
- Guarantor may terminate this guarantee 120 days following receipt of notification, through certified mail, by the Commissioner and by [the owner or operator].
11. Guarantor hereby expressly waives notice of acceptance of this guarantee by any party.
12. Guarantor agrees that this guarantee is in addition to and does not affect any other responsibility or liability of the guarantor with respect to the covered facilities.
13. The Guarantor shall satisfy a third-party liability claim only on receipt of one of the following documents:

(a) Certification from the Principal and the third-party claimant(s) that the liability claim should be paid. The certification must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

Certification of Valid Claim

The undersigned, as parties [insert Principal] and [insert name and address of third-party claimant(s)], hereby certify that the claim of bodily injury and/or property damage caused by a [sudden or nonsudden] accidental occurrence arising from operating [Principal's] facility should be paid in the amount of \$ _____.

[Signatures] _____

Principal _____

(Notary) Date _____

[Signatures] _____

Claimant(s) _____

(Notary) Date _____

(b) A valid final court order establishing a judgment against the Principal for bodily injury or property damage caused by sudden or nonsudden accidental occurrences arising from the operation of the Principal's facility or group of facilities.

14. In the event of combination of this guarantee with another mechanism to meet liability requirements, this guarantee will be considered [insert "primary" or "excess"] coverage.

I hereby certify that the wording of the guarantee is identical to the wording specified in subpart (8)(l)7(ii) of Rule 0400-12-01-.02 as such rules were constituted on the date shown immediately below.

Effective date: _____

[Name of guarantor] _____

[Authorized signature for guarantor] _____

[Name of person signing] _____

[Title of person signing] _____

Signature of witness or notary: _____

8. A hazardous waste facility liability endorsement as required in subparagraph (h) of this paragraph must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

Hazardous Secondary Material Reclamation/Intermediate Facility Liability Endorsement

1. This endorsement certifies that the policy to which the endorsement is attached provides liability insurance covering bodily injury and property damage in connection with the insured's obligation to demonstrate financial responsibility under subparagraph (8)(h) of Rule 0400-12-01-.02. The coverage applies at [list EPA Identification Number (if any issued), name, and address for each facility] for [insert "sudden accidental occurrences," "nonsudden accidental occurrences," or "sudden and nonsudden accidental occurrences"; if coverage is for multiple facilities and the coverage is different for different facilities, indicate which facilities are insured for sudden accidental occurrences, which are insured for nonsudden accidental occurrences, and which are insured for both]. The limits of liability are [insert the dollar amount of the "each occurrence" and "annual aggregate" limits of the Insurer's liability], exclusive of legal defense costs.

2. The insurance afforded with respect to such occurrences is subject to all of the terms and conditions of the policy; provided, however, that any provisions of the policy inconsistent with subsections (a) through (e) of this Paragraph 2 are hereby amended to conform with subsections (a) through (e):

(a) Bankruptcy or insolvency of the insured shall not relieve the Insurer of its obligations under the policy to which this endorsement is attached.

(b) The Insurer is liable for the payment of amounts within any deductible applicable to the policy, with a right of reimbursement by the insured for any such payment made by the Insurer. This provision does not apply with respect to that amount of any deductible for which coverage is demonstrated as specified in part (8)(h)6 of Rule 0400-12-01-.02.

(c) Whenever requested by the Commissioner of the Tennessee Department of Environment and Conservation, the Insurer agrees to furnish to the Commissioner a signed duplicate original of the policy and all endorsements.

(d) Cancellation of this endorsement or the policy, whether by the Insurer, the insured, a parent corporation providing insurance coverage for its subsidiary, or by a firm having an insurable interest in and obtaining liability insurance on behalf of the owner or operator of the facility, will be effective only upon written notice and only after the expiration of 60 days after a copy of such written notice is received by the Commissioner.

(e) Any other termination of this endorsement or the policy will be effective only upon written notice and only after the expiration of 30 days after a copy of such written notice is received by the Commissioner.

Attached to and forming part of policy No. _____ issued by [name of Insurer], herein called the Insurer, of [address of Insurer] to [name of insured] of [address] this _____ day of _____, The effective date of said policy is _____ day of _____.

I hereby certify that the wording of this endorsement is identical to the wording specified in part (8)(l)8 of Rule 0400-12-01-.02 as such rule was constituted on the date first above written, and that the Insurer is licensed to transact the business of insurance, or eligible to provide insurance as an excess or surplus lines insurer in Tennessee.

[Signature of Authorized Representative of Insurer] _____

[Type name] _____

[Title], Authorized Representative of [name of Insurer] _____

[Address of Representative] _____

9. A letter of credit, as specified in part (h)8 of this paragraph, must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

Irrevocable Standby Letter of Credit

Name and Address of Issuing Institution _____

Commissioner _____

Tennessee Department of Environment and Conservation

Dear Sir or Madam: We hereby establish our Irrevocable Standby Letter of Credit No. _____ in the favor of ["any and all third-party liability claimants"], at the request and for the account of [owner or operator's name and address] for third-party liability awards or settlements up to [in words] U.S. dollars \$ _____ per occurrence and the annual aggregate amount of [in words] U.S. dollars \$ _____, for sudden accidental occurrences and/or for third-party liability awards or settlements up to the amount of [in words] U.S. dollars \$ _____ per occurrence, and the annual aggregate amount of [in words] U.S. dollars \$ _____

for nonsudden accidental occurrences available upon presentation of a sight draft bearing reference to this letter of credit No. _____, and (1) a signed certificate reading as follows:

Certificate of Valid Claim

The undersigned, as parties [insert principal] and [insert name and address of third party claimant(s)], hereby certify that the claim of bodily injury and/or property damage caused by a [sudden or nonsudden] accidental occurrence arising from operations of [principal's] facility should be paid in the amount of \$[]. We hereby certify that the claim does not apply to any of the following:

(a) Bodily injury or property damage for which [insert principal] is obligated to pay damages by reason of the assumption of liability in a contract or agreement. This exclusion does not apply to liability for damages that [insert principal] would be obligated to pay in the absence of the contract or agreement.

(b) Any obligation of [insert principal] under a workers' compensation, disability benefits, or unemployment compensation law or any similar law.

(c) Bodily injury to:

(1) An employee of [insert principal] arising from, and in the course of, employment by [insert principal]; or

(2) The spouse, child, parent, brother or sister of that employee as a consequence of, or arising from, and in the course of employment by [insert principal]. This exclusion applies:

(A) Whether [insert principal] may be liable as an employer or in any other capacity; and

(B) To any obligation to share damages with or repay another person who must pay damages because of the injury to persons identified in paragraphs (1) and (2).

(d) Bodily injury or property damage arising out of the ownership, maintenance, use, or entrustment to others of any aircraft, motor vehicle or watercraft.

(e) Property damage to:

(1) Any property owned, rented, or occupied by [insert principal];

(2) Premises that are sold, given away or abandoned by [insert principal] if the property damage arises out of any part of those premises;

(3) Property loaned to [insert principal];

(4) Personal property in the care, custody or control of [insert principal];

(5) That particular part of real property on which [insert principal] or any contractors or subcontractors working directly or indirectly on behalf of [insert principal] are performing operations, if the property damage arises out of these operations.

[Signatures] _____

Grantor _____

[Signatures] _____

Claimant(s) _____

or (2) a valid final court order establishing a judgment against the Grantor for bodily injury or property damage caused by sudden or nonsudden accidental occurrences arising from the operation of the Grantor's facility or group of facilities.

This letter of credit is effective as of [date] and shall expire on [date at least one year later], but such expiration date shall be automatically extended for a period of [at least one year] on [date and on each successive expiration date, unless, at least 120 days before the current expiration date, we notify you, the Commissioner of the Tennessee Department of Environment and Conservation, and [owner's or operator's name] by certified mail that we have decided not to extend this letter of credit beyond the current expiration date.

Whenever this letter of credit is drawn on under and in compliance with the terms of this credit, we shall duly honor such draft upon presentation to us.

In the event that this letter of credit is used in combination with another mechanism for liability coverage, this letter of credit shall be considered [insert "primary" or "excess" coverage].

We certify that the wording of this letter of credit is identical to the wording specified in part (8)(I)9 of Rule 0400-12-01-.02 as such rules were constituted on the date shown immediately below.

[Signature(s) and title(s) of official(s) of issuing institution]

[Date].

This credit is subject to [insert "the most recent edition of the Uniform Customs and Practice for Documentary Credits, published and copyrighted by the International Chamber of Commerce," or "the Uniform Commercial Code"].

10. A surety bond, as specified in part (h)9 of this paragraph, must be worded as follows: except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

Payment Bond

Surety Bond No. [Insert number]

Parties [Insert name and address of owner or operator],

Principal, incorporated in [Insert State of incorporation] of [Insert city and State of principal place of business] and [Insert name and address of surety company(ies)], Surety Company(ies), of [Insert surety(ies) place of business].

EPA Identification Number (if any issued), name, and address for each facility guaranteed by this bond: _____

	<u>Nonsudden accidental Occurrence</u>	<u>Sudden accidental occurrences</u>
<u>Penal Sum Per Occurrence</u>	<u>[Insert amount]</u>	<u>[Insert amount]</u>
<u>Annual Aggregate</u>	<u>[Insert amount]</u>	<u>[Insert amount]</u>

Purpose: This is an agreement between the Surety(ies) and the Principal under which the Surety(ies), its(their) successors and assignees, agree to be responsible for the payment of claims against the Principal for bodily injury and/or property damage to third parties caused by ["sudden" and/or "nonsudden"] accidental occurrences arising from operations of the facility or group of facilities in the sums prescribed herein; subject to the governing provisions and the following conditions.

Governing Provisions:

- (1) Tennessee Hazardous Waste Management Act, as amended.
- (2) Rule Chapter 0400-12-01, particularly Rule 0400-12-01-.05, Rule 0400-12-01-.06, and paragraph (8) of Rule 0400-12-01-.02 (if applicable).

Conditions:

- (1) The Principal is subject to the applicable governing provisions that require the Principal to have and maintain liability coverage for bodily injury and property damage to third parties caused by ["sudden" and/or "nonsudden"] accidental occurrences arising from operations of the facility or group of facilities. Such obligation does not apply to any of the following:
- (a) Bodily injury or property damage for which [insert Principal] is obligated to pay damages by reason of the assumption of liability in a contract or agreement. This exclusion does not apply to liability for damages that [insert Principal] would be obligated to pay in the absence of the contract or agreement.
 - (b) Any obligation of [insert Principal] under a workers' compensation, disability benefits, or unemployment compensation law or similar law.
 - (c) Bodily injury to:
 - (1) An employee of [insert Principal] arising from, and in the course of, employment by [insert principal];
or
 - (2) The spouse, child, parent, brother or sister of that employee as a consequence of, or arising from, and in the course of employment by [insert Principal]. This exclusion applies:
 - (A) Whether [insert Principal] may be liable as an employer or in any other capacity; and
 - (B) To any obligation to share damages with or repay another person who must pay damages because of the injury to persons identified in paragraphs (1) and (2).
 - (d) Bodily injury or property damage arising out of the ownership, maintenance, use, or entrustment to others of any aircraft, motor vehicle or watercraft.
 - (e) Property damage to:
 - (1) Any property owned, rented, or occupied by [insert Principal];
 - (2) Premises that are sold, given away or abandoned by [insert Principal] if the property damage arises out of any part of those premises;
 - (3) Property loaned to [insert Principal];
 - (4) Personal property in the care, custody or control of [insert Principal];
 - (5) That particular part of real property on which [insert Principal] or any contractors or subcontractors working directly or indirectly on behalf of [insert Principal] are performing operations, if the property damage arises out of these operations.
- (2) This bond assures that the Principal will satisfy valid third party liability claims, as described in condition (1).
- (3) If the Principal fails to satisfy a valid third party liability claim, as described above, the Surety(ies) becomes liable on this bond obligation.
- (4) The Surety(ies) shall satisfy a third party liability claim only upon the receipt of one of the following documents:
- (a) Certification from the Principal and the third party claimant(s) that the liability claim should be paid. The certification must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

Certification of Valid Claim

The undersigned, as parties [insert name of Principal] and [insert name and address of third party claimant(s)], hereby certify that the claim of bodily injury and/or property damage caused by a [sudden or

nonsudden] accidental occurrence arising from operating [Principal's] facility should be paid in the amount of \$[].

[Signature] _____

Principal _____

[Notary] Date _____

[Signature(s)] _____

Claimant(s) _____

[Notary] Date _____

or

(b) A valid final court order establishing a judgment against the Principal for bodily injury or property damage caused by sudden or nonsudden accidental occurrences arising from the operation of the Principal's facility or group of facilities.

(5) In the event of combination of this bond with another mechanism for liability coverage, this bond will be considered [insert "primary" or "excess"] coverage.

(6) The liability of the Surety(ies) shall not be discharged by any payment or succession of payments hereunder, unless and until such payment or payments shall amount in the aggregate to the penal sum of the bond. In no event shall the obligation of the Surety(ies) hereunder exceed the amount of said annual aggregate penal sum, provided that the Surety(ies) furnish(es) notice to the Commissioner of the Tennessee Department of Environment and Conservation forthwith of all claims filed and payments made by the Surety(ies) under this bond.

(7) The Surety(ies) may cancel the bond by sending notice of cancellation by certified mail to the Principal and the Commissioner of the Tennessee Department of Environment and Conservation, provided, however, that cancellation shall not occur during the 120 days beginning on the date of receipt of the notice of cancellation by the Principal and the Commissioner, as evidenced by the return receipt.

(8) The Principal may terminate this bond by sending written notice to the Surety(ies) and to the Commissioner.

(9) The Surety(ies) hereby waive(s) notification of amendments to applicable laws, statutes, rules and regulations and agree(s) that no such amendment shall in any way alleviate its (their) obligation on this bond.

(10) This bond is effective from [insert date] (12:01 a.m., standard time, at the address of the Principal as stated herein) and shall continue in force until terminated as described above.

In Witness Whereof, the Principal and Surety(ies) have executed this Bond and have affixed their seals on the date set forth above.

The persons whose signatures appear below hereby certify that they are authorized to execute this surety bond on behalf of the Principal and Surety(ies) and that the wording of this surety bond is identical to the wording specified in part (8)(l)10 of Rule 0400-12-01-.02, as such rules were constituted on the date this bond was executed.

PRINCIPAL

[Signature(s)]

[Name(s)]

[Title(s)]

[Corporate Seal]

CORPORATE SURETY[IES]

[Name and address]

State of incorporation: _____

Liability Limit: \$ _____

[Signature(s)]

[Name(s) and title(s)]

[Corporate seal]

[For every co-surety, provide signature(s), corporate seal, and other information in the same manner as for Surety above.]

Bond premium: \$ _____

11. (i) A trust agreement, as specified in part (h)10 of this paragraph, must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

Trust Agreement

Trust Agreement, the "Agreement," entered into as of [date] by and between [name of the owner or operator] a [name of state] [insert "corporation," "partnership," "association," or "proprietorship"], the "Grantor," and [name of corporate trustee], [insert, "incorporated in the state of _____" or "a national bank"], the "Trustee."

Whereas, the Underground Storage Tanks and Solid Waste Disposal Control Board, an agency of the State of Tennessee, has established certain regulations applicable to the Grantor, requiring that an owner or operator must demonstrate financial responsibility for bodily injury and property damage to third parties caused by sudden accidental and/or nonsudden accidental occurrences arising from operations of the facility or group of facilities.

Whereas, the Grantor has elected to establish a trust to assure all or part of such financial responsibility for the facilities identified herein.

Whereas, the Grantor, acting through its duly authorized officers, has selected the Trustee to be the trustee under this agreement, and the Trustee is willing to act as trustee.

Now, therefore, the Grantor and the Trustee agree as follows:

Section 1. Definitions.

As used in this Agreement:

- (a) The term "Grantor" means the owner or operator who enters into this Agreement and any successors or assigns of the Grantor.
- (b) The term "Trustee" means the Trustee who enters into this Agreement and any successor Trustee.

Section 2. Identification of Facilities.

This agreement pertains to the facilities identified on attached schedule A [on schedule A, for each facility list the EPA Identification Number (if any issued), name, and address of the facility(ies) and the amount of liability coverage, or portions thereof, if more than one instrument affords combined coverage as demonstrated by this Agreement].

Section 3. Establishment of Fund.

The Grantor and the Trustee hereby establish a trust fund, hereinafter the "Fund," for the benefit of any and all third parties injured or damaged by [sudden and/or nonsudden] accidental occurrences arising from operation of the facility(ies) covered by this guarantee, in the amounts of _____ [up to \$1 million] per occurrence and [up to \$2 million] annual aggregate for sudden accidental occurrences and _____ [up to \$3 million] per occurrence and _____ [up to \$6 million] annual aggregate for nonsudden occurrences, except that the Fund is not established for the benefit of third parties for the following:

(a) Bodily injury or property damage for which [insert Grantor] is obligated to pay damages by reason of the assumption of liability in a contract or agreement. This exclusion does not apply to liability for damages that [insert Grantor] would be obligated to pay in the absence of the contract or agreement.

(b) Any obligation of [insert Grantor] under a workers' compensation, disability benefits, or unemployment compensation law or any similar law.

(c) Bodily injury to:

(1) An employee of [insert Grantor] arising from, and in the course of, employment by [insert Grantor]; or

(2) The spouse, child, parent, brother or sister of that employee as a consequence of, or arising from, and in the course of employment by [insert Grantor]. This exclusion applies:

(A) Whether [insert Grantor] may be liable as an employer or in any other capacity; and

(B) To any obligation to share damages with or repay another person who must pay damages because of the injury to persons identified in paragraphs (1) and (2).

(d) Bodily injury or property damage arising out of the ownership, maintenance, use, or entrustment to others of any aircraft, motor vehicle or watercraft.

(e) Property damage to:

(1) Any property owned, rented, or occupied by [insert Grantor];

(2) Premises that are sold, given away or abandoned by [insert Grantor] if the property damage arises out of any part of those premises;

(3) Property loaned to [insert Grantor];

(4) Personal property in the care, custody or control of [insert Grantor];

(5) That particular part of real property on which [insert Grantor] or any contractors or subcontractors working directly or indirectly on behalf of [insert Grantor] are performing operations, if the property damage arises out of these operations.

In the event of combination with another mechanism for liability coverage, the Fund shall be considered [insert "primary" or "excess"] coverage.

The Fund is established initially as consisting of the property, which is acceptable to the Trustee, described in Schedule B attached hereto. Such property and any other property subsequently transferred to the Trustee is referred to as the Fund, together with all earnings and profits thereon, less any payments or distributions made by the Trustee pursuant to this Agreement. The Fund shall be held by the Trustee, IN TRUST, as hereinafter provided. The Trustee shall not be responsible nor shall it undertake any responsibility for the amount or adequacy of, nor any duty to collect from the Grantor, any payments necessary to discharge any liabilities of the Grantor established by the Department.

Section 4. Payment for Bodily Injury or Property Damage.

The Trustee shall satisfy a third party liability claim by making payments from the Fund only upon receipt of one of the following documents:

- (a) Certification from the Grantor and the third party claimant(s) that the liability claim should be paid. The certification must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

Certification of Valid Claim

The undersigned, as parties [insert Grantor] and [insert name and address of third party claimant(s)], hereby certify that the claim of bodily injury and/or property damage caused by a [sudden or nonsudden] accidental occurrence arising from operating [Grantor's] facility or group of facilities should be paid in the amount of \$[].

[Signatures]

Grantor

[Signatures]

Claimant(s)

- (b) A valid final court order establishing a judgment against the Grantor for bodily injury or property damage caused by sudden or nonsudden accidental occurrences arising from the operation of the Grantor's facility or group of facilities.

Section 5. Payments Comprising the Fund.

Payments made to the Trustee for the Fund shall consist of cash or securities acceptable to the Trustee.

Section 6. Trustee Management.

The Trustee shall invest and reinvest the principal and income, in accordance with general investment policies and guidelines which the Grantor may communicate in writing to the Trustee from time to time, subject, however, to the provisions of this section. In investing, reinvesting, exchanging, selling, and managing the Fund, the Trustee shall discharge his duties with respect to the trust fund solely in the interest of the beneficiary and with the care, skill, prudence, and diligence under the circumstance then prevailing which persons of prudence, acting in a like capacity and familiar with such matters, would use in the conduct of an enterprise of a like character and with like aims; except that:

- (i) Securities or other obligations of the Grantor, or any other owner or operator of the facilities, or any of their affiliates as defined in the Investment Company Act of 1940, as amended, 15 U.S.C. 80a-2.(a), shall not be acquired or held unless they are securities or other obligations of the Federal or a state government;
- (ii) The Trustee is authorized to invest the Fund in time or demand deposits of the Trustee, to the extent insured by an agency of the Federal or a state government; and
- (iii) The Trustee is authorized to hold cash awaiting investment or distribution uninvested for a reasonable time and without liability for the payment of interest thereon.

Section 7. Commingling and Investment.

The Trustee is expressly authorized in its discretion:

- (a) To transfer from time to time any or all of the assets of the Fund to any common commingled, or collective trust fund created by the Trustee in which the fund is eligible to participate, subject to all of the provisions thereof, to be commingled with the assets of other trusts participating therein; and
- (b) To purchase shares in any investment company registered under the Investment Company Act of 1940, 15 U.S.C. 81a-1 et seq., including one which may be created, managed, underwritten, or to which investment

advice is rendered or the shares of which are sold by the Trustee. The Trustee may vote such shares in its discretion.

Section 8. Express Powers of Trustee.

Without in any way limiting the powers and discretions conferred upon the Trustee by the other provisions of this Agreement or by law, the Trustee is expressly authorized and empowered:

- (a) To sell, exchange, convey, transfer, or otherwise dispose of any property held by it, by public or private sale. No person dealing with the Trustee shall be bound to see to the application of the purchase money or to inquire into the validity or expediency of any such sale or other disposition;
- (b) To make, execute, acknowledge, and deliver any and all documents of transfer and conveyance and any and all other instruments that may be necessary or appropriate to carry out the powers herein granted;
- (c) To register any securities held in the Fund in its own name or in the name of a nominee and to hold any security in bearer form or in book entry, or to combine certificates representing such securities with certificates of the same issue held by the Trustee in other fiduciary capacities, or to deposit or arrange for the deposit of such securities in a qualified central depository even though, when so deposited, such securities may be merged and held in bulk in the name of the nominee of such depository with other securities deposited therein by another person, or to deposit or arrange for the deposit of any securities issued by the United States Government, or any agency or instrumentality thereof, with a Federal Reserve bank, but the books and records of the Trustee shall at all times show that all such securities are part of the Fund;
- (d) To deposit any cash in the Fund in interest-bearing accounts maintained or savings certificates issued by the Trustee, in its separate corporate capacity, or in any other banking institution affiliated with the Trustee, to the extent insured by an agency of the Federal or a state government; and
- (e) To compromise or otherwise adjust all claims in favor of or against the Fund.

Section 9. Taxes and Expenses.

All taxes of any kind that may be assessed or levied against or in respect of the Fund and all brokerage commissions incurred by the Fund shall be paid from the Fund. All other expenses incurred by the Trustee in connection with the administration of this Trust, including fees for legal services rendered to the Trustee, the compensation of the Trustee to the extent not paid directly by the Grantor, and all other proper charges and disbursements of the Trustee shall be paid from the Fund.

Section 10. Annual Valuations.

The Trustee shall annually, at least 30 days prior to the anniversary date of establishment of the Fund, furnish to the Grantor and to the Commissioner of the Tennessee Department of Environment and Conservation a statement confirming the value of the Trust. Any securities in the Fund shall be valued at market value as of no more than 60 days prior to the anniversary date of establishment of the Fund. The failure of the Grantor to object in writing to the Trustee within 90 days after the statement has been furnished to the Grantor and the Commissioner shall constitute a conclusively binding assent by the Grantor barring the Grantor from asserting any claim or liability against the Trustee with respect to matters disclosed in the statement.

Section 11. Advice of Counsel.

The Trustee may from time to time consult with counsel, who may be counsel to the Grantor with respect to any question arising as to the construction of this Agreement or any action to be taken hereunder. The Trustee shall be fully protected, to the extent permitted by law, in acting upon the advice of counsel.

Section 12. Trustee Compensation.

The Trustee shall be entitled to reasonable compensation for its services as agreed upon in writing from time to time with the Grantor.

Section 13. Successor Trustee.

The Trustee may resign or the Grantor may replace the Trustee, but such resignation or replacement shall not be effective until the Grantor has appointed a successor trustee and this successor accepts the appointment. The successor trustee shall have the same powers and duties as those conferred upon the Trustee hereunder. Upon the successor trustee's acceptance of the appointment, the Trustee shall assign, transfer, and pay over to the successor trustee the funds and properties then constituting the Fund. If for any reason the Grantor cannot or does not act in the event of the resignation of the Trustee, the Trustee may apply to a court of competent jurisdiction for the appointment of a successor trustee or for instructions. The successor trustee shall specify the date on which it assumes administration of the trust in a writing sent to the Grantor, the Commissioner of the Tennessee Department of Environment and Conservation, and the present Trustee by certified mail 10 days before such change becomes effective. Any expenses incurred by the Trustee as a result of any of the acts contemplated by this section shall be paid as provided in Section 9.

Section 14. Instructions to the Trustee.

All orders, requests, and instructions by the Grantor to the Trustee shall be in writing, signed by such persons as are designated in the attached Exhibit A or such other designees as the Grantor may designate by amendments to Exhibit A. The Trustee shall be fully protected in acting without inquiry in accordance with the Grantor's orders, requests, and instructions. All orders, requests, and instructions by the Commissioner of the Tennessee Department of Environment and Conservation to the Trustee shall be in writing, signed by the Commissioner, or designee, and the Trustee shall act and shall be fully protected in acting in accordance with such orders, requests, and instructions. The Trustee shall have the right to assume, in the absence of written notice to the contrary, that no event constituting a change or a termination of the authority of any person to act on behalf of the Grantor or the Tennessee Department of Environment and Conservation hereunder has occurred. The Trustee shall have no duty to act in the absence of such orders, requests, and instructions from the Grantor and/or the Commissioner of the Tennessee Department of Environment and Conservation, except as provided for herein.

Section 15. Notice of Nonpayment.

If a payment for bodily injury or property damage is made under Section 4 of this trust, the Trustee shall notify the Grantor of such payment and the amount(s) thereof within 5 working days. The Grantor shall, on or before the anniversary date of the establishment of the Fund following such notice, either make payments to the Trustee in amounts sufficient to cause the trust to return to its value immediately prior to the payment of claims under Section 4, or shall provide written proof to the Trustee that other financial assurance for liability coverage has been obtained equaling the amount necessary to return the trust to its value prior to the payment of claims. If the Grantor does not either make payments to the Trustee or provide the Trustee with such proof, the Trustee shall within 10 working days after the anniversary date of the establishment of the Fund provide a written notice of nonpayment to the Commissioner.

Section 16. Amendment of Agreement.

This Agreement may be amended by an instrument in writing executed by the Grantor, the Trustee, and the Commissioner of the Tennessee Department of Environment and Conservation, or by the Trustee and the Commissioner if the Grantor ceases to exist.

Section 17. Irrevocability and Termination.

Subject to the right of the parties to amend this Agreement as provided in Section 16, this Trust shall be irrevocable and shall continue until terminated at the written agreement of the Grantor, the Trustee, and the Commissioner of the Tennessee Department of Environment and Conservation, or by the Trustee and the Commissioner, if the Grantor ceases to exist. Upon termination of the Trust, all remaining trust property, less final trust administration expenses, shall be delivered to the Grantor.

The Commissioner of the Tennessee Department of Environment and Conservation will agree to termination of the Trust when the owner or operator substitutes alternate financial assurance as specified in this section.

Section 18. Immunity and Indemnification.

The Trustee shall not incur personal liability of any nature in connection with any act or omission, made in good faith, in the administration of this Trust, or in carrying out any directions by the Grantor or the Commissioner of the

Tennessee Department of Environment and Conservation issued in accordance with this Agreement. The Trustee shall be indemnified and saved harmless by the Grantor or from the Trust Fund, or both, from and against any personal liability to which the Trustee may be subjected by reason of any act or conduct in its official capacity, including all expenses reasonably incurred in its defense in the event the Grantor fails to provide such defense.

Section 19. Choice of Law.

This Agreement shall be administered, construed, and enforced according to the laws of the state of [enter name of state].

Section 20. Interpretation.

As used in this Agreement, words in the singular include the plural and words in the plural include the singular. The descriptive headings for each section of this Agreement shall not affect the interpretation or the legal efficacy of this Agreement.

In Witness Whereof the parties have caused this Agreement to be executed by their respective officers duly authorized and their corporate seals to be hereunto affixed and attested as of the date first above written. The parties below certify that the wording of this Agreement is identical to the wording specified in part (8)(l)11 of Rule 0400-12-01-.02 as such regulations were constituted on the date first above written.

[Signature of Grantor]

[Title]

Attest:

[Title]

[Seal]

[Signature of Trustee]

Attest:

[Title]

[Seal]

(ii) The following is an example of the certification of acknowledgement which must accompany the trust agreement for a trust fund as specified in part (h)10 of this paragraph.

State of _____ County of _____

On this [date], before me personally came [owner or operator] to me known, who, being by me duly sworn, did depose and say that she/he resides at [address], that she/he is [title] of [corporation], the corporation described in and which executed the above instrument; that she/he knows the seal of said corporation; that the seal affixed to such instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said corporation, and that she/he signed her/ his name thereto by like order.

[Signature of Notary Public]

12. Reserved

13. (i) A personal bond supported by certificate of deposit, as specified in part 6 of this paragraph, shall include the following information and use the language provided in subpart (ii) of this part:

- (I) Effective date;
- (II) Principal (legal name and address of owner/operator);
- (III) Type of organization (insert "individual," "joint venture," "partnership" or "corporation");
- (IV) State of incorporation;
- (V) Permit number;
- (VI) Name and address of facility;
- (VII) Total penal sum of the bond;
- (VIII) Name and address of the financial institution issuing the certificate of deposit; and
- (IX) Serial number(s) of certificate of deposit.

(ii) The personal bond must use the language that follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

Personal Bond

Know All Persons By These Presents. That I, the Principal am firmly bound to the Tennessee Department of Environment and Conservation in the event that the hazardous secondary materials at the reclamation or intermediate facility listed below no longer meet the conditions of the exclusion under subpart (1)(d)1(xxiv) of Rule 0400-12-01-.02, in the above penal sum for the payment of which I bind myself, my heirs, executors, administrators, successors, and assigns jointly and severally for the payment of the full amount of the penal sum.

Whereas said Principal is required, under the Tennessee Hazardous Waste Management Act, to have a permit or interim status in order to own or operate each facility identified above, or to meet conditions under subpart (1)(d)1(xxiv) of Rule 0400-12-01-.02; and

Whereas said Principal is required to provide financial assurance as a condition of permit or interim status or as a condition of an exclusion under subpart (1)(d)1(xxiv) of Rule 0400-12-01-.02;

Now, Therefore, the conditions of the obligation are such that if the Principal shall faithfully satisfy all the conditions established for exclusion of hazardous secondary materials from coverage as solid waste under subpart (1)(d)1(xxiv) of Rule 0400-12-01-.02,

Or, if the Principal shall provide alternate financial assurance, as specified in paragraph (8) of Rule 0400-12-01-.02, as applicable, and obtain the Commissioner's written approval of such assurance, then this obligation shall be null and void; otherwise it is to remain in full force and effect.

The Principal shall become liable on this bond obligation only when the Principal has failed to fulfill the conditions described above. Upon notification by the Commissioner that the Principal has failed to perform as guaranteed by this bond, the Principal shall forfeit all or a portion of the penal sum of this bond to the Department.

The liability of the Surety(ies) shall not be discharged by any payment or succession of payments hereunder, unless and until such payment or payments shall amount in the aggregate to the penal sum of the bond, but in no event shall the obligation of the Surety(ies) hereunder exceed the amount of said penal sum.

The Principal has this day irrevocably assigned the deposit to the Department and has submitted to the Department the original of Certificate of Deposit # _____ or an original safekeeping receipt of the deposit.

The person whose signature appears below hereby certifies that he/she is authorized to execute this surety bond on behalf of the Principal and that the wording of this surety bond is identical to the wording specified in Rule 0400-12-01-.02(8)(l)13(ii) as such rules were constituted on the date this bond was executed.

Principal

[Signature(s)]

[Name(s)]

[Title(s)]

Subscribed and sworn to before me this the _____ day of _____, 20_____.

Notary Public

My commission expires on the _____ day of _____, 20_____.

14. (i) A personal bond supported by cash, as specified in part 7 of this paragraph, shall include the following information and use the language provided in subpart (ii) of this part:

(I) Effective date;

(II) Principal (legal name and address of owner/operator);

(III) Type of organization (insert "individual," "joint venture," "partnership" or "corporation");

(IV) State of incorporation;

(V) Permit number;

(VI) Name and address of facility;

(VII) Total penal sum of the bond;

(ii) The personal bond must use the language that follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

Personal Bond

Know All Persons By These Presents, That I, the Principal am firmly bound to the Tennessee Department of Environment and Conservation in the event that the hazardous secondary materials at the reclamation or intermediate facility listed below no longer meet the conditions of the exclusion under subpart (1)(d)1(xxiv) of Rule

0400-12-01-.02, in the above penal sum for the payment of which I bind myself, my heirs, executors, administrators, successors, and assigns jointly and severally for the payment of the full amount of the penal sum.

Whereas said Principal is required, under the Tennessee Hazardous Waste Management Act, to have a permit or interim status in order to own or operate each facility identified above, or to meet conditions under subpart (1)(d)1(xxiv) of Rule 0400-12-01-.02, and

Whereas said Principal is required to provide financial assurance as a condition of permit or interim status or as a condition of an exclusion under subpart (1)(d)1(xxiv) of Rule 0400-12-01-.02;

Now, Therefore, the conditions of the obligation are such that if the Principal shall faithfully satisfy all the conditions established for exclusion of hazardous secondary materials from coverage as solid waste under subpart (1)(d)1(xxiv) of Rule 0400-12-01-.02,

Or, if the Principal shall provide alternate financial assurance, as specified in paragraph (8) of Rule 0400-12-01-.02, as applicable, and obtain the Commissioner's written approval of such assurance, then this obligation shall be null and void; otherwise it is to remain in full force and effect.

The Principal shall become liable on this bond obligation only when the Principal has failed to fulfill the conditions described above. Upon notification by the Commissioner that the Principal has failed to perform as guaranteed by this bond, the Principal shall forfeit all or a portion of the penal sum of this bond to the Department.

The liability of the Surety(ies) shall not be discharged by any payment or succession of payments hereunder, unless and until such payment or payments shall amount in the aggregate to the penal sum of the bond, but in no event shall the obligation of the Surety(ies) hereunder exceed the amount of said penal sum.

The Principal has this day deposited funds equal to the penal sum of the bond with the treasurer of the state of Tennessee in support of this personal bond.

The person whose signature appears below hereby certifies that he/she is authorized to execute this surety bond on behalf of the Principal and that the wording of this surety bond is identical to the wording specified in Rule 0400-12-01-.02(8)(l)14(ii) as such rules were constituted on the date this bond was executed.

Principal

[Signature(s)]

[Name(s)]

[Title(s)]

Subscribed and sworn to before me this the _____ day of _____, 20____.

Notary Public

My commission expires on the _____ day of _____, 20____.

(9) Use and Management of Containers [40 CFR 261 Subpart I]

(a) Applicability [40 CFR 261.170]

This paragraph applies to hazardous secondary materials excluded under the remanufacturing exclusion at subpart (1)(d)1(xxvii) of this rule and stored in containers.

(b) Condition of containers [40 CFR 261.171]

If a container holding hazardous secondary material is not in good condition (e.g., severe rusting, apparent structural defects) or if it begins to leak, the hazardous secondary material must be transferred from this container to a container that is in good condition or managed in some other way that complies with the requirements of this rule.

(c) Compatibility of hazardous secondary materials with containers [40 CFR 261.172]

The container must be made of or lined with materials which will not react with, and are otherwise compatible with, the hazardous secondary material to be stored, so that the ability of the container to contain the material is not impaired.

(d) Management of containers [40 CFR 261.173]

1. A container holding hazardous secondary material must always be closed during storage, except when it is necessary to add or remove the hazardous secondary material.
2. A container holding hazardous secondary material must not be opened, handled, or stored in a manner which may rupture the container or cause it to leak.

(e) Reserved

(f) Containment [40 CFR 261.175]

1. Container storage areas must have a containment system that is designed and operated in accordance with part 2 of this subparagraph.
2. A containment system must be designed and operated as follows:
 - (i) A base must underlie the containers which is free of cracks or gaps and is sufficiently impervious to contain leaks, spills, and accumulated precipitation until the collected material is detected and removed;
 - (ii) The base must be sloped or the containment system must be otherwise designed and operated to drain and remove liquids resulting from leaks, spills, or precipitation, unless the containers are elevated or are otherwise protected from contact with accumulated liquids;
 - (iii) The containment system must have sufficient capacity to contain 10% of the volume of containers or the volume of the largest container, whichever is greater.
 - (iv) Run-on into the containment system must be prevented unless the collection system has sufficient excess capacity in addition to that required in subpart (iii) of part to contain any run-on which might enter the system; and
 - (v) Spilled or leaked material and accumulated precipitation must be removed from the sump or collection area in as timely a manner as is necessary to prevent overflow of the collection system.

(g) Special requirements for ignitable or reactive hazardous secondary material [40 CFR 261.176]

Containers holding ignitable or reactive hazardous secondary material must be located at least 15 meters (50 feet) from the facility's property line.

(h) Special requirements for incompatible materials [40 CFR 261.177]

1. Incompatible materials must not be placed in the same container.
2. Hazardous secondary material must not be placed in an unwashed container that previously held an incompatible material.
3. A storage container holding a hazardous secondary material that is incompatible with any other materials stored nearby must be separated from the other materials or protected from them by means of a dike, berm, wall, or other device.

(i) Reserved

(j) Air emission standards [40 CFR 261.179]

The remanufacturer or other person that stores or treats the hazardous secondary material shall manage all hazardous secondary material placed in a container in accordance with the applicable requirements of paragraphs (27), (28) and (29) of this rule.

(10) Tank Systems [40 CFR 261 Subpart J]

(a) Applicability [40 CFR 261.190]

1. The requirements of this paragraph apply to tank systems for storing or treating hazardous secondary material excluded under the remanufacturing exclusion at subpart (1)(d)1(xxvii) of this rule.
2. Tank systems, including sumps, as defined in subparagraph (2)(a) of Rule 0400-12-01-.01, that serve as part of a secondary containment system to collect or contain releases of hazardous secondary materials are exempted from the requirements in part (d)1 of this paragraph.

