

## **G.O.C. STAFF RULE ABSTRACT**

**DEPARTMENT:** Board of Judicial Conduct

**SUBJECT:** Board Meetings / Board Chairperson and Vice-Chairperson / Confidentiality / Records Retention

**STATUTORY AUTHORITY:** Public Chapter 496 of the 111th General Assembly

**EFFECTIVE DATES:** October 7, 2019 through April 4, 2020

**FISCAL IMPACT:** Minimal

**STAFF RULE ABSTRACT:** In Public Chapter 496, the 111th General Assembly reconstituted the Board of Judicial Conduct effective July 1, 2019. These emergency rules govern general procedures of the Board.

## **Impact on Local Governments**

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

These emergency rules will have a minimal 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 111th General Assembly reconstituted the Board of Judicial Conduct effective July 1, 2019. 2019 Tenn. Pub. Acts., ch. 496 (codified as T.C.A. §§ 17-5-101, *et seq.* These rules govern general procedures of the Board.

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

2019 Tenn. Pub. Acts., ch. 496 (codified as T.C.A. §§ 17-5-101, *et seq.*).

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

These rules most directly effect Tennessee's judiciary. The Board has received no objections to these rules.

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

None.

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

The Board of Judicial Conduct does not expect that there will be any significant changes to either state or local government revenues or expenditures resulting from the promulgation of these rules. The Board also believes that its fiscal impact is minimal.

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

Judge Dee David Gay  
Sumner County Criminal Justice Center  
1117 West Smith Street  
Gallatin, Tennessee 37066  
(615) 452-5526  
[Judge.Dee.Gay@tncourts.gov](mailto:Judge.Dee.Gay@tncourts.gov)

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

Judge Dee David Gay  
Sumner County Criminal Justice Center  
1117 West Smith Street  
Gallatin, Tennessee 37066  
(615) 452-5526  
[Judge.Dee.Gay@tncourts.gov](mailto:Judge.Dee.Gay@tncourts.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

Judge Dee David Gay  
Sumner County Criminal Justice Center  
1117 West Smith Street  
Gallatin, Tennessee 37066  
(615) 452-5526  
[Judge.Dee.Gay@tncourts.gov](mailto:Judge.Dee.Gay@tncourts.gov)

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

None.

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

For Department of State Use Only

Sequence Number: 10-06-19  
 Rule ID(s): 9260  
 File Date: 10/7/19  
 Last Effective Day: 4/4/20

# Emergency Rule Filing Form

*Emergency rules are effective from date of filing, unless otherwise stated in the rule, for a period of up to 180 days.*

**Agency/Board/Commission:** Board of Judicial Conduct  
**Division:** N/A  
**Contact Person:** Judge Dee David Gay  
**Address:** Sumner County Criminal Justice Center, 1117 West Smith Street, Gallatin TN  
**Zip:** 37066  
**Phone:** (615) 452-5526  
**Email:** [Judge.dee.gay@tncourts.gov](mailto:Judge.dee.gay@tncourts.gov)

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

- Amendment
- New
- Repeal

**Statement of Necessity:**

Public Chapter 496 of the 111th General Assembly—codified as Tenn. Code Ann. §§ 17-5-101, *et seq.*--reconstituted the Tennessee Board of Judicial Conduct effective July 1, 2019. As the reconstituted Board came into existence on July 1, 2019, it did not have time to promulgate these rules in a non-emergency fashion. The Board is unable to perform its functions without these emergency rules, and "[t]he regulation of judicial conduct is critical to preserving the integrity of the judiciary and enhancing public confidence in the judicial system." Tenn. Code Ann. § 17-5-101.

**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 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
-01	General
Rule Number	Rule Title
-01-.01	Meetings
-01-.02	Chairperson and Vice-Chair of the Board
-01-.03	Confidentiality
-01-.04	Records Retention

**-01-.01 MEETINGS.**

- (1) TIME AND PLACE OF MEETING – The Board shall meet at 10:00 am on the fourth (4th) Tuesday in February and the fourth (4th) Tuesday in July in the conference room of the Administrative Office of the Courts and at such other times and places as the chairperson or a majority of the members of the Board may deem necessary. Members finding it more convenient may also attend the meeting by video or phone conference.
- (2) NOTICE OF MEETING – The chairperson shall give a minimum of ten (10) days' notice of the time and place of meetings to all members of the Board.
- (3) QUORUM – Nine (9) members of the Board, whether meeting in person or by video or phone conference, shall constitute a quorum.

Authority: T.C.A. § 17-5-201(f).

**-01-.02 CHAIRPERSON AND VICE-CHAIR OF THE BOARD.**

- (1) CHAIRPERSON ELECTION AND REMOVAL – The Board, at its meeting on the fourth (4th) Tuesday in July of each year, shall elect a chairperson to serve for a period of one (1) year. The chairperson shall be elected from the members of the Board by a majority present and voting. The chairperson may be removed by a two-thirds vote of the members of the Board, with or without cause.
- (2) VICE-CHAIR ELECTION, REMOVAL, AND DUTIES – The Board, at its meeting on the fourth (4th) Tuesday in July of each year, shall elect a vice-chair to serve for a period of one (1) year. The vice-chair shall be elected from the members of the Board by a majority present and voting. The vice-chair may be removed by a two-thirds vote of the members of the Board, with or without cause. If at any meeting the chairperson is not present, the vice-chair shall act as chairperson for that meeting. If the chairperson is recused with respect to a matter, the vice-chair shall act as chairperson with respect to that matter.
- (3) CHAIRPERSON DUTIES – In addition to the duties and responsibilities set forth in T.C.A. §§ 17-5-101, *et seq.*, the Chairperson shall preside at all meetings of the Board and at trials. The chairperson shall rule upon the admission or exclusion of evidence. However, the chairperson's ruling upon the admission or exclusion of evidence may be appealed to the full hearing panel. The chairperson and only the chairperson shall be the spokesperson for all matters pending before the Board, except that if the chairperson is recused with respect to a matter pending before the Board, the vice-chair and only the vice-chair shall be the spokesperson for the Board with respect to that matter. After the trial of any matter, the chairperson shall write or shall designate a member of the hearing panel that heard the matter to write the majority opinion. Any member of the hearing panel that heard the matter may write a concurring or dissenting opinion. The chairperson shall have such other duties and responsibilities as are necessary in fulfilling the office.

Authority: T.C.A. § 17-5-201(f).

**-01-.03 CONFIDENTIALITY.**

- (1) Except as required under T.C.A. § 17-5-303(f), matters that come before the Board are confidential. Individual members of the Board will not discuss any matter pending before the Board, except with other members of the Board and with the Board's disciplinary counsel. However, nothing in this rule shall prohibit the complainant, respondent-judge, or any witness from disclosing the existence or substance of a complaint, matter, investigation, or proceeding before the Board or from disclosing any documents or correspondence filed by, served on, or provided to that person. In addition, if it becomes apparent that allegations of misconduct by a judge have become a matter of public record independent of any action by the Board and that continued silence by the Board may be detrimental to the public interest, may lead to bringing the judiciary into public disrepute, or may adversely affect the administration of justice, the chairperson in his or her discretion may (a) confirm that an investigation is in progress, (b) clarify the procedural aspects of any proceedings, and (c) explain the rights of the subject of the investigation to a fair hearing without prejudgment.

Authority: T.C.A. §§ 17-5-201(f), -202(e), -303(f).

-01-.04 RECORDS RETENTION.

When a complaint is received from an outside source or is created internally, both a physical and an electronic file shall be created. The physical file shall contain the complaint and all relevant documentation and correspondence pertaining to the complaint. Relevant portions of all complaints and documentation, including correspondence, shall be scanned and maintained in the electronic file. Correspondence generated by the office to either the complainant or the subject judge shall also be maintained in an electronic file in word-processing format, without the necessity of scanning the printed document. Voluminous public records such as transcripts, court dockets, or pleadings filed in any court, which are retrievable by other means, need not be scanned into the electronic file. The Board's disciplinary counsel shall maintain a backup copy of all electronic files that shall be backed up daily and kept on storage media apart from the computer's internal hard drive. A physical file may be destroyed by an appropriately secure method, such as a commercial shredding service, no sooner than one (1) year after the final action and closing of that file, but the electronic file shall never be destroyed, regardless of the disposition of the case.

Authority: T.C.A. §§ 17-5-201(f). -202(e).

\* 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)
Dee David Gay	X				
Andrew G. Brigham	X				
Jeffrey M. Atherton	X				
H. Allen Bray				X	
Robert Carter, Jr.	X				
Edwena I. Crowe	X				
Rita Ellison	X				
William C. Koch, Jr.	X				
Camille R. McMillen	X				
Albert Mosley	X				
Benjamin Purser, Jr.	X				
Richard Rogers	X				
Dan Springer	X				
Terica Smith	X				
John Whitworth	X				
Robert W. Wilkinson	X				

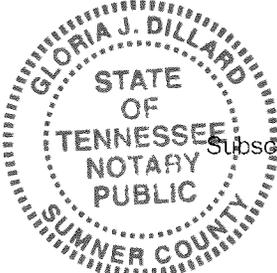
I certify that this is an accurate and complete copy of an emergency rule(s), lawfully promulgated and adopted.

Date: Oct 4 2019

Signature: [Handwritten Signature]

Name of Officer: Dee David Gay

Title of Officer: Criminal Court Judge



Subscribed and sworn to before me on: October 4, 2019

Notary Public Signature: Gloria J. Dillard

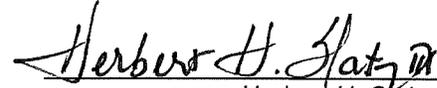
My commission expires on: 12/21/19

Agency/Board/Commission: Board of Judicial Conduct

Agency/Board/Commission: Board of Judicial Conduct

Rule Chapter Number(s): Need chapter assigned, -01 General

All emergency 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  
9/11/2019  
Date

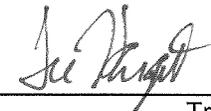
**Department of State Use Only**

Filed with the Department of State on: 10/7/19

Effective for: 180 \*days

Effective through: 4/4/20

\* Emergency rule(s) may be effective for up to 180 days from the date of filing.

  
Tre Hargett  
Secretary of State

RECEIVED  
2019 OCT -7 PM 2:15  
SECRETARY OF STATE  
PUBLICATIONS

## G.O.C. STAFF RULE ABSTRACT

DEPARTMENT: Motor Vehicle Commission

DIVISION: Regulatory Boards Division

SUBJECT: General Rules

STATUTORY AUTHORITY: None

EFFECTIVE DATES: 11/14/2019 through 6/30/2020

FISCAL IMPACT: Minimal

STAFF RULE ABSTRACT: The first amendment adds further requirements on what contact information an applicant must or should provide, specifically requiring an email address. The second amendment seeks to allow two conjoined businesses, with one being a licensed dealer, to have a door between those businesses. The door must not be used by consumers and should be secured and locked when not in use.

## Regulatory Flexibility Addendum

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

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

At the end of 2018, the Tennessee Motor Vehicle Commission licensed 3,791 motor vehicle dealers, 138 distributors/manufacturers, 30 auctions, 38 RV dealers, and 73 RV manufacturers. Of all those licensees, the majority would be considered small businesses. The rule requiring an email address and other contact information will affect small businesses on their initial applications and renewals. A phone number and address were already required, so the only new factor will be the required email address. Email addresses can be obtained for free or at a low cost, so the impact should be low.

The rule allowing a conjoining private door between businesses would impact new applicants and licensees who wish to add a door because it was previously not allowed. New applicants may have the expense of securing the door. Businesses wishing to add a door would be electing those expenses and it would not have been required by the rule change.

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

There are no projected reporting, recordkeeping, or other administrative costs anticipated to be required for compliance with the proposed rule.

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

Adding a required email address may come with a nominal expense if a licensee wishes to have a custom email rather than one provided by a free service. However, email allows faster communication, quicker responses regarding consumer complaints, and benefits the licensees by enabling online license renewals and services.

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

There is no less burdensome alternative to the updated contact information requirement. There is no less burdensome manner that also considers consumer information security in relation to the secured door requirement. The updated conjoined business rule seeks to be less burdensome than the current requirement that does not allow a door.

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

There are no known comparable federal or state counterparts to these rule changes.

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

There are no known benefits to allowing businesses to be exempt from the updated contact information rule. While allowing broader means of connecting two conjoining businesses may appear beneficial to small businesses, the increased risk of consumer harm and difficulty in enforcing other regulatory requirements offsets the apparent benefit of an exemption.

### **Impact on Local Governments**

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

These rules are not projected to impact local government.

**Additional Information Required by Joint Government Operations Committee**

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

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

The first amendment adds further requirements on what contact information an applicant must or should provide, specifically requiring an email address. The second amendment seeks to allow two conjoined businesses, with one being a licensed dealer, to have a door between those businesses. The door must not be used by consumers and should be secured and locked when not in use.

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

There are no known federal or state laws or regulations mandating the promulgation of these rules.

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

The contact information update will affect all applicants and all dealers applying for renewals. While this will affect all licensees, the small burden it creates is not anticipated to create opposition to the rule change. The door rule represents a lessening of the restrictions on dealers conjoining other businesses, so it is not anticipated that this rule change will draw opposition.

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

There are no known attorney general and reporter or judicial rulings directly related to this rule or the necessity to promulgate the rule.

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

There are no estimated increases or decreases in state and local government revenue.

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

Maria P. Bush – Assistant General Counsel  
TN Dept. of Commerce and Insurance  
  
Anthony Glandorf – Chief Counsel  
TN Dept. of Commerce and Insurance

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

Maria P. Bush – Assistant General Counsel  
TN Dept. of Commerce and Insurance  
  
Anthony Glandorf – Chief Counsel  
TN Dept. of Commerce and Insurance

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

Maria P. Bush – Assistant General Counsel  
500 James Robertson Parkway  
Nashville, TN 37243  
615-741-3072  
Maria.P.Bush@tn.gov

Anthony Glandorf – Chief Counsel  
500 James Robertson Parkway  
Nashville, TN 37243  
615-741-3072  
Anthony.Glandorf@tn.gov

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

None.

**Department of State  
Division of Publications**

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**For Department of State Use Only**

Sequence Number: 09-18-19  
Rule ID(s): 9234  
File Date: 8/16/19  
Effective Date: 11/14/19

## Proposed Rule(s) Filing Form

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

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

<b>Agency/Board/Commission:</b>	Tennessee Motor Vehicle Commission
<b>Division:</b>	Regulatory Boards Division
<b>Contact Person:</b>	Maria P. Bush
<b>Address:</b>	500 James Robertson Parkway, Nashville, TN
<b>Zip:</b>	37243
<b>Phone:</b>	(615) 741-3072
<b>Email:</b>	maria.p.bush@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
0960-01	General Rules
Rule Number	Rule Title
0960-01-.08	Applications
0960-01-.21	Motor Vehicle Dealer Facilities

General Rules  
Amendments

0960-01-.08 Applications shall be amended by adding paragraph (5) so that, as amended, the rule shall read:

- (1) An applicant for a license to sell motor vehicles shall comply with T.C.A. § 55-17-111 and shall provide the Commission with all information required by this section. An applicant for a license to sell recreational vehicles shall comply with T.C.A. § 55-17-405 and shall provide the Commission with all information required by this section.
- (2) Applicants are required to provide the Commission, and keep current, the names of any inventory financiers, i.e. "floor planners" used by the dealership.
- (3) A motor vehicle or recreational vehicle dealer applicant shall provide to the Commission a compiled financial statement indicating a minimum net worth of at least Ten Thousand Dollars (\$10,000.00). The compiled financial statement must be prepared in accordance with generally accepted accounting principles by a certified public accountant or public accountant dated not earlier than twelve (12) months prior to the date of the application, and a copy of the same must be furnished to the Commission along with any changes to the statement.
- (4) The Commission may deny any application for a license if any manager, director, or owner of five percent (5%) interest or greater of the applicant could be denied licensure as an individual pursuant to T.C.A. § 55-17-114.
- (5) Applicants are required to provide the Commission with a current address, phone number, and email address. If available, applicants shall also provide a facsimile number.

Authority: T.C.A. §§ 55-17-107, 55-17-111, 55-17-402, and 55-17-405.

0960-01-.21 Motor Vehicle Dealer Facilities is amended by striking the last sentence of paragraph (1) and substituting new language so that, as amended, the rule shall read:

- (1) The facility must be physically separate and apart from any other businesses and shall not include any residence, tent or temporary stand. The facility may be connected to another business facility provided there is a permanent wall from floor to ceiling between the two businesses and the motor vehicle or recreational vehicle facility has a separate outside entrance and exit. Any doors between the businesses shall be permanently sealed. Any doors conjoining the businesses shall be secured and locked from the interior in a nature that is satisfactory to the Commission. Doors conjoining the businesses shall only be utilized by employees of the businesses and shall not be accessible to or utilized by members of the public.
- (2) The facility shall contain adequate office space (a minimum of 288 square feet) for processing sales and purchases of motor vehicles or recreational vehicles. The facility shall also contain restroom accommodations.
- (3) The facility shall have a primary telephone number listed in the local directory under the name of the dealership. The primary phone number of the dealership shall be posted either on the door to the dealership, in a window of the dealership or on the dealership's sign.
- (4) The facility shall have immediate and contiguous access to and exclusive dedicated use of a motor vehicle or recreational vehicle storage or display lot capable of accommodating fifteen (15) motor vehicles or recreational vehicles of the dealership's product line. A lot shall consist of compacted gravel, chert, stone or similar materials and shall not include public lands, unimproved land or residential driveways. The facility shall also contain a minimum of three (3) parking spots dedicated for customer parking.
- (5) The facility shall be used exclusively for buying, selling, renting, displaying, advertising, demonstrating, servicing or repairing motor vehicles or recreational vehicles or selling functional or nonfunctional parts, including accessories, safety equipment and vehicle branded clothing.

Authority: T.C.A. §§ 55-17-107, 55-17-114, and 55-17-402.

Rules of the Tennessee Motor Vehicle Commission  
 Chapter 0960-01 – General Rules  
 Rule 0960-01-.08 and 0960-01-.21 – Applications; Motor Vehicle Dealer Facilities  
 \* If a roll-call vote was necessary, the vote by the Agency on these rules was as follows:

Board Member	Aye	No	Abstain	Absent	Signature (if required)
Eddie Roberts	x				
Stan Norton	x				
Ian Leavy				x	
Nathaniel Jackson	x				
John Chobanian	x				
Stephen Tomaso	x				
Karl Kramer	x				
Charles West	x				
Ronald Fox	x				
Kahren White				x	
Chris Lee	x				
Jim Galvin Jr.	x				
John S. Murrey				x	
Debbie Melton				x	
Farrar Schaeffer Vaughan	x				
Victor Evans	x				
John Barker, Jr.	x				

I certify that this is an accurate and complete copy of proposed rules, lawfully promulgated and adopted by the Tennessee Motor Vehicle Commission on 01/14/2019 and is in compliance with the provisions of T.C.A. § 4-5-222. The Secretary of State is hereby instructed that, in the absence of a petition for proposed rules being filed under the conditions set out herein and in the locations described, he is to treat the proposed rules as being placed on file in his office as rules at the expiration of ninety (90) days of the filing of the proposed rule with the Secretary of State.

Date: June 26, 2019

Signature: Maria P. Bush

Name of Officer: Maria P. Bush

Title of Officer: Assistant General Counsel

Subscribed and sworn to before me on: June 26, 2019

Notary Public Signature: Anna D. Matlock

My commission expires on: 09-07-2021



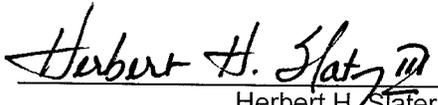
Rules of the Tennessee Motor Vehicle Commission  
Chapter 0960-01 – General Rules  
Rule 0960-01-.08 and 0960-01-.21 – Applications; Motor Vehicle Dealer Facilities

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Agency/Board/Commission: Tennessee Motor Vehicle Commission

Rule Chapter Number(s): 0960-01 – General Rules

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

  
Herbert H. Statory III  
Attorney General and Reporter  
7/31/2019  
Date

**Department of State Use Only**

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

Effective on: 11/14/19

  
Tre Hargett  
Secretary of State

2019 AUG 16 AM 9:09  
SECRETARY OF STATE  
REGISTRARS

## G.O.C. STAFF RULE ABSTRACT

DEPARTMENT: Secretary of State

SUBJECT: Online Notaries Public

STATUTORY AUTHORITY: The Secretary of State has been granted authority to promulgate rules relating to the Online Notary Public Act by the General Assembly through Public Chapter 931, as codified at Tennessee Code Annotated, Section 8-16-305.

EFFECTIVE DATES: January 7, 2020 through June 30, 2020

FISCAL IMPACT: Minimal

STAFF RULE ABSTRACT: These rulemaking hearing rules are intended to implement the Online Notary Public Act, passed by the 110th General Assembly, and govern the operation and commissioning of online notaries public pursuant to this act. The purpose of the Online Notary Public Act is to establish and provide a framework to allow the online notarization of documents by means of a two-way audio-video communication employing both identity proofing and credential analysis components to ensure reliability and eliminate, insofar as is possible, the possibility for the occurrence of fraud.

## Public Hearing Comments

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

A rulemaking hearing was conducted on July 8, 2019. In attendance at that hearing were Mr. Mark Rosser, representing First American Bank, and Ms. Vivian Paris of Bivens and Associates, LLC. Ms. Paris did not have any comments. Mr. Rosser had the following questions and/or comments.

1. Would the SOS be willing to change the provision related to the electronic signature so that the signature must be "attributable" to the notary rather than the same each time?

Response: No. The electronic signature is defined by statute. The electronic signature must also be 'capable of independent verification', as required by T.C.A. § 8-16-309(d). However, the word 'unique' has been removed from the rules wherever it appeared, as this is not stated in the statute.

2. What is the process for updating information if an online notary switches vendors for the identity proofing and credential analysis?

Response: This process is addressed by Rule 1360-07-03-.07 (5) & (6). This process may be completed through the SOS's online application portal.

3. Does the SOS interpret Proposed Rule 1360-07-03-.03(13), which references the 'papering out' process for recording with the register of deeds, to be in line with T.C.A. § 66-24-101(d) in that part of the rules?

Response: Yes. A reference to T.C.A. § 66-24-101(d) has been inserted into the rule to confirm/clarify that the requirements of this statute must be met as well.

4. Mr. Rosser also urged that the SOS maintain the same standards for identity proofing and credential analysis that are currently proposed.

Response: The SOS has no current intention to modify these requirements.

## **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 adoption of these rules will have no significant impact on 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://publications.tnsosfiles.com/acts/106/pub/pc1070.pdf>) of the 2010 Session of the General Assembly)

The adoption of these rules will have no significant impact on local governments.

**Additional Information Required by Joint Government Operations Committee**

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

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

These rules are intended to implement the Online Notary Public Act, passed by the 110<sup>th</sup> General Assembly, and govern the operation and commissioning of online notaries public pursuant to this act. The purpose of the Online Notary Public Act is to establish and provide a framework to allow the online notarization of documents by means of a two-way audio-video communication employing both identity proofing and credential analysis components to ensure reliability and eliminate, insofar as is possible, the possibility for the occurrence of fraud.

- (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 Secretary of State has been granted authority to promulgate rules relating to the Online Notary Public Act by the General Assembly through Public Chapter 931, as codified at Tennessee Code Annotated § 8-16-305.

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

These rules will relate most directly to notaries public and those who employ notaries public as a part of their business model. Based upon knowledge and belief, this process will most often be utilized by real property and mortgage buyers, sellers, lenders, and titling agencies. The Office of the Secretary of State has received extensive comments, suggestions, and information from industry stakeholders relating to the development of these rules, and to our knowledge, none of these stakeholders have expressed direct opposition to the adoption of these rules.

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

None.

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

The Department of State does not expect that there will be any significant changes to either state or local government revenues or expenditures resulting from the promulgation of these rules. The Agency also believes that the fiscal impact on the agency itself will be minimal, as the anticipated fiscal cost of operating this program does not exceed two percent (2%) of the Agency's annual budget or five hundred thousand dollars (\$500,000).

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

Lauren L. Topping  
Assistant General Counsel  
Office of the Secretary of State  
(615) 532-0824  
Lauren.L.Topping@tn.gov

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

Mary Beth Thomas  
General Counsel  
Office of the Secretary of State

State Capitol, First Floor  
Nashville, Tennessee 37243  
(615) 741-2819  
Mary.Beth.Thomas@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

Mary Beth Thomas  
General Counsel  
Office of the Secretary of State  
State Capitol, First Floor  
Nashville, Tennessee 37243  
(615) 741-2819  
Mary.Beth.Thomas@tn.gov

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

None.

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

**For Department of State Use Only**

Sequence Number: 10-12-19  
 Rule ID(s): 9263  
 File Date: 10/9/19  
 Effective Date: 1/7/20

# 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).*

<b>Agency/Board/Commission:</b>	Secretary of State
<b>Division:</b>	Capitol Office
<b>Contact Person:</b>	Mary Beth Thomas
<b>Address:</b>	600 Charlotte Avenue, State Capitol, 1 <sup>st</sup> Floor, Nashville, Tennessee, 37243
<b>Phone:</b>	(615) 741-2819
<b>Email:</b>	<a href="mailto:Mary.Beth.Thomas@tn.gov">Mary.Beth.Thomas@tn.gov</a>

**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
1360-07-03	Online Notaries Public
Rule Number	Rule Title
1360-07-03-.01	Online Notarization
1360-07-03-.02	Application for Online Notary Public Commission; Renewal
1360-07-03-.03	Performance of Notarial Acts
1360-07-03-.04	Electronic Signature and Seal
1360-07-03-.05	Standards for Online Notarization
1360-07-03-.06	Fees
1360-07-03-.07	Changes After Commissioning
1360-07-03-.08	Termination of Commission

Place substance of rules and other info here. Please be sure to include a detailed explanation of the changes being made to the listed rule(s). Statutory authority must be given for each rule change. For information on formatting rules go to

<https://sos.tn.gov/products/division-publications/rulemaking-guidelines>.

### **1360-07-03-.01 ONLINE NOTARIZATION**

- (1) A notary public who has been properly commissioned to conduct online notarizations may complete authorized notarial acts by means of an electronic interactive two-way audio and video communication that meets the following requirements. An online notarization may not be performed by an individual who has not been commissioned as an online notary public by the Department of State.
- (2) The terms used herein shall have the same definitions prescribed in T.C.A. § 8-16-302. These rules pertain to online notarizations as defined and used throughout T.C.A. § 8-16-301, et. seq. Notarial acts satisfying the requirements of T.C.A. § 8-16-101, et. seq., are not affected by these rules.

Authority: T.C.A. § 8-16-301, et seq. (Public Chapter 931, effective April 18, 2018).

### **1360-07-03-.02 APPLICATION FOR ONLINE NOTARY PUBLIC COMMISSION; RENEWAL**

- (1) A person who has been previously commissioned as a notary public by a county legislative body, and meets the qualification requirements for commissioning as a notary public as outlined in Tennessee Code Annotated Title 8, Chapter 16, may submit an application for commissioning as an online notary public by submitting to the Department of State, Division of Business Services the prescribed application form including the following information:
  - (a) The applicant's legal name as listed in the records of the county where the applicant is commissioned as a notary public;
  - (b) The applicant's physical address in this state, as is on record with the clerk of the county in which the notary is commissioned, which includes the street address, city, state, and zip code. The applicant may provide a post office box number for purposes of receiving mail from the Secretary of State, but must also provide a physical address;
  - (c) A valid email address for the applicant;
  - (d) A valid telephone number for the applicant;
  - (e) The county in this state where the applicant was commissioned as a notary public;
  - (f) The date the applicant was commissioned as a notary public;
  - (g) The date the applicant's commission is set to expire;
  - (h) The name of the vendor and electronic technology or technologies to be used in attaching or logically associating an electronic notarial certificate, signature, and seal to an electronic document;
  - (i) The name of the vendor and electronic technology or technologies to be used in conducting identity proofing and credential analysis;
  - (j) A copy of the applicant's electronic notarial certificate (otherwise known as a digital certificate) or other technology for rendering a notarized electronic document tamper-evident;
  - (k) A copy of the applicant's electronic seal, in a file format acceptable to the department;
  - (l) A copy of any necessary instructions or techniques supplied by a vendor that allow the online notary public's electronic notarial certificate and seal to be read and authenticated;
  - (m) A copy of any necessary instructions or techniques supplied by a vendor that allow the online notary public to conduct identity proofing and credential analysis;
  - (n) An explanation of the methods and/or technology by which the online notary public will maintain and store the secure electronic records of all electronic documents notarized by the online notary public in accordance with Rule 1360-07-03-.03(8);
  - (o) A certification confirming that the applicant will comply with the following standards prescribed by the Secretary of State; and
  - (p) An application fee of \$75.00.
- (2) The Secretary of State shall issue an online notary public commission to a qualified applicant who meets the eligibility requirements stated in these rules, has submitted a properly completed and executed application, and has submitted the required application fee.
- (3) An online notary public may renew his or her online notary public commission by filing an application for renewal in the same manner and on the same form as if filing an initial application for commission. The

renewal must be received by the Secretary of State no later than the expiration date of the online notary public's current commission. The Secretary of State shall determine eligibility for renewals according to the same standards as initial applications, and shall not be bound by prior determinations of eligibility.

Online notary public commissions will terminate on the same date on which the county notary public commission terminates regardless of when the online notary public commission was granted.

- (4) Applications must be submitted online to the Department of State Division of Business Services via the online portal established by the Department at [sos.tn.gov](http://sos.tn.gov).

Authority: T.C.A. § 8-16-301, et seq. (Public Chapter 931, effective April 18, 2018).

### **1360-07-03-.03 PERFORMANCE OF NOTARIAL ACTS**

- (1) An online notary public may perform authorized online notarial acts relating to electronic documents only if the principal personally appears before the online notary public at the time of the notarization; however, such personal appearance may be by means of an electronic two-way audio and video communication.
- (2) An online notary public may perform authorized notarial acts by means of an electronic interactive two-way audio and video communication only when the online notary public is physically located within this state, without regard to whether the principal is physically located in this state at the time of the online notarization.
- (3) An online notary public shall require the principal to demonstrate, to the satisfaction of the online notary public, that such person is not under duress and is not otherwise being coerced to complete the transaction, in order to preserve the integrity, security, and authenticity of online notarizations. An online notary public is authorized to refuse to perform a notarial act when the online notary public has reasonable grounds to believe that the principal is acting under coercion or undue influence.
- (4) An online notary public must verify the identity of a principal at the time that the signature is taken by means of two-way video and audio conference technology. Identity may be verified by the online notary public's personal knowledge of the principal, or by:
  - (a) Remote presentation by the principal of a non-military, government-issued credential, which is an identification card or other document issued by the United States government, any state government, or a passport issued by a foreign government that has been stamped by the United States immigration and naturalization service, and which is unexpired, contains the signature and a photograph of the principal, and which is capable of credential analysis in accordance with Rule 1360-07-03-.05.
  - (b) Credential analysis of the credential provided by the principal as set forth in Rule 1360-07-03-.05; and
  - (c) Identity proofing of the principal as set forth in Rule 1360-07-03-.05.
- (5) Under no circumstances shall an online notary public base identification merely on familiarity with a principal's electronic signature or an electronic verification process that authenticates the principal's electronic signature when the principal does not personally appear before the online notary public.
- (6) The online notary public shall refuse to complete the performance of a notarial act where:
  - (a) The online notary public has reasonable grounds to believe that the principal is acting under coercion or undue influence;
  - (b) The online notary public is unable to verify the identity of the principal using the means and the standards identified in these rules;
  - (c) The online notary public becomes aware that the security of the two-way audio-visual transmission is not secure;
  - (d) The signature of the principal cannot be attached to the electronic document; or

- (e) The online notary public's electronic notarial certificate and seal cannot be attached to the electronic document using an electronic technology which renders any subsequent change or modification to the document evident.
- (7) The online notary public shall complete and attach an electronic notarial certificate to all written notarial acts that identifies the principal, the date of notarization, the state and county in which the notarization was performed, that the notarial act was an online notarization, and the type of notarial act performed. The electronic notarial certificate shall be signed by affixing or logically associating the online notary public's electronic notarial certificate, electronic signature, and electronic seal in a manner that is capable of independent verification and renders any subsequent change or modification to the electronic document evident.
- (8) An online notary public performing authorized notarial acts must also satisfy the following requirements.
- An online notary public, or his or her properly designated custodian or repository, must keep, for at least 5 years after the date of the transaction or proceeding, a secure electronic record of all electronic documents notarized by the online notary public, containing all of the following information:
- (a) The date and time of the notarization;
  - (b) The type of notarial act;
  - (c) The type, the title, or a description of the electronic document or proceeding;
  - (d) The printed name and address of each principal involved in the transaction or proceeding;
  - (e) Evidence of the identity of each principal involved in the transaction or proceeding in the form of:
    - 1. A statement that the principal(s) is personally known to the online notary public; or both
    - 2. A notation of the type of identification document provided to the online notary public for each principal; and
    - 3. A notation that the principal(s) completed identity proofing and credential analysis procedures described by Rule 1360-07-03-.05 and both were satisfactory to verify the identity of the principal(s);
  - (f) A recording of any video and audio conference that is the basis for satisfactory evidence of identity and a notation of the type of identification presented as evidence; and
  - (g) The fee, if any, charged for the notarization.
- (9) The online notary public must take reasonable steps to ensure that the two-way video and audio communication used is encrypted during transmission, through means such as a virtual private network (VPN), and secure from unauthorized interception.
- (10) The online notary public shall not disclose any access information used to affix the online notary public's electronic notarial certificate, signature, and seal, except when requested by the Secretary of State, law enforcement, the courts, or pursuant to an agreement between the online notary public and an electronic documentation preparation and transmission vendor, which agreement shall have in place reasonable precautions to prevent the unauthorized release of access information.
- (11) The online notary public should ensure that all records relating to any individual transaction are securely stored using the Advanced Encryption Standard (AES) as a minimum encryption standard and that the principal's personally identifying information or any government-issued identification numbers cannot be accessed by unauthorized individuals. The online notary public should refrain from recording, or take steps to obscure from the recording, any identification number that was assigned to the principal by a governmental agency or by the United States and any other number(s) that could be used to identify the principal.
- (12) Records of an online notarization shall be retained, in a safe and secure manner, for five years following

the date of the notarization. An online notary public must also maintain a backup of the electronic records for the same period of time. Both the original records and the backup shall be protected from unauthorized use. An online notary public may elect to store such recordings with a custodian or repository and such recordings may be stored separately from the journal as long as the corresponding journal entry cross-references the place of storage and describes the manner in which the record is stored.

- (13) An online notary public may use his or her electronic signature only for performing online notarizations. The online notary public may certify that a tangible copy of an electronic record is an accurate copy of the electronic record by also affixing his or her signature and seal to the copy of the electronic record in the traditional manner or other manner authorized by law, but only where the online notary public is capable of independently verifying the document is a true and correct copy of the electronic record consistent with the requirements of T.C.A. § 66-24-101(d).

Authority: T.C.A. § 8-16-301, et seq. (Public Chapter 931, effective April 18, 2018).

#### **1360-07-03-.04 ELECTRONIC SIGNATURE AND SEAL**

- (1) An online notary public must use the same electronic signature for all online notarial acts performed by the online notary public.
- (2) An online notary public must use the same electronic seal for all online notarial acts performed by the online notary public, and a copy of such seal must be provided to the Department of State at the time of the online notary public's application for certification as an online notary public. The name on the online notary public seal must match the name, as stated on the application, under which the online notary public is commissioned and performs all notarial acts.
- (3) An online notary public shall use an electronic seal that substantially conforms to the following design: a circular, square, or rectangular seal with the notary public's name as it appears on the commission printed at the top, the county of election printed at the bottom, the words "State of Tennessee Notary Public" or "Tennessee Notary Public" printed in the center, and the words "Online Notary Public" printed below. The electronic seal must also be accompanied by a statement of the date upon which the online notary public's commission expires. A sample seal format appears below:



Online Notary Public  
My Commission Expires:  
[Date]

- (4) An online notary public must attach or logically associate his or her electronic signature and seal to the electronic notarial certificate in a manner that is capable of independent verification and renders any subsequent change or modification to the electronic document evident.
- (5) The online notary public must use technology from a third-party provider who has provided the online notary public with evidence of its ability to provide an electronic technology standard that utilizes Public Key Infrastructure (PKI) technology from a PKI service provider that is X.509 compliant.
- (6) The electronic notarial certificate for an online notarization must contain a notation that the notarization is an online notarization, which may be satisfied by affixing the online notary public's seal to the electronic notarial certificate. The acknowledgment contained within the electronic notarial certificate must also contain a statement that the principal "personally appeared before me by audio-video communication" or "personally appeared by audio-video communication" or "before me appeared by audio-video communication".
- (7) The online notary public's electronic notarial certificate, electronic signature, and electronic seal must remain within the exclusive control of the online notary public (including control by means of use of a password) at all times and shall be used only for the purpose of performing online notarial acts.

- (8) The online notary public must provide any necessary instruction or techniques supplied by a vendor that allow the online notary public's electronic notarial certificate and seal to be read and authenticated.

If at any time the online notary public adopts a new or additional technology or vendor with which to perform online notarial acts, the online notary public must notify the Department of State of the new or additional technology, signature and/or seal, as well as any additional information that may be requested by the Department of State.

Authority: T.C.A. § 8-16-301, et seq. (Public Chapter 931, effective April 18, 2018).

### **1360-07-03-.05 STANDARDS FOR ONLINE NOTARIZATION**

- (1) Identity proofing and credential analysis must be performed by a third party who has provided evidence to the online notary public of the ability to satisfy the requirements of this chapter.

- (2) Requirements for Credential Analysis.

A credential is a non-military identification card or other document issued by the United States government, any state government, or a passport issued by a foreign government that has been stamped by the United States immigration and naturalization service. In order to be valid, the credential must also be unexpired and contain the photograph and signature of the principal. Credential analysis is the process by which the validity of a non-military government-issued identification credential is verified. Credential analysis is performed utilizing public and proprietary data sources to verify the credential presented by the principal. Credential analysis shall, at a minimum:

- (a) Use automated processes to aid the online notary public in verifying the identity of a principal;
- (b) Ensure that the credential passes an authenticity test, consistent with sound commercial practices that:
  - 1. Use appropriate technologies to confirm the integrity of visual, physical or cryptographic security features;
  - 2. Use appropriate technologies to confirm that the credential is not fraudulent or inappropriately modified;
  - 3. Use reasonable efforts to utilize information held or published by the issuing source or authoritative source(s), as made generally available for commercial purposes, to confirm the validity of personal details and credential details; and,
  - 4. Provide output of the authenticity test to the online notary public; and
- (c) Enable the online notary public to visually compare the following for consistency: the information and photo presented on the credential itself and the principal as viewed by the online notary public in real time through audio-visual transmission.

- (3) Requirements for Identity Proofing.

Identity proofing is the process by which the identity of an individual is affirmed by a third party through review of public and proprietary data sources. Identity proofing is performed through dynamic Knowledge Based Authentication (KBA) which meets the following requirements:

- (a) The principal must answer a quiz consisting of a minimum of five (5) questions related to the principal's personal history or identity, formulated from public and proprietary data sources;
- (b) Each question must have a minimum of five (5) possible answer choices;
- (c) At least 80% of questions must be answered correctly;
- (d) All questions must be answered within two (2) minutes;

- (e) If the principal fails in his or her first attempt, the principal may retake the quiz one time within 24 hours;
  - (f) During the second attempt, a minimum of 60% of the prior questions must be replaced; and
  - (g) If the principal fails in his or her second attempt, the principal is not permitted to retry with the same online notary public for a period of 24 hours.
- (4) If the principal must exit the workflow, the principal must meet the criteria outlined in this section and must restart the identity proofing and credential analysis from the beginning.
- (5) An online notarization system used to perform online notarial acts by means of two-way audio-video communication shall:
- (a) Provide for continuous, synchronous audio-visual feeds;
  - (b) Provide sufficient video resolution and audio clarity to enable the online notary public and the principal to see and speak with each other simultaneously through live, real-time transmission;
  - (c) Provide sufficient captured image resolution for credential analysis to be performed in accordance with these rules;
  - (d) Include a means of authentication that reasonably ensures only authorized parties have access to the audio-video communication;
  - (e) Provide some manner of ensuring that the electronic record presented for online notarization is the same record electronically signed by the principal;
  - (f) Be capable of securely creating and storing or transmitting securely to be stored an electronic recording of the audio-video communication, keeping confidential the questions asked as part of any identity proofing quiz and the means and methods used to generate the credential analysis output; and
  - (g) Provide reasonable security measures to prevent unauthorized access to:
    1. The live transmission of the audio-video communication;
    2. A recording of the audio-video communication;
    3. The verification methods and credentials used to verify the identity of the principal; and
    4. The electronic documents presented for online notarization.

Authority: T.C.A. § 8-16-301, et seq. (Public Chapter 931, effective April 18, 2018).

#### **1360-07-03-.06 FEES**

An online notary public, or the online notary public's employer, may charge a fee that does not exceed twenty-five dollars (\$25.00) for performing each online notarization.

Authority: T.C.A. § 8-16-301, et seq. (Public Chapter 931, effective April 18, 2018).

#### **1360-07-03-.07 CHANGES AFTER COMMISSIONING**

- (1) An online notary public who changes his or her address, such that the online notary public no longer qualifies for either a traditional notary public commission or an online notary public commission, vacates the office of online notary public and must surrender the online notary public commission to the Secretary of State.

- (2) An online notary public who replaces or changes an electronic notarial certificate or electronic seal during the term of the online notary public commission must provide an updated copy of the electronic notarial certificate or electronic seal to the Secretary of State prior to conducting any notarial acts using the updated electronic notarial certificate or electronic seal. This information may be updated using the Secretary of State's web-based Online Notary Application.
- (3) If at any time during the term of the online notary commission the online notary public elects to use a new vendor or technology or technologies to be used in attaching or logically associating an electronic notarial certificate, signature, and seal to an electronic document, the online notary public must provide to the Secretary of State the name of the vendor and electronic technology or technologies to be used in attaching or logically associating an electronic notarial certificate, signature, and seal to an electronic document and a copy of any necessary instructions or techniques supplied by the vendor that allow the online notary public's electronic signature and seal to be read and authenticated prior to conducting any notarial acts using the new vendor or technology or technologies. This information may be updated using the Secretary of State's web-based Online Notary Application.
- (4) If at any time during the term of the online notary public commission the online notary public elects to use a new vendor or technology or technologies to be used in conducting identity proofing and credential analysis, the online notary public must provide to the Secretary of State the name of the vendor and electronic technology or technologies to be used in conducting identity proofing and credential analysis and a copy of any necessary instructions or techniques supplied by the vendor that allow the online notary public to conduct identity proofing and credential analysis prior to conducting any notarial acts using the new vendor or technology or technologies. This information may be updated using the Secretary of State's web-based Online Notary Application.

Authority: T.C.A. § 8-16-301, et seq. (Public Chapter 931, effective April 18, 2018).

#### **1360-07-03-.08 TERMINATION OF COMMISSION**

If the Secretary of State determines that any online notary public has not complied with these regulations or the provisions of Tennessee Code Annotated Title 8, Chapter 16 related to online notarization, the Secretary of State shall terminate the commission of the online notary public.

Authority: T.C.A. § 8-16-301, et seq. (Public Chapter 931, effective April 18, 2018).

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

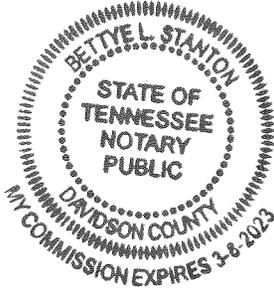
Board Member	Aye	No	Abstain	Absent	Signature (if required)

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the Secretary of State (board/commission/ other authority) on 9/24/19 (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: (05/16/2019)

Rulemaking Hearing(s) Conducted on: (add more dates). (07/08/2019)



Date: 9/24/19

Signature: Mary Beth Thomas

Name of Officer: Mary Beth Thomas

Title of Officer: General Counsel

Subscribed and sworn to before me on: SEPTEMBER 24, 2019

Notary Public Signature: Bettye L. Stanton

My commission expires on: 3-8-2023

Agency/Board/Commission: Department of State, Division of Business Services

Rule Chapter Number(s): 1360-07-.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. Slattery III  
Herbert H. Slattery III  
Attorney General and Reporter

10/2/2019 Date

**Department of State Use Only**

Filed with the Department of State on: 10/9/19

Effective on: 1/7/20

Tre Hargett

Tre Hargett  
Secretary of State

SECRETARY OF STATE  
PUBLICATIONS

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## G.O.C. STAFF RULE ABSTRACT

<u>DEPARTMENT:</u>	Environment and Conservation
<u>DIVISION:</u>	Solid Waste Management
<u>SUBJECT:</u>	Solid Waste Processing and Disposal / Fee System for Non-Hazardous Disposal
<u>STATUTORY AUTHORITY:</u>	Tennessee Code Annotated, Section 68-211-101 et seq.
<u>EFFECTIVE DATES:</u>	December 30, 2019 through June 30, 2020
<u>FISCAL IMPACT:</u>	Minimal
<u>STAFF RULE ABSTRACT:</u>	<p>With these amendments the Board intends, through this rulemaking hearing rule, to:</p> <ul style="list-style-type: none"><li>• Authorize the Commissioner to require documents to be submitted electronically,</li><li>• Clarify that a permit by rule is an authorization to operate and restructure the rules so that is clear what requirements apply to which facilities.</li><li>• Delete the petroleum contaminated soil exemption to prevent the inappropriate disposal of petroleum contaminated soils in solid waste landfills.</li><li>• Develop a "bright line" for determining which facilities are permit-exempt Recovered Materials Processing Facilities ("RMPFs"), and which facilities qualify for a solid waste processing permit by rule. Incorporating a detailed permit exemption into the rules better defines whether a facility is a RMPF and whether it is exempt from permit requirements. This rule change also requires financial assurance for certain RMPFs and amends the already-existing financial assurance requirements for solid waste processing facilities.</li><li>• Repeal the Coal Ash fill permit by rule, due to the passage of the federal Water Infrastructure Improvements for the Nation Act ("WIIN Act") and promulgation of the federal CCR disposal rules (40 CFR Part 257). The coal ash fill permit by rule currently included in the regulations is no longer appropriate.</li><li>• Require permit applicants to resubmit the Part I permit application if the applicant has</li></ul>

failed to submit either the Hydrogeological Report or the Engineering Plans (one piece of the Part II permit application) within one year.

- Require the resubmittal of the closure/post-closure (CPC) plans every 10 years. Resubmittal of the CPC is important because in Tennessee permits are issued for the life of the landfill. In being able to revisit the CPC of a landfill permit, the Division of Solid Waste Management will be able to update itemized cost estimates which are the basis for financial assurance. Owners will be provided an opportunity to reassess closure technology and technique. Class I and Class II owners will also plan for the long-term maintenance costs (custodial care) of the landfill beyond the post-closure period with no increase in required financial assurance. CPC resubmittal will be processed as a minor permit modification.

- Require a more detailed annual or triennial report to more effectively understand the status of a landfill with respect to its planned phase of development, projected dates for cell openings and closings, remaining cell capacity, and overall to ensure landfills are in compliance with their permitted fill progression. Class I landfills systems would report annually. Class II landfills would report every three years.

- Update rules to support changes in processes and procedures for, and scientific understanding of, obtaining groundwater samples.

- Replace the ambiguous phrase "final cover consists of an 18 inch low permeability layer" with the more definitive "final cover consists of an 18 inch compacted soil layer with a maximum hydraulic conductivity of  $1 \times 10^{-5}$  cm/s."

- Add a clarification requested by the Office of the Attorney General regarding deed restrictions.

## Public Hearing Comments

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

Comment 1: The Southern Environmental Law Center encourages the Board not to make the proposed change that would permit filtration of groundwater samples, so that sampling will follow best protocols and will remain accurate. SELC maintains that, while it is possible that groundwater monitoring samples could include some geologic solids not related to landfill leaks, that should be accounted for by slow rate sampling, proper well installation, and by unfiltered sampling at an upgradient well.

SELC cites the U.S. EPA "RCRA Ground-water Monitoring: Draft Technical Guidance" dated November 1992; a Washington State Department of Ecology publication, "Standard Operating Procedures for Collecting Groundwater Samples for Metals Analysis from Monitoring Wells;" as well as a white paper entitled "Ground Water Sampling for Metals Analyses" authored by Robert W. Puls and Michael J. Barcelona.

Response: The USEPA (1994, 2002, 2004) and others [The Boeing Company (1998), Saar (1999) and the United States Geologic Survey (USGS, 1999)] indicate the potential benefit of filtering (both in the field during sampling and in the lab prior to analysis) to limit the negative effects of excessive suspended solids.

At many permitted and regulated facilities throughout Tennessee, the water bearing units that are monitored are fine-grained alluvium and residuum of weathered bedrock. Groundwater well construction technology (including that for monitoring wells) is not particularly well suited for the reliable retrieval of water that is free of the fine-grained solids that are the predominant composition of these formations. Depending on specific geology and stratigraphy it can be difficult to retrieve representative (turbidity free) samples from monitoring wells installed in these fine-grained formations.

Elevated turbidity in groundwater samples resulting from uncontrollable formation and well construction/development effects can result in artificially elevated inorganic compound concentrations that may not be representative of groundwater conditions. In these cases, while recognizing and accounting for related sources of error, samples can be filtered to remove excess suspended solids to achieve more representative groundwater samples (relative to turbidity) and analytical results that more reliably reflect actual inorganic groundwater chemistry conditions.

