

G.O.C. STAFF RULE ABSTRACT

DEPARTMENT: Transportation

DIVISION: Legal

SUBJECT: Local Government Guide Sign Program

STATUTORY AUTHORITY: Section 2.D.50 of the Federal Highway Administration, Manual on Uniform Traffic Control Devices (2009 edition), specifically authorizes community wayfinding sign programs on conventional roads. T.C.A. § 54-5-703 allows incorporated municipalities to erect directional signs, including wayfinding program signs, on conventional roads on the state highway system.

EFFECTIVE DATES: March 1, 2018 to June 30, 2018

FISCAL IMPACT: None

STAFF RULE ABSTRACT: Chapter 1680-03-05 established procedures and guidelines for the approval of locally managed wayfinding program signs, including the approval of non-standard signs, on conventional state highways within incorporated municipalities. This rule chapter is no longer needed because Section 2.D.50 of the current Manual on Uniform Traffic Control Devices specifically authorizes community wayfinding sign programs, including previously nonstandard signs, on conventional roads.

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 repeal of Chapter 1680-03-05 has no specific effect 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://state.tn.us/sos/acts/106/pub/pc1070.pdf>) of the 2010 Session of the General Assembly)

The repeal of Chapter 1680-03-05 will not have any adverse impact on local governments because Section 2.D.50 of the current edition of the Manual on Uniform Traffic Control Devices specifically authorizes community wayfinding signs on conventional roads. Per T.C.A. § 54-5-703, incorporated municipalities may erect directional signs, including wayfinding program signs, on conventional roads on the state highway system.

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;

Chapter 1680-03-05 established procedures and guidelines for the approval of locally managed wayfinding program signs, including the approval of non-standard signs, on conventional state highways within incorporated municipalities. This rule chapter is no longer needed because Section 2.D.50 of the current Manual on Uniform Traffic Control Devices specifically authorizes community wayfinding sign programs, including previously non-standard signs, on conventional roads.

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

Section 2.D.50 of the Federal Highway Administration, Manual on Uniform Traffic Control Devices (2009 edition), specifically authorizes community wayfinding sign programs on conventional roads. T.C.A. § 54-5-703 allows incorporated municipalities to erect directional signs, including wayfinding program signs, on conventional roads on the state highway system.

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

Local governments are most directly impacted by the repeal of Chapter 1680-03-05. Because Section 2.D.50 of the MUTCD specifically authorizes community wayfinding signs on conventional roads, Chapter 1680-03-05 is no longer needed to authorize the implementation of local wayfinding programs, including the installation of local wayfinding signs on conventional state highways within incorporated municipalities.

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

None

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

None

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

John H. Reinbold, General Counsel; Joseph Sweat, Transportation Manager 1, Traffic Operations Division.

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

John H. Reinbold, General Counsel; Joseph Sweat, Transportation Manager 1, Traffic Operations Division.

- (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

John H. Reinbold, General Counsel, Tennessee Department of Transportation, Suite 300, James K. Polk Building, 505 Deaderick Street, Nashville, TN 37243; telephone number (615) 741-2941. Joseph Sweat, Transportation Manager 1, Traffic Operations Division, Tennessee Department of Transportation, Suite 1200, James K. Polk Building, Nashville, TN 37243; telephone number (615) 532-3431.

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

None at this time.

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Sequence Number: 12-02-17
Rule ID(s): 6658
File Date: 12/1/17
Effective Date: 3/1/18

Proposed Rule(s) Filing Form

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

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

Agency/Board/Commission:	Tennessee Department of Transportation
Division:	Legal Division
Contact Person:	John H. Reinbold, General Counsel
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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
1680-03-05	Local Government Guide Sign Program (Wayfinding Program) Including Conventional State Highways
Rule Number	Rule Title
1680-03-05-.01	Purpose
1680-03-05-.02	Application and Scope of Program
1680-03-05-.03	Definitions
1680-03-05-.04	Alternative Signing Methods
1680-03-05-.05	Program Components and Approvals
1680-03-05-.06	Installation and Maintenance of Signs

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

The Tennessee Department of Transportation adopted Chapter 1680-03-05 in 2005 to establish procedures and guidelines for the approval of locally managed wayfinding guide signs, including non-standard signs, on conventional state highways within incorporated municipalities. At that time, the Federal Highway Administration's Manual on Uniform Traffic Control Devices (MUTCD), adopted in the State of Tennessee pursuant to Chapter 1680-03-01, did not specifically provide for local wayfinding sign programs and no guide sign other than a standard sign with white lettering on a green background could be erected without the approval of the Federal Highway Administration. However, the current edition of the MUTCD, at Section 2.D.50, specifically authorizes community wayfinding signs, including previously non-standard signs. Per T.C.A. § 54-5-703, incorporated municipalities have authority to erect directional signs, which would include wayfinding signs, on conventional roads on the state highway system. Therefore, Chapter 1680-03-05 is no longer needed and is hereby repealed.

Pages 8 - 13 added by staff to denote specific rule to be repealed.

**RULES
OF
TENNESSEE DEPARTMENT OF TRANSPORTATION**

**CHAPTER 1680-3-5
LOCAL GOVERNMENT GUIDE SIGN PROGRAM (WAYFINDING PROGRAM)
INCLUDING CONVENTIONAL STATE HIGHWAYS**

TABLE OF CONTENTS

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1680-3-5-.01 PURPOSE.

The purpose of these Rules is to establish methods, procedures, and guidelines under which a local government may adopt a guide sign program (Wayfinding Program) to provide for local control of guide signs maintained on conventional state highways within a defined Wayfinding Region. An approved Wayfinding Program shall operate in place of the Department's regulations for guide signs on conventional state highways as established in Chapter 1680-3-2.