(b) Assessment of existing tank system's integrity [40 CFR 261.191]

1. Tank systems must meet the secondary containment requirements of subparagraph (d) of this paragraph, or the remanufacturer or other person that handles the hazardous secondary material must determine that the tank system is not leaking and is fit for use. Except as provided in part 3 of the subparagraph, a written assessment reviewed and certified by a qualified Professional Engineer must be kept on file at the remanufacturer's facility or other facility that stores or treats the hazardous secondary material that attests to the tank system's integrity.
2. This assessment must determine that the tank system is adequately designed and has sufficient structural strength and compatibility with the material(s) to be stored or treated, to ensure that it will not collapse, rupture, or fail. At a minimum, this assessment must consider the following:
 - (i) Design standard(s), if available, according to which the tank and ancillary equipment were constructed;
 - (ii) Hazardous characteristics of the material(s) that have been and will be handled;
 - (iii) Existing corrosion protection measures;
 - (iv) Documented age of the tank system, if available (otherwise, an estimate of the age); and
 - (v) Results of a leak test, internal inspection, or other tank integrity examination such that:

- (I) For non-enterable underground tanks, the assessment must include a leak test that is capable of taking into account the effects of temperature variations, tank end deflection, vapor pockets, and high water table effects; and
- (II) For other than non-enterable underground tanks and for ancillary equipment, this assessment must include either a leak test, as described in item (I) of this subpart, or other integrity examination that is certified by a qualified Professional Engineer that addresses cracks, leaks, corrosion, and erosion.

(Note: The practices described in the American Petroleum Institute (API) Publication, Guide for Inspection of Refinery Equipment, Chapter XIII, "Atmospheric and Low-Pressure Storage Tanks," 4th edition, 1981, may be used, where applicable, as guidelines in conducting other than a leak test.)

- 3. If, as a result of the assessment conducted in accordance with part 1 of this subparagraph, a tank system is found to be leaking or unfit for use, the remanufacturer or other person that stores or treats the hazardous secondary material must comply with the requirements of subparagraph (g) of this paragraph.

(c) Reserved [40 CFR 261.192]

(d) Containment and detection of releases [40 CFR 261.193]

- 1. Secondary containment systems must be:

- (i) Designed, installed, and operated to prevent any migration of materials or accumulated liquid out of the system to the soil, ground water, or surface water at any time during the use of the tank system; and
- (ii) Capable of detecting and collecting releases and accumulated liquids until the collected material is removed.

(Note: If the collected material is a hazardous waste under this rule, it is subject to management as a hazardous waste in accordance with all applicable requirements of Rule 0400-12-01-.03 through Rule 0400-12-01-.10. If the collected material is discharged through a point source to waters of the United States, it is subject to the requirements of Tennessee Water Quality Control Act, as amended. If discharged to a Publicly Owned Treatment Works (POTW), it is subject to the requirements of the Tennessee Water Quality Control Act, as amended. If the collected material is released to the environment, it may be subject to the reporting requirements of 40 CFR part 302)

- 2. To meet the requirements of part 1 of this subparagraph, secondary containment systems must be at a minimum:

- (i) Constructed of or lined with materials that are compatible with the materials(s) to be placed in the tank system and must have sufficient strength and thickness to prevent failure owing to pressure gradients (including static head and external hydrological forces), physical contact with the material to which it is exposed, climatic conditions, and the stress of daily operation (including stresses from nearby vehicular traffic);
- (ii) Placed on a foundation or base capable of providing support to the secondary containment system, resistance to pressure gradients above and below the system, and capable of preventing failure due to settlement, compression, or uplift;

- (iii) Provided with a leak-detection system that is designed and operated so that it will detect the failure of either the primary or secondary containment structure or the presence of any release of hazardous secondary material or accumulated liquid in the secondary containment system at the earliest practicable time; and
- (iv) Sloped or otherwise designed or operated to drain and remove liquids resulting from leaks, spills, or precipitation. Spilled or leaked material and accumulated precipitation must be removed from the secondary containment system within 24 hours, or in as timely a manner as is possible to prevent harm to human health and the environment.

3. Secondary containment for tanks must include one or more of the following devices:

- (i) A liner (external to the tank);
- (ii) A vault; or
- (iii) A double-walled tank.

4. In addition to the requirements of parts 1, 2 and 3 of this subparagraph, secondary containment systems must satisfy the following requirements:

(i) External liner systems must be:

- (I) Designed or operated to contain 100 percent of the capacity of the largest tank within its boundary;
- (II) Designed or operated to prevent run-on or infiltration of precipitation into the secondary containment system unless the collection system has sufficient excess capacity to contain run-on or infiltration. Such additional capacity must be sufficient to contain precipitation from a 25-year, 24-hour rainfall event.
- (III) Free of cracks or gaps; and
- (IV) Designed and installed to surround the tank completely and to cover all surrounding earth likely to come into contact with the material if the material is released from the tank(s) (i.e., capable of preventing lateral as well as vertical migration of the material).

(ii) Vault systems must be:

- (I) Designed or operated to contain 100 percent of the capacity of the largest tank within its boundary;
- (II) Designed or operated to prevent run-on or infiltration of precipitation into the secondary containment system unless the collection system has sufficient excess capacity to contain run-on or infiltration. Such additional capacity must be sufficient to contain precipitation from a 25-year, 24-hour rainfall event;
- (III) Constructed with chemical-resistant water stops in place at all joints (if any);
- (IV) Provided with an impermeable interior coating or lining that is compatible with the stored material and that will prevent migration of material into the concrete;
- (V) Provided with a means to protect against the formation of and ignition of

vapors within the vault, if the material being stored or treated is ignitable or reactive; and

(VI) Provided with an exterior moisture barrier or be otherwise designed or operated to prevent migration of moisture into the vault if the vault is subject to hydraulic pressure.

(iii) Double-walled tanks must be:

(I) Designed as an integral structure (i.e., an inner tank completely enveloped within an outer shell) so that any release from the inner tank is contained by the outer shell;

(II) Protected, if constructed of metal, from both corrosion of the primary tank interior and of the external surface of the outer shell; and

(III) Provided with a built-in continuous leak detection system capable of detecting a release within 24 hours, or at the earliest practicable time.

(Note: The provisions outlined in the Steel Tank Institute's (STI) "Standard for Dual Wall Underground Steel Storage Tanks" may be used as guidelines for aspects of the design of underground steel double-walled tanks.)

5. Reserved

6. Ancillary equipment must be provided with secondary containment (e.g., trench, jacketing, double-walled piping) that meets the requirements of parts 1 and 2 of this subparagraph except for:

(i) Aboveground piping (exclusive of flanges, joints, valves, and other connections) that are visually inspected for leaks on a daily basis;

(ii) Welded flanges, welded joints, and welded connections that are visually inspected for leaks on a daily basis;

(iii) Sealless or magnetic coupling pumps and sealless valves that are visually inspected for leaks on a daily basis; and

(iv) Pressurized aboveground piping systems with automatic shut-off devices (e.g., excess flow check valves, flow metering shutdown devices, loss of pressure actuated shut-off devices) that are visually inspected for leaks on a daily basis.

(e) General operating requirements [40 CFR 261.194]

1. Hazardous secondary materials or treatment reagents must not be placed in a tank system if they could cause the tank, its ancillary equipment, or the containment system to rupture, leak, corrode, or otherwise fail.

2. The remanufacturer or other person that stores or treats the hazardous secondary material must use appropriate controls and practices to prevent spills and overflows from tank or containment systems. These include at a minimum:

(i) Spill prevention controls (e.g., check valves, dry disconnect couplings);

(ii) Overfill prevention controls (e.g., level sensing devices, high level alarms, automatic feed cutoff, or bypass to a standby tank); and

(iii) Maintenance of sufficient freeboard in uncovered tanks to prevent overtopping by wave or wind action or by precipitation.

3. The remanufacturer or other person that stores or treats the hazardous secondary material must comply with the requirements of subparagraph (g) of this paragraph if a leak or spill occurs in the tank system.

(f) Reserved [40 CFR 261.195]

(g) Response to leaks or spills and disposition of leaking or unfit-for-use tank systems [40 CFR 261.196]

A tank system or secondary containment system from which there has been a leak or spill, or which is unfit for use, must be removed from service immediately, and the remanufacturer or other person that stores or treats the hazardous secondary material must satisfy the following requirements:

1. Cessation of use; prevent flow or addition of materials. The remanufacturer or other person that stores or treats the hazardous secondary material must immediately stop the flow of hazardous secondary material into the tank system or secondary containment system and inspect the system to determine the cause of the release.

2. Removal of material from tank system or secondary containment system

(i) If the release was from the tank system, the remanufacturer or other person that stores or treats the hazardous secondary material must, within 24 hours after detection of the leak or, if the remanufacturer or other person that stores or treats the hazardous secondary material demonstrates that it is not possible, at the earliest practicable time, remove as much of the material as is necessary to prevent further release of hazardous secondary material to the environment and to allow inspection and repair of the tank system to be performed.

(ii) If the material released was to a secondary containment system, all released materials must be removed within 24 hours or in as timely a manner as is possible to prevent harm to human health and the environment.

3. Containment of visible releases to the environment. The remanufacturer or other person that stores or treats the hazardous secondary material must immediately conduct a visual inspection of the release and, based upon that inspection:

(i) Prevent further migration of the leak or spill to soils or surface water; and

(ii) Remove, and properly dispose of, any visible contamination of the soil or surface water.

4. Notifications, reports

(i) Any release to the environment, except as provided in subpart (ii) of this part, must be reported to the Commissioner within 24 hours of its detection. If the release has been reported pursuant to 40 CFR part 302, that report will satisfy this requirement.

(ii) A leak or spill of hazardous secondary material is exempted from the requirements of this paragraph if it is:

(I) Less than or equal to a quantity of 1 pound; and

(II) Immediately contained and cleaned up.

(iii) Within 30 days of detection of a release to the environment, a report containing the following information must be submitted to the Commissioner:

(I) Likely route of migration of the release;

- (II) Characteristics of the surrounding soil (soil composition, geology, hydrogeology, climate);
- (III) Results of any monitoring or sampling conducted in connection with the release (if available). If sampling or monitoring data relating to the release are not available within 30 days, these data must be submitted to the Commissioner as soon as they become available;
- (IV) Proximity to downgradient drinking water, surface water, and populated areas; and
- (V) Description of response actions taken or planned.

5. Provision of secondary containment, repair, or closure

- (i) Unless the remanufacturer or other person that stores or treats the hazardous secondary material satisfies the requirements of subparts (ii) through (iv) of this part, the tank system must cease to operate under the remanufacturing exclusion at subpart (1)(d)1(xxvii) of the rule.
- (ii) If the cause of the release was a spill that has not damaged the integrity of the system, the remanufacturer or other person that stores or treats the hazardous secondary material may return the system to service as soon as the released material is removed and repairs, if necessary, are made.
- (iii) If the cause of the release was a leak from the primary tank system into the secondary containment system, the system must be repaired prior to returning the tank system to service.
- (iv) If the source of the release was a leak to the environment from a component of a tank system without secondary containment, the remanufacturer or other person that stores or treats the hazardous secondary material must provide the component of the system from which the leak occurred with secondary containment that satisfies the requirements of subparagraph (d) of this paragraph before it can be returned to service, unless the source of the leak is an aboveground portion of a tank system that can be inspected visually. If the source is an aboveground component that can be inspected visually, the component must be repaired and may be returned to service without secondary containment as long as the requirements of part 6 of this subparagraph are satisfied. Additionally, if a leak has occurred in any portion of a tank system component that is not readily accessible for visual inspection (e.g., the bottom of an inground or onground tank), the entire component must be provided with secondary containment in accordance with subparagraph (d) of this paragraph prior to being returned to use.

6. Certification of major repairs

If the remanufacturer or other person that stores or treats the hazardous secondary material has repaired a tank system in accordance with part 5 of this subparagraph, and the repair has been extensive (e.g., installation of an internal liner; repair of a ruptured primary containment or secondary containment vessel), the tank system must not be returned to service unless the remanufacturer or other person that stores or treats the hazardous secondary material has obtained a certification by a qualified Professional Engineer that the repaired system is capable of handling hazardous secondary materials without release for the intended life of the system. This certification must be kept on file at the facility and maintained until closure of the facility.

(Note: The Commissioner may, on the basis of any information received that there is or has been a release of hazardous secondary material or hazardous constituents into the environment, issue

an order under the Act (T.C.A. §§ 68-212-101 et seq.) requiring corrective action or such other response as deemed necessary to protect human health or the environment.)

(Note: The Tennessee Water Quality Control Act may require the owner or operator to notify the National Response Center of certain releases.)

(h) Termination of remanufacturing exclusion [40 CFR 261.197]

Hazardous secondary material stored in units more than 90 days after the unit ceases to operate under the remanufacturing exclusion at subpart (1)(d)1(xxvii) of this rule or otherwise ceases to be operated for manufacturing, or for storage of a product or a raw material, then becomes subject to regulation as hazardous waste under Rules 0400-12-01-.02 through 0400-12-01-.10, as applicable.

(i) Special requirements for ignitable or reactive materials [40 CFR 261.198]

1. Ignitable or reactive material must not be placed in tank systems, unless the material is stored or treated in such a way that it is protected from any material or conditions that may cause the material to ignite or react.

2. The remanufacturer or other person that stores or treats hazardous secondary material which is ignitable or reactive must store or treat the hazardous secondary material in a tank that is in compliance with the requirements for the maintenance of protective distances between the material management area and any public ways, streets, alleys, or an adjoining property line that can be built upon as required in Tables 2-1 through 2-6 of the National Fire Protection Association's "Flammable and Combustible Liquids Code," (1977 or 1981), (incorporated by reference, see 40 CFR 260.11).

(j) Special requirements for incompatible materials [40 CFR 261.199]

1. Incompatible materials must not be placed in the same tank system.

2. Hazardous secondary material must not be placed in a tank system that has not been decontaminated and that previously held an incompatible material.

(k) Air emission standards [40 CFR 261.200]

The remanufacturer or other person that stores or treats the hazardous secondary material shall manage all hazardous secondary material placed in a tank in accordance with the applicable requirements of paragraphs (27), (28) and (29) of this rule.

(11) – (12) Reserved

(13) Emergency Preparedness and Response for Management of Excluded Hazardous Secondary Materials [40 CFR 261 Subpart M]

(a) Applicability [40 CFR 261.400]

The requirements of this paragraph apply to those areas of an entity managing hazardous secondary materials excluded under subpart (1)(d)1(xxiii) and/or (xxiv) of this rule where hazardous secondary materials are generated or accumulated on site.

1. A generator of hazardous secondary material, or an intermediate or reclamation facility operating under a Certificate to Operate under part (4)(b)2 of Rule 0400-12-01-.01, that accumulates 6000 kg or less of hazardous secondary material at any time must comply with subparagraphs (b) and (c) of this paragraph.

2. A generator of hazardous secondary material, or an intermediate or reclamation facility operating under a Certificate to Operate under part (4)(b)2 of Rule 0400-12-01-.01 that accumulates more than 6000 kg of hazardous secondary material at any time must

comply with subparagraphs (b) and (d) of this paragraph.

(b) Preparedness and prevention [40 CFR 261.410]

1. Maintenance and operation of facility

Facilities generating or accumulating hazardous secondary material must be maintained and operated to minimize the possibility of a fire, explosion, or any unplanned sudden or non-sudden release of hazardous secondary materials or hazardous secondary material constituents to air, soil, or surface water which could threaten human health or the environment.

2. Required equipment

All facilities generating or accumulating hazardous secondary material must be equipped with the following, unless none of the hazards posed by hazardous secondary material handled at the facility could require a particular kind of equipment specified below:

- (i) An internal communications or alarm system capable of providing immediate emergency instruction (voice or signal) to facility personnel;
- (ii) A device, such as a telephone (immediately available at the scene of operations) or a hand-held two-way radio, capable of summoning emergency assistance from local police departments, fire departments, or state or local emergency response teams;
- (iii) Portable fire extinguishers, fire control equipment (including special extinguishing equipment, such as that using foam, inert gas, or dry chemicals), spill control equipment, and decontamination equipment; and
- (iv) Water at adequate volume and pressure to supply water hose streams, or foam producing equipment, or automatic sprinklers, or water spray systems.

3. Testing and maintenance of equipment

All facility communications or alarm systems, fire protection equipment, spill control equipment, and decontamination equipment, where required, must be tested and maintained as necessary to assure its proper operation in time of emergency.

4. Access to communications or alarm system

- (i) Whenever hazardous secondary material is being poured, mixed, spread, or otherwise handled, all personnel involved in the operation must have immediate access to an internal alarm or emergency communication device, either directly or through visual or voice contact with another employee, unless such a device is not required under part 2 of this subparagraph.
- (ii) If there is ever just one employee on the premises while the facility is operating, he must have immediate access to a device, such as a telephone (immediately available at the scene of operation) or a hand-held two-way radio, capable of summoning external emergency assistance, unless such a device is not required under part 2 of this subparagraph.

5. Required aisle space

The hazardous secondary material generator or intermediate or reclamation facility operating under a Certificate to Operate under part (4)(b)2 of Rule 0400-12-01-.01 must maintain aisle space to allow the unobstructed movement of personnel, fire protection equipment, spill control equipment, and decontamination equipment to any area of facility operation in an emergency, unless aisle space is not needed for any of these purposes.

6. Arrangements with local authorities

(i) The hazardous secondary material generator or an intermediate or reclamation facility operating under a Certificate to Operate under part (4)(b)2 of Rule 0400-12-01-.01 must attempt to make the following arrangements, as appropriate for the type of waste handled at his facility and the potential need for the services of these organizations:

(I) Arrangements to familiarize police, fire departments, and emergency response teams with the layout of the facility, properties of hazardous secondary material handled at the facility and associated hazards, places where facility personnel would normally be working, entrances to roads inside the facility, and possible evacuation routes;

(II) Where more than one police and fire department might respond to an emergency, agreements designating primary emergency authority to a specific police and a specific fire department, and agreements with any others to provide support to the primary emergency authority;

(III) Agreements with state emergency response teams, emergency response contractors, and equipment suppliers; and

(IV) Arrangements to familiarize local hospitals with the properties of hazardous waste handled at the facility and the types of injuries or illnesses which could result from fires, explosions, or releases at the facility.

(ii) Where state or local authorities decline to enter into such arrangements, the hazardous secondary material generator or an intermediate or reclamation facility operating under a Certificate to Operate under part (4)(b)2 of Rule 0400-12-01-.01 must document the refusal in the operating record.

(c) Emergency procedures for facilities generating or accumulating 6000 kg or less of hazardous secondary material [40 CFR 261.411]

A generator or an intermediate or reclamation facility operating under a Certificate to Operate under part (4)(b)2 of Rule 0400-12-01-.01 that generates or accumulates 6000 kg or less of hazardous secondary material must comply with the following requirements:

1. At all times there must be at least one employee either on the premises or on call (i.e., available to respond to an emergency by reaching the facility within a short period of time) with the responsibility for coordinating all emergency response measures specified in part 4 of this subparagraph. This employee is the emergency coordinator.

2. The generator or intermediate or reclamation facility operating under a Certificate to Operate under part (4)(b)2 of Rule 0400-12-01-.01 must post the following information next to the telephone:

(i) The name and telephone number of the emergency coordinator;

(ii) Location of fire extinguishers and spill control material, and, if present, fire alarm; and

(iii) The telephone number of the fire department, unless the facility has a direct alarm.

3. The generator or an intermediate or reclamation facility operating under a Certificate to Operate under part (4)(b)2 of Rule 0400-12-01-.01 must ensure that all employees are thoroughly familiar with proper waste handling and emergency procedures, relevant to

their responsibilities during normal facility operations and emergencies.

4. The emergency coordinator or his designee must respond to any emergencies that arise. The applicable responses are as follows:

(i) In the event of a fire, call the fire department or attempt to extinguish it using a fire extinguisher;

(ii) In the event of a spill, contain the flow of hazardous waste to the extent possible, and as soon as is practicable, clean up the hazardous waste and any contaminated materials or soil;

(iii) In the event of a fire, explosion, or other release which could threaten human health outside the facility or when the generator or an intermediate or reclamation facility operating under a Certificate to Operate under part (4)(b)2 of Rule 0400-12-01-.01 has knowledge that a spill has reached surface water, the generator or an intermediate or reclamation facility operating under a Certificate to Operate under part (4)(b)2 of Rule 0400-12-01-.01 must immediately notify the National Response Center (using their 24-hour toll free number 800/424-8802). The report must include the following information:

(I) The name, address, and U.S. EPA Identification Number of the facility;

(II) Date, time, and type of incident (e.g., spill or fire);

(III) Quantity and type of hazardous waste involved in the incident;

(IV) Extent of injuries, if any; and

(V) Estimated quantity and disposition of recovered materials, if any.

(d) Contingency planning and emergency procedures for facilities generating or accumulating more than 6000 kg of hazardous secondary material [40 CFR 261.420]

A generator or an intermediate or reclamation facility operating under a Certificate to Operate under part (4)(b)2 of Rule 0400-12-01-.01 that generates or accumulates more than 6000 kg of hazardous secondary material must comply with the following requirements:

1. Purpose and implementation of contingency plan

(i) Each generator or an intermediate or reclamation facility operating under a Certificate to Operate under part (4)(b)2 of Rule 0400-12-01-.01 that accumulates more than 6000 kg of hazardous secondary material must have a contingency plan for his facility. The contingency plan must be designed to minimize hazards to human health or the environment from fires, explosions, or any unplanned sudden or non-sudden release of hazardous secondary material or hazardous secondary material constituents to air, soil, or surface water.

(ii) The provisions of the plan must be carried out immediately whenever there is a fire, explosion, or release of hazardous secondary material or hazardous secondary material constituents which could threaten human health or the environment.

2. Content of contingency plan

(i) The contingency plan must describe the actions facility personnel must take to comply with parts 1 and 6 of this subparagraph in response to fires, explosions, or any unplanned sudden or non-sudden release of hazardous secondary material or hazardous secondary material constituents to air, soil, or surface water at the facility.

- (ii) If the generator or an intermediate or reclamation facility operating under a Certificate to Operate under part (4)(b)2 of Rule 0400-12-01-.01 accumulating more than 6000 kg of hazardous secondary material has already prepared a Spill Prevention, Control, and Countermeasures (SPCC) Plan in accordance with 40 CFR part 112, or some other emergency or contingency plan, he need only amend that plan to incorporate hazardous waste management provisions that are sufficient to comply with the requirements of this rule. The hazardous secondary material generator or an intermediate or reclamation facility operating under a Certificate to Operate under part (4)(b)2 of Rule 0400-12-01-.01 may develop one contingency plan which meets all regulatory requirements. The Department recommends that the plan be based on the National Response Team's Integrated Contingency Plan Guidance ("One Plan"). When modifications are made to non-Rule Chapter 0400-12-01 provisions in an integrated contingency plan, the changes do not trigger the need for a permit modification under Rule 0400-12-01-.07.
- (iii) The plan must describe arrangements agreed to by local police departments, fire departments, hospitals, contractors, and state and local emergency response teams to coordinate emergency services, pursuant to part (b)6 of this paragraph.
- (iv) The plan must list names, addresses, and phone numbers (office and home) of all persons qualified to act as emergency coordinator (see part 5 of this subparagraph), and this list must be kept up-to-date. Where more than one person is listed, one must be named as primary emergency coordinator and others must be listed in the order in which they will assume responsibility as alternates.
- (v) The plan must include a list of all emergency equipment at the facility (such as fire extinguishing systems, spill control equipment, communications and alarm systems (internal and external), and decontamination equipment), where this equipment is required. This list must be kept up to date. In addition, the plan must include the location and a physical description of each item on the list, and a brief outline of its capabilities.
- (vi) The plan must include an evacuation plan for facility personnel where there is a possibility that evacuation could be necessary. This plan must describe signal(s) to be used to begin evacuation, evacuation routes, and alternate evacuation routes (in cases where the primary routes could be blocked by releases of hazardous waste or fires).

3. Copies of contingency plan

A copy of the contingency plan and all revisions to the plan must be:

- (i) Maintained at the facility; and
- (ii) Submitted to all local police departments, fire departments, hospitals, and state and local emergency response teams that may be called upon to provide emergency services.

4. Amendment of contingency plan

The contingency plan must be reviewed, and immediately amended, if necessary, whenever:

- (i) Applicable rules are revised;
- (ii) The plan fails in an emergency;

(iii) The facility changes--in its design, construction, operation, maintenance, or other circumstances--in a way that materially increases the potential for fires, explosions, or releases of hazardous secondary material or hazardous secondary material constituents, or changes the response necessary in an emergency;

(iv) The list of emergency coordinators changes; or

(v) The list of emergency equipment changes.

5. Emergency coordinator

At all times, there must be at least one employee either on the facility premises or on call (i.e., available to respond to an emergency by reaching the facility within a short period of time) with the responsibility for coordinating all emergency response measures. This emergency coordinator must be thoroughly familiar with all aspects of the facility's contingency plan, all operations and activities at the facility, the location and characteristics of waste handled, the location of all records within the facility, and the facility layout. In addition, this person must have the authority to commit the resources needed to carry out the contingency plan. The emergency coordinator's responsibilities are more fully spelled out in part 6 of this subparagraph. Applicable responsibilities for the emergency coordinator vary, depending on factors such as type and variety of hazardous secondary material(s) handled by the facility, and type and complexity of the facility.

6. Emergency procedures

(i) Whenever there is an imminent or actual emergency situation, the emergency coordinator (or his designee when the emergency coordinator is on call) must immediately:

(I) Activate internal facility alarms or communication systems, where applicable, to notify all facility personnel; and

(II) Notify appropriate state or local agencies with designated response roles if their help is needed.

(ii) Whenever there is a release, fire, or explosion, the emergency coordinator must immediately identify the character, exact source, amount, and areal extent of any released materials. He may do this by observation or review of facility records or manifests and, if necessary, by chemical analysis.

(iii) Concurrently, the emergency coordinator must assess possible hazards to human health or the environment that may result from the release, fire, or explosion. This assessment must consider both direct and indirect effects of the release, fire, or explosion (e.g., the effects of any toxic, irritating, or asphyxiating gases that are generated, or the effects of any hazardous surface water run-offs from water or chemical agents used to control fire and heat-induced explosions).

(iv) If the emergency coordinator determines that the facility has had a release, fire, or explosion which could threaten human health, or the environment, outside the facility, he must report his findings as follows:

(I) If his assessment indicates that evacuation of local areas may be advisable, he must immediately notify appropriate local authorities. He must be available to help appropriate officials decide whether local areas should be evacuated; and

(II) He must immediately notify either the government official designated as the on-scene coordinator for that geographical area, or the National Response Center (using their 24-hour toll free number 800/424-8802).

The report must include:

- I. Name and telephone number of reporter;
- II. Name and address of facility;
- III. Time and type of incident (e.g., release, fire);
- IV. Name and quantity of material(s) involved, to the extent known;
- V. The extent of injuries, if any; and
- VI. The possible hazards to human health, or the environment, outside the facility.

- (v) During an emergency, the emergency coordinator must take all reasonable measures necessary to ensure that fires, explosions, and releases do not occur, recur, or spread to other hazardous secondary material at the facility. These measures must include, where applicable, stopping processes and operations, collecting and containing released material, and removing or isolating containers.
- (vi) If the facility stops operations in response to a fire, explosion or release, the emergency coordinator must monitor for leaks, pressure buildup, gas generation, or ruptures in valves, pipes, or other equipment, wherever this is appropriate.
- (vii) Immediately after an emergency, the emergency coordinator must provide for treating, storing, or disposing of recovered secondary material, contaminated soil or surface water, or any other material that results from a release, fire, or explosion at the facility. Unless the hazardous secondary material generator can demonstrate, in accordance with part (1)(c)3 or part (1)(c)4 of this rule, that the recovered material is not a hazardous waste, the owner or operator becomes a generator of hazardous waste and must manage it in accordance with all applicable requirements of Rules 0400-12-01-.03, 0400-12-01-.04 and 0400-12-01-.05.
- (viii) The emergency coordinator must ensure that, in the affected area(s) of the facility:
 - (I) No secondary material that may be incompatible with the released material is treated, stored, or disposed of until cleanup procedures are completed; and
 - (ii) All emergency equipment listed in the contingency plan is cleaned and fit for its intended use before operations are resumed.
- (ix) The hazardous secondary material generator must note in the operating record the time, date, and details of any incident that requires implementing the contingency plan. Within 15 days after the incident, he must submit a written report on the incident to the Commissioner. The report must include:
 - (I) Name, address, and telephone number of the hazardous secondary material generator;
 - (II) Name, address, and telephone number of the facility;
 - (III) Date, time, and type of incident (e.g., fire, explosion);
 - (IV) Name and quantity of material(s) involved;
 - (V) The extent of injuries, if any;

- (VI) An assessment of actual or potential hazards to human health or the environment, where this is applicable; and
- (VII) Estimated quantity and disposition of recovered material that resulted from the incident.

(14) – (26) Reserved

(27) Air Emission Standards for Process Vents [40 CFR 261 Subpart AA]

(a) Applicability [40 CFR 261.1030]

This paragraph applies to process vents associated with distillation, fractionation, thin-film evaporation, solvent extraction, or air or stream stripping operations that manage hazardous secondary materials excluded under the remanufacturing exclusion at (1)(d)1(xxvii) of this rule with concentrations of at least 10 ppmw, unless the process vents are equipped with operating air emission controls in accordance with the requirements of an applicable rule under the Tennessee Air Quality Act and Rule Division 1200-03 or Rule Division 0400-30.

(b) Definitions [40 CFR 261.1031]

As used in this paragraph, all terms not defined herein shall have the meaning given them in the Tennessee Hazardous Waste Management Act and subparagraph (2)(a) of Rule 0400-12-01-.01.

"Air stripping operation" is a desorption operation employed to transfer one or more volatile components from a liquid mixture into a gas (air) either with or without the application of heat to the liquid. Packed towers, spray towers, and bubble-cap, sieve, or valve-type plate towers are among the process configurations used for contacting the air and a liquid.

"Bottoms receiver" means a container or tank used to receive and collect the heavier bottoms fractions of the distillation feed stream that remain in the liquid phase.

"Closed-vent system" means a system that is not open to the atmosphere and that is composed of piping, connections, and, if necessary, flow-inducing devices that transport gas or vapor from a piece or pieces of equipment to a control device.

"Condenser" means a heat-transfer device that reduces a thermodynamic fluid from its vapor phase to its liquid phase.

"Connector" means flanged, screwed, welded, or other joined fittings used to connect two pipelines or a pipeline and a piece of equipment. For the purposes of reporting and recordkeeping, connector means flanged fittings that are not covered by insulation or other materials that prevent location of the fittings.

"Continuous recorder" means a data-recording device recording an instantaneous data value at least once every 15 minutes.

"Control device" means an enclosed combustion device, vapor recovery system, or flare. Any device the primary function of which is the recovery or capture of solvents or other organics for use, reuse, or sale (e.g., a primary condenser on a solvent recovery unit) is not a control device.

"Control device shutdown" means the cessation of operation of a control device for any purpose.

"Distillate receiver" means a container or tank used to receive and collect liquid material (condensed) from the overhead condenser of a distillation unit and from which the condensed liquid is pumped to larger storage tanks or other process units.

"Distillation operation" means an operation, either batch or continuous, separating one or more feed stream(s) into two or more exit streams, each exit stream having component concentrations

different from those in the feed stream(s). The separation is achieved by the redistribution of the components between the liquid and vapor phase as they approach equilibrium within the distillation unit.

"Double block and bleed system" means two block valves connected in series with a bleed valve or line that can vent the line between the two block valves.

"Equipment" means each valve, pump, compressor, pressure relief device, sampling connection system, open-ended valve or line, or flange or other connector, and any control devices or systems required by this paragraph.

"Flame zone" means the portion of the combustion chamber in a boiler occupied by the flame envelope.

"Flow indicator" means a device that indicates whether gas flow is present in a vent stream.

"First attempt at repair" means to take rapid action for the purpose of stopping or reducing leakage of organic material to the atmosphere using best practices.

"Fractionation operation" means a distillation operation or method used to separate a mixture of several volatile components of different boiling points in successive stages, each stage removing from the mixture some proportion of one of the components.

"Hazardous secondary material management unit shutdown" means a work practice or operational procedure that stops operation of a hazardous secondary material management unit or part of a hazardous secondary material management unit. An unscheduled work practice or operational procedure that stops operation of a hazardous secondary material management unit or part of a hazardous secondary material management unit for less than 24 hours is not a hazardous secondary material management unit shutdown. The use of spare equipment and technically feasible bypassing of equipment without stopping operation are not hazardous secondary material management unit shutdowns.

"Hot well" means a container for collecting condensate as in a steam condenser serving a vacuum-jet or steam-jet ejector.

"In gas/vapor service" means that the piece of equipment contains or contacts a hazardous secondary material stream that is in the gaseous state at operating conditions.

"In heavy liquid service" means that the piece of equipment is not in gas/vapor service or in light liquid service.

"In light liquid service" means that the piece of equipment contains or contacts a material stream where the vapor pressure of one or more of the organic components in the stream is greater than 0.3 kilopascals (kPa) at 20°C, the total concentration of the pure organic components having a vapor pressure greater than 0.3 kilopascals (kPa) at 20°C is equal to or greater than 20 percent by weight, and the fluid is a liquid at operating conditions.

"In situ sampling systems" means nonextractive samplers or in-line samplers.

"In vacuum service" means that equipment is operating at an internal pressure that is at least 5 kPa below ambient pressure.

"Malfunction" means any sudden failure of a control device or a hazardous secondary material management unit or failure of a hazardous secondary material management unit to operate in a normal or usual manner, so that organic emissions are increased.

"Open-ended valve or line" means any valve, except pressure relief valves, having one side of the valve seat in contact with hazardous secondary material and one side open to the atmosphere, either directly or through open piping.

"Pressure release" means the emission of materials resulting from the system pressure being greater than the set pressure of the pressure relief device.

"Process heater" means a device that transfers heat liberated by burning fuel to fluids contained in tubes, including all fluids except water that are heated to produce steam.

"Process vent" means any open-ended pipe or stack that is vented to the atmosphere either directly, through a vacuum-producing system, or through a tank (e.g., distillate receiver, condenser, bottoms receiver, surge control tank, separator tank, or hot well) associated with hazardous secondary material distillation, fractionation, thin-film evaporation, solvent extraction, or air or steam stripping operations.

"Repaired" means that equipment is adjusted, or otherwise altered, to eliminate a leak.

"Sampling connection system" means an assembly of equipment within a process or material management unit used during periods of representative operation to take samples of the process or material fluid. Equipment used to take non-routine grab samples is not considered a sampling connection system.

"Sensor" means a device that measures a physical quantity or the change in a physical quantity, such as temperature, pressure, flow rate, pH, or liquid level.

"Separator tank" means a device used for separation of two immiscible liquids.

"Solvent extraction operation" means an operation or method of separation in which a solid or solution is contacted with a liquid solvent (the two being mutually insoluble) to preferentially dissolve and transfer one or more components into the solvent.

"Startup" means the setting in operation of a hazardous secondary material management unit or control device for any purpose.

"Steam stripping operation" means a distillation operation in which vaporization of the volatile constituents of a liquid mixture takes place by the introduction of steam directly into the charge.

"Surge control tank" means a large-sized pipe or storage reservoir sufficient to contain the surging liquid discharge of the process tank to which it is connected.

"Thin-film evaporation operation" means a distillation operation that employs a heating surface consisting of a large diameter tube that may be either straight or tapered, horizontal or vertical. Liquid is spread on the tube wall by a rotating assembly of blades that maintain a close clearance from the wall or actually ride on the film of liquid on the wall.

"Vapor incinerator" means any enclosed combustion device that is used for destroying organic compounds and does not extract energy in the form of steam or process heat.

"Vented" means discharged through an opening, typically an open-ended pipe or stack, allowing the passage of a stream of liquids, gases, or fumes into the atmosphere. The passage of liquids, gases, or fumes is caused by mechanical means such as compressors or vacuum-producing systems or by process-related means such as evaporation produced by heating and not caused by tank loading and unloading (working losses) or by natural means such as diurnal temperature changes.

(c) Standards: Process vents [40 CFR 261.1032]

1. The remanufacturer or other person that stores or treats hazardous secondary materials in hazardous secondary material management units with process vents associated with distillation, fractionation, thin-film evaporation, solvent extraction, or air or steam stripping operations managing hazardous secondary material with organic concentrations of at least 10 ppmw shall either:

- (i) Reduce total organic emissions from all affected process vents at the facility below 1.4 kg/h (3 lb/h) and 2.8 Mg/yr (3.1 tons/yr); or
- (ii) Reduce, by use of a control device, total organic emissions from all affected process vents at the facility by 95 weight percent.

- 2. If the remanufacturer or other person that stores or treats the hazardous secondary material installs a closed-vent system and control device to comply with the provisions of part 1 of this subparagraph the closed-vent system and control device must meet the requirements of subparagraph (d) of this paragraph.
- 3. Determinations of vent emissions and emission reductions or total organic compound concentrations achieved by add-on control devices may be based on engineering calculations or performance tests. If performance tests are used to determine vent emissions, emission reductions, or total organic compound concentrations achieved by add-on control devices, the performance tests must conform with the requirements of part (e)3 of this paragraph.
- 4. When a remanufacturer or other person that stores or treats the hazardous secondary material and the Commissioner do not agree on determinations of vent emissions and/or emission reductions or total organic compound concentrations achieved by add-on control devices based on engineering calculations, the procedures in part (e)3 of this paragraph shall be used to resolve the disagreement.

(d) Standards: Closed-vent systems and control devices [40 CFR 261.1033]

- 1. (i) The remanufacturer or other person that stores or treats the hazardous secondary materials in hazardous secondary material management units using closed-vent systems and control devices used to comply with provisions of this rule shall comply with the provisions of this subparagraph.
- (ii) Reserved
- 2. A control device involving vapor recovery (e.g., a condenser or adsorber) shall be designed and operated to recover the organic vapors vented to it with an efficiency of 95 weight percent or greater unless the total organic emission limits of subpart (c)1(i) of this paragraph for all affected process vents can be attained at an efficiency less than 95 weight percent.
- 3. An enclosed combustion device (e.g., a vapor incinerator, boiler, or process heater) shall be designed and operated to reduce the organic emissions vented to it by 95 weight percent or greater; to achieve a total organic compound concentration of 20 ppmv, expressed as the sum of the actual compounds, not carbon equivalents, on a dry basis corrected to 3 percent oxygen; or to provide a minimum residence time of 0.50 seconds at a minimum temperature of 760°C. If a boiler or process heater is used as the control device, then the vent stream shall be introduced into the flame zone of the boiler or process heater.
- 4. (i) A flare shall be designed for and operated with no visible emissions as determined by the methods specified in subpart 5(i) of this subparagraph, except for periods not to exceed a total of 5 minutes during any 2 consecutive hours.
- (ii) A flare shall be operated with a flame present at all times, as determined by the methods specified in item 6(ii)(III) of this subparagraph.
- (iii) A flare shall be used only if the net heating value of the gas being combusted is 11.2 MJ/scm (300 Btu/scf) or greater if the flare is steam-assisted or air-assisted; or if the net heating value of the gas being combusted is 7.45 MJ/scm (200 Btu/scf) or greater if the flare is nonassisted. The net heating value of the gas being combusted shall be determined by the methods specified in subpart 5(ii) of

this subparagraph.