Sample filtering is permitted by many states for both solid waste and remediation compliance areas. Review of existing guidance nationwide indicates that filtered samples are considered to be representative of groundwater (without specific use limitations) for the purpose of establishing and monitoring compliance conditions. The position appears to be broadly ubiquitous across environmental programs including underground storage tank, solid waste, and CERCLA applications. States where filtered groundwater samples are regarded as representative include but are not limited to Indiana, New Jersey, New York, Florida, Connecticut, Texas, and California.

The Board has concluded that in certain cases, as discussed above, field filtering of groundwater samples is appropriate to obtain a representative sample.

Comment 2: The Southern Environmental Law Center urges the Board to require landfill covers to have hydraulic conductivity of at least  $1 \times 10^{-7}$  cm/sec. SELC cites federal law, specifically 40 CFR § 258.60 and 264.301.

Response: The commenter references 40 CFR Part 264 - Standards for Owners and Operators of Hazardous Waste Treatment, Storage, And Disposal Facilities. Additionally, the commenter references 40 CFR 258, Criteria for Municipal Solid Waste Landfill. However, these federal regulations do not apply to the landfills addressed by the proposed rules amendments: non-hazardous Class III construction and demolition landfills. Construction and demolition landfills are subject to the requirements of 40 CFR part 257, subparts A or B, subparts A or B, which do not provide a specific hydraulic conductivity level for Class IIIs.

Comment 3: A commenter requests that the proposed rules should be amended to require the development of a closure plan for a facility operating under permit by rule. A third party would be required to develop the plan and the plan would be certified by a professional engineer. The closure cost estimate for financial assurance would be based on this plan. At closure, the Department would select a contractor to execute the closure plan as approved by the Department. A third party would then certify the contractor's work.

Response: The Board may consider this proposal in a future rulemaking after obtaining stakeholder input and public comment.

Currently, the owner/operator of a solid waste processing facility that has a solid waste storage capacity of 1,000 cubic yards or greater must file with the Commissioner a performance bond or equivalent cash or securities, payable to the State of Tennessee. The rule amendment requires that the owner/operator of any solid waste processing facility must now file financial assurance. Such financial assurance is intended to ensure that adequate financial resources are available to the Commissioner for the proper operation, closure, and post closure care of the facility.

For permit-by-rule facilities, the applicant submits to the Department a closure cost estimate. The Department analyzes the various itemized costs to determine whether the estimate is acceptable. The Commissioner ultimately establishes the amount of financial assurance that is required, in accordance with paragraph (3) of Rule 0400-11-01-.03. The operator may appeal the amount of financial assurance required by the Commissioner as set forth in Tenn. Code Ann. § 68-211-113.

Under both the current rules and this proposed rule amendment, the owner or operator of a solid waste processing facility must certify that the facility has been closed and all solid wastes and residues have been removed. The facility must be closed to the satisfaction of the Commissioner. Closure will not be considered final and complete until the approval of the Commissioner has been obtained.

Comment 4: TVA has concerns with the proposed addition of boron as a constituent in both Appendix I (detection monitoring) and Appendix II (assessment monitoring). TVA agrees with TDEC that boron can be a constituent found in association with landfilled coal combustion residuals (CCR) waste, however, as the current proposed rulemaking does not comprehensively address CCR issues or impoundments, the Department should refrain from recommending the addition of boron unless or until the Department recommends the adoption of rules establishing a delegated state CCR permitting program.

Response: The Department removed the proposed addition of boron to Appendix I & II from this rulemaking.

## Regulatory Flexibility Addendum

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

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

The rule amendments require Class I landfills to submit annual engineering reports and resubmit their Closure/Post Closure plans every 10 years. The Department has identified two small businesses that own Class I landfills. Class II landfills will submit engineering reports every three years. The Department has identified three small businesses that own a Class II landfill.

These rules add the definition of a recovered materials processing facility (RMPF). Many operators of RMPFs were unnecessarily managing these types of facilities as solid waste processing facilities and complying with the permit-by-rule requirements. RMPFs engaged solely in the storage, processing and resale or reuse of recovered materials are not solid waste processing facility and not required to obtain a permit-by-rule to operate or to pay annual maintenance fees. Owners or operators of RMPFs will be required by these rules to notify the Department and may be required to submit financial assurance in order to ensure proper closure and post-closure care of the facility if the Commissioner determines that the value of the materials managed is less than the estimated cost of removing the materials if a third party is required to ensure proper closure and post-closure care. The Department has identified 55 private RMPFs. Of the 55 private RMPFs, at least 20 are small businesses, and will be among the facilities that will most likely transition from qualifying as a solid waste processing facility under the current rule to a RMPF under the new rule. Under the new rule, RMPFs have fewer requirements to meet than solid waste processing facilities.

For facilities that continue to meet the definition of a solid waste processing facility and have over 1,000 cubic yards of storage, the requirements will not change. Solid waste processing facilities that have less than 1,000 cubic yards of storage may have to submit financial assurance under the new rule. The Department estimates 30-40 solid waste processing facilities may be required to submit financial assurance; approximately half, or 15-20, are 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.

Annual engineering reports and closure/post closure plans require the contracting of a qualified surveyor and/or professional engineer. All permitted landfills either have this expertise available on staff or engage in routine contracts with these individuals.

Annual reporting for RMPFs requires no specialized skills or administrative costs. RMPFs may already be compiling this information in order to comply with Tenn. Code Ann. § 68-211-871.

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

The proposed rules will have minimal effect on small businesses. The differences in permitting and regulatory oversight under these proposed rule amendments are minimal.

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

The purpose and objectives of the proposed rules are to clarify the requirements for the regulated community and to ensure that the Department is carrying out the statutory mandates found in Tenn. Code Ann. Title 68, Chapter 211, Parts 1 and 8, of protecting human health and the environment while supervising the operation, closure, and post-closure of facilities that may handle solid waste across the state. The Board has implemented the least burdensome, intrusive, and costly methods of achieving the purpose and objectives of this proposed rule.

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

A recent survey of the EPA Region 4 states showed that Alabama, Florida, and Kentucky require varying types of permit or registration requirements for recyclers. Under the new rule, Tennessee RMPFs are only required to submit a one-time notice of activities to show that the RMPF meets the permit exemption. Alabama and Florida have permit reissuance cycles for landfills. Currently, landfill permits in Tennessee are valid for the life of the facility without any reissuance or recertification requirements. These rule amendments require only periodical reevaluation of the long-term closure needs. Annual engineering reports are common throughout state programs.

- (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.

Excluding small businesses would create potential harm to the public health and environment. The Board sought to address the needs of small businesses in the rule amendments. Recovered material processors will remain exempt from permitting requirements. Class III landfills were deliberately left out of this rule package as they are more often owned and/or operated by small businesses.

## **Impact on Local Governments**

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

The Board anticipates that these rules will have an impact on local governments that own Class I landfills.

## 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;

With these amendments the Board intends to:

- Authorize the Commissioner to require documents to be submitted electronically.
- Clarify that a permit by rule is an authorization to operate and restructure the rules so that is clear what requirements apply to which facilities.
- Delete the petroleum contaminated soil exemption to prevent the inappropriate disposal of petroleum contaminated soils in solid waste landfills.
- Develop a "bright line" for determining which facilities are permit-exempt Recovered Materials Processing Facilities ("RMPFs"), and which facilities qualify for a solid waste processing permit by rule. Incorporating a detailed permit exemption into the rules better defines whether a facility is a RMPF and whether it is exempt from permit requirements. This rule change also requires financial assurance for certain RMPFs and amends the already-existing financial assurance requirements for solid waste processing facilities.
- Repeal the Coal Ash fill permit by rule, due to the passage of the federal Water Infrastructure Improvements for the Nation Act ("WIIN Act") and promulgation of the federal CCR disposal rules (40 CFR Part 257). The coal ash fill permit by rule currently included in the regulations is no longer appropriate.
- Require permit applicants to resubmit the Part I permit application if the applicant has failed to submit either the Hydrogeological Report or the Engineering Plans (one piece of the Part II permit application) within one year.
- Require the resubmittal of the closure/post-closure (CPC) plans every 10 years. Resubmittal of the CPC is important because in Tennessee permits are issued for the life of the landfill. In being able to revisit the CPC of a landfill permit, the Division of Solid Waste Management will be able to update itemized cost estimates which are the basis for financial assurance. Owners will be provided an opportunity to reassess closure technology and technique. Class I and Class II owners will also plan for the long-term maintenance costs (custodial care) of the landfill beyond the post-closure period with no increase in required financial assurance. CPC resubmittal will be processed as a minor permit modification.
- Require a more detailed annual or triennial report to more effectively understand the status of a landfill with respect to its planned phase of development, projected dates for cell openings and closings, remaining cell capacity, and overall to ensure landfills are in compliance with their permitted fill progression. Class I landfills systems would report annually. Class II landfills would report every three years.
- Update rules to support changes in processes and procedures for, and scientific understanding of, obtaining groundwater samples.
- Replace the ambiguous phrase "final cover consists of an 18 inch low permeability layer" with the more definitive "final cover consists of an 18 inch compacted soil layer with a maximum hydraulic conductivity of  $1 \times 10^{-5}$  cm/s."
- Add a clarification requested by the Office of the Attorney General regarding deed restrictions.

- (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 promulgated under the authority of Tenn. Code Ann. §§ 68-211-101 et seq. and Tenn. Code Ann. §§ 68-211-801 et seq., but are not specifically mandated by law.

- (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;

Changes to Part I submittal requirements, closure/post-closure renewal, annual engineering reports, and cover standards will apply to those entities that engage in the operation and construction of landfills. The majority of Class I landfills are owned or operated by larger landfill corporations. The Department has reached out to these businesses on behalf of the Board through a series of stakeholder meetings and other channels and has explained the need for these changes. These changes are similar to what these entities may encounter in neighboring states.

To a lesser extent, some of these changes apply to government entities that continue to operate disposal facilities. During the stakeholder input phase, many items were deleted or amended to accommodate the concerns of local governments. For example, as a result of discussions with local solid waste officials, the Department withdrew a proposal to require engineering reports for Class III and IV landfills, given that those landfills are mostly owned and operated by local governments and local officials were concerned about associated costs.

- (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 Board is not aware of any opinions or judicial rulings that directly relate to this rule.

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

The Board does not anticipate an increase or decrease in state revenues and expenditures and only a minimal increase in expenditures for local governments that own solid waste landfills.

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

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William R. Snodgrass Tennessee Tower  
312 Rosa L. Parks Avenue, 14th Floor  
Nashville, Tennessee 37243  
[Nickolaus.Lytle@tn.gov](mailto:Nickolaus.Lytle@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](mailto:Emily.Urban@tn.gov)

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

A letter will be submitted to the committee to address the committee's request.

**Department of State  
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Effective Date: \_\_\_\_\_

# 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).*

<b>Agency/Board/Commission:</b>	Environment and Conservation
<b>Division:</b>	Solid Waste Management
<b>Contact Person:</b>	Nick Lytle
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**Revision Type (check all that apply):**

- Amendment  
 New  
 Repeal

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

Chapter Number	Chapter Title
0400-11-01	Solid Waste Processing and Disposal
Rule Number	Rule Title
0400-11-01-.01	Solid Waste Disposal Control System: General
0400-11-01-.02	Permitting of Solid Waste Storage, Processing, and Disposal Facilities
0400-11-01-.03	Requirements for Financial Assurance
0400-11-01-.04	Specific Requirements for Class I, II, III, and IV Disposal Facilities
0400-11-01-.07	Fee System for Non-Hazardous Disposal and Certain Non-Hazardous Processors of Solid Waste
0400-11-01-.10	Convenience Centers / County Public Collection Receptacles
0400-11-01-.11	Requirements for Compost and Composting Facilities
0400-11-01-.13	Requirements for Land Application Facilities

Place substance of rules and other info here. Please be sure to include a detailed explanation of the changes being made to the listed rule(s). Statutory authority must be given for each rule change. For information on formatting rules go to

[http://sos-tn.gov/files.s3.amazonaws.com/forms/Rulemaking%20Guidelines\\_September2016.pdf](http://sos-tn.gov/files.s3.amazonaws.com/forms/Rulemaking%20Guidelines_September2016.pdf).

Chapter 0400-11-01  
Solid Waste Processing and Disposal

Amendments

Paragraph (2) of Rule 0400-11-01-.01 Solid Waste Disposal Control System: General is amended by deleting the current definition of "medical wastes" and substituting instead in alphabetical order a new definition of "medical wastes" to read as follows:

"Medical wastes" means the following solid wastes:

- (a) Wastes generated by hospitalized patients who are isolated to protect others from communicable diseases (see the current U. S. Centers for Disease Control "Guidelines for Isolation Precautions in Hospitals", July, 1983 guidance related to preventing transmission of infectious agents in healthcare settings for definition of diseases requiring such isolation).
- (b) Cultures and stocks of infectious agents, including specimen cultures from medical and pathological laboratories, cultures and stocks of infectious agents from research and industrial laboratories, wastes from the production of biologicals, discarded live and attenuated vaccines, and culture dishes and devices used to transfer, inoculate, and mix cultures.
- (c) Waste human blood and blood products such as serum, plasma, and other blood components.
- (d) Pathological wastes (i.e., tissues, organs, body parts, and body fluids) that are removed during surgery and autopsy.
- (e) All discarded sharps (e.g., hypodermic needles, syringes, pasteur pipettes, broken glass, scalpel blades) used in patient care or which have come into contact with infectious agents during use in medical, research, or industrial laboratories.
- (f) Contaminated carcasses, body parts, and bedding of animals that were intentionally exposed to pathogens in research, in the production of biologicals, or in the in vivo testing of pharmaceuticals.
- (g) The following wastes from patients known to be infected with blood-borne disease:
  1. Contaminated wastes from surgery and autopsy (e.g., soiled dressings, sponges, drapes, lavage tubes, drainage sets, underpads, surgical gloves).
  2. Wastes from medical, pathological, pharmaceutical, or other research, commercial, or industrial laboratories that were in contact with infectious agents (e.g., specimen containers, slides and cover slips, disposable gloves, lab coats, aprons).
  3. Wastes that were in contact with the blood of patients undergoing hemodialysis, including contaminated disposal equipment and supplies such as tubing, filters, disposable sheets, towels, gloves, aprons, and lab coats.
  4. Discarded equipment and parts that were used in patient care, medical and industrial laboratories, research, and in the production and testing of certain pharmaceuticals and that may be contaminated with infectious agents.

Authority: T.C.A. §§ 68-211-101 et seq. and 4-5-201 et seq.

Paragraph (2) of Rule 0400-11-01-.01 Solid Waste Disposal Control System: General is amended by adding in alphabetical order definitions for the terms "recovered materials" and "recovered materials processing facility" to

read as follows:

“Recovered materials” means those materials which have been diverted or removed from the solid waste stream for sale, use, reuse, or recycling, whether or not requiring subsequent separation processing. Such recovered materials are not solid waste.

“Recovered materials processing facility” means a facility engaged solely in the storage, processing, and resale or reuse of recovered materials. A recovered materials processing facility is not a solid waste processing facility.

Authority: T.C.A. §§ 68-211-101 et seq., 68-211-801 et seq., and 4-5-201 et seq.

Rule 0400-11-01-.01 Solid Waste Disposal Control System: General is amended by adding a new paragraph (6) to read as follows:

(6) Electronic Submittal

This chapter requires submittals of applications, reports, and other documents. To aid in the review or processing of an application, report, or other document, the Commissioner may require the person submitting such document to include an electronic copy of the document in a format acceptable to the Commissioner. When required by the Commissioner, the additional electronic copy of the application, report, or other document shall be submitted in accordance with the Commissioner's instructions.

Authority: T.C.A. §§ 68-211-101 et seq. and 4-5-201 et seq.

Part 3 of subparagraph (b) of paragraph (1) of Rule 0400-11-01-.02 Permitting of Solid Waste Storage, Processing, and Disposal Facilities is amended by deleting it in its entirety and substituting instead the following:

3. The following facilities or practices are not subject to the requirement to have a permit:
  - (i) Disposal of septic tank pumpings;
  - (ii) Junkyards;
  - (iii) Reclamation of surface mines;
  - (iv) Disposal of farming wastes at facilities which are on the site of generation and with a fill area of less than one acre in areal extent when completed;
  - (v) Disposal of landscaping and land clearing wastes at facilities which are on the site of generation and with a fill area of less than one acre in areal extent when completed;
  - (vi) Disposal of construction/demolition wastes at facilities which are on-site of generation and with a fill area of less than one acre in areal extent when completed;
  - (vii) Burning solid wastes for energy recovery or processing solid wastes to produce a fuel or processing solid waste for materials recovery, provided such burning or processing occurs on the site of generation or at a site owned or operated by the same corporation or subsidiaries of such corporation;
  - (viii) Processing or disposal of solid wastes at hazardous waste management facilities authorized by permit or interim status under Rule 0400-12-01-.07, or management of solid waste that is regulated under Chapter 0400-12-01;
  - (ix) Baling, shredding, and mechanical or other processing of solid waste on the site of generation or at a site owned or operated by the same corporation or subsidiaries of such corporation;

- (x) Processing of industrial wastewaters in on-site facilities subject to regulation under T.C.A. § 69-3-101 et seq.;
- (xi) Processing or disposal of the following materials:
  - (I) Domestic sewage and any mixture of domestic sewage and other wastes that passes through a sewer system to a publicly-owned wastewater treatment works for treatment;
  - (II) Industrial wastewater discharges that are point source discharges subject to permits under T.C.A. § 69-3-101 et seq.;
  - (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) Farming wastes which are returned to the soil as fertilizers; and
  - (VII) Mining overburden returned to the mine site;
- (xii) Processing or disposal of solid wastes by deep underground injection which are permitted under the Water Quality Control Act pursuant to the of 1977 and Chapter 0400-45-06 Underground Injection Control Regulations Chapter 1200-04-06.
- (xiii) The use of solely natural rock, dirt, stumps, pavement, concrete and rebar, and/or brick rubble as fill material.
- ~~(xiv)~~ The use and/or disposal of Petroleum contaminated soil and rock generated from the clean-up of leaking Underground Storage Tank sites regulated under Chapter 0400-18-01, provided such materials are treated and the benzene level is below 5 ppm and the total petroleum hydrocarbon level is below 100 ppm and provided that the method of treatment was reviewed and approved by the Division of Underground Storage Tanks.
- ~~(xv)~~~~(xiv)~~ The processing of waste tires at facilities that are permitted or otherwise authorized by this Chapter chapter to store and/or dispose of waste tires.
- ~~(xvi)~~~~(xv)~~ The storage of solid waste that is recyclable material incidental to its recycling, reuse, reclamation, or salvage provided that upon request of the Commissioner, the operator demonstrates to the satisfaction of the Commissioner that there is a viable market for all stored waste and provided that all waste is stored in a manner that minimizes the potential for harm to the public and the environment. Material Recyclable material may not be stored for more than one (1) year without written approval from the Division.
- ~~(xvii)~~~~(xvi)~~ The storage of solid waste incidental to its collection. (The storage of solid waste at permitted facilities and permit-by-rule facilities and storage in a manner constituting disposal are not exempt from permitting requirements).
- ~~(xviii)~~~~(xvii)~~ The collection of "used oil" and/or the processing of used oil filters, provided that the used oil and/or filters are received directly from "do-it-yourselfers" as the terms are defined at T.C.A. § 68-211-1002.
- ~~(xix)~~~~(xviii)~~ The processing of landscaping or land clearing wastes or unpainted, unstained, and untreated wood into mulch.

~~(xx)(xix)~~ The land application of both publicly-owned publicly owned treatment works water sludges and publicly-owned publicly owned treatment waste water works wastewater sludges from facilities that are subject to regulatory standards of the Department's Division of Water Supply and Division of Water Pollution Control Resources.

~~(xxi)(xx)~~ The burning of natural and untreated wood, landscaping wastes, landclearing wastes in either an air curtain destructor or by open burning.

~~(xxii)(xxi)~~ The beneficial use of waste, which does not constitute disposal, provided that upon request of the Commissioner, that the generator demonstrates, to the satisfaction of the Commissioner, that such use is not detrimental to public health, safety, or the environment.

(xxii) Recovered materials processing facilities provided all the following conditions are met:

(I) Prior to commencing operations, the owner or operator notifies the Commissioner on forms provided by the Department and completed in accordance with the instructions accompanying the forms, which include:

I. The facility name, owner, operator, mailing and location address;

II. The type(s) of material to be received;

III. The maximum storage capacity at the facility for the storage of each material identified in subitem II of this item;

IV. A general description of the recovered materials processing operation; and

V. Any information requested by the Commissioner to determine the amount of financial assurance needed, if any, pursuant to item (VII) of this subpart;

(II) Prior to implementing a change in ownership, location, type of material received, increase in storage capacity for a material, or method of processing, the owner or operator:

I. Notifies the Commissioner of the proposed change by submitting updated forms in accordance with item (I) of this subpart; and

II. Complies with item (VII) of this subpart;

(III) All materials arriving at the facility to be processed are recovered materials as defined in paragraph (2) of Rule 0400-11-01-.01;

(IV) The owner or operator manages all solid waste generated as a result of recovered materials processing from the point of generation and provides for its proper management in accordance with the requirements of this chapter;

(V) The owner or operator manages the recovered material(s) and/or product(s) produced as a valuable commodity(ies) while it is under the owner or operator's control and minimizes:

I. The propagation, harborage, or attraction of flies, rodents, or other disease vectors;

- II. The potential for explosions or uncontrolled fires;
- III. The potential for releases of recovered materials or process residues to the environment except in a manner authorized by state and local air pollution control, water pollution control, and/or waste management agencies; and
- IV. The potential for harm to the public through unauthorized or uncontrolled access;
- (VI) Upon request of the Commissioner, the owner or operator timely demonstrates, to the satisfaction of the Commissioner, that there is a viable market for the sale of, or a use or reuse of, the recovered material;
- (VII) Upon request of the Commissioner, after the Commissioner receives the initial notification pursuant to item (I) of this subpart or a change in the information pursuant to item (II) of this subpart, the owner or operator timely files with the Commissioner a financial assurance instrument that complies with subparagraph (3)(d) of Rule 0400-11-01-.03 in an amount determined by the Commissioner to be sufficient to ensure proper closure and post-closure care of the facility, after taking into consideration the potential value of the recovered materials and the cost for an independent third party to remove for proper management all of the recovered materials to be stored or processed based on the maximum extent of facility operation;

(Note: Financial assurance will not be required for recovered materials processing facilities that are government-owned or if the value of the recovered materials is more than the cost for an independent third party to remove for proper management all of the recovered materials to be stored or processed assuming the maximum extent of facility operation.)
- (VIII) The owner or operator maintains the records necessary to demonstrate:
  - I. Compliance with items (III), (IV), and (VI) of this subpart; and
  - II. That the maximum storage capacity at the facility for the storage of each recovered material has not been exceeded; and
- (IX) If applicable, in accordance with T.C.A. § 68-211-871 and subparagraph (5)(c) of Rule 0400-11-01-.09, the owner or operator submits an annual report by type of material by March 1 of each year in a manner directed by the Commissioner.

Authority: T.C.A. §§ 68-211-101 et seq., 68-211-801 et seq. and 4-5-201 et seq.

Subpart (j) of part 2 of subparagraph (c) of paragraph (1) of Rule 0400-11-01-.02 Permitting of Solid Waste Storage, Processing, and Disposal Facilities is amended by deleting it in its entirety and substituting instead the following:

- (i) T.C.A. Title 68, Chapter 211, Part 7, known as the "Jackson Law," authorizes counties and municipalities to opt-into its provisions in accordance with T.C.A. § 68-211-707. If a local government does so, it may then approve or disapprove the proposed new construction for solid waste disposal by landfilling (including coal ash fills) and solid waste processing facilities in accordance with T.C.A. § 68-211-704. For purposes of T.C.A. § 68-211-105(h), a "new landfill for solid waste disposal" or a "new solid waste landfill" means any of the following:
  - (I) A solid waste landfill that received a tentative decision from the

department to issue a permit after June 2, 1989 (the date the Jackson Law went into effect);

- (II) A lateral expansion (a modification that expands the previously permitted footprint) of a solid waste landfill described in item (I) of this part; and
- (III) A solid waste landfill described in item (I) of this part whose owner or operator proposes to accept waste that would require a change of the landfill's classification under this chapter to a classification with higher standards (i.e., from a Class III/IV landfill to a Class I or II landfill, or from a Class II to a Class I).

Authority: T.C.A. §§ 68-211-101 et seq. and 4-5-201 et seq.

Paragraph (2) of Rule 0400-11-01-.02 Permitting of Solid Waste Storage, Processing, and Disposal Facilities is amended by deleting it in its entirety and substituting instead the following:

(2) Permits by Rule

(a) ~~All permit by rule facilities shall keep any records that are required by these rules and a copy of its permit by rule authorization at the facility or at another location approved by the Department. Notwithstanding any other provision of this rule, except for subparagraph (1)(c) of this rule, and provided they are not excluded pursuant to part (1)(b)3 of this rule, the following classes of activities shall be deemed to have a permit by rule if the conditions listed are met. Except as specifically allowed in part 1 of this subparagraph, the owner or operator of the facilities or activities listed in parts (b)1 through 7 of this paragraph shall be deemed permitted and are authorized to operate upon receipt of a written authorization from the Commissioner.~~

1. Owners or operators of existing facilities or activities listed in parts (b)1 through 7 of this paragraph authorized to manage solid waste and operating on the effective date of these rules may continue to operate the facility or activity consistent with the notification, including the written narrative and any required attachments, currently on file with the Department, until the owner or operator:

(i) Is required by the Commissioner to comply with subparagraph (c) of this paragraph by submitting a complete updated notification by the date required by the Commissioner; and

(ii) Receives a new written authorization from the Commissioner.

2. Owners or operators of facilities or activities seeking a written authorization from the Commissioner after the effective date of these rules must:

(i) Satisfy the requirements of parts 4 through 8 of this subparagraph if applicable;

(ii) Obtain all necessary prior approvals in accordance with subparagraph (1)(c) of this rule;

(iii) Submit a complete notification in compliance with the requirements of subparagraph (c) of this paragraph; and

(iv) Pay all applicable fees as required by Rule 0400-11-01-.07.

3. After receiving a written authorization from the Commissioner, pursuant to part 1 or 2 of this subparagraph, the owner or operator must:

(i) As provided in subparagraph (d) of this paragraph, comply with the requirements of this paragraph, as applicable to the owner's or operator's facility or activity, as well as any recordkeeping requirements specified in the written authorization deemed necessary by the Commissioner after reviewing the written narrative and

any required attachments to the notification that document site specific compliance with this paragraph;

(ii) Operate the facility or activity consistent with the notification submitted in accordance with part (c)2 of this paragraph;

(iii) Notify the Commissioner of any substantive changes in the information submitted pursuant to part (c)2 of this paragraph, including but not limited to a change in ownership, location, type of material received, storage capacity for a material, and method of processing, and receive an amended written authorization from the Commissioner prior to implementing the change;

(iv) Keep the following records at the facility or at another location approved by the Commissioner:

(I) The written authorization from the Commissioner;

(II) The notification information submitted to comply with subpart 2(iii) of this subparagraph and subpart (iii) of this part; and

(III) Any records specifically required by subparagraphs (b) and (c) of this paragraph, and as specifically required by the Commissioner in the written authorization, from the date the record is generated;

(v) Upon the request of the Commissioner, furnish any records required by subpart (iv) of this part and make them available at all reasonable times for inspection; and

(vi) Pay all applicable fees as required by Rule 0400-11-01-.07.

~~(xix)4.~~ New solid waste processing facilities, tire storage facilities, and transfer stations shall must not be located in wetlands, unless the owner or operator makes the applicable demonstrations to the Commissioner as referenced at subparagraph (2)(p) of Rule 0400-11-01-.04.

~~(xx)5.~~ The facility Solid waste processing facilities, tire storage facilities, and transfer stations must not be located in a 100-year floodplain unless it is demonstrated to the satisfaction of the Commissioner that:

(i) Location in the floodplain will not restrict the flow of the 100-year flood nor reduce the temporary water storage capacity of the floodplain; and

(ii) The facility is designed, constructed, operated, and maintained to prevent washout of any solid waste.

~~(xxi)6.~~ The facility does Solid waste processing facilities, tire storage facilities, and transfer stations must not:

(i) Cause or contribute to the taking of any endangered or threatened species of plants, fish, or wildlife; or

(ii) Result in the destruction or adverse modification of the critical habitat of endangered or threatened species.

~~(xxiv)7.~~ The owners or operators An owner or operator proposing a new solid waste processing facility or a transfer station that handles putrescible wastes located within 10,000 feet (3,048 meters) of any airport runway end used by turbojet aircraft or within 5,000 feet (1,524 meters) of any airport runway end used only by piston-type aircraft must include in the permit-by-rule notification a demonstration demonstrate to the satisfaction of the Commissioner that the facility does not pose a bird hazard to aircraft.

8. ~~The owners or operators~~ An owner or operator proposing a new solid waste processing facility ~~or a transfer station~~ that handles putrescible wastes located within a five-mile radius of any airport runway end used by turbojet or piston-type aircraft must notify the affected airport and the appropriate Federal Aviation Administration (FAA) office.
9. ~~While authorized to operate under this paragraph, the owner or operator is exempt from the requirements of the following paragraphs of this rule: (3) (Application for a Permit), (4) (Processing the Permit), and (6) (Transfer, Modification, Revocation and Reissuance, and Termination of Permits), and from Rules 0400-11-01-.03 (Requirements for Financial Assurance) and 0400-11-01-.04 (Specific Requirements for Class I, II, III, and IV Disposal Facilities), except to the extent these paragraphs or rules are otherwise referenced by this paragraph.~~

(b) Permit by rule eligible facilities or activities.

1. ~~A processing facility, if:~~ Solid waste processing facilities.

- (i) ~~The operator complies with the notification requirement of subparagraph (b) of this paragraph; Except as specified in subpart (iv) of this part, an owner or operator of a solid waste processing facility shall:~~

~~(ii)(I)~~ Construct, operate, maintain, and close ~~The facility is constructed, operated, maintained, and closed~~ Construct, operate, maintain, and close the facility in such a manner as to minimize:

~~(+)~~ I. ~~The propagation, harborage, or attraction of flies, rodents, or other disease vectors;~~

~~(++)~~ II. ~~The potential for explosions or uncontrolled fires;~~

~~(+++)~~ III. ~~The potential for releases of solid wastes or solid waste constituents to the environment except in a manner authorized by state and local air pollution control, water pollution control, and/or waste management agencies; and~~

~~(IV)~~ IV. ~~The potential for harm to the public through unauthorized or uncontrolled access;~~

~~(iii)(II)~~ Ensure that the facility has ~~The facility has~~ an artificial or natural barrier which completely surrounds the facility and a means to control entry, at all times, through the gate or other entrances to the facility;

~~(iv)(III)~~ Ensure that the facility, if open to the public, has clearly visible and legible signs at the points of public access which indicate the hours of operation, the general types of waste materials that either will or will not be accepted, emergency telephone numbers, schedule of charges (if applicable), and other necessary information;

~~(v)(IV)~~ Ensure that the facility has trained personnel are always present during operating hours to operate the facility;

~~(vi)(V)~~ Ensure that the facility has adequate sanitary facilities, potable water, emergency communications (e.g., telephone), and shelter available for personnel;

~~(vii)(VI)~~ Ensure that the facility has access road(s) and parking area(s) are constructed so as to be accessible in all weather conditions;

- ~~(viii)(VII)~~ Except for composting facilities utilizing landscaping and land clearing wastes only, Restrict all waste handling (including loading and unloading) at the facility is conducted on to paved surfaces;
- ~~(ix)(VIII)~~ There is no Restrict the storage of solid wastes at the facility except in the to containers, bins, lined pits or on paved surfaces, designated for such storage;
- ~~(x)(IX)~~ Except for incinerators or energy recovery units, there is no burning of Not burn solid wastes at the facility;
- ~~(xi)(X)~~ There is no Prohibit scavenging of solid wastes at the facility and limit any salvaging is conducted at to safe, designated areas and times;
- ~~(xii)(XI)~~ Wind Ensure that wind dispersal of solid wastes at or from the facility is adequately controlled, including the daily collection and proper disposal of that windblown litter and other loose, unconfined solid wastes are collected daily and properly disposed;
- ~~(xiii)(XII)~~ All Ensure that all liquids which either drain from solid wastes or are created by washdown of equipment at the facility go are collected and directed to either:
- ~~(I)~~ I. A wastewater treatment facility permitted to receive such wastewaters under T.C.A. §§ 69-3-101 et seq. (Tennessee Water Quality Control Act), or
  - ~~(II)~~ II. Other methods approved by the Commissioner.
- ~~(xiv)(XIII)~~ The facility receives no Ensure that special wastes are not received, unless:
- ~~(I)~~ I. Such receipt has been specifically approved in writing by the Department Commissioner, and
  - ~~(II)~~ II. Special procedures and/or equipment are utilized to adequately confine and segregate the special wastes;
- ~~(xv)(XIV)~~ The operator can demonstrate, at the request of the Commissioner, that Have alternative arrangements (e.g., contracts with other facilities) for the proper processing or disposal of the solid wastes his authorized to be managed at the facility handles are available in the event his the facility can not cannot operate;
- ~~(xvi)(XV)~~ The facility has properly maintained and located Properly maintain and locate fire suppression equipment (e.g., fire extinguishers, water hoses) and make the equipment continuously available in sufficient quantities to control accidental fires that may occur;
- ~~(xvii)(XVI)~~ All Manage all waste residues resulting from processing activities at the facility are managed in accordance with this Chapter chapter or Chapter 0400-12-01 (Hazardous Waste Management), whichever is applicable, and/or with any other applicable state or federal regulations governing waste management;
- ~~(xxii)(XVII)~~ The owner/operator may not store solid waste until the processing equipment has been installed Install the processing equipment on-site and ensure it is ready for use before accepting solid waste for storage or processing;

~~(xxiii)(XVIII)~~ The owner/operator of a solid waste processing facility which has a solid waste storage capacity of 1000 cubic yards or greater shall file Prior to receiving solid waste for processing, or within 90 days of the effective date of these rules, if authorized and operating on the effective date of these rules:

I. File with the Commissioner a performance bond or equivalent cash or securities, payable to the State of Tennessee. Such financial assurance is intended to ensure that adequate financial resources are available to in an amount determined by the Commissioner to insure be sufficient to ensure the proper operation, closure, and post closure care of the facility;

II. The types of ~~Submit~~ financial assurance instruments that are acceptable are those specified in subparagraph (3)(d) of Rule 0400-11-01-.03; and

III. Such ~~Ensure that the~~ financial assurance shall meet ~~meets~~ the criteria set forth in T.C.A. § 68-211-116(a), and at ~~complies with~~ subparagraph (3)(b) of Rule 0400-11-01-.03.

(XIX) Maintain records documenting the amounts of the different types of solid waste at the facility, including, but not limited to, the amounts stored to be processed, in process, and that have completed processing, in order to determine processing completion within one year.

(ii) When closing the facility, the owner or operator of a processing facility shall:

~~(xviii)(I)~~ The facility is finally closed by removal of ~~Remove~~ all solid wastes and solid waste residues for proper disposal.; and

(II) The operator must notify ~~Notify the Division Director~~ Commissioner in writing of his ~~the~~ completion of closure of the facility. Such notification must ~~and~~ include a certification by the operator that the facility has been closed by removal of all the solid waste and residues.

(iii) Within 21 days of the receipt of such ~~the~~ certification of closure notice submitted by an owner or operator in accordance with item (ii)(II) of this part, the ~~Division Director shall~~ Commissioner will inspect the facility to verify that closure has been completed ~~to the satisfaction of the Commissioner~~. Within 10 days of such verification, the Commissioner shall ~~will~~ approve the closure in writing to the operator. Closure shall not be considered final and complete until such approval has been made.

(iv) Item (i)(IX) of this part does not apply to incinerators or energy recovery units.

2. Reserved. A coal ash fill area, if:

(i) The coal ash disposed of is not hazardous as defined in subparagraph (1)(c) of Rule 0400-12-01-.02 of the rules governing hazardous waste management.

(ii) The coal ash disposed of is fly ash, bottom ash, or boiler slag resulting primarily from the combustion of fossil fuel.

(iii) Disposal is limited to:

(I) Coal ash in engineered structures for the following projects: a highway overpass, levee, runway, or foundation backfill.

(II) Such other similar uses as the Commissioner may approve in writing.

Financial assurance may be required by the Commissioner if deemed appropriate for these case-by-case projects.

- ~~(iv) The operator complies with the notification requirement of subparagraph (b) of this paragraph;~~
- ~~(v) The fill area is constructed, operated, maintained, and closed in such a manner as to minimize:
  - ~~(I) The potential for harmful release of solid wastes or solid waste constituents to the environment; and~~
  - ~~(II) The potential for harm to the public through unauthorized or uncontrolled access;~~~~
- ~~(vi) The fill area, until development is complete, must have an artificial or natural barrier to control access of unauthorized entry.~~
- ~~(vii) There must be equipment available that is capable of spreading and compacting the coal ash, and capable of handling the earthwork required during the periods that coal ash is received at the fill area.~~
- ~~(viii) The coal ash fill project is designed with:
  - ~~(I) A geologic buffer of at least three feet with a maximum saturated conductivity of  $1 \times 10^{-6}$  centimeters per second between the base of the fill and the seasonal high water table of the uppermost unconfined aquifer or the top of the formation of a confined aquifer, or such other protection as approved by the Commissioner taking into account site specific coal ash and soil characteristics, ambient groundwater quality, and projected flows in and around the site; and~~
  - ~~(II) A ground water monitoring program approved by the department that reports sampling results to the department at least once each year. If sampling results indicate that the fill area has caused the ground water protection standards to be exceeded, the owner or operator of the facility shall commence an assessment monitoring program in accordance with regulations adopted by the board and carry out all corrective measures specified by the Commissioner.~~~~
- ~~(ix) At the completion of the coal ash fill project, and no later than 90 days after operations have ceased, the final cover must meet the requirement of at least 24 inches of compacted soil on the coal ash project area, except for those areas covered by structures, asphalt, concrete (including concrete containing coal ash), or other similar barriers to water infiltration. The upper six inches of this cover shall be able to support the growth of suitable vegetation.~~
- ~~(x) The final surface of the coal ash fill area is graded and/or provided with drainage facilities in a manner that:
  - ~~(I) Minimizes erosion of cover material (e.g., no steep slopes);~~
  - ~~(II) Promotes drainage of precipitation falling on the area (e.g., prevents pooling);~~
  - ~~(III) Provides a surface drainage system which is consistent with the surrounding area and in no way significantly adversely affects proper drainage from these adjacent lands; and~~
  - ~~(IV) The operator must take other erosion control measures (e.g., temporary~~~~

mulching or seeding, silt barriers) as necessary to control erosion of the site.

- (xi) ~~Dust Control~~—The operator must take dust control measures as necessary to prevent dust from creating a nuisance or safety hazard to adjacent landowners or to persons engaged in supervising, operating, and using the site. The use of any oils or other chemicals (other than water) for dust suppression must be approved in writing beforehand by the Department.
- (xii) ~~Prior to excavation, all bore holes drilled or dug during subsurface investigation of the site, piezometers, and abandoned wells which are either in or within 100 feet of the areas to be filled must be backfilled with a bentonite slurry or other sealant approved by the Commissioner to an elevation at least ten feet greater than the elevation of the lowest point of the fill base (including any liner), or to the ground surface if the site will be excavated less than ten feet below grade.~~
- (xiii) ~~The fill area must not be located in a 100-year floodplain unless it is demonstrated to the satisfaction of the Commissioner that:~~
  - (I) ~~Location in the floodplain will not restrict the flow of the 100-year flood, nor reduce the temporary water storage capacity of the floodplain.~~
  - (II) ~~The fill area is designed, constructed, operated, and maintained to prevent washout of any solid waste.~~
- (xiv) ~~There must be installed on-site a permanent benchmark (e.g., a concrete marker) of known elevation.~~
- (xv) ~~New coal ash fill areas and lateral expansions shall not be located in wetlands, unless the owner or operator makes the applicable demonstrations to the Commissioner as referenced at subparagraph (2)(p) of Rule 0400-11-01-.04.~~
- (xvi) ~~A fill area must not be located in highly developed karst terrain (i.e., sink holes and caves).~~
- (xvii) ~~The coal ash fill project does not:~~
  - (I) ~~Cause or contribute to the taking of any endangered or threatened species of plants, fish, or wildlife; or~~
  - (II) ~~Result in the destruction or adverse modification of the critical habitat of endangered or threatened species.~~
- (xviii) ~~Notice in Deed to Property~~—Except for coal ash fills on federal, state or local government owned right-of-ways, the operator must ensure that, within 90 days of meeting final cover requirements and prior to the sale or lease of the coal ash fill area property, there is recorded, a notation on the deed to the property or on some other instrument which is normally examined during a title search that will in perpetuity notify any person conducting a title search that coal ash has been placed on the property.

3. A tire ~~Tire~~ storage facility, if: facilities.

An owner or operator of a tire storage facility must:

- (i) The ~~Not operate a tire storage facility in a county where the county legislative body, of a county that does not own or operate owns or operates~~ a permitted Class I, Class III, or Class IV facility which is accepting waste tires, complies with the notification requirement of part 2 of this subparagraph; and

- (ii) ~~The facility is constructed, operated, maintained and closed~~ Construct, operate, maintain, and close the facility in a manner consistent with items (2)(k)3(i)(I) and (II) of Rule 0400-11-01-.04;
- ~~(iii) and subparts 1(iii), (iv), (v), (vi), (vii), (x), (xi), (xiii), (xiv), (xvi), (xvii), (xviii), (xix), (xx) and (xxi)~~ Comply with items 1(i)(II), (III), (IV), (V), (VI), (IX), (X), (XII), (XIII), (XVI), and (XVII) of this subparagraph;
- ~~(iv)~~ Provide, properly maintain, and make accessible fire suppression equipment capable of extinguishing a tire fire, such as fire extinguishers, and make the equipment continuously available in sufficient quantities to control accidental tire fires that may occur; and
- ~~(iii)(v)~~ Contracts As a condition to begin operating or to continue to operate, establish and maintain a valid contract for the disposal or recycling of the shredded tires have been established.

4. A convenience center, if: Convenience centers.

An owner or operator of a convenience center must:

- ~~(i)~~ The operator complies with the notification requirements of Part 2 of this subparagraph;
- ~~(ii)(i)~~ The operator attaches to his Attach as a part of the notification required by subpart (a)2(iii) of this paragraph all attachments required at pursuant to part (2)(b)1 of Rule 0400-11-01-.10; and
- ~~(iii)(ii)~~ The facility is designed and operated Design and operate the facility in compliance with Rule 0400-11-01-.10.

5. A transfer station, if: Transfer stations.

~~(i)~~ The operator complies with the notification requirements of Part 2 of this subparagraph; and ~~(ii)~~ The facility is constructed, operated, maintained, and closed in a manner consistent with subparts 1(ii), (iii), (iv), (v), (vi), (vii), (viii), (ix), (x), (xi), (xii), (xiii), (xiv), (xv), (xvi), (xviii), (xix), (xx), (xxi) and (xxiv) of this subparagraph An owner or operator of a transfer station must comply with items 1(i)(I) through (XV) and (XVII) of this subparagraph.

6. A land Land application facility, if: facilities.

An owner or operator of a land application facility must:

- ~~(i)~~ The operator complies with the notification requirements of subparagraph (b) of this paragraph;
- ~~(ii)(i)~~ The operator attaches to his Attach as a part of the notification required by subpart (a)2(iii) of this paragraph all attachments required at subparagraph (1)(c) of Rule 0400-11-01-.13; and
- ~~(iii)(ii)~~ The facility is designed and operated Design and operate the facility in compliance with Rule 0400-11-01-.13.

7. A Tier One composting facility, if: facilities.

An owner or operator of a Tier One composting facility must:

- ~~(i)~~ The operator complies with the notification requirements of subparagraph (b) of this paragraph;

- (ii)(i) ~~The operator attaches to his Attach as a part of the notification required by subpart (a)2(iii) of this paragraph all attachments required in the Composting Facility Operation Plan by pursuant to subpart (2)(a)2(vii) of Rule 0400-11-01-.11; and~~
  - (iii)(ii) ~~The facility is designed and operated~~ Design and operate the facility in compliance with Rule 0400-11-01-.11.
- (b)(c) ~~The An owner or operator of a facility deemed to have seeking a written authorization from the Commissioner pursuant to this paragraph to operate a facility or activity listed in parts (b)1 through 7 of this paragraph a permit by rule must notify the Department Commissioner in accordance with the requirements of this subparagraph.~~
1. ~~No person shall begin operation on a new facility without having submitted notification and received written approval from the Commissioner.~~
  - 2.1. Notification must be submitted on forms provided by the Department and completed as per the accompanying instructions.
  2. ~~¶~~ Notification must include, but shall not necessarily be limited to, the following information:
    - (i) The processing and disposal activities conducted and the types of solid wastes handled;
    - (ii) The name, mailing address, and location of the facility;
    - (iii) The name, mailing address, and telephone number of the applicant and, if the applicant is a government agency, corporation, company, or partnership, that of the process registered agent or other contact person;
    - (iv) If different from the operator, the name, mailing address, and telephone number of the landowner, along with a signed letter from such owner to the Department allowing access to the property for purposes of inspection;
    - (v) A map (e.g., U.S.G.S. 7.5 minute topographic map) which clearly indicates the location of the facility;
    - (vi) A written narrative must be submitted that describes:
      - (I) ~~how~~ How the facility/operation owner or operator will comply with all applicable standards listed in part 1 of this the requirements of subparagraph (b) of this paragraph, and Rules 0400-11-01-.10, 0400-11-01-.11, and 0400-11-01-.13, as applicable;
      - (II) The maximum capacity for each unit and storage area; and
      - (III) any Any other information deemed necessary by the Commissioner; and
    - (vii) A design plan attached indicating boundaries of the site and all on-site appurtenances.
  3. ~~The notification under part 2 of this subparagraph shall be revised within 30 days of a change in facility ownership with new information as necessary but at a minimum to include changes to subparts 2(iii) and (iv) of this subparagraph along with payment of the fee specified at part (2)(b)6 of Rule 0400-11-01-.07.~~
- (e)(d) ~~Duty to Comply - The permittee~~ An owner or operator deemed permitted under this paragraph must comply with all conditions of this permit-by-rule requirements applicable to the facility or

activity operated under this paragraph, unless otherwise authorized by the Department Commissioner in writing. Any permit-by-rule noncompliance constitutes a violation of the Act and is grounds for the assessment of civil penalties by the Commissioner.

(e) Revocation of the Authorization to Operate.

1. The authorization to operate issued by the Commissioner pursuant to subparagraph (a) of this paragraph may be revoked for a cause identified in part 2 of this subparagraph and only according to the procedures set forth in part 3 of this subparagraph.

2. Causes for Revocation.

The following are causes for revoking the authorization to operate under this paragraph:

(i) The owner or operator of facilities or activities operating on the effective date of these rules fails to comply with part (a)1 of this paragraph by either not submitting a complete updated notification satisfying the requirements of subparagraph (c) of this paragraph, or not submitting it by the date required by the Commissioner.

(ii) Noncompliance by the owner or operator with any requirement of this paragraph which the Commissioner deems to be significant and/or repeated;

(iii) Failure of the owner or operator to disclose relevant or truthful facts in the notification information submitted pursuant to subparagraph (c) of this paragraph;

(iv) A determination made by the Commissioner that continued operation of the facility or activity endangers human health or the environment, which can only be effectively protected by revoking the authorization; and

(v) The failure of the owner or operator to pay any applicable fee owed to the Department.

3. Procedures.

(i) If the Commissioner determines cause exists and tentatively decides to revoke the authorization to operate, the Commissioner will, pursuant to T.C.A. § 4-5-320, give the owner and/or operator notice by mail of facts or conduct that warrant the intended action and will give the owner and/or operator an opportunity to show compliance with this paragraph;

(ii) After completing all the requirements of T.C.A. § 4-5-320, the Commissioner will decide whether or not to revoke the authorization to operate by issuing an order to the owner or operator; and

(iii) The Commissioner's decision to revoke the authorization to operate may be appealed as set forth in T.C.A. § 68-211-113.

(f) Denial of an Authorization to Operate.

The Commissioner may deny an owner or operator an authorization to operate a facility or activity if:

1. The owner or operator has had any previously issued authorization to operate revoked for cause, unless the Commissioner is satisfied that the owner or operator is willing and able to operate the facility or activity in compliance with the requirements of this paragraph; or

2. The Commissioner believes the operation of the facility or activity will endanger human health or the environment.

Authority: T.C.A. §§ 68-211-101 et seq. and 4-5-201 et seq.

Subparagraph (a) of paragraph (4) of Rule 0400-11-01-.02 Permitting of Solid Waste Storage, Processing, and Disposal Facilities is amended by deleting it in its entirety and substituting instead the following:

- (a) Preliminary Notices - Within 30 days after the date of receipt, the Commissioner shall issue a preliminary public notice under subparagraph (e) of this paragraph for each Part I permit application received. Within one year of the date of receipt of the Part I permit application, the applicant shall submit either the Hydrogeological Report or Engineering Plans required to satisfy the Part II permit application. If within one year of the date of receipt of the Part I permit application the Commissioner has not received either the Hydrogeological Report or Engineering Plans, the applicant must resubmit the Part I permit application at the time of the submittal of the Engineering Plans.

Authority: T.C.A. §§ 68-211-101 et seq. and 4-5-201 et seq.

Subparagraph (k) of paragraph (4) of Rule 0400-11-01-.02 Permitting of Solid Waste Storage, Processing, and Disposal Facilities is amended by deleting it in its entirety and substituting instead the following:

- (k) Appeals - ~~If, in his~~ The Commissioner's final permit decision under subparagraph (i) of this paragraph, ~~the Commissioner denied the permit or issued it subject to conditions with which the permit applicant disagrees, the applicant may appeal be appealed the decision to the Board as set forth in T.C.A. § 68-211-113. If the Commissioner fails to take any action on a permit application within 45 days after it was submitted to him, the permit applicant may appeal to the Board as set forth in T.C.A. § 68-211-113.~~

Authority: T.C.A. §§ 68-211-101 et seq. and 4-5-201 et seq.

Part 1 of subparagraph (b) of paragraph (1) of Rule 0400-11-01-.03 Requirements for Financial Assurance is amended by deleting it in its entirety and substituting instead the following:

1. The requirements of this rule apply to:
  - (i) ~~disposal~~ Disposal facilities in operation on March 18, 1990 or thereafter;
  - (ii) Recovered materials processing facilities to the extent required by item (1)(b)3(xxii)(VII) of Rule 0400-11-01-.02; and
  - (iii) Solid waste processing facilities to the extent required by item (2)(b)1(i)(XVIII) of Rule 0400-11-01-.02.

Authority: T.C.A. §§ 68-211-101 et seq. and 4-5-201 et seq.

Paragraph (2) of Rule 0400-11-01-.03 Requirements for Financial Assurance is amended by deleting it in its entirety and substituting instead the following:

- (2) Closure/Post-Closure Care Plan
  - (a) General Requirements - Operators of facilities must submit a closure/post-closure care plan to the Department, obtain approval of the plan, and amend the plan when necessary, as set forth in this paragraph.
  - (b) Contents of Plan
    1. The closure/post-closure plan must identify the steps necessary to completely or partially close the facility at any point during its intended operating life and to completely close the facility at the end of its intended operating life, and must identify the activities which will

be carried on after closure and the frequency of these activities. For facilities being developed or to be developed according to a phased development plan, the closure/post-closure care plan must address each parcel separately as well as the whole.

2. The closure/post-closure plan must include, at a minimum:

- (i) A description of how and when the facility will be partially closed, if applicable, and finally closed. If minimum closure areas are used, they must be delineated in the engineering plans. The description must identify how the applicable closure standards of paragraph (8) of Rule 0400-11-01-.04 will be met. It must also include an estimate of the expected year of closure and a schedule for completing the steps of final closure;
- (ii) A description of the planned ground and surface water monitoring and other monitoring and maintenance activities and frequencies at which they will be performed. The description must identify how the applicable post-closure care standards of paragraph (8) of Rule 0400-11-01-.04 and the applicable Ground Water Protection/Monitoring Standards of paragraph (7) of Rule 0400-11-01-.04 will be met; and
- (iii) The name, address, and phone number of the person or office to contact about the facility during the post-closure care period. This person or office must keep an updated closure/post-closure plan during the post-closure care period.
- (iv) An itemized estimate in current dollars of the cost based on hiring a third party to perform the closure and post-closure care activities.
- (v) A description of the planned uses of the property during the post-closure care period.
- (vi) For Class I and Class II facilities, a description of recommended inspection, monitoring, maintenance activities for long-term custodial care, during the 50-year period beginning upon certification of completion of post-closure to ensure the continued protection of human health and the environment. Facilities which utilize synthetic components in the final cover system must include an analysis of the life cycle of such components.

3. In the closure portion of his plan, the operator must address the closure of active portions and future active portions of the facility. In the post-closure care portion of his plan, the operator must address the post-closure care of closed portions, active portions, and future active portions of the facility. If a facility which was in operation on March 18, 1990 closes prior to the date the closure/post-closure care plan is to be submitted, the plan need address only the post-closure care of closed portions of the facility provided that the closure is in accordance with applicable rules.

(c) Resubmittal of Plan – All Class I and Class II facilities must submit a new closure/post-closure care plan every 10 years from the date of the original permit or the date of approval of the most recent permit modification for an expansion. The resubmittal of a plan will be processed as a minor modification to the facility and must comply with subparagraph (b) of this paragraph. At a minimum:

- 1. Itemized closure/post-closure cost estimates must be adjusted by recalculating the maximum closure/post-closure amounts in current dollars and taking into account any design changes, new monitoring points, and changes in materials.
- 2. The phased development plan must be updated and reconciled with the closure/post-closure cost estimate.
- 3. Minimum closure areas must be revised or added to reflect planned partial closure of the facility.

4. The new plan must include a separate itemized cost estimate for long-term custodial care activities. This cost estimate is not to be included in the financial assurance amount for the facility.

(e)(d) Amendment of Plan - The approved closure/post-closure care plan may be amended at any time during the active life of the facility or during the post-closure care period as set forth in this subparagraph.

1. The operator may request to amend the plan to alter the closure requirements, to alter the post-closure care requirements, or to extend or reduce the post-closure care period based on cause. The request must include evidence demonstrating to the satisfaction of the Commissioner that:
  - (i) The nature of the facility makes the closure or post-closure care requirement(s) unnecessary; or
  - (ii) The nature of the facility supports reduction of the post-closure care period; or
  - (iii) The requested extension in the post-closure care period or alteration of closure or post-closure care requirements is necessary to prevent threats to human health and the environment.
2. Such plan amendments shall be processed as modifications to the permit. However, the Commissioner may decide to modify the plan if he deems it necessary to prevent threats to human health and the environment. He may extend or reduce the post-closure care period based on cause or alter the closure or post-closure care requirements based on cause. However, no such modifications shall be initiated until the operator has been notified of such proposed action and provided the opportunity to be heard on the matter.
3. The cost estimate of the approved closure/post closure care plan must be adjusted annually for inflation. Such inflation adjustment shall not be considered an amendment of the plan.

Authority: T.C.A. §§ 68-211-101 et seq. and 4-5-201 et seq.

Subparagraph (t) of paragraph (2) of Rule 0400-11-01-.04 Specific Requirements for Class I, II, III, and IV Disposal Facilities is amended by deleting it in its entirety and substituting instead the following:

(t) ~~Annual and Triennial Engineering Report Future Planning – All operators of Class I disposal facilities within the state of Tennessee shall file with the Department, by May 1st of every year, an estimate of the remaining life of their site. This report shall include the original usable acreage of the site and the remaining unused portion at the time of the report. Where measuring facilities are available, an average monthly weight (or volume) estimate of the incoming waste shall be supplied. The Department shall have final determination of the accuracy of the estimate. If the operator plans to operate a new landfill, a suitable site for the new facility shall be selected at least twelve months before the estimated date for expiration of the operating life of the existing facility, and as applicable, design and construction plans shall be submitted at least six months prior to the estimated date for expiration of the operating life of the existing facility to assure continued operation in an approved facility or site.~~

1. All operators of Class I disposal facilities within the state of Tennessee shall file with the Department, by May 1 of every year, an annual engineering report (AER) which shall include:

- (i) A current topographic survey of the active portion of the disposal facility (same scale as approved plans) performed by a qualified land surveyor duly authorized under Tennessee law to conduct such activities. The survey must be superimposed on the approved contours;

- (ii) Calculations on the current constructed capacity of the disposal facility, in cubic yards, and the total remaining volume within the currently constructed cells to be filled, in cubic yards, along with the total remaining permitted cubic yards;
- (iii) The first AER submitted should include all minor permit modifications to the facility since the most recent permit issuance;
- (iv) A report showing the quantity of leachate collected in gallons: for treatment, for disposal, recirculation, or other management method on a monthly basis for the reporting year. The report must name the location and method of leachate treatment and disposal. A summary of any leachate management system cleanouts performed since the last AER must also be provided.
- (v) A report of amounts and types of Special Wastes disposal relative to normal solid waste disposed at the facility since the last AER, presented in the form of a ratio; and
- (vi) A notarized statement that, to the best of the knowledge of the owner or operator, the information contained in the AER is true and accurate.

2. All operators of Class II facilities in the state of Tennessee shall file with the Department, beginning May 1, 2020, a triennial engineering report (TER). This report shall include:

- (i) A current topographic survey of the active portion of the disposal facility (same scale as approved plans) performed by a qualified land surveyor duly authorized under Tennessee law to conduct such activities. The survey should be superimposed on the approved contours;
- (ii) Calculations on the current constructed capacity of the disposal facility, in cubic yards, and the total remaining volume within the currently constructed cells to be filled in cubic yards, along with the total remaining cubic yards;
- (iii) The first TER submitted should include all minor modifications to the facility since the most recent permit issuance; and
- (v) A notarized statement that, to the best of the knowledge of the owner or operator, the information contained in the TER is true and accurate.

Authority: T.C.A. §§ 68-211-101 et seq. and 4-5-201 et seq.

Item (II) of subpart (i) of part 4 of subparagraph (a) of paragraph (7) of Rule 0400-11-01-.04 Specific Requirements for Class I, II, III, and IV Disposal Facilities is amended by deleting it in its entirety and substituting instead the following:

- (II) The ground water monitoring program must include sampling and analytical methods that are appropriate for ground water sampling and that accurately measure hazardous constituents and other monitoring parameters in ground water samples. ~~Ground water samples shall not be field-filtered prior to laboratory analysis.~~

Authority: T.C.A. §§ 68-211-101 et seq. and 4-5-201 et seq.

Subpart (ii) of part 3 of subparagraph (c) of paragraph (8) of Rule 0400-11-01-.04 Specific Requirements for Class I, II, III, and IV Disposal Facilities is amended by deleting it in its entirety and substituting instead the following:

- (ii) At Class III and Class IV facilities, unless the Commissioner determines that a greater depth is needed to achieve the general performance standard of subparagraph (a) of this paragraph, the depth of final cover shall be at least 30 inches of compacted soil. The final cover ~~consists~~ shall consist of an ~~48-inch low permeability~~ 18-inch compacted soil layer with a maximum hydraulic conductivity

of  $1 \times 10^{-5}$  cm/s overlain by a 12-inch 12-inch protective layer.

Authority: T.C.A. §§ 68-211-101 et seq. and 4-5-201 et seq.

Part 8 of subparagraph (g) of paragraph (8) of Rule 0400-11-01-.04 Specific Requirements for Class I, II, III, and IV Disposal Facilities is amended by deleting it in its entirety and substituting instead the following:

8. ~~If the dump closed has been closed on-site after an order has been issued by the Commissioner or Board and become final pursuant to T.C.A. § 68-211-113 or 4-5-322 owner or operator fails to timely comply with part 7 of this subparagraph, the Commissioner may present for recording in the office of the county register an instrument that will be in the chain of title that will in perpetuity notify any person conducting a title search that the land has been used as a disposal facility site. Such notice may include the following:~~
  - (i) The name of the person who owns the property upon which the dump is located;
  - (ii) The book and page number in which the deed to such property is recorded; and
  - (iii) A description of the wastes believed to be disposed on such property.

Authority: T.C.A. §§ 68-211-101 et seq. and 4-5-201 et seq.

Part 4 of subparagraph (c) of paragraph (3) of Rule 0400-11-01-.07 Fee System for Non-Hazardous Disposal and Certain Non-Hazardous Processors of Solid Waste is amended by deleting it in its entirety and substituting instead the following:

4. Reserved. Coal Ash Fill Area \_\_\_\_\_ \$ 3,000

Authority: T.C.A. §§ 68-203-101 et seq., 68-211-101 et seq. and 4-5-201 et seq.

Subparagraph (b) of paragraph (6) of Rule 0400-11-01-.07 Fee System for Non-Hazardous Disposal and Certain Non-Hazardous Processors of Solid Waste is amended by deleting it in its entirety and substituting instead the following:

- (b) Permit application shall be acted upon (issued or denied) by the Department within the following time after the application is certified to be complete:
  1. Disposal Facility
    - (i) Class I 270 days
    - (ii) Class II 270 days
    - (iii) Class III 240 days
  2. Processing Facility
    - (i) Permit By Rule 90 days
    - (ii) Compost Facility 120 days
  3. Major Modification
    - (i) Regulatory Requirement 180 days
    - (ii) Application
      - (I) Plans Only 240 days

	(II) Hydrogeologic	270 days
4.	Minor Modifications	
	(i) Engineering Review	90 days
	(ii) Reserved	
4.5.	Waste Evaluation	30 days

Authority: T.C.A. §§ 68-203-101 et seq., 68-211-101 et seq. and 4-5-201 et seq.

Part 1 of subparagraph (b) of paragraph (2) of Rule 0400-11-01-.10 Convenience Centers / County Public Collection Receptacles is amended by deleting it in its entirety and substituting instead the following:

1. Convenience centers must meet the permit by rule requirements at ~~subpart (2)(a)4~~ part (2)(b)4 of Rule 0400-11-01-.02. The operator must make attachments to the notification as follows:
  - (i) The operator attaches a written narrative to his notification describing the specific manner in which the facility complies with paragraph (3) of this rule.
  - (ii) A design plan attached indicating boundaries of the site and all appurtenances.
  - (iii) A site location map is submitted on a USGS Topo map.

Authority: T.C.A. §§ 68-203-101 et seq., 68-211-101 et seq. and 4-5-201 et seq.

Part 7 of subparagraph (b) of paragraph (1) of Rule 0400-11-01-.11 Requirements for Compost and Composting Facilities is amended by deleting it in its entirety and substituting instead the following:

7. Owner or operators of Tier One composting facilities may apply for a permit by rule an authorization pursuant to part (2)(a)7 (2)(b)7 of Rule 0400-11-01-.02.

Authority: T.C.A. §§ 68-203-101 et seq., 68-211-101 et seq. and 4-5-201 et seq.

Subparagraph (c) of paragraph (1) of Rule 0400-11-01-.13 Requirements for Land Application Facilities is amended by deleting it in its entirety and substituting instead the following:

- (c) Notification Requirements – The operator must comply with the notification requirements of ~~(2)(a)4~~ part (2)(b)6 of Rule 0400-11-01-.02. The operator must make attachments to the notification as follows:
  1. The operator attaches a written narrative to his notification describing the specific manner in which the facility complies with paragraph (2) of this rule.
  2. The operator attaches any sampling, monitoring, or other plans required by these rules or by the Commissioner.
  3. The operator of an existing permit-by-rule land application facility must modify the notification if:
    - (i) Adding a waste stream from a new generator, or a waste stream from an existing generator which has not been previously approved for land application at that site; or
    - (ii) Adding new acreage to the land application operations.

Authority: T.C.A. §§ 68-203-101 et seq., 68-211-101 et seq. and 4-5-201 et seq.

Subparagraph (g) of paragraph (2) of Rule 0400-11-01-.13 Requirements for Land Application Facilities is amended by deleting it in its entirety and substituting instead the following:

- (g) ~~Reserved. Duty to Comply — The permittee must comply with all relevant notification and permit-by-rule requirements, unless otherwise authorized in writing by this Department. Any permit-by-rule condition noncompliance, except as otherwise authorized by the Department, constitutes a violation of the Act and is grounds for enforcement action, or for termination of the permit-by-rule, revocation and reissuance, or modification.~~

Authority: T.C.A. §§ 68-203-101 et seq., 68-211-101 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:

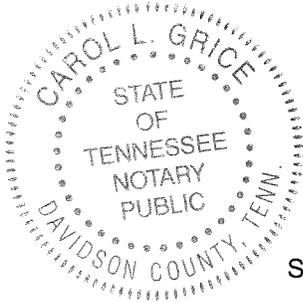
<b>Board Member</b>	<b>Aye</b>	<b>No</b>	<b>Abstain</b>	<b>Absent</b>	<b>Signature (if required)</b>
<b>Marty Calloway</b> (Petroleum Business with at least 15 Underground Storage Tanks)	X				
<b>Stacey Cothran</b> (Solid/Hazardous Waste Management Industry)	X				
<b>Kenneth L. Donaldson</b> (Municipal Government)				X	
<b>Dr. George Hyfantis, Jr.</b> (Institution of Higher Learning)				X	
<b>Richard "Ric" Morris</b> (Single Facility with less than 5 Underground Storage Tanks)				X	
<b>Alan M. Leiserson</b> Environmental Interests	X				
<b>Jared L. Lynn</b> (Manufacturing experienced with Solid/Hazardous Waste)	X				
<b>David Martin</b> (Working in a field related to Agriculture)				X	
<b>Beverly Philpot</b> (Manufacturing experienced with Underground Storage Tanks/Hazardous Materials)				X	
<b>DeAnne Redman</b> (Petroleum Management Business)	X				
<b>Mayor Howard Bradley</b> (County Government)				X	
<b>Mark Williams</b> (Small Generator of Solid/Hazardous Materials representing Automotive Interests)	X				
<b>Chuck Head</b> Commissioner's Designee, Dept. of Environment and Conservation	X				
<b>Jimmy West</b> 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 Underground Storage Tanks and Solid Waste Disposal Control Board on 02/07/2018, and is in compliance with the provisions of T.C.A. § 4-5-222.

I further certify the following:

Notice of Rulemaking Hearing filed with the Department of State on: 10/26/17

Rulemaking Hearing(s) Conducted on: (add more dates). 12/18/17



Date: February 7, 2018

Signature: [Handwritten Signature]

Name of Officer: Jared L. Lynn

Title of Officer: Chairman

Subscribed and sworn to before me on: February 7, 2018

Notary Public Signature: Carol L. Grice

My commission expires on: March 3, 2020

Agency/Board/Commission: Underground Storage Tanks and Solid Waste Disposal Control Board

Rule Chapter Number(s): 0400-11-01

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

[Handwritten Signature]  
Herbert H. Slatery III  
Attorney General and Reporter  
9/27/2019  
Date

**Department of State Use Only**

2019 OCT -1 AM 11:13  
SECRETARY OF STATE  
PUBLICATIONS

Filed with the Department of State on: 10/1/19

Effective on: 12/30/19

[Handwritten Signature]

Tre Hargett  
Secretary of State

## G.O.C. STAFF RULE ABSTRACT

DEPARTMENT: Austin Peay State University

SUBJECT: Traffic and Parking Regulations, Fees

STATUTORY AUTHORITY: Tennessee Code Annotated, Section 49-9-209(e)

EFFECTIVE DATES: January 26, 2020 through June 30, 2020

FISCAL IMPACT: None

STAFF RULE ABSTRACT: The purpose of these regulations is to facilitate the safe and orderly operation of University business and to provide parking facilities for this operation within the limits of available space. This proposed rule revises the hours and dates of operations, and institutes a boot removal fee.

## **Regulatory Flexibility Addendum**

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

These rules only affect students enrolled at Austin Peay State University and no small businesses will be impacted by their promulgation.

## **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 only affect students enrolled at Austin Peay State University and will not have an impact on local governments.

**Additional Information Required by Joint Government Operations Committee**

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

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

The purpose of these regulations is to facilitate the safe and orderly operation of University business and to provide parking facilities for this operation within the limits of available space. The rules changes revise the hours and dates of operations and institute a boot removal fee.

- (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;

§49-9-209(e), Public Acts of Tennessee, 1839-1840, Ch. 98, Section 5 and Public Acts of Tennessee 1807, Ch. 64.

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

The rule impacts all persons operating motor vehicles on streets or lots owned by APSU. The Board urges adoption of these rules.

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

Not applicable.

- (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;

Not applicable.

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

Michael J. Kasitz  
Chief of Police  
Austin Peay State University

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

Dannelle Whiteside  
General Counsel  
Austin Peay State University

Chief Michael J. Kasitz  
Chief of Police  
Austin Peay State University

- (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

Dannelle Whiteside  
General Counsel

Austin Peay State University  
931-221-7580  
[whitesided@apsu.edu](mailto:whitesided@apsu.edu)

Chief Michael J. Kasitz  
Chief of Police  
Austin Peay State University  
(931) 221-7786  
[kasitzj@apsu.edu](mailto:kasitzj@apsu.edu)

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

None.

**Department of State  
Division of Publications**

312 Rosa L. Parks Avenue, 8th Floor Snodgrass/TN Tower  
Nashville, TN 37243  
Phone: 615-741-2650  
Email: [publications.information@tn.gov](mailto:publications.information@tn.gov)

**For Department of State Use Only**

Sequence Number: 10-23-19  
Rule ID(s): 9266  
File Date: 10/28/19  
Effective Date: 1/26/20

# 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).*

<b>Agency/Board/Commission:</b>	Austin Peay State University
<b>Division:</b>	
<b>Contact Person:</b>	Dannelle Whiteside
<b>Address:</b>	601 College Street, P.O. Box 4628 Clarksville, TN
<b>Zip:</b>	37044
<b>Phone:</b>	931-221-7580
<b>Email:</b>	whitesided@apsu.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
0240-05-01	Traffic and Parking Regulations
Rule Number	Rule Title
0240-05-01-.02	Registration of Vehicles
0240-05-01-.03	Parking Zones
0240-05-01-.05	Violations
0240-05-01-.07	Penalties

**Rules  
of  
Austin Peay State University**

**Chapter 0240-05-01  
Traffic and Parking Regulations**

**0240-05-01-.02 Registration of Vehicles.**

- (1) All motor vehicles parked on APSU property between 7:30 a.m. and 4:030 p.m. or on lots leased by APSU must have a current APSU permit and be registered with APSU. Housing lots require a valid parking permit twenty-four (24) hours a day, seven (7) days a week.
- (2) Permits are available for pickup/purchase at Parking Services. Students receive a permit as part of their access fee. Faculty and staff must purchase a parking permit.
- (3) The permit must be hung on the rear view mirror of the vehicle. If the mirror prevents the permit from hanging, the permit must be displayed near the rear view mirror.
- (4) Expired permits should be removed (or covered) so that only the current permit is displayed.
- (5) Permits must be renewed at the beginning of each Fall semester and will be valid until the beginning of the following Fall semester so long as the registrant remains a student or an APSU employee.
- (6) Hanging parking permits are issued to persons, not vehicles, and are required to be affixed to a vehicle. Permit holders are responsible for citations incurred with their permit and/or vehicle. Persons will also be held liable for a violation incurred by a vehicle, when that vehicle is reasonably shown to be associated to that person.
- (7) Persons are entitled to only one (1) category of parking permit at a time. Persons will be identified by their primary affiliation with APSU. Graduate assistants and part-time student workers are eligible for student parking permits only.
- (8) Permit holders are only eligible for one (1) parking permit at a time. This permit can be moved from one (1) vehicle to another. A second parking permit may be issued to students who live in married housing. Faculty/Staff/Students who present extraordinary circumstances may be authorized to have a second parking permit with the approval of the Director of Public Safety/Chief of Police. The cost of a second permit, if authorized, will be equal to the APSU access fee for parking. This fee will be prorated if purchased after the first month of the Fall semester.
- (9) Permits are not transferable to any person other than the registrant, particularly to a person in a different parking category.
- (10) Only persons who are neither students, nor faculty/staff are entitled to a visitor parking permit.
- (11) Lost or stolen permits will be replaced for \$10.00 upon making a report to Parking Services.

**0240-05-01-.03 Parking Zones**

- (1) Parking is permitted only in marked areas with painted control lines. Parking is not permitted in seeded areas or gravel service areas utilized by Physical Plant.
- (2) Faculty or Staff – Zone Color Red – Full-time faculty, staff, contract service employees, and adjunct instructors are authorized for this zone. Valid permits must be displayed between 7:30 a.m. and 4:030 p.m., Monday through Friday ~~when APSU is in session.~~
- (3) Resident Student – Zone Color Silver – Students who reside in the on-campus residence halls are authorized for this zone. Valid permits must be displayed twenty-four (24) hours a day, seven (7) days a week.
- (4) Commuter Student and Married Housing – Zone Color Green – Students who reside off campus and students who reside in married housing are authorized for this zone. Valid permits must be displayed between 7:30 a.m. and 4:30 p.m., Monday through Friday ~~when APSU is in session.~~
- (5) Overflow – Zone Color Black – Any valid APSU permit is authorized for this zone. Valid permits must be displayed between 7:30 a.m. and 4:30 p.m., Monday through Friday ~~when APSU is in session.~~
- (6) ADA Accessible Parking – Zone Color Light-Blue – Persons utilizing ADA spaces on campus must have a placard issued by any state. Students, faculty, and staff who have a state issued placard must be registered with APSU Parking Services. APSU Parking checks to ensure the state issued placard is issued to the registrant and issues an APSU ADA Accessible parking permit. ADA Accessible Permit holders are authorized to park in any parking space on campus, except those spaces specifically reserved with a sign (example: Electric Vehicle Charging). Valid permits or state issued placards for ADA Accessible parking spaces must be displayed twenty-four (24) hours a day, seven (7) days a week.
- (7) Visitor Parking Spaces – Visitor parking permits are issued by Parking Services. Areas where visitors can park will be listed on the parking permit provided. Visitor parking permits are available twenty-four (24) hours a day, seven (7) days a week at the Shasteen Building. APSU Departments may request visitor permits in advance by contacting Parking Services. Marked visitor spaces are enforced between 7:30 a.m. and 4:030 p.m., Monday through Friday, ~~when APSU is in session.~~
- (8) Yellow curbs, yellow or white striped areas, and yellow bumper blocks. No parking is permitted in these areas. These areas are enforced twenty-four (24) hours a day, seven (7) days a week.
- (9) Temporary Parking Permits– Temporary permits are issued to community members who qualify for zoned parking but do not have their permit in their possession at the time they need to park. Temporary permits are available twenty-four (24) hours a day, seven (7) days a week.
- (10) Motorcycle Parking –

- (a) All motorcycles are to be parked in a parking space in their designated zone or in motorcycle only parking spaces.
- (b) Motorcycles are not to block stairways, sidewalks, or pedestrian access.

**Authority:** Public Acts of Tennessee, 1839-1840, Ch. 98, Section 5 and Public Acts of Tennessee, 1807, Ch. 64.

**0240-05-01-.05 Violations.** The following non-exhaustive examples constitute classifications for violations of these regulations:

(1) Parking Violations

- (a) Out of Zone;
- (b) Not a Parking Space;
- (c) Loading Zone;
- (d) Parking on Yellow Curb/No Parking Zone;
- (e) Blocking Traffic;
- (f) Parked Facing Traffic;
- (g) Occupying Two (2) (or more) Spaces;
- (h) Outside of Designated Space;
- (i) Within Fifteen (15) feet of Fire Hydrant;
- (j) Within Twenty (20) feet of entrance/exit/intersection;
- (k) On Seeded Areas;
- (l) Failure to Display Permit;
- (m) No Permit or Improper Display of Permit;
- (n) Altered, Lost, or Stolen Permit;
- (o) Reserved – Visitor;
- ~~(o)~~(p) Reserved – Electric Vehicle Charging Only
- ~~(p)~~(q) Reserved – ADA Accessible Parking Only; and
- ~~(q)~~(r) Warning Only.

(2) Moving Violations

- (a) Failure to obey stop sign or traffic signal;

- (b) Failure to yield to pedestrian in crosswalk;
  - (c) Traveling wrong way on one-way street;
  - (d) Operating a motor vehicle off a marked roadway;
  - (e) Speeding;
  - (f) Failure to yield right of way;
  - (g) Failure to obey lawful directions of a police officer;
  - (h) Failure of motorcycle operator or rider to wear required headgear; and
  - (i) Failure to yield to emergency vehicle.
- (3) Impounded Vehicle/Towed Vehicle
- (a) APSU may tow without advance notice those motor vehicles parked in a fire lane, designated ADA accessible parking space, spaces reserved for designated vehicles or in such a manner as to impede the flow of traffic or to disrupt the orderly affairs of APSU.
  - (b) If a motor vehicle has unpaid parking citations, APSU may impound/tow the vehicle, if advance notice and opportunity to contest have been given. Windshield notices and/or other methods of notification will be used to provide the operator of the vehicle with advance notice of APSU's intent to tow and the operator's right to a hearing.

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

**0240-05-01-.07 Penalties.**

- (1) Parked in Visitor, maintenance, or emergency vehicle space: \$35.00
- (2) Parked in ADA Accessible Space: \$200.00 - The fine for this parking violation is set by State law, T.C.A. §55-21-108. As of July 1, 2008, the fine was set at \$200. The fine imposed under these regulations will increase or decrease automatically when increased or decreased by State law.
- (2)(3) Boot Removal Fee - \$75.00 for first violation in an academic year. \$125.00 for subsequent violations in the same academic year.
- (3)(4) All other parking violations: \$25.00
- (4)(5) All moving violations when written as an APSU citation: \$35.00
- (5)(6) Other Penalties

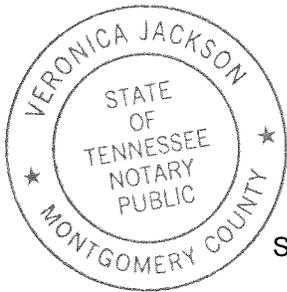
- (a) Students who fail to pay violation fines or penalties will not be permitted to register for course work, to continue as a student, to receive credit, to receive a degree, or to obtain a transcript until the fines or penalties are paid.
- (b) Repeated violations of parking regulations will be grounds for towing away, impoundment or immobilization in accordance with regulations under enforcement.
- (c) Students who persist in violating these regulations or commit a single violation under extreme circumstances will be referred to the Dean of Students' office for disciplinary action which may lead to suspension or dismissal from APSU.
- (d) Once a motor vehicle or owner has accumulated one hundred dollars (\$100.00) of unpaid fines, his or her motor vehicle, if found parked upon APSU property or lots leased by APSU, will be immobilized or towed in accordance with regulations under 0240-05-01-.06 Enforcement.
- (e) Any individual (student, faculty or staff) with outstanding citations will not be allowed to register a motor vehicle or purchase a parking permit until indebtedness is cleared.
- (f) Repeated violations may result in the loss of parking privileges.

**Authority:** T.C.A. §49-9-209(e).

\* 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)
Billy Atkins	X				
Katherine Cannata	X				
Larry Carroll				X	
Don Jenkins	X				
Gary Luck				X	
Valencia May	X				
Robin Mealer	X				
Mike O'Malley				X	
Nell Rayburn				X	

I certify that this is an accurate and complete copy of proposed rules, lawfully promulgated and adopted by Austin Peay State University on 06/07/19, 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: 9/18/19

Signature: \_\_\_\_\_

Name of Officer: Dannelle Whiteside

Title of Officer: Vice President for Legal Affairs

Subscribed and sworn to before me on: 9/18/19

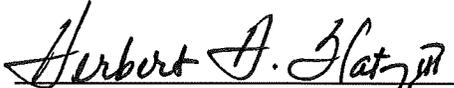
Notary Public Signature: \_\_\_\_\_

My commission expires on: 12/16/20

Agency/Board/Commission: Austin Peay State University

Rule Chapter Number(s): 0240 - 05 - 01

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

  
Herbert H. Slatery III  
Attorney General and Reporter  
10/16/2019  
Date

**Department of State Use Only**

Filed with the Department of State on: 10/28/19

Effective on: 1/26/20

  
Tre Hargett  
Secretary of State

10/28/19 9:52 AM  
SECRETARIAT OF STATE  
REGISTRAR

## G.O.C. STAFF RULE ABSTRACT

DEPARTMENT: Safety and Homeland Security

DIVISIONS: Highway Patrol

SUBJECT: Rules of Ignition Interlock Device Program, Fees

STATUTORY AUTHORITY: Tennessee Code Annotated, Sections 55-10-409, 55-10-401, 55-10-407, 55-10-406, 55-10-413, 55-10-417, 55-10-418, 55-10-419, 55-10-425

EFFECTIVE DATES: January 28, 2020 through June 30, 2020

FISCAL IMPACT: The estimated total increase in state revenue following the implementation of the new ignition interlock program rules is estimated at \$623,380 annually based on the collection of fees listed in the rules.

STAFF RULE ABSTRACT: These rules govern the regulation of the Ignition Interlock Device program in Tennessee. This impacts all persons required to operate motor vehicles with Ignition Interlock installed pursuant to a DUI conviction. This rulemaking hearing rule changes requirements for providers, manufacturers and customers. The rule also makes updates relative to new law changes for toll periods and fee changes relative to the cost of maintenance and installation.

**Public Hearing Comments**

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

**CHAPTER 1340-03-06  
RULES OF IGNITION INTERLOCK DEVICE PROGRAM****OCTOBER 22, 2018, RULEMAKING HEARING  
RESPONSES TO QUESTIONS AND COMMENTS**

The Department has reviewed all of the comments and questions put forth in response to the proposed Ignition Interlock Device Program rule changes. This document will address and provide responses to those questions and comments.

**1340-03-06-.02 Definitions**

It was recommended that on (4) we replace "breath" with "alcohol" so that it reads, "Breath Alcohol Concentration (BrAC) - means the amount of alcohol, expressed in weight per volume (w/v) based upon grams of alcohol per 210 liters (L) of breath." We acknowledge that the wording should be changed and agree to update this definition to reflect this.

It was recommended a change be made to (6) to reflect the National Highway Traffic Safety Administration (NHTSA) naming convention; we decline to make this change as our current definition was pulled from the Association of Ignition Interlock Program Administrators (AIIPA) list of definitions.

The Department received comments on the definition of "GPS Technology" (12). One commenter wanted to do away with the definition completely, which we decline to do. The Department wishes to reiterate that GPS Technology will not be used to track an individual's location at all times; it will capture a latitude and longitude when an event occurs that requires a photo to be taken, basically geo-tagging photos. Another submitted comments in general support of the adoption of GPS technology and in response to potential privacy concerns regarding GPS technology and how it will be used; they are below:

*The American Association of Motor Vehicle Administration (AAMVA) Ignition Interlock Program Best Practice Guide dated September 2018 recommends the use of advanced technology being camera, GPS, and real time reporting.*

*Currently, the following states require GPS: Arizona, Missouri with court order, Minnesota with court order, New York, Oregon, South Dakota, and Washington. Advanced technology such as camera, GPS, and real time reporting can help limit "false" violations and obtain better evidence for "valid" violations.*

*GPS verifies the exact location of a violation and the jurisdiction in which it occurs in cases where an offender argues that the violation occurred outside the jurisdiction of the state or the court.*

*GPS verifies whether the vehicle was in motion in the event of a power interruption which is helpful in determining tampering. The results of advanced technology is that it reduces offender complaints and challenges by offenders resulting in cost savings and time for those overseeing the ignition interlock program.*

*The Driver's Privacy Protection Act of 1994 is a federal law governing the privacy and disclosure of personal information gathered by the state Department of Motor Vehicles. This federal law prohibits a state Department of Motor Vehicles from disclosing personal information without the express consent of the person to whom such information applies. However, there are exceptions to the law's nondisclosure requirement. Personal information may be disclosed by any government agency including any court or law enforcement agency, or any private person or entity acting on behalf of a Federal, State, or local agency to carry out its functions.*

*Chapter 25 of the Tennessee Uniform Motor Vehicle Records Disclosure Act follows the federal Driver's Privacy Protection Act of 1994. Pursuant to TCA §55-25-105(a) personal information can be disclosed for use in connection with matters of motor vehicle and driver safety. Tennessee has already determined that personal information can be disclosed for use in connection with matters of motor vehicle and driver safety when it allowed the use of the camera in conjunction with the BAIID.*

*Pursuant to TCA §§ 55-10-401 and 40-11-152, the Court may order anyone driving under the influence of alcohol to be subject to device monitoring or a GPS monitoring system. Pursuant to TCS §§ 55-10-409(b)(2)(D), a person who fails to take a blood or breath test may be court ordered to have a BAIID with or without geographic restrictions. Geographic restrictions can be monitored using GPS. In addition, TCA §55-25-106 states that if the written consent of the person has been obtained, personal information may also be disclosed. Intoxalock's written lease with the customer discloses that the BAIID includes a camera, GPS, and real time reporting and that the individual acknowledges and consents to these functions and their capabilities.*

It was requested that we change (21) to be consistent with the AIIPA standardized definition by changing "bypassing" to "overriding". We accept this and will make this change to the definition of "Override Lockout".

Requests to change the definition of "Normal Business Hours" (22) from three (3) days per week to two (2) days per week were submitted; we decline to make this change as we feel that program participants would be hindered by only having two (2) days per week to obtain service. In the end we decided that three (3) days was still insufficient to effectively serve program participants and made this five (5) days per week.

A commenter asked that we change language within the definition of "Permanent Lockout" (24) from "...once five (5) violations have occurred..." to "...once a violation reset has occurred..." We decline to make this change.

It was requested that we modify (25) to clarify that the Permanent Lockout Fee is applicable even though the device may be accepting tests due to the use of an Override Lockout Code. We do not feel that this clarification is necessary and decline to make this change.

Comments were submitted requesting that the definition of "Random Retest" (28) be updated to make it compatible with electric and hybrid vehicles and to set an approved time interval for these tests. The Department realizes the importance of acknowledging changing vehicle technologies in these rules and will change this rule to state that Random Retests will be required while the vehicle is being operated. We will also clarify that the first retest shall be required five (5) to fifteen (15) minutes after vehicle start, and every fifteen (15) to forty-five (45) minutes thereafter.

In regards to the definition of "Real Time Reporting" (29), we have received several comments. One asks that we clarify the meaning of "particular events" within the definition; we will clarify this reflect that we mean any event that requires a photo to be captured. We have been asked to change the wording "as the event occurs" to "within five minutes of the event occurring"; we decline to make this change as it would not then be real-time. One commenter asked that we remove this definition all together, which we decline to do. We did receive some comments in general support of the Real Time Reporting requirement and they are listed below:

*Real Time Reporting allows reporting of specific violations as near as possible to the event, allowing better monitoring authority. Both those would have ignition interlock devices. It also expedites addressing violations rather than allowing violations to accumulate for a period of time before they are reported. It provides the opportunity to reduce impaired driving collisions. And I'd also like to say that the American Association of Motor Vehicle Administration, AAMVA, ignition interlock program best practice guide dated September 2018, recommends the use of advanced technology including Real Time Reporting.*

The Department received multiple comments on (33). It has been requested that the definition of "Tampering" specifically include the camera. We are in agreement that the camera is an important component of the BAIID, especially in determining who committed a violation, and will change the language to say "a BAIID and all of its components". We will also clarify that removing the handset once the vehicle has been turned off is allowable.

It has been requested that we remove the definition of "Temporary Lockout Code" (37); we decline to make this change.

The Department has received comments requesting that definitions for "Circumvent- means to bypass the correct operation of a BAIID by starting the vehicle, by any means, without first providing a breath test" and "Camera- A feature of the device that incorporates photo identification or digital images of the person who is providing the breath test in all light conditions" be added to these rules. We agree that these definitions should be incorporated and will add them to our list of definitions. It was also requested that we add a definition for "Delinquency Days", however, this is not a standardized definition and we decline to make this change.

### **1340-03-06-.03 Manufacturer Application Procedures**

It was requested that we change language in (1) from "Any individual or business..." to "A manufacturer..." we decline to make this change as any individual or business may apply to be a certified manufacturer.

A commenter requested that we remove "BAIID" from (1)(a)(1) and (2), which we decline to do as we feel that the distinction is necessary. The question was also posed if there could be a timeframe associated with (2) and we agree that there should be ten (10) year limit on how far back this list should go.

Several commenters asked who would be responsible for providing a background check (1)(a)(3) on the application if the manufacturer is owned by a corporation or business entity. We will add language to clarify that in this case the manufacturer's state representative would be the person who would need to provide the background check. We will also add "Manufacturer State Representative" to our list of definitions.

It was asked if for instances where the manufacturer is also a service center, do applications for both need to be provided and will application fees apply to both. The answer is yes to both; each role has to be applied for and approved by the Department.

The recommendation was made that we remove the reference to "manufacturing standards" in (1)(a)(5) to align the language with that used by NHTSA; we agree to remove the reference to "manufacturing standards" in this section. It was also suggested that we specify which specifications and ISO standard the devices adhere to. We decline to make this change because we require all devices to be up to the most recent NHTSA model specifications; making this rule that specific could hinder us in the future as those specifications are updated. It was suggested that we make device certification a part of the manufacturer application process; we currently do this before approving a new manufacturer or device. We require a representative to come in to our office and demonstrate the use of their device, its calibration, and accuracy.

In relation to (1)(a)(9) one commenter noted that they allow their service centers to set their own pricing within the Department's pricing guidelines and asked if this rule meant they would have to submit a fee schedule for all of their service centers with their application. We took this into consideration and decided to remove (9) from this section. We will only require fee schedules to be submitted with the service center provider applications.

Commenters asked for clarification on (1)(a)(6). Financial responsibility refers to section 13-1340-03-06-.16 of these rules and the requirement to maintain comprehensive general liability insurance in minimum amounts determined by the Department. We referred to section 13-1340-03-06-.15 mistakenly and will correct that in this section.

A couple of commenters requested clarification on who is the "affiliated device manufacturer" referred to in section (1)(b). We will change this language to say "manufacturer's state representative" and will define this term. This language update will be made throughout the document.

One commenter requested that we set a thirty (30) day timeframe on review, decision, and notification of approval or denial of applications (2). Due to extended testing periods of devices and technical capabilities we cannot set a timeframe for manufacturer approvals.

It was posed that we consider requiring approved manufacturers to carry a bond in the amount of \$100,000 to protect against vendor abandonment. After speaking with our legal department it was determined that this is not a requirement that we can make, we therefore decline to make this addition.

The rules proposed here include the addition of application fees to be paid by the manufacturers. The Department did receive comments in support of these fees; they are listed below:

*It is recommended that to support the state's ignition interlock program that the initial and renewal fees for certifying a manufacturer be increased to cover the costs of certifying and testing the device and the state's involvement in the compliance based removal process.*

#### **1340-03-06-.04 SERVICE CENTER PROVIDER APPLICATION PROCEDURES**

Additional language was suggested for (1)(a)(4), adding calibrating to the list of services; we are in agreement with this suggestion and will add "calibrating" so that it directly reflects our definition of "Service Center Provider".

Several commentators asked for clarification on who would be required to have background checks according to (1)(a)(5). It is only the people referenced in (1)(a)(2), those who will be installing, calibrating, servicing, or removing the BAIDs. It was also suggested that we add clarifying language to this section, which we will do.

Commenters asked for clarification on (1)(a)(7). Financial responsibility refers to section 13-1340-03-06-.16 of these rules and the requirement to maintain comprehensive general liability insurance in minimum amounts determined by the Department. We referred to section 13-1340-03-06-.15 mistakenly and will correct that in this section.

The request was made that we remove (1)(a)(8) from this section because it is ultimately a responsibility of the manufacturer; we agree with this and will remove from this section.

It was recommended that we allow service center providers to post the fee schedule (1)(a)(11) related to the services provided specifically by that location. The Department declines to make this change in the interest of transparency for the clients and minimizing pricing confusion.

Clarification was requested on the nature of exclusivity between manufacturers and service center providers in relation to (1)(a)(12) and (4). Any expectation of vendor exclusivity should be addressed in the contract between the manufacturer and the service center provider; the Department does not involve itself in those agreements.

One commenter would like the service center providers to have the opportunity to correct application deficiencies and/or request a hearing upon denial. We decline to make this change because all correspondence with the service center providers goes through the manufacturers and is conducted in a way that allows for the manufacturer to review and correct the applications before they are submitted to the Department. We do not allow a period for correction and reconsideration because the service center providers have certified that they are ready for inspection upon submitting applications to the manufacturer. It is neither financially feasible, nor does this unit have the manpower resources, for Troopers to return to a site for re-inspection.

It was requested that we provide a timeframe for (2) and (3). We decline to do this due to the current state of our manpower resources and the rapid growth of the Ignition Interlock Program.

It was suggested that we change language in (5)(a) to say "service center provider" rather than "manufacturer". The Department agrees with this suggestion and will make this change.

#### **1340-03-06-.05 GENERAL REQUIREMENTS**

In regards to (1) it was asked that we change "passed" to "enacted"; we decline to make this change. It was also requested that we give ninety (90) days of notice before any changes are implemented due to new or changed legislation. We agree that manufacturers and service centers should have a reasonable amount of time to prepare for any changes and will notify them as soon as possible of any new programmatic requirements, but decline to put a timeframe in these rules.

A commenter asked that we add language to (3), changing it to say, "... A-List System for any participant installed after November 18, 2016" and to say "forty-eight (48) business hours". We decline to add the "November 18, 2016" date to this section, but agree to add "business hours".

Commenters raised questions over the authorization process referenced in (6) and (7). This will be a pre-approval requested in writing for all out of state services.

A request was submitted asking that we add language to (7) authorizing manufacturers to recover devices from delinquent clients after a period of sixty (60) days. We will add to these rules a subsection stating that a manufacturer may be authorized, upon receipt of written request and approval from the Department, to immediately recover any BAIID after ninety (90) consecutive delinquent days. The service center provider may remove the delinquent device at any off-site location; the manufacturer and service center provider will hold the Department and the State of Tennessee harmless from any liability resulting from the recovery of a BAIID pursuant to this subsection.

#### **1340-03-06-.06 APPROVED BAIID REQUIREMENTS**

A language change was requested in (1) to remove "manufacturing standards" and only refer to "model specifications" to be in line with NHTSA language, and also to remove "fuel cell devices". The Department is in agreement with the removal of "manufacturing standards" and will make this change; we decline to remove "fuel cell devices".

Several commenters wished to see us note in section (2) that the requirement for devices to be equipped with and utilize "Real Time Reporting" and "GPS" technology will not immediately apply to all devices in use across the state, but will allow for a period of transition to these devices. The Department is in agreement and will clarify that the transition should take place beginning with new program participants, allowing the old technology to be phased out as participants complete the program. This transition will begin October 1, 2019, and should be completed with all participants having devices with the new technology by January 1, 2020. One commenter wanted the removal of all references to "Real Time Reporting" and "GPS"; we decline to make this change.

One commenter asked that we specify how the Quality Assurance Plan (QAP) referred to in (3) should be drafted. We are going to edit this to clarify that we meant the QAP document must be submitted and should include operating instructions for the BAIID and the step-by-step instructions of the process for checking the accuracy of the calibration of the BAIID. We decline to further explain how this document should be drafted because that we feel that stating what it must contain should suffice.

Clarification was requested for (4) and (5) in reference to what tests these will apply to and what the allowable time intervals are. We will change (4) and (5) to say "...a failed initial, retest, or random test". We have addressed the timing of random tests in the definitions section.

Multiple commenters would like to see a change made to (6) allowing devices to only activate the vehicle's horn upon failing to provide a passing random test, rather than the horn and lights; including one that didn't want either. This activation of the horn and lights is meant to alert law enforcement that may be in the area to the vehicle; for that reason we will not remove this requirement.

It was requested that we change (7) to initiate a violation lockout upon the BAIID recording circumvention or attempted circumvention. The Department declines to make these changes.

It was also requested that changes to (8) be made that would make each violation require the client to visit a service center for a violation reset; we decline to make this change because of the undue burden it would cause program participants.

Multiple commenters wanted clarification on (9) to ensure that the rules acknowledged that the lockout is only valid for a set period of time. The Department is in agreement and will add wording to this section noting that the lockout is not to be valid for a period of time exceeding 2 hours.

Several commenters asked that manufacturers be removed from the breath reduction approval process as much as possible. We agree that this should be between the Department and the participant and will change (11) to simplify this process and require all health related documentation to be collected only by the Department who will then notify the manufacturer of the approval or denial.

One commenter wanted changes made to this section to remove references to wet-bath testing, which we decline to make because wet-bath testing is currently accepted by AllPA. They also wanted us to elaborate on what is expected during a random retest. We will update (5) and (6) to state that upon request for a random test a participant should have six (6) minutes to provide an unlimited number of samples; upon providing a failing sample participants will have ten (10) minutes to provide a passing test. During these ten (10) minutes a participant should have, at minimum, 3 opportunities to provide a sample. The device must audibly alert the participant to the sample request; it may also light up or vibrate. Once a retest is in progress, failure to deliver a breath test below .020 within the time frame allowed shall: Activate the vehicle's horn to sound repeatedly until the engine is shut down, record a retest violation in the data storage system, and disable the free restart.

#### **1340-03-06-.07 SERVICE CENTER PROVIDER-OWNER/TECHNICIAN REQUIREMENTS**

It was requested that a grace period be in effect in regards to (4) for manufacturers currently approved. It is addressed in changes made to section 1340-06-06-.05 that we will implement a ninety (90) day grace period for any legislative or rule changes.

#### **1340-03-06-.08 BAIID INSTALLATION REQUIREMENTS**

In reference to the problem-solving guide that we require all service centers to have on hand and provide to all interlock program participants, it was requested that we allow a 24-hour phone number for the manufacturer to be listed in lieu of all of the service center providers. We agree that because of constant turnover of these providers that it is difficult to keep these guides up to date under the current rule and will make this requested change to remove the requirement of listing all of the approved service center providers and allow the manufacturer 24-hour phone number to suffice.

One commenter would like to see (10) changed to say, "If the participant is on supervised probation, the service center provider will notify the Department upon removal of the BAIID, if the participant does not provide authorization from the court of the Department to remove the BAIID." Because the program participant faces real consequences for unauthorized removal of the device, and manufacturers' service center providers and customer service representatives often give out incorrect information to clients, we decline to make this change. However, we will update (10) to say, "If the participant is on supervised probation, under no circumstance shall a BAIID be removed without written authorization from the court." This removes the Department from this process since the Department would not be the monitoring agency in these cases and would not provide removal authorization.