- (iv) (I) A steam-assisted or nonassisted flare shall be designed for and operated with an exit velocity, as determined by the methods specified in subpart 5(iii) of this subparagraph, less than 18.3 m/s (60 ft/s), except as provided in items (II) and (III) of this subpart.
- (II) A steam-assisted or nonassisted flare designed for and operated with an exit velocity, as determined by the methods specified in subpart 5(iii) of this subparagraph, equal to or greater than 18.3 m/s (60 ft/s) but less than 122 m/s (400 ft/s) is allowed if the net heating value of the gas being combusted is greater than 37.3 MJ/scm (1,000 Btu/scf).
- (III) A steam-assisted or nonassisted flare designed for and operated with an exit velocity, as determined by the methods specified in subpart 5(iii) of this subparagraph, less than the velocity, V_{max} , as determined by the method specified in subpart 5(iv) of this subparagraph and less than 122 m/s (400 ft/s) is allowed.
- (v) An air-assisted flare shall be designed and operated with an exit velocity less than the velocity, V_{max} , as determined by the method specified in subpart 5(v) of this subparagraph.
- (vi) A flare used to comply with this section shall be steam-assisted, air-assisted, or nonassisted.
5. (i) Reference Method 22 in 40 CFR part 60 shall be used to determine the compliance of a flare with the visible emission provisions of this subpart. The observation period is 2 hours and shall be used according to Method 22.
- (ii) The net heating value of the gas being combusted in a flare shall be calculated using the following equation:

$$H_t = K \left[\sum_{i=1}^n C_i H_i \right]$$

where:

H_i = Net heating value of the sample, MJ/scm; where the net enthalpy per mole of offgas is based on combustion at 25 °C and 760 mm Hg, but the standard temperature for determining the volume corresponding to 1 mol is 20 °C;

K = Constant, 1.74×10^{-7} (1/ppm) (g mol/scm) (MJ/kcal) where standard temperature for (g mol/scm) is 20 °C;

C_i = Concentration of sample component i in ppm on a wet basis, as measured for organics by Reference Method 18 in 40 CFR part 60 and measured for hydrogen and carbon monoxide by ASTM D 1946-82 (listed in Rule 0400-12-01-.01(2)(b)); and

H_i = Net heat of combustion of sample component i, kcal/g mol at 25°C and 760 mm Hg. The heats of combustion may be determined using ASTM D 2382-83 (listed in Rule 0400-12-01-.01(2)(b)) if published values are not available or cannot be

calculated.

(iii) The actual exit velocity of a flare shall be determined by dividing the volumetric flow rate (in units of standard temperature and pressure), as determined by Reference Methods 2, 2A, 2C, or 2D in 40 CFR part 60 as appropriate, by the unobstructed (free) cross-sectional area of the flare tip.

(iv) The maximum allowed velocity in m/s, V_{max} , for a flare complying with item 4(iv)(III) of this subparagraph shall be determined by the following equation:

$$\text{Log}_{10}(V_{max}) = (HT + 28.8) \div 31.7$$

Where:

28.8 = Constant,

31.7 = Constant,

HT = The net heating value as determined in subpart (ii) of this part.

(v) The maximum allowed velocity in m/s, V_{max} , for an air-assisted flare shall be determined by the following equation:

$$V_{max} = 8.706 + 0.7084 (HT)$$

Where:

8.706 = Constant,

0.7084 = Constant,

HT = The net heating value as determined in subpart (ii) of this part.

6. The remanufacturer or other person that stores or treats the hazardous secondary material shall monitor and inspect each control device required to comply with this subparagraph to ensure proper operation and maintenance of the control device by implementing the following requirements:

(i) Install, calibrate, maintain, and operate according to the manufacturer's specifications a flow indicator that provides a record of vent stream flow from each affected process vent to the control device at least once every hour. The flow indicator sensor shall be installed in the vent stream at the nearest feasible point to the control device inlet but before the point at which the vent streams are combined.

(ii) Install, calibrate, maintain, and operate according to the manufacturer's specifications a device to continuously monitor control device operation as specified below:

(I) For a thermal vapor incinerator, a temperature monitoring device equipped with a continuous recorder. The device shall have an accuracy of ± 1 percent of the temperature being monitored in $^{\circ}\text{C}$ or ± 0.5 $^{\circ}\text{C}$, whichever is greater. The temperature sensor shall be installed at a location in the combustion chamber downstream of the combustion zone.

(II) For a catalytic vapor incinerator, a temperature monitoring device equipped with a continuous recorder. The device shall be capable of monitoring temperature at two locations and have an accuracy of ± 1 percent of the temperature being monitored in $^{\circ}\text{C}$ or ± 0.5 $^{\circ}\text{C}$, whichever is greater. One temperature sensor shall be installed in the vent stream

at the nearest feasible point to the catalyst bed inlet and a second temperature sensor shall be installed in the vent stream at the nearest feasible point to the catalyst bed outlet.

(III) For a flare, a heat sensing monitoring device equipped with a continuous recorder that indicates the continuous ignition of the pilot flame.

(IV) For a boiler or process heater having a design heat input capacity less than 44 MW, a temperature monitoring device equipped with a continuous recorder. The device shall have an accuracy of ± 1 percent of the temperature being monitored in $^{\circ}\text{C}$ or ± 0.5 $^{\circ}\text{C}$, whichever is greater. The temperature sensor shall be installed at a location in the furnace downstream of the combustion zone.

(V) For a boiler or process heater having a design heat input capacity greater than or equal to 44 MW, a monitoring device equipped with a continuous recorder to measure a parameter(s) that indicates good combustion operating practices are being used.

(VI) For a condenser, either:

I. A monitoring device equipped with a continuous recorder to measure the concentration level of the organic compounds in the exhaust vent stream from the condenser; or

II. A temperature monitoring device equipped with a continuous recorder. The device shall be capable of monitoring temperature with an accuracy of ± 1 percent of the temperature being monitored in degrees Celsius ($^{\circ}\text{C}$) or ± 0.5 $^{\circ}\text{C}$, whichever is greater. The temperature sensor shall be installed at a location in the exhaust vent stream from the condenser exit (i.e., product side).

(VII) For a carbon adsorption system that regenerates the carbon bed directly in the control device such as a fixed-bed carbon adsorber, either:

I. A monitoring device equipped with a continuous recorder to measure the concentration level of the organic compounds in the exhaust vent stream from the carbon bed; or

II. A monitoring device equipped with a continuous recorder to measure a parameter that indicates the carbon bed is regenerated on a regular, predetermined time cycle.

(iii) Inspect the readings from each monitoring device required by subparts (i) and (ii) of this part at least once each operating day to check control device operation and, if necessary, immediately implement the corrective measures necessary to ensure the control device operates in compliance with the requirements of this subparagraph.

7. A remanufacturer or other person that stores or treats hazardous secondary material in a hazardous secondary material management unit using a carbon adsorption system such as a fixed-bed carbon adsorber that regenerates the carbon bed directly onsite in the control device shall replace the existing carbon in the control device with fresh carbon at a regular, predetermined time interval that is no longer than the carbon service life established as a requirement of subitem (f)2(iv)(III)VI of this paragraph.

8. A remanufacturer or other person that stores or treats hazardous secondary material in a hazardous secondary material management unit using a carbon adsorption system such as a carbon canister that does not regenerate the carbon bed directly onsite in the control

device shall replace the existing carbon in the control device with fresh carbon on a regular basis by using one of the following procedures:

- (i) Monitor the concentration level of the organic compounds in the exhaust vent stream from the carbon adsorption system on a regular schedule, and replace the existing carbon with fresh carbon immediately when carbon breakthrough is indicated. The monitoring frequency shall be daily or at an interval no greater than 20 percent of the time required to consume the total carbon working capacity established as a requirement of subitem (f)2(iv)(III)VII of this paragraph, whichever is longer.
 - (ii) Replace the existing carbon with fresh carbon at a regular, predetermined time interval that is less than the design carbon replacement interval established as a requirement of subitem (f)2(iv)(III)VII of this paragraph.
9. An alternative operational or process parameter may be monitored if it can be demonstrated that another parameter will ensure that the control device is operated in conformance with these standards and the control device's design specifications.
10. A remanufacturer or other person that stores or treats hazardous secondary material at an affected facility seeking to comply with the provisions of this rule by using a control device other than a thermal vapor incinerator, catalytic vapor incinerator, flare, boiler, process heater, condenser, or carbon adsorption system is required to develop documentation including sufficient information to describe the control device operation and identify the process parameter or parameters that indicate proper operation and maintenance of the control device.
11. A closed-vent system shall meet either of the following design requirements:
 - (i) A closed-vent system shall be designed to operate with no detectable emissions, as indicated by an instrument reading of less than 500 ppmv above background as determined by the procedure in part (e)2 of this paragraph, and by visual inspections; or
 - (ii) A closed-vent system shall be designed to operate at a pressure below atmospheric pressure. The system shall be equipped with at least one pressure gauge or other pressure measurement device that can be read from a readily accessible location to verify that negative pressure is being maintained in the closed-vent system when the control device is operating.
12. The remanufacturer or other person that stores or treats the hazardous secondary material shall monitor and inspect each closed-vent system required to comply with this subparagraph to ensure proper operation and maintenance of the closed-vent system by implementing the following requirements:
 - (i) Each closed-vent system that is used to comply with subpart 11(i) of this subparagraph shall be inspected and monitored in accordance with the following requirements:
 - (I) An initial leak detection monitoring of the closed-vent system shall be conducted by the remanufacturer or other person that stores or treats the hazardous secondary material on or before the date that the system becomes subject to this subparagraph. The remanufacturer or other person that stores or treats the hazardous secondary material shall monitor the closed-vent system components and connections using the procedures specified in part (e)2 of this paragraph to demonstrate that the closed-vent system operates with no detectable emissions, as indicated by an instrument reading of less than 500 ppmv above background.

- (II) After initial leak detection monitoring required in item (I) of this subpart, the remanufacturer or other person that stores or treats the hazardous secondary material shall inspect and monitor the closed-vent system as follows:
 - I. Closed-vent system joints, seams, or other connections that are permanently or semi-permanently sealed (e.g., a welded joint between two sections of hard piping or a bolted and gasketed ducting flange) shall be visually inspected at least once per year to check for defects that could result in air pollutant emissions. The remanufacturer or other person that stores or treats the hazardous secondary material shall monitor a component or connection using the procedures specified in part (e)2 of this paragraph to demonstrate that it operates with no detectable emissions following any time the component is repaired or replaced (e.g., a section of damaged hard piping is replaced with new hard piping) or the connection is unsealed (e.g., a flange is unbolted).
 - II. Closed-vent system components or connections other than those specified in subitem I of this item shall be monitored annually and at other times as requested by the Commissioner, except as provided for in part 15 of this subparagraph, using the procedures specified in part (e)2 of this paragraph to demonstrate that the components or connections operate with no detectable emissions.
- (III) In the event that a defect or leak is detected, the remanufacturer or other person that stores or treats the hazardous secondary material shall repair the defect or leak in accordance with the requirements of subpart (iii) of part.
- (IV) The remanufacturer or other person that stores or treats the hazardous secondary material shall maintain a record of the inspection and monitoring in accordance with the requirements specified in subparagraph (f) of this paragraph.
- (ii) Each closed-vent system that is used to comply with subpart 11(ii) of this subparagraph shall be inspected and monitored in accordance with the following requirements:
 - (I) The closed-vent system shall be visually inspected by the remanufacturer or other person that stores or treats the hazardous secondary material to check for defects that could result in air pollutant emissions. Defects include, but are not limited to, visible cracks, holes, or gaps in ductwork or piping or loose connections.
 - (II) The remanufacturer or other person that stores or treats the hazardous secondary material shall perform an initial inspection of the closed-vent system on or before the date that the system becomes subject to this subparagraph. Thereafter, the remanufacturer or other person that stores or treats the hazardous secondary material shall perform the inspections at least once every year.
 - (III) In the event that a defect or leak is detected, the remanufacturer or other person that stores or treats the hazardous secondary material shall repair the defect in accordance with the requirements of subpart (iii) of this part.
 - (IV) The remanufacturer or other person that stores or treats the hazardous

secondary material shall maintain a record of the inspection and monitoring in accordance with the requirements specified in subparagraph (f) of this paragraph.

(iii) The remanufacturer or other person that stores or treats the hazardous secondary material shall repair all detected defects as follows:

(I) Detectable emissions, as indicated by visual inspection, or by an instrument reading greater than 500 ppmv above background, shall be controlled as soon as practicable, but not later than 15 calendar days after the emission is detected, except as provided for in item (III) of this subpart.

(II) A first attempt at repair shall be made no later than 5 calendar days after the emission is detected.

(III) Delay of repair of a closed-vent system for which leaks have been detected is allowed if the repair is technically infeasible without a process unit shutdown, or if the remanufacturer or other person that stores or treats the hazardous secondary material determines that emissions resulting from immediate repair would be greater than the fugitive emissions likely to result from delay of repair. Repair of such equipment shall be completed by the end of the next process unit shutdown.

(IV) The remanufacturer or other person that stores or treats the hazardous secondary material shall maintain a record of the defect repair in accordance with the requirements specified in subparagraph (f) of this paragraph.

13. Closed-vent systems and control devices used to comply with provisions of this paragraph shall be operated at all times when emissions may be vented to them.

14. The owner or operator using a carbon adsorption system to control air pollutant emissions shall document that all carbon that is a hazardous waste and that is removed from the control device is managed in one of the following manners, regardless of the average volatile organic concentration of the carbon:

(i) Regenerated or reactivated in a thermal treatment unit that meets one of the following:

(I) The owner or operator of the unit has been issued a final permit under Rule 0400-12-01-.07 which implements the requirements of paragraph (27) of Rule 0400-12-01-.06;

(II) The unit is equipped with and operating air emission controls in accordance with the applicable requirements of either paragraphs (27) and (29) of Rule 0400-12-01-.05 or paragraphs (30) and (32) of Rule 0400-12-01-.06; or

(III) The unit is equipped with and operating air emission controls in accordance with a national emission standard for hazardous air pollutants under 40 CFR part 61 or 40 CFR part 63.

(ii) Incinerated in a hazardous waste incinerator for which the owner or operator either:

(I) Has been issued a final permit under Rule 0400-12-01-.07 which implements the requirements of paragraph (15) of Rule 0400-12-01-.06; or

instrument and the background level is compared with 500 ppm for determining compliance.

3. Performance tests to determine compliance with part (c)1 of this paragraph and with the total organic compound concentration limit of part (d)3 of this paragraph shall comply with the following:

(i) Performance tests to determine total organic compound concentrations and mass flow rates entering and exiting control devices shall be conducted and data reduced in accordance with the following reference methods and calculation procedures:

(I) Method 2 in 40 CFR part 60 for velocity and volumetric flow rate.

(II) Method 18 or Method 25A in 40 CFR part 60, appendix A, for organic content. If Method 25A is used, the organic HAP used as the calibration gas must be the single organic HAP representing the largest percent by volume of the emissions. The use of Method 25A is acceptable if the response from the high-level calibration gas is at least 20 times the standard deviation of the response from the zero calibration gas when the instrument is zeroed on the most sensitive scale.

(III) Each performance test shall consist of three separate runs; each run conducted for at least 1 hour under the conditions that exist when the hazardous secondary material management unit is operating at the highest load or capacity level reasonably expected to occur. For the purpose of determining total organic compound concentrations and mass flow rates, the average of results of all runs shall apply. The average shall be computed on a time-weighted basis.

(IV) Total organic mass flow rates shall be determined by the following equation:

I. For sources utilizing Method 18.

$$E_h = Q_{2sd} \left[\sum_{i=1}^n C_i MW_i \right] (0.0416) (10^{-6})$$

where:

E_h = Total organic mass flow rate, kg/h;

Q_{2sd} = Volumetric flow rate of gases entering or exiting control device, as determined by Method 2, dscm/h;

n = Number of organic compounds in the vent gas;

C_i = Organic concentration in ppm, dry basis, of compound i in the vent gas, as determined by Method 18;

MW_i = Molecular weight of organic compound i in the vent gas, kg/kg-mol;

0.0416 = Conversion factor for molar volume, kg-mol/m³ (@ 293 K and 760 mm Hg);

10^{-6} = Conversion from ppm.

II. For sources utilizing Method 25A.

$$E_h = (Q)(C)(MW)(0.0416)(10^{-6})$$

where:

E_h = Total organic mass flow rate, kg/h;

Q = Volumetric flow rate of gases entering or exiting control device, as determined by Method 2, dscm/h;

C = Organic concentration in ppm, dry basis, as determined by Method 25A;

MW = Molecular weight of propane, 44;

0.0416 = Conversion factor for molar volume, kg-mol/m³ (@ 293 K and 760 mm Hg);

10^{-6} = Conversion from ppm.

(V) The annual total organic emission rate shall be determined by the following equation:

$$E_A = (E_h)(H)$$

where:

E_A = Total organic mass emission rate, kg/y;

E_h = Total organic mass flow rate for the process vent, kg/h;

H = Total annual hours of operations for the affected unit, h.

(VI) Total organic emissions from all affected process vents at the facility shall be determined by summing the hourly total organic mass emission rates (E_h , as determined in item (IV) of this subpart) and by summing the annual total organic mass emission rates (E_A , as determined in item (V) of this subpart) for all affected process vents at the facility.

(ii) The remanufacturer or other person that stores or treats the hazardous secondary material shall record such process information as may be necessary to determine the conditions of the performance tests. Operations during periods of startup, shutdown, and malfunction shall not constitute representative conditions for the purpose of a performance test.

(iii) The remanufacturer or other person that stores or treats the hazardous secondary material at an affected facility shall provide, or cause to be provided, performance testing facilities as follows:

(I) Sampling ports adequate for the test methods specified in subpart (i) of this part.

(II) Safe sampling platform(s).

(III) Safe access to sampling platform(s).

(IV) Utilities for sampling and testing equipment.

(iv) For the purpose of making compliance determinations, the time-weighted average of the results of the three runs shall apply. In the event that a sample is accidentally lost or conditions occur in which one of the three runs must be discontinued because of forced shutdown, failure of an irreplaceable portion of the sample train, extreme meteorological conditions, or other circumstances beyond the remanufacturer's or other person's that stores or treats the hazardous secondary material control, compliance may, upon the Commissioner's approval, be determined using the average of the results of the two other runs.

4. To show that a process vent associated with a hazardous secondary material distillation, fractionation, thin-film evaporation, solvent extraction, or air or steam stripping operation is not subject to the requirements of this subpart, the remanufacturer or other person that stores or treats the hazardous secondary material must make an initial determination that the time-weighted, annual average total organic concentration of the material managed by the hazardous secondary material management unit is less than 10 ppmw using one of the following two methods:

(i) Direct measurement of the organic concentration of the material using the following procedures:

(I) The remanufacturer or other person that stores or treats the hazardous secondary material must take a minimum of four grab samples of material for each material stream managed in the affected unit under process conditions expected to cause the maximum material organic concentration.

(II) For material generated onsite, the grab samples must be collected at a point before the material is exposed to the atmosphere such as in an enclosed pipe or other closed system that is used to transfer the material after generation to the first affected distillation, fractionation, thin-film evaporation, solvent extraction, or air or steam stripping operation. For material generated offsite, the grab samples must be collected at the inlet to the first material management unit that receives the material provided the material has been transferred to the facility in a closed system such as a tank truck and the material is not diluted or mixed with other material.

(III) Each sample shall be analyzed and the total organic concentration of the sample shall be computed using Method 9060A (incorporated by reference under subparagraph (2)(b) of Rule 0400-12-01-.01) of "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," EPA Publication SW-846, or analyzed for its individual organic constituents.

(IV) The arithmetic mean of the results of the analyses of the four samples shall apply for each material stream managed in the unit in determining the time-weighted, annual average total organic concentration of the material. The time-weighted average is to be calculated using the annual quantity of each material stream processed and the mean organic concentration of each material stream managed in the unit.

(ii) Using knowledge of the material to determine that its total organic concentration is less than 10 ppmw. Documentation of the material determination is required. Examples of documentation that shall be used to support a determination under this provision include production process information documenting that no organic compounds are used, information that the material is generated by a process that is identical to a process at the same or another facility that has previously been demonstrated by direct measurement to generate a material

stream having a total organic content less than 10 ppmw, or prior speciation analysis results on the same material stream where it can also be documented that no process changes have occurred since that analysis that could affect the material total organic concentration.

5. The determination that distillation, fractionation, thin-film evaporation, solvent extraction, or air or steam stripping operations manage hazardous secondary materials with time-weighted, annual average total organic concentrations less than 10 ppmw shall be made as follows:

(i) By the effective date that the facility becomes subject to the provisions of this paragraph or by the date when the material is first managed in a hazardous secondary material management unit, whichever is later, and

(ii) For continuously generated material, annually, or

(iii) Whenever there is a change in the material being managed or a change in the process that generates or treats the material.

6. When a remanufacturer or other person that stores or treats the hazardous secondary material and the Commissioner do not agree on whether a distillation, fractionation, thin-film evaporation, solvent extraction, or air or steam stripping operation manages a hazardous secondary material with organic concentrations of at least 10 ppmw based on knowledge of the material, the dispute may be resolved by using direct measurement as specified at subpart 4(i) of this subparagraph.

(f) Recordkeeping requirements [40 CFR 261.1035]

1. (i) Each remanufacturer or other person that stores or treats the hazardous secondary material subject to the provisions of this paragraph shall comply with the recordkeeping requirements of this subparagraph.

(ii) A remanufacturer or other person that stores or treats the hazardous secondary material of more than one hazardous secondary material management unit subject to the provisions of this subpart may comply with the recordkeeping requirements for these hazardous secondary material management units in one recordkeeping system if the system identifies each record by each hazardous secondary material management unit.

2. The remanufacturer or other person that stores or treats the hazardous secondary material must keep the following records on-site:

(i) For facilities that comply with the provisions of subpart (d)1(ii) of this paragraph, an implementation schedule that includes dates by which the closed-vent system and control device will be installed and in operation. The schedule must also include a rationale of why the installation cannot be completed at an earlier date. The implementation schedule must be kept on-site at the facility by the effective date that the facility becomes subject to the provisions of this paragraph.

(ii) Up-to-date documentation of compliance with the process vent standards in subparagraph (c) of this paragraph, including:

(I) Information and data identifying all affected process vents, annual throughput and operating hours of each affected unit, estimated emission rates for each affected vent and for the overall facility (i.e., the total emissions for all affected vents at the facility), and the approximate location within the facility of each affected unit (e.g., identify the hazardous secondary material management units on a facility plot plan).

(II) Information and data supporting determinations of vent emissions and

emission reductions achieved by add-on control devices based on engineering calculations or source tests. For the purpose of determining compliance, determinations of vent emissions and emission reductions must be made using operating parameter values (e.g., temperatures, flow rates, or vent stream organic compounds and concentrations) that represent the conditions that result in maximum organic emissions, such as when the hazardous secondary material management unit is operating at the highest load or capacity level reasonably expected to occur. If the remanufacturer or other person that stores or treats the hazardous secondary material takes any action (e.g., managing a material of different composition or increasing operating hours of affected hazardous secondary material management units) that would result in an increase in total organic emissions from affected process vents at the facility, then a new determination is required.

- (iii) Where a remanufacturer or other person that stores or treats the hazardous secondary material chooses to use test data to determine the organic removal efficiency or total organic compound concentration achieved by the control device, a performance test plan must be developed and include:

 - (I) A description of how it is determined that the planned test is going to be conducted when the hazardous secondary material management unit is operating at the highest load or capacity level reasonably expected to occur. This shall include the estimated or design flow rate and organic content of each vent stream and define the acceptable operating ranges of key process and control device parameters during the test program.
 - (II) A detailed engineering description of the closed-vent system and control device including:

 - I. Manufacturer's name and model number of control device.
 - II. Type of control device.
 - III. Dimensions of the control device.
 - IV. Capacity.
 - V. Construction materials.
 - (III) A detailed description of sampling and monitoring procedures, including sampling and monitoring locations in the system, the equipment to be used, sampling and monitoring frequency, and planned analytical procedures for sample analysis.
- (iv) Documentation of compliance with subparagraph (d) of this paragraph shall include the following information:

 - (I) A list of all information references and sources used in preparing the documentation.
 - (II) Records, including the dates, of each compliance test required by part (d)11 of this paragraph.
 - (III) If engineering calculations are used, a design analysis, specifications, drawings, schematics, and piping and instrumentation diagrams based on the appropriate sections of "APTI Course 415: Control of Gaseous Emissions" (incorporated by reference as specified in subparagraph (2)(b) of Rule 0400-12-01-01) or other engineering texts acceptable to the Commissioner that present basic control device design information.

Documentation provided by the control device manufacturer or vendor that describes the control device design in accordance with subitems I through VII of this item may be used to comply with this requirement. The design analysis shall address the vent stream characteristics and control device operation parameters as specified below.

- I. For a thermal vapor incinerator, the design analysis shall consider the vent stream composition, constituent concentrations, and flow rate. The design analysis shall also establish the design minimum and average temperature in the combustion zone and the combustion zone residence time.
- II. For a catalytic vapor incinerator, the design analysis shall consider the vent stream composition, constituent concentrations, and flow rate. The design analysis shall also establish the design minimum and average temperatures across the catalyst bed inlet and outlet.
- III. For a boiler or process heater, the design analysis shall consider the vent stream composition, constituent concentrations, and flow rate. The design analysis shall also establish the design minimum and average flame zone temperatures, combustion zone residence time, and description of method and location where the vent stream is introduced into the combustion zone.
- IV. For a flare, the design analysis shall consider the vent stream composition, constituent concentrations, and flow rate. The design analysis shall also consider the requirements specified in part (d)4 of this paragraph.
- V. For a condenser, the design analysis shall consider the vent stream composition, constituent concentrations, flow rate, relative humidity, and temperature. The design analysis shall also establish the design outlet organic compound concentration level, design average temperature of the condenser exhaust vent stream, and design average temperatures of the coolant fluid at the condenser inlet and outlet.
- VI. For a carbon adsorption system such as a fixed-bed adsorber that regenerates the carbon bed directly onsite in the control device, the design analysis shall consider the vent stream composition, constituent concentrations, flow rate, relative humidity, and temperature. The design analysis shall also establish the design exhaust vent stream organic compound concentration level, number and capacity of carbon beds, type and working capacity of activated carbon used for carbon beds, design total steam flow over the period of each complete carbon bed regeneration cycle, duration of the carbon bed steaming and cooling/drying cycles, design carbon bed temperature after regeneration, design carbon bed regeneration time, and design service life of carbon.
- VII. For a carbon adsorption system such as a carbon canister that does not regenerate the carbon bed directly onsite in the control device, the design analysis shall consider the vent stream composition, constituent concentrations, flow rate, relative humidity, and temperature. The design analysis shall also establish the design outlet organic concentration level, capacity of carbon bed, type and working capacity of activated carbon used for carbon bed, and design carbon replacement interval

based on the total carbon working capacity of the control device and source operating schedule.

(IV) A statement signed and dated by the remanufacturer or other person that stores or treats the hazardous secondary material certifying that the operating parameters used in the design analysis reasonably represent the conditions that exist when the hazardous secondary material management unit is or would be operating at the highest load or capacity level reasonably expected to occur.

(V) A statement signed and dated by the remanufacturer or other person that stores or treats the hazardous secondary material certifying that the control device is designed to operate at an efficiency of 95 percent or greater unless the total organic concentration limit of part (c)1 of this paragraph is achieved at an efficiency less than 95 weight percent or the total organic emission limits of part (c)1 of this paragraph for affected process vents at the facility can be attained by a control device involving vapor recovery at an efficiency less than 95 weight percent. A statement provided by the control device manufacturer or vendor certifying that the control equipment meets the design specifications may be used to comply with this requirement.

(VI) If performance tests are used to demonstrate compliance, all test results.

3. Design documentation and monitoring, operating, and inspection information for each closed-vent system and control device required to comply with the provisions of this rule shall be recorded and kept up-to-date at the facility. The information shall include:

(i) Description and date of each modification that is made to the closed-vent system or control device design.

(ii) Identification of operating parameter, description of monitoring device, and diagram of monitoring sensor location or locations used to comply with subparts (d)6(i) and (ii) of this paragraph.

(iii) Monitoring, operating, and inspection information required by part (d)6 through 11 of this paragraph.

(iv) Date, time, and duration of each period that occurs while the control device is operating when any monitored parameter exceeds the value established in the control device design analysis as specified below:

(I) For a thermal vapor incinerator designed to operate with a minimum residence time of 0.50 second at a minimum temperature of 760°C, period when the combustion temperature is below 760°C.

(II) For a thermal vapor incinerator designed to operate with an organic emission reduction efficiency of 95 weight percent or greater, period when the combustion zone temperature is more than 28°C below the design average combustion zone temperature established as a requirement of subitem 2(iv)(III) of this subparagraph.

(III) For a catalytic vapor incinerator, period when:

I. Temperature of the vent stream at the catalyst bed inlet is more than 28°C below the average temperature of the inlet vent stream established as a requirement of subitem 2(iv)(III) of this subparagraph; or

II. Temperature difference across the catalyst bed is less than 80

percent of the design average temperature difference established as a requirement of subitem 2(iv)(III)II.

(IV) For a boiler or process heater, period when:

I. Flame zone temperature is more than 28°C below the design average flame zone temperature established as a requirement subitem 2(iv)(III)III of this subparagraph; or

II. Position changes where the vent stream is introduced to the combustion zone from the location established as a requirement of subitem 2(iv)(III)III of this subparagraph.

(V) For a flare, period when the pilot flame is not ignited.

(VI) For a condenser that complies with subitem (d)6(ii)(VI)I of this paragraph, period when the organic compound concentration level or readings of organic compounds in the exhaust vent stream from the condenser are more than 20 percent greater than the design outlet organic compound concentration level established as a requirement of subitem 2(iv)(III)V of this subparagraph.

(VII) For a condenser that complies with subitem (d)6(ii)(VI)II of this paragraph, period when:

I. Temperature of the exhaust vent stream from the condenser is more than 6°C above the design average exhaust vent stream temperature established as a requirement of subitem 2(iv)(III)V of this subparagraph; or

II. Temperature of the coolant fluid exiting the condenser is more than 6°C above the design average coolant fluid temperature at the condenser outlet established as a requirement of subitem 2(iv)(III)V of this subparagraph.

(VIII) For a carbon adsorption system such as a fixed-bed carbon adsorber that regenerates the carbon bed directly on-site in the control device and complies with subitem (d)6(ii)(VII)I of this paragraph, period when the organic compound concentration level or readings of organic compounds in the exhaust vent stream from the carbon bed are more than 20 percent greater than the design exhaust vent stream organic compound concentration level established as a requirement of subitem 2(iv)(III)VI of this subparagraph.

(IX) For a carbon adsorption system such as a fixed-bed carbon adsorber that regenerates the carbon bed directly on-site in the control device and complies with subitem (d)6(ii)(VII)II of this paragraph, period when the vent stream continues to flow through the control device beyond the predetermined carbon bed regeneration time established as a requirement of subitem 2(iv)(III)VI of this subparagraph.

(v) Explanation for each period recorded under subpart (iv) of this part of the cause for control device operating parameter exceeding the design value and the measures implemented to correct the control device operation.

(vi) For a carbon adsorption system operated subject to requirements specified in part (d)7 or subpart (d)8(ii) of this paragraph, date when existing carbon in the control device is replaced with fresh carbon.

(vii) For a carbon adsorption system operated subject to requirements specified in

subpart (d)8(i) of this paragraph, a log that records:

- (I) Date and time when control device is monitored for carbon breakthrough and the monitoring device reading.
- (II) Date when existing carbon in the control device is replaced with fresh carbon.
- (viii) Date of each control device startup and shutdown.
- (ix) A remanufacturer or other person that stores or treats the hazardous secondary material designating any components of a closed-vent system as unsafe to monitor pursuant to part (d)15 of this paragraph shall record in a log that is kept at the facility the identification of closed-vent system components that are designated as unsafe to monitor in accordance with the requirements of part (d)15 of this paragraph, an explanation for each closed-vent system component stating why the closed-vent system component is unsafe to monitor, and the plan for monitoring each closed-vent system component.
- (x) When each leak is detected as specified in part (d)12 of this paragraph, the following information shall be recorded:
 - (I) The instrument identification number, the closed-vent system component identification number, and the operator name, initials, or identification number.
 - (II) The date the leak was detected and the date of first attempt to repair the leak.
 - (III) The date of successful repair of the leak.
 - (IV) Maximum instrument reading measured by Method 21 of 40 CFR part 60, appendix A after it is successfully repaired or determined to be nonreparable.
 - (V) "Repair delayed" and the reason for the delay if a leak is not repaired within 15 calendar days after discovery of the leak.
 - I. The remanufacturer or other person that stores or treats the hazardous secondary material may develop a written procedure that identifies the conditions that justify a delay of repair. In such cases, reasons for delay of repair may be documented by citing the relevant sections of the written procedure.
 - II. If delay of repair was caused by depletion of stocked parts, there must be documentation that the spare parts were sufficiently stocked on-site before depletion and the reason for depletion.
- 4. Records of the monitoring, operating, and inspection information required by subparts 3(iii) through (x) of this subparagraph shall be maintained by the owner or operator for at least 3 years following the date of each occurrence, measurement, maintenance, corrective action, or record.
- 5. For a control device other than a thermal vapor incinerator, catalytic vapor incinerator, flare, boiler, process heater, condenser, or carbon adsorption system, the Commissioner will specify the appropriate recordkeeping requirements.
- 6. Up-to-date information and data used to determine whether or not a process vent is subject to the requirements in subparagraph (c) of this paragraph including supporting documentation as required by subpart (e)4(ii) of this paragraph when application of the

knowledge of the nature of the hazardous secondary material stream or the process by which it was produced is used, shall be recorded in a log that is kept at the facility.

(g) through (t) Reserved [40 CFR 261.1036-261.1049]

(28) Air Emission Standards for Equipment Leaks [40 CFR 261 -- Subpart BB]

(a) Applicability. [40 CFR 261.1050]

1. This paragraph applies to equipment that contains hazardous secondary materials excluded under the remanufacturing exclusion at subpart (1)(d)1(xxvii) of this rule, unless the equipment operations are subject to the requirements of an applicable Clean Air Act regulation codified under 40 CFR part 60, part 61, or part 63.

2. Reserved

(b) Definitions [40 CFR 261.1051]

As used in this paragraph, all terms shall have the meaning given them in subparagraph (27)(b) of this rule, the Tennessee Hazardous Waste Management Act and subparagraph (2)(a) of Rule 0400-12-01-.01.

(c) Standards: Pumps in light liquid service [40 CFR 261.1052]

1. (i) Each pump in light liquid service shall be monitored monthly to detect leaks by the methods specified in part (n)2 of this paragraph, except as provided in parts 4, 5 and 6 of this subparagraph.

(ii) Each pump in light liquid service shall be checked by visual inspection each calendar week for indications of liquids dripping from the pump seal.

2. (i) If an instrument reading of 10,000 ppm or greater is measured, a leak is detected.

(ii) If there are indications of liquids dripping from the pump seal, a leak is detected.

3. (i) When a leak is detected, it shall be repaired as soon as practicable, but not later than 15 calendar days after it is detected, except as provided in subparagraph (j) of this paragraph.

(ii) A first attempt at repair (e.g., tightening the packing gland) shall be made no later than 5 calendar days after each leak is detected.

4. Each pump equipped with a dual mechanical seal system that includes a barrier fluid system is exempt from the requirements of part 1 of this subparagraph, provided the following requirements are met:

(i) Each dual mechanical seal system must be:

(I) Operated with the barrier fluid at a pressure that is at all times greater than the pump stuffing box pressure;

(II) Equipped with a barrier fluid degassing reservoir that is connected by a closed-vent system to a control device that complies with the requirements of subparagraph (k) of this paragraph; or

(III) Equipped with a system that purges the barrier fluid into a hazardous secondary material stream with no detectable emissions to the atmosphere.

- (ii) The barrier fluid system must not be a hazardous secondary material with organic concentrations 10 percent or greater by weight.
- (iii) Each barrier fluid system must be equipped with a sensor that will detect failure of the seal system, the barrier fluid system, or both.
- (iv) Each pump must be checked by visual inspection, each calendar week, for indications of liquids dripping from the pump seals.
- (v) (I) Each sensor as described in subpart (iii) of this part must be checked daily or be equipped with an audible alarm that must be checked monthly to ensure that it is functioning properly.
- (II) The remanufacturer or other person that stores or treats the hazardous secondary material must determine, based on design considerations and operating experience, a criterion that indicates failure of the seal system, the barrier fluid system, or both.
- (vi) (I) If there are indications of liquids dripping from the pump seal or the sensor indicates failure of the seal system, the barrier fluid system, or both based on the criterion determined in item (v)(II) of this part, a leak is detected.
- (II) When a leak is detected, it shall be repaired as soon as practicable, but not later than 15 calendar days after it is detected, except as provided in subparagraph (j) of this paragraph.
- (III) A first attempt at repair (e.g., relapping the seal) shall be made no later than 5 calendar days after each leak is detected.

5. Any pump that is designated, as described in subpart (o)7(ii) of this paragraph, for no detectable emissions, as indicated by an instrument reading of less than 500 ppm above background, is exempt from the requirements of parts 1, 3 and 4 of this subparagraph if the pump meets the following requirements:

- (i) Must have no externally actuated shaft penetrating the pump housing.
- (ii) Must operate with no detectable emissions as indicated by an instrument reading of less than 500 ppm above background as measured by the methods specified in part (n)3 of this paragraph.
- (iii) Must be tested for compliance with subpart (ii) of this part initially upon designation, annually, and at other times as requested by the Commissioner.

6. If any pump is equipped with a closed-vent system capable of capturing and transporting any leakage from the seal or seals to a control device that complies with the requirements of subparagraph (k) of this paragraph, it is exempt from the requirements of parts 1 through 5 of this subparagraph.