#### **1340-03-06-.09 ORIENTATION OF PROGRAM PARTICIPANT**

Clarification was requested on (3) regarding who would draft these summary letters and if the service center providers had to provide a copy to all program participants or just post them. The letters are written by the Department, so they are complete and accurate. The service center providers are only required to post them in a conspicuous location.

#### **1340-03-06-.10 PROOF OF INSTALLATION OF A BAIID**

The Department received comments on (2); one request to remove it entirely and one asking us to address what happens when a court refuses to supply the Order for Restricted Driver License before the BAIID is installed. After review, we have decided to update (2) to say, "Prior to the installation of the BAIID, the manufacturer shall ascertain the reason the BAIID is required, and if available shall obtain a copy of the participant's Order for Restricted Driver License form (SF-0680). We think this will cover any situations that may arise with situations where the ORDL may not be readily available, such as judges' refusal to issue, voluntary participants, or probationary requirements.

It was requested that we change (3) to state that upon completion of the installation of a BAIID, the manufacturer will provide the participant with installation verification. We agree that the onus for proof of BAIID installation to probation officers falls on the program participant so we will make this requested change.

#### **1340-03-06-.11 MONITORING REQUIREMENTS**

One commenter asked that we change the second sentence of (1) to say, "Unless otherwise authorized by the ignition interlock program, an authorized service center provider will not conduct a calibration or service any BAIID unless the vehicle is present at the approved facility and is in mechanically operable condition." We decline to make this change because we want all service carried out at facility that has been inspected and approved by the Department.

It was requested that we add language to the second sentence of (3), changing it to say, "Unless otherwise authorized pursuant to 1340-03-06.04(7) the certified technician..." We decline to make this change because the rule already states that, "The certified technician shall only service, calibrate, or remove the BAIID at an approved service center provider location within the geographical boundaries of the State of Tennessee or at a location that has been approved by the Department", thus allowing service and removal to be obtained at out of state locations with pre-approval by the Department.

It was requested that we change "...recorded in the Department's A-List system" to "submitted to the Department's A-List system" in (4). We will make this change.

One commenter requested a definition of non-operable vehicles. We stated in (1) that the vehicle must be in "mechanically operable condition" and feel that this clearly conveys that the vehicle must arrive under its own power and be drivable. We decline to add a definition.

A commenter wanted it noted in (5)(c) and (6)(c) that failing or skipping a random test would not be considered a violation if the participant was not in the vehicle at the time of the request. This is our current practice and is why all violations must be confirmed by camera. We will update these sections to read, "Failing to take or skipping a random retest while in the vehicle;".

#### **1340-03-06-.12 REPAIR, REPLACEMENT, OR VEHICLE TRANSFER OF A BAIID**

A commenter asked if the Transfer Report referred to in (1) was state generated. It is not; it is generated by the manufacturers and submitted to A-List similar to the Monthly Summary Reports. All manufacturers should currently have the ability to submit Transfer Reports.

#### **1340-03-06-.13 PROGRAM COMPLIANCE BASED REMOVAL / NON-COMPLIANCE REPORT**

It was requested that we address, in this section or in the definitions, when the 7-day grace period comes into effect in regards to a permanent lockout. This section does address the grace period in (1) and (1)(f); it is only for a missed appointment allowing participants to not be extended under the compliance based removal law if they have to miss their original appointment date due to extenuating circumstances. This does not mean that they have a 7-day grace period after their missed appointment that their vehicle continues to operate; the device can still begin a lockout countdown seventy-two (72) hours prior to day thirty (30), and may lockout after day thirty (30).

One commenter was unclear as to how compliance based removal works and asked, "Does this mean that they have to get their unrestricted license first and THEN go have their interlock device removed? Can someone without a Code 16 drive a vehicle with an interlock device on it?" In response, yes, the program participant must have their unrestricted license to remove the device. Someone without the code sixteen (16) can drive a vehicle with an interlock, but someone with a code sixteen (16) can only drive a vehicle with interlock.

The Department received the following in support of Real Time Reporting and application fees:

*Real time reporting will allow reporting to occur at the conclusion of the violation free 120 days. By providing the report in real time truly allows for a 120 day review rather than waiting for the next calibration period which may result in a significant addition of time (i.e., more than 120 days) before the BAIID may be removed. To compensate the Department for the staff required to review compliance based removals, it is recommended that the manufacturer's initial and annual certification fee be increased as previously set forth in these rule comments.*

*In regard to compliance based removal which is Rule 1340-03-06-.13, successful Certificate of Compliance, we would recommend that consideration be given to adding wording to the section about the benefits of Real Time Reporting to be able to get the device removed very quickly after that 120-day violation-free period. If they are violation free during that 120-day period, that Real Time Reporting will allow that device to come off quicker than it would if they would have to go back to calibration. So let's say the 120 days is expired and their calibration isn't for another 20, 40, 60 days. By shoring up the compliance-based removal with Real Time Reporting, we think we have a real beneficial process shoring that up and streamlining that and making that more efficient.*

#### **1340-03-06-.15 FEES**

A commenter requested that we change language in (1) to say, "...DUI monitoring fund and the client has been qualified to receive the funds. ...State Treasury Department who shall reimburse the costs..." The Department of Safety is not over the indigency fund. We cannot state that Treasury shall reimburse. We will update this section to say: Any BAIID program participant who has been declared indigent by the court pursuant to T.C.A. § 55-10-419(d), upon providing a copy of the Proof of Indigency Form signed by the judge and approval of application of indigency by the Department of Treasury, can be provided interlock service at the discretion of the BAIID manufacturer.

Multiple commenters would like to see the installation fee raised, either by dollar amount or maximum allowable hours, to cover the costs associated with longer install times on technologically advanced vehicles such as hybrid and electric, and those with push-button start. The Department is in agreement that the time it takes to install on these types of vehicles is longer than traditional vehicles. We will change (3) to increase the maximum time of three (3) hours.

A commenter would like (6) to read, "...permanent lockout, regardless of whether the device has been unlocked by use of an approved override lockout code". We agree that this clarification is helpful and will make this requested addition to the language.

One commenter requested clarification on whether this five dollar (\$5) fee (10) may be collected by the manufacturer from Participants in addition to, or inclusive of the allowed \$125 per month as outlined in (4). This is a fee assessed to and collected from the manufacturer, not the participant.

#### **1340-03-06-.16 FINANCIAL RESPONSIBILITY REQUIREMENTS**

Multiple commenters pointed out that the liability insurance requirements on the service center providers were too high (2). The Department is in agreement and will change these amounts to \$100,000 per event and \$300,000 aggregate.

#### **1340-03-06-.18 AUDITS AND INSPECTIONS**

It was requested that (3) be changed to read, "...non-compliance notification will be given to the service center provider and forwarded to the service center provider's manufacturer representative. The notification will state the cause of the non-compliance and what needs to be done to remedy the non-compliance. The manufacturer representative will have ten (10) business days from receipt of the notification to correct the stated deficiencies and notify the Department in writing of such correction." We decline to make this change because the current process for notification of non-compliance found during inspections is detailed in the 3rd Party Compliance processes and documentation.

The commenter then went on to ask that (3)(a) be changed to read, "If the cause of non-compliance found cannot be corrected immediately, a one hundred dollar (\$100) non-compliance fee may be assessed to cover the expenses incurred by the Department for a re-inspection, if a re-inspection is necessary as determined by the Department." We decline to make this change; the \$50 fee is for minor violations that we see often but can be remedied while on-site. The commenter then asked that (3)(b) read, "The manufacturer representative may request a hearing pursuant to Rule 1340-03-06-.19." We decline to make this change; hearing requests are addressed in section 1340-03-06.20.

It was requested that we add a section stating, "All inspection fees will be transferred by ACH to the Department's Ignition Interlock Program. The manufacturer representative will submit a detailed payment report to the Ignition Interlock Program Administrator on the day that the non-compliance fees are paid. The report will contain a list of service center inspections incurring fees and the fees associated with each." This is addressed in the first paragraph of (3).

**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.

If approved the rules would affect most of or not all of the 162 interlock installation facilities. As most of these facilities are in rural areas the increase for installation and monthly service for the interlock device could affect the hourly wages of the ignition interlock technicians.

**Impact on Local Governments**

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

These rules will not have an impact on local government.

**Additional Information Required by Joint Government Operations Committee**

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

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

These rules govern the regulation of the Ignition Interlock Device program in Tennessee. This impacts all persons required to operate motor vehicles with Ignition Interlock installed pursuant to a DUI conviction. The updates include changes to requirements for providers, manufacturers and customers. There are also updates relative to new law changes for toll periods. There are fee changes relative to the cost of maintenance and installation.

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

TCA 55-10-409 Restricted License, 55-10-401 Driving Under the Influence, TCA 55-10-407 penalty for violation of TCA 55-10-406, TCA 55-10-409 Restricted License, TCA 55-10-413 Ignition Interlock Fee, TCA 55-10-417 Ignition Interlock Devices, TCA 55-10-418 Maximum Allowable Fee (Ignition Interlock Devices), TCA 55-10-419 DUI Monitoring Fund, TCA 55-10-423 Confidentiality of Information about Interlock Program Participants, TCA 55-10-425 Compliance Based Removal of Ignition Interlock

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

These rule changes would affect the citizens of Tennessee required to have the ignition interlock device to obtain a restricted license. The rule changes would affect the eight approved ignition interlock manufacturers and their respected service centers. If approved these rules would affect the Tennessee Department of Treasury. These adopted rules would affect the Tennessee Department of Safety and Homeland Security Ignition Interlock Program. Tennessee Department of Safety and Homeland Security Driver License Division.

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

The Department is not aware of any Attorney General Opinion or judicial ruling directly related to these rules.

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

The estimated total increase in state revenue following the implementation of the new ignition interlock program rules is estimated at six hundred twenty-three thousand three hundred eighty dollars (\$623,380) annually based on the collection of fees listed in the rules.

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

Elizabeth Stroecker, Director of Legislation and Assistant General Counsel  
 Liz Hale, Deputy General Counsel  
 Terry Seay, Sergeant, RPD  
 Stephanie Wayne, Program Administrator, RPD

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

Elizabeth Stroecker, Director of Legislation and Assistant General Counsel  
 Liz Hale, Deputy General Counsel

Terry Seay, Sergeant, RPD  
Stephanie Waye, Program Administrator, RPD

(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

312 Rosa L. Parks Avenue, 25<sup>th</sup> Floor, Nashville, TN 37243;  
[Elizabeth.Stroecker@tn.gov](mailto:Elizabeth.Stroecker@tn.gov) 615-251-5199  
[Lizabeth.Hale@tn.gov](mailto:Lizabeth.Hale@tn.gov) 615-251-5349  
1150 Foster Avenue, Nashville, TN 37243  
[Terry.Seay@tn.gov](mailto:Terry.Seay@tn.gov) 615-743-3916  
[Stephanie.Waye@tn.gov](mailto:Stephanie.Waye@tn.gov) 615-743-4960

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

**Department of State  
Division of Publications**

312 Rosa L. Parks Ave., 8th Floor, Snodgrass/TN Tower  
Nashville, TN 37243  
Phone: 615-741-2650  
Email: [publications.information@tn.gov](mailto:publications.information@tn.gov)

**For Department of State Use Only**

Sequence Number: 10-29-19  
Rule ID(s): 9267  
File Date: 10/30/19  
Effective Date: 1/28/20

# 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).*

<b>Agency/Board/Commission:</b>	Department of Safety & Homeland Security
<b>Division:</b>	Highway Patrol
<b>Contact Person:</b>	Elizabeth Stroecker
<b>Address:</b>	312 Rosa L. Parks Avenue, 25 <sup>th</sup> Floor
<b>Zip:</b>	37243
<b>Phone:</b>	615-251-5199
<b>Email:</b>	Elizabeth.Stroecker@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
1340-03-06	Rules of Ignition Interlock Device Program
Rule Number	Rule Title
1340-03-06-.01	Purpose and Scope
1340-03-06-.02	Definitions
1340-03-06-.03	Manufacturer Application Procedures
1340-03-06-.04	Service Center Application Procedures
1340-03-06-.05	General Requirements
1340-03-06-.06	Approved BAIID Requirements
1340-03-06-.07	Service Center-Owner/Technician Requirements
1340-03-06-.08	BAIID Installation Requirements
1340-03-06-.09	Orientation of Program Participant
1340-03-06-.10	Proof of Installation of a BAIID
1340-03-06-.11	Monitoring Requirements
1340-03-06-.12	Repair, Replacement, or Vehicle Transfer of a BAIID
1340-03-06-.13	Program Compliance-Based Removal/Non-Compliance Report
1340-03-06-.14	Toll of the Required Consecutive Day Period
1340-03-06-.15	Fees
1340-03-06-.16	Financial Responsibility Requirements

1340-03-06-.17	Liability
1340-03-06-.18	Audits and Inspections
1340-03-06-.19	Denial, Suspension, or Revocation of Certification
1340-03-06-.20	Administrative Hearings

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

Amendments: These amendments make substantial changes to Chapter 1340-03-06, including adding two new rules at 1340-03-06.04 and 1340-03-06.14. Thus, these amendments delete the original version of Chapter 1340-03-06 and replace it with the version set out below.

**RULES  
OF  
TENNESSEE DEPARTMENT OF SAFETY AND HOMELAND SECURITY  
HIGHWAY PATROL DIVISION**

**CHAPTER 1340-03-06  
RULES OF IGNITION INTERLOCK PROGRAM**

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1340-03-06-.01	Purpose and Scope	1340-03-06-.4911	Monitoring Requirements
1340-03-06-.02	Definitions	1340-03-06-.4412	Repair or Replacement of Ignition Interlock Device
1340-03-06-.03	Manufacturer Application Procedures		Repair, Replacement, or Vehicle Transfer of a BAIID
1340-03-06-.04	Service Center Application Procedures		
1340-03-06-.0405	General Requirements	1340-03-06-.4213	Program Status
1340-03-06-.0506	Approved Ignition Interlock Device BAIID Requirements		Compliance-Based Removal / Non-Compliance Report
1340-03-06-.0607	Ignition Interlock Installer— Service Center-Owner/Personnel Technician Requirements	1340-03-06-.14	Toll of the Required Consecutive Day Period
1340-03-06-.0708	Ignition Interlock BAIID Installation Requirements	1340-03-06-.4315	Fees
1340-03-06-.0809	Orientation of Program Participant	1340-03-06-.4416	Financial Responsibility Requirements
1340-03-06-.0910	Proof of Installation of Ignition Interlock Devices a BAIID	1340-03-06-.4517	Liability
		1340-03-06-.4618	Audits and Inspections
		1340-03-06-.4719	Suspension, Revocation or Denial
		1340-03-06-.4820	Denial, Suspension, or Revocation of Certification
			Administrative Hearings

**1340-03-06-.01 PURPOSE AND SCOPE.**

To establish uniform, statewide, minimum, standards for ignition interlock devices, for the certification of ignition interlock device installers and the approval of such installers pursuant to T.C.A. § 55-10-412, manufacturers and service centers, and for program participant monitoring pursuant to T.C.A. §§ 55-10-417, 55-10-418, and 55-10-425.

Authority: T.C.A. §§ 4-3-2009 and 55-10-412, 55-10-417, and 55-10-425. Administrative History: Original rule filed December 17, 2012; effective May 31, 2013.

**1340-03-06-.02 DEFINITIONS.**

- (1) ~~Approved Ignition Interlock Device Installer means an individual or business which has been approved and certified by the Department as meeting all of the minimum requirements set forth in these rules.~~
- (2) ~~Commissioner means the commissioner of the Tennessee Department of Safety.~~
- (3) ~~Department means the Tennessee Department of Safety.~~
- (4) ~~Ignition Interlock Device means a device which connects a motor vehicle ignition system to a~~

breath-alcohol analyzer and prevents a motor vehicle ignition from starting if a driver's blood alcohol level exceeds the calibrated setting on the device.

- ~~(5) Ignition Interlock Device Provider means a person or company engaged in the business of manufacturing, selling, leasing, servicing and/or monitoring ignition interlock devices.~~
- ~~(6) Ignition Interlock Device Installer means a person or company, affiliated with an Ignition Interlock Device Provider and engaged in the installation, monitoring, maintaining, and removal of ignition interlock devices.~~
- ~~(7) Ignition Interlock Device Installer Certificate means a certificate provided by the Department, once the Department is satisfied that the Ignition Interlock Device Installer complies with all of the minimum requirements set forth in this rule.~~
- ~~(8) Ignition Interlock Program means the Department of Safety's system of regulating ignition interlock devices, installers, and providers.~~
- ~~(9) Ignition Interlock Program Participant means an individual who has been ordered by a court, pursuant to the provisions of T.C.A. § 55-10-412, to operate a motor vehicle which has been equipped with a functioning ignition interlock device.~~
- (1) Accuracy Check - confirming the calibration of the equipment used for the BAIID's calibration.
- (2) Administrative Fee - a fee collected by the manufacturer from each participant.
- (3) A-List - The Department of Safety and Homeland Security's secure data reporting system.
- (4) Breath Alcohol Concentration (BrAC) - the amount of alcohol expressed in weight per volume (w/v) of breath based upon grams of alcohol per 210 liters (L) of breath.
- (5) Breath Alcohol Ignition Interlock Device (BAIID) - a device that is designed to allow a driver to start a vehicle if the driver's BrAC is below the set point and to prevent the driver from starting the vehicle if the driver's BrAC is at or above the set point.
- (6) Calibration - the process of testing and/or adjusting the BAIID to ensure accuracy by using a wet bath or dry gas standard as defined by the current National Highway Traffic Safety Administration (NHTSA) model specifications for calibration units.
- (7) Camera - a feature of the device that incorporates photo identification or digital images of the person who is providing the breath test in all light conditions.
- (8) Circumvent - to bypass the correct operation of the BAIID by starting the vehicle without first providing a breath test.
- (9) Commissioner - the Commissioner of the Tennessee Department of Safety and Homeland Security.
- (10) Compliance-Based Removal - the authorized removal of the BAIID as determined by the participant meeting terms set by T.C.A. § 55-10-425.
- (11) Department - the Tennessee Department of Safety and Homeland Security.

- (12) Geotag - the process of adding geographical identification metadata to various media such as a geotagged photograph or video.
- (13) GPS Technology - global positioning system technology that has the ability to report the location of the participant's BAIID.
- (14) Hearing Officer - the officer designated by the Commissioner to preside over administrative hearings.
- (15) Ignition Interlock Program - the Department of Safety and Homeland Security's program of regulating BAIIDs, manufacturers, service centers, and technicians in the State of Tennessee.
- (16) Ignition Interlock Service Center Inspection Checklist - a form (SF-1535) to be completed by the manufacturer or service center prior to initial and/or annual renewal inspection.
- (17) Manufacturer - a person or organization responsible for the design, construction, and/or production of the BAIID, which has been approved and certified by the Ignition Interlock Program as meeting all of the minimum requirements set forth in these rules.
- (18) Manufacturer Certificate of Compliance - a certificate of compliance issued by the manufacturer to a participant who has been compliant with the program conditions for the required period.
- (19) Manufacturer/Service Center Non-Compliance Fee - a fee charged to the manufacturer for non-compliance with any of the requirements stated in Chapter 1340-03-06.
- (20) Manufacturer Representative - an individual designated by the manufacturer as a direct point of contact for the ignition interlock program administrator in the State of Tennessee.
- (21) Non-Compliance - failure to meet the minimum requirements set forth in state law, these rules, a court order, or the device configuration requirements.
- (22) Normal Business Hours - standard workdays of Monday through Saturday between the hours of 7:00 am and 7:00 pm at a minimum of five (5) days per week, excluding state and federal holidays.
- (23) Participant - an individual who has been ordered by a court or the Department pursuant to the provisions of T.C.A. § 55-10-417 to operate a motor vehicle which has been equipped with a functioning BAIID.
- (24) Permanent Lockout - A condition where the device will not accept a breath test until serviced.
- (25) Probation - an entity appointed to investigate, supervise, and report on the conduct of program participants.
- (26) Program Administrator - an individual who is the direct point of contact with the general public, current and prospective service centers, manufacturers, and other government and private entities.
- (27) Random Retest - a breath test that is required after the initial engine start-up breath test and while the vehicle is being operated. Note: Commonly referred to as a rolling, random, or running retest.
- (28) Real Time Reporting - the contemporaneous transmission of data any time a photo is captured to a specified monitoring entity as the event occurs or as soon as cellular reception permits.
- (29) Remove Interlock Restriction Letter - a letter issued by the Department to a participant indicating program compliance.
- (30) Residual Mouth Alcohol - alcohol found in the oral cavity that dissipates over a short period of time.

- (31) Service Center - the entity designated by the manufacturer and approved by the Ignition Interlock Program to provide services to include, but not limited to, installation, inspection, maintenance, and removal of the BAIID within Tennessee.
- (32) Service Center Certificate - a certificate provided by the Ignition Interlock Program once the Ignition Interlock Program is satisfied that the service center complies with all of the minimum requirements set forth in Chapter 1340-03-06.
- (33) Tampering - an attempt to physically disable, disconnect, adjust, or otherwise alter the proper operation of a BAIID and/or any of its components; to remove the BAIID and/or any of its components without authorization. Note: Disconnecting the handset once the vehicle is turned off is permissible unless the vehicle was turned off during a random retest.
- (34) Technician - a person affiliated with a service center and engaged in the installation, inspection, maintenance, and removal of BAIIDs in Tennessee.
- (35) Technician's Certificate of Training - a certificate issued to the technician by the manufacturer certifying that the technician has been properly trained in the installation, inspection, maintenance, and removal of BAIIDs in Tennessee.
- (36) Technician Training - type(s) of training provided to the technician by the manufacturer including hands-on training, paper materials, and training videos.
- (37) Temporary Lockout Code - a temporary code issued by the manufacturer to a participant whose BAIID is in lockout mode.
- (38) Violation - non-compliance with a law, regulation, or rule.

Authority: T.C.A. §§ 4-3-2009 and 55-10-412, 55-10-417, and 55-10-425. Administrative History: Original rule filed December 17, 2012; effective May 31, 2013.

1340-03-06-.03 MANUFACTURER APPLICATION PROCEDURES.

- (1) ~~Any individual or business shall apply to be an approved and certified Ignition Interlock Device Installer~~manufacturer using forms supplied by the Department Ignition Interlock Program.
  - (a) ~~The application~~Manufacturer Application (SF-1573) shall be completed in full and shall include the following:
    1. ~~Name and physical address of individual or business applying to be an Approved Ignition Interlock Device Installer;~~
    2. ~~The physical addresses of planned installation locations in Tennessee;~~
    3. ~~A list of the names of the persons who will be installing, servicing or removing the ignition interlock devices;~~
    4. ~~Three (3) or more business references;~~
    5. ~~Information pertaining to the business' or individual's experience in providing the services of installing, servicing and removing ignition interlock devices in other jurisdictions.~~
    6. ~~A statewide criminal history background check performed through the Tennessee~~

Bureau of Investigation (TBI);

~~7. A copy of the current fee schedule for installation, monitoring, servicing, leasing, maintaining, and removal of devices; and~~

~~8. The name and address of the Ignition Interlock Device Provider that the applicant intends to be affiliated with (installing that provider's device).~~

1. A list of all states for which you are currently an approved BAIID manufacturer.

2. A list of all states where the BAIID manufacturer is currently or has previously been suspended or revoked within the last ten (10) years.

3. A statewide criminal history background check performed through the Tennessee Bureau of Investigation (TBI) or a background check from the state through which the driver license is issued. If the manufacturer is not an individual but a business entity, the background check should be completed on the Manufacturer Representative.

4. Verification that the manufacturer is not an employee of the Department.

5. Verification that the BAIID meets or exceeds the most recent model specifications established by the National Highway Traffic Safety Administration (NHTSA).

6. A Quality Assurance Plan (QAP) that includes the operating instructions for the BAIID and step-by-step instructions of the process for checking the accuracy of the calibration of the BAIID.

7. Verification of current financial responsibility as stated in Rule 1340-03-06-.16.

8. Verification that the manufacturer has the ability to submit automated reports via a web service program into A-List.

9. A copy of the materials used to train the participant on the proper use of the BAIID.

10. The physical addresses of planned installation locations in Tennessee. A certified manufacturer will have ninety (90) days to establish their service center locations within the geographical boundaries of Tennessee or the manufacturer will be removed from the certified manufacturer list and must reapply. At a minimum, each approved manufacturer must open and maintain one (1) service center in each of the eight (8) Tennessee Highway Patrol districts.

11. A two hundred and fifty dollar (\$250.00) non-refundable application fee transferred by Automated Clearing House (ACH) to the Ignition Interlock Program.

(b) All applications will be submitted to the Ignition Interlock Program by the Manufacturer Representative.

~~(2) Upon receipt of the application, the Department will process the application and conduct an on-site inspection; and (3)(2) The applicant will be notified by U.S. mail or electronically of the approval or denial of the application. If the application is approved, the applicant shall receive the Ignition Interlock Installer; manufacturer will receive a Certificate which shall be valid for one (1) year. If the application is denied, the applicant will be informed of the reason for denial.~~

- ~~(4) An entity desiring to become an approved installer must apply separately for each Ignition Interlock Device Provider that they intend to be affiliated with, including submission of an application and all required information under (1)(a).~~
- ~~(3) In order to continue as an approved manufacturer, an application to renew must be submitted to the Ignition Interlock Program annually.~~
- ~~(a) The renewal application consists of all the required information under (1)(a) and must be submitted to the Ignition Interlock Program at least sixty (60) days prior to the expiration of its current certificate.~~
- ~~(b) At the time the application to renew is submitted, a one hundred dollar (\$100.00) non-refundable renewal fee shall be transferred by ACH to the Ignition Interlock Program.~~
- ~~(c) If the application to renew, including background checks and proof of financial responsibility, is not submitted at a minimum of sixty (60) days prior to the expiration of the current certificate, the non-refundable renewal fee will increase to two hundred and fifty dollars (\$250.00).~~
- ~~(d) If the appropriate renewal fee is not submitted, the application will be considered incomplete and will not be processed for renewal.~~
- ~~(4) The Ignition Interlock Program shall notify the manufacturer of its decision before the expiration date of the current certificate. If approved, the manufacturer shall receive a certificate valid for one (1) year. If the re-certification is denied, the Ignition Interlock Program will inform the manufacturer of the reason for denial. The manufacturer shall have ten (10) days from the date the notification is sent to correct any deficiencies and notify the Ignition Interlock Program in writing of such correction. The manufacturer may also request a hearing pursuant to Rule 1340-03-06-.20.~~

Authority: T.C.A. §§ 4-3-2009 and 55-10-412, 55-10-417, and 55-10-425. Administrative History: Original rule filed December 17, 2012; effective May 31, 2013.

1340-03-06-.04 SERVICE CENTER APPLICATION PROCEDURES.

- ~~(1) Any individual or business shall apply to be a certified service center using forms supplied by the Ignition Interlock Program.~~
- ~~(a) The Service Center Application (SF-1377) shall be completed in full and shall include the following:~~
- ~~1. Name and physical address of individual or business applying to be a service center.~~
  - ~~2. A list of the names and a Technician Application (SF-1378) for each of the persons who will be installing, calibrating, servicing, or removing the BAIID.~~
  - ~~3. The individual's or business's experience in installing, servicing, and removing BAIIDs in other jurisdictions.~~
  - ~~4. A statewide criminal history background check of the owner and all technicians performed through the Tennessee Bureau of Investigation (TBI) or a background check from the state through which the driver license is issued.~~
  - ~~5. Verification that the service center owner and technicians are not employees of the Department.~~
  - ~~6. Verification of current financial responsibility as stated in Rule 1340-03-06-.16.~~
  - ~~7. A copy of the technicians' certificates of training issued by the manufacturer.~~

8. The name of the manufacturer that the applicant is affiliated with.
  9. An Ignition Interlock Service Center Inspection Checklist (SF-1535).
  10. A two hundred and fifty dollar (\$250.00) non-refundable application fee per service center transferred by ACH to the Ignition Interlock Program.
- (b) All applications will be submitted to the Ignition Interlock Program by the affiliated Manufacturer Representative.
- (2) Upon receipt of the application and fee, the Ignition Interlock Program will process the application and conduct an on-site inspection of the service center.
  - (3) The applicant will be notified by U.S. mail or electronically of the approval or denial of the application. If the application is approved, the manufacturer and service center will receive a certificate which shall be valid for one (1) year. If the application is denied, the applicant's affiliated manufacturer will be informed of the reason for denial.
  - (4) An entity desiring to become a service center must apply separately through each manufacturer that it intends to be affiliated with, including submission of an application, application fee, and all required information under (1)(a).
  - (5) In order for a service center to maintain its certification, every year its affiliated manufacturer(s) shall submit an application to renew to the Ignition Interlock Program.
    - (a) The renewal consists of all the required information under (1)(a) for each service center and must be submitted to the Ignition Interlock Program at least sixty (60) days prior to the expiration of its current certificate.
    - (b) At the time the application to renew is submitted a one hundred dollar (\$100.00) non-refundable renewal fee for all service centers will be transferred by ACH to the Ignition Interlock Program.
    - (c) If the application to renew, including background checks, proof of financial responsibility, and the facility checklist, is not submitted at least sixty (60) days prior to the expiration of the current certificate, the non-refundable renewal fee will be increased to two hundred and fifty dollars (\$250.00) and the renewal inspection may be delayed.
    - (d) If the appropriate renewal fee is not submitted, the application will be considered incomplete and will not be processed for a renewal.
  - (6) If the application to renew and all other required documents are received at least sixty (60) days prior to the expiration of the current certificate, the Ignition Interlock Program will notify the service center and its manufacturer of its decision before the expiration date of the current certificate. If approved, the manufacturer and the service center shall receive a certificate valid for one (1) year. This certificate shall be posted in a conspicuous place at the service center's office where it is clearly visible to the program participants. If the re-certification is denied, the Ignition Interlock Program will inform the manufacturer of the reason for denial. The manufacturer shall have ten (10) days from the date the notification is sent to correct any deficiencies and notify the Ignition Interlock Program in writing of such correction. The manufacturer may also request a hearing pursuant to Rule 1340-03-06-.20.

Authority: T.C.A. §§ 4-3-2009, 55-10-417, and 55-10-425.

#### 1340-03-06-.0405 GENERAL REQUIREMENTS.

- (1) The rules, regulations, and requirements established herein are minimums and may be exceeded by the Approved Ignition Interlock Device Installer and Provider service center or manufacturer. The Ignition

Interlock Program reserves the right to implement new procedures and requirements not found in these rules on an interim basis until these rules are amended in order to comply with the requirements of any new legislation passed by the Tennessee General Assembly. Certified manufacturers and service centers will be notified of the new procedures or requirements in writing prior to the enactment of said procedure or requirement. Service centers and manufacturers may not waive any requirement of these rules or pass any requirement imposed on the service center or manufacturers to a program participant through contract or other means.

- ~~(2)~~ The Approved Ignition Interlock Device Installer and Provider~~service center and manufacturer shall comply with all applicable state laws, administrative rules, and regulations that the Department may promulgate concerning the Ignition Interlock Program.~~
- ~~(3)~~ An Approved Ignition Interlock Device Installer and Provider shall have the ability to carry out the requirements as stated in this rule.
- ~~(3)~~ The manufacturer shall have the ability to accurately submit automated reports via a web service program into A-List. Upon request of the Ignition Interlock Program, incomplete or missing reports must be resubmitted into A-List within forty-eight business (48) hours.
- ~~(4)~~ An Approved Ignition Interlock Device Installer~~A service center shall provide and maintain a service center~~their business within the geographical boundaries of Tennessee, which is easily accessible and open during normal business hours. The location will be easily accessible and open during normal business hours. The service center's hours of operation and the manufacturer's twenty-four (24) hour emergency phone number shall be posted in a conspicuous place at the service center's office where it is clearly visible to the program participants. If at any time the service center changes hours of service, the Ignition Interlock Program shall be immediately notified.
- ~~(5)~~ Approved manufacturers must open and maintain service centers at a distance no greater than one hundred (100) miles from each other. If an existing service center closes, the manufacturer shall have thirty (30) days to submit an application for a replacement service center within that immediate geographic area.
- ~~(5)(6)~~ An Approved Ignition Interlock Device Installer~~A service center shall comply with all minimum requirements for installation and any other Tennessee state and federal laws applicable to ignition interlock devices or providers~~BAIIDs and manufacturers.
- ~~(6)~~ In order to continue as an Approved Ignition Interlock Device Installer, the Ignition Interlock Device Provider shall submit to the Department an application to renew the installer's certification and criminal history background checks on all installers sixty (60) days before the expiration of its certificate. The Department shall notify the Ignition Interlock Device Installer and Provider of its decision before the expiration date of the current certificate. If reapproved, the Approved Ignition Interlock Installer and Provider shall receive a certificate valid for one (1) year. If re-certification is denied, the Department will make a written finding of the reason for denial. The Ignition Interlock Provider shall have ten (10) days from the date of notification to correct any deficiencies and notify the Department in writing of such correction. The Ignition Interlock Provider may also request a hearing pursuant to Rule 1340-03-06-.18.
- ~~(7)~~ All BAIIDs that are required by Tennessee courts or the Department shall have all calibrations, data downloads, and servicing completed at a certified service center's fixed facility within Tennessee unless otherwise authorized by the Ignition Interlock Program.
- ~~(8)~~ All BAIIDs that are required by Tennessee courts or the Department shall only be installed and removed at a certified service center's fixed facility within Tennessee unless otherwise authorized by the Ignition Interlock Program.

(9) A manufacturer may request approval to recover a BAIID after ninety (90) consecutive delinquent days. The manufacturer may only remove the delinquent BAIID at an off-site location upon approval by the Ignition Interlock Program. The manufacturer and service center will hold the Department and the State of Tennessee harmless from any liability resulting from the recovery of a BAIID pursuant to this subsection. The option to recover a BAIID for delinquency must have been included in the contract signed by the program participant in order to be approved by the Ignition Interlock Program.

Authority: T.C.A. §§ 4-3-2009 and ~~55-10-412~~, 55-10-417, and 55-10-425. Administrative History: Original rule filed December 17, 2012; effective May 31, 2013.

~~1340-03-06-.056~~ APPROVED IGNITION INTERLOCK DEVICE BAIID REQUIREMENTS.

- (1) ~~Only ignition interlock devices~~BAIIDs that are alcohol specific fuel cell devices may be used. These must be capable of recording, through a reliable electronic information system, all reports required in these rules. It is mandatory that all ~~devices~~BAIIDs meet or exceed the ~~manufacturing standards~~most recent model specifications established by the National Highway Traffic Safety Administration (NHTSA) in the Federal Register/Vol. 57, No. 67/ Tuesday, April 7, 1992. Adherence to these standards must be verified by a laboratory which subscribes to the quality code of the International Standards Organization of the American National Standards Institute — or another commensurate laboratory approved by the Department Ignition Interlock Program.
- (2) All BAIIDs installed must include a camera component to comply with T.C.A. §§ 55-10-417 and 55-10-425. All BAIID cameras that are not integrated into the handset shall be mounted on the passenger side of the vehicle cabin facing toward the driver.
- (3) A photo should be captured when:
- (a) An initial test is requested;
  - (b) A random retest is requested; or
  - (c) Any time a breath sample is provided.
- (4) When a photo is captured, it must be geotagged using GPS technology.
- (5) All BAIIDs installed on a participant's vehicle, beginning six (6) months after the effective date of these rules, must be equipped with and utilize Real Time Reporting and GPS technology.
- (6) A breath alcohol content (BAC) of .020 or greater shall prevent the vehicle from starting and constitutes a failure for retests.
- (7) The BAIID must allow the participant to provide a minimum of three (3) retests within ten (10) minutes of any failed initial test or random retest.
- (8) The first random retest should occur five (5) to fifteen (15) minutes after initial start-up and subsequent tests should occur fifteen (15) to forty-five (45) minutes from the conclusion of the previous retest.
- ~~(3)~~(9) All installed devices must cause the vehicle's horn to blow and the hazard lights to flash upon a violation of a random retest and stop only upon the ignition being turned off or a passed retest.
- ~~(4)~~(10) A violation will be recorded for any of the following reasons:
- (a) The engine is started without passing a breath test or while in a lockout state;
  - (b) The user fails or refuses to take a random retest;
  - (c) The user delivers a breath sample above the violation level of .020; or

- (d) The user tampers with or attempts to circumvent the device.
- ~~(5)~~(11) Once five (5) violations have occurred, the user must return for service within seventy-two (72) hours or the device will lockout and prevent the vehicle from starting. This shall not apply to BAIDs equipped with real time reporting technology.
- (12) The service center or manufacturer is authorized to issue a temporary lockout code to a participant whose device is in a permanent lockout mode. The temporary lockout code will allow the vehicle to be started one (1) time, provided a proper breath test is submitted and passed, and should be valid for a period of time not to exceed two (2) hours. The temporary lockout code shall only be issued one (1) time in a thirty (30) day period for the purpose of allowing a participant to drive their vehicle to a service center for service.
- (13) The BAID manufacturer must notify the Ignition Interlock Program before any software changes are made to the BAID.
- (14) All breath reductions of the BAID shall be approved by the Ignition Interlock Program. The required breath volume shall be set at 1.5 liters unless granted a medical exemption. If a reduction is approved the required breath volume shall not be set at less than 1.2 liters. The process for requesting a medical exemption breath reduction is as follows:
  - (a) The client must obtain a plain-language statement from their primary care physician or pulmonary specialist that details why they are unable to utilize the BAID.
  - (b) The participant shall request permission from the Ignition Interlock Program to lower the required breath volume on the BAID by sending the physician's statement to the Ignition Interlock Program at 1150 Foster Avenue, Nashville, TN 37210, by U.S. mail or electronically to [safety.interlock@tn.gov](mailto:safety.interlock@tn.gov).
  - (c) The Ignition Interlock Program will review the documentation and forward approvals to the manufacturer.
  - (d) The manufacturer will advise the service center how to calibrate the BAID.

Authority: T.C.A. §§ 4-3-2009~~and 55-10-412, 55-10-417, and 55-10-425.~~ Administrative History: Original rule filed December 17, 2012; effective May 31, 2013.

1340-03-06-.067 IGNITION INTERLOCK INSTALLER OWNER/PERSONNEL SERVICE CENTER-OWNER/TECHNICIAN REQUIREMENTS.

- (1) Service center owner(s) of an Approved Ignition Interlock Device Installer business shall not be an employee of the Department; shall not have been convicted of a felony or any crime involving violence, dishonesty, deceit, fraud, or indecency within ten (10) years prior to the date of the application or any conviction of vehicular homicide or vehicular assault regardless of the date of conviction; shall have and maintain a valid driver license; and shall comply with all administrative rules and regulations that the Department may promulgate concerning the Ignition Interlock Program.
- (2) Personnel Technician(s) who works for of an Approved Ignition Interlock Device Installer business a service center shall not be an employee of the Department, shall not have been convicted of a felony or any crime involving violence, dishonesty, deceit, fraud, or indecency within ten (10) years of the date of the application or of vehicular homicide or vehicular assault regardless of the date of conviction; shall have and maintain a valid driver license; and shall comply with all administrative rules and regulations that the Department may promulgate concerning the Ignition Interlock Program. The applicant must technician shall not have been convicted of the offense of driving under the influence of an intoxicant in this or any other state two (2) or more times within ten (10) years from the date of the application, and that none of

~~such where none of these convictions must have occurred within five (5) years from the date of application or renewal. At no time may a technician who is required to operate a vehicle equipped with a BAIID utilize a device that the technician is certified to service.~~

- (3) ~~Falsification on any application shall be sufficient grounds for denial of the application and suspension of all Ignition Interlock Device Installer certificates issued to the same Ignition Interlock Device Installer company.~~
- (4) ~~The manufacturer shall train all technicians in a timely manner to ensure the proper installation, servicing, and removal of the device prior to the inspection of the facility. The training of the technician shall include hands-on training by a representative of the manufacturer. Once the technicians are properly trained the manufacturer shall submit a Technician's Application and a certificate of training to the Ignition Interlock Program by U.S. mail or electronically. The certified technician shall only install and service the approved BAIID at fixed facilities that have been inspected and approved by the Ignition Interlock Program.~~

Authority: T.C.A. §§ 4-3-2009, and ~~55-10-412~~ 55-10-417, and 55-10-425. Administrative History: Original rule filed December 17, 2012; effective May 31, 2013.

#### 1340-03-06-.078 ~~IGNITION INTERLOCK~~BAIID INSTALLATION REQUIREMENTS.

- (1) ~~An ignition interlock device~~A BAIID shall be installed, serviced, and removed in all makes and models of motor vehicles only by ~~personnel~~technicians who have been certified by the manufacturer of the ignition interlock deviceBAIID in the installation, servicing, and removal of such device. The certified personnel shall only install, service or remove the approved ignition interlock devices at fixed facilities that have been inspected and approved by the Department. (2) Under no circumstances will the Ignition Interlock:
- (2) Under no circumstances will the Ignition Interlock Program Pparticipant be allowed to watch the installation or removal of the ignition interlock deviceBAIID. Adequate security measures shall be taken to ensure that areas where installations of ignition interlock devicesoccur the installations and removals of BAIIDs shall not be visible to participants. Participants shall be confined to enclosed areas within the facility.
- (3) A reference and problem-solving guide developed by the Approved Ignition Interlock Device Providermanufacturer shall be given to the Ignition Interlock Pprogram Pparticipant at the time of the installation. This guide shall include information on the correct operation of the ignition interlock deviceBAIID, location of service centersa twenty-four (24) hour customer service phone number, service and procedures, emergency procedures, and how the ignition interlock deviceBAIID detects non-compliance with the Ignition Interlock Program Participant's court order and device requirements.
- (4) Adequate security measures shall be taken to ensure that unauthorized personnel cannot gain access to materials such as tamper proof seals, installation instructions, and files of other Ignition InterlockBAIID Pprogram Pparticipants.
- (5) ~~The Approved Ignition Interlock Device Installer shall follow all written instructions from the manufacturer of the ignition interlock device for device installation and removal.~~
- (5) ~~The service center is required to inspect all vehicles prior to installation and to determine whether the vehicle is in acceptable mechanical and electrical condition. For reasons of safety, a BAIID will not be installed unless the vehicle is capable of supporting such installation. The service center and the manufacturer shall maintain a log of such inspections.~~
- (6) ~~The Approved Ignition Interlock Device Installer will furnish hours of operation and a twentyfour (24) hour phone number to all Ignition Interlock Program Participants for use in the event of emergencies with the ignition interlock device.~~

- ~~(5)~~(6) The Approved Ignition Interlock Device Installer service center shall follow all written instructions from the manufacturer of the ignition interlock device for device for the BAIID installation and removal. Installations shall be executed according to accepted trade standards and the manufacturer's instructions.
- ~~(7)~~ The Approved Ignition Interlock Device Installer is required to inspect all vehicles prior to installation and determine if the vehicle is in acceptable mechanical and electrical condition. For reasons of safety, no ignition interlock device will be installed until and unless the vehicle is capable of supporting such installation. The Approved Interlock Ignition Device Installer and Provider shall maintain a log of such inspections and use the vehicle's inspection in the removal process.
- ~~(7)~~ Tamper proof seals should be on every connection and must be proprietary to the manufacturer. A visual inspection should be done during each service visit to affirm that the seals are intact.
- ~~(8)~~ Removal of the ignition interlock devicesBAIID shall be carried out so that the ignition may be operated; reasonable wear and tear excepted, in the same manner as before installation of the ignition interlock devicein the same manner as before installation of the BAIID. All severed wires will be permanently soldered and insulated with heat-shrink wrap or its equivalent. Reasonable wear and tear is expected.

Authority: T.C.A. §§ ~~4-3-2009 and 55-10-412, 55-10-417, and 55-10-425.~~ Administrative History: Original rule filed December 17, 2012; effective May 31, 2013.

1340-03-06-.089 ORIENTATION OF PROGRAM PARTICIPANT.

- ~~(1)~~ The Approved Ignition Interlock Device Installer service center shall conduct an orientation on the correct use of the ignition interlock deviceBAIID for the Interlock Pprogram Pparticipant and for any family member or friend who may drive the vehicle. Interlock Program participants will be informed of the need to ensure that all vehicle users are adequately trained, which may require a subsequent visit.
  - ~~(a)~~ The service center shall advise the BAIID participant that residual mouth alcohol is the responsibility of the offender to prevent and avoid.
  - ~~(b)~~ The service center shall advise the BAIID participant that all breath tests must be performed within view of the camera.
- ~~(2)~~ During orientation, the service center shall make the participant aware of the compliance-based removal requirements of T.C.A. § 55-10-425, as well as the Ignition Interlock Program website <https://www.tn.gov/safety/ignitioninterlock>, where the participant may read the entire compliance-based removal law. The summary of this law provided by the Ignition Interlock Program shall be posted in a conspicuous place at the service center's office.

Authority: T.C.A. §§ ~~4-3-2009 and 55-10-412~~55-10-417, and 55-10-425. Administrative History: Original rule filed December 17, 2012; effective May 31, 2013.

1340-03-06-.0910 PROOF OF INSTALLATION OF IGNITION INTERLOCK DEVICESA BAIID

- ~~(1)~~ Within two (2) working days of installing the ignition interlock device, a BAIID, the Ignition Interlock Device Providermanufacturer shall complete the appropriate form as designated by the Department, and submit it to the Department as proof of installation by mail, electronic transmission or facsimileenter the installation in A-List. This notice shall include:
  - ~~(a)~~ Name, address and telephone(as it appears on the participant's driver license), date of birth, and driver license number of the Ignition Interlock Program participant;
  - ~~(b)~~ OwnerVehicle make, model and year, Vehicle Identification Number (VIN), and license plate number of the vehicle to which the interlock ignition device is installedin which the BAIID is installed;

- ~~(c) Serial number of the ignition interlock device installed; and~~
- ~~(d) Length of ignition interlock device term, date of monitoring checks, and payment schedule.~~
- (c) BAIID model number and BAIID serial numbers of the handset, camera, and relay; and
- (d) Next calibration and monitoring check date of the BAIID.
- ~~(2) When an Ignition Interlock Program Participant arrives at the installation location after having been ordered to install an ignition interlock device on their vehicle, the installer or provider shall inspect the restricted license order and ascertain the reason that the device is required. This information MUST be included on the installation report that is sent to the Department.~~
- ~~(3) If the restricted license order does not contain this information, the customer shall be refused service by the installer and told to return to the court of jurisdiction to have the form completed properly. This shall ensure that the data can be properly acquired.~~
- (2) If the participant is on supervised probation, the manufacturer will notify Probation of the installation of the BAIID by U.S. mail or electronically.

Authority: T.C.A. §§ 4-3-2009 and ~~55-10-412, 55-10-417, and 55-10-425~~. Administrative History: Original rule filed December 17, 2012; effective May 31, 2013.

**1340-03-06-.~~1011~~ MONITORING REQUIREMENTS.**

- ~~(1) Servicing, inspection, and monitoring of each ignition interlock device shall occur thirty (30) days after the initial installation and at least every thirty (30) days thereafter. The Ignition Interlock Provider shall maintain records on every Ignition Interlock Program Participant, including the results of every monitoring check. Violations or evidence of non-compliance and the reasons for such will be reported to the Department by mail, electronic transmission or facsimile within forty-eight (48) hours of detection.~~
- (1) At the time of servicing or calibration of the BAIID, the technician is required to conduct an inspection to determine if there is evidence of tampering or circumventing the device. The technician should also confirm that the tamper proof seals are intact. A technician shall not conduct a calibration or service any BAIID unless the vehicle is present at the approved facility and is in mechanically operable condition. Participants shall not be allowed to remove or install any component of the BAIID during the time of servicing or calibration.
- (2) Within two (2) working days of performing any removal of a device, whether the removal was authorized or unauthorized, Ignition Interlock Device Provider shall send to the Department by mail, electronic transmission or facsimile, the following: the manufacturer shall report the removal in A-List and, if applicable, to Probation.
  - ~~(a) Name of Ignition Interlock Program Participant whose device was monitored;~~
  - ~~(b) Number of miles driven during the monitoring period;~~
  - ~~(c) Charges for monitoring visit;~~
  - ~~(d) Date of next scheduled monitoring visit;~~
  - ~~(e) Any type of repair work performed on the ignition interlock device and probable cause for its need; and~~
  - ~~(f) Any areas of discussion with the Ignition Interlock Program Participant concerning problems or questions with the device or the status of the Participant.~~

- (3) Service, inspecting, and monitoring of each BAIID and all of its components shall occur thirty (30) days after the initial installation and at least every thirty (30) days thereafter. The thirty (30) day BAIID calibration schedule is calculated to begin with the date of the previous calibration service. The technician shall only service, calibrate, or remove the BAIID at a service center location within the geographical boundaries of Tennessee or at a location that has been approved by the Ignition Interlock Program.
- (4) The manufacturer shall maintain records on every program participant, including the results of every monitoring check. Violations or evidence of non-compliance, and the reasons for such, will be submitted to A-List within forty-eight (48) hours of detection.
- ~~(3)~~(5) Within two (2) working days of performing a monitoring check, the Ignition Interlock Device Provider shall report to the Department by mail, electronic transmission or facsimile any evidence of manufacturer shall send the following information by electronic transmission to A-List and, if applicable, to Probation:
- ~~(a)~~ Altering, tampering with, bypassing, or removal of the ignition interlock device;
  - ~~(b)~~ Failure to abide by the terms and conditions of the court order or lease agreement, including failure to appear for a monitoring visit;
  - ~~(c)~~ Lockouts or violations and reasons for such;
  - ~~(d)~~ Indications of non-compliance, such as failure to take a random or time test; and/or
  - ~~(e)~~ Data indicating that the Ignition Interlock Program Participant has attempted to start the vehicle while under the influence of alcohol.
    - ~~(a)~~ BrAC above 0.020%;
    - ~~(b)~~ Evidence of tampering or circumventing the device;
    - ~~(c)~~ Failing to take or skipping a random retest if the driver is in the vehicle;
    - ~~(d)~~ Failing a random retest;
    - ~~(e)~~ Removing or causing the removal of the BAIID at any time during the three hundred sixty-five (365) day consecutive day period;
    - ~~(f)~~ Failing to appear at the BAIID service center when required for calibration, monitoring, or inspection of the device;
    - ~~(g)~~ Name and driver license number of the participant;
    - ~~(h)~~ Date of next scheduled monitoring check; and
    - ~~(i)~~ Odometer reading at the end of each monitoring period.
- ~~(6)~~ If the use of a BAIID is a bond condition or a requirement of supervised probation, under no circumstance shall a BAIID be removed without authorization from the court or Probation. This only applies to participants not required to have a BAIID under T.C.A. § 55-10-425 or by the Department.

Authority: T.C.A. §§ ~~4-3-2009 and 55-10-412, 55-10-417, and 55-10-425~~. Administrative History: Original rule filed December 17, 2012; effective May 31, 2013.

1340-03-06-.1112 REPAIR OR REPLACEMENT OF IGNITION INTERLOCK DEVICE REPAIR, REPLACEMENT, OR VEHICLE TRANSFER OF A BAIID.

- (1) ~~The Approved Ignition Interlock Installer or Provider~~service center or manufacturer shall respond to all service inquiries by phone within one (1) hour of initial contact during normal business hours. Repair or replacement of an ~~ignition interlock device~~any BAIID shall be conducted within forty-eight (48) hours of initial contact. The ~~Approved Ignition Interlock Device Provider~~manufacturer shall notify the ~~Department~~Ignition Interlock Program of any changes in the ~~ignition interlock device (i.e., Serial #, Type, etc.)~~ by ~~facsimile or electronic transmission~~BAIID by submitting a transfer report into A-List within forty-eight (48) hours of the changes. The transfer report must include the vehicle year, make, model, VIN, license plate number, and odometer reading, as well as the BAIID's model number; serial numbers of the handset, relay, and camera; and the next calibration date.
- (2) ~~The Approved Ignition Interlock Device Installer or Provider~~service center shall be available to answer questions and to troubleshoot any mechanical problems relating to the ~~ignition interlock device~~BAIID in the vehicle, or to repair/replace an inoperable or malfunctioning BAIID during normal business hours.

Authority: T.C.A. §§ ~~4-3-2009 and 55-10-412, 55-10-417, and 55-10-425~~. Administrative History: Original rule filed December 17, 2012; effective May 31, 2013.

1340-03-06-.1213 PROGRAM STATUS/COMPLIANCE-BASED REMOVAL / NON-COMPLIANCE REPORT.

~~(1) At the half-way point at which the ignition interlock device is installed in the Ignition Interlock Program Participant's vehicle, the Ignition Interlock Device Provider shall submit a status report to the Department's Research, Planning, and Development Section by mail, electronic transmission or facsimile, which summarizes all problems related to the monitoring and servicing of the ignition interlock device, as well as any written complaints received concerning the ignition interlock device or the Ignition Interlock Device Provider. The reports shall include the following categories:~~

- ~~(a) Ignition Interlock Program Participant error in operation and reasons for such;~~
- ~~(b) Faulty automotive equipment;~~
- ~~(c) Apparent misuse or attempts to circumvent the ignition interlock device, which did or did not cause damage, and the reasons for such; and~~
- ~~(d) Ignition interlock device failure due to material defect, design defect, and/or workmanship errors in construction, installation, or calibration.~~

(1) Program Compliance Criteria:

- (a) A participant who is required to install and use a functioning BAIID shall be required to maintain the BAIID in working order for a three hundred and sixty-five (365) consecutive day period or for the entire period of the driver license revocation period, whichever is longer. The BAIID cannot be lawfully removed from the vehicle during the required period, except for necessary maintenance, replacement, or repair as determined by the Ignition Interlock Program. If the participant fails to comply with the requirements of T.C.A. § 55-10-425, the entire required period will restart on the date the BAIID is reinstalled and properly functioning.
- (b) If a participant fails to appear at the service center when required for the monthly calibration, monitoring, and inspection of the device, the entire required period will restart.
- (c) During the final one hundred and twenty (120) day period for which the BAIID is required, the participant shall not:
  - 1. Attempt to start or operate the vehicle with a BrAC in excess of 0.02% (The participant shall not be in violation if a subsequent retest within ten (10) minutes shows a BrAC of two hundredths of one percent (0.02%) or less and review of the digital images associated with each test confirms that the same participant performed both tests);

2. Tamper with or circumvent the BAIID;
3. Fail to take or skip a random retest;
4. Fail a random retest with a BrAC in excess of 0.02%;
5. Remove or cause the BAIID to be removed at any time during the three hundred sixty-five (365) consecutive day period; or
6. Fail to appear at the service center when required for a monthly calibration, monitoring, and inspection of the device.

(2) Successful Certificate of Compliance:

Upon completion of the period for which the participant is required to use a BAIID, the participant shall request that the manufacturer certify that the participant has complied with the conditions for the required period. The manufacturer shall determine whether the participant has complied with the conditions for the required period and either issue a certificate of compliance for the participant or notify the participant of non-compliance and the resulting extension of the BAIID requirement. If the manufacturer determines that the participant has complied with the conditions for the required period it shall upload the certificate of compliance into A-List within three (3) business days from the date of the participant's last calibration appointment.

(3) Program Non-Compliance:

(a) If the manufacturer notifies the participant that its records indicate the participant has not complied with the conditions of the BAIID during the required period, the participant may either accept the extension of the BAIID requirement or request that the manufacturer reconsider the finding of non-compliance, based on evidence of compliance provided by the participant. If the manufacturer confirms the finding of non-compliance, the participant may either accept the extension of the BAIID requirement or request an administrative compliance review by the Ignition Interlock Program.

(b) A participant may request, in writing, an administrative compliance review by the Ignition Interlock Program, and the participant shall include in the request any evidence of compliance. This request for review must be made within thirty (30) days from the date of notification by the manufacturer of the extension. The Ignition Interlock Program shall review any evidence provided by the participant and the records provided by the manufacturer within thirty (30) days of receiving the request and shall notify the participant and the manufacturer of the Ignition Interlock Program's determination by mail. If the Ignition Interlock Program determines that the participant has complied for the required period, the manufacturer shall issue a certificate of compliance to the participant. If the Ignition Interlock Program determines that the participant has not complied for the required period, the participant may seek judicial review of the Ignition Interlock Program's administrative compliance review determination as provided by T.C.A. § 4-5-322.

(4) Compliance-Based Removals:

(a) Prior to lawfully removing the BAIID of a compliance-based program participant, the manufacturer must first receive written authorization from the Ignition Interlock Program. Once the manufacturer receives written authorization from the Ignition Interlock Program for removal of the BAIID, the manufacturer must contact their appropriate service center to authorize the removal of the BAIID from the program participant's vehicle. The manufacturer may in good faith rely on a participant's Remove Interlock Restriction Letter issued by the Department.

- (b) A participant is required to only operate a vehicle that is equipped with a BAIID until they obtain a valid driver license without the ignition interlock restriction (code 16).

Authority: T.C.A. §§ ~~4-3-2009 and 55-10-412~~, 55-10-417, and 55-10-425. Administrative History: Original rule filed December 17, 2012; effective May 31, 2013.

1340-03-06-.14 TOLL OF THE REQUIRED CONSECUTIVE DAY PERIOD.

- (1) A participant whose vehicle is inoperable due to damage from an accident or other uncontrollable circumstance where the participant's intoxication was not a proximate cause; or due to repairs based on normal wear and tear of a vehicle, or due to a recall, may request the Ignition Interlock Program toll the required consecutive day period, beginning on the date of the incident that led to the vehicle being inoperable. The participant must submit proof to the manufacturer that the vehicle was involved in a traffic crash, is being repaired, or was rendered inoperable due to some other circumstance beyond the participant's control.
- (2) If the vehicle was in an accident and a law enforcement agency issued a crash report, the crash report must be submitted. Other proof may consist of, but is not limited to:
- (a) A written statement from the insurance company regarding repairs;
- (b) A written statement from a repair shop showing the damage being repaired and the estimated time of completion for repairs; or
- (c) Other documentation acceptable to the Ignition Interlock Program.
- (3) The manufacturer shall forward the request and documentation to the Ignition Interlock Program within five (5) business days of receipt.
- (4) The Ignition Interlock Program shall notify the participant and the manufacturer by U.S. mail or electronically, if the tolling period has been granted or denied, and, if denied, the reason for the denial.
- (5) At the end of any thirty-day toll period, if no new request has been submitted and granted, then the required consecutive day period shall resume with the participant being required to maintain a BAIID for the period of time that was remaining on the day the tolling period began.

Authority: T.C.A. §§ 4-3-2009, 55-10-417, and 55-10-425.

1340-03-06-.1315 FEES.

- (1) Whenever a participant ordered to install a BAIID pursuant to T.C.A. § 55-10-409 or § 55-10-417 asserts to the court that the participant is indigent and financially unable to pay for a BAIID, the court shall conduct a full and complete hearing as to the financial ability of the participant to pay for such device and, thereafter, make a finding as to the indigency of such participant. Any participant who has been declared indigent by the court pursuant to T.C.A. § 55-10-419(d), upon providing a copy of the Proof of Indigency Form signed by the judge, shall not be refused service by a manufacturer as long as funds are available in the Electronic Monitoring Indigency Fund (EMIF). The manufacturer shall submit the required documentation to the State Treasury Department to recover the costs associated with the lease, purchase, installation, removal, and maintenance of BAIIDs or with any other cost or fee associated with a BAIID required by this part.
- ~~(1)~~(2) The fees for leasing, buying, monitoring, servicing, installing, and removing the ignition interlock deviceBAIID shall be at a reasonable rate set by the manufacturer.
- ~~(2)~~(3) The fee for installation of ignition interlock devices shall not exceed \$150.00a BAIID shall not exceed an hourly rate of seventy-five dollars (\$75.00) per hour with a three (3) hour maximum.

- ~~(3)~~(4) Approved Ignition Interlock Installers/Manufacturers shall charge reasonable and customary fees, not to exceed a total of \$100one hundred and twenty-five dollars (\$125.00) per month for leasing, monitoring, and maintenance of devicesBAIIDs. If a participant is extended in the program due to non-compliance, the fee for the leasing, monitoring, and maintenance of the BAIID will not exceed five dollars (\$5.00) per day or one hundred and twenty-five dollars (\$125.00) per month during the extension, whichever is less.
- (4)(5) Approved Ignition Interlock Installers/Manufacturers shall charge reasonable and customary fees, not to exceed a total of seventy-five dollars (\$75.00), for the removal of the devicesBAIID.
- (6) Manufacturers shall charge reasonable and customary fees, not to exceed a total of fifty dollars (\$50.00), for resetting a BAIID that is in permanent lockout mode due to five (5) or more violations.
- (7) Manufacturers may charge reasonable and customary fees, not to exceed a total of twenty-five dollars (\$25.00), for a temporary lockout code.
- (8) A manufacturer shall charge an annual administrative fee of twelve dollars and fifty cents (\$12.50) to each new BAIID user. This fee will be collected from each participant at the time of the installation of the BAIID and again annually for the duration of the required period. By the fifth (5<sup>th</sup>) day of each month, the manufacturer shall send the Ignition Interlock Program the proceeds from this fee by an ACH transfer and a report of the participants' names, driver license numbers.
- ~~(5)~~(9) The ~~(above)~~ fee rates shall be posted in a conspicuous place at the Approved Ignition Interlock Installer'sservice center's office. The Approved Installer shall file a copy of the installation company's current fee schedule with the Department.
- (10) All manufacturers will pay a BAIID certification fee of five dollars (\$5.00) per BAIID per month by ACH transfer to the Ignition Interlock Program by the tenth (10<sup>th</sup>) day of each month. The manufacturer will submit a monthly report listing the name, date of birth, and BAIID installation date of all current participants as well as the total BAIID certification fees submitted for the month.

Authority: T.C.A. §§ 4-3-2009, 55-10-412 and, 55-10-417, 55-10-418, 55-10-423, and 55-10-425. Administrative History: Original rule filed December 17, 2012; effective May 31, 2013.

#### 1340-03-06-.4416 FINANCIAL RESPONSIBILITY REQUIREMENTS.

- (1) ~~The Approved Ignition Interlock Device Installer and Provider shall protect, save and hold harmless the State, all State Departments, Agencies, Boards and Commissions, as well as all Officials, Employees, Agents and Servants of the State of Tennessee (all in their official and individual capacities, both current and former), from any and all claims, demands, expenses, and liability arising out of an omission by the Approved Ignition Interlock Device Installer or Provider in the performance of its duties set forth in the law or these rules.~~
- (1) The manufacturer shall maintain comprehensive general liability insurance in the amount of at least one million dollars (\$1,000,000.00) per occurrence with a three million dollar (\$3,000,000.00) aggregate total liability that shall cover defects or problems with product design and materials; workmanship during manufacture; and BAIID calibration, installation, use, and removal. Th manufacturer shall provide the Ignition Interlock Program written notice forty-five (45) days prior to cancellation, material change, or lapse of the insurance policy.
- (2) The service center shall maintain comprehensive general liability insurance in the amount of at least one hundred thousand dollars (\$100,000.00) per occurrence with a three hundred thousand dollar (\$300,000.00) aggregate total liability that shall cover defects or problems with the BAIID calibration, installation, use, and removal. The manufacturer shall provide the Ignition Interlock Program written notice forty-five (45) days prior to cancellation, material change, or lapse of the insurance policy held by any of its service centers.

Authority: T.C.A. §§ ~~4-3-2009 and 55-10-412~~, ~~55-10-417~~, and ~~55-10-425~~. Administrative History: Original rule filed December 17, 2012; effective May 31, 2013.

~~1340-03-06-.1517~~ LIABILITY.

- (1) ~~The Approved Ignition Interlock Device Installer and Provider~~service center and manufacturer shall protect, save, and hold harmless the State, all State Departments, Agencies, Boards, and Commissions, as well as all officials, employees, agents, and servants of the State of Tennessee (all in their official and individual capacities, both current and former), from any and all claims, demands, expenses, and liability arising out of any omission by the ~~The Approved Ignition Interlock Device Installer and Provider~~service center or manufacturer in the performance of its duties set forth in the law or these rules.

Authority: T.C.A. §§ ~~4-3-2009 and 55-10-412~~, ~~55-10-417~~, and ~~55-10-425~~. Administrative History: Original rule filed December 17, 2012; effective May 31, 2013.

~~1340-03-06-.1618~~ AUDITS AND INSPECTIONS.

- (1) ~~Approved Ignition Interlock Device Installer and Provider~~Service centers shall be subject to unannounced inspections and reviews of all records and to being temporarily placed out of service, suspension, or revocation of certification, if sufficient cause exists as determined by the Department~~Ignition Interlock Program that the Approved Ignition Interlock Device Installer~~service center does not meet the requirements of any applicable law or these rules. The scope of service center inspections can be found on SF-1508 On-Site Inspection and SF-1512 On-Site Interim Inspection.
- (2) ~~Service centers shall be subject to an accuracy check on their dry gas and wet bath equipment. The accuracy check by the Ignition Interlock Program will consist of:~~
- ~~(a) Verification that the certification label, lot number, and expiration date are on the dry gas tank;~~
  - ~~(b) Verification of the empty wet bath solution bottle's lot number and expiration date for the current solution being used;~~
  - ~~(c) Verification that the equipment is stored and used in a climate-controlled environment;~~
  - ~~(d) Inspection of the tubing leading from the solution tower to the BAIID for wet bath stations, ensuring:
 
    - ~~1. Maximum length of six (6) inches,~~
    - ~~2. No moisture, and~~
    - ~~3. Cleanliness;~~~~
  - ~~(e) Verification that the wet bath solution is being changed after a maximum of thirty (30) days or thirty (30) calibrations, whichever comes first (Note: Service centers must maintain a log of the dates when the wet bath solution is changed; the log must also contain the solution lot number, bottle number, and BrAC value);~~
  - ~~(f) Verification that the temperature of the wet bath solution is thirty-four (34) degrees Celsius at a quantity of five hundred (500) milliliters; and~~
  - ~~(g) Verification that the BrAC in the dry gas and wet bath solution is accurate (.005 +/-) according to the manufacturer's QAP.~~
- (3) ~~If the Ignition Interlock Program finds that the service center is not in compliance at the time of an interim or renewal inspection, a non-compliance fee will be assessed to the service center's manufacturer. The ACH will transfer all non-compliance fees to the Ignition Interlock Program. The manufacturer will submit~~

a detailed payment report to the Ignition Interlock Program on the day that the non-compliance fees are paid. The report will contain a list of service centers incurring fees and the non-compliance fees associated with each.

(a) If the cause of non-compliance is a minor violation of these rules and is corrected immediately, the manufacturer(s) must pay a non-compliance fee of fifty dollars (\$50) for the inspection.

(b) If the cause of non-compliance cannot be immediately corrected, the manufacturer(s) must pay a non-compliance fee of one hundred dollars (\$100) to cover the expenses incurred by the Ignition Interlock Program re-inspection.

(4) Failing a facility inspection may delay a service center's re-inspection for a maximum of thirty (30) days.

Authority: T.C.A. §§ 4-3-2009 and 55-10-412, 55-10-417, and 55-10-425. Administrative History: Original rule filed December 17, 2012; effective May 31, 2013.

1340-03-06-.1719 SUSPENSION, REVOCATION OR DENIAL OF CERTIFICATION DENIAL, SUSPENSION, OR REVOCATION OF CERTIFICATION.

**(1) Failure to comply with any requirements set forth in the law or these rules may result in the denial, suspension or revocation of the Ignition Interlock Device Installer Certification a penalty of being placed temporarily out of service; being assessed a non-compliance fee; or the denial, suspension, or revocation of the service center's or manufacturer's certification, which may prevent the service center from installing, inspecting, and/or removing BAIIDs. Other reasons for denial, suspension, or revocation may include, but are not limited to the following:**

**(a) Non-compliance with any of the minimum requirements stated in this Chapter 1340-03-06;**

**(b) Providing false or inaccurate information to the Department Ignition Interlock Program;**

**(c) Assisting in or providing information that will enable the Ignition Interlock Program Participant to circumvent or tamper with the ignition interlock device; or enabling the participant's circumvention of or tampering with the BAIID;**

**(d) Installing devices other than those supplied by the Provider referenced on the approved applications service center's manufacturer.**

(2) If a service center's or manufacturer's certification is revoked subsequent to the administrative hearing process, the manufacturer will be responsible for all costs associated with the removal of their BAIIDs. Manufacturers aggrieved by the application of this rule have a right to request a hearing pursuant to Rule 1340-03-06-.20.

(3) If a manufacturer's certification is revoked, suspended, or canceled for any reason in any other state, the manufacturer shall notify the Ignition Interlock Program within seven (7) days.

(4) Submission of certification fees and non-compliance fees will be the sole responsibility of the manufacturer for their respective service centers. If a manufacturer is more than thirty (30) days delinquent in the payment of any required BAIID administrative, certification, or non-compliance fees listed in Rules 1340-03-06-.03, 1340-03-06-.04, 1340-03-06-.14, 1340-06-06-.15, or 1340-03-06-.18, the manufacturer's or service center's certification will be suspended until there is proof that all of the delinquent fees have been paid.

Authority: T.C.A. §§ 4-3-2009 and 55-10-412, 55-10-417, and 55-10-425. Administrative History: Original rule filed December 17, 2012; effective May 31, 2013.

1340-03-06-.1820 ADMINISTRATIVE HEARINGS.

- ~~(1) An Approved Ignition Interlock Device Installer or Provider may request in writing an administrative hearing within ten (10) days of written notification of any proposed denial, suspension or revocation. Such hearing shall be held in accordance with the Uniform Administrative Procedures Act.~~
- (1) A manufacturer may request in writing an administrative hearing within ten (10) days of written notification of any suspension, revocation, or denial of certification.
- (2) All hearings shall be recorded. A copy of the recording will be provided to the complainant upon receipt of a written request.
- (3) Only the Hearing Officer is allowed to ask questions during hearings, and the rules of evidence shall not apply.
- (4) The Hearing Officer shall open and preside over each hearing as follows:
- (a) Read or permit a member of the Ignition Interlock Program to read the reason for suspension, revocation, or denial of certification;
  - (b) Permit an attorney to attend and speak and answer questions on behalf of a manufacturer;
  - (c) Accept documentary proof;
  - (d) Hear the testimony of witnesses, if any;
  - (e) Ask questions, if deemed appropriate;
  - (f) Reconvene the hearing within seven (7) working days for other witnesses unable to attend, if deemed appropriate; and
  - (g) Conclude the hearing.
- (5) At the conclusion of the hearing, the Hearing Officer shall take the matter under advisement and render a written "Hearing Officer's Determination" within fifteen (15) working days of the date of the hearing.
- (6) Appeal of the Hearing Officer's Determination:
- (a) In the event the manufacturer wishes to appeal the Hearing Officer's Determination, the party shall file a written appeal with the Administrative Support Bureau Lieutenant Colonel within fifteen (15) working days of the date of the Final Hearing Officer's Determination.
  - (b) The Administrative Support Bureau Lieutenant Colonel, acting as the Commissioner's Designee, shall review the Hearing Officer's Determination.
    - 1. Such review shall be solely on the record compiled by the Hearing Officer, which shall include the recording of the hearing and any documentation submitted during the hearing.
    - 2. The Lieutenant Colonel shall review the record and render a written decision in thirty (30) working days.
    - 3. Such decision shall be the final decision of the Department.
- (6) Any party wishing to appeal the Administrative Support Bureau Lieutenant Colonel's decision shall have sixty (60) days from the date of the decision to file a Petition for Review in the Chancery Court of Davidson County, pursuant to T.C.A. § 4-5-322.

Authority: T.C.A. §§ 4-3-2009 and ~~55-10-412~~, 55-10-417, and 55-10-425. Administrative History: Original rule filed December 17, 2012; effective May 31, 2013.

\* 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 Safety (board/commission/ other authority) on 10/23/19 (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: (8/24/2018)

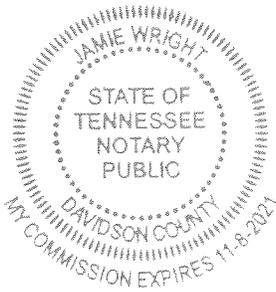
Rulemaking Hearing(s) Conducted on: (add more dates). (10/22/2018)

Date: October 23 2019

Signature: Elizabeth R. Strocker

Name of Officer: Elizabeth Strocker

Title of Officer: Director of Legislation



Subscribed and sworn to before me on: October 23, 2019

Notary Public Signature: Jamie Wright

My commission expires on: November 8, 2021

Agency/Board/Commission: Tennessee Department of Safety & Homeland Security

Rule Chapter Number(s): 1340-03-06

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

Herbert H. Slatery III  
 Herbert H. Slatery III  
 Attorney General and Reporter  
10/28/2019  
 Date

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Filed with the Department of State on: 10/30/19

Effective on: 1/28/20

Tre Hargett  
 Tre Hargett  
 Secretary of State

## G.O.C. STAFF RULE ABSTRACT

DEPARTMENT: State Board of Accountancy

DIVISION: Regulatory Boards

SUBJECT: Licensing and Registration Requirements

STATUTORY AUTHORITY: Tennessee Code Annotated, Section 62-1-105(e)

EFFECTIVE DATES: January 15, 2020 through June 30, 2020

FISCAL IMPACT: None

STAFF RULE ABSTRACT: This proposed rule amendment to Rule 0020-01-.06 offers a restructured schedule for candidates to take the CPA exam. The former rule provided that a candidate had six (6) three-month exam cycles to pass the required test sections. The amendments change this requirement to a rolling eighteen month period. This change will eliminate the rigid cut off time for a candidate to attempt to pass the required test sections. Further, this amendment will eliminate the prohibition against retaking a failed test section in the same test window once those charged with governance of the Uniform CPA exam eliminate the prohibition.

## Regulatory Flexibility Addendum

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

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

The Tennessee State Board of Accountancy ("Board") governs over 2,000 registered firms. While a vast majority of those firms are small businesses, they will neither bear the cost of nor directly benefit from the proposed amendments to Rule 0020-01-.06.

(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 amendments to Rule 0020-01-.06 will not impose any additional reporting, recordkeeping, nor other administrative costs required for compliance. All applicants, without exception, must comply with CPA Examination requirements.

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

The amendments to Rule 0020-01-.06 will likely not have any negative effect on small businesses and consumers.

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

The Board avers that the proposed amendments to Rules 0020-01-.06 are not burdensome, intrusive, or costly to small businesses as they only relate to testing for individuals.

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

There are no known federal or state counterparts to the rules.

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

Exemption from Rule 0020-01-.06 would not benefit small businesses because all applicants, even those working for a small business, must complete the CPA Examination. The proposed amendments do not impose any new requirements on small businesses. Rather, the proposed amendments only streamline the standard by which testing is conducted putting Tennessee's standards in congruence with the national trend.

### **Impact on Local Governments**

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

This rule 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;

The amendments to Rule 0020-01-.06 offer a restructured schedule for candidates to take the CPA exam. The former rule provided that a candidate had six, three month exam cycles to pass the required test sections. The amendments change this requirement to a rolling eighteen month period. This change will eliminate the rigid cut off time for a candidate to attempt to pass the required test sections. Further, this amendment will eliminate the prohibition against retaking a failed test section in the same test window once those charged with governance of the Uniform CPA exam eliminate the prohibition.

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

There are no known federal laws or regulations mandating promulgation of these rules. T.C.A. 62-1-105(e) authorizes the Board to adopt rules to enforce the Tennessee Accountancy Act of 1998.

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

The proposed amendments to Rule 0020-01-.06 will impact all applicants who are applying to sit for the CPA Examination. Their position, however, is unknown to the Board. NASBA, the AICPA, and the TSCPA, the largest CPA professional organizations, are in support of this rule package.

- (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 judicial rulings that directly relate to these rules.

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

These rules are not expected to have an 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;

Wendy Garvin – Executive Director of the Tennessee State Board of Accountancy

Anthony Glandorf – Chief Counsel  
TN Department of Commerce and Insurance

Maria P. Bush – Assistant General Counsel  
TN Department of Commerce and Insurance

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

Wendy Garvin – Executive Director of the Tennessee State Board of Accountancy

Anthony Glandorf – Chief Counsel  
TN Department of Commerce and Insurance

Maria P. Bush – Assistant General Counsel  
TN Department of Commerce and Insurance

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

Wendy Garvin – Executive Director of the Tennessee State Board of Accountancy  
500 James Robertson Parkway  
Nashville, Tennessee 37243  
(615) 741-2550,  
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Anthony Glandorf – Chief Counsel  
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615-741-3072  
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Maria P. Bush – Assistant General Counsel  
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**(I)** Any additional information relevant to the rule proposed for continuation that the committee requests.

None.

**Department of State  
 Division of Publications**

312 Rosa L. Parks Ave., 8th Floor, Snodgrass/TN Tower  
 Nashville, TN 37243  
 Phone: 615-741-2650  
 Email: [publications.information@tn.gov](mailto:publications.information@tn.gov)

**For Department of State Use Only**

Sequence Number: 10-16-19  
 Rule ID(s): 9264  
 File Date: 10/17/19  
 Effective Date: 11/5/20

## 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 Accountancy  
**Division:** Department of Commerce and Insurance Regulatory Boards Division  
**Contact Person:** Maria P. Bush  
**Address:** 500 James Robertson Parkway, Nashville, TN  
**Zip:** 37243  
**Phone:** 615-741-3072  
**Email:** [maria.p.bush@tn.gov](mailto:maria.p.bush@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
0020-01	Licensing and Registration Requirements
Rule Number	Rule Title
0020-01-.06	Examinations

Tennessee State Board of Accountancy  
Chapter 0020-01  
Licensing and Registration Requirements  
Amendments

Rule 0020-01-.06(2) and (6) are amended so that Rule 0020-01-.06 shall read:

- (1) The examination required by T.C.A. § 62-1-106(d) shall test the knowledge and skills required for performance as an entry-level certified public accountant. The examination shall include the subject areas of accounting and auditing and related knowledge and skills as the Board may require.
- (2) Eligible candidates shall be notified of the time and place of the examination or shall independently contact the Board, or its designee, or a test center operator identified by the Board to schedule the time and place for the examination at an approved test site. Scheduling reexaminations must be made in accordance with ~~(7)(a)(2)~~ (6)(a) below.
- (3) The Board shall cause the examination for certification to be graded by the AICPA. The Board may recognize the grades assigned by the AICPA. Applicants may request a grade review if the Board permits such, and the applicant pays whatever administrative charges that are assessed for a grade review.
- (4) A candidate shall be required to pass all test sections of the examination provided for in T.C.A. § 62-1-106(d) in order to qualify for a certificate. The uniform passing grade shall be established through a psychometrically acceptable standard-setting procedure and approved by the Board.
- (5) The notification given to the exam candidate regarding the grades and requirements that the candidate must achieve to pass a particular exam shall govern the grading of that exam.
- (6) The following shall apply to the computer-based Uniform CPA Examination:
  - (a) Candidates may take the required test sections individually and in any order. Credit for any test section(s) passed shall be valid for a period of eighteen (18) months and be calculated from the actual date the candidate took that test section, six (6) three month exam cycles, without having to attain a minimum score on any failed test section(s) and without regard to whether the candidate has taken the remaining test sections.
    1. Candidates must pass all required four (4) test sections of the Uniform CPA Examination within a rolling eighteen (18) month period, which begins on the date that the first test section(s) passed is taken the next six (6) three month exam cycles.
    - 2-(i) Candidates cannot retake a failed test section(s) in the same examination window. An examination window refers to a three-month cycle in which candidates have an opportunity to take the CPA examination, (comprised of two (2) months in which the examination is available to be taken and one (1) month in which the examination will not be offered while routine maintenance is performed and the item bank is refreshed). Candidates may take the examination for two (2) out of the three (3) months within an examination window.
    - (ii) Notwithstanding subpart (6)(a)(1)(i), the Board shall allow a candidate to retake failed test sections within a continuous eighteen (18) month period without a three (3) month window

restriction once the restriction has been eliminated by those charged with governance of the Uniform CPA exam.

- 3-2. In the event a candidate does not pass all ~~four (4)~~ required test sections of the Uniform CPA Examination within ~~the next six (6) three-month cycles~~ eighteen (18) months, credit for any test section(s) passed outside ~~the six (6) three-month cycles~~ eighteen (18) months will expire and that test section(s) must be retaken.
- (b) A candidate shall retain credit for any and all test sections of an examination passed in another state if such credit would have been given, under then applicable requirements, if the candidate had taken the examination in this state.
  - (c) The Board may in particular cases extend the term of conditional credit notwithstanding the requirements of these rules, upon a showing that the credit was lost by reason of circumstances beyond the candidate's control.
  - (d) A candidate shall be deemed to have passed the Uniform CPA Examination once the candidate holds at the same time valid credit for passing each of the ~~four (4)~~ required test sections of the examination. For purposes of this section, credit for passing a test section of the computer based examination is valid from the actual date of the testing event for that test section, regardless of the date the candidate actually receives notice of the passing grade.
- (7) An applicant may be required to pass an examination covering the rules of ethics and professional conduct promulgated by the Board. Such examination may be part of the examination required in T.C.A. § 62-1-106(d) or may be a separate examination.
  - (8) The Board may provide for a third party administering the examination to charge each applicant a fee for each section of the examination or reexamination taken by the applicant.
  - (9) The candidate shall schedule each test section with the Board or its designee and pay a candidate testing fee that includes the actual fees charged by the AICPA, NASBA, and the Test Delivery Service Provider.
  - (10) Notwithstanding any other provisions under these rules, the Board may postpone scheduled examinations, release of grades, or the issuance of certificates due to a breach of examination security, unauthorized acquisition or disclosure of the contents of an examination, suspected or actual negligence, errors, omissions, or irregularities in conducting an examination, or for any other reasonable cause or unforeseen circumstance.
  - (11) All CPA Exam scores shall expire ten (10) years after the first passing score is earned. However, upon written request by the applicant, the Board may, in its sole discretion, grant an extension of the score expiration date for good cause shown.
  - (12) Candidates who have been ordered to military service shall receive an automatic extension on any CPA examination credits, in order to complete the examination requirements of paragraph (6) of this rule, for the length of time that the candidate was ordered to military service.

**Authority:** T.C.A. §§ 62-1-105 and 62-1-106.

Rules of the Tennessee State Board of Accountancy  
 Chapter 0020-01 Licensing and Registration Requirements  
 Rule 0020-01-.06 Examinations

\* 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)
Casey M. Stuart, CPA	X				
Stephen E. Eldridge, CPA				X	
Gay Moon, CPA	X				
Jack A. Bonner, Jr., CPA	X				
Janet Booker-Davis, CPA	X				
Pamela Church, CPA	X				
Larry Elmore, CPA	X				
Kevin Monroe, CPA	X				
John G. (Gabe) Roberts	X				
William (Trey) H. Watkins, III, CPA	X				
Judy Wetherbee	X				

I certify that this is an accurate and complete copy of proposed rules, lawfully promulgated and adopted by the Tennessee State Board of Accountancy on 05/07/2019 and is in compliance with the provisions of T.C.A. § 4-5-222. The Secretary of State is hereby instructed that, in the absence of a petition for proposed rules being filed under the conditions set out herein and in the locations described, he is to treat the proposed rules as being placed on file in his office as rules at the expiration of ninety (90) days of the filing of the proposed rule with the Secretary of State.

Date: September 18, 2019

Signature: Maria P. Bush

Name of Officer: Maria P. Bush

Title of Officer: Assistant General Counsel

Subscribed and sworn to before me on: September 18, 2019

Notary Public Signature: Carol L. McGlynn

My commission expires on: May 9, 2023

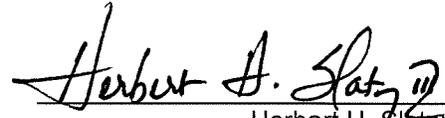


Rules of the Tennessee State Board of Accountancy  
Chapter 0020-01 Licensing and Registration Requirements  
Rule 0020-01-.06 Examinations

Agency/Board/Commission: Tennessee State Board of Accountancy

Rule Chapter Number(s): 0020-01 – Licensing and Registration Requirements

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. Slattery III  
Attorney General and Reporter  
10/2/2019 Date

**Department of State Use Only**

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

Effective on: 11/15/20

  
Tre Hargett  
Secretary of State

2019 OCT 17 AM 9:04  
SECRETARY OF STATE  
PHOTOGRAPHY

## G.O.C. STAFF RULE ABSTRACT

<u>DEPARTMENT:</u>	Health
<u>DIVISION:</u>	Population Health Assessment
<u>SUBJECT:</u>	Cancer Reporting System, Fees
<u>STATUTORY AUTHORITY:</u>	Tennessee Code Annotated, Section 68-1-1003 et. seq.
<u>EFFECTIVE DATES:</u>	January 23, 2020 through June 30, 2020
<u>FISCAL IMPACT:</u>	None
<u>STAFF RULE ABSTRACT:</u>	<p>Rule 1200-07-02-.05(5)(b) provides that if a facility fails to timely report the required cancer information to the Department, it may obtain the information itself. Timely reporting is defined by the Tennessee Cancer Reporting System Act of 1983 as six months from the date of diagnosis of cancer in a patient. This reporting obligation is "mandatory"; it is not the Department's role. Tennessee Code Annotated, Section 68-1-1003(g). Timely reporting is critical for the Department's efforts to address and combat cancer. The rule, however, is outdated and actually incentivizes facilities to delay their reporting. Under the statute, the Department charges its reasonable expenses for reporting facilities to delay their reporting. Under the statute, the Department charges its reasonable expenses for reporting a facility's cancer information. But the rule limits these expenses, that is, what the Department can charge, to a maximum of \$50 per case. The Department, however, estimates that to report the average cancer case costs the Department over five times this amount. To allow the Department to recoup its actual costs, the proposed rule makes the following changes:</p> <ul style="list-style-type: none"><li>- This rulemaking hearing rule makes two changes to the rule's first sentence: (1) "[B]y the required deadline" is added as a condition when the Department can casefind and abstract a facility's cancer case information. This language is taken directly from the statute, which provides that when a facility does not timely report, the Department can obtain the report via a direct examination and charge</li></ul>

the Department's reasonable expenses. Tennessee Code Annotated, Section 68-1-1003(f). (2) In describing how the Department can casefind and abstract, the "enter the facility" language is stricken and replaced with "by a direct examination of those patients' medical records." This change, also taken verbatim from the statute, updates the rule. Tennessee Code Annotated, Section 68-11003(f). Today most, but not all, reporting can be done off-site. Department personnel can remotely connect to a facility's network and casefind and abstract from the Department's office. "By a direct examination" captures both off- and on-site reporting.

- The second sentence contains the change at the heart of the proposed rule. The \$50 per case maximum is deleted and replaced by a maximum of "\$70 per hour, plus, if necessary, reasonable ancillary and travel expenses." With this change, the rule can achieve the statute's intention that the facility "shall reimburse the department for the department's reasonable expenses incurred in obtaining the information in this manner." Tennessee Code Annotated, Section 68-1-1003(f). A per-hour, as opposed to a per-case, maximum is used to account for the wide variation in the amount of time necessary to complete a report. The proposed rule maintains what the Department may be reimbursed for ("casefinding, abstracting, coding, and editing") and would add reasonable ancillary and travel expenses, if necessary.

## Public Hearing Comments

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

A single public comment was received at the hearing from a representative from the Tennessee Hospital Association who commented that some smaller, rural hospitals were concerned that the proposed rule could disproportionately impact their operations. While the rule change will ensure timely reporting of cancer cases from all facilities, the main intent of the change is to enable the Department to capture the actual expenses and costs it may incur while performing the duties imposed by the Tennessee Cancer Reporting System Act of 1983 (Tenn. Code Ann. § 68-1-1001, et seq.). Currently the rules accompanying the statute only allow the Department to capture \$50 per case for casefinding and abstracting cancer cases for a delinquent facility, a cost that is substantially below the market rate. Some facilities opted for this low rate by asking the Department to perform their casefinding and abstracting, a result that exceedingly burdened the Department. The rule change is not intended to increase the burden on any particular facility beyond the reasonable duties already imposed by Tennessee law.

## Regulatory Flexibility Addendum

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

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

This new rule does not overlap, duplicate, or conflict with other federal, state, and local government rules.

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

This new rule is established with clarity, conciseness, and lack of ambiguity.

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

This new rule does not establish new compliance and/or reporting requirements for small businesses.

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

This new rule does 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.**

This new rule does not establish compliance or reporting requirements for small businesses.

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

This new rule does not establish performance standards for small businesses as opposed to design or operational standards required in the proposed rule.

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

This new rule does not create unnecessary entry barriers or other effects that stifle entrepreneurial activity, curb innovation, or increase costs.

## STATEMENT OF ECONOMIC IMPACT TO SMALL BUSINESSES

**Name of Board, Committee or Council:** Department of Health, Division of Population Health Assessment

**Rulemaking hearing date:** 08/22/2019

- 1. Type or types of small business and an identification and estimate of the number of small businesses subject to the proposed rule that would bear the cost of, and/or directly benefit from the proposed rule:**

While most facilities that diagnose and treat cancer are large healthcare facilities, some smaller practices, such as clinics, would do this work, too.

- 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 ensures that healthcare facilities pay the Department's reasonable expenses if the Department reports the facilities' own cancer cases. The rule would not add any reporting, recordkeeping, or other administrative costs that are not already required by statute. In practice, the proposed rule would shift reporting costs from the public to the private sector. Healthcare facilities would be more likely to report their own cancer cases, rather than having the government do it for them.

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

To the extent that small businesses have reportable cancer diagnoses, the proposed rule would have minimal effect. These small businesses are statutorily required to report their own cancer cases to the Department. In the event these businesses fail to do so, the proposed rule ensures that they pay the Department's actual costs. The proposed rule would have no effect on consumers.

- 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 is no less burdensome, less intrusive, or less costly alternative method of achieving the purposes and/or objectives of the proposed rule.

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

**Federal:** The proposed rule has no federal counterpart.

**State:** The proposed rule would bring Tennessee more in line with other states that regulate the reporting of cancer to a central registry. These states allow their registries to recoup their actual, reasonable expenses when they report for a facility. Research shows that only one other state limits what may be charged, a limit of \$100. Several states even provide for the imposition of costly penalties when facilities fail to timely report cancer cases.

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

This rule does not provide 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://publications.tnsosfiles.com/acts/106/pub/pc1070.pdf>) of the 2010 Session of the General Assembly)

The proposed rule will not have an impact on local governments.

**Additional Information Required by Joint Government Operations Committee**

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

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

Rule 1200-07-02-.05(5)(b) provides that if a facility fails to timely report the required cancer information to the Department, it may obtain the information itself. Timely reporting is defined by the Tennessee Cancer Reporting System Act of 1983 as six months from the date of diagnosis of cancer in a patient. This reporting obligation is "mandatory"; it is not the Department's role. T.C.A. § 68-1-1003(g). Timely reporting is critical for the Department's efforts to address and combat cancer. The rule, however, is outdated and actually incentivizes facilities to delay their reporting. Under the statute, the Department charges its reasonable expenses for reporting a facility's cancer information. But the rule limits these expenses, that is, what the Department can charge, to a maximum of \$50 per case. The Department, however, estimates that to report the average cancer case costs the Department over five times this amount. To allow the Department to recoup its actual costs, the proposed rule makes the following changes:

- Two changes are made to the rule's first sentence: (1) "[B]y the required deadline" is added as a condition when the Department can casefind and abstract a facility's cancer case information. This language is taken directly from the statute, which provides that when a facility does not timely report, the Department can obtain the report via a direct examination and charge the Department's reasonable expenses. T.C.A. § 68-1-1003(f). (2) In describing how the Department can casefind and abstract, the "enter the facility" language is stricken and replaced with "by a direct examination of those patients' medical records." This change, also taken verbatim from the statute, updates the rule. T.C.A. § 68-1-1003(f). Today most, but not all, reporting can be done off-site. Department personnel can remotely connect to a facility's network and casefind and abstract from the Department's office. "By a direct examination" captures both off- and on-site reporting.
- The second sentence contains the change at the heart of the proposed rule. The \$50 per case maximum is deleted and replaced by a maximum of "\$70 per hour, plus, if necessary, reasonable ancillary and travel expenses." With this change, the rule can achieve the statute's intention that the facility "shall reimburse the department for the department's reasonable expenses incurred in obtaining the information in this manner." T.C.A. § 68-1-1003(f). A per-hour, as opposed to a per-case, maximum is used to account for the wide variation in the amount of time necessary to complete a report. The proposed rule maintains what the Department may be reimbursed for ("casefinding, abstracting, coding, and editing") and would add reasonable ancillary and travel expenses, if necessary.

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

T.C.A. §§ 68-1-1003, et. seq. (the purpose of which is to ensure an accurate and continuing source of data concerning cancer and to provide appropriate data for research purposes)

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

These rules affect larger facilities that diagnose and treat cancer as well as some smaller practices.

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

None.

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

These rules should not impact revenues or expenditures.

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

Gabriel Galletti, Assistant General Counsel, Department of Health.

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

Gabriel Galletti, Assistant General Counsel, Department of Health.

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

Department of Health, Office of General Counsel, 710 James Robertson Parkway, 5th Floor, Nashville, TN 37243, (615) 532-7663, gabriel.galletti@tn.gov.

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

None.

**Department of State  
Division of Publications**

312 Rosa L. Parks Ave., 8th Floor, Snodgrass/TN Tower  
Nashville, TN 37243  
Phone: 615-741-2650  
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**For Department of State Use Only**

Sequence Number: 10-22-19  
Rule ID(s): 9265  
File Date: 10/25/19  
Effective Date: 11/23/20

# 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).*

<b>Agency/Board/Commission:</b>	Tennessee Department of Health
<b>Division:</b>	Population Health Assessment
<b>Contact Person:</b>	Gabriel Galletti, Assistant General Counsel
<b>Address:</b>	710 James Robertson Parkway, 5th Floor, Nashville, TN
<b>Zip:</b>	37243
<b>Phone:</b>	(615) 532-7663
<b>Email:</b>	<a href="mailto:gabriel.galletti@tn.gov">gabriel.galletti@tn.gov</a>

**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
1200-07-02	Cancer Reporting System
Rule Number	Rule Title
1200-07-02-.05	Cancer Case Reporting

(Rule 1200-07-02-.03, continued)

**Authority:** T.C.A. §§ 4-5-202, 4-5-209, 68-1-1001 et seq., 68-1-1002, 68-1-1003(a) and 68-1-1004.  
**Administrative History:** Original rule filed October 6, 1986; effective November 20, 1986. Amendment filed September 5, 1990; effective October 20, 1990. Repeal and new rule filed February 1, 2002; effective April 17, 2002. Public necessity rule filed August 3, 2007; effective through January 15, 2008. Amendment filed August 28, 2007; effective December 28, 2007. Amendment filed August 25, 2009; effective November 23, 2009.

#### 1200-07-02-.04 PARTICIPATION IN THE PROGRAM

- (1) All hospitals, laboratories, facilities and health care practitioners shall report data concerning Tennessee patients who are diagnosed and/or treated for cancer.
- (2) Health care practitioners are not required to report data on cancer patients who are directly referred to or have been previously admitted to a hospital or a facility for cancer diagnosis or treatment.
- (3) All hospitals, laboratories, facilities and health care practitioners shall designate one (1) staff member to be responsible for reporting the cancer data and shall notify the department of the name, title, work address, work telephone number, and e-mail address (if available) of the designated staff member.

**Authority:** T.C.A. §§ 4-5-202 and 68-1-1001 et seq. **Administrative History:** Original rule filed October 6, 1986; effective November 20, 1986. Amendment filed September 5, 1990; effective October 20, 1990. Repeal and new rule filed February 1, 2002; effective April 17, 2002.

#### 1200-07-02-.05 CANCER CASE REPORTING

- (1) Reportable Cancer Cases
  - (a) Any newly diagnosed in-situ or invasive cancer as defined by the TCR Policies and Procedures Manual is considered a reportable diagnosis. If a patient subsequently develops a new primary cancer, it shall be reported separately.
- (2) Format for Reporting
  - (a) The format for reporting, the required codes, and the standards for completeness and quality are defined by the department in the TCR Policies and Procedures Manual.
- (3) Data Items to be Reported
  - (a) The standardized report of cancer shall include as a minimum those data items required by the Tennessee Cancer Registry, a list of which is maintained in the TCR Policies and Procedures Manual. The report of cancer shall include the listed demographic, diagnostic, and treatment data as defined by the department.
- (4) Deadline for Reporting
  - (a) Reporting shall occur no later than six months after the date of diagnosis of cancer in a patient. Reports shall be submitted to the department according to a time frame communicated by the department to each hospital, facility, laboratory, and health care practitioner.
- (5) Failure to Report

(Rule 1200-07-02-.05, continued)

- (a) A hospital, laboratory, facility, or health care practitioner that fails to report data or allow access to records, as required by T.C.A. § 68-1-1003, shall be informed in writing by the department that compliance is mandatory.
- ~~(b) If a hospital, laboratory, facility, or health care practitioner fails to provide the required data in the format specified by the department or if the data are of unacceptable quality, the Commissioner or the Commissioner's authorized representative may enter the facility to casefind and abstract the information. In these cases, the facility shall reimburse the department for the actual cost of casefinding, abstracting, coding and editing, a maximum of which is fifty dollars (\$50) per case. A hospital, laboratory, facility or health care practitioner from whom reimbursement is sought may appeal the assessment of expenses under the Tennessee Uniform Administrative Procedures Act. The appeal shall be to the Commissioner in writing and within thirty (30) days of receipt of the assessment.~~
- (b) If a hospital, laboratory, facility, or health care practitioner fails to provide the required data by the required deadline in the format specified by the department or if the data are of unacceptable quality, the Commissioner or the Commissioner's authorized representative may casefind and abstract the information by a direct examination of those patients' medical records. In these cases, the facility shall reimburse the department for the actual cost of casefinding, abstracting, coding, and editing, a maximum of which is seventy dollars (\$70) per hour, plus, if necessary, reasonable ancillary and travel expenses. A hospital, laboratory, facility, or health care practitioner from whom reimbursement is sought may appeal the assessment of expenses under the Tennessee Uniform Administrative Procedures Act. The appeal shall be to the Commissioner in writing and within thirty (30) days of receipt of the assessment.

## (6) Quality Assurance

- (a) Staff members from the Tennessee Cancer Registry or their agents shall perform periodic quality assurance studies at all reporting facilities. These studies shall include:
1. casefinding to ensure that all cancer cases have been accessioned; and
  2. reabstracting the records of cancer patients to ensure that all data have been transcribed and coded correctly.
- (b) Reporting facilities shall assist TCR staff by providing the necessary medical records and the office space for conducting quality assurance activities.
- (c) In order to improve the quality of the data, the TCR or their agents shall offer training for reporting facility personnel.

**Authority:** T.C.A. §§ 4-5-202 and 68-1-1001 et seq. **Administrative History:** Original rule filed October 6, 1986; effective November 20, 1986. Amendment filed September 5, 1990; effective October 20, 1990. Repeal and new rule filed February 1, 2002; effective April 17, 2002.