(d) Standards: Compressors [40 CFR 261.1053]

- 1. Each compressor shall be equipped with a seal system that includes a barrier fluid system and that prevents leakage of total organic emissions to the atmosphere, except as provided in parts 8 and 9 of this subparagraph.
- 2. Each compressor seal system as required in part 1 of this subparagraph shall be:
 - (i) Operated with the barrier fluid at a pressure that is at all times greater than the compressor stuffing box pressure;

condition of no detectable emissions, as indicated by an instrument reading of less than 500 ppm above background, as soon as practicable, but no later than 5 calendar days after each pressure release, except as provided in subparagraph (j) of this paragraph.

(ii) No later than 5 calendar days after the pressure release, the pressure relief device shall be monitored to confirm the condition of no detectable emissions, as indicated by an instrument reading of less than 500 ppm above background, as measured by the method specified in part (n)3 of this paragraph.

3. Any pressure relief device that is equipped with a closed-vent system capable of capturing and transporting leakage from the pressure relief device to a control device as described in subparagraph (k) of this paragraph is exempt from the requirements of parts 1 and 2 of this subparagraph.

(f) Standards: Sampling connection systems [40 CFR 261.1055]

1. Each sampling connection system shall be equipped with a closed-purge, closed-loop, or closed-vent system. This system shall collect the sample purge for return to the process or for routing to the appropriate treatment system. Gases displaced during filling of the sample container are not required to be collected or captured.

2. Each closed-purge, closed-loop, or closed-vent system as required in part 1 of this subparagraph shall meet one of the following requirements:

(i) Return the purged process fluid directly to the process line;

(ii) Collect and recycle the purged process fluid; or

(iii) Be designed and operated to capture and transport all the purged process fluid to a material management unit that complies with the applicable requirements of subparagraphs (29)(e) through (g) of this rule or a control device that complies with the requirements of subparagraph (k) of this paragraph.

3. In-situ sampling systems and sampling systems without purges are exempt from the requirements of parts 1 and 2 of this subparagraph.

(g) Standards: Open-ended valves or lines [40 CFR 261.1056]

1. (i) Each open-ended valve or line shall be equipped with a cap, blind flange, plug, or a second valve.

(ii) The cap, blind flange, plug, or second valve shall seal the open end at all times except during operations requiring hazardous secondary material stream flow through the open-ended valve or line.

2. Each open-ended valve or line equipped with a second valve shall be operated in a manner such that the valve on the hazardous secondary material stream end is closed before the second valve is closed.

3. When a double block and bleed system is being used, the bleed valve or line may remain open during operations that require venting the line between the block valves but shall comply with part 1 of this subparagraph at all other times.

(h) Standards: Valves in gas/vapor service or in light liquid service [40 CFR 261.1057]

1. Each valve in gas/vapor or light liquid service shall be monitored monthly to detect leaks by the methods specified in part (n)2 of this paragraph and shall comply with parts 2 through 5 of this subparagraph, except as provided in parts 6, 7 and 8 of this subparagraph and subparagraphs (l) and (m) of this paragraph.

2. If an instrument reading of 10,000 ppm or greater is measured, a leak is detected.
3.
 - (i) Any valve for which a leak is not detected for two successive months may be monitored the first month of every succeeding quarter, beginning with the next quarter, until a leak is detected.
 - (ii) If a leak is detected, the valve shall be monitored monthly until a leak is not detected for two successive months.
4.
 - (i) When a leak is detected, it shall be repaired as soon as practicable, but no later than 15 calendar days after the leak is detected, except as provided in subparagraph (j) of this paragraph.
 - (ii) A first attempt at repair shall be made no later than 5 calendar days after each leak is detected.
5. First attempts at repair include, but are not limited to, the following best practices where practicable:
 - (i) Tightening of bonnet bolts.
 - (ii) Replacement of bonnet bolts.
 - (iii) Tightening of packing gland nuts.
 - (iv) Injection of lubricant into lubricated packing.
6. Any valve that is designated, as described in subpart (o)7(ii) of this paragraph, for no detectable emissions, as indicated by an instrument reading of less than 500 ppm above background, is exempt from the requirements of part 1 of this subparagraph if the valve:
 - (i) Has no external actuating mechanism in contact with the hazardous secondary material stream.
 - (ii) Is operated with emissions less than 500 ppm above background as determined by the method specified in part (n)3 of this paragraph.
 - (iii) Is tested for compliance with subpart 6(ii) of this subparagraph initially upon designation, annually, and at other times as requested by the Commissioner.
7. Any valve that is designated, as described in subpart (o)8(i) of this paragraph, as an unsafe-to-monitor valve is exempt from the requirements of part 1 of this subparagraph if:
 - (i) The remanufacturer or other person that stores or treats the hazardous secondary material determines that the valve is unsafe to monitor because monitoring personnel would be exposed to an immediate danger as a consequence of complying with part 1 of this subparagraph.
 - (ii) The remanufacturer or other person that stores or treats the hazardous secondary material adheres to a written plan that requires monitoring of the valve as frequently as practicable during safe-to-monitor times.
8. Any valve that is designated, as described in subpart (o)8(ii) of this paragraph, as a difficult-to-monitor valve is exempt from the requirements of part 1 of this subparagraph if:
 - (i) The remanufacturer or other person that stores or treats the hazardous secondary material determines that the valve cannot be monitored without elevating the monitoring personnel more than 2 meters above a support surface.

5. Delay of repair beyond a hazardous secondary material management unit shutdown will be allowed for a valve if valve assembly replacement is necessary during the hazardous secondary material management unit shutdown, valve assembly supplies have been depleted, and valve assembly supplies had been sufficiently stocked before the supplies were depleted. Delay of repair beyond the next hazardous secondary material management unit shutdown will not be allowed unless the next hazardous secondary material management unit shutdown occurs sooner than 6 months after the first hazardous secondary material management unit shutdown.

(k) Standards: Closed-vent systems and control devices [40 CFR 261.1060]

1. The remanufacturer or other person that stores or treats the hazardous secondary material in a hazardous secondary material management units using closed-vent systems and control devices subject to this paragraph shall comply with the provisions of subparagraph (27)(d) of this rule.

2. (i) The remanufacturer or other person that stores or treats the hazardous secondary material at an existing facility who cannot install a closed-vent system and control device to comply with the provisions of this paragraph on the effective date that the facility becomes subject to the provisions of this paragraph must prepare an implementation schedule that includes dates by which the closed-vent system and control device will be installed and in operation. The controls must be installed as soon as possible, but the implementation schedule may allow up to 30 months after the effective date that the facility becomes subject to this paragraph for installation and startup.

(ii) Any unit that begins operation after July 13, 2015 and is subject to the provisions of this paragraph when operation begins, must comply with the rules immediately (i.e., must have control devices installed and operating on startup of the affected unit); the 30-month implementation schedule does not apply.

(iii) The remanufacturer or other person that stores or treats the hazardous secondary material at any facility in existence on the effective date of a statutory or regulatory amendment that renders the facility subject to this paragraph shall comply with all requirements of this paragraph as soon as practicable but no later than 30 months after the amendment's effective date. When control equipment required by this paragraph cannot be installed and begin operation by the effective date of the amendment, the facility owner or operator shall prepare an implementation schedule that includes the following information: Specific calendar dates for award of contracts or issuance of purchase orders for the control equipment, initiation of on-site installation of the control equipment, completion of the control equipment installation, and performance of any testing to demonstrate that the installed equipment meets the applicable standards of this paragraph. The remanufacturer or other person that stores or treats the hazardous secondary material shall keep a copy of the implementation schedule at the facility.

(iv) Remanufacturers or other persons that store or treat the hazardous secondary materials at facilities and units already subject to federal law, due to an action other than those described in subpart 2(ii) of this subparagraph must comply with all applicable requirements immediately (i.e., must have control devices installed and operating on the date the facility or unit becomes subject to this subpart; the 30-month implementation schedule does not apply).

(l) Alternative standards for valves in gas/vapor service or in light liquid service: percentage of valves allowed to leak [40 CFR 261.1061]

1. A remanufacturer or other person that stores or treats the hazardous secondary material subject to the requirements of subparagraph (h) of this paragraph may elect to have all

valves within a hazardous secondary material management unit comply with an alternative standard that allows no greater than 2 percent of the valves to leak.

2. The following requirements shall be met if a remanufacturer or other person that stores or treats the hazardous secondary material decides to comply with the alternative standard of allowing 2 percent of valves to leak:

(i) A performance test as specified in part 3 of this subparagraph shall be conducted initially upon designation, annually, and at other times requested by the Commissioner.

(ii) If a valve leak is detected, it shall be repaired in accordance with parts (h)4 and 5 of this paragraph.

3. Performance tests shall be conducted in the following manner:

(i) All valves subject to the requirements in subparagraph (h) of this paragraph within the hazardous secondary material management unit shall be monitored within 1 week by the methods specified in part (n)2 of this paragraph.

(ii) If an instrument reading of 10,000 ppm or greater is measured, a leak is detected.

(iii) The leak percentage shall be determined by dividing the number of valves subject to the requirements in subparagraph (h) of this paragraph for which leaks are detected by the total number of valves subject to the requirements in subparagraph (h) of this paragraph within the hazardous secondary material management unit.

(m) Alternative standards for valves in gas/vapor service or in light liquid service: skip period leak detection and repair [40 CFR 261.1062]

1. A remanufacturer or other person that stores or treats the hazardous secondary material subject to the requirements of subparagraph (h) of this paragraph may elect for all valves within a hazardous secondary material management unit to comply with one of the alternative work practices specified in subparts 2(ii) and (iii) of this subparagraph.

2. (i) A remanufacturer or other person that stores or treats the hazardous secondary material shall comply with the requirements for valves, as described in subparagraph (h) of this paragraph, except as described in subparts (ii) and (iii) of this part.

(ii) After two consecutive quarterly leak detection periods with the percentage of valves leaking equal to or less than 2 percent, a remanufacturer or other person that stores or treats the hazardous secondary material may begin to skip one of the quarterly leak detection periods (i.e., monitor for leaks once every 6 months) for the valves subject to the requirements in subparagraph (h) of this paragraph.

(iii) After 5 consecutive quarterly leak detection periods with the percentage of valves leaking equal to or less than 2 percent, a remanufacturer or other person that stores or treats the hazardous secondary material may begin to skip 3 of the quarterly leak detection periods (i.e., monitor for leaks once every year) for the valves subject to the requirements in subparagraph (h) of this paragraph.

(iv) If the percentage of valves leaking is greater than 2 percent, the remanufacturer or other person that stores or treats the hazardous secondary material shall monitor monthly in compliance with the requirements in subparagraph (h) of this paragraph, but may again elect to use this subparagraph after meeting the requirements of subpart (h)3(i) of this paragraph.

(n) Test methods and procedures [40 CFR 261.1063]

1. Each remanufacturer or other person that stores or treats the hazardous secondary material subject to the provisions of this paragraph shall comply with the test methods and procedures requirements provided in this subparagraph.
2. Leak detection monitoring, as required in subparagraph (c) through (m) of this paragraph, shall comply with the following requirements:
 - (i) Monitoring shall comply with Reference Method 21 in 40 CFR part 60.
 - (ii) The detection instrument shall meet the performance criteria of Reference Method 21.
 - (iii) The instrument shall be calibrated before use on each day of its use by the procedures specified in Reference Method 21.
 - (iv) Calibration gases shall be:
 - (I) Zero air (less than 10 ppm of hydrocarbon in air).
 - (II) A mixture of methane or n-hexane and air at a concentration of approximately, but less than, 10,000 ppm methane or n-hexane.
 - (v) The instrument probe shall be traversed around all potential leak interfaces as close to the interface as possible as described in Reference Method 21.
3. When equipment is tested for compliance with no detectable emissions, as required in (c)5, part (d)9, subparagraph (e) and part (h)6 of this paragraph, the test shall comply with the following requirements:
 - (i) The requirements of subparts 2(i) through (iv) of this subparagraph shall apply.
 - (ii) The background level shall be determined as set forth in Reference Method 21.
 - (iii) The instrument probe shall be traversed around all potential leak interfaces as close to the interface as possible as described in Reference Method 21.
 - (iv) The arithmetic difference between the maximum concentration indicated by the instrument and the background level is compared with 500 ppm for determining compliance.
4. A remanufacturer or other person that stores or treats the hazardous secondary material must determine, for each piece of equipment, whether the equipment contains or contacts a hazardous secondary material with organic concentration that equals or exceeds 10 percent by weight using the following:
 - (i) Methods described in ASTM Methods D 2267-88, E 169-87, E 168-88, E 260-85 (incorporated by reference under subparagraph (2)(b) of Rule 0400-12-01-.01);
 - (ii) Method 9060A (incorporated by reference under subparagraph (2)(b) of Rule 0400-12-01-.01) of "Test Methods for Evaluating Solid Waste," EPA Publication SW-846, for computing total organic concentration of the sample, or analyzed for its individual organic constituents; or
 - (iii) Application of the knowledge of the nature of the hazardous secondary material stream or the process by which it was produced. Documentation of a material determination by knowledge is required. Examples of documentation that shall be used to support a determination under this provision include production process information documenting that no organic compounds are used, information that

the material is generated by a process that is identical to a process at the same or another facility that has previously been demonstrated by direct measurement to have a total organic content less than 10 percent, or prior speciation analysis results on the same material stream where it can also be documented that no process changes have occurred since that analysis that could affect the material total organic concentration.

5. If a remanufacturer or other person that stores or treats the hazardous secondary material determines that a piece of equipment contains or contacts a hazardous secondary material with organic concentrations at least 10 percent by weight, the determination can be revised only after following the procedures in subparts 4(i) or (ii) of this subparagraph.
6. When a remanufacturer or other person that stores or treats the hazardous secondary material and the Commissioner do not agree on whether a piece of equipment contains or contacts a hazardous secondary material with organic concentrations at least 10 percent by weight, the procedures in subparts 4(i) or (ii) of this subparagraph can be used to resolve the dispute.
7. Samples used in determining the percent organic content shall be representative of the highest total organic content hazardous secondary material that is expected to be contained in or contact the equipment.
8. To determine if pumps or valves are in light liquid service, the vapor pressures of constituents may be obtained from standard reference texts or may be determined by ASTM D-2879-86 (incorporated by reference under subparagraph (2)(b) of Rule 0400-12-01-01).
9. Performance tests to determine if a control device achieves 95 weight percent organic emission reduction shall comply with the procedures of subparts (27)(e)3(i) through (iv) of this rule.

(o) Recordkeeping requirements [40 CFR 261.1064]

1. (i) Each remanufacturer or other person that stores or treats the hazardous secondary material subject to the provisions of this paragraph shall comply with the recordkeeping requirements of this subparagraph.
 - (ii) A remanufacturer or other person that stores or treats the hazardous secondary material in more than one hazardous secondary material management unit subject to the provisions of this subpart may comply with the recordkeeping requirements for these hazardous secondary material management units in one recordkeeping system if the system identifies each record by each hazardous secondary material management unit.
2. Remanufacturers and other persons that store or treat the hazardous secondary material must record and keep the following information at the facility:
 - (i) For each piece of equipment to which this paragraph applies:
 - (I) Equipment identification number and hazardous secondary material management unit identification.
 - (II) Approximate locations within the facility (e.g., identify the hazardous secondary material management unit on a facility plot plan).
 - (III) Type of equipment (e.g., a pump or pipeline valve).
 - (IV) Percent-by-weight total organics in the hazardous secondary material stream at the equipment.

- (V) Hazardous secondary material state at the equipment (e.g., gas/vapor or liquid).
 - (VI) Method of compliance with the standard (e.g., "monthly leak detection and repair" or "equipped with dual mechanical seals").
 - (ii) For facilities that comply with the provisions of subpart (27)(d)1(ii) of this rule, an implementation schedule as specified in subpart (27)(d)1(ii) of this rule.
 - (iii) Where a remanufacturer or other person that stores or treats the hazardous secondary material chooses to use test data to demonstrate the organic removal efficiency or total organic compound concentration achieved by the control device, a performance test plan as specified in subpart (27)(f)2(iii) of this rule.
 - (iv) Documentation of compliance with subparagraph (k) of this paragraph, including the detailed design documentation or performance test results specified in subpart (27)(f)2(iv) of this rule.
3. When each leak is detected as specified in subparagraphs (c), (d), (h) and (i) of this paragraph, the following requirements apply:
- (i) A weatherproof and readily visible identification, marked with the equipment identification number, the date evidence of a potential leak was found in accordance with part (i)1 of this paragraph, and the date the leak was detected, shall be attached to the leaking equipment.
 - (ii) The identification on equipment, except on a valve, may be removed after it has been repaired.
 - (iii) The identification on a valve may be removed after it has been monitored for 2 successive months as specified in part (h)3 of this paragraph and no leak has been detected during those two months.
4. When each leak is detected as specified in subparagraphs (c), (d), (h) and (i) of this paragraph, the following information shall be recorded in an inspection log and shall be kept at the facility:
- (i) The instrument and operator identification numbers and the equipment identification number.
 - (ii) The date evidence of a potential leak was found in accordance with part (i)1 of this paragraph.
 - (iii) The date the leak was detected and the dates of each attempt to repair the leak.
 - (iv) Repair methods applied in each attempt to repair the leak.
 - (v) "Above 10,000" if the maximum instrument reading measured by the methods specified in part (n)2 of this paragraph after each repair attempt is equal to or greater than 10,000 ppm.
 - (vi) "Repair delayed" and the reason for the delay if a leak is not repaired within 15 calendar days after discovery of the leak.
 - (vii) Documentation supporting the delay of repair of a valve in compliance with part (i)3 of this paragraph.
 - (viii) The signature of the remanufacturer or other person that stores or treats the hazardous secondary material (or designate) whose decision it was that repair

could not be effected without a hazardous secondary material management unit shutdown.

(ix) The expected date of successful repair of the leak if a leak is not repaired within 15 calendar days.

(x) The date of successful repair of the leak.

5. Design documentation and monitoring, operating, and inspection information for each closed-vent system and control device required to comply with the provisions of subparagraph (k) of this paragraph shall be recorded and kept up-to-date at the facility as specified in part (27)(f)3 of this rule. Design documentation is specified in subparts (27)(f)3(i) and (ii) of this rule and monitoring, operating, and inspection information in subparts (27)(f)3(iii) through (viii) of this rule.

6. For a control device other than a thermal vapor incinerator, catalytic vapor incinerator, flare, boiler, process heater, condenser, or carbon adsorption system, the Commissioner will specify the appropriate recordkeeping requirements.

7. The following information pertaining to all equipment subject to the requirements in subparagraphs (c) through (k) of this paragraph shall be recorded in a log that is kept at the facility:

(i) A list of identification numbers for equipment (except welded fittings) subject to the requirements of this paragraph.

(ii) (I) A list of identification numbers for equipment that the remanufacturer or other person that stores or treats the hazardous secondary material elects to designate for no detectable emissions, as indicated by an instrument reading of less than 500 ppm above background, under the provisions of parts (c)5, (d)9 and (h)6 of this paragraph.

(II) The designation of this equipment as subject to the requirements of parts (c)5, (d)9 and (h)6 of this paragraph shall be signed by the remanufacturer or other person that stores or treats the hazardous secondary material.

(iii) A list of equipment identification numbers for pressure relief devices required to comply with part (e)1 of this paragraph.

(iv) (I) The dates of each compliance test required in part (c)5, part (d)9, subparagraph (e) and part (h)6 of this paragraph.

(II) The background level measured during each compliance test.

(III) The maximum instrument reading measured at the equipment during each compliance test.

(v) A list of identification numbers for equipment in vacuum service.

(vi) Identification, either by list or location (area or group) of equipment that contains or contacts hazardous secondary material with an organic concentration of at least 10 percent by weight for less than 300 hours per calendar year.

8. The following information pertaining to all valves subject to the requirements of parts (h)7 and 8 of this paragraph shall be recorded in a log that is kept at the facility:

(i) A list of identification numbers for valves that are designated as unsafe to monitor, an explanation for each valve stating why the valve is unsafe to monitor, and the plan for monitoring each valve.

- (ii) A list of identification numbers for valves that are designated as difficult to monitor, an explanation for each valve stating why the valve is difficult to monitor, and the planned schedule for monitoring each valve.
9. The following information shall be recorded in a log that is kept at the facility for valves complying with subparagraph (m) of this paragraph:
- (i) A schedule of monitoring.
- (ii) The percent of valves found leaking during each monitoring period.
10. The following information shall be recorded in a log that is kept at in the facility:
- (i) Criteria required in item (c)4(v)(II) and subpart (d)5(ii) of this paragraph and an explanation of the design criteria.
- (ii) Any changes to these criteria and the reasons for the changes.
11. The following information shall be recorded in a log that is kept at the facility for use in determining exemptions as provided in the applicability subparagraph of this paragraph and other specific paragraphs:
- (i) An analysis determining the design capacity of the hazardous secondary material management unit.
- (ii) A statement listing the hazardous secondary material influent to and effluent from each hazardous secondary material management unit subject to the requirements in subparagraphs (c) through (k) of this paragraph and an analysis determining whether these hazardous secondary materials are heavy liquids.
- (iii) An up-to-date analysis and the supporting information and data used to determine whether or not equipment is subject to the requirements in subparagraphs (c) through (k) of this paragraph. The record shall include supporting documentation as required by subpart (n)4(iii) of this paragraph when application of the knowledge of the nature of the hazardous secondary material stream or the process by which it was produced is used. If the remanufacturer or other person that stores or treats the hazardous secondary material takes any action (e.g., changing the process that produced the material) that could result in an increase in the total organic content of the material contained in or contacted by equipment determined not to be subject to the requirements in subparagraphs (c) through (k) of this paragraph, then a new determination is required.
12. Records of the equipment leak information required by part 4 of this subparagraph and the operating information required by part 5 of this subparagraph need be kept only three years.
13. The remanufacturer or other person that stores or treats the hazardous secondary material at a facility with equipment that is subject to this paragraph and to regulations at 40 CFR part 60, part 61, or part 63 may elect to determine compliance with this paragraph either by documentation pursuant to this paragraph, or by documentation of compliance with the regulations at 40 CFR part 60, part 61, or part 63 pursuant to the relevant provisions of the regulations at 40 part 60, part 61, or part 63. The documentation of compliance under regulations at 40 CFR part 60, part 61, or part 63 shall be kept with or made readily available at the facility.

(p) through (dd) Reserved [40 CFR 261.1065-261.1079]

(29) Air Emission Standards for Tanks and Containers [40 CFR 261 -- Subpart CC]

(a) Applicability [40 CFR 261.1080]

1. This paragraph applies to tanks and containers that contain hazardous secondary materials excluded under the remanufacturing exclusion at subpart (1)(d)1(xxvii) of this rule, unless the tanks and containers are equipped with and operating air emission controls in accordance with the requirements of an applicable Clean Air Act regulations codified under 40 CFR part 60, part 61, or part 63.

2. Reserved

(b) Definitions [40 CFR 261.1081]

As used in this subpart, all terms not defined herein shall have the meaning given to them in the Act and Rules 0400-12-01-.01 through 0400-12-01-.06 and 0400-12-01-.09.

"Average volatile organic concentration" or "average VO concentration" means the mass-weighted average volatile organic concentration of a hazardous secondary material as determined in accordance with the requirements of subparagraph (e) of this paragraph.

"Closure device" means a cap, hatch, lid, plug, seal, valve, or other type of fitting that blocks an opening in a cover such that when the device is secured in the closed position it prevents or reduces air pollutant emissions to the atmosphere. Closure devices include devices that are detachable from the cover (e.g., a sampling port cap), manually operated (e.g., a hinged access lid or hatch), or automatically operated (e.g., a spring-loaded pressure relief valve).

"Continuous seal" means a seal that forms a continuous closure that completely covers the space between the edge of the floating roof and the wall of a tank. A continuous seal may be a vapor-mounted seal, liquid-mounted seal, or metallic shoe seal. A continuous seal may be constructed of fastened segments so as to form a continuous seal.

"Cover" means a device that provides a continuous barrier over the hazardous secondary material managed in a unit to prevent or reduce air pollutant emissions to the atmosphere. A cover may have openings (such as access hatches, sampling ports, gauge wells) that are necessary for operation, inspection, maintenance, and repair of the unit on which the cover is used. A cover may be a separate piece of equipment which can be detached and removed from the unit or a cover may be formed by structural features permanently integrated into the design of the unit.

"Empty hazardous secondary material container" means:

1. A container from which all hazardous secondary materials have been removed that can be removed using the practices commonly employed to remove materials from that type of container, e.g., pouring, pumping, and aspirating, and no more than 2.5 centimeters (one inch) of residue remain on the bottom of the container or inner liner;

2. A container that is less than or equal to 119 gallons in size and no more than 3 percent by weight of the total capacity of the container remains in the container or inner liner; or

3. A container that is greater than 119 gallons in size and no more than 0.3 percent by weight of the total capacity of the container remains in the container or inner liner.

"Enclosure" means a structure that surrounds a tank or container, captures organic vapors emitted from the tank or container, and vents the captured vapors through a closed-vent system to a control device.

"External floating roof" means a pontoon-type or double-deck type cover that rests on the surface of the material managed in a tank with no fixed roof.

"Fixed roof" means a cover that is mounted on a unit in a stationary position and does not move with fluctuations in the level of the material managed in the unit.

"Floating membrane cover" means a cover consisting of a synthetic flexible membrane material that rests upon and is supported by the hazardous secondary material being managed in a surface impoundment.

"Floating roof" means a cover consisting of a double deck, pontoon single deck, or internal floating cover which rests upon and is supported by the material being contained, and is equipped with a continuous seal.

"Hard-piping" means pipe or tubing that is manufactured and properly installed in accordance with relevant standards and good engineering practices.

"In light material service" means the container is used to manage a material for which both of the following conditions apply: The vapor pressure of one or more of the organic constituents in the material is greater than 0.3 kilopascals (kPa) at 20 °C; and the total concentration of the pure organic constituents having a vapor pressure greater than 0.3 kPa at 20 °C is equal to or greater than 20 percent by weight.

"Internal floating roof" means a cover that rests or floats on the material surface (but not necessarily in complete contact with it) inside a tank that has a fixed roof.

"Liquid-mounted seal" means a foam or liquid-filled primary seal mounted in contact with the hazardous secondary material between the tank wall and the floating roof continuously around the circumference of the tank.

"Malfunction" means any sudden, infrequent, and not reasonably preventable failure of air pollution control equipment, process equipment, or a process to operate in a normal or usual manner. Failures that are caused in part by poor maintenance or careless operation are not malfunctions.

"Material determination" means performing all applicable procedures in accordance with the requirements of subparagraph (e) of this paragraph to determine whether a hazardous secondary material meets standards specified in this paragraph. Examples of a material determination include performing the procedures in accordance with the requirements of subparagraph (e) of this paragraph to determine the average VO concentration of a hazardous secondary material at the point of material origination; the average VO concentration of a hazardous secondary material at the point of material treatment and comparing the results to the exit concentration limit specified for the process used to treat the hazardous secondary material; the organic reduction efficiency and the organic biodegradation efficiency for a biological process used to treat a hazardous secondary material and comparing the results to the applicable standards; or the maximum volatile organic vapor pressure for a hazardous secondary material in a tank and comparing the results to the applicable standards.

"Maximum organic vapor pressure" means the sum of the individual organic constituent partial pressures exerted by the material contained in a tank, at the maximum vapor pressure-causing conditions (i.e., temperature, agitation, pH effects of combining materials, etc.) reasonably expected to occur in the tank. For the purpose of this paragraph, maximum organic vapor pressure is determined using the procedures specified in part (e)3 of this paragraph.

"Metallic shoe seal" means a continuous seal that is constructed of metal sheets which are held vertically against the wall of the tank by springs, weighted levers, or other mechanisms and is connected to the floating roof by braces or other means. A flexible coated fabric (envelope) spans the annular space between the metal sheet and the floating roof.

"No detectable organic emissions" means no escape of organics to the atmosphere as determined using the procedure specified in part (e)4 of this paragraph.

"Point of material origination" means as follows:

1. When the remanufacturer or other person that stores or treats the hazardous secondary

material is the generator of the hazardous secondary material, the point of material origination means the point where a material produced by a system, process, or material management unit is determined to be a hazardous secondary material excluded under subpart (1)(d)1(xxvii) of this rule.

(Note: This term is being used in a manner similar to the use of the term "point of generation" in air standards established under authority of the Clean Air Act in 40 CFR parts 60, 61, and 63.)

2. When the remanufacturer or other person that stores or treats the hazardous secondary material is not the generator of the hazardous secondary material, point of material origination means the point where the remanufacturer or other person that stores or treats the hazardous secondary material accepts delivery or takes possession of the hazardous secondary material.

"Safety device" means a closure device such as a pressure relief valve, frangible disc, fusible plug, or any other type of device which functions exclusively to prevent physical damage or permanent deformation to a unit or its air emission control equipment by venting gases or vapors directly to the atmosphere during unsafe conditions resulting from an unplanned, accidental, or emergency event. For the purpose of this paragraph, a safety device is not used for routine venting of gases or vapors from the vapor headspace underneath a cover such as during filling of the unit or to adjust the pressure in this vapor headspace in response to normal daily diurnal ambient temperature fluctuations. A safety device is designed to remain in a closed position during normal operations and open only when the internal pressure, or another relevant parameter, exceeds the device threshold setting applicable to the air emission control equipment as determined by the remanufacturer or other person that stores or treats the hazardous secondary material based on manufacturer recommendations, applicable regulations, fire protection and prevention codes, standard engineering codes and practices, or other requirements for the safe handling of flammable, ignitable, explosive, reactive, or hazardous materials.

"Single-seal system" means a floating roof having one continuous seal. This seal may be vapor-mounted, liquid-mounted, or a metallic shoe seal.

"Vapor-mounted seal" means a continuous seal that is mounted such that there is a vapor space between the hazardous secondary material in the unit and the bottom of the seal.

"Volatile organic concentration" or "VO concentration" means the fraction by weight of the volatile organic compounds contained in a hazardous secondary material expressed in terms of parts per million (ppmw) as determined by direct measurement or by knowledge of the material in accordance with the requirements of subparagraph (e) of this paragraph. For the purpose of determining the VO concentration of a hazardous secondary material, organic compounds with a Henry's law constant value of at least 0.1 mole-fraction-in-the-gas-phase/mole-fraction-in-the-liquid-phase (0.1 Y/X) (which can also be expressed as 1.8×10^{-6} atmospheres/gram-mole/m³) at 25°C must be included.

(c) Standards: General [40 CFR 261.1082]

1. This subparagraph applies to the management of hazardous secondary material in tanks and containers subject to this paragraph.
2. The remanufacturer or other person that stores or treats the hazardous secondary material shall control air pollutant emissions from each hazardous secondary material management unit in accordance with standards specified in subparagraphs (e) through (h) of this paragraph, as applicable to the hazardous secondary material management unit, except as provided for in part 3 of this subparagraph.
3. A tank or container is exempt from standards specified in subparagraphs (e) through (h) of this paragraph, as applicable, provided that the hazardous secondary material management unit is a tank or container for which all hazardous secondary material

entering the unit has an average VO concentration at the point of material origination of less than 500 parts per million by weight (ppmw). The average VO concentration shall be determined using the procedures specified in part (d)1 of this paragraph. The remanufacturer or other person that stores or treats the hazardous secondary material shall review and update, as necessary, this determination at least once every 12 months following the date of the initial determination for the hazardous secondary material streams entering the unit.

(d) Material determination procedures [40 CFR 261.1083]

1. Material determination procedure to determine average volatile organic (VO) concentration of a hazardous secondary material at the point of material origination

(i) Determining average VO concentration at the point of material origination. A remanufacturer or other person that stores or treats the hazardous secondary material shall determine the average VO concentration at the point of material origination for each hazardous secondary material placed in a hazardous secondary material management unit exempted under the provisions of part (c)3 of this paragraph from using air emission controls in accordance with standards specified in subparagraphs (e) through (h) of this paragraph, as applicable to the hazardous secondary material management unit.

(I) An initial determination of the average VO concentration of the material stream shall be made before the first time any portion of the material in the hazardous secondary material stream is placed in a hazardous secondary material management unit exempted under the provisions of part (c)3 of this paragraph from using air emission controls, and thereafter an initial determination of the average VO concentration of the material stream shall be made for each averaging period that a hazardous secondary material is managed in the unit; and

(II) Perform a new material determination whenever changes to the source generating the material stream are reasonably likely to cause the average VO concentration of the hazardous secondary material to increase to a level that is equal to or greater than the applicable VO concentration limits specified in subparagraph (c) of this paragraph.

(ii) Determination of average VO concentration using direct measurement or knowledge. For a material determination that is required by subpart (i) of this part, the average VO concentration of a hazardous secondary material at the point of material origination shall be determined using either direct measurement as specified in subpart (iii) of this part or by knowledge as specified in subpart (iv) of this part.

(iii) Direct measurement to determine average VO concentration of a hazardous secondary material at the point of material origination

(I) Identification. The remanufacturer or other person that stores or treats the hazardous secondary material shall identify and record in a log that is kept at the facility the point of material origination for the hazardous secondary material.

(II) Sampling. Samples of the hazardous secondary material stream shall be collected at the point of material origination in a manner such that volatilization of organics contained in the material and in the subsequent sample is minimized and an adequately representative sample is collected and maintained for analysis by the selected method.

I. The averaging period to be used for determining the average VO concentration for the hazardous secondary material stream on a

mass-weighted average basis shall be designated and recorded. The averaging period can represent any time interval that the remanufacturer or other person that stores or treats the hazardous secondary material determines is appropriate for the hazardous secondary material stream but shall not exceed 1 year.

II. A sufficient number of samples, but no less than 4 samples, shall be collected and analyzed for a hazardous secondary material determination. All of the samples for a given material determination shall be collected within a one-hour period. The average of the 4 or more sample results constitutes a material determination for the material stream. One or more material determinations may be required to represent the complete range of material compositions and quantities that occur during the entire averaging period due to normal variations in the operating conditions for the source or process generating the hazardous secondary material stream. Examples of such normal variations are seasonal variations in material quantity or fluctuations in ambient temperature.

III. All samples shall be collected and handled in accordance with written procedures prepared by the remanufacturer or other person that stores or treats the hazardous secondary material and documented in a site sampling plan. This plan shall describe the procedure by which representative samples of the hazardous secondary material stream are collected such that a minimum loss of organics occurs throughout the sample collection and handling process, and by which sample integrity is maintained. A copy of the written sampling plan shall be maintained at the facility. An example of acceptable sample collection and handling procedures for a total volatile organic constituent concentration may be found in Method 25D in 40 CFR part 60, appendix A.

IV. Sufficient information, as specified in the "site sampling plan" required under subitem III of this item, shall be prepared and recorded to document the material quantity represented by the samples and, as applicable, the operating conditions for the source or process generating the hazardous secondary material represented by the samples.

(III) Analysis. Each collected sample shall be prepared and analyzed in accordance with Method 25D in 40 CFR part 60, appendix A for the total concentration of volatile organic constituents, or using one or more methods when the individual organic compound concentrations are identified and summed and the summed material concentration accounts for and reflects all organic compounds in the material with Henry's law constant values at least 0.1 mole-fraction-in-the-gas-phase/mole-fraction-in-the-liquid-phase (0.1 Y/X) [which can also be expressed as 1.8×10^{-6} atmospheres/gram-mole/m³] at 25°C. At the discretion of the remanufacturer or other person that stores or treats the hazardous secondary material, the test data obtained may be adjusted by any appropriate method to discount any contribution to the total volatile organic concentration that is a result of including a compound with a Henry's law constant value of less than 0.1 Y/X at 25°C. To adjust these data, the measured concentration of each individual chemical constituent contained in the material is multiplied by the appropriate constituent-specific adjustment factor (f_{m25D}). If the remanufacturer or other person that stores or treats the hazardous secondary material elects to adjust the test data, the adjustment must be made to all individual chemical

constituents with a Henry's law constant value greater than or equal to 0.1 Y/X at 25 degrees Celsius contained in the material. Constituent-specific adjustment factors (f_{m25}) can be obtained by contacting the Waste and Chemical Processes Group, Office of Air Quality Planning and Standards, Research Triangle Park, NC 27711. Other test methods may be used if they meet the requirements in subitem I or II of this item and provided the requirement to reflect all organic compounds in the material with Henry's law constant values greater than or equal to 0.1 Y/X [which can also be expressed as 1.8×10^{-6} atmospheres/gram-mole/ m^3] at 25°C, is met.

- I. Any EPA standard method that has been validated in accordance with "Alternative Validation Procedure for EPA Waste and Wastewater Methods," 40 CFR part 63, appendix D.
- II. Any other analysis method that has been validated in accordance with the procedures specified in Section 5.1 or Section 5.3, and the corresponding calculations in Section 6.1 or Section 6.3, of Method 301 in 40 CFR part 63, appendix A. The data are acceptable if they meet the criteria specified in Section 6.1.5 or Section 6.3.3 of Method 301. If correction is required under section 6.3.3 of Method 301, the data are acceptable if the correction factor is within the range 0.7 to 1.30. Other sections of Method 301 are not required.

(IV) Calculations

- I. The average VO concentration (C) on a mass-weighted basis shall be calculated by using the results for all material determinations conducted in accordance with paragraphs items (II) and (III) of this subpart and the following equation:

$$\bar{C} = \frac{1}{Q_T} \times \sum_{i=1}^n (Q_i \times C_i)$$

Where:

\bar{C} = Average VO concentration of the hazardous secondary material at the point of material origination on a mass-weighted basis, ppmw.

i = Individual waste determination "i" of the hazardous secondary material.

n = Total number of material determinations of the hazardous secondary material conducted for the averaging period (not to exceed 1 year).

Q_i = Mass quantity of hazardous secondary material stream represented by C_i , kg/hr.

Q_T = Total mass quantity of hazardous secondary material during the averaging period, kg/hr.

C_i = Measured VO concentration of material determination "i" as determined in accordance with the requirements of item (III) of this subpart (i.e. the average of the four or more samples specified in subitem (II) of this subpart), ppmw.

II. For the purpose of determining C_i for individual material samples analyzed in accordance with item III of this subpart, the remanufacturer or other person that stores or treats the hazardous secondary material shall account for VO concentrations determined to be below the limit of detection of the analytical method by using the following VO concentration:

A. If Method 25D in 40 CFR part 60, appendix A is used for the analysis, one-half the blank value determined in the method at section 4.4 of Method 25D in 40 CFR part 60, appendix A.

B. If any other analytical method is used, one-half the sum of the limits of detection established for each organic constituent in the material that has a Henry's law constant values at least 0.1 mole-fraction-in-the-gas-phase/mole-fraction-in-the-liquid-phase ($0.1 Y/X$) [which can also be expressed as 1.8×10^{-6} atmospheres/gram-mole/ m^3] at $25^\circ C$.

(iv) Use of knowledge by the remanufacturer or other person that stores or treats the hazardous secondary material to determine average VO concentration of a hazardous secondary material at the point of material origination

(I) Documentation shall be prepared that presents the information used as the basis for the knowledge by the remanufacturer or other person that stores or treats the hazardous secondary material of the hazardous secondary material stream's average VO concentration. Examples of information that may be used as the basis for knowledge include: Material balances for the source or process generating the hazardous secondary material stream; constituent-specific chemical test data for the hazardous secondary material stream from previous testing that are still applicable to the current material stream; previous test data for other locations managing the same type of material stream; or other knowledge based on information included in shipping papers or material certification notices.

(II) If test data are used as the basis for knowledge, then the remanufacturer or other person that stores or treats the hazardous secondary material shall document the test method, sampling protocol, and the means by which sampling variability and analytical variability are accounted for in the determination of the average VO concentration. For example, a remanufacturer or other person that stores or treats the hazardous secondary material may use organic concentration test data for the hazardous secondary material stream that are validated in accordance with Method 301 in 40 CFR part 63, appendix A as the basis for knowledge of the material.

(III) A remanufacturer or other person that stores or treats the hazardous secondary material using chemical constituent-specific concentration test data as the basis for knowledge of the hazardous secondary material may adjust the test data to the corresponding average VO concentration value which would have been obtained had the material samples been analyzed using Method 25D in 40 CFR part 60, appendix A. To adjust these data, the measured concentration for each individual chemical constituent contained in the material is multiplied by the appropriate constituent-specific adjustment factor (f_{m25D}).

(IV) In the event that the Commissioner and the remanufacturer or other

person that stores or treats the hazardous secondary material disagree on a determination of the average VO concentration for a hazardous secondary material stream using knowledge, then the results from a determination of average VO concentration using direct measurement as specified in subpart (iii) of this part shall be used to establish compliance with the applicable requirements of this paragraph. The Commissioner may perform or request that the remanufacturer or other person that stores or treats the hazardous secondary material perform this determination using direct measurement. The remanufacturer or other person that stores or treats the hazardous secondary material may choose one or more appropriate methods to analyze each collected sample in accordance with the requirements of item (iii)(III) of this part.

2. Reserved

3. Procedure to determine the maximum organic vapor pressure of a hazardous secondary material in a tank

(i) A remanufacturer or other person that stores or treats the hazardous secondary material shall determine the maximum organic vapor pressure for each hazardous secondary material placed in a tank using Tank Level 1 controls in accordance with standards specified in part (e)3 of this paragraph.

(ii) A remanufacturer or other person that stores or treats the hazardous secondary material shall use either direct measurement as specified in subpart (iii) of this part or knowledge of the waste as specified by subpart (iv) of this part to determine the maximum organic vapor pressure which is representative of the hazardous secondary material composition stored or treated in the tank.

(iii) Direct measurement to determine the maximum organic vapor pressure of a hazardous secondary material.

(I) Sampling. A sufficient number of samples shall be collected to be representative of the hazardous secondary material contained in the tank. All samples shall be collected and handled in accordance with written procedures prepared by the remanufacturer or other person that stores or treats the hazardous secondary material and documented in a site sampling plan. This plan shall describe the procedure by which representative samples of the hazardous secondary material are collected such that a minimum loss of organics occurs throughout the sample collection and handling process and by which sample integrity is maintained. A copy of the written sampling plan shall be maintained at the facility. An example of acceptable sample collection and handling procedures may be found in Method 25D in 40 CFR part 60, appendix A.

(II) Analysis. Any appropriate one of the following methods may be used to analyze the samples and compute the maximum organic vapor pressure of the hazardous secondary material:

I. Method 25E in 40 CFR part 60 appendix A;

II. Methods described in American Petroleum Institute Publication 2517, Third Edition, February 1989, "Evaporative Loss from External Floating-Roof Tanks," (incorporated by reference--refer to subparagraph (2)(b) of Rule 0400-12-01-.01);

III. Methods obtained from standard reference texts;

IV. ASTM Method 2879-92 (incorporated by reference--refer to subparagraph (2)(b) of Rule 0400-12-01-.01); and

V. Any other method approved by the Commissioner.

(iv) Use of knowledge to determine the maximum organic vapor pressure of the hazardous secondary material. Documentation shall be prepared and recorded that presents the information used as the basis for the knowledge by the remanufacturer or other person that stores or treats the hazardous secondary material that the maximum organic vapor pressure of the hazardous secondary material is less than the maximum vapor pressure limit listed in item (e)2(i)(I) of this paragraph for the applicable tank design capacity category. An example of information that may be used is documentation that the hazardous secondary material is generated by a process for which at other locations it previously has been determined by direct measurement that the hazardous secondary material's waste maximum organic vapor pressure is less than the maximum vapor pressure limit for the appropriate tank design capacity category.

4. Procedure for determining no detectable organic emissions for the purpose of complying with this paragraph:

(i) The test shall be conducted in accordance with the procedures specified in Method 21 of 40 CFR part 60, appendix A. Each potential leak interface (i.e., a location where organic vapor leakage could occur) on the cover and associated closure devices shall be checked. Potential leak interfaces that are associated with covers and closure devices include, but are not limited to: the interface of the cover and its foundation mounting; the periphery of any opening on the cover and its associated closure device; and the sealing seat interface on a spring-loaded pressure relief valve.

(ii) The test shall be performed when the unit contains a hazardous secondary material having an organic concentration representative of the range of concentrations for the hazardous secondary material expected to be managed in the unit. During the test, the cover and closure devices shall be secured in the closed position.

(iii) The detection instrument shall meet the performance criteria of Method 21 of 40 CFR part 60, appendix A, except the instrument response factor criteria in section 3.1.2(a) of Method 21 shall be for the average composition of the organic constituents in the hazardous secondary material placed in the hazardous secondary management unit, not for each individual organic constituent.

(iv) The detection instrument shall be calibrated before use on each day of its use by the procedures specified in Method 21 of 40 CFR part 60, appendix A.

(v) Calibration gases shall be as follows:

(I) Zero air (less than 10 ppmv hydrocarbon in air); and

(II) A mixture of methane or n-hexane and air at a concentration of approximately, but less than, 10,000 ppmv methane or n-hexane.

(vi) The background level shall be determined according to the procedures in Method 21 of 40 CFR part 60, appendix A.

(vii) Each potential leak interface shall be checked by traversing the instrument probe around the potential leak interface as close to the interface as possible, as described in Method 21 of 40 CFR part 60, appendix A. In the case when the configuration of the cover or closure device prevents a complete traverse of the interface, all accessible portions of the interface shall be sampled. In the case when the configuration of the closure device prevents any sampling at the interface and the device is equipped with an enclosed extension or horn (e.g.,

some pressure relief devices), the instrument probe inlet shall be placed at approximately the center of the exhaust area to the atmosphere.

(viii) The arithmetic difference between the maximum organic concentration indicated by the instrument and the background level shall be compared with the value of 500 ppmv except when monitoring a seal around a rotating shaft that passes through a cover opening, in which case the comparison shall be as specified in subpart (ix) of this part. If the difference is less than 500 ppmv, then the potential leak interface is determined to operate with no detectable organic emissions.

(ix) For the seals around a rotating shaft that passes through a cover opening, the arithmetic difference between the maximum organic concentration indicated by the instrument and the background level shall be compared with the value of 10,000 ppmw. If the difference is less than 10,000 ppmw, then the potential leak interface is determined to operate with no detectable organic emissions.

(e) Standards: tanks [40 CFR 261.1084]

1. The provisions of this section apply to the control of air pollutant emissions from tanks for which part (d)2 of this paragraph references the use of this subparagraph for such air emission control.

2. The remanufacturer or other person that stores or treats the hazardous secondary material shall control air pollutant emissions from each tank subject to this subparagraph in accordance with the following requirements as applicable:

(i) For a tank that manages hazardous secondary material that meets all of the conditions specified in items (I) through (III) of this subpart, the remanufacturer or other person that stores or treats the hazardous secondary material shall control air pollutant emissions from the tank in accordance with the Tank Level 1 controls specified in part 3 of this subparagraph or the Tank Level 2 controls specified in part 4 of this subparagraph.

(I) The hazardous secondary material in the tank has a maximum organic vapor pressure which is less than the maximum organic vapor pressure limit for the tank's design capacity category as follows:

I. For a tank design capacity equal to or greater than 151 m³, the maximum organic vapor pressure limit for the tank is 5.2 kPa.

II. For a tank design capacity equal to or greater than 75 m³ but less than 151 m³, the maximum organic vapor pressure limit for the tank is 27.6 kPa.

III. For a tank design capacity less than 75 m³, the maximum organic vapor pressure limit for the tank is 76.6 kPa.

(II) The hazardous secondary material in the tank is not heated by the remanufacturer or other person that stores or treats the hazardous secondary material to a temperature that is greater than the temperature at which the maximum organic vapor pressure of the hazardous secondary material is determined for the purpose of complying with item (I) of this subpart.

(ii) For a tank that manages hazardous secondary material that does not meet all of the conditions specified in items (i)(I) and (II) of this part, the remanufacturer or other person that stores or treats the hazardous secondary material shall control air pollutant emissions from the tank by using Tank Level 2 controls in accordance with the requirements of part 4 of this subparagraph. An example of tanks required to use Tank Level 2 controls is a tank for which the hazardous

secondary material in the tank has a maximum organic vapor pressure that is equal to or greater than the maximum organic vapor pressure limit for the tank's design capacity category as specified in item (i)(I) of this part.

3. Remanufacturers or other persons that store or treat the hazardous secondary material controlling air pollutant emissions from a tank using Tank Level 1 controls shall meet the requirements specified in subparts (i) through (iv) of this part:

(i) The remanufacturer or other person that stores or treats that hazardous secondary material shall determine the maximum organic vapor pressure for a hazardous secondary material to be managed in the tank using Tank Level 1 controls before the first time the hazardous secondary material is placed in the tank. The maximum organic vapor pressure shall be determined using the procedures specified in part (d)3 of this paragraph. Thereafter, the remanufacturer or other person that stores or treats the hazardous secondary material shall perform a new determination whenever changes to the hazardous secondary material managed in the tank could potentially cause the maximum organic vapor pressure to increase to a level that is equal to or greater than the maximum organic vapor pressure limit for the tank design capacity category specified in item 2(i)(I) of this subparagraph, as applicable to the tank.

(ii) The tank shall be equipped with a fixed roof designed to meet the following specifications:

(I) The fixed roof and its closure devices shall be designed to form a continuous barrier over the entire surface area of the hazardous secondary material in the tank. The fixed roof may be a separate cover installed on the tank (e.g., a removable cover mounted on an open-top tank) or may be an integral part of the tank structural design (e.g., a horizontal cylindrical tank equipped with a hatch).

(II) The fixed roof shall be installed in a manner such that there are no visible cracks, holes, gaps, or other open spaces between roof section joints or between the interface of the roof edge and the tank wall.

(III) Each opening in the fixed roof, and any manifold system associated with the fixed roof, shall be either:

I. Equipped with a closure device designed to operate such that when the closure device is secured in the closed position there are no visible cracks, holes, gaps, or other open spaces in the closure device or between the perimeter of the opening and the closure device; or

II. Connected by a closed-vent system that is vented to a control device. The control device shall remove or destroy organics in the vent stream, and shall be operating whenever hazardous secondary material is managed in the tank, except as provided for in sections A and B of this subitem.

A. During periods when it is necessary to provide access to the tank for performing the activities of section B of this subitem, venting of the vapor headspace underneath the fixed roof to the control device is not required, opening of closure devices is allowed, and removal of the fixed roof is allowed. Following completion of the activity, the remanufacturer or other person that stores or treats the hazardous secondary material shall promptly secure the closure device in the closed position or reinstall the cover, as applicable, and resume operation of the control

device.

B. During periods of routine inspection, maintenance, or other activities needed for normal operations, and for removal of accumulated sludge or other residues from the bottom of the tank.

(IV) The fixed roof and its closure devices shall be made of suitable materials that will minimize exposure of the hazardous secondary material to the atmosphere, to the extent practical, and will maintain the integrity of the fixed roof and closure devices throughout their intended service life. Factors to be considered when selecting the materials for and designing the fixed roof and closure devices shall include: organic vapor permeability, the effects of any contact with the hazardous secondary material or its vapors managed in the tank; the effects of outdoor exposure to wind, moisture, and sunlight; and the operating practices used for the tank on which the fixed roof is installed.

(iii) Whenever a hazardous secondary material is in the tank, the fixed roof shall be installed with each closure device secured in the closed position except as follows:

(I) Opening of closure devices or removal of the fixed roof is allowed at the following times:

I. To provide access to the tank for performing routine inspection, maintenance, or other activities needed for normal operations. Examples of such activities include those times when a worker needs to open a port to sample the liquid in the tank, or when a worker needs to open a hatch to maintain or repair equipment. Following completion of the activity, the remanufacturer or other person that stores or treats the hazardous secondary material shall promptly secure the closure device in the closed position or reinstall the cover, as applicable, to the tank.

II. To remove accumulated sludge or other residues from the bottom of tank.

(II) Opening of a spring-loaded pressure-vacuum relief valve, conservation vent, or similar type of pressure relief device which vents to the atmosphere is allowed during normal operations for the purpose of maintaining the tank internal pressure in accordance with the tank design specifications. The device shall be designed to operate with no detectable organic emissions when the device is secured in the closed position. The settings at which the device opens shall be established such that the device remains in the closed position whenever the tank internal pressure is within the internal pressure operating range determined by the remanufacturer or other person that stores or treats the hazardous secondary material based on the tank manufacturer recommendations, applicable regulations, fire protection and prevention codes, standard engineering codes and practices, or other requirements for the safe handling of flammable, ignitable, explosive, reactive, or hazardous materials. Examples of normal operating conditions that may require these devices to open are during those times when the tank internal pressure exceeds the internal pressure operating range for the tank as a result of loading operations or diurnal ambient temperature fluctuations.

(III) Opening of a safety device, as defined in subparagraph (b) of this paragraph, is allowed at any time conditions require doing so to avoid an

unsafe condition.

(iv) The remanufacturer or other person that stores or treats the hazardous secondary material shall inspect the air emission control equipment in accordance with the following requirements.

(I) The fixed roof and its closure devices shall be visually inspected by the remanufacturer or other person that stores or treats the hazardous secondary material to check for defects that could result in air pollutant emissions. Defects include, but are not limited to, visible cracks, holes, or gaps in the roof sections or between the roof and the tank wall; broken, cracked, or otherwise damaged seals or gaskets on closure devices; and broken or missing hatches, access covers, caps, or other closure devices.

(II) The remanufacturer or other person that stores or treats the hazardous secondary material shall perform an initial inspection of the fixed roof and its closure devices on or before the date that the tank becomes subject to this section. Thereafter, the remanufacturer or other person that stores or treats the hazardous secondary material shall perform the inspections at least once every year except under the special conditions provided for in part 12 of this subparagraph.

(III) In the event that a defect is detected, the remanufacturer or other person that stores or treats the hazardous secondary material shall repair the defect in accordance with the requirements of part 11 of this subparagraph.

(IV) The remanufacturer or other person that stores or treats the hazardous secondary material shall maintain a record of the inspection in accordance with the requirements specified in part (j)2 of this paragraph.

4. Remanufacturers or other persons that store or treat the hazardous secondary material controlling air pollutant emissions from a tank using Tank Level 2 controls shall use one of the following tanks:

(i) A fixed-roof tank equipped with an internal floating roof in accordance with the requirements specified in part 5 of this subparagraph;

(ii) A tank equipped with an external floating roof in accordance with the requirements specified in part 6 of this subparagraph;

(iii) A tank vented through a closed-vent system to a control device in accordance with the requirements specified in part 7 of this subparagraph;

(iv) A pressure tank designed and operated in accordance with the requirements specified in part 8 of this subparagraph; or

(v) A tank located inside an enclosure that is vented through a closed-vent system to an enclosed combustion control device in accordance with the requirements specified in part 9 of this subparagraph.

5. The remanufacturer or other person that stores or treats the hazardous secondary material who controls air pollutant emissions from a tank using a fixed roof with an internal floating roof shall meet the requirements specified in subparts 5(i) through (iii) of this subparagraph.

(i) The tank shall be equipped with a fixed roof and an internal floating roof in accordance with the following requirements:

- (I) The internal floating roof shall be designed to float on the liquid surface except when the floating roof must be supported by the leg supports.
- (II) The internal floating roof shall be equipped with a continuous seal between the wall of the tank and the floating roof edge that meets either of the following requirements:

 - I. A single continuous seal that is either a liquid-mounted seal or a metallic shoe seal, as defined in subparagraph (b) of this paragraph; or
 - II. Two continuous seals mounted one above the other. The lower seal may be a vapor-mounted seal.
- (III) The internal floating roof shall meet the following specifications:

 - I. Each opening in a noncontact internal floating roof except for automatic bleeder vents (vacuum breaker vents) and the rim space vents is to provide a projection below the liquid surface.
 - II. Each opening in the internal floating roof shall be equipped with a gasketed cover or a gasketed lid except for leg sleeves, automatic bleeder vents, rim space vents, column wells, ladder wells, sample wells, and stub drains.
 - III. Each penetration of the internal floating roof for the purpose of sampling shall have a slit fabric cover that covers at least 90 percent of the opening.
 - IV. Each automatic bleeder vent and rim space vent shall be gasketed.
 - V. Each penetration of the internal floating roof that allows for passage of a ladder shall have a gasketed sliding cover.
 - VI. Each penetration of the internal floating roof that allows for passage of a column supporting the fixed roof shall have a flexible fabric sleeve seal or a gasketed sliding cover.
- (ii) The remanufacturer or other person that stores or treats the hazardous secondary material shall operate the tank in accordance with the following requirements:

 - (I) When the floating roof is resting on the leg supports, the process of filling, emptying, or refilling shall be continuous and shall be completed as soon as practical.
 - (II) Automatic bleeder vents are to be set closed at all times when the roof is floating, except when the roof is being floated off or is being landed on the leg supports.
 - (III) Prior to filling the tank, each cover, access hatch, gauge float well or lid on any opening in the internal floating roof shall be bolted or fastened closed (i.e., no visible gaps). Rim space vents are to be set to open only when the internal floating roof is not floating or when the pressure beneath the rim exceeds the manufacturer's recommended setting.
- (iii) The remanufacturer or other person that stores or treats the hazardous secondary material shall inspect the internal floating roof in accordance with the procedures specified as follows:

- (I) The floating roof and its closure devices shall be visually inspected by the remanufacture or other person that stores or treats the hazardous secondary material to check for defects that could result in air pollutant emissions. Defects include, but are not limited to: the internal floating roof is not floating on the surface of the liquid inside the tank; liquid has accumulated on top of the internal floating roof; any portion of the roof seals have detached from the roof rim; holes, tears, or other openings are visible in the seal fabric; the gaskets no longer close off the hazardous secondary material surface from the atmosphere; or the slotted membrane has more than 10 percent open area.

- (II) The remanufacturer or other person that stores or treats the hazardous secondary material shall inspect the internal floating roof components as follows except as provided in item (III) of this subpart:
 - I. Visually inspect the internal floating roof components through openings on the fixed-roof (e.g., manholes and roof hatches) at least once every 12 months after initial fill, and

 - II. Visually inspect the internal floating roof, primary seal, secondary seal (if one is in service), gaskets, slotted membranes, and sleeve seals (if any) each time the tank is emptied and degassed and at least every 10 years.

- (III) As an alternative to performing the inspections specified in item (II) of this subpart for an internal floating roof equipped with two continuous seals mounted one above the other, the remanufacturer or other person that stores or treats the hazardous secondary material may visually inspect the internal floating roof, primary and secondary seals, gaskets, slotted membranes, and sleeve seals (if any) each time the tank is emptied and degassed and at least every 5 years.

- (IV) Prior to each inspection required by item (II) or (III) of this subpart, the remanufacturer or other person that stores or treats the hazardous secondary material shall notify the Commissioner in advance of each inspection to provide the Commissioner with the opportunity to have an observer present during the inspection. The remanufacturer or other person that stores or treats the hazardous secondary material shall notify the Commissioner of the date and location of the inspection as follows:
 - I. Prior to each visual inspection of an internal floating roof in a tank that has been emptied and degassed, written notification shall be prepared and sent by the remanufacturer or other person that stores or treats the hazardous secondary material so that it is received by the Commissioner at least 30 calendar days before refilling the tank except when an inspection is not planned as provided for in subitem II of this item.

 - II. When a visual inspection is not planned and the remanufacturer or other person that stores or treats the hazardous secondary material could not have known about the inspection 30 calendar days before refilling the tank, the remanufacturer or other person that stores or treats the hazardous secondary material shall notify the Commissioner as soon as possible, but no later than 7 calendar days before refilling of the tank. This notification may be made by telephone and immediately followed by a written explanation for why the inspection is unplanned. Alternatively, written notification, including the explanation for the unplanned inspection, may be sent so that it is received by the

Commissioner at least seven calendar days before refilling the tank.

(V) In the event that a defect is detected, the remanufacturer or other person that stores or treats the hazardous secondary material shall repair the defect in accordance with the requirements of part 11 of this subparagraph.

(VI) The remanufacturer or other person that stores or treats the hazardous secondary material shall maintain a record of the inspection in accordance with the requirements specified in part (j)2 of this paragraph.

(iv) Safety devices, as defined in subparagraph (b) of this paragraph, may be installed and operated as necessary on any tank complying with the requirements of this part.

6. The remanufacturer or other person that stores or treats the hazardous secondary material who controls air pollutant emissions from a tank using an external floating roof shall meet the requirements specified in subpart (i) through (iii) of this part.

(i) The remanufacturer or other person that stores or treats the hazardous secondary material shall design the external floating roof in accordance with the following requirements:

(I) The external floating roof shall be designed to float on the liquid surface except when the floating roof must be supported by the leg supports.

(II) The floating roof shall be equipped with two continuous seals, one above the other, between the wall of the tank and the roof edge. The lower seal is referred to as the primary seal, and the upper seal is referred to as the secondary seal.

I. The primary seal shall be a liquid-mounted seal or a metallic shoe seal, as defined in subparagraph (b) of this paragraph. The total area of the gaps between the tank wall and the primary seal shall not exceed 212 square centimeters (cm²) per meter of tank diameter, and the width of any portion of these gaps shall not exceed 3.8 centimeters (cm). If a metallic shoe seal is used for the primary seal, the metallic shoe seal shall be designed so that one end extends into the liquid in the tank and the other end extends a vertical distance of at least 61 centimeters (cm) above the liquid surface.

II. The secondary seal shall be mounted above the primary seal and cover the annular space between the floating roof and the wall of the tank. The total area of the gaps between the tank wall and the secondary seal shall not exceed 21.2 square centimeters (cm²) per meter of tank diameter, and the width of any portion of these gaps shall not exceed 1.3 centimeters (cm).

(III) The external floating roof shall meet the following specifications:

I. Except for automatic bleeder vents (vacuum breaker vents) and rim space vents, each opening in a noncontact external floating roof shall provide a projection below the liquid surface.

II. Except for automatic bleeder vents, rim space vents, roof drains, and leg sleeves, each opening in the roof shall be equipped with a gasketed cover, seal, or lid.

- III. Each access hatch and each gauge float well shall be equipped with a cover designed to be bolted or fastened when the cover is secured in the closed position.
 - IV. Each automatic bleeder vent and each rim space vent shall be equipped with a gasket.
 - V. Each roof drain that empties into the liquid managed in the tank shall be equipped with a slotted membrane fabric cover that covers at least 90 percent of the area of the opening.
 - VI. Each unslotted and slotted guide pole well shall be equipped with a gasketed sliding cover or a flexible fabric sleeve seal.
 - VII. Each unslotted guide pole shall be equipped with a gasketed cap on the end of the pole.
 - VIII. Each slotted guide pole shall be equipped with a gasketed float or other device which closes off the liquid surface from the atmosphere.
 - IX. Each gauge hatch and each sample well shall be equipped with a gasketed cover.
- (ii) The remanufacturer or other person that stores or treats the hazardous secondary material shall operate the tank in accordance with the following requirements:
- (I) When the floating roof is resting on the leg supports, the process of filling, emptying, or refilling shall be continuous and shall be completed as soon as practical.
 - (II) Except for automatic bleeder vents, rim space vents, roof drains, and leg sleeves, each opening in the roof shall be secured and maintained in a closed position at all times except when the closure device must be open for access.
 - (III) Covers on each access hatch and each gauge float well shall be bolted or fastened when secured in the closed position.
 - (IV) Automatic bleeder vents shall be set closed at all times when the roof is floating, except when the roof is being floated off or is being landed on the leg supports.
 - (V) Rim space vents shall be set to open only at those times that the roof is being floated off the roof leg supports or when the pressure beneath the rim seal exceeds the manufacturer's recommended setting.
 - (VI) The cap on the end of each unslotted guide pole shall be secured in the closed position at all times except when measuring the level or collecting samples of the liquid in the tank.
 - (VII) The cover on each gauge hatch or sample well shall be secured in the closed position at all times except when the hatch or well must be opened for access.
 - (VIII) Both the primary seal and the secondary seal shall completely cover the annular space between the external floating roof and the wall of the tank in a continuous fashion except during inspections.

- (iii) The remanufacturer or other person that stores or treats the hazardous secondary material shall inspect the external floating roof in accordance with the procedures specified as follows:
- (I) The remanufacturer or other person that stores or treats the hazardous secondary material shall measure the external floating roof seal gaps in accordance with the following requirements:
- I. The remanufacturer or other person that stores or treats the hazardous secondary material shall perform measurements of gaps between the tank wall and the primary seal within 60 calendar days after initial operation of the tank following installation of the floating roof and, thereafter, at least once every 5 years.
- II. The remanufacturer or other person that stores or treats the hazardous secondary material shall perform measurements of gaps between the tank wall and the secondary seal within 60 calendar days after initial operation of the tank following installation of the floating roof and, thereafter, at least once every year.
- III. If a tank ceases to hold hazardous secondary material for a period of 1 year or more, subsequent introduction of hazardous secondary material into the tank shall be considered an initial operation for the purposes of subitems I and II of this item.
- IV. The remanufacturer or other person that stores or treats the hazardous secondary material shall determine the total surface area of gaps in the primary seal and in the secondary seal individually using the following procedure:
- A. The seal gap measurements shall be performed at one or more floating roof levels when the roof is floating off the roof supports.
- B. Seal gaps, if any, shall be measured around the entire perimeter of the floating roof in each place where a 0.32-centimeter (cm) diameter uniform probe passes freely (without forcing or binding against the seal) between the seal and the wall of the tank and measure the circumferential distance of each such location.
- C. For a seal gap measured under this subpart, the gap surface area shall be determined by using probes of various widths to measure accurately the actual distance from the tank wall to the seal and multiplying each such width by its respective circumferential distance.
- D. The total gap area shall be calculated by adding the gap surface areas determined for each identified gap location for the primary seal and the secondary seal individually, and then dividing the sum for each seal type by the nominal diameter of the tank. These total gap areas for the primary seal and secondary seal are then compared to the respective standards for the seal type as specified in item (i)(II) of this part.
- V. In the event that the seal gap measurements do not conform to the specifications in item (i)(II) of this part, the remanufacturer or

other person that stores or treats the hazardous secondary material shall repair the defect in accordance with the requirements of part 11 of this subparagraph.

VI. The remanufacturer or other person that stores or treats the hazardous secondary material shall maintain a record of the inspection in accordance with the requirements specified in part (j)2 of this paragraph.

(II) The remanufacturer or other person that stores or treats the hazardous secondary material shall visually inspect the external floating roof in accordance with the following requirements:

I. The floating roof and its closure devices shall be visually inspected by the remanufacturer or other person that stores or treats the hazardous secondary material to check for defects that could result in air pollutant emissions. Defects include, but are not limited to: holes, tears, or other openings in the rim seal or seal fabric of the floating roof; a rim seal detached from the floating roof; all or a portion of the floating roof deck being submerged below the surface of the liquid in the tank; broken, cracked, or otherwise damaged seals or gaskets on closure devices; and broken or missing hatches, access covers, caps, or other closure devices.

II. The remanufacturer or other person that stores or treats the hazardous secondary material shall perform an initial inspection of the external floating roof and its closure devices on or before the date that the tank becomes subject to this subparagraph. Thereafter, the remanufacturer or other person that stores or treats the hazardous secondary material shall perform the inspections at least once every year except for the special conditions provided for in part 12 of this subparagraph.

III. In the event that a defect is detected, the remanufacturer or other person that stores or treats the hazardous secondary material shall repair the defect in accordance with the requirements of part 11 of this subparagraph.

IV. The remanufacturer or other person that stores or treats the hazardous secondary material shall maintain a record of the inspection in accordance with the requirements specified in part (j)2 of this paragraph.

(III) Prior to each inspection required by item (I) or (II) of this subpart, the remanufacturer or other person that stores or treats the hazardous secondary material shall notify the Commissioner in advance of each inspection to provide the Commissioner with the opportunity to have an observer present during the inspection. The remanufacturer or other person that stores or treats the hazardous secondary material shall notify the Commissioner of the date and location of the inspection as follows:

I. Prior to each inspection to measure external floating roof seal gaps as required under item (I) of this subpart, written notification shall be prepared and sent by the remanufacturer or other person that stores or treats the hazardous secondary material so that it is received by the Commissioner at least 30 calendar days before the date the measurements are scheduled to be performed.

- II. Prior to each visual inspection of an external floating roof in a tank that has been emptied and degassed, written notification shall be prepared and sent by the remanufacturer or other person that stores or treats the hazardous secondary material so that it is received by the Commissioner at least 30 calendar days before refilling the tank except when an inspection is not planned as provided for in subitem III of this item.
 - III. When a visual inspection is not planned and the remanufacturer or other person that stores or treats the hazardous secondary material could not have known about the inspection 30 calendar days before refilling the tank, the owner or operator shall notify the Commissioner as soon as possible, but no later than 7 calendar days before refilling of the tank. This notification may be made by telephone and immediately followed by a written explanation for why the inspection is unplanned. Alternatively, written notification, including the explanation for the unplanned inspection, may be sent so that it is received by the Commissioner at least 7 calendar days before refilling the tank.
- (iv) Safety devices, as defined in subparagraph (b) of this paragraph, may be installed and operated as necessary on any tank complying with the requirements of this part.
7. The remanufacturer or other person that stores or treats the hazardous secondary material who controls air pollutant emissions from a tank by venting the tank to a control device shall meet the requirements specified in subparts (i) through (iii) of this part.
- (i) The tank shall be covered by a fixed roof and vented directly through a closed-vent system to a control device in accordance with the following requirements:
 - (I) The fixed roof and its closure devices shall be designed to form a continuous barrier over the entire surface area of the liquid in the tank.
 - (II) Each opening in the fixed roof not vented to the control device shall be equipped with a closure device. If the pressure in the vapor headspace underneath the fixed roof is less than atmospheric pressure when the control device is operating, the closure devices shall be designed to operate such that when the closure device is secured in the closed position there are no visible cracks, holes, gaps, or other open spaces in the closure device or between the perimeter of the cover opening and the closure device. If the pressure in the vapor headspace underneath the fixed roof is equal to or greater than atmospheric pressure when the control device is operating, the closure device shall be designed to operate with no detectable organic emissions.
 - (III) The fixed roof and its closure devices shall be made of suitable materials that will minimize exposure of the hazardous secondary material to the atmosphere, to the extent practical, and will maintain the integrity of the fixed roof and closure devices throughout their intended service life. Factors to be considered when selecting the materials for and designing the fixed roof and closure devices shall include: organic vapor permeability, the effects of any contact with the liquid and its vapor managed in the tank; the effects of outdoor exposure to wind, moisture, and sunlight; and the operating practices used for the tank on which the fixed roof is installed.
 - (IV) The closed-vent system and control device shall be designed and operated in accordance with the requirements of subparagraph (h) of this paragraph.

- (ii) Whenever a hazardous secondary material is in the tank, the fixed roof shall be installed with each closure device secured in the closed position and the vapor headspace underneath the fixed roof vented to the control device except as follows:
- (I) Venting to the control device is not required, and opening of closure devices or removal of the fixed roof is allowed at the following times:
- I. To provide access to the tank for performing routine inspection, maintenance, or other activities needed for normal operations. Examples of such activities include those times when a worker needs to open a port to sample liquid in the tank, or when a worker needs to open a hatch to maintain or repair equipment. Following completion of the activity, the remanufacturer or other person that stores or treats the hazardous secondary material shall promptly secure the closure device in the closed position or reinstall the cover, as applicable, to the tank.
- II. To remove accumulated sludge or other residues from the bottom of a tank.
- (II) Opening of a safety device, as defined in subparagraph (b) of this paragraph, is allowed at any time conditions require doing so to avoid an unsafe condition.
- (iii) The remanufacturer or other person that stores or treats the hazardous secondary material shall inspect and monitor the air emission control equipment in accordance with the following procedures:
- (I) The fixed roof and its closure devices shall be visually inspected by the remanufacturer or other person that stores or treats the hazardous secondary material to check for defects that could result in air pollutant emissions. Defects include, but are not limited to, visible cracks, holes, or gaps in the roof sections or between the roof and the tank wall; broken, cracked, or otherwise damaged seals or gaskets on closure devices; and broken or missing hatches, access covers, caps, or other closure devices.
- (II) The closed-vent system and control device shall be inspected and monitored by the remanufacturer or other person that stores or treats the hazardous secondary material in accordance with the procedures specified in subparagraph (h) of this paragraph.
- (III) The remanufacturer or other person that stores or treats the hazardous secondary material shall perform an initial inspection of the air emission control equipment on or before the date that the tank becomes subject to this subparagraph. Thereafter, the remanufacturer or other person that stores or treats the hazardous secondary material shall perform the inspections at least once every year except for the special conditions provided for in part 12 of this subparagraph.
- (IV) In the event that a defect is detected, the remanufacturer or other person that stores or treats the hazardous secondary material shall repair the defect in accordance with the requirements of part 11 of this subparagraph.
- (V) The remanufacturer or other person that stores or treats the hazardous secondary material shall maintain a record of the inspection in accordance with the requirements specified in part (j)2 of this paragraph.

8. The remanufacturer or other person that stores or treats the hazardous secondary material who controls air pollutant emissions by using a pressure tank shall meet the following requirements.
- (i) The tank shall be designed not to vent to the atmosphere as a result of compression of the vapor headspace in the tank during filling of the tank to its design capacity.
 - (ii) All tank openings shall be equipped with closure devices designed to operate with no detectable organic emissions as determined using the procedure specified in part (e)4 of this paragraph.
 - (iii) Whenever a hazardous secondary material is in the tank, the tank shall be operated as a closed system that does not vent to the atmosphere except under either or the following conditions as specified in item (I) or (II) of this subpart.
 - (I) At those times when opening of a safety device, as defined in subparagraph (b) of this paragraph, is required to avoid an unsafe condition.
 - (II) At those times when purging of inerts from the tank is required and the purge stream is routed to a closed-vent system and control device designed and operated in accordance with the requirements of subparagraph (h) of this paragraph.
9. The remanufacturer or other person that stores or treats the hazardous secondary material who controls air pollutant emissions by using an enclosure vented through a closed-vent system to an enclosed combustion control device shall meet the requirements specified in subparts (i) through (iv) of this part.
- (i) The tank shall be located inside an enclosure. The enclosure shall be designed and operated in accordance with the criteria for a permanent total enclosure as specified in "Procedure T--Criteria for and Verification of a Permanent or Temporary Total Enclosure" under 40 CFR 52.741, appendix B. The enclosure may have permanent or temporary openings to allow worker access; passage of material into or out of the enclosure by conveyor, vehicles, or other mechanical means; entry of permanent mechanical or electrical equipment; or direct airflow into the enclosure. The remanufacturer or other person that stores or treats the hazardous secondary material shall perform the verification procedure for the enclosure as specified in Section 5.0 to "Procedure T--Criteria for and Verification of a Permanent or Temporary Total Enclosure" initially when the enclosure is first installed and, thereafter, annually.
 - (ii) The enclosure shall be vented through a closed-vent system to an enclosed combustion control device that is designed and operated in accordance with the standards for either a vapor incinerator, boiler, or process heater specified in subparagraph (h) of this paragraph.
 - (iii) Safety devices, as defined in subparagraph (b) of this paragraph, may be installed and operated as necessary on any enclosure, closed-vent system, or control device used to comply with the requirements of subparts (i) and (ii) of this part.
 - (iv) The remanufacturer or other person that stores or treats the hazardous secondary material shall inspect and monitor the closed-vent system and control device as specified in subparagraph (h) of this paragraph.
10. The remanufacturer or other person that stores or treats the hazardous secondary material shall transfer hazardous secondary material to a tank subject to this

subparagraph in accordance with the following requirements:

- (i) Transfer of hazardous secondary material, except as provided in subpart (ii) of this part, to the tank from another tank subject to this subparagraph shall be conducted using continuous hard-piping or another closed system that does not allow exposure of the hazardous secondary material to the atmosphere. For the purpose of complying with this provision, an individual drain system is considered to be a closed system when it meets the requirements of 40 CFR part 63, subpart RR--National Emission Standards for Individual Drain Systems.
- (ii) The requirements of subpart (i) of this part do not apply when transferring a hazardous secondary material to the tank under any of the following conditions:
 - (I) The hazardous secondary material meets the average VO concentration conditions specified in part (c)3 of this paragraph at the point of material origination.
 - (II) The hazardous secondary material has been treated by an organic destruction or removal process to meet the requirements in subpart (c)3(ii) of this paragraph.
 - (III) The hazardous secondary material meets the requirements of subpart (c)3(iv) of this paragraph.

11. The remanufacturer or other person that stores or treats the hazardous secondary material shall repair each defect detected during an inspection performed in accordance with the requirements of subparts 3(iv), 5(iii), 6(iii), or 7(iii) of this subparagraph as follows:

- (i) The remanufacturer or other person that stores or treats the hazardous secondary material shall make first efforts at repair of the defect no later than 5 calendar days after detection, and repair shall be completed as soon as possible but no later than 45 calendar days after detection except as provided in subpart (ii) of this part.
- (ii) Repair of a defect may be delayed beyond 45 calendar days if the remanufacturer or other person that stores or treats the hazardous secondary material determines that repair of the defect requires emptying or temporary removal from service of the tank and no alternative tank capacity is available at the site to accept the hazardous secondary material normally managed in the tank. In this case, the remanufacturer or other person that stores or treats the hazardous secondary material shall repair the defect the next time the process or unit that is generating the hazardous secondary material managed in the tank stops operation. Repair of the defect shall be completed before the process or unit resumes operation.