**1200-07-02-.06 CONFIDENTIALITY**

- (1) T.C.A. § 68-1-1006 provides for the confidentiality of data obtained from the reports of cancer patients.
- (2) TCR Responsibilities
- (a) The commissioner shall take strict measures to ensure that all patient identifying information is treated as confidential and privileged. All employees or consultants,

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

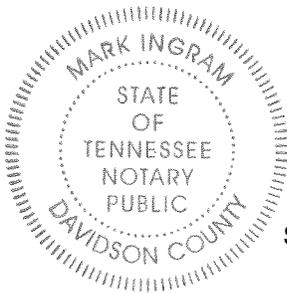
Board Member	Aye	No	Abstain	Absent	Signature (if required)
N/A					

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the Tennessee Department of Health, Population Health Assessment (board/commission/ other authority) on 08/22/2019 (mm/dd/yyyy), and is in compliance with the provisions of T.C.A. § 4-5-222.

I further certify the following:

Notice of Rulemaking Hearing filed with the Department of State on: 06/20/19 (mm/dd/yy)

Rulemaking Hearing(s) Conducted on: (add more dates). 08/22/19 (mm/dd/yy)



Date: 9/9/19

Signature: [Handwritten Signature]  
Name of Officer: Gabriel Galletti

Title of Officer: Assistant General Counsel  
Department of Health

Subscribed and sworn to before me on: 9/9/19

Notary Public Signature: [Handwritten Signature]

My commission expires on: March 7 2023

Agency/Board/Commission: Tennessee Department of Health, Population Health Assessment

Rule Chapter Number(s): 1200-07-02

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.

[Handwritten Signature]  
Herbert H. Slatery III  
Attorney General and Reporter  
10/21/2019 Date

**Department of State Use Only**

2019 OCT 25 PM 1:41  
SECRETARY OF STATE  
PUBLIC AFFAIRS

Filed with the Department of State on: 10/25/19

Effective on: 1/23/20

[Handwritten Signature]  
Tre Hargett  
Secretary of State

## G.O.C. STAFF RULE ABSTRACT

<u>DEPARTMENT:</u>	Intellectual and Developmental Disabilities
<u>SUBJECT:</u>	Methodologies Utilized to Determine Payments to Service Providers (Rate Structure)
<u>STATUTORY AUTHORITY:</u>	Tennessee Code Annotated, Section 33-1-309
<u>EFFECTIVE DATES:</u>	January 5, 2020 through June 30, 2020
<u>FISCAL IMPACT:</u>	Minimal
<u>STAFF RULE ABSTRACT:</u>	<p>This rulemaking hearing rule establishes a rate setting methodology for residential, day, and other services that are provided through the Department of Intellectual and Developmental Disabilities. This amendment to the existing rules will:</p> <ul style="list-style-type: none"><li>• Remove two services, intensive behavioral residential services, and vision services which are no longer provided in the home and community – based waivers</li><li>• Remove the rate setting methodologies for day services and replace with rate setting methodologies for distinct day and employment services</li><li>• Change day services reimbursement from daily rates to quarter hour rates</li><li>• Replace in-home day service with three new services: intermittent employment and community participation wraparound, residential special needs adjustment, homebound and non-residential homebound support service</li><li>• Establish rate setting methodologies for three new pre-employment services: exploration, discovery, and job development</li><li>• Establish quantity incentive payments for providers of supported employment when waiver participants are engaged in certain levels of competitive integrated employment</li></ul>

**Public Hearing Comments**

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

See attached comments and related responses.

**Comments/Responses from July 29, 2019, Rulemaking Hearing  
for Revised Rate Methodology Rules**

	Comment Submitted By	Rule	Comment	Response
1.)	Robin Atwood, TNCO	All employment services	Employment rates are not adequate to cover the required services. The issue with the rate methodology is the use of DSP wages in the formula. DSPs are not qualified to provide this service. The service must be provided by someone with the required credentials.	For all individual employment services, the DSP wage of \$10/hr is adjusted, as follows: for Exploration, a value-based incentive of \$4.30/hour above actual cost (rate model) to reward the provision of services expected to result in the person identifying a goal of competitive integrated employment; for Discovery and Job Development, an adjustment of \$2.75/hour to increase DSP reimbursement rate to \$12.75/hour to account for additional qualifications required for this service; and for Job Coaching, a value-based incentive of \$3/hour above actual cost (rate model) to reward the provision of services to support individual success in competitive, integrated employment—so long as fading expectations are met.
2.)	Beverly Matthews, Pacesetters, Inc.	0465-01-02-.03(1)(d)	The rule states that Full-Time Equivalent is the total cost for one direct support staff for 40 hours. What is the rate of pay that that is figured on? Is that at \$10 an hour or less? Is there an average? Because there's a lot of agencies that pay different rates and that could mean something different to each agency.	The DSP reimbursement rate reflected in the reimbursement methodology is based on available appropriations for home and community based services. For Fiscal Year 2019-2020, the DSP hourly wage is funded at \$10. As described in the response above, adjustments/incentives are included in the reimbursement methodology for all individual employment services.

**Comments/Responses from July 29, 2019, Rulemaking Hearing  
for Revised Rate Methodology Rules**

	Comment Submitted By	Rule	Comment	Response
3.)	Bill Toye, Pacesetters, Inc.	0465-01-02.05	<p>How are we supposed to ask questions when this is made so confusing? For one thing, they list percentages with no figures. So anybody in math, if you have no figures how do you figure out what percentage to use? They also say divided by four residents. In supported living we're supposedly only to have three residents; why are they listing this as a four resident figure? And then on No. 5 under this Methodology it says, Multiply the results of Step 4 by 1. Why would they even put that in there? Multiplying anything by 1 is the same figure.</p>	<p>The rate methodology for residential and supported living services has not changed. This is the same methodology that has been in place for several years. Actual numbers are not used so that adjustments can be easily made when the Administration and/or legislature adds additional appropriations to increase waiver rates. If specific numbers are included in the rate methodology rules, then the department would have to go through the rule making process every time additional funds are appropriated to increase rates. This could delay the time in which the rate increase could be implemented. The division by 4 pertains to supervision and not direct care staff. Number 5 under this methodology says multiply the results of Step by four by one AND the % allowed for non-direct program cost. For example, if the percentage for non direct program cost is 20%, then you would divide the result of Step four by 1.20.</p>

**Comments/Responses from July 29, 2019, Rulemaking Hearing  
for Revised Rate Methodology Rules**

	Comment Submitted By	Rule	Comment	Response
3.) cont.			<p>It seems without actual figures to start with, when you say hourly support staff wages, or something, how do you know where to go with this? It's just from somebody that's familiar with mathematics, trying to even guess what this comes out to without any kind of percentage or figures that they might use, and again one of the benefits is divided by four residents, which we usually don't have four residents in any home. To this point that's not something that we have rates for, anyway. And then why do they even bother putting No. 5 in here because dividing anything by 1 is the same figure.</p>	
4.)	George Cunningham, Journeys In Community Living	0465-01-02-.04	<p>This section talks about the rate being based on direct support staff, but I don't see any mention of LPN or RN supervision, which are required in that home and are a significant cost. So, I would suggest that be added in here, if it's not already. I don't see it mentioned.</p>	<p>The rate methodology for Medical Residential services has not changed. The calculation of the FTE includes the cost of LPN coverage and RN supervision.</p>

## **Regulatory Flexibility Addendum**

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

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

The proposed rules will have no impact to local governments.

**Additional Information Required by Joint Government Operations Committee**

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

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

The rules establish a rate setting methodology for residential, day and other services that are provided through the Department of Intellectual and Developmental Disabilities. This amendment to the existing rules will:

- Remove two services, intensive behavioral residential services and visions services, which are no longer provided in the home and community-based waivers
- Remove the rate setting methodologies for day services and replace with rate setting methodologies for distinct day and employment services
- Change day services reimbursement from daily rates to quarter hour rates
- Replace in-home day service with three new services: intermittent employment and community participation wraparound, residential special needs adjustment - homebound and non-residential homebound support service
- Establish rate setting methodologies for three new pre-employment services: exploration, discovery and job development
- Establish quantity incentive payments for providers of supported employment when waiver participants are engaged in certain levels of competitive integrated employment

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

33-1-309

- (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;

Providers of the Department of Intellectual and Developmental Disabilities home and community based services will be most directly affected by this rule. These rules authorize payment for services to contracted direct service providers of 1915(c) home and community based services, these providers participated in the rule making hearing but did not provide feedback as to whether the urged adoption or rejection of the rules.

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

None

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

State expenditures for employment and day services as a whole are not expected to change from the promulgation of these rules. The final rate structure was developed with the expectation that current funding for employment and day services would be maintained. Assumptions regarding the utilization of services were made in determining the overall impact of the changes to day and employment waiver expenditures.

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

Melinda Lanza, Budget Director for the Tennessee Department of Intellectual and Developmental Disabilities

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

Melinda Lanza, Budget Director for the Tennessee Department of Intellectual and Developmental Disabilities

- (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

315 Deaderick Street, UBS Building, 8<sup>th</sup> Floor, Nashville, TN 37243, 615-253-3166, Melinda.Lanza@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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**For Department of State Use Only**

Sequence Number: 10-09-19  
Rule ID(s): 9262  
File Date: 10/7/19  
Effective Date: 11/9/20

# 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 Intellectual and Developmental Disabilities  
**Division:**  
**Contact Person:** Richard R. Prybilla  
**Address:** 315 Deaderick Street, UBS Tower, 8<sup>th</sup> Floor, Nashville, TN  
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**Revision Type (check all that apply):**

- Amendment  
 New  
 Repeal

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

Chapter Number	Chapter Title
0465-01-02	Methodology Utilized to Determine Payments to Service Providers (Rate Structure)
Rule Number	Rule Title
0465-01-02-.01	Purpose
0465-01-02-.02	Scope
0465-01-02-.03	Definitions
0465-01-02-.04	Rate Setting Methodologies for Medical, Residential Services
0465-01-02-.05	Rate Setting Methodologies for Intensive Behavioral Residential Services
0465-01-02-.06	Rate Setting Methodologies for Residential and Supported Services
0465-01-02-.07	Rate Setting Methodologies for Semi-Independent Living Services
0465-01-02-.08	Special Needs Adjustments
0465-01-02-.09	Rate Setting Methodologies for Day Services
0465-01-02-.10	Rate Setting Methodologies for Day Services – In Home Care
0465-01-02-.11	Rate Setting Methodologies for Clinical Services
0465-01-02-.12	Rate Setting Methodologies for Respite and Personal Assistance Services
0465-01-02-.13	Rate Setting Methodologies for Dental Services
0465-01-02-.14	Rate Setting Methodologies for Personal Emergency Response Systems
0465-01-02-.15	Rate Setting Methodologies for Specialized Medical Equipment and Supplies
0465-01-02-.16	Rate Setting Methodologies for Environmental Modifications
0465-01-02-.17	Rate Setting Methodologies for Vision Services

**RULE OF THE TENNESSEE  
DEPARTMENT OF INTELLECTUAL AND DEVELOPMENTAL DISABILITIES**

**CHAPTER 0465-01-02  
METHODOLOGY UTILIZED TO DETERMINE PAYMENTS  
TO SERVICE PROVIDERS (RATE STRUCTURE)**

**TABLE OF CONTENTS**

0465-01-02-.01	Purpose	0465-01-02-.14	Rate Setting Methodologies for Personal Emergency Response Systems
0465-01-02-.02	Scope		Intermittent Employment and Community Participation Wraparound
0465-01-02-.03	Definitions	0465-01-02-.15	Rate Setting Methodologies for Specialized-Medical-Equipment-and-Supplies Facility-Based Day Services
0465-01-02-.04	Rate Setting Methodologies for Medical, Residential Services	0465-01-02-.16	Rate Setting Methodologies for Environmental Modifications
0465-01-02-.05	Rate Setting Methodologies for Intensive-Behavioral-Residential-Services Residential and Supported Living Services		Residential Special Needs Adjustment-Homebound and Non-Residential Homebound Support Services
0465-01-02-.06	Rate Setting Methodologies for Residential-and-Supported-Services Semi-Independent Living Services	0465-01-02-.17	Rate Setting Methodologies for Vision-Services Clinical Services
0465-01-02-.07	Rate Setting Methodologies for Semi-Independent-Living-Services Special Needs Adjustments	0465-01-02-.18	Rate Setting Methodologies for Independent Support Coordination Respite and Personal Assistance Services
0465-01-02-.08	Special-Needs-Adjustments Value-Based Rate Setting Methodology for Supported Employment – Individual Exploration	0465-01-02-.19	Rate Setting Methodologies for Services Funded Exclusively by the State [Non-Waiver, State Funded (NWSF) Services] Dental Services
0465-01-02-.09	Rate Setting Methodologies for Day-Services Value-Based Rate Setting Methodology for Supported Employment – Individual Discovery	0465-01-02-.20	Rate Setting Methodologies for Personal Emergency Response Systems
0465-01-02-.10	Rate Setting Methodologies for Day Services – In-Home-Care Value-Based Rate Setting Methodology for Supported Employment – Individual Job Development	0465-01-02-.21	Rate Setting Methodologies for Specialized Medical Equipment and Supplies
0465-01-02-.11	Rate Setting Methodologies for Clinical-Services Value-Based Rate Setting Methodology for Supported Employment – Individual Job Coaching	0465-01-02-.22	Rate Setting Methodologies for Environmental Modifications
0465-01-02-.12	Rate Setting Methodologies for Respite and Personal Assistance-Services Value-Based Rate Setting Methodology for Supported Employment -Small Group	0465-01-02-.23	Rate Setting Methodologies for Independent Support Coordination Services
0465-01-02-.13	Rate Setting Methodologies for Dental-Services Community Participation Services	0465-01-02-.24	Rate Setting Methodologies for Services Funded Exclusively by the State [Non-Waiver, State Funded (NWSF) Services]

**0465-01-02-.01 PURPOSE.**

- (1) This chapter establishes a rate setting methodology for Residential Day and other Services that are provided through the Department of Intellectual and Developmental Disabilities.

*Authority: Tenn. Code Ann. (T.C.A.) §§ 4-3-2701, 4-3-2707, 4-4-103, 4-5-201, et seq., 33-1-201, 33-1-202, 33-1-203 (1) and (6), 33-1-204, 33-1-301, 33-1-302 (a)(3) and (a)(4), & ~~303~~ 33-1-303 (3) and (11), 33-1-*

~~304, 33-1-305 (1), and 33-1-309 (d); 33-1-204; Executive Orders of the State of Tennessee Nos. 9, 10, 21 & 34 23 dated February 7, 1996, October 14, 1996, July 29, 1999, and October 19, 1999 respectively; State of Tennessee Delegated Purchase Authority DP 10-28649-00 Reg. 515; T.C.A. § 4-5-208, et seq. and its applicable regulations concerning emergency rules; and, the "Reimbursement Rate" for Medical Services under DIDD federal waiver(s) for provision of services as administered by TennCare. Administrative History: Original rule filed December 12, 2013; effective March 12, 2014.~~

0465-01-02-02 SCOPE.

- (1) All of the rate methodologies used to determine payments to service providers set forth in these rules are subject to the availability of appropriations established in the TennCare budget for home and community based services provided under the State's approved HCBS waivers for individuals with intellectual disabilities and may be adjusted by the Department or by TennCare as necessary to assure that expenditures for these services are within and do not exceed the budgeted amount for waiver services that year; and also the provisions of Title 33 and 34 of the Tennessee Code Annotated; and, Executive Orders of the State of Tennessee Nos. 9, 10, 21 and 23, dated February 7, 1996, October 14, 1996, July 29, 1999 and October 19, 1999, respectively and Executive Order No. 28, dated June 19, 2013, which established the Tennessee Employment First Initiative which directs state agencies to "coordinate to increase opportunities for integrated and competitive employment for individuals with intellectual and developmental disabilities."

~~Authority: Tenn. Code Ann. (T.C.A.) §§ 4-3-2701, 4-3-2707, 4-4-103, 4-5-201, et seq., 33-1-201, 33-1-202, 33-1-203 (1) and (6), 33-1-204, 33-1-301, 33-1-302 (a)(3) and (a)(4), 33-1-303 (3) and (11), 33-1-304, 33-1-305 (1), and 33-1-309 (d); 33-1-204; Executive Orders of the State of Tennessee Nos. 9, 10, 21 & 34 23, dated February 7, 1996, October 14, 1996, July 29, 1999, and October 19, 1999 respectively; State of Tennessee Delegated Purchase Authority DP 10-28649-00 Reg. 515; §§ 33-1-302 and 303; 4-5-208, et seq. and its applicable regulations concerning emergency rules; and, the "Reimbursement Rate" for Medical Services under DIDD federal waiver(s) for provision of services as administered by TennCare. Administrative History: Original rule filed December 12, 2013; effective March 12, 2014.~~

0465-01-02-03 DEFINITIONS.

- (1) As used in these rules:
  - (a) "Administrative Costs" are the allowable percentage of the service rate that includes, for example, the costs for administrative salaries and benefits, home office costs, office supplies and printing, phone and other communication, travel and conference, advertising, professional services, licensure and dues, legal and accounting fees, interest, depreciation, occupancy, general liability insurance, equipment and administrative vehicles.
  - (b) "Costs" are estimated calculations of the average expense incurred by a provider in 2004 based on information available at that time and are not intended to fully account for every expense that may have been incurred by any particular provider at or since that time in delivering a waiver service. Costs include adjustments based on funding approved by the General Assembly to increase certain components of these calculations, including primarily, wages for direct support staff. ~~Costs will be reviewed on a periodic basis based on information provided in Uniform Cost Reports and may be adjusted as determined by DIDD and TennCare, subject to the availability of funding in each year's Appropriation Bill.~~
  - (c) "Direct Service Costs" are the costs for direct service such as staff salaries and benefits, overtime, direct supervision wages and benefits, contracted direct service/temporary help, training, recruiting/advertising, drug testing, background checks, Hepatitis B and TB tests, and other costs for direct service staff bonuses

and employee appreciation events.

- (d) "Direct Support Professional (DSP) Reimbursement Rate" shall be the estimated calculation of the cost of wages paid to DSPs employed by providers to deliver services requiring hands-on assistance and supervision, including adjustments based on funding approved by the General Assembly to increase DSP wages.
- (e) "Fading" is an essential component of the provision of job coaching services. Fading uses a combination of strategies such as job and task analysis, on-the-job training, including systematic instruction, use of assistive technology or other adaptive aids, and engagement of natural supports (assistance from co-workers or others) to allow the waiver participant to independently perform as much of his/her employment or self-employment roles and responsibilities as possible, without the engagement of paid support. Fading is possible when a waiver participant achieves greater independence and/or inter-dependence performing his/her job, thereby reducing the need for the job coach.
- (e) (f) "Full Time Equivalent (FTE)" means the total cost for one direct support staff for forty hours. It includes direct service costs, non-direct program costs, administrative costs, and twenty (20) annual days of payment to cover service recipient waiver participant absences.
- (g) "Job Coach" is a person employed by a provider agency who meets the additional qualifications specified by DIDD or TennCare and has the skills and competencies needed to identify and provide services and supports that assist a waiver participant in maintaining individualized integrated employment that pays at least minimum wage, but ideally not less than the customary wage and level of benefits paid by the employer for the same or similar work performed by individuals without disabilities, or in maintaining self-employment, and that supports the development of the waiver participant's independence in performing employment or self-employment job functions using a fading plan.
- (h) "Job Developer" is a person employed by a provider agency who meets the additional qualifications specified by DIDD or TennCare and has the skills and competencies needed to support a waiver participant in obtaining an individualized competitive or customized job in an integrated employment setting in the general workforce, for which the waiver participant is compensated at or above the minimum wage, but ideally not less than the customary wage and level of benefits paid by the employer for the same or similar work performed by individuals without disabilities or achievement of individualized self-employment consistent with the waiver participant's personal and career goals.
- (e) (i) "Non-Direct Program Costs" is the allowable percentage of the service rate that includes the costs for multi-site supervisors and benefits, training, off site computer/file storage, depreciation/amortization, internal monitoring, agency case management, personal funds management, healthcare oversight, specific assistance to individuals waiver participants-room and board, specific assistance to individuals waiver participant-non-room and board, transportation of individuals, staff travel, facility maintenance, facility supplies, habilitation supplies.
- (j) "Productivity Assumptions" is a calculation which takes into account the amount of a paid job coach or job developer's time that will not be spent providing direct services, including administrative tasks (e.g. documentation, staff meetings), training, holidays, vacation, sick leave, and other emergencies, as well as the absentee rate of waiver participants receiving services which impact the billable hours of support in a typical day.

- (f) (k) "Rate" is the amount paid per person to approved service providers for each unit of a DIDD service that is provided. A rate unit may be a portion of an hour, a day, a month, an item or a job, depending on the type of service.
  - (g) (l) "Rate Levels" are the series of rates for residential, day and other services that are based on a service recipient's waiver participant's needs and the size or site of the service setting.
  - (h) (m) "Rate Level Factor" is the multiplier applied to the FTE daily cost that reflects intensity of support need and number of persons in the home receiving services. Rate level factors were based on licensure requirements for staffing and professional judgment of estimated hours of direct support staff assistance required for individuals waiver participants at each rate level.
  - (i) (n) "Rate Setting Methodology" is the manner in which the rates for residential, day and other services are calculated or determined.
  - (j) (o) "Special Needs Adjustment" is an additional payment that may, within the discretion of the Division Department and subject to resource availability, be added to the residential rate for an individual a waiver participant in appropriate circumstances, (e.g. periodic crisis that require additional support).
  - (k) ~~"Uniform Cost Report" is a report relating to costs and/or operating expenses/revenues completed by providers that is submitted as required by the Division Department of Intellectual Disabilities Services. The Uniform Cost Report is completed and transmitted in the manner, format and timeframe required by the Division Department.~~
  - (p) "Usual and customary" is the amount paid for a service in a geographic area based on what providers in the area usually charge for the same or similar service.
  - (q) "Value-based adjustment" is an adjustment made to a rate of reimbursement or to one or more components used to calculate a rate of reimbursement that is intended to incentivize (and reward) certain qualitative aspects of the delivery of services or service outcomes (e.g. fading in the provision of job coaching or smaller group size in the provision of supported employment-small group).
- (2) Waiver services (for which rate setting methodologies are set forth in these rules) shall be defined as set for the in the Section 1915(c) waiver application approved by the federal Centers for Medicare and Medicaid Services.

**Authority:** ~~Tenn. Code Ann. (T.C.A.) §§ 4-3-2701, 4-3-2707, 4-4-103, 4-5-201 et seq., 33-1-201, 33-1-202, 33-1-203 (1) and (6), 33-1-309 (d); 33-1-204; 33-1-301, 33-1-302 (a)(3) and (a)(4), 33-1-303 (3) and (11), 33-1-304, 33-1-305 (1), and 33-1-309 (d); Executive Orders of the State of Tennessee Nos. 9, 10, 21 & 34 23, dated February 7, 1996, October 14, 1996, July 29, 1999, and October 19, 1999 respectively; State of Tennessee Delegated Purchase Authority DP 10-28649-00 Reg. 515; T.C.A. §§ 33-1-302 and 303; 4-5-208, et seq. and its applicable regulations concerning emergency rules; and, the "Reimbursement Rate" for Medical Services under DIDD federal waiver(s) for provision of services as administered by TennCare. Administrative History: Original rule filed December 12, 2013; effective March 12, 2014.~~

0465-01-02-.04 RATE SETTING METHODOLOGIES FOR MEDICAL, RESIDENTIAL SERVICES.

- (1) Medical Residential Services.
  - (a) For residential services that are shift-staffed, staff coverage is calculated as follows:

1. 168 hours per week - 7 days at 24 hours per day.
2. The unit of service for these residential services is a day.

(b) The calculation of the daily cost per person for a Full Time Equivalent (FTE) is:

1. Allowable Hourly direct support staff wages plus % for benefits for the hourly cost for direct support staff.
2. Annual allowable salary for direct supervision plus % for benefits divided by four residents equals the cost per person per year.
3. Divide the cost per person per year by 52 weeks and by 168 hours to arrive at the hourly cost for supervision.
4. Add together the hourly cost for direct support staff and the hourly cost for supervision.
5. Multiply the result from Step four by one and the % allowed for non-direct program costs.
6. Multiply the result from Step five by one and the % allowed for administrative costs to arrive at the hourly cost for coverage.
7. Multiply the hourly cost for an FTE by 168 hours to arrive at the weekly cost for coverage.
8. Divide the weekly cost by 7 days to arrive at the daily cost for coverage.
9. Divide the daily cost by allowable FTEs to arrive at the daily FTE cost per person.

(c) Calculation for the daily rate per person is:

1. For each Rate Level and Home Size, multiply the daily per person FTE cost by the rate level factor.
2. Divide the result of Step one by the facility size.
3. Multiply the result of Step two by 385 (to allow for 20 absent days).
4. Divide the result of Step three by 365 to arrive at the daily rate.

*Authority: Tenn. Code Ann. (T.C.A.) §§ 4-3-2701, 4-3-2707, 4-4-103, 4-5-201, et seq., 33-1-201, 33-1-202, 33-1-203 (1) and (6), 33-1-204, 33-1-301, 33-1-302 (a)(3) and (a)(4), 33-1-303 (3) and (11), 33-1-304, 33-1-305 (1), and 33-1-309 (d); 33-1-204; Executive Orders of the State of Tennessee Nos. 9, 10, 21 & 34 23, dated February 7, 1996, October 14, 1996, July 29, 1999, and October 19, 1999 respectively; State of Tennessee Delegated Purchase Authority DP 10-28649-00 Reg. 515; §§ 33-1-302 & 303, 4-5-208, et seq. and its applicable regulations concerning emergency rules; and the "Reimbursement Rate" for Medical Services under DIDD federal waiver(s) for provision of services as administered by TennCare. Administrative History: Original rule filed December 12, 2013; effective March 12, 2014.*

0465-01-02-.05 RATE SETTING METHODOLOGIES FOR INTENSIVE BEHAVIORAL RESIDENTIAL AND SUPPORTED LIVING SERVICES.

- (1) — Includes Behavioral Analyst Services.
- (2) — For residential services that are shift-staffed, staff coverage is calculated as follows:
- (a) — 168 hours per week—7 days at 24 hours per day.
  - (b) — The unit of service for these residential services is a day.
- (3) — The calculation of the daily cost per person for a Full Time Equivalent (FTE) is:
- (a) — Allowable hourly direct support staff wages plus % for benefits for the hourly cost for direct support staff.
  - (b) — Annual allowable salary for direct supervision plus % for benefits divided by four residents equals the cost per person per year.
  - (c) — Divide the cost per person per year by 52 weeks and by 168 hours to arrive at the hourly cost for supervision.
  - (d) — Add together the hourly cost for direct support staff and the hourly cost for supervision.
  - (e) — Multiply the result from Step four by one and the % allowed for non-direct program costs.
  - (f) — Multiply the result from Step five by one and the % allowed for administrative costs to arrive at the hourly cost for coverage.
  - (g) — Multiply the hourly cost for an FTE by 168 hours to arrive at the weekly cost for coverage.
  - (h) — Divide the weekly cost by 7 days to arrive at the daily cost for coverage.
  - (i) — Divide the daily cost by allowable FTEs to arrive at the daily FTE cost per person.
- (4) — Calculation for the daily rate per person is:
- (a) — For each Rate Level and Home Size, multiply the daily per person FTE cost by the rate level factor.
  - (b) — Divide the result of Step (a) by the facility size.
  - (c) — Multiply the result of Step (b) by 385 (to allow for 20 absent days).
  - (d) — Divide the result of Step (c) by 365 to arrive at the program costs.
  - (e) — Add an allowance for BA services to the program component to the step above (d) to determine the daily rate.
- (1) Residential Habilitation and Supported Living (Shift-Staffed) Model.
- (a) For residential services that are shift-staffed, staff coverage is calculated as follows:
    - 1. 138 hours per week - 5 days at 18 hours per day and 2 days at 24 hours per day is equal to one week.

2. The unit of service for these residential services is a day.

(b) The calculation of the daily cost per person for a Full Time Equivalent (FTE) is:

1. Hourly direct support staff wages plus % for benefits for the hourly cost for direct support staff.
2. Annual salary for direct supervision plus % for benefits divided by four residents equals the cost per person per year.
3. Divide the cost per person per year by 52 weeks and by 138 hours to arrive at the hourly cost for supervision.
4. Add together the hourly cost for direct support staff and the hourly cost for supervision.
5. Multiply the result from Step four by one and the % allowed for non-direct program costs.
6. Multiply the result from Step five by one and the % allowed for administrative costs to arrive at the hourly cost for coverage.
7. Multiply the hourly cost for an FTE by 138 hours to arrive at the weekly cost for coverage.
8. Divide the weekly cost by 7 days to arrive at the daily cost for coverage.
9. Divide the daily cost by allowable FTEs to arrive at the daily FTE cost per person.

(c) Calculation for the daily rate per person is:

1. For each Rate Level and Home Size, multiply the daily per person FTE cost by the rate level factor.
2. Divide the result of Step one by the facility size.
3. Multiply the result of Step two by 385 (to allow for 20 absent days).
4. Divide the result of Step three by 365 to arrive at the daily rate.

(2) Supported Living-Companion Model.

(a) For non-shift staffed, companion model the unit of service is a day. The calculations are as follows:

(b) Calculate the daily rate per person.

1. Multiply the annual stipend by one and the % for benefits.
2. Add the companion room and board allowance.
3. Add the number of hours per year at the hourly rate for relief staff divided by 365 days.
4. Add costs in steps one through three.

5. Multiply the result of step four by one and the % for non-direct program costs.
6. Multiply the result of step five by one and the % for administrative costs.
7. Divide the result of step six by 365.
8. Multiply the result of step seven by 385 (to allow for 20 absent days).
9. Divide the result of step eight by 365 to arrive at the daily rate.

(3) Family Model for Residential Services.

- (a) Family Model Residential Services are those provided in a family home under the supervision of a residential services agency. The unit of service is a day.
- (b) Calculate the daily rate per person.
  1. Multiply the annual stipend by one and the % for benefits.
  2. Add the number of hours per year at the hourly rate for relief staff divided by 365 days.
  3. Add direct supervision at annual salary plus % for benefits divided by 10 waiver participants divided by 365 days.
  4. Add costs in steps 1 through 3 above.
  5. Multiply the result of step four by one and the percent for non-direct program costs.
  6. Multiply the result of step five by one and the percent for administrative costs.
  7. Divide the result of step six by 365 days.
  8. Multiply the result of step seven by 385 days (to allow for 20 absent days).
  9. Divide the result of step eight by 365 days to arrive at the daily rate.

**Authority:** *Tenn. Code Ann. (T.C.A.) §§ 4-3-2701, 4-3-2707, 4-4-103, 4-5-201, et seq., 33-1-201, 33-1-202, 33-1-203 (1) and (6), 33-1-204, 33-1-301, 33-1-302 (a)(3) and (a)(4), 33-1-303 (3) and (11), 33-1-304, 33-1-305 (1), and 33-1-309 (d); 33-1-204; Executive Orders of the State of Tennessee Nos. 9, 10, 21 & 34 23, dated February 7, 1996, October 14, 1996, July 29, 1999, and October 19, 1999 respectively; State of Tennessee Delegated Purchase Authority DP 10-28649-00 Reg. 515; T.C.A. §§ 33-1-302 & 303, 4-5-208, et seq. and its applicable regulations concerning emergency rules; and the "Reimbursement Rate" for Medical Services under DIDD federal waiver(s) for provision of services as administered by TennCare. Tennessee Public Chapter 1100, June 23, 2010. Administrative History: Original rule filed December 12, 2013; effective March 12, 2014.*

0465-01-02-.06 RATE SETTING METHODOLOGIES FOR RESIDENTIAL AND SUPPORTED LIVING SEMI-INDEPENDENT LIVING SERVICES.

(1) — Residential Habilitation and Supported Living (Shift-Staffed) Model.

~~(a) For residential services that are shift-staffed, staff coverage is calculated as follows:~~

- ~~1. 138 hours per week—5 days at 18 hours per day and 2 days at 24 hours per day is equal to one week.~~
- ~~2. The unit of service for these residential services is a day.~~

~~(b) The calculation of the daily cost per person for a Full Time Equivalent (FTE) is:~~

- ~~1. Hourly direct support staff wages plus % for benefits for the hourly cost for direct support staff.~~
- ~~2. Annual salary for direct supervision plus % for benefits divided by four residents equals the cost per person per year.~~
- ~~3. Divide the cost per person per year by 52 weeks and by 138 hours to arrive at the hourly cost for supervision.~~
- ~~4. Add together the hourly cost for direct support staff and the hourly cost for supervision.~~
- ~~5. Multiply the result from Step four by one and the % allowed for non-direct program costs.~~
- ~~6. Multiply the result from Step five by one and the % allowed for administrative costs to arrive at the hourly cost for coverage.~~
- ~~7. Multiply the hourly cost for an FTE by 138 hours to arrive at the weekly cost for coverage.~~
- ~~8. Divide the weekly cost by 7 days to arrive at the daily cost for coverage.~~
- ~~9. Divide the daily cost by allowable FTEs to arrive at the daily FTE cost per person.~~

~~(c) Calculation for the daily rate per person is:~~

- ~~1. For each Rate Level and Home Size, multiply the daily per person FTE cost by the rate level factor.~~
- ~~2. Divide the result of Step one by the facility size.~~
- ~~3. Multiply the result of Step two by 385 (to allow for 20 absent days).~~
- ~~4. Divide the result of Step three by 365 to arrive at the daily rate.~~

~~(2) Supported Living Companion Model~~

~~(a) For non-shift staffed, companion model the unit of service is a day. The calculations are as follows:~~

~~(b) Calculate the daily rate per person.~~

- ~~1. Multiply the annual stipend by one and the % for benefits.~~
- ~~2. Add the companion room and board allowance.~~

3. ~~\_\_\_\_\_ Add the number of hours per year at the hourly rate for relief staff divided by 365 days.~~
4. ~~\_\_\_\_\_ Add costs in steps one through three.~~
5. ~~\_\_\_\_\_ Multiply the result of step four by one and the % for non-direct program costs.~~
6. ~~\_\_\_\_\_ Multiply the result of step five by one and the % for administrative costs.~~
7. ~~\_\_\_\_\_ Multiply the result of step seven by 385 (to allow for 20 absent days).~~
8. ~~\_\_\_\_\_ Divide the result of step eight by 365 to arrive at the daily rate.~~

(3) ~~\_\_\_\_\_ Family Model for Residential Services~~

- (a) ~~\_\_\_\_\_ Family Model Residential Services are those provided in a family home under the supervision of a residential services agency. The unit of service is a day.~~
- (b) ~~\_\_\_\_\_ Calculate the daily rate per person.~~
  1. ~~\_\_\_\_\_ Multiply the annual stipend by one and the % for benefits.~~
  2. ~~\_\_\_\_\_ Add the number of hours per year at the hourly rate for relief staff divided by 365 days.~~
  3. ~~\_\_\_\_\_ Add direct supervision at annual salary plus % for benefits divided by 10 individuals divided by 365 days.~~
  4. ~~\_\_\_\_\_ Add costs in steps 1 through 3 above.~~
  5. ~~\_\_\_\_\_ Multiply the result of step four by one and the percent for non-direct program costs.~~
  6. ~~\_\_\_\_\_ Multiply the result of step five by one and the percent for administrative costs.~~
  7. ~~\_\_\_\_\_ Divide the result of step six by 365 days.~~
  8. ~~\_\_\_\_\_ Multiply the result of step seven by 385 days (to allow for 20 absent days).~~
  9. ~~\_\_\_\_\_ Divide the result of step eight by 365 days to arrive at the daily rate.~~

(1) Calculation for Semi-Independent Living Services is:

- (a) The unit of service for these residential services is a day.
- (b) The rate is calculated on a monthly basis. For purposes of billing, the monthly rate is converted to a per diem amount. The per diem rate will be billed for each day of the month that the person is enrolled in the services, regardless of whether any direct assistance was provided that day.
- (c) The rate is calculated using the following factors:
  1. Average monthly hours, inclusive of on-call services;

2. Personal Assistant services quarter hour reimbursement rate as defined in 0465-01-02-.18;
  3. Transportation cost.
- (d) Semi-Independent Living Incentive: is a one-time payment of \$2,500 per waiver participant per provider. The waiver participant must have transitioned directly into Semi-Independent Living from a twenty-four hour residential service following at least thirty consecutive paid residential days. The waiver participant must then participate in Semi-Independent Living for six (6) consecutive months immediately following the transition to be eligible for the incentive payment.
- (e) Semi-Independent Living Transition Rate: is double that of the semi-independent living daily rate and limited to waiver participants who require additional hours of support during the period immediately following transition. This rate is only available for up to thirty days following the initial transition from a twenty-four hour residential service to Semi-Independent Living and requires thirty consecutive paid residential days immediately prior and adjacent to the claim for the transition rate.

*Authority: Tenn. Code Ann. (T.C.A.) §§ 4-3-2701, 4-3-2707, 4-4-103, 4-5-201, et seq., 33-1-201, 33-1-202, 33-1-203 (1) and (6), 33-1-204, 33-1-301, 33-1-302 (a)(3) and (a)(4), 33-1-303 (3) and (11), 33-1-304, 33-1-305 (1), and 33-1-309 (d); 33-1-204; Executive Orders of the State of Tennessee Nos. 9, 10, 21 & 34 23, dated February 7, 1996, October 14, 1996, July 29, 1999, and October 19, 1999 respectively; State of Tennessee Delegated Purchase Authority DP 10-28649-00 Reg. 515; T.C.A. §§ 33-1-302 & 303, 4-5-208, et seq. and its applicable regulations concerning emergency rules; and the "Reimbursement Rate" for Medical Services under DIDD federal waiver(s) for provision of services as administered by TennCare. Administrative History: Original rule filed December 12, 2013; effective March 12, 2014.*

~~0465-01-02-.07 RATE SETTING METHODOLOGIES FOR SEMI-INDEPENDENT LIVING SERVICES SPECIAL NEEDS ADJUSTMENTS.~~

- (1) ~~Calculation for Semi-Independent Living Services is:~~
- (a) ~~The unit of service for these residential services is a month.~~
  - (b) ~~Average monthly hours of service were used to calculate the rate.~~
  - (c) ~~The average monthly hours are inclusive of on-call services.~~
  - (d) ~~The PA quarter hour reimbursement was used in determining the monthly rate.~~
- (2) ~~Take amount in Step above and add an allowance for transportation costs to determine the maximum rate.~~
- (1) An adjustment up to an additional thirty-five dollars (\$35.00) per day is available to Residential Habilitation and Supported Living Levels 1-4, for homes with 1-4 persons.
  - (2) An adjustment of twenty dollars (\$20.00) per day is available to Residential Habilitation homes with 5 or more people except for reasons of a vacancy in the home.
  - (3) This adjustment may be used for additional staff coverage or higher wages for staff.
  - (4) A special needs adjustment does not change the rate level designated for the waiver participant, but adjusts the rate level as a result of one or more of the following circumstances:

- (a) The waiver participant has a history of significant behavioral or psychiatric problems such as DSM-V diagnosis, violent acting out, serious self-injury or danger to others that are now not apparent due to the design or intensity of services being received or the person has a situation that is unique and results in the need for additional resources.
- (b) Less intensive services will likely result in recurrence of previous problems. The Regional Office must review the special adjustment at least annually.
- (c) The waiver participant is in circumstances that are time limited but that require support(s) at a higher level than described by the Level. (For example, the person has had a serious illness, injury, or surgery that requires more support while he is recovering than the Level describes.) A special adjustment may be approved for up to ninety (90) days and may be extended for an additional ninety (90) days.

*Authority: Tenn. Code Ann. (T.C.A.) §§ 4-3-2701, 4-3-2707, 4-4-103, 4-5-201, et seq., 33-1-201, 33-1-202, 33-1-203 (1) and (6), 33-1-204, 33-1-301, 33-1-302 (a)(3) and (a)(4), 33-1-303 (3) and (11), 33-1-304, 33-1-305 (1), and 33-1-309 (d); 33-1-204; Executive Orders of the State of Tennessee Nos. 9, 10, 21 & 34 23, dated February 7, 1996, October 14, 1996, July 29, 1999, and October 19, 1999 respectively; State of Tennessee Delegated Purchase Authority DP 10-28649-00 Reg. 515; T.C.A. §§ 33-1-302 & 303, 4-5-208, et seq. and its applicable regulations concerning emergency rules; and the "Reimbursement Rate" for Medical Services under DIDD federal waiver(s) for provision of services as administered by TennCare. Tennessee Public Chapter 1100, June 23, 2010. Administrative History: Original rule filed December 12, 2013; effective March 12, 2014.*

**0465-01-02-08 SPECIAL NEEDS ADJUSTMENTS VALUE-BASED RATE SETTING METHODOLOGY FOR SUPPORTED EMPLOYMENT -INDIVIDUAL EXPLORATION.**

- (1) An adjustment up to an additional thirty-five dollars (\$35.00) per day is available to Residential Habilitation and Supported Living Levels 1-4, for homes with 1-4 persons.
- (2) An adjustment of twenty dollars (\$20.00) per day is available to Residential Habilitation homes with 5 or more people except for reasons of a vacancy in the home.
- (3) This adjustment may be used for additional staff coverage or higher wages for staff.
- (4) A special needs adjustment does not change the rate level designated for the individual, but adjusts the rate level as a result of one or more of the following circumstances:
  - (a) The individual has a history of significant behavioral or psychiatric problems such as DSM-IV diagnosis, violent acting out, serious self-injury or danger to others that are now not apparent due to the design or intensity of services being received or the person has a situation that is unique and results in the need for additional resources.
  - (b) Less intensive services will likely result in recurrence of previous problems. The Regional Office must review the special adjustment at least annually.
  - (c) The individual is in circumstances that are time limited but that require support(s) at a higher level than described by the Level. (For example, the person has had a serious illness, injury, or surgery that requires more support while he is recovering than the Level describes.) A special adjustment may be approved for up to ninety (90) days and may be extended for an additional ninety (90) days.

- (1) Supported employment-individual exploration is paid for on an outcome basis.
- (2) The unit is a complete episode of the service as defined in the approved Section 1915(c) waiver application and includes all of the service required to deliver the expected outcome.
- (3) The outcome-based rate is calculated using the following factors:
  - (a) Average cost of job coach hour of service (as described in 0465-01-02-.11(3)(a)), including these component costs:
    1. DSP reimbursement rate;
    2. Employee-related expenses;
    3. Administrative costs;
    4. Productivity assumptions; and
    5. Travel costs;
  - (b) A value-based incentive of \$4.30/hour above actual cost (rate model) to reward provision of services expected to result in the person identifying a goal of competitive integrated employment;
  - (c) Average number of job coach hours required to complete service; and
  - (d) Billable service adjustment for percentage of waiver participants that do not complete the service due to reasons beyond the purview of the provider's control.

*Authority: Tenn. Code Ann. (T.C.A.) §§ 4-3-2701, 4-3-2707, 4-4-103, 4-5-201, et seq., 33-1-201, 33-1-202, 33-1-203 (1) and (6), 33-1-204, 33-1-301, 33-1-302 (a)(3) and (a)(4), 33-1-303 (3) and (11), 33-1-304, 33-1-305 (1), and 33-1-309 (d); 33-1-204; Executive Orders of the State of Tennessee Nos. 9, 10, 21 & 34 23, dated February 7, 1996, October 14, 1996, July 29, 1999, and October 19, 1999 respectively; State of Tennessee Delegated Purchase Authority DP 10-28649-00 Reg. 515; T.C.A. §§ 33-1-302 and 303, 4-5-208, et seq. and its applicable regulations concerning emergency rules; and, the "Reimbursement Rate" for Medical Services under DIDD federal waiver(s) for provision of services as administered by TennCare. Administrative History: Original rule filed December 12, 2013; effective March 12, 2014.*

~~0465-01-02-.09 RATE SETTING METHODOLOGIES FOR DAY SERVICES VALUE-BASED RATE SETTING METHODOLOGY FOR SUPPORTED EMPLOYMENT -INDIVIDUAL DISCOVERY.~~

- ~~(1) Calculation for day services is:
 
  - ~~(a) The unit of service is a day.~~
  - ~~(b) For day services staff coverage is calculated for 6 hours per day for 243 days per year.~~~~
- ~~(2) The cost models are calculated with the following direct service cost factors:
 
  - ~~(a) Non-direct program costs at the allowable percentage.~~
  - ~~(b) Administrative costs at the allowable percentage.~~
  - ~~(c) Transportation costs per day per person.~~~~

- ~~(d) Twenty (20) leave days.~~
- ~~(e) Rate Level Factor based on service setting and the need of the individual.~~
- ~~(f) Day Service settings (except in In Home Day Services) include day habilitation facilities, community locations and community employment locations.~~
- (1) Supported employment-individual discovery is paid for on an outcome basis.
- (2) The unit is a complete episode of the service as defined in the approved Section 1915(c) waiver application and includes all of the service required to deliver the expected outcome.
- (3) The outcome-based rate is calculated using the following factors:
  - (a) Average cost of job developer hour of service, including these component costs:
    - 1. DSP reimbursement rate;
    - 2. Adjustment of \$2.75/hour to increase DSP reimbursement rate to account for additional qualifications required for discovery;
    - 3. Employee-related expenses;
    - 4. Administrative costs;
    - 5. Productivity assumptions; and
    - 6. Travel costs;
  - (b) Average number of job developer hours required to complete service; and
  - (c) Billable service adjustment for percentage of waiver participants that do not complete the service due to reasons beyond the purview of the provider's control.

**Authority:** ~~Tenn. Code Ann. (T.C.A.) §§ 4-3-2701, 4-3-2707, 4-4-103, 4-5-201, et seq., 33-1-201, 33-1-202, 33-1-203 (1) and (6), 33-1-204, 33-1-301, 33-1-302 (a)(3) and (a)(4), 33-1-303 (3) and (11), 33-1-304, 33-1-305 (1), and 33-1-309 (d); 33-1-204; Executive Orders of the State of Tennessee Nos. 9, 10, 21 & 34 23, dated February 7, 1996, October 14, 1996, July 29, 1999, and October 19, 1999 respectively; State of Tennessee Delegated Purchase Authority DP 10-28649-00 Reg. 515; T.C.A. §§ 33-1-302 & 303, 4-5-208, et seq. and its applicable regulations concerning emergency rules; and, the "Reimbursement Rate" for Medical Services under DIDD federal waiver(s) for provision of services as administered by TennCare. Administrative History: Original rule filed December 12, 2013; effective March 12, 2014.~~

~~0465-01-02-.10 RATE SETTING METHODOLOGIES FOR DAY SERVICES – IN HOME DAY VALUE-BASED RATE SETTING METHODOLOGY FOR SUPPORTED EMPLOYMENT -INDIVIDUAL JOB DEVELOPMENT.~~

- ~~(1) Calculation for day services – home day per person is:
 
  - ~~(a) The unit of service is a day.~~
  - ~~(b) For day services staff coverage is calculated for 6 hours per day for 243 days per year.~~~~
- ~~(2) The cost models are calculated with the following direct service cost factors:~~

- ~~(a) Non-direct program costs at the allowable percentage.~~
  - ~~(b) Administrative costs at the allowable percentage.~~
  - ~~(c) Twenty (20) leave days.~~
  - ~~(d) Rate level factor based on service setting and the need of the individual.~~
  - ~~(e) This Day Service setting is limited to the home and has no transportation cost included.~~
- (1) Supported employment-individual job development is paid for on an outcome basis.
  - (2) The unit is a complete episode of the service as defined in the approved Section 1915(c) waiver application and includes all of the service required to deliver the expected outcome.
  - (3) The outcome-based rate is calculated using the following factors:
    - (a) Average cost of job developer hour of service, including these component costs:
      - 1. DSP reimbursement rate;
      - 2. Adjustment of \$2.75/hour to increase DSP reimbursement rate to account for additional qualifications required for job developer;
      - 3. Employee-related expenses;
      - 4. Administrative costs;
      - 5. Productivity assumptions; and
      - 6. Travel costs;
    - (b) Rate level factor based on average number of job developer hours required to complete service and secure outcome adjusted for intensity of support needs of the individual; and
    - (c) Billable service adjustment for percentage of waiver participants that do not complete the service due to reasons beyond the purview of the provider's control.