12. Following the initial inspection and monitoring of the cover as required by the applicable provisions of this paragraph, subsequent inspection and monitoring may be performed at intervals longer than 1 year under the following special conditions:

- (i) In the case when inspecting or monitoring the cover would expose a worker to dangerous, hazardous, or other unsafe conditions, then the remanufacturer or other person that stores or treats the hazardous secondary material may designate a cover as an "unsafe to inspect and monitor cover" and comply with all of the following requirements:
 - (I) Prepare a written explanation for the cover stating the reasons why the cover is unsafe to visually inspect or to monitor, if required.
 - (II) Develop and implement a written plan and schedule to inspect and

monitor the cover, using the procedures specified in the applicable subparagraph of this paragraph, as frequently as practicable during those times when a worker can safely access the cover.

(ii) In the case when a tank is buried partially or entirely underground, a remanufacturer or other person that stores or treats the hazardous secondary material is required to inspect and monitor, as required by the applicable provisions of this section, only those portions of the tank cover and those connections to the tank (e.g., fill ports, access hatches, gauge wells, etc.) that are located on or above the ground surface.

(f) Reserved [40 CFR 261.1085]

(g) Standards: containers [40 CFR 261.1086]

1. Applicability

The provisions of this subparagraph apply to the control of air pollutant emissions from containers for which part (c)2 of this paragraph references the use of this subparagraph for such air emission control.

2. General requirements

(i) The remanufacturer or other person that stores or treats the hazardous secondary material shall control air pollutant emissions from each container subject to this subparagraph in accordance with the following requirements, as applicable to the container.

(I) For a container having a design capacity greater than 0.1 m³ and less than or equal to 0.46 m³, the remanufacturer or other person that stores or treats the hazardous secondary material shall control air pollutant emissions from the container in accordance with the Container Level 1 standards specified in part 3 of this subparagraph.

(II) For a container having a design capacity greater than 0.46 m³ that is not in light material service, the remanufacturer or other person that stores or treats the hazardous secondary material shall control air pollutant emissions from the container in accordance with the Container Level 1 standards specified in part 3 of this subparagraph.

(III) For a container having a design capacity greater than 0.46 m³ that is in light material service, the remanufacturer or other person that stores or treats the hazardous secondary material shall control air pollutant emissions from the container in accordance with the Container Level 2 standards specified in part 4 of this subparagraph.

(ii) Reserved

3. Container Level 1 standards

(i) A container using Container Level 1 controls is one of the following:

(I) A container that meets the applicable U.S. Department of Transportation (DOT) regulations on packaging hazardous materials for transportation as specified in part 6 of this subparagraph.

(II) A container equipped with a cover and closure devices that form a continuous barrier over the container openings such that when the cover and closure devices are secured in the closed position there are no visible holes, gaps, or other open spaces into the interior of the

container. The cover may be a separate cover installed on the container (e.g., a lid on a drum or a suitably secured tarp on a roll-off box) or may be an integral part of the container structural design (e.g., a "portable tank" or bulk cargo container equipped with a screw-type cap).

(III) An open-top container in which an organic-vapor suppressing barrier is placed on or over the hazardous secondary material in the container such that no hazardous secondary material is exposed to the atmosphere. One example of such a barrier is application of a suitable organic-vapor suppressing foam.

(ii) A container used to meet the requirements of item (i)(II) or (III) of this part shall be equipped with covers and closure devices, as applicable to the container, that are composed of suitable materials to minimize exposure of the hazardous secondary material to the atmosphere and to maintain the equipment integrity, for as long as the container is in service. Factors to be considered in selecting the materials of construction and designing the cover and closure devices shall include: organic vapor permeability; the effects of contact with the hazardous secondary material or its vapor managed in the container; the effects of outdoor exposure of the closure device or cover material to wind, moisture, and sunlight; and the operating practices for which the container is intended to be used.

(iii) Whenever a hazardous secondary material is in a container using Container Level 1 controls, the remanufacturer or other person that stores or treats the hazardous secondary material shall install all covers and closure devices for the container, as applicable to the container, and secure and maintain each closure device in the closed position except as follows:

(I) Opening of a closure device or cover is allowed for the purpose of adding hazardous secondary material or other material to the container as follows:

I. In the case when the container is filled to the intended final level in one continuous operation, the remanufacturer or other person that stores or treats the hazardous secondary material shall promptly secure the closure devices in the closed position and install the covers, as applicable to the container, upon conclusion of the filling operation.

II. In the case when discrete quantities or batches of material intermittently are added to the container over a period of time, the remanufacturer or other person that stores or treats the hazardous secondary material shall promptly secure the closure devices in the closed position and install covers, as applicable to the container, upon either the container being filled to the intended final level; the completion of a batch loading after which no additional material will be added to the container within 15 minutes; the person performing the loading operation leaving the immediate vicinity of the container; or the shutdown of the process generating the hazardous secondary material being added to the container, whichever condition occurs first.

(II) Opening of a closure device or cover is allowed for the purpose of removing hazardous secondary material from the container as follows:

I. For the purpose of meeting the requirements of this subparagraph, an empty hazardous secondary material container may be open to the atmosphere at any time (i.e., covers and closure devices on such a container are not required to be secured in the closed position).

- II. In the case when discrete quantities or batches of material are removed from the container, but the container is not an empty hazardous secondary material container, the remanufacturer or other person that stores or treats the hazardous secondary material shall promptly secure the closure devices in the closed position and install covers, as applicable to the container, upon the completion of a batch removal after which no additional material will be removed from the container within 15 minutes or the person performing the unloading operation leaves the immediate vicinity of the container, whichever condition occurs first.
- (III) Opening of a closure device or cover is allowed when access inside the container is needed to perform routine activities other than transfer of hazardous secondary material. Examples of such activities include those times when a worker needs to open a port to measure the depth of or sample the material in the container, or when a worker needs to open a manhole hatch to access equipment inside the container. Following completion of the activity, the remanufacturer or other person that stores or treats the hazardous secondary material shall promptly secure the closure device in the closed position or reinstall the cover, as applicable to the container.
- (IV) Opening of a spring-loaded pressure-vacuum relief valve, conservation vent, or similar type of pressure relief device which vents to the atmosphere is allowed during normal operations for the purpose of maintaining the internal pressure of the container in accordance with the container design specifications. The device shall be designed to operate with no detectable organic emissions when the device is secured in the closed position. The settings at which the device opens shall be established such that the device remains in the closed position whenever the internal pressure of the container is within the internal pressure operating range determined by the remanufacturer or other persons that stores or treats the hazardous secondary material based on container manufacturer recommendations, applicable regulations, fire protection and prevention codes, standard engineering codes and practices, or other requirements for the safe handling of flammable, ignitable, explosive, reactive, or hazardous materials. Examples of normal operating conditions that may require these devices to open are during those times when the internal pressure of the container exceeds the internal pressure operating range for the container as a result of loading operations or diurnal ambient temperature fluctuations.
- (V) Opening of a safety device, as defined in subparagraph (b) of this paragraph, is allowed at any time conditions require doing so to avoid an unsafe condition.
- (iv) The remanufacturer or other person that stores or treats the hazardous secondary material using containers with Container Level 1 controls shall inspect the containers and their covers and closure devices as follows:
 - (I) In the case when a hazardous secondary material already is in the container at the time the remanufacturer or other person that stores or treats the hazardous secondary material first accepts possession of the container at the facility and the container is not emptied within 24 hours after the container is accepted at the facility (i.e., is not an empty hazardous secondary material container) the remanufacturer or other person that stores or treats the hazardous secondary material shall visually inspect the container and its cover and closure devices to check

for visible cracks, holes, gaps, or other open spaces into the interior of the container when the cover and closure devices are secured in the closed position. The container visual inspection shall be conducted on or before the date that the container is accepted at the facility (i.e., the date the container becomes subject to the standards of this paragraph).

(II) In the case when a container used for managing hazardous secondary material remains at the facility for a period of 1 year or more, the remanufacturer or other person that stores or treats the hazardous secondary material shall visually inspect the container and its cover and closure devices initially and thereafter, at least once every 12 months, to check for visible cracks, holes, gaps, or other open spaces into the interior of the container when the cover and closure devices are secured in the closed position. If a defect is detected, the remanufacturer or other person that stores or treats the hazardous secondary material shall repair the defect in accordance with the requirements of item (III) of this subpart.

(III) When a defect is detected for the container, cover, or closure devices, the remanufacturer or other person that stores or treats the hazardous secondary material shall make first efforts at repair of the defect no later than 24 hours after detection and repair shall be completed as soon as possible but no later than 5 calendar days after detection. If repair of a defect cannot be completed within 5 calendar days, then the hazardous secondary material shall be removed from the container and the container shall not be used to manage hazardous secondary material until the defect is repaired.

(v) The remanufacturer or other person that stores or treats the hazardous secondary material shall maintain at the facility a copy of the procedure used to determine that containers with capacity of 0.46 m³ or greater, which do not meet applicable DOT regulations as specified in part 6 of this subparagraph, are not managing hazardous secondary material in light material service.

4. Container Level 2 standards

(i) A container using Container Level 2 controls is one of the following:

(I) A container that meets the applicable U.S. Department of Transportation (DOT) regulations on packaging hazardous materials for transportation as specified in part 6 of this subparagraph.

(II) A container that operates with no detectable organic emissions as defined in subparagraph (b) of this paragraph and determined in accordance with the procedure specified in part 7 of this subparagraph.

(III) A container that has been demonstrated within the preceding 12 months to be vapor-tight by using 40 CFR part 60, appendix A, Method 27 in accordance with the procedure specified in part 8 of this subparagraph.

(ii) Transfer of hazardous secondary material in or out of a container using Container Level 2 controls shall be conducted in such a manner as to minimize exposure of the hazardous secondary material to the atmosphere, to the extent practical, considering the physical properties of the hazardous secondary material and good engineering and safety practices for handling flammable, ignitable, explosive, reactive, or other hazardous materials. Examples of container loading procedures that the EPA considers to meet the requirements of this subpart include using any one of the following: a submerged-fill pipe or other submerged-fill method to load liquids into the container; a vapor-balancing system or a vapor-recovery system to collect and control the vapors displaced

from the container during filling operations; or a fitted opening in the top of a container through which the hazardous secondary material is filled and subsequently purging the transfer line before removing it from the container opening.

(iii) Whenever a hazardous secondary material is in a container using Container Level 2 controls, the remanufacturer or other person that stores or treats the hazardous secondary material shall install all covers and closure devices for the container, and secure and maintain each closure device in the closed position except as follows:

(I) Opening of a closure device or cover is allowed for the purpose of adding hazardous secondary material or other material to the container as follows:

I. In the case when the container is filled to the intended final level in one continuous operation, the remanufacturer or other person that stores or treats the hazardous secondary material shall promptly secure the closure devices in the closed position and install the covers, as applicable to the container, upon conclusion of the filling operation.

II. In the case when discrete quantities or batches of material intermittently are added to the container over a period of time, the remanufacturer or other person that stores or treats the hazardous secondary material shall promptly secure the closure devices in the closed position and install covers, as applicable to the container, upon either the container being filled to the intended final level; the completion of a batch loading after which no additional material will be added to the container within 15 minutes; the person performing the loading operation leaving the immediate vicinity of the container; or the shutdown of the process generating the material being added to the container, whichever condition occurs first.

(II) Opening of a closure device or cover is allowed for the purpose of removing hazardous secondary material from the container as follows:

I. For the purpose of meeting the requirements of this subparagraph, an empty hazardous secondary material container may be open to the atmosphere at any time (i.e., covers and closure devices are not required to be secured in the closed position on an empty container).

II. In the case when discrete quantities or batches of material are removed from the container, but the container is not an empty hazardous secondary materials container, the remanufacturer or other person that stores or treats the hazardous secondary material shall promptly secure the closure devices in the closed position and install covers, as applicable to the container, upon the completion of a batch removal after which no additional material will be removed from the container within 15 minutes or the person performing the unloading operation leaves the immediate vicinity of the container, whichever condition occurs first.

(III) Opening of a closure device or cover is allowed when access inside the container is needed to perform routine activities other than transfer of hazardous secondary material. Examples of such activities include those times when a worker needs to open a port to measure the depth of or

sample the material in the container, or when a worker needs to open a manhole hatch to access equipment inside the container. Following completion of the activity, the remanufacturer or other person that stores or treats the hazardous secondary material shall promptly secure the closure device in the closed position or reinstall the cover, as applicable to the container.

(IV) Opening of a spring-loaded, pressure-vacuum relief valve, conservation vent, or similar type of pressure relief device which vents to the atmosphere is allowed during normal operations for the purpose of maintaining the internal pressure of the container in accordance with the container design specifications. The device shall be designed to operate with no detectable organic emission when the device is secured in the closed position. The settings at which the device opens shall be established such that the device remains in the closed position whenever the internal pressure of the container is within the internal pressure operating range determined by the remanufacturer or other person that stores or treats the hazardous secondary material based on container manufacturer recommendations, applicable regulations, fire protection and prevention codes, standard engineering codes and practices, or other requirements for the safe handling of flammable, ignitable, explosive, reactive, or hazardous materials. Examples of normal operating conditions that may require these devices to open are during those times when the internal pressure of the container exceeds the internal pressure operating range for the container as a result of loading operations or diurnal ambient temperature fluctuations.

(V) Opening of a safety device, as defined in subparagraph (b) of this paragraph, is allowed at any time conditions require doing so to avoid an unsafe condition.

(iv) The remanufacture or other person that stores or treats the hazardous secondary material using containers with Container Level 2 controls shall inspect the containers and their covers and closure devices as follows:

(I) In the case when a hazardous secondary material already is in the container at the time the remanufacturer or other person that stores or treats the hazardous secondary material first accepts possession of the container at the facility and the container is not emptied within 24 hours after the container is accepted at the facility (i.e., is not an empty hazardous secondary material container), the remanufacturer or other person that stores or treats the hazardous secondary material shall visually inspect the container and its cover and closure devices to check for visible cracks, holes, gaps, or other open spaces into the interior of the container when the cover and closure devices are secured in the closed position. The container visual inspection shall be conducted on or before the date that the container is accepted at the facility (i.e., the date the container becomes subject to the standards of this paragraph).

(II) In the case when a container used for managing hazardous secondary material remains at the facility for a period of 1 year or more, the remanufacturer or other person that stores or treats the hazardous secondary material shall visually inspect the container and its cover and closure devices initially and thereafter, at least once every 12 months, to check for visible cracks, holes, gaps, or other open spaces into the interior of the container when the cover and closure devices are secured in the closed position. If a defect is detected, the remanufacturer or other person that stores or treats the hazardous secondary material shall repair the defect in accordance with the requirements of item (III) of this subpart.

(III) When a defect is detected for the container, cover, or closure devices, the remanufacturer or other person that stores or treats the hazardous secondary material shall make first efforts at repair of the defect no later than 24 hours after detection, and repair shall be completed as soon as possible but no later than 5 calendar days after detection. If repair of a defect cannot be completed within 5 calendar days, then the hazardous secondary material shall be removed from the container and the container shall not be used to manage hazardous secondary material until the defect is repaired.

5. Container Level 3 standards

(i) A container using Container Level 3 controls is one of the following:

(I) A container that is vented directly through a closed-vent system to a control device in accordance with the requirements of item (ii)(II) of this part.

(II) A container that is vented inside an enclosure which is exhausted through a closed-vent system to a control device in accordance with the requirements of items (ii)(I) and (II) of this part.

(ii) The remanufacturer or other person that stores or treats the hazardous secondary material shall meet the following requirements, as applicable to the type of air emission control equipment selected by the remanufacturer or other person that stores or treats the hazardous secondary material:

(I) The container enclosure shall be designed and operated in accordance with the criteria for a permanent total enclosure as specified in "Procedure T--Criteria for and Verification of a Permanent or Temporary Total Enclosure" under 40 CFR 52.741, appendix B. The enclosure may have permanent or temporary openings to allow worker access; passage of containers through the enclosure by conveyor or other mechanical means; entry of permanent mechanical or electrical equipment; or direct airflow into the enclosure. The remanufacturer or other person that stores or treats the hazardous secondary material shall perform the verification procedure for the enclosure as specified in Section 5.0 to "Procedure T--Criteria for and Verification of a Permanent or Temporary Total Enclosure" initially when the enclosure is first installed and, thereafter, annually.

(II) The closed-vent system and control device shall be designed and operated in accordance with the requirements of subparagraph (h) of this paragraph.

(iii) Safety devices, as defined in subparagraph (b) of this paragraph, may be installed and operated as necessary on any container, enclosure, closed-vent system, or control device used to comply with the requirements of subpart (i) of this part.

(iv) Remanufacturers or other persons that store or treat the hazardous secondary material using Container Level 3 controls in accordance with the provisions of this paragraph shall inspect and monitor the closed-vent systems and control devices as specified in subparagraph (h) of this paragraph.

(v) Remanufacturers or other persons that store or treat the hazardous secondary material that use Container Level 3 controls in accordance with the provisions of this paragraph shall prepare and maintain the records specified in part (i)4 of this paragraph.

- (vi) Transfer of hazardous secondary material in or out of a container using Container Level 3 controls shall be conducted in such a manner as to minimize exposure of the hazardous secondary material to the atmosphere, to the extent practical, considering the physical properties of the hazardous secondary material and good engineering and safety practices for handling flammable, ignitable, explosive, reactive, or other hazardous materials. Examples of container loading procedures that the EPA considers to meet the requirements of this subpart include using any one of the following: a submerged-fill pipe or other submerged-fill method to load liquids into the container; a vapor-balancing system or a vapor-recovery system to collect and control the vapors displaced from the container during filling operations; or a fitted opening in the top of a container through which the hazardous secondary material is filled and subsequently purging the transfer line before removing it from the container opening.
6. For the purpose of compliance with item 3(i)(I) or 4(i)(I) of this subparagraph, containers shall be used that meet the applicable U.S. Department of Transportation (DOT) regulations on packaging hazardous materials for transportation as follows:
- (i) The container meets the applicable requirements specified in 49 CFR part 178 or part 179.
- (ii) Hazardous secondary material is managed in the container in accordance with the applicable requirements specified in 49 CFR part 107, subpart B and 49 CFR parts 172, 173, and 180.
- (iii) For the purpose of complying with this paragraph, no exceptions to the 49 CFR part 178 or part 179 regulations are allowed.
7. To determine compliance with the no detectable organic emissions requirement of item 4(i)(II) of this subparagraph, the procedure specified in part (d)4 of this paragraph shall be used.
- (i) Each potential leak interface (i.e., a location where organic vapor leakage could occur) on the container, its cover, and associated closure devices, as applicable to the container, shall be checked. Potential leak interfaces that are associated with containers include, but are not limited to: the interface of the cover rim and the container wall; the periphery of any opening on the container or container cover and its associated closure device; and the sealing seat interface on a spring-loaded pressure-relief valve.
- (ii) The test shall be performed when the container is filled with a material having a volatile organic concentration representative of the range of volatile organic concentrations for the hazardous secondary materials expected to be managed in this type of container. During the test, the container cover and closure devices shall be secured in the closed position.
8. Procedure for determining a container to be vapor-tight using Method 27 of 40 CFR part 60, appendix A for the purpose of complying with item 4(i)(II) of this subparagraph.
- (i) The test shall be performed in accordance with Method 27 of 40 CFR part 60, appendix A of this chapter.
- (ii) A pressure measurement device shall be used that has a precision of 2.5 mm water and that is capable of measuring above the pressure at which the container is to be tested for vapor tightness.
- (iii) If the test results determined by Method 27 indicate that the container sustains a pressure change less than or equal to 750 Pascals within 5 minutes after it is

pressurized to a minimum of 4,500 Pascals, then the container is determined to be vapor-tight.

(h) Standards: Closed-vent systems and control devices [40 CFR 261.1087]

1. This subparagraph applies to each closed-vent system and control device installed and operated by the remanufacturer or other person who stores or treats the hazardous secondary material to control air emissions in accordance with standards of this paragraph.
2. The closed-vent system shall meet the following requirements:
 - (i) The closed-vent system shall route the gases, vapors, and fumes emitted from the hazardous secondary material in the hazardous secondary material management unit to a control device that meets the requirements specified in part 3 of this subparagraph.
 - (ii) The closed-vent system shall be designed and operated in accordance with the requirements specified in part (27)(d)11 of this rule.
 - (iii) In the case when the closed-vent system includes bypass devices that could be used to divert the gas or vapor stream to the atmosphere before entering the control device, each bypass device shall be equipped with either a flow indicator as specified in item (I) of this subpart or a seal or locking device as specified in item (II) of this subpart. For the purpose of complying with this subpart, low leg drains, high point bleeds, analyzer vents, open-ended valves or lines, spring loaded pressure relief valves, and other fittings used for safety purposes are not considered to be bypass devices.
 - (I) If a flow indicator is used to comply with this subpart, the indicator shall be installed at the inlet to the bypass line used to divert gases and vapors from the closed-vent system to the atmosphere at a point upstream of the control device inlet. For this item, a flow indicator means a device which indicates the presence of either gas or vapor flow in the bypass line.
 - (II) If a seal or locking device is used to comply with this subpart, the device shall be placed on the mechanism by which the bypass device position is controlled (e.g., valve handle, damper lever) when the bypass device is in the closed position such that the bypass device cannot be opened without breaking the seal or removing the lock. Examples of such devices include, but are not limited to, a car-seal or a lock-and-key configuration valve. The remanufacturer or other person that stores or treats the hazardous secondary material shall visually inspect the seal or closure mechanism at least once every month to verify that the bypass mechanism is maintained in the closed position.
 - (iv) The closed-vent system shall be inspected and monitored by the remanufacturer or other person that stores or treats the hazardous secondary material in accordance with the procedure specified in part (27)(d)12 of this rule.
3. The control device shall meet the following requirements:
 - (i) The control device shall be one of the following devices:
 - (I) A control device designed and operated to reduce the total organic content of the inlet vapor stream vented to the control device by at least 95 percent by weight;
 - (II) An enclosed combustion device designed and operated in accordance

with the requirements of part (27)(d)3 of this rule; or

(III) A flare designed and operated in accordance with the requirements of part (27)(d)4 of this rule.

(ii) The remanufacturer or other person that stores or treats the hazardous secondary material who elects to use a closed-vent system and control device to comply with the requirements of this subparagraph shall comply with the requirements specified in items (I) through (VI) of this subpart.

(I) Periods of planned routine maintenance of the control device, during which the control device does not meet the specifications of items (i)(I), (II), or (III) of this part, as applicable, shall not exceed 240 hours per year.

(II) The specifications and requirements in items (i)(I) through (III) of this part for control devices do not apply during periods of planned routine maintenance.

(III) The specifications and requirements in items (i)(I) through (III) of this part for control devices do not apply during a control device system malfunction.

(IV) The remanufacturer or other person that stores or treats the hazardous secondary material shall demonstrate compliance with the requirements of item (I) of this subpart (i.e., planned routine maintenance of a control device, during which the control device does not meet the specifications of items (i)(I) through (III) of this part, as applicable, shall not exceed 240 hours per year) by recording the information specified in item (j)5(i)(V) of this paragraph.

(V) The remanufacturer or other person that stores or treats the hazardous secondary material shall correct control device system malfunctions as soon as practicable after their occurrence in order to minimize excess emissions of air pollutants.

(VI) The remanufacturer or other person that stores or treats the hazardous secondary material shall operate the closed-vent system such that gases, vapors, or fumes are not actively vented to the control device during periods of planned maintenance or control device system malfunction (i.e., periods when the control device is not operating or not operating normally) except in cases when it is necessary to vent the gases, vapors, and/or fumes to avoid an unsafe condition or to implement malfunction corrective actions or planned maintenance actions.

(iii) The remanufacturer or other person that stores or treats the hazardous secondary material using a carbon adsorption system to comply with subpart (i) of this part shall operate and maintain the control device in accordance with the following requirements:

(I) Following the initial startup of the control device, all activated carbon in the control device shall be replaced with fresh carbon on a regular basis in accordance with the requirements of part (27)(d)7 or part (27)(d)8 of this rule.

(II) All carbon that is hazardous waste and that is removed from the control device shall be managed in accordance with the requirements of part (27)(d)14 of this rule, regardless of the average volatile organic concentration of the carbon.

- (iv) A remanufacturer or other person that stores or treats the hazardous secondary material using a control device other than a thermal vapor incinerator, flare, boiler, process heater, condenser, or carbon adsorption system to comply with subpart (i) of this part shall operate and maintain the control device in accordance with the requirements of part (27)(d)10 of this rule.
- (v) The remanufacturer or other person that stores or treats the hazardous secondary material shall demonstrate that a control device achieves the performance requirements of subpart (i) of this part as follows:
- (I) A remanufacturer or other person that stores or treats the hazardous secondary material shall demonstrate using either a performance test as specified in item (III) of this subpart or a design analysis as specified in item (IV) of this subpart the performance of each control device except for the following:
- I. A flare;
- II. A boiler or process heater with a design heat input capacity of 44 megawatts or greater;
- III. A boiler or process heater into which the vent stream is introduced with the primary fuel;
- (II) A remanufacturer or other person that stores or treats the hazardous secondary material shall demonstrate the performance of each flare in accordance with the requirements specified in part (27)(d)5 of this rule.
- (III) For a performance test conducted to meet the requirements of item (I) of this subpart, the remanufacturer or other person that stores or treats the hazardous secondary material shall use the test methods and procedures specified in subparts (27)(e)3(i) through (iv) of this rule.
- (IV) For a design analysis conducted to meet the requirements of item (I) of this subpart, the design analysis shall meet the requirements specified in item (27)(f)2(iv)(III) of this rule.
- (V) The remanufacturer or other person that stores or treats the hazardous secondary material shall demonstrate that a carbon adsorption system achieves the performance requirements of subpart (i) of this part based on the total quantity of organics vented to the atmosphere from all carbon adsorption system equipment that is used for organic adsorption, organic desorption or carbon regeneration, organic recovery, and carbon disposal.
- (vi) If the remanufacturer or other person that stores or treats the hazardous secondary material and the Commissioner do not agree on a demonstration of control device performance using a design analysis then the disagreement shall be resolved using the results of a performance test performed by the remanufacturer or other person that stores or treats the hazardous secondary material in accordance with the requirements of item (v)(III) of this part. The Commissioner may choose to have an authorized representative observe the performance test.
- (vii) The closed-vent system and control device shall be inspected and monitored by the remanufacture or other person that stores or treats the hazardous secondary material in accordance with the procedures specified in subpart (27)(d)6(ii) and part (27)(d)12 of this rule. The readings from each monitoring device required by subpart (27)(d)6(ii) of this rule shall be inspected at least once each operating

day to check control device operation. Any necessary corrective measures shall be immediately implemented to ensure the control device is operated in compliance with the requirements of this subparagraph.

(i) Inspection and monitoring requirements [40 CFR 261.1088]

1. The remanufacturer or other person that stores or treats the hazardous secondary material shall inspect and monitor air emission control equipment used to comply with this paragraph in accordance with the applicable requirements specified in subparagraphs (e) through (h) of this paragraph.
2. The remanufacturer or other person that stores or treats the hazardous secondary material shall develop and implement a written plan and schedule to perform the inspections and monitoring required by part 1 of this subparagraph. The remanufacturer or other person that stores or treats the hazardous secondary material shall keep the plan and schedule at the facility.

(j) Recordkeeping requirements. [40 CFR 261.1089]

1. Each remanufacturer or other person that stores or treats the hazardous secondary material subject to requirements of this paragraph shall record and maintain the information specified in parts 2 through 8 of this subparagraph, as applicable to the facility. Except for air emission control equipment design documentation, records required by this subparagraph shall be maintained at the facility for a minimum of 3 years. Air emission control equipment design documentation shall be maintained at the facility until the air emission control equipment is replaced or otherwise no longer in service.

2. The remanufacturer or other person that stores or treats the hazardous secondary material using a tank with air emission controls in accordance with the requirements of subparagraph (e) of this paragraph shall prepare and maintain records for the tank that include the following information:

(i) For each tank using air emission controls in accordance with the requirements of subparagraph (e) of this paragraph, the remanufacturer or other person that stores or treats the hazardous secondary material shall record:

(I) A tank identification number (or other unique identification description as selected by the remanufacturer or other person that stores or treats the hazardous secondary material).

(II) A record for each inspection required by subparagraph (e) of this paragraph that includes the following information:

I. Date inspection was conducted.

II. For each defect detected during the inspection: The location of the defect, a description of the defect, the date of detection, and corrective action taken to repair the defect. In the event that repair of the defect is delayed in accordance with the requirements of subparagraph (e) of this paragraph, the remanufacturer or other person that stores or treats the hazardous secondary material shall also record the reason for the delay and the date that completion of repair of the defect is expected.

(ii) In addition to the information required by subpart (i) of this part, the remanufacturer or other person that stores or treats the hazardous secondary material shall record the following information, as applicable to the tank:

(I) The remanufacturer or other person that stores or treats the hazardous

secondary material using a fixed roof to comply with the Tank Level 1 control requirements specified in part (e)3 of this paragraph shall prepare and maintain records for each determination for the maximum organic vapor pressure of the hazardous secondary material in the tank performed in accordance with the requirements of part (e)3 of this paragraph. The records shall include the date and time the samples were collected, the analysis method used, and the analysis results.

(II) The remanufacturer or other person that stores or treats the hazardous secondary material using an internal floating roof to comply with the Tank Level 2 control requirements specified in part (e)5 of this paragraph shall prepare and maintain documentation describing the floating roof design.

(III) Remanufacturer or other persons that store or treat the hazardous secondary material using an external floating roof to comply with the Tank Level 2 control requirements specified in part (e)6 of this paragraph shall prepare and maintain the following records:

I. Documentation describing the floating roof design and the dimensions of the tank.

II. Records for each seal gap inspection required by subpart (e)6(iii) of this paragraph describing the results of the seal gap measurements. The records shall include the date that the measurements were performed, the raw data obtained for the measurements, and the calculations of the total gap surface area. In the event that the seal gap measurements do not conform to the specifications in subpart (e)6(i) of this paragraph, the records shall include a description of the repairs that were made, the date the repairs were made, and the date the tank was emptied, if necessary.

(IV) Each remanufacturer or other person that stores or treats the hazardous secondary material using an enclosure to comply with the Tank Level 2 control requirements specified in part (e)9 of this paragraph shall prepare and maintain the following records:

I. Records for the most recent set of calculations and measurements performed by the remanufacturer or other person that stores or treats the hazardous secondary material to verify that the enclosure meets the criteria of a permanent total enclosure as specified in "Procedure T--Criteria for and Verification of a Permanent or Temporary Total Enclosure" under 40 CFR 52.741, appendix B.

II. Records required for the closed-vent system and control device in accordance with the requirements of part 5 of this subparagraph.

3. Reserved

4. The remanufacturer or other person that stores or treats the hazardous secondary material using containers with Container Level 3 air emission controls in accordance with the requirements of subparagraph (g) of this paragraph shall prepare and maintain records that include the following information:

(i) Records for the most recent set of calculations and measurements performed by the remanufacturer or other person that stores or treats the hazardous secondary material to verify that the enclosure meets the criteria of a permanent total enclosure as specified in "Procedure T--Criteria for and Verification of a

Permanent or Temporary Total Enclosure” under 40 CFR 52.741, appendix B.

(ii) Records required for the closed-vent system and control device in accordance with the requirements of part 5 of this subparagraph.

5. The remanufacturer or other person that stores or treats the hazardous secondary material using a closed-vent system and control device in accordance with the requirements of subparagraph (h) of this paragraph shall prepare and maintain records that include the following information:

(i) Documentation for the closed-vent system and control device that includes:

(I) Certification that is signed and dated by the remanufacturer or other person that stores or treats the hazardous secondary material stating that the control device is designed to operate at the performance level documented by a design analysis as specified in item (II) of this subpart or by performance tests as specified in item (III) of this subpart when the tank or container is or would be operating at capacity or the highest level reasonably expected to occur.

(II) If a design analysis is used, then design documentation as specified in subpart (27)(f)2(iv) of this rule. The documentation shall include information prepared by the remanufacturer or other person that stores or treats the hazardous secondary material or provided by the control device manufacturer or vendor that describes the control device design in accordance with item (27)(f)2(iv)(III) of this rule and certification by the remanufacturer or other person that stores or treats the hazardous secondary material that the control equipment meets the applicable specifications.

(III) If performance tests are used, then a performance test plan as specified in subpart (27)(f)2(iii) of this rule and all test results.

(IV) Information as required by subparts (27)(f)3(i) and (ii) of this rule, as applicable.

(V) A remanufacturer or other person that stores or treats the hazardous secondary material shall record, on a semiannual basis, the information specified in subitems I and II of this item for those planned routine maintenance operations that would require the control device not to meet the requirements of item (h)3(i)(I), (II) or (III) of this paragraph, as applicable.

I. A description of the planned routine maintenance that is anticipated to be performed for the control device during the next 6-month period. This description shall include the type of maintenance necessary, planned frequency of maintenance, and lengths of maintenance periods.

II. A description of the planned routine maintenance that was performed for the control device during the previous 6-month period. This description shall include the type of maintenance performed and the total number of hours during those 6 months that the control device did not meet the requirements of item (h)3(i)(I), (II) or (III) of this paragraph, as applicable, due to planned routine maintenance.

(VI) A remanufacturer or other person that stores or treats the hazardous secondary material shall record the information specified in subitems I through III of this item for those unexpected control device system

malfunctions that would require the control device not to meet the requirements of item (h)3(i)(I), (II) or (III) of this paragraph, as applicable.

I. The occurrence and duration of each malfunction of the control device system.

II. The duration of each period during a malfunction when gases, vapors, or fumes are vented from the hazardous secondary material management unit through the closed-vent system to the control device while the control device is not properly functioning.

III. Actions taken during periods of malfunction to restore a malfunctioning control device to its normal or usual manner of operation.

(VII) Records of the management of carbon removed from a carbon adsorption system conducted in accordance with item (h)3(iii)(II) of this paragraph.

6. The remanufacturer or other person that stores or treats the hazardous secondary material using a tank or container exempted under the hazardous secondary material organic concentration conditions specified in subpart (c)3(i) of this paragraph or items (c)3(ii)(I) through (IV) of this paragraph, shall prepare and maintain at the facility records documenting the information used for each material determination (e.g., test results, measurements, calculations, and other documentation). If analysis results for material samples are used for the material determination, then the remanufacturer or other person that stores or treats the hazardous secondary material shall record the date, time, and location that each material sample is collected in accordance with applicable requirements of subparagraph (d) of this paragraph.

7. A remanufacturer or other person that stores or treats the hazardous secondary material designating a cover as "unsafe to inspect and monitor" pursuant to part (e)12 or (f)7 of this paragraph shall record and keep at facility the following information: the identification numbers for hazardous secondary material management units with covers that are designated as "unsafe to inspect and monitor," the explanation for each cover stating why the cover is unsafe to inspect and monitor, and the plan and schedule for inspecting and monitoring each cover.

8. The remanufacturer or other person that stores or treats the hazardous secondary material that is subject to this paragraph and to the control device standards in 40 CFR part 60, subpart VV, or 40 CFR part 61, subpart V, may elect to demonstrate compliance with the applicable subparagraphs of this paragraph by documentation either pursuant to this paragraph, or pursuant to the provisions of 40 CFR part 60, subpart VV or 40 CFR part 61, subpart V, to the extent that the documentation required by 40 CFR parts 60 or 61 duplicates the documentation required by this subparagraph.

(k) Reserved [40 CFR 261.1090]

(5)(30) Appendices to Rule 0400-12-01-.02 [Appendices to 40 CFR 261]

Appendix I -- Representative Sampling Methods

The methods and equipment used for sampling waste materials will vary with the form and consistency of the waste materials to be sampled. Samples collected using the sampling protocols listed below, for sampling waste with properties similar to the indicated materials, will be considered by the Department to be representative of the waste.

Extremely viscous liquid -- ASTM Standard D140-70 Crushed or powdered material -- ASTM Standard D346-75
Soil or rock-like material -- ASTM Standard D420-69 Soil-like material -- ASTM Standard D1452-65

Fly Ash-like material -- ASTM Standard D2234-76 (ASTM Standards are available from ASTM, 1916 Race St., Philadelphia, PA 19103)

Containerized liquid waste -- "COLIWASA"

Liquid waste in pits, ponds, lagoons, and similar reservoirs -- "Pond Sampler"

SW-846 also contains additional information on the application of these protocols.

Appendix II -- (RESERVED)

Appendix III -- (RESERVED)

Appendix IV -- (RESERVED) - Radioactive Waste Test Methods

Appendix V -- (RESERVED) - Infectious Waste Treatment Specifications

Appendix VI -- (RESERVED) - Etiologic Agents

Appendix VII -- Basis for Listing Hazardous Waste

Hazardous Waste Code	Hazardous Constituents for Which Listed
F001	Tetrachloroethylene, methylene chloride trichloroethylene, 1,1,1-trichloroethane, carbon tetrachloride, chlorinated fluorocarbons.
F002	Tetrachloroethylene, methylene chloride, trichloroethylene, 1,1,1-trichloroethane, 1,1,2-trichloroethane, chlorobenzene, 1,1,2-trichloro-1,2,2-trifluoroethane, ortho-dichlorobenzene, trichlorofluoromethane.
F003	N.A.
F004	Cresols and cresylic acid, nitrobenzene.
F005	Toluene, methyl ethyl ketone, carbon disulfide, isobutanol, pyridine, 2-ethoxyethanol, benzene, 2-nitropropane.
F006	Cadmium, hexavalent chromium, nickel, cyanide (complexed).
F007	Cyanide (salts).
F008	Cyanide (salts).
F009	Cyanide (salts).
F010	Cyanide (salts).
F011	Cyanide (salts).
F012	Cyanide (complexed).
F019	Hexavalent chromium, cyanide (complexed).
F020	Tetra- and pentachlorodibenzo-p-dioxins; tetra and pentachlorodi-benzofurans; tri- and tetrachlorophenols and their chlorophenoxy derivative acids, esters, ethers, amine and other salts.
F021	Penta- and hexachlorodibenzo-p-dioxins; penta- and hexachlorodibenzofurans; pentachlorophenol and its derivatives.
F022	Tetra-, penta-, and hexachlorodibenzo-p-dioxins; tetra-, penta-, and hexachlorodibenzofurans.

F023	Tetra-, and pentachlorodibenzo-p-dioxins; tetra- and pentachlorodibenzofurans; tri- and tetrachlorophenols and their chlorophenoxy derivative acids, esters, ethers, amine and other salts.
F024	Chloromethane, dichloromethane, trichloromethane, carbon tetrachloride, chloroethylene, 1,1-dichloroethane, 1,2-dichloroethane, trans-1,2-dichloroethylene, 1,1-dichloroethylene, 1,1,1-trichloroethane, 1,1,2-trichloroethane, trichloroethylene, 1,1,1,2-tetra-chloroethane, 1,1,2,2-tetrachloroethane, tetrachloroethylene, pentachloroethane, hexachloroethane, allyl chloride (3-chloropropene), dichloropropane, dichloropropene, 2-chloro-1,3-butadiene, hexachloro-1,3-butadiene, hexachlorocyclopentadiene, hexachlorocyclohexane, benzene, chlorobenzene, dichlorobenzenes, 1,2,4-trichlorobenzene, tetrachlorobenzene, pentachlorobenzene, hexachlorobenzene, toluene, naphthalene.
F025	Chloromethane; Dichloromethane; Trichloromethane; Carbon tetrachloride; Chloroethylene; 1,1-Dichloroethane; 1,2-Dichloroethane; trans-1,2-Dichloroethylene; 1,1-Dichloroethylene; 1,1,1-Trichloroethane; 1,1,2-Trichloroethane; Trichloroethylene; 1,1,1,2-Tetrachloroethane; 1,1,2,2-Tetrachloroethane; Tetrachloroethylene; Pentachloroethane; Hexachloroethane; Allyl chloride (3-Chloropropene); Dichloropropane; Dichloropropene; 2-Chloro-1,3-butadiene; Hexachloro-1,3-butadiene; Hexachlorocyclopentadiene; Benzene; Chlorobenzene; Dichlorobenzene; 1,2,4-Trichlorobenzene; Tetrachlorobenzene; Pentachlorobenzene; Hexachlorobenzene; Toluene; Naphthalene.
F026	Tetra-, penta-, and hexachlorodibenzo-p-dioxins; tetra-, penta-, and hexachlorodibenzofurans.
F027	Tetra-, penta-, and hexachlorodibenzo-p-dioxins; tetra-, penta-, and hexachlorodibenzofurans; tri-, tetra-, and pentachlorophenols and their chlorophenoxy derivative acids, esters, ethers, amine and other salts.
F028	Tetra-, penta-, and hexachlorodibenzo-p-dioxins; tetra-, penta-, and hexachlorodibenzofurans; tri-, tetra-, and pentachlorophenols and their chlorophenoxy derivative acids, esters, ethers, amine and other salts.
F032	Benz(a)anthracene, benzo(a)pyrene, dibenz(a,h)-anthracene, indeno(1,2,3-cd)pyrene, pentachlorophenol, arsenic, chromium, tetra-, penta-, hexa-, heptachlorodibenzo-p-dioxins, tetra-, penta-, hexa-, heptachlorodibenzofurans.
F034	Benz(a)anthracene, benzo(k)fluoranthene, benzo(a)pyrene, dibenz(a,h)anthracene, indeno(1,2,3-cd)pyrene, naphthalene, arsenic, chromium.
F035	Arsenic, chromium, lead.
F037	Benzene, benzo(a)pyrene, chrysene, lead, chromium.
F038	Benzene, benzo(a)pyrene, chrysene, lead, chromium.
F039	All constituents for which treatment standards are specified for multi-source leachate (wastewaters and nonwastewaters) under 40 CFR 268.43, Table CCW.
K001	Pentachlorophenol, phenol, 2-chlorophenol, p-chloro-m-cresol, 2,4-dimethylphenyl, 2,4-dinitrophenol, trichlorophenols, tetrachlorophenols, 2,4-dinitrophenol, creosote, chrysene, naphthalene, fluoranthene, benzo(b)fluoranthene, benzo(a)pyrene, indeno(1,2,3-cd)pyrene, benz(a)anthracene, dibenz(a)anthracene, acenaphthalene.
K002	Hexavalent chromium, lead
K003	Hexavalent chromium, lead.
K004	Hexavalent chromium.
K005	Hexavalent chromium, lead.
K006	Hexavalent chromium.

K007	Cyanide (complexed), hexavalent chromium.
K008	Hexavalent chromium.
K009	Chloroform, formaldehyde, methylene chloride, methyl chloride, paraldehyde, formic acid.
K010	Chloroform, formaldehyde, methylene chloride, methyl chloride, paraldehyde, formic acid, chloroacetaldehyde.
K011	Acrylonitrile, acetonitrile, hydrocyanic acid.
K013	Hydrocyanic acid, acrylonitrile, acetonitrile.
K014	Acetonitrile, acrylamide.
K015	Benzyl chloride, chlorobenzene, toluene, benzotrichloride.
K016	Hexachlorobenzene, hexachlorobutadiene, carbon tetrachloride, hexachloroethane, perchloroethylene.
K017	Epichlorohydrin, chloroethers [bis(chloromethyl) ether and bis (2-chloroethyl) ethers], trichloropropane, dichloropropanols.
K018	1,2-dichloroethane, trichloroethylene, hexachlorobutadiene, hexachlorobenzene.
K019	Ethylene dichloride, 1,1,1-trichloroethane, 1,1,2-trichloroethane, tetrachloroethanes (1,1,2,2-tetrachloroethane and 1,1,1,2-tetrachloroethane), trichloroethylene, tetrachloroethylene, carbon tetrachloride, chloroform, vinyl chloride, vinylidene chloride.
K020	Ethylene dichloride, 1,1,1-trichloroethane, 1,1,2-trichloroethane, tetrachloroethanes (1,1,2,2-tetrachloroethane and 1,1,1,2-tetrachloroethane), trichloroethylene, tetrachloroethylene, carbon tetrachloride, chloroform, vinyl chloride, vinylidene chloride.
K021	Antimony, carbon tetrachloride, chloroform.
K022	Phenol, tars (polycyclic aromatic hydrocarbons).
K023	Phthalic anhydride, maleic anhydride.
K024	Phthalic anhydride, 1,4-naphthoquinone.
K025	Meta-dinitrobenzene, 2,4-dinitrotoluene.
K026	Paraldehyde, pyridines, 2-picoline.
K027	Toluene diisocyanate, toluene-2, 4-diamine.
K028	1,1,1-trichloroethane, vinyl chloride.
K029	1,2-dichloroethane, 1,1,1-trichloroethane, vinyl chloride, vinylidene chloride, chloroform.
K030	Hexachlorobenzene, hexachlorobutadiene, hexachloroethane, 1,1,1,2-tetrachloroethane, 1,1,2,2-tetrachloroethane, ethylene dichloride.
K031	Arsenic.
K032	Hexachlorocyclopentadiene.
K033	Hexachlorocyclopentadiene.
K034	Hexachlorocyclopentadiene.
K035	Creosote, chrysene, naphthalene, fluoranthene, benzo(b) fluoranthene, benzo(a)pyrene, indeno(1,2,3-cd) pyrene, benzo(a)anthracene, dibenzo(a)anthracene, acenaphthalene.

K036	Toluene, phosphorodithioic and phosphorothioic acid esters.
K037	Toluene, phosphorodithioic and phosphorothioic acid esters.
K038	Phorate, formaldehyde, phosphorodithioic and phosphorothioic acid esters.
K039	Phosphorodithioic and phosphorothioic acid esters.
K040	Phorate, formaldehyde, phosphorodithioic and phosphorothioic acid esters.
K041	Toxaphene.
K042	Hexachlorobenzene, ortho-dichlorobenzene.
K043	2,4-dichlorophenol, 2,6-dichlorophenol, 2,4,6-trichlorophenol.
K044	N.A.
K045	N.A.
K046	Lead.
K047	N.A.
K048	Hexavalent chromium, lead.
K049	Hexavalent chromium, lead.
K050	Hexavalent chromium.
K051	Hexavalent chromium, lead.
K052	Lead.
K060	Cyanide, naphthalene, phenolic compounds, arsenic.
K061	Hexavalent chromium, lead, cadmium.
K062	Hexavalent chromium, lead.
K069	Hexavalent chromium, lead, cadmium.
K071	Mercury.
K073	Chloroform, carbon tetrachloride, hexachloroethane, trichloroethane, tetrachloroethylene, dichloroethylene, 1,1,2,2-tetrachloroethane.
K083	Aniline, diphenylamine, nitrobenzene, phenylenediamine.
K084	Arsenic.
K085	Benzene, dichlorobenzenes, trichlorobenzenes, tetrachlorobenzenes, pentachlorobenzene, hexachlorobenzene, benzyl chloride.
K086	Lead, hexavalent chromium.
K087	Phenol, naphthalene.
K088	Cyanide (complexes).
K093	Phthalic anhydride, maleic anhydride.
K094	Phthalic anhydride.
K095	1,1,2-trichloroethane, 1,1,1,2-tetrachloroethane, 1,1,2,2-tetrachloroethane.
K096	1,2-dichloroethane, 1,1,1-trichloroethane, 1,1,2-trichloroethane.
K097	Chlordane, heptachlor.
K098	Toxaphene.
K099	2,4-dichlorophenol, 2,4,6-trichlorophenol.

K100	Hexavalent chromium, lead, cadmium.
K101	Arsenic.
K102	Arsenic.
K103	Aniline, nitrobenzene, phenylenediamine.
K104	Aniline, benzene, diphenylamine, nitrobenzene, phenylenediamine.
K105	Benzene, monochlorobenzene, dichlorobenzenes, 2,4,6-trichlorophenol.
K106	Mercury.
K107	1,1-Dimethylhydrazine (UDMH).
K108	1,1-Dimethylhydrazine (UDMH).
K109	1,1-Dimethylhydrazine (UDMH).
K110	1,1-Dimethylhydrazine (UDMH).
K111	2,4-Dinitrotoluene.
K112	2,4-Toluenediamine, o-toluidine, p-toluidine, aniline.
K113	2,4-Toluenediamine, o-toluidine, p-toluidine, aniline.
K114	2,4-Toluenediamine, o-toluidine, p-toluidine.
K115	2,4-Toluenediamine.
K116	Carbon tetrachloride, tetrachloroethylene, chloroform, phosgene.
K117	Ethylene dibromide.
K118	Ethylene dibromide.
K123	Ethylene thiourea.
K124	Ethylene thiourea.
K125	Ethylene thiourea.
K126	Ethylene thiourea.
K131	Dimethyl sulfate, methyl bromide.
K132	Methyl bromide.
K136	Ethylene dibromide.
K141	Benzene, benz(a)anthracene, benzo(a)pyrene, benzo(b)fluoranthene, benzo(k)fluoranthene, dibenz(a,h)anthracene, indeno(1,2,3-cd)pyrene.
K142	Benzene, benz(a)anthracene, benzo(a)pyrene, benzo(b)fluoranthene, benzo(k)fluoranthene, dibenz(a,h)anthracene, indeno(1,2,3-cd)pyrene.
K143	Benzene, benz(a)anthracene, benzo(b)fluoranthene, benzo(k)fluoranthene.
K144	Benzene, benz(a)anthracene, benzo(a)pyrene, benzo(b)fluoranthene, benzo(k)fluoranthene, dibenz(a,h)anthracene.
K145	Benzene, benz(a)anthracene, benzo(a)pyrene, dibenz(a,h)anthracene, naphthalene.
K147	Benzene, benz(a)anthracene, benzo(a)pyrene, benzo(b)fluoranthene, benzo(k)fluoranthene, dibenz(a,h)anthracene, indeno(1,2,3-cd)pyrene.
K148	Benz(a)anthracene, benzo(a)pyrene, benzo(b)fluoranthene, benzo(k)fluoranthene, dibenz(a,h)anthracene, indeno(1,2,3-cd)pyrene.

K149	Benzotrichloride, benzyl chloride, chloroform, chloromethane, chlorobenzene, 1,4-dichlorobenzene, hexachlorobenzene, pentachlorobenzene, 1,2,4,5-tetrachlorobenzene, toluene.
K150	Carbon tetrachloride, chloroform, chloromethane, 1,4-dichlorobenzene, hexachlorobenzene, pentachlorobenzene, 1,2,4,5-tetrachlorobenzene, 1,1,2,2-tetrachloroethane, tetrachloroethylene, 1,2,4-trichlorobenzene.
K151	Benzene, carbon tetrachloride, chloroform, hexachlorobenzene, pentachlorobenzene, toluene, 1,2,4,5-tetrachlorobenzene, tetrachloroethylene.
K156	Benomyl, carbaryl, carbendazim, carbofuran, carbosulfan, formaldehyde, methylene chloride, triethylamine.
K157	Carbon tetrachloride, formaldehyde, methyl chloride, methylene chloride, pyridine, triethylamine.
K158	Benomyl, carbendazim, carbofuran, carbosulfan, chloroform, methylene chloride.
K159	Benzene, butylate, eptc, molinate, pebulate, vernolate.
K161	Antimony, arsenic, metam-sodium, ziram.
K169	Benzene.
K170	Benzo(a)pyrene, dibenz(a,h)anthracene, benzo (a) anthracene, benzo (b)fluoranthene, benzo(k)fluoranthene, 3-methylcholanthrene, 7, 12-dimethylbenz(a)anthracene.
K171	Benzene, arsenic.
K172	Benzene, arsenic.
K174	1, 2, 3, 4, 6, 7, 8-Heptachlorodibenzo-p-dioxin (1, 2, 3, 4, 6, 7, 8-HpCDD), 1, 2, 3, 4, 6, 7, 8-Heptachlorodibenzofuran (1, 2, 3, 4, 6, 7, 8-HpCDF), 1, 2, 3, 4, 7, 8, 9-Heptachlorodibenzofuran (1, 2, 3, 6, 7, 8, 9-HpCDF), HxCDDs (All Hexachlorodibenzo-p-dioxins), HxCDFs (All Hexachlorodibenzofurans), PeCDDs (All Pentachlorodibenzo-p-dioxins), OCDD (1, 2, 3, 4, 6, 7, 8, 9-Octachlorodibenzo-p-dioxin, OCDF (1, 2, 3, 4, 6, 7, 8, 9-Octachlorodibenzofuran), PeCDFs (All Pentachlorodibenzofurans), TCDDs (All tetrachlorodi-benzo-p-dioxins), TCDFs (All tetrachlorodibenxofurans).
K175	Mercury
K176	Arsenic, Lead
K177	Antimony
K178	Thallium
K181	Aniline, o-anisidine, 4-chloroaniline, p-cresidine, 2, 4-dimethylaniline, 1, 2-phenylenediamine, 1, 3-phenylenediamine.

FOOTNOTE: N.A. -- Waste is hazardous because it fails the test for the characteristic of ignitability, corrosivity, or reactivity.

Appendix VIII -- Hazardous Constituents

Common Name	Chemical Abstracts Name	Chemical Abstracts No.	Hazardous Waste Code
A2213	Ethanimidothioic acid, 2-(dimethylamino)-N-hydroxy-2-oxo-, methyl ester	30558-43-1	U394
Acetonitrile	Same	75-05-8	U003
Acetophenone	Ethanone, 1-phenyl-	98-86-2	U004

2-Acetylaminofluarone	Acetamide, N-9H-fluoren-2-yl-	53-96-3	U005
Acetyl chloride	Same	75-36-5	U006
1-Acetyl-2-thiourea	Acetamide, N-(aminothioxomethyl)-	591-08-2	P002
Acrolein	2-Propenal	107-02-8	P003
Acrylamide	2-Propenamide	79-06-1	U007
Acrylonitrile	2-Propenenitrile	107-13-1	U009
Aflatoxins	Same	1402-68-2	
Aldicarb	Propanal, 2-methyl-2-(methylthio)-, O-[(methylamino)carbonyl]oxime	116-06-3	P070
Aldicarb sulfone	Propanal, 2-methyl-2-(methylsulfonyl) O-[(methylamino) carbonyl] oxime	1646-88-4	P203
Aldrin	1,4,5,8-Dimethanonaphthalene, 1,2,3,4,10,10-10-hexachloro-1,4,4a,5,8,8a-hexahydro-, (1alpha,4alpha,4abeta,5alpha,8alpha, 8abeta)-	309-00-2	P004
Allyl alcohol	2-Propen-1-ol	107-18-6	P005
Allyl chloride	1-Propane, 3-chloro	107-05-1	
Aluminum phosphide	Same	20859-73-8	P006
4-Aminobiphenyl	[1,1'-Biphenyl]-4-amine	92-67-1	
5-(Aminomethyl)-3-isoxazolol	3(2H)-Isoxazolone, 5-(aminomethyl)-	2763-96-4	P007
4-Aminopyridine	4-Pyridinamine	504-24-5	P008
Amitrole	1H-1,2,4-Triazol-3-amine	61-82-5	U011
Ammonium vanadate	Vanadic acid, ammonium salt	7803-55-6	P119
Aniline	Benzenamine	62-53-3	U012
o-Anisidine (2-methoxyaniline)	Benzenamine, 2-Methoxy-	90-04-0	
Antimony	Benzenamine	7440-36-0	
Antimony compounds, N.O.S. ¹			
Aramite	Sulfurous acid, 2-chloroethyl 2-[4-(1,1-dimethylethyl)phenoxy]-1-methylethyl ester	140-57-8	
Arsenic	Same	7440-38-2	
Arsenic compounds, N.O.S. ¹			
Arsenic acid	Arsenic acid H ₃ AsO ₄	7778-39-4	P010
Arsenic pentoxide	Arsenic oxide As ₂ O ₅	1303-28-2	P011
Arsenic trioxide	Arsenic oxide As ₂ O ₃	1327-53-3	P012
Auramine	Benzenamine, 4,4'-carbonimidoylbis[N,N-dimethyl	492-80-8	U014
Azaserine	L-Serine, diazoacetate (ester)	115-02-6	U015
Barban	Carbamic acid, (3-chlorophenyl) -, 4-chloro-2-butynyl ester	101-27-9	U280
Barium	Same	7440-39-3	

Barium compounds, N.O.S. ¹			
Barium cyanide	Same	542-62-1	P013
Bendiocarb	1,3-Benzodioxol-4-ol, 2,2-dimethyl-, methyl carbamate	22781-23-3	U278
Bendiocarb phenol	1,3-Benzodioxol-4-ol, 2,2-dimethyl-,	22961-82-6	U364
Benomyl	Carbamic acid, [1- [(butylamino) carbonyl]-1H-benzimidazol-2-yl] -, methyl ester	17804-35-2	U271
Benz[c]acridine	Same	225-51-4	U016
Benz[a]anthracene	Same	56-55-3	U018
Benzal chloride	Benzene, (dichloromethyl)-	98-87-3	U017
Benzene	Same	71-43-2	U019
Benzeneearsonic acid	Arsonic acid, phenyl-	98-05-5	
Benzidine	[1,1'-Biphenyl]-4,4'-diamine	92-87-5	U021
Benzo[b]fluoranthene	Benz[e]acephenanthrylene	205-99-2	
Benzo[j]fluoranthene	Same	205-82-3	
Benzo(k)fluoranthene	Same	207-08-9	
Benzo[a]pyrene	Same	50-32-8	U022
p-Benzoquinone	2,5-Cyclohexadiene-1,4-dione	106-51-4	U197
Benzotrichloride	Benzene, (trichloromethyl)-	98-07-7	U023
Benzyl chloride	Benzene, (chloromethyl)-	100-44-7	P028
Beryllium powder	Same	7440-41-7	P015
Beryllium compounds, N.O.S. ¹			
Bis(pentamethylene)-thiuram tetrasulfide	Piperidine, 1,1'-(tetrathiodicarbonothioyl)-bis-	120-54-7	
Bromoacetone	2-Propanone, 1-bromo-	598-31-2	P017
Bromoform	Methane, tribromo-	75-25-2	U225
4-Bromophenyl phenyl ether	Benzene, 1-bromo-4-phenoxy-	101-55-3	U030
Brucine	Strychnidin-10-one, 2,3-dimethoxy-	357-57-3	P018
Butylate	Carbamothioic acid, bis(2-methylpropyl)-, S-ethyl ester	2008-41-5	
Butyl benzyl phthalate	1,2-Benzenedicarboxylic acid, butyl phenylmethyl ester	85-68-7	
Cacodylic acid	Arsinic acid, dimethyl-	75-60-5	U136
Cadmium	Same	7440-43-9	
Cadmium compounds, N.O.S. ¹			
Calcium chromate	Chromic acid H ₂ CrO ₄ , calcium salt	13765-19-0	U032
Calcium cyanide	Calcium cyanide Ca(CN) ₂	592-01-8	P021
Carbaryl	1-Naphthalenol, methylcarbamate	63-25-2	U279
Carbendazim	Carbamic acid, 1H-benzimidazol-2-yl, methyl ester	10605-21-7	U372
Carbofuran	7-Benzofuranol, 2,3-dihydro-2,2-dimethyl-, methylcarbamate	1563-66-2	P127

Carbofuran phenol	7-Benzofuranol, 2,3-dihydro-2,2-dimethyl-	1563-38-8	U367
Carbon disulfide	Same	75-15-0	P022
Carbon oxyfluoride	Carbonic difluoride	353-50-4	U033
Carbon tetrachloride	Methane, tetrachloro-	56-23-5	U211
Carbosulfan	Carbamic acid, [(dibutylamino) thio] methyl-, 2,3-dihydro-2,2-dimethyl-7-benzofuranyl ester	55285-14-8	P189
Chloral	Acetaldehyde, trichloro-	75-87-6	U034
Chlorambucil	Benzenebutanoic acid, 4-[bis(2-chloroethyl)amino]-	305-03-3	U035
Chlordane	4,7-Methano-1H-indene, 1,2,4,5,6,7,8,8-octachloro-2,3,3a,4,7,7a-hexahydro-	57-74-9	U036
Chlordane (alpha and gamma isomers)			U036
Chlorinated benzenes, N.O.S. ¹			
Chlorinated ethane, N.O.S. ¹			
Chlorinated fluorocarbons, N.O.S. ¹			
Chlorinated naphthalene, N.O.S. ¹			
Chlorinated phenol, N.O.S. ¹			
Chlornaphazin	Naphthalenamine, N,N'-bis(2-chloroethyl)-	494-03-1	U026
Chloroacetaldehyde	Acetaldehyde, chloro-	107-20-0	P023
Chloroalkyl ethers, N.O.S. ¹			
p-Chloroaniline	Benzenamine, 4-chloro-	106-47-8	P024
Chlorobenzene	Benzene, chloro-	108-90-7	U037
Chlorobenzilate	Benzeneacetic acid, 4-chloro-alpha-(4-chlorophenyl)-alpha-hydroxy-, ethyl ester	510-15-6	U038
p-Chloro-m-cresol	Phenol, 4-chloro-3-methyl-	59-50-7	U039
2-Chloroethyl vinyl ether	Ethene, (2-chloroethoxy)-	110-75-8	U042
Chloroform	Methane, trichloro-	67-66-3	U044
Chloromethyl methyl ether	Methane, chloromethoxy-	107-30-2	U046
beta-Chloronaphthalene	Naphthalene, 2-chloro-	91-58-7	U047
o-Chlorophenol	Phenol, 2-chloro-	95-57-8	U048
1-(o-Chlorophenyl)thiourea	Thiourea, (2-chlorophenyl)-	5344-82-1	P026
Chloroprene	1,3-Butadiene, 2-chloro-	126-99-8	
3-Chloropropionitrile	Propanenitrile, 3-chloro-	542-76-7	P027
Chromium	Same	7440-47-3	
Chromium compounds, N.O.S. ¹			
Chrysene	Same	218-01-9	U050
Citrus red No. 2	2-Naphthalenol, 1-[(2,5-dimethoxyphenyl)azo]-	6358-53-8	

Coal tar creosote	Same	8007-45-2	
Copper cyanide	Copper cyanide CuCN	544-92-3	P029
Copper dimethyldithiocarbamate	Copper, bis(dimethylcarbamodithioato-S,S')-	137-29-1	
Creosote	Same		U051
p-Cresidine	2-Methoxy-5-methylbenzenamine	120-71-8	
Cresol (Cresylic acid)	Phenol, methyl-	1319-77-3	U052
Crotonaldehyde	2-Butenal	4170-30-3	U053
m-Cumenyl methylcarbamate	Phenol, 3-(methylethyl)-, methyl carbamate	64-00-6	P202
Cyanides (soluble salts and complexes) N.O.S. ¹			P030
Cyanogen	Ethanedinitrile	460-19-5	P031
Cyanogen bromide	Cyanogen bromide (CN)Br	506-68-3	U246
Cyanogen chloride	Cyanogen chloride (CN)Cl	506-77-4	P033
Cycasin	beta-D-Glucopyranoside, (methyl-ONN-azoxy)methyl	14901-08-7	
Cycolate	Carbamothioic acid, cyclohexylethyl-, S-ethyl ester	1134-23-2	
2-Cyclohexyl-4,6-dinitrophenol	Phenol, 2-cyclohexyl-4,6-dinitro-	131-89-5	P034
Cyclophosphamide	2H-1,3,2-Oxazaphosphorin-2-amine, N,N-bis(2-chloroethyl)tetrahydro-, 2-oxide	50-18-0	U058
2,4-D	Acetic acid, (2,4-dichlorophenoxy)-	94-75-7	U240
2,4-D, salts, esters			U240
Daunomycin	5,12-Naphthacenedione, 8-acetyl-10-[(3-amino-2,3,6-trideoxy-alpha-L-lyxo-hexopyranosyl)oxy]-7,8,9,10-tetrahydro-6,8,11-trihydroxy-1-methoxy-, (8S-cis)-	20830-81-3	U059
Dazomet	2H-1,3,5-thiadiazine-2-thione, tetrahydro-3,5-dimethyl	533-74-4	
DDD	Benzene, 1,1'-(2,2-dichloroethylidene)bis[4-chloro-	72-54-8	U060
DDE	Benzene, 1,1'-(dichloroethenylidene)bis[4-chloro-	72-55-9	
DDT	Benzene, 1,1'-(2,2,2-trichloroethylidene)bis[4-chloro-	50-29-3	U061
Diallate	Carbamothioic acid, bis(1-methylethyl)-, S-(2,3-dichloro-2-propenyl) ester	2303-16-4	U062
Dibenz[a,h]acridine	Same	226-36-8	
Dibenz[a,i]acridine	Same	224-42-0	
Dibenz[a,h]anthracene	Same	53-70-3	U063
7H-Dibenzo[c,g]carbazole	Same	194-59-2	
Dibenzo[a,e]pyrene	Naphtho[1,2,3,4-def]chrysene	192-65-4	
Dibenzo[a,h]pyrene	Dibenzo[b,def]chrysene	189-64-0	
Dibenzo[a,i]pyrene	Benzo[rst]pentaphene	189-55-9	U064
1,2-Dibromo-3-chloropropane	Propane, 1,2-dibromo-3-chloro-	96-12-8	U066
Dibutyl phthalate	1,2-Benzenedicarboxylic acid, dibutyl ester	84-74-2	U069

o-Dichlorobenzene	Benzene, 1,2-dichloro-	95-50-1	U070
m-Dichlorobenzene	Benzene, 1,3-dichloro-	541-73-1	U071
p-Dichlorobenzene	Benzene, 1,4-dichloro-	106-46-7	U072
Dichlorobenzene, N.O.S. ¹	Benzene, dichloro-	25321-22-6	
3,3'-Dichlorobenzidine	[1,1'-Biphenyl]-4,4'-diamine, 3,3'-dichloro-	91-94-1	U073
1,4-Dichloro-2-butene	2-Butene, 1,4-dichloro-	764-41-0	U074
Dichlorodifluoromethane	Methane, dichlorodifluoro-	75-71-8	U075
Dichloroethylene, N.O.S. ¹	Dichloroethylene	25323-30-2	
1,1-Dichloroethylene	Ethene, 1,1-dichloro-	75-35-4	U078
1,2-Dichloroethylene	Ethene, 1,2-dichloro-, (E)-	156-60-5	U079
Dichloroethyl ether	Ethane, 1,1'-oxybis[2-chloro-	111-44-4	U025
Dichloroisopropyl ether	Propane, 2,2'-oxybis[2-chloro-	108-60-1	U027
Dichloromethoxy ethane	Ethane, 1,1'-[methylenebis(oxy)]bis[2-chloro-	111-91-1	U024
Dichloromethyl ether	Methane, oxybis[chloro-	542-88-1	P016
2,4-Dichlorophenol	Phenol, 2,4-dichloro-	120-83-2	U081
2,6-Dichlorophenol	Phenol, 2,6-dichloro-	87-65-0	U082
Dichlorophenylarsine	Arsonous dichloride, phenyl-	696-28-6	P036
Dichloropropane, N.O.S. ¹	Propane, dichloro-	26638-19-7	
Dichloropropanol, N.O.S. ¹	Propanol, dichloro-	26545-73-3	
Dichloropropene, N.O.S. ¹	1-Propene, dichloro-	26952-23-8	
1,3-Dichloropropene	1-Propene, 1,3-dichloro-	542-75-6	U084
Dieldrin	2,7:3,6-Dimethanonaphth[2,3-b]oxirene, 3,4,5,6,9,9-hexachloro-1a,2,2a,3,6,6a,7,7a-octahydro-, (1aalpha,2beta,2aalpha,3beta,6beta,6aalpha,7beta,7aalpha)-	60-57-1	P037
1,2:3,4-Diepoxybutane	2,2'-Bioxirane	1464-53-5	U085
Diethylarsine	Arsine, diethyl-	692-42-2	P038
Diethylene glycol, dicarbamate	Ethanol, 2,2'-oxybis-, dicarbamate	5952-26-1	U395
1,4-Diethyleneoxide	1,4-Dioxane	123-91-1	U108
Diethylhexyl phthalate	1,2-Benzenedicarboxylic acid, bis(2-ethylhexyl) ester	117-81-7	U028
N,N'-Diethylhydrazine	Hydrazine, 1,2-diethyl-	1615-80-1	U086
O,O-Diethyl dithiophosphate S-methyl	Phosphorodithioic acid, O,O-diethyl S-methyl ester	3288-58-2	U087
Diethyl-p-nitrophenyl phosphate	Phosphoric acid, diethyl 4-nitrophenyl ester	311-45-5	P041
Diethyl phthalate	1,2-Benzenedicarboxylic acid, diethyl ester	84-66-2	U088
O,O-Diethyl phosphorothioate O-pyrazinyl	Phosphorothioic acid, O,O-diethyl O-pyrazinyl ester	297-97-2	P040
Diethylstilbesterol	Phenol, 4,4'-(1,2-diethyl-1,2-ethenediyl)bis-, (E)-	56-53-1	U089

Dihydrosafrole	1,3-Benzodioxole, 5-propyl-	94-58-6	U090
Diisopropylfluorophosphate (DFP)	Phosphorofluoridic acid, bis(1-methylethyl) ester	55-91-4	P043
Dimethoate	Phosphorodithioic acid, O,O-dimethyl S-[2-(methylamino)-2-oxoethyl] ester	60-51-5	P044
3,3'-Dimethoxybenzidine	[1,1'-Biphenyl]-4,4'-diamine, 3,3'-dimethoxy-	119-90-4	U091
p-Dimethylaminoazobenzene	Benzenamine, N,N-dimethyl-4-(phenylazo)-	60-11-7	U093
2, 4-Dimethylaniline (2, 4-xylydine)	Benzenamine, 2, 4-dimethyl-	95-68-1	
7,12-Dimethylbenz[a]anthracene	Benz[a]anthracene, 7,12-dimethyl-	57-97-6	U094
3,3'-Dimethylbenzidine	[1,1'-Biphenyl]-4,4'-diamine, 3,3'-dimethyl-	119-93-7	U095
Dimethylcarbamoyl chloride	Carbamic chloride, dimethyl-	79-44-7	U097
1,1-Dimethylhydrazine	Hydrazine, 1,1-dimethyl-	57-14-7	U098
1,2-Dimethylhydrazine	Hydrazine, 1,2-dimethyl-	540-73-8	U099
alpha,alpha-Dimethylphenethylamine	Benzeneethanamine, alpha,alpha-dimethyl-	122-09-8	P046
2,4-Dimethylphenol	Phenol, 2,4-dimethyl-	105-67-9	U101
Dimethyl phthalate	1,2-Benzenedicarboxylic acid, dimethyl ester	131-11-3	U102
Dimethyl sulfate	Sulfuric acid, dimethyl ester	77-78-1	U103
Dimetilan	Carbamic acid, dimethyl-, 1- [(dimethylamino) carbonyl]-5-methyl-1H-pyrazol-3-yl ester	644-64-4	P191
Dinitrobenzene, N.O.S. ¹	Benzene, dinitro-	25154-54-5	
4,6-Dinitro-o-cresol	Phenol, 2-methyl-4,6-dinitro-	534-52-1	P047
4,6-Dinitro-o-cresol salts			P047
2,4-Dinitrophenol	Phenol, 2,4-dinitro-	51-28-5	P048
2,4-Dinitrotoluene	Benzene, 1-methyl-2,4-dinitro-	121-14-2	U105
2,6-Dinitrotoluene	Benzene, 2-methyl-1,3-dinitro-	606-20-2	U106
Dinoseb	Phenol, 2-(1-methylpropyl)-4,6-dinitro-	88-85-7	P020
Di-n-octylphthalate	1,2-Benzenedicarboxylic acid, dioctyl ester	117-84-0	U017
Diphenylamine	Benzenamine, N-phenyl-	122-39-4	
1,2-Diphenylhydrazine	Hydrazine, 1,2-diphenyl-	122-66-7	U109
Di-n-propylnitrosamine	1-Propanamine, N-nitroso-N-propyl-	621-64-7	U111
Disulfiram	Thioperoxydicarbonic diamide, tetraethyl	97-77-8	
Disulfoton	Phosphorodithioic acid, O,O-diethyl S-[2-(ethylthio)ethyl] ester	298-04-4	P039
Dithiobiuret	Thioimidodicarbonic diamide [(H ₂ N)C(S)] ₂ NH	541-53-7	P049
Endosulfan	6,9-Methano-2,4,3-benzodioxathiepin, 6,7,8,9,10,10-hexachloro-1,5,5a,6,9,9a-hexahydro-, 3-oxide	115-29-7	P050
Endothall	7-Oxabicyclo[2.2.1]heptane-2,3-dicarboxylic acid	145-73-3	P088

Endrin	2,7:3,6-Dimethanonaphth[2,3-b]oxirene, 3,4,5,6,9,9-hexachloro-1a,2,2a,3,6,6a,7,7a-octahydro-, (1aalpha,2beta,2abeta,3alpha,6alpha,6abeta,7beta,7aalpha)-	72-20-8	P051
Endrin metabolites			P051
Epichlorohydrin	Oxirane, (chloromethyl)-	106-89-8	U041
Epinephrine	1,2-Benzenediol, 4-[1-hydroxy-2-(methylamino)ethyl]-, (R)-	51-43-4	P042
EPTC	Carbamothioic acid, dipropyl-, S-ethyl ester	759-94-4	
Ethyl carbamate (urethane)	Carbamic acid, ethyl ester	51-79-6	U238
Ethyl cyanide	Propanenitrile	107-12-0	P101
Ethylenebisdithiocarbamic acid	Carbamodithioic acid, 1,2-ethanediybis-	111-54-6	U114
Ethylenebisdithiocarbamic acid, salts and esters			U114
Ethylene dibromide	Ethane, 1,2-dibromo-	106-93-4	U067
Ethylene dichloride	Ethane, 1,2-dichloro-	107-06-2	U077
Ethylene glycol monoethyl ether	Ethanol, 2-ethoxy-	110-80-5	U359
Ethyleneimine	Aziridine	151-56-4	P054
Ethylene oxide	Oxirane	75-21-8	U115
Ethylenethiourea	2-Imidazolidinethione	96-45-7	U116
Ethylidene dichloride	Ethane, 1,1-dichloro-	75-34-3	U076
Ethyl methacrylate	2-Propenoic acid, 2-methyl-, ethyl ester	97-63-2	U118
Ethyl methanesulfonate	Methanesulfonic acid, ethyl ester	62-50-0	U119
Ethyl Ziram	Zinc, bis(diethylcarbamodithioato-S,S')-	14324-55-1	
Famphur	Phosphorothioic acid, O-[4-[(dimethylamino)sulfonyl]phenyl] O,O-dimethyl ester	52-85-7	P097
Ferbam	Iron, tris(dimethylcarbamodithioato-S,S')-	14484-64-1	
Fluoranthene	Same	206-44-0	U120
Fluorine	Same	7782-41-4	P056
Fluoroacetamide	Acetamide, 2-fluoro-	640-19-7	P057
Fluoroacetic acid, sodium salt	Acetic acid, fluoro-, sodium salt	62-74-8	P058
Formaldehyde	Same	50-00-0	U122
Formetanate hydrochloride	Methanimidamide, N,N-dimethyl-N'-[3-[(methylamino)carbonyloxy]phenyl]-, monohydrochloride	23422-53-9	P198
Formic acid	Same	64-18-6	U123
Formparanate	Methanimidamide, N,N-dimethyl-N'-[2-methyl-4-[(methylamino)carbonyloxy]phenyl]-	17702-57-7	P197
Glycidylaldehyde	Oxiranecarboxyaldehyde	765-34-4	U126
Halomethanes, N.O.S. ¹			

Heptachlor	4,7-Methano-1H-indene, 1,4,5,6,7,8-heptachloro-3a,4,7,7a-tetrahydro-	76-44-8	P059
Heptachlor epoxide	2,5-Methano-2H-indeno[1,2-b]oxirene, 2,3,4,5,6,7,7-heptachloro-1a,1b,5,5a,6,6a-hexahydro-, (1aalpha,1bbeta,2alpha,5alpha, 5abeta,6beta,6aalpha)-	1024-57-3	
Heptachlor epoxide (alpha, beta, and gamma isomers)			
Heptachlorodibenzofurans.			
Heptachlorodibenzo-p-dioxins			
Hexachlorobenzene	Benzene, hexachloro-	118-74-1	U127
Hexachlorobutadiene	1,3-Butadiene, 1,1,2,3,4,4-hexachloro-	87-68-3	U128
Hexachlorocyclopentadiene	1,3-Cyclopentadiene, 1,2,3,4,5,5-hexachloro-	77-47-4	U130
Hexachlorodibenzo-p-dioxins			
Hexachlorodibenzofurans			
Hexachloroethane	Ethane, hexachloro-	67-72-1	U131
Hexachlorophene	Phenol, 2,2'-methylenebis[3,4,6-trichloro-	70-30-4	U132
Hexachloropropene	1-Propene, 1,1,2,3,3,3-hexachloro-	1888-71-7	U243
Hexaethyl tetraphosphate	Tetraphosphoric acid, hexaethyl ester	757-58-4	P062
Hydrazine	Same	302-01-2	U133
Hydrogen cyanide	Hydrocyanic acid	74-90-8	P063
Hydrogen fluoride	Hydrofluoric acid	7664-39-3	U134
Hydrogen sulfide	Hydrogen sulfide H ₂ S	7783-06-4	U135
Indeno[1,2,3-cd]pyrene	Same	193-39-5	U137
3-Iodo-2-propynyl butylcarbamate	n- Carbamic acid, butyl-, 3-iodo-2-propynyl ester	55406-53-6	
Isobutyl alcohol	1-Propanol, 2-methyl-	78-83-1	U140
Isodrin	1,4,5,8-Dimethanonaphthalene, 1,2,3,4,10,10-hexachloro-1,4,4a,5,8,8a-hexahydro-, (1alpha,4alpha,4abeta,5beta,8beta,-8abeta) -	465-73-6	P060
Isolan	Carbamic acid, dimethyl-, 3-methyl-1-(1-methylethyl)-1H-pyrazol-5-yl ester	119-38-0	P192
Isosafrole	1,3-Benzodioxole, 5-(1-propenyl)-	120-58-1	U141
Kepone	1,3,4-Metheno-2H-cyclobuta[cd]pentalen-2-one, 1,1a,3,3a,4,5,5a,5b,6-decachlorooctahydro-	143-50-0	U142
Lasiocarpine	2-Butenoic acid, 2-methyl-,7-[[2,3-dihydroxy-2-(1-methoxyethyl)-3-methyl-1-oxobutoxy]methyl]-2,3,5,7a-tetrahydro-1H-pyrrolizin-1-yl ester, [1S-[1alpha(Z),7(2S*,3R*),7aalpha]-	303-34-4	U143
Lead	Same	7439-92-1	
Lead compounds, N.O.S. ¹			
Lead acetate	Acetic acid, lead(2+) salt	301-04-2	U144