**Authority:** ~~Tenn. Code Ann. (T.C.A.) §§ 4-3-2701, 4-3-2707, 4-4-103, 4-5-201, et seq., 33-1-201, 33-1-202, 33-1-203 (1) and (6), 33-1-204, 33-1-301, 33-1-302 (a)(3) and (a)(4), 33-1-303 (3) and (11), 33-1-304, 33-1-305 (1), and 33-1-309 (d); 33-1-204; Executive Orders of the State of Tennessee Nos. 9, 10, 21 & 34 23, dated February 7, 1996, October 14, 1996, July 29, 1999, and October 19, 1999 respectively; State of Tennessee Delegated Purchase Authority DP 10-28649-00 Reg. 515; T.C.A. §§ 33-1-302 & 303, 4-5-208, et seq. and its applicable regulations concerning emergency rules; and the "Reimbursement Rate" for Medical Services under DIDD federal waiver(s) for provision of services as administered by TennCare. Tennessee Public Chapter 1100, June 23, 2010. Administrative History: Original rule filed December 12, 2013; effective March 12, 2014.~~

~~0465-01-02-.11 RATE SETTING METHODOLOGIES FOR CLINICAL SERVICES VALUE-BASED RATE SETTING METHODOLOGY FOR SUPPORTED EMPLOYMENT -INDIVIDUAL JOB COACHING.~~

- ~~(1) The unit for therapy and nursing services is a quarter hour.~~
- ~~(2) The Unit for behavioral services is one quarter (1/4) of an hour.~~

- ~~(1) The unit for therapy and nursing services is a quarter hour.~~
- ~~(2) The Unit for behavioral services is one quarter (1/4) of an hour.~~
- ~~(3) The rate for clinical services is based on comparison with national rates of payment and comparable rates of payment within the State for like services.~~
- (1) Supported employment-individual job coaching is reimbursed on a fee-for-service basis.
- (2) The unit of service is 15 minutes.
- (3) The fee-for-service rate is calculated using the following factors:
- (a) Average cost of job coach hour of service divided by four (4), including these component costs:
1. DSP reimbursement rate;
  2. Employee-related expenses;
  3. Administrative costs;
  4. Productivity assumptions, including projected average waiver participant absentee rate of 12 percent; and
  5. Travel cost; and
- (b) A value-based incentive of \$3/hour above actual cost (rate model) to reward the provision of services to support waiver participant success in competitive, integrated employment - so long as fading expectations are met (see below);
- (c) Value-based adjustments beginning six months after initiation of individual job coaching to incentivize fading of services, based on a combination of: the intensity of support needs of the waiver participant, the length of time the waiver participant has held the current job or self-employment position, and the effectiveness of job coaching services as demonstrated by fading achieved.
- (4) Additionally, where a waiver participant has a need for job coaching that is equal to or less than one hour per week, a monthly "Stabilization and Monitoring" payment will be used to encourage ongoing, effective monitoring of the waiver participant's employment situations, with minimum monthly contact requirements that will allow for prevention of otherwise avoidable job losses or reductions in work hours.
- (5) Quality Payment for Hours Worked Milestone under Supported Employment -Individual Employment Support: Payment earned and paid for additional/atypical effort of provider that results in a waiver participant working in competitive integrated employment achieving above average hours worked in a six-month period. There are two quality payment levels available:
- (a) The base tier payment is \$1,500 and is made based on the waiver participant working in competitive integrated employment between three-hundred ninety (390) and five-hundred nineteen (519) hours in the prior six (6) calendar month period. This is average hourly employment that is at least 15 but less than 20 hours/week.

- (b) The top tier payment is \$2,000 and is made based on the waiver participant working five-hundred and twenty (520) or more hours in the prior six (6) calendar month period. This is average hourly employment that is 20 hours/week or more.
- (c) A provider may earn the quality payment up to twice a year.

*Authority: Tenn. Code Ann. (T.C.A.) §§ 4-3-2701, 4-3-2707, 4-4-103, 4-5-201, et seq., 33-1-201, 33-1-202, 33-1-203 (1) and (6), 33-1-204, 33-1-301, 33-1-302 (a)(3) and (a)(4), 33-1-303 (3) and (11), 33-1-304, 33-1-305 (1), and 33-1-309 (d); 33-1-204; Executive Orders of the State of Tennessee Nos. 9, 10, 21 & 34 23, dated February 7, 1996, October 14, 1996, July 29, 1999, and October 19, 1999 respectively; State of Tennessee Delegated Purchase Authority DP 10-28649-00 Reg. 515; T.C.A. §§ 33-1-302 & 303, 4-5-208, et seq. and its applicable regulations concerning emergency rules; and, the "Reimbursement Rate" for Medical Services under DIDD federal waiver(s) for provision of services as administered by TennCare. Administrative History: Original rule filed December 12, 2013; effective March 12, 2014.*

~~0465-01-02.12 RATE SETTING METHODOLOGIES FOR RESPITE AND PERSONAL ASSISTANCE SERVICES VALUE-BASED RATE SETTING METHODOLOGY FOR SUPPORTED EMPLOYMENT - SMALL GROUP.~~

- ~~(1) The unit for respite and personal assistance services may be one quarter (1/4) of an hour or daily rates as determined by DIDD.~~
- ~~(2) The determination of rates in this section (.09) is calculated based on units of one quarter (1/4) of an hour for one (1) staff person or of one day of allowable direct service costs for one staff person and a percentage of administrative costs. Reimbursement for two (2) staff to deliver services to one (1) service recipient at the same time is not covered under any circumstances.~~
- ~~(3) There will be one (1) maximum rate for one quarter (1/4) of an hour of Personal Assistance.~~
- ~~(4) There will be one (1) maximum rate for one quarter (1/4) of an hour of Respite services.~~
- (1) Supported employment-small group is reimbursed on a fee-for-service basis.
- (2) The unit of service is 15 minutes.
- (3) The fee-for-service rate is calculated using the following factors:
  - (a) Average cost of job coach hour of service divided by four (4), including these component costs:
    - 1. DSP reimbursement rate;
    - 2. Employee-related expenses;
    - 3. Administrative costs;
    - 4. Productivity assumptions, including projected average waiver participant absentee rate of 8.23 percent; and
    - 5. Travel costs;
  - (b) Participant transportation cost per unit per person;

- (c) Administrative adjustment based on the number of waiver participants in the small group and the expected job coach-to-waiver participant staffing ratio (one job coach for a group of two, three, or four waiver participants); and
- (d) Value-based adjustment to incentivize smaller group size.

**Authority:** ~~Tenn. Code Ann. (T.C.A.) §§ 4-3-2701, 4-3-2707, 4-4-103, 4-5-201, et seq., 33-1-201, 33-1-202, 33-1-203 (1) and (6), 33-1-204, 33-1-301, 33-1-302 (a)(3) and (a)(4), 33-1-303 (3) and (11), 33-1-304, 33-1-305 (1), and 33-1-309 (d); 33-1-204; Executive Orders of the State of Tennessee Nos. 9, 10, 21 & 34 23, dated February 7, 1996, October 14, 1996, July 29, 1999, and October 19, 1999 respectively; State of Tennessee Delegated Purchase Authority DP 10-28649-00 Reg. 515; T.C.A. §§ 33-1-302 & 303, 4-5-208, et seq. and its applicable regulations concerning emergency rules; and the "Reimbursement Rate" for Medical Services under DIDD federal waiver(s) for provision of services as administered by TennCare. Administrative History: Original rule filed December 12, 2013; effective March 12, 2014.~~

~~0465-01-02-13 RATE SETTING METHODOLOGIES FOR DENTAL SERVICES RATE SETTING METHODOLOGY FOR COMMUNITY PARTICIPATION SERVICES.~~

- ~~(1) Dental Services rates are those set by TennCare for reimbursement of Medicaid funded dental care.~~
- (1) Community participation services are reimbursed on a fee-for-service basis.
- (2) The unit of service is 15 minutes.
- (3) The fee-for-service rate is calculated using the following factors:
  - (a) DSP reimbursement rate.
  - (b) Non-direct program costs;
  - (c) Administrative costs;
  - (d) Transportation costs per unit per person;
  - (e) Projected average waiver participant absentee rate of 8.23 percent; and
  - (f) Rate Level Factor as defined in 0465-01-02-.03.

~~**Authority:** Tenn. Code Ann. (T.C.A.) §§ 4-3-2701, 4-3-2707, 4-4-103, 4-5-201, et seq., 33-1-201, 33-1-202, 33-1-203 (1) and (6), 33-1-204, 33-1-301, 33-1-302 (a)(3) and (a)(4), 33-1-303 (3) and (11), 33-1-304, 33-1-305 (1), and 33-1-309 (d); 33-1-204; Executive Orders of the State of Tennessee Nos. 9, 10, 21 & 34 23, dated February 7, 1996, October 14, 1996, July 29, 1999, and October 19, 1999 respectively; State of Tennessee Delegated Purchase Authority DP 10-28649-00 Reg. 515; T.C.A. §§ 33-1-302 & 303, 4-5-208, et seq. and its applicable regulations concerning emergency rules; and the "Reimbursement Rate" for Medical Services under DIDD federal waiver(s) for provision of services as administered by TennCare. Administrative History: Original rule filed December 12, 2013; effective March 12, 2014.~~

~~0465-01-02-14 RATE SETTING METHODOLOGY FOR PERSONAL EMERGENCY RESPONSE SYSTEMS INTERMITTENT EMPLOYMENT AND COMMUNITY PARTICIPATION WRAPAROUND.~~

- ~~(1) Rates paid are the usual and customary rates for installation and monitoring set by the company providing the service.~~
- (1) Intermittent employment and community participation wraparound services are reimbursed on a fee-for-service basis.

- (2) The unit of service is 15 minutes.
- (3) The fee-for-service rate is calculated using the following factors:
  - (a) DSP reimbursement rate;
  - (b) Non-direct program costs;
  - (c) Administrative costs;
  - (d) Projected average waiver participant absentee rate of 8.23 percent; and
  - (e) Rate Level Factor as defined in 0465-01-02-.03.
  - (f) This service is provided in a waiver participant's home and has no transportation cost included.

**Authority:** ~~Tenn. Code Ann. (T.C.A.) §§ 4-3-2701, 4-3-2707, 4-4-103, 4-5-201, et seq., 33-1-201, 33-1-202, 33-1-203 (1) and (6), 33-1-204, 33-1-301, 33-1-302 (a)(3) and (a)(4), 33-1-303 (3) and (11), 33-1-304, 33-1-305 (1), and 33-1-309 (d); 33-1-204; Executive Orders of the State of Tennessee Nos. 9, 10, 21 & 34 23, dated February 7, 1996, October 14, 1996, July 29, 1999, and October 19, 1999 respectively; State of Tennessee Delegated Purchase Authority DP 10-28649-00 Reg. 515; T.C.A. §§ 33-1-302 & 303, 4-5-208, et seq. and its applicable regulations concerning emergency rules; and the "Reimbursement Rate" for Medical Services under DIDD federal waiver(s) for provision of services as administered by TennCare. Administrative History: Original rule filed December 12, 2013; effective March 12, 2014.~~

**0465-01-02-.15 RATE SETTING METHODOLOGY FOR SPECIALIZED MEDICAL EQUIPMENT AND SUPPLIES FACILITY-BASED DAY SERVICES.**

- ~~(1) Rates paid are the usual and customary costs for the equipment or supplies.~~
- (1) Facility-based day services are reimbursed on a fee-for-service basis.
- (2) The unit of service is 15 minutes.
- (3) The fee-for-service rate is calculated using the following factors:
  - (a) DSP reimbursement rate;
  - (b) Non-direct program costs;
  - (c) Administrative costs;
  - (d) Transportation costs per unit per person;
  - (e) Projected average waiver participant absentee rate of 8.23 percent; and
  - (f) Rate Level Factor as defined in 0465-01-02-.03.

**Authority:** ~~Tenn. Code Ann. (T.C.A.) §§ 4-3-2701, 4-3-2707, 4-4-103, 4-5-201, et seq., 33-1-201, 33-1-202, 33-1-203 (1) and (6), 33-1-204, 33-1-301, 33-1-302 (a)(3) and (a)(4), 33-1-303 (3) and (11), 33-1-304, 33-1-305 (1), and 33-1-309 (d); 33-1-204; Executive Orders of the State of Tennessee Nos. 9, 10, 21 & 34 23, dated February 7, 1996, October 14, 1996, July 29, 1999, and October 19, 1999 respectively; State of Tennessee Delegated Purchase Authority DP 10-28649-00 Reg. 515; T.C.A. §§ 33-1-302 & 303, 4-5-208, et seq. and its applicable regulations concerning emergency rules; and the "Reimbursement Rate" for~~

*Medical Services under DIDD federal waiver(s) for provision of services as administered by TennCare. Administrative History: Original rule filed December 12, 2013; effective March 12, 2014.*

**0465-01-02-16 RATE SETTING METHODOLOGIES FOR ENVIRONMENTAL MODIFICATIONS METHODOLOGY FOR RESIDENTIAL SPECIAL NEEDS ADJUSTMENT-HOMEBOUND AND NON-RESIDENTIAL HOMEBOUND SUPPORT SERVICES.**

- ~~(1) Rates paid are the usual and customary costs for the modification.~~
- (1) Residential special needs adjustment-homebound and non-residential homebound support service are reimbursed on a fee-for-service basis.
- (2) The unit of service is a day, constituting staff coverage for 6 hours each day.
- (3) The fee-for-service rate is calculated using the following factors:
  - (a) DSP reimbursement rate;
  - (b) Non-direct program costs at the allowable percentage;
  - (c) Administrative costs;
  - (d) Projected average waiver participant absentee rate percentage based on 20 leave days per year; and
  - (e) Rate level factor as defined in 0465-01-02-.03.
  - (f) This setting is provided in a waiver participant's home and has no transportation cost included.

*Authority: Tenn. Code Ann. (T.C.A.) §§ 4-3-2701, 4-3-2707, 4-4-103, 4-5-201, et seq., 33-1-201, 33-1-202, 33-1-203 (1) and (6), 33-1-204, 33-1-301, 33-1-302 (a)(3) and (a)(4), 33-1-303 (3) and (11), 33-1-304, 33-1-305 (1), and 33-1-309 (d); 33-1-204; Executive Orders of the State of Tennessee Nos. 9, 10, 21 & 34 23, dated February 7, 1996, October 14, 1996, July 29, 1999, and October 19, 1999 respectively; State of Tennessee Delegated Purchase Authority DP 10-28649-00 Reg. 515; T.C.A. §§ 33-1-302 & 303, 4-5-208, et seq. and its applicable regulations concerning emergency rules; and the "Reimbursement Rate" for Medical Services under DIDD federal waiver(s) for provision of services as administered by TennCare. Administrative History: Original rule filed December 12, 2013; effective March 12, 2014.*

**0465-01-02-17 RATE SETTING METHODOLOGIES FOR VISION SERVICES CLINICAL SERVICES.**

- ~~(1) Rates paid are a combination of the usual and customary charges for examination and corrective lenses.~~
- (1) The unit for all types of therapy services and nursing services is a quarter hour.
- (2) The unit for behavioral services is one quarter (1/4) of an hour.
- (3) The rate for clinical services is based on comparison with national rates of payment and comparable rates of payment within the State for like services.

*Authority: Tenn. Code Ann. (T.C.A.) §§ 4-3-2701, 4-3-2707, 4-4-103, 4-5-201, et seq., 33-1-201, 33-1-202, 33-1-203 (1) and (6), 33-1-204, 33-1-301, 33-1-302 (a)(3) and (a)(4), 33-1-303 (3) and (11), 33-1-304, 33-1-305 (1), and 33-1-309 (d); 33-1-204; Executive Orders of the State of Tennessee Nos. 9, 10, 21 & 34 23, dated February 7, 1996, October 14, 1996, July 29, 1999, and October 19, 1999 respectively; State of Tennessee Delegated Purchase Authority DP 10-28649-00 Reg. 515; T.C.A. §§*

33-1-302 & 303, 4-5-208 et seq. and its applicable regulations concerning emergency rules; and, the "Reimbursement Rate" for Medical Services under DIDD federal waiver(s) for provision of services as administered by TennCare. Administrative History: Original rule filed December 12, 2013; effective March 12, 2014.

0465-01-02-.18 RATE SETTING METHODOLOGIES FOR INDEPENDENT SUPPORT COORDINATION RESPITE AND PERSONAL ASSISTANCE SERVICES.

- (1) ~~Current rates in this category are found at Rule 0620-06-03-.04 (h) and were derived after consideration of provider input, resource availability as well as system service requirements. Future changes in amounts paid for this service will be made utilizing such tools as: consultation with stake holders (e.g. Independent Support Coordinators, Independent Support Coordination Agencies/Organizations), review of similar services in other states, market conditions, and system needs.~~
- (1) The unit for respite services may be one quarter (1/4) of an hour or daily rates as determined by DIDD based on the duration of services provided. The unit for personal assistance services is a quarter hour.
- (2) The determination of rates in this section (.18) is calculated based on units of one quarter (1/4) of an hour for one (1) staff person or of one day of allowable direct service costs for one (1) staff person and a percentage of administrative costs. Reimbursement for two (2) staff to deliver services to one (1) waiver participant at the same time is not covered under any circumstances.
- (3) There will be one (1) maximum rate for one-quarter (1/4) of an hour of Personal Assistance.
- (4) There will be one (1) maximum rate for one-quarter (1/4) of an hour of Respite services.

*Authority: Tenn. Code Ann. (T.C.A.) §§ 4-3-2701, 4-3-2707, 4-4-103, 4-5-201, et seq., 33-1-201, 33-1-202, 33-1-203 (1) and (6), 33-1-204, 33-1-301, 33-1-302 (a)(3) and (a)(4), 33-1-303 (3) and (11), 33-1-304, 33-1-305 (1), and 33-1-309 (d); 33-1-204; Executive Orders of the State of Tennessee Nos. 9, 10, 21 & 34 23, dated February 7, 1996, October 14, 1996, July 29, 1999, and October 19, 1999 respectively; State of Tennessee Delegated Purchase Authority DP 10-28649-00 Reg. 515; T.C.A. §§ 33-1-302 & 303, 4-5-208, et seq. and its applicable regulations concerning emergency rules; and the "Reimbursement Rate" for Medical Services under DIDD federal waiver(s) for provision of services as administered by TennCare. Administrative History: Original rule filed December 12, 2013; effective March 12, 2014.*

0465-01-02-.19 RATE SETTING METHODOLOGIES FOR SERVICES FUNDED EXCLUSIVELY BY THE STATE [NON-WAIVER; STATE FUNDED (NWSF) SERVICES] DENTAL SERVICES.

- (1) ~~Rates paid are discretionary and based upon Service Recipient need, limited by system and service requirements and subject to DIDD funding and resource availability.~~
- (1) Dental Services rates are those set by TennCare for reimbursement of Medicaid funded dental care.

*Authority: Tenn. Code Ann. (T.C.A.) §§ 4-3-2701, 4-3-2707, 4-4-103, 4-5-201, et seq., 33-1-201, 33-1-202, 33-1-203 (1) and (6), 33-1-204, 33-1-301, 33-1-302 (a)(3) and (a)(4), 33-1-303 (3) and (11), 33-1-304, 33-1-305 (1), and 33-1-309 (d); 33-1-204; Executive Orders of the State of Tennessee Nos. 9, 10, 21 & 34 23, dated February 7, 1996, October 14, 1996, July 29, 1999, and October 19, 1999 respectively; State of Tennessee Delegated Purchase Authority DP 10-28649-00 Reg. 515; T.C.A. §§ 33-1-302 & 303, 4-5-208, et seq. and its applicable regulations concerning emergency rules; and the "Reimbursement Rate" for Medical Services under DIDD federal waiver(s) for provision of services as administered by TennCare. Administrative History: Original rule filed December 12, 2013; effective March 12, 2014.*

0465-01-02-20 RATE SETTING METHODOLOGIES FOR PERSONAL EMERGENCY RESPONSE SYSTEMS.

- (1) Rates paid are the usual and customary rates for installation and monitoring set by the company providing the service.

*Authority: T.C.A. §§ 4-3-2701, 4-3-2707, 4-4-103, 4-5-201, et seq., 33-1-201, 33-1-202, 33-1-203 (1) and (6), 33-1-204, 33-1-301, 33-1-302 (a)(3) and (a)(4), 33-1-303 (3) and (11), 33-1-304, 33-1-305 (1), and 33-1-309 (d); Executive Order of the State of Tennessee No. 23, dated October 19, 1999; State of Tennessee Delegated Purchase Authority DP 10-28649-00 Reg. 515; §§ 33-1-302 and 303; 4-5-208, et. seq. and its applicable regulations concerning emergency rules; and the "Reimbursement Rate" for Medical Services under DIDD federal waiver(s) for provision of services as administered by TennCare. Administrative History: Original rule filed December 12, 2013; effective March 12, 2014.*

0465-01-02-21 RATE SETTING METHODOLOGIES FOR SPECIALIZED MEDICAL EQUIPMENT AND SUPPLIES.

- (1) Rates paid are the usual and customary costs for the equipment or supplies.

*Authority: T.C.A. §§ 4-3-2701, 4-3-2707, 4-4-103, 4-5-201, et seq., 33-1-201, 33-1-202, 33-1-203 (1) and (6), 33-1-204, 33-1-301, 33-1-302 (a)(3) and (a)(4), 33-1-303 (3) and (11), 33-1-304, 33-1-305 (1), and 33-1-309 (d); Executive Order of the State of Tennessee No. 23, dated October 19, 1999; State of Tennessee Delegated Purchase Authority DP 10-28649-00 Reg. 515; §§ 33-1-302 and 303; 4-5-208, et. seq. and its applicable regulations concerning emergency rules; and the "Reimbursement Rate" for Medical Services under DIDD federal waiver(s) for provision of services as administered by TennCare. Administrative History: Original rule filed December 12, 2013; effective March 12, 2014.*

0465-01-02-22 RATE SETTING METHODOLOGIES FOR ENVIRONMENTAL MODIFICATIONS.

- (1) Rates paid are the usual and customary costs for the modification.

*Authority: T.C.A. §§ 4-3-2701, 4-3-2707, 4-4-103, 4-5-201, et seq., 33-1-201, 33-1-202, 33-1-203 (1) and (6), 33-1-204, 33-1-301, 33-1-302 (a)(3) and (a)(4), 33-1-303 (3) and (11), 33-1-304, 33-1-305 (1), and 33-1-309 (d); Executive Order of the State of Tennessee No. 23, dated October 19, 1999; State of Tennessee Delegated Purchase Authority DP 10-28649-00 Reg. 515; §§ 33-1-302 and 303; 4-5-208, et. seq. and its applicable regulations concerning emergency rules; and the "Reimbursement Rate" for Medical Services under DIDD federal waiver(s) for provision of services as administered by TennCare. Administrative History: Original rule filed December 12, 2013; effective March 12, 2014.*

0465-01-02-23 RATE SETTING METHODOLOGIES FOR INDEPENDENT SUPPORT COORDINATION SERVICES.

- (1) Current rates were derived after consideration of provider input, resource availability as well as system service requirements. Future changes in amounts paid for this service will be made utilizing such tools as: consultation with stake-holders (e.g. Independent Support Coordinators, Independent Support Coordination Agencies/Organizations), review of similar services in other states, market conditions, and system needs.

*Authority: T.C.A. §§ 4-3-2701, 4-3-2707, 4-4-103, 4-5-201, et seq., 33-1-201, 33-1-202, 33-1-203 (1) and (6), 33-1-204, 33-1-301, 33-1-302 (a)(3) and (a)(4), 33-1-303 (3) and (11), 33-1-304, 33-1-305 (1), and 33-1-309 (d); Executive Order of the State of Tennessee No. 23, dated October 19, 1999; State of Tennessee Delegated Purchase Authority DP 10-28649-00 Reg. 515; §§ 33-1-302 and 303; 4-5-208, et. seq. and its applicable regulations concerning emergency rules; and the "Reimbursement Rate" for Medical Services*

*under DIDD federal waiver(s) for provision of services as administered by TennCare. Administrative History: Original rule filed December 12, 2013; effective March 12, 2014.*

0465-01-02-24 RATE SETTING METHODOLOGIES FOR SERVICES FUNDED EXCLUSIVELY BY THE STATE [NON-WAIVER; STATE FUNDED (NWSF) SERVICES].

- (1) Rates paid are discretionary and based upon waiver participant need, limited by system and service requirements and subject to DIDD funding and resource availability.

*Authority: T.C.A. §§ 4-3-2701, 4-3-2707, 4-4-103, 4-5-201, et seq., 33-1-201, 33-1-202, 33-1-203 (1) and (6), 33-1-204, 33-1-301, 33-1-302 (a)(3) and (a)(4), 33-1-303 (3) and (11), 33-1-304, 33-1-305 (1), and 33-1-309 (d); Executive Order of the State of Tennessee No. 23, dated October 19, 1999; State of Tennessee Delegated Purchase Authority DP 10-28649-00 Reg. 515; §§ 33-1-302 and 303; 4-5-208, et. seq. and its applicable regulations concerning emergency rules; and the "Reimbursement Rate" for Medical Services under DIDD federal waiver(s) for provision of services as administered by TennCare. Administrative History: Original rule filed December 12, 2013; effective March 12, 2014.*

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

Board Member	Aye	No	Abstain	Absent	Signature (if required)

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the Tennessee Department of Intellectual and Developmental Disabilities (DIDD) on 09/30/2019 and is in compliance with the provisions of T.C.A. § 4-5-222.

I further certify the following:

Notice of Rulemaking Hearing filed with the Department of State on: 06/06/19

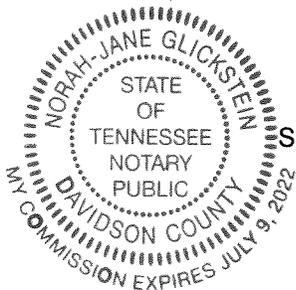
Rulemaking Hearing(s) Conducted on: 07/29/19

Date: 9/30/2019

Signature: *Brad Turner*

Name of Officer: Brad Turner

Title of Officer: DIDD Commissioner



Subscribed and sworn to before me on: 9/30/19

Notary Public Signature: *Nora-Jane Glickstein*

My commission expires on: 7/9/22

Agency/Board/Commission: Dept. of Intellectual and Developmental Disabilities

Rule Chapter Number(s): 0465-01-02

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. Slattery III*  
 Herbert H. Slattery III  
 Attorney General and Reporter  
10/2/2019 Date

**Department of State Use Only**

Filed with the Department of State on: 10/7/19

Effective on: 11/5/20

*Tre Hargett*  
 Tre Hargett  
 Secretary of State

RECEIVED  
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## G.O.C. STAFF RULE ABSTRACT

DEPARTMENT: Mental Health and Substance Abuse Services

DIVISION: Substance Abuse Services

SUBJECT: Controlled Substances

STATUTORY AUTHORITY: 21 U.S.C. 812: Establishes schedules of controlled substances.  
21 C.F.R. 1308: Contains schedules of controlled substances set forth by the U.S. Department of Justice Drug Enforcement Administration.  
T.C.A. § 4-4-103: Empowers the Commissioner of each department to prescribe regulations.  
T.C.A. § 33-1-302: Empowers the Department to make and enforce rules necessary for the efficient financial management and lawful operation of facilities and services.  
T.C.A. § 33-1-303: Defines powers of the Commissioner including rulemaking authority.  
T.C.A. § 33-1-305: Empowers the Commissioner of the Department of Mental Health and Substance Abuse Services to adopt rules to fulfill the Department's responsibilities.  
T.C.A. § 33-1-309: Requires the Department to adopt all rules in accordance with the Uniform Administrative Procedures Act.  
T.C.A. § 39-17-403: Requires the Commissioner of the Department of Mental Health and Substance Abuse Services, upon agreement of the Commissioner of the Department of Health, to control substances according to certain guidelines.

EFFECTIVE DATES: December 30, 2019 through June 30, 2020

FISCAL IMPACT: None

STAFF RULE ABSTRACT: This rulemaking hearing rule revises the lists of controlled substances for all schedules were revised to ensure consistency with Part 1308 of Title 21 of the Code of Federal Regulations (C.F.R.).  
0940-06-01 -. 01 names controlled substances within Schedule I including opiates, opium derivatives,

hallucinogenic substances, depressants, and stimulants. Newly identified stimulants, hallucinogens, opiates, and fentanyl derivatives that were scheduled at the federal level have been added.

0940-06-01-.02 names controlled substances within Schedule II including opium and opiates, substances produced by extraction from vegetable origin or chemical synthesis, opiates, stimulants, depressants, hallucinogenic substances, immediate precursors to amphetamine and methamphetamine, and PCP.

0940-06-01-.03 names controlled substances within Schedule III including stimulants, depressants, nalorphine, narcotic drugs, anabolic steroids, and hallucinogenic substances.

0940-06-01-.04 names controlled substances within Schedule IV including narcotic drugs, depressants, fenfluramine, and stimulants.

0940-06-01-.05 names controlled substances within Schedule V including narcotic drugs containing non-narcotic active medicinal ingredients, stimulants, and depressants. A newly approved FDA-approved cannabidiol oil was added.

0940-06-01 -. 06 names controlled substances within Schedule VI including marijuana and tetrahydrocannabinols.

0940-06-01 -. 07 names controlled substances within Schedule VII including butyl nitrite and any isomer of butyl nitrite.

0940-06-01-.08 incorporates by reference exclusions for non-narcotic substances listed in the most current edition of 21 C.F.R. 1308.22 including those sold lawfully over the counter without a prescription.

0940-06-01 -.09 names chemical preparations excluded from controlled substances.

0940-06-01-.10 names veterinary anabolic steroid implant products excluded from controlled substances.

0940-06-01-.11 names prescription products excluded from controlled substances.

0940-06-01-.12 names anabolic steroid products excluded from controlled substances.

0940-06-01-.13 names certain cannabis plant material, and product made therefrom, excluded from controlled substances.



**STATE OF TENNESSEE**  
**DEPARTMENT OF MENTAL HEALTH AND SUBSTANCE ABUSE SERVICES**

5th FLOOR, ANDREW JACKSON BUILDING  
500 DEADERICK STREET  
NASHVILLE, TENNESSEE 37243

**BILL LEE**  
GOVERNOR

**MARIE WILLIAMS**  
COMMISSIONER

**MEMORANDUM**

**TO:** Marie Williams, LCSW  
Commissioner, TDMHSAS

**FROM:** Zack Blair  
Director of Legislation and Rules

**DATE:** August 15, 2019

**RE:** Public Hearing for Chapter 0940-06-01 Controlled Substances rulemaking activity

On Thursday, June 27, 2019, the Tennessee Department of Mental Health and Substance Abuse Services ("the Department") held a public hearing re: proposed changes to Rules Chapter 0940-06-01 Controlled Substances. The Department did not receive any oral or written comments during this public hearing or during the time period designated for accepting comments re: Rules Chapter 0940-06-01 Controlled Substances.

## **Regulatory Flexibility Addendum**

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

These rules will not affect small businesses. Although, some pharmacies qualify as small businesses, the changes to the controlled substances schedules promulgated by these rules should not change the daily operations of those pharmacies.

## **Impact on Local Governments**

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

TDMHSAS believes that these rules will not have a projected financial impact on local governments.

## Additional Information Required by Joint Government Operations Committee

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

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

The lists of controlled substances for all schedules were revised to ensure consistency with Part 1308 of Title 21 of the Code of Federal Regulations (C.F.R.).

0940-06-01-.01 names controlled substances within Schedule I including opiates, opium derivatives, hallucinogenic substances, depressants, and stimulants. Newly identified stimulants, hallucinogens, opiates, and fentanyl derivatives that were scheduled at the federal level have been added.

0940-06-01-.02 names controlled substances within Schedule II including opium and opiates, substances produced by extraction from vegetable origin or chemical synthesis, opiates, stimulants, depressants, hallucinogenic substances, immediate precursors to amphetamine and methamphetamine, and PCP.

0940-06-01-.03 names controlled substances within Schedule III including stimulants, depressants, nalorphine, narcotic drugs, anabolic steroids, and hallucinogenic substances.

0940-06-01-.04 names controlled substances within Schedule IV including narcotic drugs, depressants, fenfluramine, and stimulants.

0940-06-01-.05 names controlled substances within Schedule V including narcotic drugs containing non-narcotic active medicinal ingredients, stimulants, and depressants. A newly approved FDA-approved cannabidiol oil was added.

0940-06-01-.06 names controlled substances within Schedule VI including marijuana and tetrahydrocannabinols.

0940-06-01-.07 names controlled substances within Schedule VII including butyl nitrite and any isomer of butyl nitrite.

0940-06-01-.08 incorporates by reference exclusions for non-narcotic substances listed in the most current edition of 21 C.F.R. 1308.22 including those sold lawfully over the counter without a prescription.

0940-06-01-.09 names chemical preparations excluded from controlled substances.

0940-06-01-.10 names veterinary anabolic steroid implant products excluded from controlled substances.

0940-06-01-.11 names prescription products excluded from controlled substances.

0940-06-01-.12 names anabolic steroid products excluded from controlled substances.

0940-06-01-.13 names certain cannabis plant material, and product made therefrom, excluded from controlled substances.

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

21 U.S.C. 812: Establishes schedules of controlled substances.

21 C.F.R. 1308: Contains schedules of controlled substances set forth by the U.S. Department of Justice Drug Enforcement Administration.

T.C.A. § 4-4-103: Empowers the Commissioner of each department to prescribe regulations.

T.C.A. § 33-1-302: Empowers the Department to make and enforce rules necessary for the efficient financial management and lawful operation of facilities and services.

T.C.A. § 33-1-303: Defines powers of the Commissioner including rulemaking authority.

T.C.A. § 33-1-305: Empowers the Commissioner of the Department of Mental Health and Substance Abuse Services to adopt rules to fulfill the Department's responsibilities.

T.C.A. § 33-1-309: Requires the Department to adopt all rules in accordance with the Uniform Administrative Procedures Act.

T.C.A. § 39-17-403: Requires the Commissioner of the Department of Mental Health and Substance Abuse Services, upon agreement of the Commissioner of the Department of Health, to control substances according to certain guidelines.

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

This rule affects healthcare professionals and pharmacies; as well as the TN Boards of Nursing, Medical Examiners, and Pharmacy; the TennCare Inspector General and the TN Bureau of Investigation. The Department did not receive any comments from these parties regarding this rule during the rulemaking hearing

held for this rule on June 27<sup>th</sup>, 2019.

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

There are no opinions of the Attorney General and Reporter that directly relate to these rules.

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

It is estimated that these rules will not have a fiscal impact on state and local government revenues and expenditures.

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

Dr. Wesley Geminn, Chief Pharmacist, TDMHSAS  
Zack Blair, Director of Legislation and Rules, TDMHSAS

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

Dr. Wesley Geminn, Chief Pharmacist, TDMHSAS  
Zack Blair, Director of Legislation and Rules, TDMHSAS

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

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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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## Rulemaking Hearing Rule(s) Filing Form

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

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

**Agency/Board/Commission:** Tennessee Department of Mental Health and Substance Abuse Services  
**Division:** Division of Substance Abuse Services  
**Contact Person:** Zack Blair, Director of Legislation and Rules  
**Address:** 500 Deaderick Street, 5<sup>th</sup> Floor, Andrew Jackson Bldg., Nashville, TN  
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**Revision Type (check all that apply):**

- Amendment  
 New  
 Repeal

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

Chapter Number	Chapter Title
0940-06-01	Controlled Substances
Rule Number	Rule Title
0940-06-01-.01	Controlled Substances in Schedule I
0940-06-01-.02	Controlled Substances in Schedule II
0940-06-01-.03	Controlled Substances in Schedule III
0940-06-01-.04	Controlled Substances in Schedule IV
0940-06-01-.05	Controlled Substances in Schedule V
0940-06-01-.06	Controlled Substances in Schedule VI
0940-06-01-.07	Controlled Substances in Schedule VII
0940-06-01-.08	Non-Narcotic Substances Excluded from Controlled Substances
0940-06-01-.09	Chemical preparations excluded from Controlled Substances
0940-06-01-.10	Veterinary anabolic steroid implant products excluded from Controlled Substances
0940-06-01-.11	Prescription products excluded from Controlled Substances
0940-06-01-.12	Anabolic steroid products excluded from Controlled Substances
0940-06-01-.13	Certain cannabis plant material, and products made therefrom, excluded from Controlled Substances

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

Chapter 0940-06-01  
Controlled Substances

Chapter 0940-06-01 Controlled Substances is being repealed and rewritten including its table of contents.

Authority: T.C.A. §§ 4-4-103, 33-1-302, 33-1-303, 33-1-305, 33-1-309, and 39-17-403.

Chapter 0940-06-01  
Controlled Substances

New Rules

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- 0940-06-01-.08 Non-Narcotic Substances Excluded from Controlled Substances
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- 0940-06-01-.11 Prescription products excluded from Controlled Substances
- 0940-06-01-.12 Anabolic steroid products excluded from Controlled Substances
- 0940-06-01-.13 Certain cannabis plant material, and products made therefrom, excluded from Controlled Substances

0940-06-01-.01 Controlled Substances in Schedule I.

- (1) Schedule I consists of the drugs and other substances, by whatever official name, common or usual name, chemical name, or brand name designated, listed in this rule. Each drug or substance bears the federal controlled substance code number assigned to it by the Drug Enforcement Administration.
- (2) Opiates. Unless specifically excepted or unless listed in another schedule, any of the following opiates, including their isomers, esters, ethers, salts and salts of isomers, esters, and ethers, whenever the existence of such isomers, esters, ethers, salts is possible within the specific chemical designation. For the purposes of subparagraph ~~(xx)2.(xviii)~~ ~~(vv)(2)(xv)~~, 3-Methylfentanyl, only, the term isomer includes the optical and geometric isomers.

(a)	Acetylmethadol.....	9601
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(f)	Alphamethadol.....	9605

(gf)	Benzethidine.....	9606
(hg)	Betacetylmethadol.....	9607
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(ji)	Betamethadol.....	9609
(kj)	Betaprodine.....	9611
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(ggee)	Noracymethadol.....	9633
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(lljj)	Phenadoxone.....	9637
(mmkk)	Phenampramide.....	9638
(nnll)	Phenomorphane.....	9647
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(uuss)	Tilidine.....	9750
(vvtt)	Trimeperidine.....	9646
(wwuu)	U-47700.....	9547
(xxvv)	Fentanyl Derivatives and Analogues.	

1. Unless specifically excepted, listed in another schedule, or contained within a pharmaceutical product approved by the United States Food and Drug Administration, any material, compound, mixture, or preparation, including its salts, isomers, esters, or ethers, and salts of isomers, esters, or ethers, whenever the existence of such salts is possible within any of the following specific chemical designations containing a 4-anilidopiperidine structure:
  - (i) With or without substitution at the carbonyl of the aniline moiety with alkyl, alkenyl, carboalkoxy, cycloalkyl, methoxyalkyl, cyanoalkyl, or aryl groups, or furanyl, dihydrofuranyl, benzyl moiety, or rings containing heteroatoms sulfur, oxygen, or nitrogen;
  - (ii) With or without substitution at the piperidine amino moiety with a phenethyl, benzyl, alkylaryl (including heteroaromatics), alkyltetrazolyl ring, or an alkyl or carbomethoxy group, whether or not further substituted in the ring or group;
  - (iii) With or without substitution or addition to the piperidine ring to any extent with one or more methyl, carbomethoxy, methoxy, methoxymethyl, aryl, allyl, or ester groups;
  - (iv) With or without substitution of one or more hydrogen atoms for halogens, or methyl, alkyl, or methoxy groups, in the aromatic ring of the anilide moiety;
  - (v) With or without substitution at the alpha or beta position of the piperidine ring with alkyl, hydroxyl, or methoxy groups;

- (vi) With or without substitution of the benzene ring of the anilide moiety for an aromatic heterocycle; and
- (vii) With or without substitution of the piperidine ring for a pyrrolidine ring, perhydroazepine ring, or azepine ring;
2. Excluding, Alfentanil, Carfentanil, Fentanyl, and Sufentanil; including, but not limited to:
- (i) Acetylfentanyl (N-(1-phenethylpiperidin-4-yl)-N-phenylacetamide)..9821
- (ii) Acetyl-alpha-methylfentanyl (N-[1-(1-methyl-2-phenethyl)-4-piperidinyl]-N-phenyl-acetamide).....9815
- (iii) Acryl fentanyl (N-(1-phenethylpiperidin-4-yl)-N-phenylacrylamide).....9811
- (iv) Alpha-methylfentanyl (N-[1-(alpha-methyl-beta-phenyl)ethyl-4-piperidyl]propionanilide; 1-(1-methyl-2-phenylethyl)-4-(N-propanilido)piperidine)..... 9814
- (v) Alpha-methylthiofentanyl (N-[1-methyl-2-(2-thienyl)ethyl-4-piperidinyl]-N-phenylpropanamide) .....9832
- (vi) Benzodioxolefentanyl
- (vii) Beta-hydroxyfentanyl (N-[1-(2-hydroxy-2-phenethyl)-4-piperidinyl]-N-phenylpropanamide)..... 9830
- (viii) Beta-hydroxythiofentanyl (N-[1-[2-hydroxy-2-(thiophen-2-yl) ethyl]piperidin-4-yl]-N-phenylpropionamide; N-[1-[2-hydroxy-2-(2-thienyl)ethyl]-4-piperidinyl]-N-phenylpropanamide).....9836
- (ix) Beta-hydroxy-3-methylfentanyl (N-[1-(2-hydroxy-2-phenethyl)-3-methyl-4-piperidinyl]-N-phenylpropanamide) .....9831
- (x) Butyrylfentanyl (N-(1-phenethylpiperidin-4-yl)-N-phenylbutyramide, N-(1-phenethylpiperidin-4-yl)-N-phenylbutanamide).....9822
- (xi) Cyclopentyl fentanyl (N-(1-phenethylpiperidin-4-yl)-N-phenylcyclopentanecarboxamide).....9847
- (xii) Cyclopropyl fentanyl (N-(1-phenethylpiperidin-4-yl)-N-phenylcyclopropanecarboxamide).....9845
- (xiii) Isobutyryl fentanyl (N-(1-phenethylpiperidin-4yl)-N-phenylisobutyramide).....9827
- (xiv) 4-Fluoroisobutyryl Fentanyl (N-(4-fluorophenyl)-N-(1-phenethylpiperidin-4-yl)isobutyramide).....9824
- (xviii) Furanyl fentanyl ((N-(1-phenethylpiperidin-4-yl)-N-phenylfuran-2-carboxamide).....9834
- (xviiv) Lofentanil
- (xvii) Methoxyacetyl fentanyl (2-methoxy-N-(1-phenethylpiperidin-4-yl)-N-phenylacetamide).....9825

(xviii)	3-Methylfentanyl (N-[3-methyl-1-(2-phenylethyl)-4-piperidyl]-N-phenylpropanamide).....	9813
(xvix)	3-Methylthiofentanyl (N-[(3-methyl-1-(2-thienyl)ethyl-4-piperidinyl]-N-phenylpropanamide).....	9833
(xxvii)	Ocfentanil (N-(2-fluorophenyl)-2-methoxy-N-(1-phenethylpiperidin-4-yl)acetamide).....	9838
(xxiviii)	Ohmefentanyl	
(xxii)	Ortho-fluorofentanyl (2-fluorofentanyl; N-(2-fluorophenyl)-N-(1-phenethylpiperidin-4-yl)propionamide).....	9816
(xxiii)	Para-chloroisobutyryl fentanyl (N-(4-chlorophenyl)-N-(1-phenethylpiperidin-4-yl)isobutyramide).....	9826
(xxiv)	Para-fluorobutyryl (N-(4-fluorophenyl)-N-(1-phenethylpiperidin-4-yl)butyramide).....	9823
(xxvix)	Para-fluorofentanyl. (N-(4-fluorophenyl)-N-[1-(2-phenethyl)-4-piperidinyl]propanamide) .....	9812
(xxvi)	Para-fluoroisobutyryl fentanyl (N-(4-fluorophenyl)-N-(1-phenethylpiperidin-4-yl)isobutyramide; 4-fluoroisobutyryl fentanyl).....	9824
(xxvii)	Para-methoxybutyryl fentanyl (N-(4-methoxyphenyl)-N-(1-phenethylpiperidin-4-yl)butyramide).....	9837
(xxviii)	Pentanoyl fentanyl	
(xxix)	Tetrahydrofuranyl fentanyl (N-(1-phenethylpiperidin-4-yl)-nphenyltetrahydrofuran-2-carboxamide).....	9843
(xxxii)	Thiofentanyl.....	9835
(xxxiii)	Valeryl fentanyl (N-(1-phenethylpiperidin-4-yl)-N-phenylpentanamide).....	9840

(3) Opium derivatives. Unless specifically excepted or unless listed in another schedule, any of the following opium derivatives, its salts, isomers, and salts of isomers, whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation:

(a)	Acetorphine.....	9319
(b)	Acetyldihydrocodeine.....	9051
(c)	Benzylmorphine.....	9052
(d)	Codeine methylbromide.....	9070
(e)	Codeine-N-Oxide.....	9053
(f)	Cyprenorphine.....	9054
(g)	Desomorphine.....	9055

(h)	Dihydromorphine.....	9145
(i)	Drotebanol.....	9335
(j)	Etorphine (except hydrochloride salt).....	9056
(k)	Heroin.....	9200
(l)	Hydromorphinol.....	9301
(m)	Methyldesorphine.....	9302
(n)	Methyldihydromorphine.....	9304
(o)	Morphine methylbromide.....	9305
(p)	Morphine methylsulfonate.....	9306
(q)	Morphine-N-Oxide.....	9307
(r)	Myrophine.....	9308
(s)	Nicocodeine.....	9309
(t)	Nicomorphine.....	9312
(u)	Normorphine.....	9313
(v)	Pholcodine.....	9314
(w)	Thebacon.....	9315
(4)	Hallucinogenic substances. Unless specifically excepted or unless listed in another schedule, any material, compound mixture, or preparation, which contains any quantity of the following hallucinogenic substances, or which contains any of its salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers, is possible within the specified chemical designation (for purposes of this paragraph only, the term "isomer" includes the optical, position and geometric isomers):	
(a)	Alpha-ethyltryptamine.....	7249
	Other names: etryptamine; Monase; [alpha]-ethyl-1H-indole-3-ethanamine; 3-(2-aminobutyl) indole; [alpha]-ET; and AET; ET; Trip	
(b)	Alpha-methyltryptamine.....	7432
	Other name: AMT	
(c)	Alpha-pyrrolidinobutiophenone.....	7546
	Other names: [alpha]-PBP; 1-phenyl-2-(pyrrolidin-1-yl)butan-1-one	
(d)	Alpha-pyrrolidinopentiophenone.....	7545
	Other names: [alpha]-PVP; [alpha]-pyrrolidinovalerophenone; 1-phenyl-2-(pyrrolidin-1-yl)pentan-1-one	
(ee)	4-Bromo-2,5-dimethoxyamphetamine.....	7391
	Other names: 4-Bromo-2,5-dimethoxy-[alpha]-methylphenethylamine; 4-bromo-2,5-DMA	
(fe)	4-Bromo-2,5-dimethoxyphenethylamine.....	7392
	Other names: 2-(4-bromo-2,5-dimethoxyphenyl)-1-aminoethane; alpha-desmethyl DOB; 2C-B; Nexus	

(ge)	2-(4-Bromo-2,5-dimethoxyphenyl)-N-(2-methoxybenzyl)ethanamine.....	7536
	Other names: 25B-NBOMe; 2C-B-NBOMe; 25B; Cimbi-36	
(hf)	Bufotenine.....	7433
	Other names: 3-([beta]-Dimethylaminoethyl)-5-hydroxyindole; 3-(2-dimethylaminoethyl)-5-indolol; N,N-dimethylserotonin; 5-hydroxy-N,N-dimethyltryptamine; mappine	
(i)	Butylone.....	7541
	Other names: bk-MBDB; 1-(1,3-benzodioxol-5-yl)-2-(methylamino)butan-1-one	
(ig)	2-(4-Chloro-2,5-dimethoxyphenyl)-N-(2-methoxybenzyl)ethanamine.....	7537
	Other names: 25C-NBOMe; 2C-C-NBOMe; 25C; Cimbi-82	
(kh)	Diethyltryptamine.....	7434
	Other names: N,N-Diethyltryptamine; DET	
(li)	2,5-Dimethoxyamphetamine.....	7396
	Other names: 2,5-Dimethoxy-[alpha]-methylphenethylamine; 2,5-DMA	
(mj)	2,5-Dimethoxy-4-ethylamphetamine.....	7399
	Other name: DOET	
(nk)	2,5 Dimethoxy-4-(n)-propylthiophenethylamine.....	7348
	Other name: 2C-T-7	
(ol)	Dimethyltryptamine.....	7435
	Other name: DMT	
(pm)	Ethylamine analogue of phencyclidine.....	7455
	Other names: N-Ethyl-1-phenylcyclohexylamine; (1-phenylcyclohexyl)ethylamine; N-(1-phenylcyclohexyl)ethylamine; cyclohexamine; PCE	
(q)	3-Fluoro-N-methylcathinone.....	1233
	Other names: 3-FMC; 1-(3-fluorophenyl)-2-(methylamino)propan-1-one	
(r)	4-Fluoro-N-methylcathinone.....	1238
	Other names: 4-FMC; flephedrone; 1-(4-fluorophenyl)-2-(methylamino)propan-1-one	
(sa)	Ibogaine.....	7260
	Other names: 7-Ethyl-6,6[beta],7,8,9,10,12,13-octahydro-2-methoxy-6,9-methano-5H-pyrido [1',2':1,2]azepino[5,4-b]indole; Tabenanthe iboga.	
(te)	2-(4-iodo-2,5-dimethoxyphenyl)-N-(2-methoxybenzyl)ethanamine.....	7538
	Other names: 25I-NBOMe; 2C-I-NBOMe; 25I; Cimbi-5	
(up)	Lysergic acid diethylamide.....	7315
	Other name: LSD	
(vq)	Mescaline.....	7381
	Other name: Constituent of "Peyote" cacti	
(wf)	4-Methoxyamphetamine.....	7411
	Other names: 4-methoxy-[alpha]-methylphenethylamine; paramethoxyamphetamine; PMA	
(xs)	5-Methoxy-3,4-methylenedioxyamphetamine.....	7401