Lead phosphate	Phosphoric acid, lead(2+) salt (2:3)	7446-27-7	U145
Lead subacetate	Lead, bis(acetato-O)tetrahydroxytri-	1335-32-6	U146
Lindane	Cyclohexane, 1,2,3,4,5,6-hexachloro-, (1alpha,2alpha,3beta,4alpha,5alpha,6beta)-	58-89-9	U129
Maleic anhydride	2,5-Furandione	108-31-6	U147
Maleic hydrazide	3,6-Pyridazinedione, 1,2-dihydro-	123-33-1	U148
Malononitrile	Propanedinitrile	109-77-3	U149
Manganese dimethyldithiocarbamate	Manganese, bis(dimethylcarbamodithioato-S,S')-,	15339-36-3	P196
Melphalan	L-Phenylalanine, 4-[bis(2-chloroethyl)amino]-	148-82-3	U150
Mercury	Same	7439-97-6	U151
Mercury compounds, N.O.S. ¹			
Mercury fulminate	Fulminic acid, mercury(2+) salt	628-86-4	P065
Metam Sodium	Carbamodithioic acid, methyl-, monosodium salt	137-42-8	
Methacrylonitrile	2-Propenenitrile, 2-methyl-	126-98-7	U152
Methapyrilene	1,2-Ethanediamine, N,N-dimethyl-N'-2-pyridinyl-N'-(2-thienylmethyl)-	91-80-5	U155
Methiocarb	Phenol, (3,5-dimethyl-4-(methylthio)-, methylcarbamate	2032-65-7	P199
Methomyl	Ethanimidothioic acid, N-[[[(methylamino)carbonyl]oxy]-, methyl ester	16752-77-5	P066
Methoxychlor	Benzene, 1,1'-(2,2,2-trichloroethylidene)bis[4-methoxy-	72-43-5	U247
Methyl bromide	Methane, bromo-	74-83-9	U029
Methyl chloride	Methane, chloro-	74-87-3	U045
Methyl chlorocarbonate	Carbonochloridic acid, methyl ester	79-22-1	U156
Methyl chloroform	Ethane, 1,1,1-trichloro-	71-55-6	U226
3-Methylcholanthrene	Benz[j]aceanthrylene, 1,2-dihydro-3-methyl-	56-49-5	U157
4,4'-Methylenebis(2-chloroaniline)	Benzenamine, 4,4'-methylenebis[2-chloro-	101-14-4	U158
Methylene bromide	Methane, dibromo-	74-95-3	U068
Methylene chloride	Methane, dichloro-	75-09-2	U080
Methyl ethyl ketone (MEK)	2-Butanone	78-93-3	U159
Methyl ethyl ketone peroxide	2-Butanone, peroxide	1338-23-4	U160
Methyl hydrazine	Hydrazine, methyl-	60-34-4	P068
Methyl iodide	Methane, iodo-	74-88-4	U138
Methyl isocyanate	Methane, isocyanato-	624-83-9	P064
2-Methylacetonitrile	Propanenitrile, 2-hydroxy-2-methyl-	75-86-5	P069
Methyl methacrylate	2-Propenoic acid, 2-methyl-, methyl ester	80-62-6	U162
Methyl methanesulfonate	Methanesulfonic acid, methyl ester	66-27-3	

Methyl parathion	Phosphorothioic acid, O,O-dimethyl O-(4-nitrophenyl) ester	298-00-0	P071
Methylthiouracil	4(1H)-Pyrimidinone, 2,3-dihydro-6-methyl-2-thioxo-	56-04-2	U164
Metolcarb	Carbamic acid, methyl-, 3-methylphenyl ester	1129-41-5	P190
Mexacarbate	Phenol, 4-(dimethylamino)-3,5-dimethyl-, methylcarbamate (ester)	315-18-4	P128
Mitomycin C	Azirino[2',3':3,4]pyrrolo[1,2-a]indole-4,7-dione, 6-amino-8-[[aminocarbonyloxy]methyl]-1,1a,2,8,8a,8b-hexahydro-8a-methoxy-5-methyl-, [1aS-(1aalpha,8beta,8aalpha,8balpha)]-	50-07-7	U010
MNNG	Guanidine, N-methyl-N'-nitro-N-nitroso-	70-25-7	U163
Molinate	1H-Azepine-1-carbothioic acid, hexahydro-, S-ethyl ester	2212-67-1	
Mustard gas	Ethane, 1,1'-thiobis[2-chloro-	505-60-2	
Naphthalene	Same	91-20-3	U165
1,4-Naphthoquinone	1,4-Naphthalenedione	130-15-4	U166
alpha-Naphthylamine	1-Naphthalenamine	134-32-7	U167
beta-Naphthylamine	2-Naphthalenamine	91-59-8	U168
alpha-Naphthylthiourea	Thiourea, 1-naphthalenyl-	86-88-4	P072
Nickel	Same	7440-02-0	
Nickel compounds, N.O.S. ¹			
Nickel carbonyl	Nickel carbonyl Ni(CO) ₄ , (T-4)-	13463-39-3	P073
Nickel cyanide	Nickel cyanide Ni(CN) ₂	557-19-7	P074
Nicotine	Pyridine, 3-(1-methyl-2-pyrrolidinyl)-, (S)-	54-11-5	P075
Nicotine salts			P075
Nitric oxide	Nitrogen oxide NO	10102-43-9	P076
p-Nitroaniline	Benzenamine, 4-nitro-	100-01-6	P077
Nitrobenzene	Benzene, nitro-	98-95-3	U169
Nitrogen dioxide	Nitrogen oxide NO ₂	10102-44-0	P078
Nitrogen mustard	Ethanamine, 2-chloro-N-(2-chloroethyl)-N-methyl-	51-75-2	
Nitrogen mustard, hydrochloride salt			
Nitrogen mustard N-oxide	Ethanamine, 2-chloro-N-(2-chloroethyl)-N-methyl-, N-oxide	126-85-2	
Nitrogen mustard, N-oxide, hydrochloride salt			
Nitroglycerin	1,2,3-Propanetriol, trinitrate	55-63-0	P081
p-Nitrophenol	Phenol, 4-nitro-	100-02-7	U170
2-Nitropropane	Propane, 2-nitro-	79-46-9	U171
Nitrosamines, N.O.S. ¹		35576-91-1	
N-Nitrosodi-n-butylamine	1-Butanamine, N-butyl-N-nitroso-	924-16-3	U172

N-Nitrosodiethanolamine	Ethanol, 2,2'-(nitrosoimino)bis-	1116-54-7	U173
N-Nitrosodiethylamine	Ethanamine, N-ethyl-N-nitroso-	55-18-5	U174
N-Nitrosodimethylamine	Methanamine, N-methyl-N-nitroso-	62-75-9	P082
N-Nitroso-N-ethylurea	Urea, N-ethyl-N-nitroso-	759-73-9	U176
N-Nitrosomethylethylamine	Ethanamine, N-methyl-N-nitroso-	10595-95-6	
N-Nitroso-N-methylurea	Urea, N-methyl-N-nitroso-	684-93-5	U177
N-Nitroso-N-methylurethane	Carbamic acid, methylnitroso-, ethyl ester	615-53-2	U178
N-Nitrosomethylvinylamine	Vinylamine, N-methyl-N-nitroso-	4549-40-0	P084
N-Nitrosomorpholine	Morpholine, 4-nitroso-	59-89-2	
N-Nitrososnicotine	Pyridine, 3-(1-nitroso-2-pyrrolidinyl)-, (S)-	16543-55-8	
N-Nitrosopiperidine	Piperidine, 1-nitroso-	100-75-4	U179
N-Nitrosopyrrolidine	Pyrrolidine, 1-nitroso-	930-55-2	U180
N-Nitrososarcosine	Glycine, N-methyl-N-nitroso-	13256-22-9	
5-Nitro-o-toluidine	Benzenamine, 2-methyl-5-nitro-	99-55-8	U181
Octachlorodibenzo-p-dioxin (OCDD)	1, 2, 3, 4, 6, 7, 8, 9-Octachlorodibenzo-p-dioxin	3268-87-9	
Octachlorodibenzofuran (OCDF)	1, 2, 3, 4, 6, 7, 8, 9-Octachlorodibenzofuran	39001-02-0	
Octamethylpyrophosphoramide	Diphosphoramidate, octamethyl-	152-16-9	P085
Osmium tetroxide	Osmium oxide OsO ₄ , (T-4)-	20816-12-0	P087
Oxamyl	Ethanimidothioic acid, 2-(dimethylamino)-N-[[[(methylamino)carbonyl]-oxy]-2-oxo-, methyl ester	23135-22-0	P194
Paraldehyde	1,3,5-Trioxane, 2,4,6-trimethyl-	123-63-7	U182
Parathion	Phosphorothioic acid, O,O-diethyl O-(4-nitrophenyl) ester	56-38-2	P089
Pebulate	Carbamothioic acid, butylethyl-, S-propyl ester	1114-71-2	
Pentachlorobenzene	Benzene, pentachloro-	608-93-5	U183
Pentachlorodibenzo-p-dioxins			
Pentachlorodibenzofurans			
Pentachloroethane	Ethane, pentachloro-	76-01-7	U184
Pentachloronitrobenzene (PCNB)	Benzene, pentachloronitro-	82-68-8	U185
Pentachlorophenol	Phenol, pentachloro-	87-86-5	See F027
Phenacetin	Acetamide, N-(4-ethoxyphenyl)-	62-44-2	U187
Phenol	Same	108-95-2	U188
Phenylenediamine	Benzenediamine	25265-76-3	
1, 2-Phenylenediamine	1, 2-Benzenediamine	95-54-5	
1, 3-Phenylenediamine	1, 3-Benzenediamine	108-45-2	

Phenylmercury acetate	Mercury, (acetato-O)phenyl-	62-38-4	P092
Phenylthiourea	Thiourea, phenyl-	103-85-5	P093
Phosgene	Carbonic dichloride	75-44-5	P095
Phosphine	Same	7803-51-2	P096
Phorate	Phosphorodithioic acid, O,O-diethyl S-[(ethylthio)methyl] ester	298-02-2	P094
Phthalic acid esters, N.O.S. ¹			
Phthalic anhydride	1,3-Isobenzofurandione	85-44-9	U190
Physostigmine	Pyrrolo[2,3-b]indol-5-01, 1,2,3,3a,8,8a-hexahydro-1,3a,8-trimethyl-, methylcarbamate (ester), (3aS-cis)-	57-47-6	P204
Physostigmine salicylate	Benzoic acid, 2-hydroxy-, compd. with (3aS-cis) -1,2,3,3a,8,8a-hexahydro-1,3a,8-trimethylpyrrolo [2,3-b]indol-5-yl methylcarbamate ester (1:1)	57-64-7	P188
2-Picoline	Pyridine, 2-methyl-	109-06-8	U191
Polychlorinated biphenyls, N.O.S. ¹			
Potassium cyanide	Potassium cyanide K(CN)	151-50-8	P098
Potassium dimethyldithiocarbamate	Carbamodithioic acid, dimethyl, potassium salt	128-03-0	
Potassium n-hydroxymethyl-n-methyl-dithiocarbamate	Carbamodithioic acid, (hydroxymethyl)methyl-, monopotassium salt	51026-28-9	
Potassium methyl-dithiocarbamate n-	Carbamodithioic acid, methyl-monopotassium salt	137-41-7	
Potassium pentachlorophenate	Pentachlorophenol, potassium salt	7778736	None
Potassium silver cyanide	Argentate(1-), bis(cyano-C)-, potassium	506-61-6	P099
Promecarb	Phenol, 3-methyl-5-(1-methylethyl)-, methyl carbamate	2631-37-0	P201
Pronamide	Benzamide, 3,5-dichloro-N-(1,1-dimethyl-2-propynyl)-	23950-58-5	U192
1,3-Propane sultone	1,2-Oxathiolane, 2,2-dioxide	1120-71-4	U193
Propham	Carbamic acid, phenyl-, 1-methylethyl ester	122-42-9	U373
Propoxur	Phenol, 2-(1-methylethoxy)-, methylcarbamate	114-26-1	U411
n-Propylamine	1-Propanamine	107-10-8	U194
Propargyl alcohol	2-Propyn-1-ol	107-19-7	P102
Propylene dichloride	Propane, 1,2-dichloro-	78-87-5	U083
1,2-Propylenimine	Aziridine, 2-methyl-	75-55-8	P067
Propylthiouracil	4(1H)-Pyrimidinone, 2,3-dihydro-6-propyl-2-thio-	51-52-5	
Prosulfocarb	Carbamothioic acid, dipropyl-, S-(phenylmethyl) ester	52888-80-9	U387
Pyridine	Same	110-86-1	U196

Reserpine	Yohimban-16-carboxylic acid, 11,17-dimethoxy-18- [(3,4,5-trimethoxybenzoyl)oxy]-smethyl ester, (3beta,16beta,17alpha,18beta,20alpha)-	50-55-5	U200
Resorcinol	1,3-Benzenediol	108-46-3	U201
Safrole	1,3-Benzodioxole, 5-(2-propenyl)-	94-59-7	U203
Selenium	Same	7782-49-2	
Selenium compounds, N.O.S. ¹			
Selenium dioxide	Selenious acid	7783-00-8	U204
Selenium sulfide	Selenium sulfide SeS ₂	7488-56-4	U205
Selenium, tetrakis(dimethyl- dithiocarbamate)	Carbamodithioic acid, dimethyl-, tetraanhydrosulfide with orthotheselenious acid	144-34-3	
Selenourea	Same	630-10-4	P103
Silver	Same	7440-22-4	
Silver compounds, N.O.S. ¹			
Silver cyanide	Silver cyanide Ag(CN)	506-64-9	P104
Silvex (2,4,5-TP)	Propanoic acid, 2-(2,4,5-trichlorophenoxy)-	93-72-1	See F027
Sodium cyanide	Sodium cyanide Na(CN)	143-33-9	P106
Sodium dibutyldithiocarbamate	Carbamodithioic acid, dibutyl, sodium salt	136-30-1	
Sodium diethyldithiocarbamate	Carbamodithioic acid, diethyl-, sodium salt	148-18-5	
Sodium dimethyldithiocarbamate	Carbamodithioic acid, dimethyl-, sodium salt	128-04-1	
Sodium pentachlorophenate	Pentachlorophenol, sodium salt	131522	None
Streptozotocin	D-Glucose, 2-deoxy-2- [[[(methylnitrosoamino)carbonyl]amino]-	18883-66-4	U206
Strychnine	Strychnidin-10-one	57-24-9	P108
Strychnine salts			P108
Sulfallate	Carbamodithioic acid, diethyl-, 2-chloro-2-propenyl ester	95-06-7	
TCDD	Dibenzo[b,e][1,4]dioxin, 2,3,7,8-tetrachloro-	1746-01-6	
Tetrabutylthiuram disulfide	Thioperoxydicarbonic diamide, tetrabutyl	1634-02-2	
1,2,4,5-Tetrachlorobenzene	Benzene, 1,2,4,5-tetrachloro-	95-94-3	U207
Tetrachlorodibenzo-p-dioxins			
Tetrachlorodibenzofurans			
Tetrachloroethane, N.O.S. ¹	Ethane, tetrachloro-, N.O.S.	25322-20-7	
1,1,1,2-Tetrachloroethane	Ethane, 1,1,1,2-tetrachloro-	630-20-6	U208
1,1,2,2-Tetrachloroethane	Ethane, 1,1,2,2-tetrachloro-	79-34-5	U209
Tetrachloroethylene	Ethene, tetrachloro-	127-18-4	U210
2,3,4,6-Tetrachlorophenol	Phenol, 2,3,4,6-tetrachloro-	58-90-2	See F027
***2,3,4,6-tetrachlorophenol, potassium salt	Same	53535276	None

2,3,4,6-tetrachlorophenol, sodium salt	Same	25567559	None
Tetraethyldithiopyrophosphate	Thiodiphosphoric acid, tetraethyl ester	3689-24-5	P109
Tetraethyl lead	Plumbane, tetraethyl-	78-00-2	P110
Tetraethyl pyrophosphate	Diphosphoric acid, tetraethyl ester	107-49-3	P111
Tetramethylthiuram monosulfide	Bis(dimethylthiocarbamoyl) sulfide	97-74-5	
Tetranitromethane	Methane, tetranitro-	509-14-8	P112
Thallium	Same	7440-28-0	
Thallium compounds, N.O.S. ¹			
Thallic oxide	Thallium oxide Tl ₂ O ₃	1314-32-5	P113
Thallium(I) acetate	Acetic acid, thallium(1+) salt	563-68-8	U214
Thallium(I) carbonate	Carbonic acid, dithallium(1+) salt	6533-73-9	U215
Thallium(I) chloride	Thallium chloride TlCl	7791-12-0	U216
Thallium(I) nitrate	Nitric acid, thallium(1+) salt	10102-45-1	U217
Thallium selenite	Selenious acid, dithallium(1+) salt	12039-52-0	P114
Thallium(I) sulfate	Sulfuric acid, dithallium(1+) salt	7446-18-6	P115
Thioacetamide	Ethanethioamide	62-55-5	U218
Thiodicarb	Ethanimidothioic acid, N,N'-[thiobis [(methylimino) carbonyloxy]] bis-, dimethyl ester.	59669-26-0	U410
Thiofanox	2-Butanone, 3,3-dimethyl-1-(methylthio)-, O-[(methylamino)carbonyl] oxime	39196-18-4	P045
Thiomethanol	Methanethiol	74-93-1	U153
Thiophanate-methyl	Carbamic acid, [1,2-phenylenebis (iminocarbonothioyl)] bis-, dimethyl ester	23564-05-8	U409
Thiophenol	Benzenethiol	108-98-5	P014
Thiosemicarbazide	Hydrazinecarbothioamide	79-19-6	P116
Thiourea	Same	62-56-6	U219
Thiram	Thioperoxydicarbonic diamide tetramethyl-	{(H ₂ N)C(S)} ₂ S ₂ , 137-26-8	U244
Tirpate	1,3-Dithiolane-2-carboxaldehyde, O-[(methylamino) carbonyl] oxime	2,4-dimethyl-, 26419-73-8	P185
Toluene	Benzene, methyl-	108-88-3	U220
Toluenediamine	Benzenediamine, ar-methyl-	25376-45-8	U221
Toluene-2,4-diamine	1,3-Benzenediamine, 4-methyl-	95-80-7	
Toluene-2,6-diamine	1,3-Benzenediamine, 2-methyl-	823-40-5	
Toluene-3,4-diamine	1,2-Benzenediamine, 4-methyl-	496-72-0	
Toluene diisocyanate	Benzene, 1,3-diisocyanatomethyl-	26471-62-5	U223
o-Toluidine	Benzenamine, 2-methyl-	95-53-4	U328

o-Toluidine hydrochloride	Benzenamine, 2-methyl-, hydrochloride	636-21-5	U222
p-Toluidine	Benzenamine, 4-methyl-	106-49-0	U353
Toxaphene	Same	8001-35-2	P123
Triallate	Carbamothioic acid, bis(1-methylethyl)-, S-(2,3,3-trichloro-2-propenyl) ester	2303-17-5	U389
1,2,4-Trichlorobenzene	Benzene, 1,2,4-trichloro-	120-82-1	
1,1,2-Trichloroethane	Ethane, 1,1,2-trichloro-	79-00-5	U227
Trichloroethylene	Ethene, trichloro-	79-01-6	U228
Trichloromethanethiol	Methanethiol, trichloro-	75-70-7	P118
Trichloromonofluoromethane	Methane, trichlorofluoro-	75-69-4	U121
2,4,5-Trichlorophenol	Phenol, 2,4,5-trichloro-	95-95-4	See F027
2,4,6-Trichlorophenol	Phenol, 2,4,6-trichloro-	88-06-2	See F027
2,4,5-T	Acetic acid, (2,4,5-trichlorophenoxy)-	93-76-5	See F027
Trichloropropane, N.O.S. ¹		25735-29-9	
1,2,3-Trichloropropane	Propane, 1,2,3-trichloro-	96-18-4	
Triethylamine	Ethanamine, N,N-diethyl-	121-44-8	U404
O,O,O-Triethyl phosphorothioate	Phosphorothioic acid, O,O,O-triethyl ester	126-68-1	
1,3,5-Trinitrobenzene	Benzene, 1,3,5-trinitro-	99-35-4	U234
Tris(1-aziridinyl)phosphine sulfide	Aziridine, 1,1',1"-phosphinothioylidynetris-	52-24-4	
Tris(2,3-dibromopropyl) phosphate	1-Propanol, 2,3-dibromo-, phosphate (3:1)	126-72-7	U235
Trypan blue	2,7-Naphthalenedisulfonic acid, 3,3'-[(3,3'-dimethyl[1,1'-biphenyl]-4,4'-diyl)bis(azo)]-bis[5-amino-4-hydroxy-, tetrasodium salt	72-57-1	U236
Uracil mustard	2,4-(1H,3H)-Pyrimidinedione, 5-[bis(2-chloroethyl)amino]-	66-75-1	U237
Vanadium pentoxide	Vanadium oxide V ₂ O ₅	1314-62-1	P120
Vernolate	Carbamothioic acid, dipropyl-,S-propyl ester	1929-77-7	
Vinyl chloride	Ethene, chloro-	75-01-4	U043
Warfarin	2H-1-Benzopyran-2-one, 4-hydroxy-3-(3-oxo-1-phenylbutyl)-, when present at concentrations less than 0.3%	81-81-2	U248
Warfarin	2H-1-Benzopyran-2-one, 4-hydroxy-3-(3-oxo-1-phenylbutyl)-, when present at concentrations greater than 0.3%	81-81-2	P001
Warfarin salts, when present at concentrations less than 0.3%			U248

Warfarin salts, when present at concentrations greater than 0.3%			P001
Zinc cyanide	Zinc cyanide Zn(CN) ₂	557-21-1	P121
Zinc phosphide	Zinc phosphide Zn ₃ P ₂ , when present at concentrations greater than 10%	1314-84-7	P122
Zinc phosphide	Zinc phosphide Zn ₃ P ₂ , when present at concentrations of 10% or less	1314-84-7	U249
Ziram	Zinc, bis(dimethylcarbamodithioato-S,S')-, (T-4)-	137-30-4	P205

FOOTNOTE: ¹The abbreviation N.O.S. (not otherwise specified) signifies those members of the general class not specifically listed by name in this appendix.

Appendix IX - (Reserved) [40 CFR 261 Appendix IX]
(Note: EPA maintains the listing in Appendix IX.)

Authority: T.C.A. §§ 68-212-101 et seq. and 4-5-201 et seq.

Subpart (i) of part 5 of subparagraph (m) of paragraph (12) of Rule 0400-12-01-.03 Notification Requirements and Standards Applicable to Generators of Hazardous Waste is amended by deleting it in its entirety and substituting instead the following:

- (i) Write the words "hazardous waste" on the container label that is affixed or attached to the container ~~(or on the label that is affixed or attached to the container, if that is preferred)~~ within four (4) calendar days of arriving at the on-site interim status or permitted treatment, storage or disposal facility and before the hazardous waste may be removed from the on-site interim status or permitted treatment, storage or disposal facility; and

Authority: T.C.A. §§ 68-212-101 et seq. and 4-5-201 et seq.

Subpart (xi) of part 2 of subparagraph (b) of paragraph (1) of Rule 1200-12-01-.05 Interim Status Standards for Owners and Operators of Existing Hazardous Waste Treatment, Storage, and Disposal Facilities is amended by deleting it in its entirety and substituting instead the following:

- (xi) A farmer disposing of waste pesticides from his own use in compliance with item (1)(d)2(ii)(II) of Rule 0400-12-01-.02~~(1)(d)1(ii)(II)~~.

Authority: T.C.A. §§ 68-212-101 et seq. and 4-5-201 et seq.

Subpart (ix) of part 2 of subparagraph (b) of paragraph (1) of Rule 0400-12-01-.06 Standards for Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities is amended by deleting it in its entirety and substituting instead the following:

- (ix) A farmer disposing of waste pesticides from his own use in compliance with item (1)(d)2(ii)(II) of Rule 0400-12-01-.02~~(1)(b)1(ii)(II)~~.

Authority: T.C.A. §§ 68-212-101 et seq. and 4-5-201 et seq.

Subparagraph (a) of paragraph (27) of Rule 0400-12-01-.06 Standards for Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities is amended by deleting it in its entirety and substituting instead the following:

- (a) Applicability [40 CFR 264.600]

The requirements in this ~~subpart paragraph~~ apply to owners and operators of facilities that treat, store, or dispose of hazardous waste in miscellaneous units, except as paragraph (1) of this rule

provides otherwise.

Authority: T.C.A. §§ 68-212-101 et seq. and 4-5-201 et seq.

Subparagraph (a) of paragraph (10) of Rule 0400-12-01-.07 Permitting of Hazardous Waste Treatment, Storage, and Disposal Facilities is amended by adding parts 9 and 10 to read as follows:

9.	<u>Changes to remove permit conditions applicable to a unit excluded under the provisions of subparagraph (1)(d) of Rule 0400-12-01-.02.</u>	11
10.	<u>Changes in the expiration date of a permit issued to a facility at which all units are excluded under the provisions of subparagraph (1)(d) of Rule 0400-12-01-.02.</u>	11

Authority: T.C.A. §§ 68-212-101 et seq. and 4-5-201 et seq.

Paragraph (11) of Rule 0400-12-01-.08 Fee System for Transporters, Storer, Treater, Disposer, and Certain Generators of Hazardous Waste and For Certain Used Oil Facilities or Transporters is amended by deleting it in its entirety and substituting instead the following:

(11) Chromium Exclusion Review Fee

2,500 dollars for each chromium waste stream applicable to the exclusion in subpart (1)(d)2(vi) of Rule 0400-12-01-.02~~(1)(d)2(v)~~.

Authority: T.C.A. §§ 68-212-101 et seq. and 4-5-201 et seq.

Subpart (i) of part 4 of subparagraph (a) of paragraph (3) of Rule 0400-12-01-.09 Standards for the Management of Specific Hazardous Wastes and Specific Types of Hazardous Waste Management Facilities is amended by deleting it in its entirety and substituting instead the following:

- (i) They are zinc fertilizers excluded from the definition of solid waste according to subpart (1)(d)1(xxi) of Rule 0400-12-01-.02; or

Authority: T.C.A. §§ 68-212-101 et seq. and 4-5-201 et seq.

Part 4 of subparagraph (a) of paragraph (6) of Rule 0400-12-01-.09 Standards for the Management of Specific Hazardous Wastes and Specific Types of Hazardous Waste Management Facilities is amended by deleting it in its entirety and substituting instead the following:

- 4. Recyclable materials that are regulated under this paragraph that are accumulated speculatively (as defined in subpart (1)(a)3(viii) of Rule 0400-12-01-.02~~(1)(a)3~~) are subject to all applicable provisions of Rules 0400-12-01-.03 through 0400-12-01-.07.

Authority: T.C.A. §§ 68-212-101 et seq. and 4-5-201 et seq.

Subparagraph (m) of paragraph (8) of Rule 0400-12-01-.09 Standards for the Management of Specific Hazardous Wastes and Specific Types of Hazardous Waste Management Facilities is amended by deleting it in its entirety and substituting instead the following:

(m) Regulation of Residues [40 CFR 266.112]

A residue derived from the burning or processing of hazardous waste in a boiler or industrial furnace is not excluded from the definition of a hazardous waste under subparts (1)(d)2(xiii) (1)(d)2(iv), (xv) (vii), or (xvi) (viii) of Rule 0400-12-01-.02 unless the device and the owner or operator meet the following requirements:

- 1. The device meets the following criteria:
 - (i) Boilers

Boilers must burn at least 50% coal on a total heat input or mass input basis, whichever results in the greater mass feed rate of coal;

(ii) Ore or Mineral Furnaces

Industrial furnaces subject to subpart (1)(d)2(vii) of Rule 0400-12-01-.02(1)(d)2(xv) must process at least 50% by weight normal, nonhazardous raw materials;

(iii) Cement Kilns

Cement kilns must process at least 50% by weight normal cement-production raw materials;

2. The owner or operator demonstrates that the hazardous waste does not significantly affect the residue by demonstrating conformance with either of the following criteria:

(i) Comparison of Waste-derived Residue With Normal Residue

The waste-derived residue must not contain Appendix VIII, paragraph (30) of Rule 0400-12-01-.02(5) constituents (toxic constituents) that could reasonably be attributable to the hazardous waste at concentrations significantly higher than in residue generated without burning or processing of hazardous waste, using the following procedure. Toxic compounds that could reasonably be attributable to burning or processing the hazardous waste (constituents of concern) include toxic constituents in the hazardous waste, and the organic compounds listed in Appendix VIII of this rule that may be generated as products of incomplete combustion. For polychlorinated dibenzo-p-dioxins and polychlorinated dibenzofurans, analyses must be performed to determine specific congeners and homologues, and the results converted to 2, 3, 7, 8-TCDD equivalent values using the procedure specified in section 4.0 of the Methods Manual for Compliance with the BIF Regulations. (See Appendix IX of this rule.)

(I) Normal Residue

Concentrations of toxic constituents of concern in normal residue shall be determined based on analyses of a minimum of 10 samples representing a minimum of 10 days of operation. Composite samples may be used to develop a sample for analysis provided that the compositing period does not exceed 24 hours. The upper tolerance limit (at 95% confidence with a 95% proportion of the sample distribution) of the concentration in the normal residue shall be considered the statistically-derived concentration in the normal residue. If changes in raw materials or fuels reduce the statistically-derived concentrations of the toxic constituents of concern in the normal residue, the statistically-derived concentrations must be revised or statistically-derived concentrations of toxic constituents in normal residue must be established for a new mode of operation with the new raw material or fuel. To determine the upper tolerance limit in the normal residue, the owner or operator shall use statistical procedures prescribed in "Statistical Methodology for Beville Residue Determinations" in Appendix IX of this rule.

(II) Waste-derived Residue

Waste-derived residue shall be sampled and analyzed as often as necessary to determine whether the residue generated during each 24-hour period has concentrations of toxic constituents that are higher than the concentrations established for the normal residue under item (I) of this subpart. If so, hazardous waste burning has significantly affected the

residue and the residue shall not be excluded from the definition of a hazardous waste. Concentrations of toxic constituents of concern in the waste-derived residue shall be determined based on analysis of one or more samples obtained over a 24-hour period. Multiple samples may be analyzed, and multiple samples may be taken to form a composite sample for analysis provided that the sampling period does not exceed 24 hours. If more than one sample is analyzed to characterize waste-derived residues generated over a 24-hour period, the concentration of each toxic constituent shall be the arithmetic mean of the concentrations in the samples. No results may be disregarded; or

(ii) Comparison of Waste-derived Residue Concentrations With Health-based Limits

(I) Nonmetal Constituents

The concentration of each nonmetal toxic constituent of concern (specified in subpart (i) of this part) in the waste-derived residue must not exceed the health-based level specified in Appendix VII of this rule, or the level of detection, whichever is higher. If a health-based limit for a constituent of concern is not listed in Appendix VII of this rule, then a limit of 0.002 micrograms per kilogram or the level of detection (which must be determined by using appropriate analytic procedures), whichever is higher, must be used. The levels specified in Appendix VII of this rule (and the default level of 0.002 micrograms per kilogram or the level of detection for constituents as identified in Note 1 of Appendix VII of this rule) are administratively stayed under the condition, for those constituents specified in subpart (i) of this part, that the owner or operator complies with alternative levels defined as the land disposal restriction limits specified in subparagraph (3)(d) of Rule 0400-12-01-.10(3)(d) for F039 nonwastewaters. In complying with those alternative levels, if an owner or operator is unable to detect a constituent despite documenting use of best good-faith efforts as defined by applicable Department guidance or standards, the owner or operator is deemed to be in compliance for that constituent. Until new guidance or standards are developed, the owner or operator may demonstrate such good-faith efforts by achieving a detection limit for the constituent that does not exceed an order of magnitude above the level provided by subparagraph (3)(d) of Rule 0400-12-01-.10(3)(d) for F039 nonwastewaters. In complying with the subparagraph (3)(d) of Rule 0400-12-01-.10(3)(d) F039 nonwastewater levels for polychlorinated dibenzo-p-dioxins and polychlorinated dibenzo-furans, analyses must be performed for total hexachlorodibenzo-p-dioxins, total hexachlorodibenzofurans, total pentachlorobibenzo-p-dioxins, total pentachlorodibenzofurans, total tetrachlorodibenzo-p-dioxins, and total tetrachlorodibenzofurans.

~~(Note to this item:~~ The administrative stay, under the condition that the owner or operator complies with alternative levels defined as the land disposal restriction limits specified in 40 CFR § 268.43 of this chapter for F039 nonwastewaters, remains in effect until further administrative action is taken and notice is published in the Federal Register and the Code of Federal Regulations.)

(II) Metal Constituents

The concentration of metals in an extract obtained using the Toxicity Characteristic Leaching Procedure of subparagraph (3)(e) of Rule 0400-12-01-.02(3)(e) must not exceed the levels specified in Appendix VII of this rule; and

(III) Sampling and Analysis

Waste-derived residue shall be sampled and analyzed as often as necessary to determine whether the residue generated during each 24-hour period has concentrations of toxic constituents that are higher than the health-based levels. Concentrations of toxic constituents of concern in the waste-derived residue shall be determined based on analysis of one or more samples obtained over a 24-hour period. Multiple samples may be analyzed, and multiple samples may be taken to form a composite sample for analysis provided that the sampling period does not exceed 24 hours. If more than one sample is analyzed to characterize waste-derived residues generated over a 24-hour period, the concentration of each toxic constituent shall be the arithmetic mean of the concentrations in the samples. No results may be disregarded; and

3. Records sufficient to document compliance with the provisions of this subparagraph shall be retained until closure of the boiler or industrial furnace unit. At a minimum, the following shall be recorded.
 - (i) Levels of constituents in Appendix VIII in paragraph (30) of Rule 0400-12-01-.02~~(5)~~, that are present in waste-derived residues;
 - (ii) If the waste-derived residue is compared with normal residue under subpart 2(i) of this subparagraph:
 - (I) The levels of constituents in Appendix VIII in paragraph (30) of Rule 0400-12-01-.02~~(5)~~, that are present in normal residues; and
 - (II) Data and information, including analyses of samples as necessary, obtained to determine if changes in raw materials or fuels would reduce the concentration of toxic constituents of concern in the normal residue.

Authority: T.C.A. §§ 68-212-101 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)
Marty Calloway (Petroleum Business with at least 15 Underground Storage Tanks)	X				
Stacey Cothran (Solid/Hazardous Waste Management Industry)	X				
Kenneth L. Donaldson (Municipal Government)				X	
Dr. George Hyfantis, Jr. (Institution of Higher Learning)	X				
Bhag Kanwar (Single Facility with less than 5 Underground Storage Tanks)	X				
Alan M. Leiserson Environmental Interests	X				
Jared L. Lynn (Manufacturing experienced with Solid/Hazardous Waste)	X				
David Martin (Working in a field related to Agriculture)	X				
Beverly Philpot (Manufacturing experienced with Underground Storage Tanks/Hazardous Materials)	X				
DeAnne Redman (Petroleum Management Business)	X				
Mayor A. Franklin Smith, III (County Government)				X	
Mark Williams (Small Generator of Solid/Hazardous Materials representing Automotive Interests)	X				

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the Underground Storage Tanks and Solid Waste Disposal Control Board on 12/02/2015, and is in compliance with the provisions of T.C.A. § 4-5-222.

I further certify the following:

Notice of Rulemaking Hearing filed with the Department of State on: 07/14/15

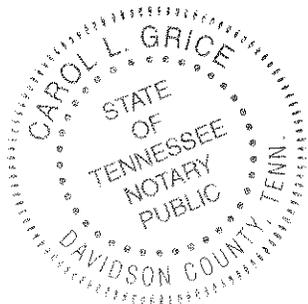
Rulemaking Hearing(s) Conducted on: (add more dates). 09/08/15

Date: December 2, 2015

Signature: *Stacey Cothran*

Name of Officer: Stacey Cothran

Title of Officer: Chair



Subscribed and sworn to before me on: December 2, 2015

Notary Public Signature: *Carol L. Grice*

My commission expires on: June 21, 2016

- Rules of the Board of Underground Storage Tanks and Solid Waste Disposal Control Board
- Chapter 0400-12-01 Hazardous Waste Management
- Rule 0400-12-01-.01 Hazardous Waste Management System: General
- Rule 0400-12-01-.02 Identification and Listing of Hazardous Waste
- Rule 0400-12-01-.03 Notification Requirements and Standards Applicable to Generators of Hazardous Waste
- Rule 0400-12-01-.05 Interim Status Standards for Owners and Operators of Existing Hazardous Waste Treatment, Storage, and Disposal Facilities
- Rule 0400-12-01-.06 Standards for Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities
- Rule 0400-12-01-.07 Permitting of Hazardous Waste Treatment, Storage, and Disposal Facilities
- Rule 0400-12-01-.08 Fee System for Transporters, Storers, Treaters Disposers, and Certain Generators of Hazardous Waste and For Certain Used Oil Facilities or Transporters
- Rule 0400-12-01-.09 Standards for the Management of Specific Hazardous Wastes and Specific Types of Hazardous Waste Management Facilities

All rulemaking hearing rules provided for herein have been examined by the Attorney General and Reporter of the State of Tennessee and are approved as to legality pursuant to the provisions of the Administrative Procedures Act, Tennessee Code Annotated, Title 4, Chapter 5.


 Herbert H. Slatery III
 Attorney General and Reporter
5/5/2017
 Date

Department of State Use Only

Filed with the Department of State on: 5/9/17

Effective on: 8/7/17


 Tre Hargett
 Secretary of State

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