(yt)	5-Methoxy-N,N-diisopropyltryptamine.....	7439
	Other name: 5-MeO-DIPT	
(zu)	5-methoxy-N,N-dimethyltryptamine .....	7431
	Other names: 5-methoxy-3-[2-(dimethylamino)ethyl]indole; 5-MeO-DMT	
(aa)	4-Methyl-N-ethylcathinone.....	1249
	Other names: 4-MEC; 2-(ethylamino)-1-(4-methylphenyl)propan-1-one	
(bb)	4-Methyl-alpha-pyrrolidinopropiophenone.....	7498
	Other names: 4-MePPP; MePPP; 4-methyl-[alpha]-pyrrolidinopropiophenone; 1-(4-methylphenyl)-2-(pyrrolidin-1-yl)-propan-1-one	
(ccv)	4-Methyl-2,5-dimethoxyamphetamine.....	7395
	Other names: 4-methyl-2,5-dimethoxy-[alpha]-methylphenethylamine; DOM; STP	
(ddw)	3,4-Methylenedioxyamphetamine.....	7400
(eex)	3,4-Methylenedioxyamphetamin.....	7405
	Other name: MDMA	
(ffy)	3,4-Methylenedioxy-N-ethylamphetamine.....	7404
	Other names: N-ethyl-alpha-methyl-3,4(methylenedioxy)phenethylamine; N-ethyl MDA; MDE; MDEA	
(ggz)	3,4-Methylenedioxy-N-methylcathinone.....	7540
	Other names: Methylone	
(hh)	Naphyrone.....	1258
	Other names: naphthylpyrovalerone; 1-(naphthalen-2-yl)-2-(pyrrolidin-1-yl)pentan-1-one	
(ii)	Naphthalen-1-yl 1-(5-fluoropentyl)-1 h-indole-3-carboxylate.....	7221
	Other names: NM2201; CBL2201	
(jja)	N-Ethyl-3-piperidyl benzilate.....	7482
(kkbb)	N-Hydroxy-3,4-methylenedioxyamphetamine.....	7402
	Other names: N-hydroxy-alpha-methyl-3,4(methylenedioxy)phenethylamine; N-hydroxy MDA	
(llee)	N-methyl-3-piperidyl benzilate.....	7484
(mmdd)	Parahexyl.....	7374
	Other names: 3-Hexyl-1-hydroxy-7,8,9,10-tetrahydro-6,6,9-trimethyl-6H-dibenzo[b, d]pyran; Synhexyl	
(nn)	Pentedrone.....	1246
	Other names: [alpha]-methylaminovalerophenone; 2-(methylamino)-1-phenylpentan-1-one	
(oo)	Pentylone.....	7542
	Other names: bk-MBDP; 1-(1,3-benzodioxol-5-yl)-2-(methylamino)pentan-1-one	
(ppee)	Peyote.....	7415
	Meaning all parts of the plant presently classified botanically as Lophophora williamsii Lamaire, whether growing or not, the seeds thereof, any extract from any part of such plant, and every compound, manufacture, salts, derivative, mixture, or preparation of such plant its seeds or extracts. (Interprets 21 USC 812 (c), Schedule 1 (c) (12)(o))	

(ggff)	Psilocybin (constituent of magic mushrooms).....	7437
(rrgg)	Psilocyn (constituent of magic mushrooms) .....	7438
(sshh)	Pyrrolidine analogue of phencyclidine (1-(1-phenylcyclohexyl)-pyrrolidine)..... Other names: PCPy; PHP	7458
(ttii)	1-[1-(2-Thienyl)cyclohexyl]pyrrolidine..... Other names: TCPy	7473
(uuji)	4-Methylmethcathinone .....	1248
	Other names: mephedrone; methpadrone; 4-MMC	
(vvkk)	3,4-Methylenedioxypropylvalerone.....	7535
	Other names: MDPV	
(wwll)	2-(2,5-Dimethoxy-4-ethylphenyl)ethanamine (2C-E).....	7509
(xxmm)	2-(2,5-Dimethoxy-4-methylphenyl)ethanamine (2C-D).....	7508
(yynn)	2-(4-Chloro-2,5-dimethoxyphenyl)ethanamine (2C-C).....	7519
(zzoo)	2-(4-Iodo-2,5-dimethoxyphenyl)ethanamine (2C-I).....	7518
(aaapp)	2-[4-Ethylthio-2,5-dimethoxyphenyl]ethanamine (2C-T-2).....	7385
(bbbqq)	2-[4-(Isopropylthio)-2,5-dimethoxyphenyl]ethanamine (2C-T-4) .....	7532
(cccrf)	2-(2,5-Dimethoxyphenyl)ethanamine (2C-H).....	7517
(dddss)	2-(2,5-Dimethoxy-4-nitro-phenyl)ethanamine (2C-N) .....	7521
(eeett)	2-(2,5-Dimethoxy-4-(n)-propylphenyl)ethanamine (2C-P) .....	7524
(ffuu)	Thiophene analogue of phencyclidine..... Other names: 1-[1-(2-thienyl)cyclohexyl]piperidine; 2-thienylanalog of phencyclidine; TPCP; TCP	7470
(gggvv)	3,4,5-Trimethoxyamphetamine.....	7390
(hhhww)	(1-Pentyl-1H-indol-3-yl)(2,2,3,3-tetramethylcyclopropyl)methanone .....	7144
	Other names: UR-144; 1-pentyl-3-(2,2,3,3-tetramethylcyclopropyl)indole	
(iiiix)	1-(5-Fluoro-pentyl)-1H-indol-3-yl](2,2,3,3-tetramethylcyclopropyl)methanone .....	7011
	Other names: 5-fluoro-UR-144; 5-F-UR-144; XLR11; 1-(5-fluoro-pentyl)-3-(2,2,3,3-tetramethylcyclopropyl)indole	
(jjj)	(1-(5-Fluoropentyl)-1H-indazol-3-yl)(naphthalen-1-yl)methanone.....	7024
	Other names: THJ-2201	
(kkk)	5F-CUMYL-P7AICA.....	7085
	Other names: 1-(5-fluoropentyl)-n-(2-phenylpropan-2-yl)-1H-pyrrolo[2,3-b]pyridine-3-carboxamide	
(lll)	MMB-CHMICA.....	7044
	Other names: methyl-2-(1-(cyclohexylmethyl)-1H-indole-3-carboxamido)-3-methylbutanoate; AMB-CHMICA	
(mmm)	4-CN-CUMYL-BUTINACA.....	7089

	Other names: 1-(4-cyanobutyl)-N-(2-phenylpropan-2-yl)-1H-indazole-3-carboxamide; 4-cyano-CUMYL-BUTINACA; 4-CN-CUMYL BINACA; CUMYL-4CN-BINACA; SGT-78	
(nnn)	5F-AB-PINACA.....	7025
	Other names: N-(1-amino-3-methyl-1-oxobutan-2-yl)-1-(5-fluoropentyl)-1H-indazole-3-carboxamide	
(ooo)	N-(1-amino-3-methyl-1-oxobutan-2-yl)-1-(cyclohexylmethyl)-1H-indazole-3-carboxamide.....	7031
	Other names: AB-CHMINACA	
(ppp)	N-(1-amino-3-methyl-1-oxobutan-2-yl)-1-(4-fluorobenzyl)-1H-indazole-3-carboxamide.....	7012
	Other names: AB-FUBINACA	
(qqq)	N-(1-adamantyl)-1-pentyl-1H-indazole-3-carboxamide.....	7048
	Other names: APINACA; AKB48	
(rrr)	N-(1-amino-3,3-dimethyl-1-oxobutan-2-yl)-1-pentyl-1H-indazole-3-carboxamide ..	7035
	Other names: ADB-PINACA	
(sss)	N-(1-amino-3-methyl-1-oxobutan-2-yl)-1-pentyl-1H-indazole-3-carboxamide.....	7023
	Other names: AB-PINACA	
(ttt)	Quinolin-8-yl 1-(5-fluoropentyl)-1H-indole-3-carboxylate .....	7225
	Other names: 5-fluoro-PB-22; 5F-PB-22	
(uuu)	Quinolin-8-yl 1-pentyl-1H-indole-3-carboxylate .....	7222
	Other names: PB-22; QUPIC	
(vvv)	N-(1-amino-3,3-dimethyl-1-oxobutan-2-yl)-1-(cyclohexylmethyl)-1H-.....	7032
	indazole-3-carboxamide, its optical, positional, and geometric isomers, salts and salts of isomers	
	Other Names: MAB-CHMINACA; ADB-CHMINACA	
(www)	Methyl 2-(1-(4-fluorobenzyl)-1Hindazole-3-carboxamido)-3-methylbutanoate.....	7021
	Other Names: FUB-AMB, MMB-FUBINACA, AMB-FUBINACA	

(5) Depressants. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a depressant effect on the central nervous system, including its salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specified chemical designation:

- (a) Etizolam  
Other names; Etilaam, Etizola, Sedekopan, Pasaden, Depas
- (b) Gamma-hydroxybutyric acid..... 2010  
Other names: GHB; gamma-hydroxybutyrate; 4-hydroxybutyrate; 4-hydroxybutanoic acid; sodium oxybate; sodium oxybutyrate
- (c) Mecloqualone..... 2572
- (d) Methaqualone..... 2565

(6) Stimulants. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances

having a stimulant effect on the central nervous system, including its salts, isomers, and salts of isomers:

- (a) Alpha-pyrrolidinobutiophenone..... 7546  
Other names: [alpha]-PBP; 1-phenyl-2-(pyrrolidin-1-yl)butan-1-one
- (b) Alpha-pyrrolidinopentiophenone..... 7545  
Other names: [alpha]-PVP; [alpha]-pyrrolidinovalerophenone; 1-phenyl-2-(pyrrolidin-1-yl)pentan-1-one
- (ae) Aminorex..... 1585  
Other names: aminoxophen; 2-amino-5-phenyl-2-oxazoline; or 4,5-dihydro-5-phenyl-2-oxazolamine
- (d) Butylone..... 7541  
Other names: bk-MBDB; 1-(1,3-benzodioxol-5-yl)-2-(methylamino)butan-1-one
- (be) Cathinone..... 1235  
Other names: 2-amino-1-phenyl-1-propanone; alpha-aminopropiophenone; 2-aminopropiophenone; norphedrone; constituent of *catha edulis* or "Khat" plant
- (c) Ephylone..... 7543  
Other names: N-ethylpentylone; 1-(1,3-benzodioxol-5-yl)-2-(ethylamino)-pentan-1-one
- (f) 3-Fluoro-N-methylcathinone..... 1233  
Other names: 3-FMC; 1-(3-fluorophenyl)-2-(methylamino)propan-1-one
- (g) 4-Fluoro-N-methylcathinone..... 1238  
Other names: 4-FMC; flephedrone; 1-(4-fluorophenyl)-2-(methylamino)propan-1-one
- (dh) Fenethylline..... 1503
- (ei) Methcathinone..... 1237  
Other names: 2-(methylamino)-propiophenone; alpha-(methylamino)propiophenone; 2-(methylamino)-1-phenylpropan-1-one; alpha-N-methylaminopropiophenone; monomethylpropion; ephedrone; N-methylcathinone; methylcathinone; AL-464; AL-422; AL-463; and UR1432;
- (ff) (+/-) cis-4-Methylaminorex (cis isomer)..... 1590  
Other name: (+/-)cis-4,5-dihydro-4-methyl-5-phenyl-2-oxazolamine
- (k) 4-Methyl-N-ethylcathinone..... 1249  
Other names: 4-MEC; 2-(ethylamino)-1-(4-methylphenyl)propan-1-one
- (l) 4-Methyl-alpha-pyrrolidinopropiophenone..... 7498  
Other names: 4-MePPP; MePPP; 4-methyl-[alpha]-pyrrolidinopropiophenone; 1-(4-methylphenyl)-2-(pyrrolidin-1-yl)propan-1-one
- (m) Naphyrone..... 1258  
Other names: naphthylpyrovalerone; 1-(naphthalen-2-yl)-2-(pyrrolidin-1-yl)pentan-1-one
- (gn) N-Benzylpiperazine..... 7493  
Other names: BZP; 1-benzylpiperazine
- (he) N-Ethylamphetamine..... 1475
- (ip) N,N-Dimethylamphetamine..... 1480  
Other names: N,N-alpha-trimethyl-benzeneethanamine; N,N-alpha-

trimethylphenethylamine

- (q) Pentedrone..... 1246  
 Other names: [alpha]-methylaminovalerophenone; 2-(methylamino)-1-phenylpentan-1-one
- (r) Pentylone..... 7542  
 Other names: bk-MBDP; 1-(1,3-benzodioxol-5-yl)-2-(methylamino)pentan-1-one

(7) Cannabimimetic agents. Unless specifically exempted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances, or which contains their salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation:

- (a) 5-(1,1-Dimethylheptyl)-2-[(1R,3S)-3-hydroxycyclohexyl]-phenol (CP-47,497) ..... 7297
- (b) 5-(1,1-Dimethyloctyl)-2-[(1R,3S)-3-hydroxycyclohexyl]-phenol (cannabicyclohexanol or CP-47,497 C8-homolog) ..... 7298
- (c) 1-Pentyl-3-(1-naphthoyl)indole (JWH-018 and AM678) ..... 7118
- (d) 1-Butyl-3-(1-naphthoyl)indole (JWH-073) ..... 7173
- (e) 1-Hexyl-3-(1-naphthoyl)indole (JWH-019) ..... 7019
- (f) 1-[2-(4-Morpholinyl)ethyl]-3-(1-naphthoyl)indole (JWH-200) ..... 7200
- (g) 1-Pentyl-3-(2-methoxyphenylacetyl)indole (JWH-250) ..... 6250
- (h) 1-Pentyl-3-[1-(4-methoxynaphthoyl)]indole (JWH-081) ..... 7081
- (i) 1-Pentyl-3-(4-methyl-1-naphthoyl)indole (JWH-122) ..... 7122
- (j) 1-Pentyl-3-(4-chloro-1-naphthoyl)indole (JWH-398) ..... 7398
- (k) 1-(5-Fluoropentyl)-1H-indazol-3-yl(naphthalen-1-yl)methanone (THJ-2201) ..... 7024
- (k) 1-(5-Fluoropentyl)-3-(1-naphthoyl)indole (AM2201)..... 7201
- (l) 1-(5-Fluoropentyl)-3-(2-iodobenzoyl)indole (AM694)..... 7694
- (m) 1-Pentyl-3-[(4-methoxy)-benzoyl]indole (SR-19 and RCS-4) ..... 7104
- (n) 1-Cyclohexylethyl-3-(2-methoxyphenylacetyl)indole (SR-18 and RCS-8) .... 7008
- (o) 1-Pentyl-3-(2-chlorophenylacetyl)indole (JWH-203) ..... 7203
- (p) Methyl 2-(1-(cyclohexylmethyl)-1h-indole-3- carboxamido)-3,3-dimethylbutanoate ..... 7042  
 Other names: MDMB-CHMICA, MMB-CHMINACA
- (q) Methyl 2-(1-(4-fluorobenzyl)-1h-indazole-3- carboxamido)-3,3-dimethylbutanoate ..... 7020  
 Other names: MDMB-FUBINACA
- (r) Methyl 2-(1-(5-fluoropentyl)-1h-indazole-3- carboxamido)-3-methylbutanoate ..... 7033  
 Other names: 5F-AMB

(s)	Methyl 2-(1-(5-fluoropentyl)-1H-indazole-3-carboxamido)-3,3-dimethylbutanoate.....	7034
	Other names: 5F-ADB, 5F-MDMB-PINACA	
(u)	N-(1-adamantyl)-1-pentyl-1H-indazole-3-carboxamide.....	7048
	Other names: APINACA; AKB48	
(t)	N-(adamantan-1-yl)-1-(5-fluoropentyl)-1H-indazole-3-carboxamide.....	7049
	Other names: 5F-APINACA, 5F-AKB48	
(w)	N-(1-amino-3-methyl-1-oxobutan-2-yl)-1-(4-fluorobenzyl)-1H-indazole-3-carboxamide.....	7012
	Other names: AB-FUBINACA	
(x)	N-(1-amino-3-methyl-1-oxobutan-2-yl)-1-(cyclohexylmethyl)-1H-indazole-3-carboxamide.....	7031
	Other names: AB-CHMINACA	
(u)	N-(1-amino-3,3-dimethyl-1-oxobutan-2-yl)-1-(4-fluorobenzyl)-1H-indazole-3-carboxamide.....	7010
	Other names: ADB-FUBINACA	
(z)	N-(1-amino-3,3-dimethyl-1-oxobutan-2-yl)-1-pentyl-1H-indazole-3-carboxamide ..	7035
	Other names: ADB-PINACA	
(aa)	N-(1-amino-3-methyl-1-oxobutan-2-yl)-1-pentyl-1H-indazole-3-carboxamide.....	7023
	Other names: AB-PINACA	
(bb)	Quinolin-8-yl-1-(5-fluoropentyl)-1H-indole-3-carboxylate .....	7225
	Other names: 5-fluoro-PB-22; 5F-PB-22	
(cc)	Quinolin-8-yl-1-pentyl-1H-indole-3-carboxylate .....	7222
	Other names: PB-22; QUPIC	

Authority: T.C.A. §§ 4-4-103, 33-1-302, 33-1-303, 33-1-305, 33-1-309, and 39-17-403.

0940-06-01-.02 Controlled Substances in Schedule II.

- (1) Schedule II consists of the drugs and other substances, by whatever official name, common or usual name, chemical name, or brand name designated, listed in this rule. Each drug or substance bears the federal controlled substance code number assigned to it by the Drug Enforcement Administration.
- (2) Substances, vegetable origin or chemical synthesis. Unless specifically excepted or unless listed in another schedule, any of the following substances whether produced directly or indirectly by extraction from substances of vegetable origin, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis:
  - (a) Opium and opiate, and any salt, compound, derivative, or preparation of opium or opiate, excluding apomorphine, dextroproprium, thebaine-derived butorphanol, nalmeferne, nalbuphine, naloxone, and naltrexone, and their respective salts, but including the following:
    1. Codeine..... 9050
    2. Dihydroetorphine..... 9334
    3. Ethylmorphine..... 9190

4.	Etorphine hydrochloride.....	9059
5.	Granulated opium.....	9640
6.	Hydrocodone.....	9193
7.	Hydromorphone.....	9150
8.	Metopon.....	9260
9.	Morphine.....	9300
10.	Opium extracts.....	9610
11.	Opium fluid.....	9620
12.	Oripavine.....	9330
13.	Oxycodone.....	9143
14.	Oxymorphone.....	9652
15.	Powdered opium.....	9639
16.	Raw opium.....	9600
17.	Thebaine.....	9333
18.	Tincture of opium.....	9630

(b) Any salt, compound, derivative, or preparation thereof which is chemically equivalent or identical with any of the substances referred to in paragraph (2)(a) of this rule, except that these substances shall not include the isoquinoline alkaloids of opium

(c) Opium poppy and poppy straw

(d) Coca leaves (9040) and any salt, compound, derivative or preparation of coca leaves (including cocaine (9041) and ecgonine (9180) and their salts, isomers, derivatives and salts of isomers and derivatives), and any salt, compound, derivative, or preparation thereof which is chemically equivalent or identical with any of these substances, except that the substances shall not include decocainized coca leaves or extraction of coca leaves, which extractions do not contain cocaine or ecgonine.

(e) Concentrate of poppy straw (the crude extract of poppy straw in either liquid, solid or powder form which contains the phenanthrene alkaloids of the opium poppy)..... 9670

(3) Opiates. Unless specifically excepted or unless in another schedule any of the following opiates, including its isomers, esters, ethers, salts and salts of isomers, esters and ethers whenever the existence of such isomers, esters, ethers, and salts is possible within the specific chemical designation, dextrorphan and levopropoxyphene excepted:

(a) Alfentanil.....9737

(b) Alphaprodine..... 9010

(c) Anileridine.....9020

(d) Bezitramide..... 9800

(e)	Carfentanil.....	9743
(f)	Dextropropoxyphene (bulk, non dosage forms).....	9273
(g)	Dihydrocodeine.....	9120
(h)	Diphenoxylate.....	9170
(i)	Fentanyl.....	9801
(j)	Isomethadone.....	9226
(k)	Levo-alphaacetylmethadol..... Other names: levo-alpha-acetylmethadol; levomethadyl acetate; LAAM	9648
(l)	Levomethorphan.....	9210
(m)	Levorphanol.....	9220
(n)	Metazocine.....	9240
(o)	Methadone.....	9250
(p)	Methadone-Intermediate; 4-cyano-2-dimethylamino-4,4-diphenyl butane.....	9254
(q)	Moramide-Intermediate; 2-methyl-3-morpholino-1,1-diphenylpropane-carboxylic acid.....	9802
(r)	Pethidine (meperidine).....	9230
(s)	Pethidine-Intermediate-A; 4-cyano-1-methyl-4-phenylpiperidine.....	9232
(t)	Pethidine-Intermediate-B; ethyl-4-phenylpiperidine-4-carboxylate.....	9233
(u)	Pethidine-Intermediate-C; 1-methyl-4-phenylpiperidine-4-carboxylic acid.....	9234
(v)	Phenazocine.....	9715
(w)	Piminodine.....	9730
(x)	Racemethorphan.....	9732
(y)	Racemorphan.....	9733
(z)	Remifentanyl.....	9739
(aa)	Sufentanyl.....	9740
(bb)	Tapentadol.....	9780
(cc)	Thiafentanyl.....	9729

(4) Stimulants. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a stimulant effect on the central nervous system:

(a)	Amphetamine, its salts, optical isomers, and salts of its optical isomers.....	1100
(b)	Methamphetamine, its salts, isomers, and salts of its isomers.....	1105

(c)	Phenmetrazine and its salts.....	1631
(d)	Methylphenidate.....	1724
(e)	Lisdexamfetamine, its salts, isomers, and salts of its isomers.....	1205
(5)	Depressants. Unless specifically excepted or unless listed in another schedule any material, compound, mixture, or preparation which contains any quantity of the following substances having a depressant effect on the central nervous system, including its salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation:	
(a)	Amobarbital.....	2125
(b)	Glutethimide.....	2550
(c)	Pentobarbital.....	2270
(d)	Phencyclidine.....	7471
(e)	Secobarbital.....	2315
(6)	Hallucinogenic substances.	
(a)	Nabilone.....	7379
	Other names: (+/-)-trans-3-(1,1-dimethylheptyl)-6,6a,7,8,10,10a-hexahydro-1-hydroxy-6,6-dimethyl-9H-dibenzo[b,d]pyran-9-one.	
(b)	Dronabinol in oral solution in drug product approved for marketing by United States Food and Drug Administration.....	7365
	Other names: Syndros	
(7)	Immediate precursors. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture or preparation which contains any quantity of the following substances:	
(a)	Immediate precursor to amphetamine and methamphetamine:	
	1. Phenylacetone.....	8501
	Other names: phenyl-2-propanone; P2P; benzyl methyl ketone; methyl benzyl ketone;	
(b)	Immediate precursors to phencyclidine (PCP):	
	1. 1-phenylcyclohexylamine.....	7460
	2. 1-piperidinocyclohexanecarbonitrile(PCC).....	8603
(c)	Immediate precursor to fentanyl:	
	1. 4-anilino-N-phenethyl-4-piperidine (ANPP).....	8333

Authority: T.C.A. §§ 4-4-103, 33-1-302, 33-1-303, 33-1-305, 33-1-309, and 39-17-403.

0940-06-01-.03 Controlled Substances in Schedule III.

- (1) Schedule III consists of the drugs and other substances by whatever official name, common or usual name, chemical name, or brand name designated, listed in this rule. Each drug or

substance bears the federal controlled substance code number assigned to it by the Drug Enforcement Administration.

- (2) Stimulants. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a stimulant effect on the central nervous system, including its salts, isomers (whether optical, position or geometric), and salts of such isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation:
- (a) Those compounds, mixtures, or preparations in dosage unit form containing any stimulant substances listed in Schedule II which compounds, mixtures, or preparations were listed on August 25, 1971, as excepted compounds under 21 C.F.R. 1308.32, and any other drug of the quantitative composition shown in that list for those drugs or which is the same except that it contains a lesser quantity of controlled substances..... 1405
  - (b) Benzphetamine..... 1228
  - (c) Clorphentermine..... 1645
  - (d) Clortermine..... 1647
  - (e) Phendimetrazine..... 1615
- (3) Depressants. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a depressant effect in the central nervous system:
- (a) Any compound, mixture, or preparation containing:
    - 1. Amobarbital..... 2126
    - 2. Secobarbital.....2316
    - 3. Pentobarbital .....2271  
Or any salt thereof and one or more other active medicinal ingredients which are not listed in any schedule.
  - (b) Any suppository dosage form containing:
    - 1. Amobarbital..... 2126
    - 2. Secobarbital.....2316
    - 3. Pentobarbital..... 2271  
Or any salt of these drugs and approved by the Food and Drug Administration for marketing only as a suppository.
  - (c) Any substance which contains any quantity of a derivative of barbituric acid or any salt thereof. Examples include the following drugs:..... 2100
    - 1. Aprobarbital.....2100
    - 2. Butobarbital (secbutobarbital).....2100
    - 3. Butalbital.....2100
    - 4. Butobarbital (butethal).....2100

5.	Talbutal.....	2100
6.	Thiamylal.....	2100
7.	Thiopental.....	2100
8.	Vinbarbital .....	2100
(d)	Chlorhexadol.....	2510
(e)	Embutramide.....	2020
(f)	Gamma hydroxybutyric acid preparations. Any drug product containing gamma hydroxybutyric acid, including its salts, isomers, and salts of isomers, for which an application is approved under § 505 of the federal Food, Drug, and Cosmetic Act, codified in 21 U.S.C. § 301, et seq.....	2012
(g)	Ketamine, its salts, isomers, and salts of isomers ..... Other name: (±)-2-(2-chlorophenyl)-2-(methylamino)-cyclohexanone	7285
(h)	Lysergic acid.....	7300
(i)	Lysergic acid amide.....	7310
(j)	Methypylon.....	2575
(k)	Perampanel, and its salts, isomers, and salts of isomers .....	2261
(l)	Sulfondiethylmethane.....	2600
(m)	Sulfonethylmethane.....	2605
(n)	Sulfonmethane.....	2610
(o)	Tiletamine and zolazepam or any salt of tiletamine or zolazepam.....	7295
	1. Other name for a tiletamine-zolazepam combination product: Telazol®;	
	2. Other name for tiletamine: 2-(ethylamino)-2-(2-thienyl)-cyclohexanone.	
	3. Other names for zolazepam: 4-(2-fluorophenyl)-6,8-dihydro-1,3,8-trimethylpyrazolo[3,4-e],[1,4]-diazepin-7(1H)-one; flupyrazapon	
(4)	Nalorphine.....	9400
(5)	Narcotic Drugs.	
(a)	Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation containing any of the following narcotic drugs, or their salts calculated as the free anhydrous base or alkaloid, in limited quantities as set forth below:	
	1. Not more than 1.8 grams of codeine per 100 milliliters or not more than 90 milligrams per dosage unit, with an equal or greater quantity of an isoquinoline alkaloid of opium.....	9803
	2. Not more than 1.8 grams of codeine per 100 milliliters or not more than 90 milligrams per dosage unit, with one or more active, non-narcotic ingredients in recognized therapeutic amounts.....	9804

3. Not more than 1.8 grams of dihydrocodeine per 100 milliliters or not more than 90 milligrams per dosage unit with one or more active non-narcotic ingredients in recognized therapeutic amount.....9807
  4. Not more than 300 milligrams of ethylmorphine per 100 milliliters or not more than 15 milligrams per dosage unit with one or more active non-narcotic ingredients in recognized therapeutic amounts.....9808
  5. Not more than 500 milligrams of opium per 100 milliliters or per 100 grams or not more than 25 milligrams per dosage unit, with one or more active, non-narcotic ingredients in recognized therapeutic amounts.....9809
  6. Not more than 50 milligrams of morphine per 100 milliliters or per 100 grams, with one or more active, non-narcotic ingredients in recognized therapeutic amounts.....9810
- (b) Any material, compound, mixture, or preparation containing any of the following narcotic drugs or their salts:
1. Buprenorphine.....9064
- (6) Anabolic steroids. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation containing any quantity of the following substances, including its salts, esters and ethers:
- (a) Anabolic steroids..... 4000
1. 3[alpha],17[beta]-dihydroxy-5a-androstane
  2. 17[alpha]-methyl-3[alpha],17[beta]-dihydroxy-5a-androstane
  3. 17[alpha]-methyl-3[beta],17[beta]-dihydroxy-5a-androstane
  4. 17[alpha]-methyl-3[beta],17[beta]-dihydroxyandrost-4-ene
  5. 17[alpha]-methyl-[delta]1-dihydrotestosterone(17[beta]-hydroxy-17[alpha]-methyl-5[alpha]-androst-1-en-3-one  
Other Names: 17-[alpha]-methyl-1-testosterone
  6. 17[alpha]-methyl-4-hydroxynandrolone(17[alpha]-methyl-4-hydroxy-17[beta]-hydroxyestr-4-en-3-one)
  7. 1-Androstenediol (3[alpha],17[beta]-dihydroxy-5[alpha]-androst-1-ene)
  8. 1-Androstenediol (3[beta],17[beta]-dihydroxy-5[alpha]-androst-1-ene)
  9. 4-Androstenediol (3[beta],17[beta]-dihydroxy-androst-4-ene)
  10. 5-Androstenediol (3[beta],17[beta]-dihydroxy-androst-5-ene)
  11. 1-Androstenedione (5[alpha]-androst-1-en-3,17-dione)
  12. 4-Androstenedione (androst-4-en-3,17-dione)
  13. 5-Androstenedione (androst-5-en-3,17-dione)
  14. 3[Beta],17[Beta]-dihydroxy-5a-androstane

15. 13[Beta]-ethyl-17[beta]-hydroxygon-4-en-3-one
16. Androstenedione (5[alpha]-androst-3,17-dione)
17. Bolasterone (7[alpha],17[alpha]-dimethyl-17[beta]-hydroxyandrost-4-en-3-one)
18. Boldenone (17[beta]-hydroxyandrost-1,4-diene-3-one)
19. Boldione (androsta-1,4-diene-3,17-dione)
20. Calusterone (7[beta],17[alpha]-dimethyl-17[beta]-hydroxyandrost-4-en-3-one)
21. Clostebol (4-chloro-17[beta]-hydroxyandrost-4-en-3-one)  
Other Names: 4-Chlorotestosterone
22. Dehydrochloromethyltestosterone (4-chloro-17[beta]-hydroxy-17[alpha]-methylandrost-1,4-dien-3-one)
23. [Delta]1-dihydrotestosterone (a.k.a.'1-testosterone') (17[Beta]-hydroxy-5[alpha]-androst-1-en-3-one)
24. Desoxymethyltestosterone (17[alpha]-methyl-5[alpha]-androst-2-en-17[Beta]-ol)  
Other name: madol
25. 4-Dihydrotestosterone (17[beta]-hydroxyandrost-3-one)
26. Drostanolone (17[beta]-hydroxy-2[alpha]-methyl-5[alpha]-androst-3-one)
27. Ethylestrenol (17[alpha]-ethyl-17[beta]-hydroxyestr-4-ene)
28. Fluoxymesterone (9-fluoro-17[alpha]-methyl-11[beta],17[beta]-dihydroxyandrost-4-en-3-one)
29. Formebolone (2-formyl-17[alpha]-methyl-11[alpha],17[beta]-dihydroxyandrost-1,4-dien-3-one)
30. Furazabol (17[alpha]-methyl-17[beta]-hydroxyandrostano[2,3-c]-furazan)
31. 4-Hydroxy-19-nortestosterone (4,17[beta]-dihydroxyestr-4-en-3-one)
32. 4-Hydroxytestosterone (4,17[beta]-dihydroxyandrost-4-en-3-one)
33. Mestanolone (17[alpha]-methyl-17[beta]-hydroxy-5[alpha]-androst-3-one)
34. Mesterolone (1[alpha]-methyl-17[beta]-hydroxy-5[alpha]-androst-3-one)
35. Methandienone (17[alpha]-methyl-17[beta]-hydroxyandrost-1,4-diene-3-one)
36. Methandranone
37. Methandriol (17[alpha]-methyl-3[beta],17[beta]-dihydroxyandrost-5-ene)
38. Methandrostenolone
39. Methasterone (2[alpha],17[alpha]-dimethyl-5[alpha]-androst-17[beta]-ol-3-one)
40. Methenolone (1-methyl-17[beta]-hydroxy-5[alpha]-androst-1-en-3-one)
41. Methyldienolone (17[alpha]-methyl-17[beta]-hydroxyestra-4,9(10)-dien-3-one)

42. Methyltestosterone (17[alpha]-methyl-17[beta]-hydroxyandrost-4-en-3-one)
43. Methyltrienolone (17[alpha]-methyl-17[beta]-hydroxyestra-4, 9, 11-trien-3-one)
44. Mibolerone (7[alpha], 17[alpha]-dimethyl-17[beta]-hydroxyestr-4-en-3-one)
45. Nandrolone (17[beta]-hydroxyestr-4-en-3-one)
46. 19-Nor-4,9(10)-androstadienedione (estra-4,9(10)-diene-3, 17-dione)
47. 19-Nor-4-androstenediol (3[alpha], 17[beta]-dihydroxyestr-4-ene)
48. 19-Nor-4-androstenediol (3[beta], 17[beta]-dihydroxyestr-4-ene)
49. 19-Nor-5-androstenediol (3[alpha], 17[beta]-dihydroxyestr-5-ene)
50. 19-Nor-5-androstenediol (3[beta], 17[beta]-dihydroxyestr-5-ene)
51. 19-Nor-4-androstenedione (estr-4-en-3, 17-dione)
52. 19-Nor-5-androstenedione (estr-5-en-3, 17-dione)
53. Norbolethone (13[beta], 17[alpha]-diethyl-17[beta]-hydroxygon-4-en-3-one)
54. Norclostebol (4-chloro-17[beta]-hydroxyestr-4-en-3-one)
55. Norethandrolone (17[alpha]-ethyl-17[beta]-hydroxyestr-4-en-3-one)
56. Normethandrolone (17[alpha]-methyl-17[beta]-hydroxyestr-4-en-3-one)
57. Oxandrolone (17[alpha]-methyl-17[beta]-hydroxy-2-oxa-5[alpha]-androstan-3-one)
58. Oxymesterone (17[alpha]-methyl-4, 17[beta]-dihydroxyandrost-4-en-3-one)
59. Oxymetholone (17[alpha]-methyl-2-hydroxymethylene-17[beta]-hydroxy-[5[alpha]]-androstan-3-one)
60. Prostanazol (17[beta]-hydroxy-5[alpha]-androstan-3-one-2-c-pyrazole)
61. Stanolone (17[beta]-Hydroxy-5alpha-Androstan-3-One)
62. Stanozolol (17[alpha]-methyl-17[beta]-hydroxy-[5[alpha]]-androst-2-eno[3,2-c]-pyrazole)
63. Stenbolone (17[beta]-hydroxy-2-methyl-[5[alpha]]-androst-1-en-3-one)
64. Testolactone (13-hydroxy-3-oxo-13, 17-secoandrosta-1, 4-dien-17-oic acid lactone)
65. Testosterone (17[beta]-hydroxyandrost-4-en-3-one)
66. Tetrahydrogestrinone (13[beta], 17[alpha]-diethyl-17[beta]-hydroxygon-4, 9, 11-trien-3-one)
67. Trenbolone (17[beta]-hydroxyestr-4,9, 11-trien-3-one)

- (b) Any salt, ester, or isomer of a drug or substance described or listed in subparagraph (a), if such salt, ester, or isomer promotes muscle growth.
  - (c) Anabolic steroids intended for administration to cattle or other non-human species are exempt from this rule unless such steroids are prescribed, dispensed, or distributed for human use.
  - (d) Anabolic steroids with a combination of estrogens intended for administration to hormone deficient women are exempt from this rule unless such steroids are prescribed, dispensed, or distributed to women who are not hormone deficient.
- (7) Hallucinogenic Substances
- (a) Dronabinol (synthetic) in sesame oil and encapsulated in a soft gelatin capsule in a United States Food and Drug administration approved drug product..... 7369  
Other names: (6aR-trans)-6a,7,8,10a-tetrahydro-6,6,9-trimethyl-3-pentyl-6H-dibenzo [b,d]pyran-1-ol or (-)-delta-9-(trans)-tetrahydrocannabinol

Authority: T.C.A. §§ 4-4-103, 33-1-302, 33-1-303, 33-1-305, 33-1-309, and 39-17-403.

0940-06-01-.04 Controlled Substances in Schedule IV.

- (1) Schedule IV consists of the drugs and other substances, by whatever official name, common or usual name, chemical name, or brand name designated, listed in this rule. Each drug or substance bears the federal controlled substance code number assigned to it by the Drug Enforcement Administration.
- (2) Narcotic drugs. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture or preparation containing any of the following narcotic drugs, or their salts calculated as the free anhydrous base or alkaloid, in limited quantities as set forth below:
  - (a) Not more than 1 milligram of difenoxin and not less than 25 micrograms of atropine sulfate per dosage unit.....9167
  - (b) Dextropropoxyphene dosage forms (alpha-(+)-4-dimethylamino-1,2-diphenyl-3-methyl-2-propionoxybutane)..... 9278
- (3) Depressants. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substance, including its salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation:
  - (a) Alfaxalone .....2731
  - (b) Alprazolam..... 2882
  - (c) Barbital.....2145
  - (d) Bromazepam..... 2748
  - (e) Camazepam..... 2749
  - (f) Carisoprodol..... 8192  
Other name: Soma®
  - (g) Chloral betaine..... 2460
  - (h) Chloral hydrate..... 2465

(i)	Chlordiazepoxide.....	2744
(j)	Clobazam.....	2751
(k)	Clonazepam.....	2737
(l)	Clorazepate.....	2768
(m)	Clotiazepam.....	2752
(n)	Cloxazolam.....	2753
(o)	Delorazepam.....	2754
(p)	Diazepam.....	2765
(q)	Dichloralphenazone.....	2467
(r)	Estazolam.....	2756
(s)	Eszopiclone.....	N/A
(t)	Ethchlorvynol.....	2540
(u)	Ethinamate.....	2545
(v)	Ethyl Loflazepate.....	2758
(w)	Fludiazepam.....	2759
(x)	Flunitrazepam.....	2763
(y)	Flurazepam.....	2767
(z)	Fospropofol.....	2138
(aa)	Halazepam.....	2762
(bb)	Haloxazolam.....	2771
(cc)	Ketazolam.....	2772
(dd)	Loprazolam.....	2773
(ee)	Lorazepam.....	2885
(ff)	Lormetazepam.....	2774
(gg)	Mebutamate.....	2800
(hh)	Medazepam.....	2836
(ii)	Meprobamate.....	2820
(jj)	Methohexital.....	2264
(kk)	Methylphenobarbital (mephobarbital).....	2250
(ll)	Midazolam.....	2884

(mm)	Nimetazepam.....	2837
(nn)	Nitrazepam.....	2834
(oo)	Nordiazepam.....	2838
(pp)	Oxazepam.....	2835
(qq)	Oxazolam.....	2839
(rr)	Paraldehyde.....	2585
(ss)	Petrichloral.....	2591
(tt)	Phenobarbital.....	2285
(uu)	Pinazepam.....	2883
(vv)	Prazepam.....	2764
(ww)	Quazepam.....	2881
(xx)	Suvorexant.....	2223
(yy)	Temazepam.....	2925
(zz)	Tetrazepam.....	2886
(aaa)	Tramadol.....	9752
	Other names: Ultram® and Ultracet®	
(bbb)	Triazolam.....	2887
(ccc)	Zaleplon.....	2781
(ddd)	Zolpidem.....	2783
(eee)	Zopiclone.....	2784

(4) Fenfluramine. Any material, compound, mixture, or preparation which contains any quantity of the following substances including its salts, isomers (whether optical, positional, or geometric), and salts of isomers, whenever the existence of such salts, isomers, and salts of isomers is possible:

(a)	Fenfluramine.....	1670
(b)	Dexfenfluramine.....	1670

(5) Lorcaserin. Any material, compound, mixture, or preparation which contains any quantity of the following substances, including its salts, isomers, and salts of such isomers, whenever the existence of such salts, isomers, and salts of isomers is possible:

(a)	Lorcaserin.....	1625
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(6) Stimulants. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a stimulant effect on the central nervous system, including its salts, isomers and salts of isomers:

(a)	Cathine ((+)-norpseudoephedrine).....	1230
(b)	Diethylpropion.....	1610
(c)	Fencamfamin.....	1760
(d)	Fenproporex.....	1575
(e)	Mazindol.....	1605
(f)	Mefenorex.....	1580
(g)	Modafinil.....	1680
(h)	Pemoline (including organometallic complexes and chelates thereof).....	1530
(i)	Phentermine.....	1640
(j)	Pipradol.....	1750
(k)	Sibutramine.....	1675
(l)	SPA ((-)-1-dimethylamino-1,2-diphenylethane).....	1635
(7)	Other substances. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances, including its salts:	
(a)	Pentazocine.....	9709
(b)	Butorphanol (including its optical isomers).....	9720
(c)	Eluxadoline (5-[[[(2S)-2-amino-3-[4-aminocarbonyl]-2,6-dimethylphenyl]-1-oxopropyl]][(1S)-1-(4-phenyl-1H-imidazol-2-yl)ethyl]amino]methyl]-2-methoxybenzoic acid) (including its optical isomers) and its salts, isomers, and salts of isomers.....	9725

Authority: T.C.A. §§ 4-4-103, 33-1-302, 33-1-303, 33-1-305, 33-1-309, and 39-17-403.

0940-06-01-.05 Controlled Substances in Schedule V.

- (1) Schedule V consists of the drugs and other substances, by whatever official name, common or usual name, chemical name, or brand name designated, listed in this rule. Each drug or substance bears the federal controlled substance code number assigned to it by the Drug Enforcement Administration.
- (2) Narcotic drugs containing non-narcotic active medicinal ingredients. Any compound, mixture, or preparation containing any of the following narcotic drugs, or their salts calculated as the free anhydrous base or alkaloid, in limited quantities as set forth below, which shall include one or more non-narcotic active medicinal ingredients in sufficient proportion to confer upon the compound, mixture, or preparation valuable medicinal qualities other than those possessed by narcotic drugs alone:
  - (a) Not more than 200 milligrams of codeine per 100 milliliters or per 100 grams.
  - (b) Not more than 100 milligrams of dihydrocodeine per 100 milliliters or per 100 grams.
  - (c) Not more than 100 milligrams of ethylmorphine per 100 milliliters or per 100 grams.

- (d) Not more than 2.5 milligrams of diphenoxylate and not less than 25 micrograms of atropine sulfate per dosage unit.
  - (e) Not more than 100 milligrams of opium per 100 milliliters or per 100 grams.
  - (f) Not more than 0.5 milligrams of difenoxin and not less than 25 micrograms of atropine sulfate per dosage unit.
- (3) Stimulants. Unless specifically exempted or excluded, or unless listed in another schedule, any material, compound, mixture or preparation that contains any quantity of the following substances having a stimulant effect on the central nervous system, including its salts, isomers, and salts of the isomers:
- (a) Pyrovalerone..... 1485
- (4) Depressants. Unless specifically exempted or excluded or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances have a depressant effect on the central nervous system, including its salts:
- (a) Brivaracetam ((2S)-2-[(4R)-2-oxo-4-propylpyrrolidin-1-yl] butanamide).....2710
  - (b) Ezogabine [N-[2-amino-4-(4-fluorobenzylamino)-phenyl]-carbamic acid ethyl ester]..... 2779
  - (c) Gabapentin [1-(aminomethyl)cyclohexaneacetic acid]
  - (d) Lacosamide [(R)-2-acetoamido-N-benzyl-3-methoxy-propionamide]..... 2746
  - (e) Pregabalin [(S)-3-(aminomethyl)-5-methylhexanoic acid]..... 2782
  - (f) Approved cannabidiol drugs  
(1) A drug product in finished dosage formulation that has been approved by the U.S. Food and Drug Administration that contains cannabidiol (2-[1R-3-methyl-6R-(1-methylethenyl)-2-cyclohexen-1-yl]-5-pentyl-1,3-benzenediol) derived from cannabis and no more than 0.1 percent (w/w) residual tetrahydrocannabinols.....7367

Authority: T.C.A. §§ 4-4-103, 33-1-302, 33-1-303, 33-1-305, 33-1-309, and 39-17-403.

0940-06-01-.06 Controlled Substances in Schedule VI.

- (1) Marijuana..... 7360
- (2) Tetrahydrocannabinols..... 7370
- (3) Unless specifically excepted or unless listed in another schedule, synthetic equivalents of the substances contained in the plant, or in the resinous extractives of Cannabis, sp. and/or synthetic substances, derivatives, and their isomers with similar chemical structure and pharmacological activity. Examples include the following drugs or their compounds regardless of numerical designation of atomic positions covered:
  - (a) 1 cis or trans tetrahydrocannabinol, and its optical isomers.
  - (b) 6 cis or trans tetrahydrocannabinol, and its optical isomers.
  - (c) 3, 4 cis or trans tetrahydrocannabinol, and its optical isomers.

Authority: T.C.A. §§ 4-4-103, 33-1-302, 33-1-303, 33-1-305, 33-1-309, and 39-17-403.

0940-06-01-.07 Controlled Substances in Schedule VII.

- (1) Butyl nitrite and any isomer of butyl nitrite.

Authority: T.C.A. §§ 4-4-103, 33-1-302, 33-1-303, 33-1-305, 33-1-309, and 39-17-403.

0940-06-01-.08 Non-Narcotic Substances Excluded from Controlled Substances

- (1) Non-narcotic substances listed in the most current edition of 21 C.F.R. 1308.22, are excluded from all schedules.

Authority: T.C.A. §§ 4-4-103, 33-1-302, 33-1-303, 33-1-305, 33-1-309, and 39-17-403.

0940-06-01-.09 Chemical preparations excluded from Controlled Substances

- (1) Chemical preparations listed in the most current edition of 21 C.F.R. 1308.24, are excluded from all schedules.

Authority: T.C.A. §§ 4-4-103, 33-1-302, 33-1-303, 33-1-305, 33-1-309, and 39-17-403.

0940-06-01-.10 Veterinary anabolic steroid implant products excluded from Controlled Substances.

- (1) Veterinary anabolic steroid implant products listed in the most current edition of 21 C.F.R. 1308.26, are excluded from all schedules.

Authority: T.C.A. §§ 4-4-103, 33-1-302, 33-1-303, 33-1-305, 33-1-309, and 39-17-403.

0940-06-01-.11 Prescription products excluded from Controlled Substances.

- (1) Prescription products listed in the most current edition of 21 C.F.R. 1308.32, are excluded from all schedules.

Authority: T.C.A. §§ 4-4-103, 33-1-302, 33-1-303, 33-1-305, 33-1-309, and 39-17-403.

0940-06-01-.12 Anabolic steroid products excluded from Controlled Substances.

- (1) Anabolic steroid products listed in the most current edition of 21 C.F.R. 1308.34, are excluded from all schedules.

Authority: T.C.A. §§ 4-4-103, 33-1-302, 33-1-303, 33-1-305, 33-1-309, and 39-17-403.

0940-06-01-.13 Certain cannabis plant material, and products made therefrom, excluded from Controlled Substances.

- (1) Certain cannabis plant material, and products made therefrom, that contain tetrahydrocannabinols listed in the most current edition of 21 C.F.R. 1308.35, are excluded from all schedules.

Authority: T.C.A. §§ 4-4-103, 33-1-302, 33-1-303, 33-1-305, 33-1-309, and 39-17-403.

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

Board Member	Aye	No	Abstain	Absent	Signature (if required)

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the Tennessee Department of Mental Health & Substance Abuse Services (board/commission/ other authority) on 8/16/2019 (mm/dd/yyyy), and is in compliance with the provisions of T.C.A. § 4-5-222.

I further certify the following:

Notice of Rulemaking Hearing filed with the Department of State on: 05/06/19

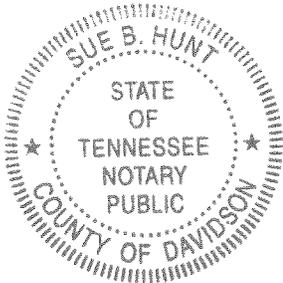
Rulemaking Hearing(s) Conducted on: (add more dates). 06/27/19

Date: 8.16.19

Signature: [Handwritten Signature]

Name of Officer: Marie Williams, LCSW

Title of Officer: Commissioner, Tennessee Department of Mental Health and Substance Abuse Services



Subscribed and sworn to before me on: August 16, 2019

Notary Public Signature: [Handwritten Signature]

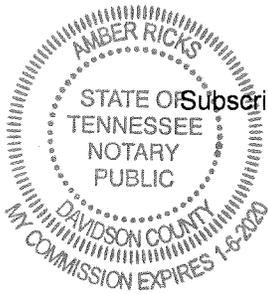
My commission expires on: March 8, 2021

Date: 8-27-19

Signature: [Handwritten Signature]

Name of Officer: Lisa Piercey, MD, MBA, FAAP

Title of Officer: Commissioner, Tennessee Department of Health



Subscribed and sworn to before me on: 8/27/19

Notary Public Signature: [Handwritten Signature]

My commission expires on: 1/6/2020

Agency/Board/Commission: Tennessee Dept of Mental Health + Substance Abuse Services

Rule Chapter Number(s): 0940-06-01

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

*Herbert H. Slatery III*

Herbert H. Slatery III  
Attorney General and Reporter

9/27/2019

Date

**Department of State Use Only**

Filed with the Department of State on: \_\_\_\_\_

10/1/19

Effective on: \_\_\_\_\_

12/30/19

*Tre Hargett*

Tre Hargett  
Secretary of State

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