Authority: T.C.A. §§ 4-3-2307 and 54-5-108. *Administrative History:* Original rule filed August 2, 2005; effective October 16, 2005.

1680-3-5-.02 APPLICATION AND SCOPE OF PROGRAM.

- (1) Any county or incorporated municipality within the State of Tennessee that is organized with legal authority to construct and maintain its own local roads is authorized to adopt a Wayfinding Program as provided in these Rules.
- (2) Adoption of a Wayfinding Program is optional, and nothing in these Rules shall be construed to require any county or municipality to participate in or undertake a Wayfinding Program.
- (3) An approved Wayfinding Program may apply to conventional state highways within the jurisdiction of a county or municipality, but it shall not apply to freeways and expressways, including ramps, on the state highway system. Guide signs on all freeways and expressways on the state highway system, as well as guide signs on all conventional state highways outside of any designated Wayfinding Region, will continue to be maintained by the Department.

Authority: T.C.A. §§ 4-3-2307 and 54-5-108. *Administrative History:* Original rule filed August 2, 2005; effective October 16, 2005.

1680-3-5-.03 DEFINITIONS.

- (1) "Conventional highway" means a highway with at-grade intersections and without control of access.
- (2) "Department" means the Tennessee Department of Transportation.
- (3) "Eligible local government" as used in these Rules means a county or a municipality that is incorporated under the laws of the State of Tennessee and is organized with legal authority to construct and maintain its own local roads.
- (4) "Expressway" means a divided highway with partial control of access, including some grade-separated interchanges as well as at-grade intersections.

(Rule 1680-3-5-.03, continued)

- (5) "Freeway" means a divided highway with full control of access, including grade-separated interchanges rather than at-grade intersections.
- (6) "Guide sign" means a highway or street sign that shows route designations (route shields), destinations, directions, distances, services, points of interest, or other geographical, recreational, or cultural information.
- (7) "Guide sign policy" as used in these Rules means a policy that establishes the types of destinations or points of interest for which guide signs may be erected, the specific eligibility criteria under which such destinations or points of interest may be signed, and the types of signs (standard or non-standard) that will be used under an approved Wayfinding Program.
- (8) "MUTCD" means the United States Department of Transportation, Federal Highway Administration, *Manual on Uniform Traffic Control Devices for Streets and Highways*, which is adopted and incorporated by reference in Chapter 1680-3-1 of the Rules of the Tennessee Department of Transportation.
- (9) "Non-standard sign" means a sign that does not conform to the MUTCD's standards or guidance for sign design, including color, shape, size, lettering, legend, borders, and reflectivity.
- (10) "Standard sign" means a sign that does conform to the MUTCD's standards or guidance for sign design, including color, shape, size, lettering, legend, borders, and reflectivity.
- (11) "State highway" means a highway designated by the Department as part of the state highway system of the State of Tennessee.
- (12) "Wayfinding Program" means a program adopted by an eligible local government in accordance with these Rules that provides for local control of guide signs within a defined Wayfinding Region, including conventional state highways as well as local roads under the local government's jurisdiction, in place of the Department's regulations for guide signs on conventional state highways as established in Chapter 1680-3-2.
- (13) "Wayfinding Region" means the defined area, including all or part of an eligible local government, within which a Wayfinding Program approved by the Department shall apply.

Authority: T.C.A. §§ 4-3-2307 and 54-5-108. **Administrative History:** Original rule filed August 2, 2005; effective October 16, 2005.

1680-3-5-.04 ALTERNATIVE SIGNING METHODS.

Subject to the approval of the Department and the Federal Highway Administration, if applicable, as indicated in these Rules, an eligible local government may adopt a Wayfinding Program that provides for the use of either standard or non-standard signs within the Wayfinding Region, as follows:

- (1) A local government may use standard signs consistent with the current edition of the MUTCD.
 - (a) Under this method, all guide signs on conventional state highways previously installed and maintained by the Department that are located within the Wayfinding Region and included in the local government's Wayfinding Program will be maintained and replaced as needed by the local government, except that
 - (b) On state highways within the Wayfinding Region the Department will continue to be responsible for the installation and maintenance of all route designation signs (route shields),

(Rule 1680-3-5-.04, continued)

city destination signs, and any other guide signs that the Department has designated to remain in place under the local government's approved Wayfinding Program.

- (2) In the alternative, an eligible local government may request to use non-standard signs that are not consistent with the MUTCD.
 - (a) Under this method, the local government must apply to the Federal Highway Administration for experimental status following the steps outlined in the current MUTCD and these Rules for the use of such non-standard signs.
 - (b) If the request to experiment is approved, all guide signs on conventional state highways within the Wayfinding Region that were previously installed and maintained by the Department shall be removed by the local government at the local government's expense and returned to Department's applicable Regional highway sign shop or otherwise disposed of as directed by the Department's Traffic Engineering Office, except that
 - (c) On conventional state highways within the Wayfinding Region the Department will continue to be responsible for the installation and maintenance of route designation (route shields) and directional signs, city destination and distance signs, and any other guide signs that the Department has designated to remain in place under the local government's approved Wayfinding Program. Signs maintained by the Department within the Wayfinding Region will be standard signs consistent with the MUTCD.

Authority: T.C.A. §§ 4-3-2307 and 54-5-108. *Administrative History:* Original rule filed August 2, 2005; effective October 16, 2005.

1680-3-5-.05 PROGRAM COMPONENTS AND APPROVALS.

- (1) Guide Sign Policy.
 - (a) An eligible local government choosing to have a Wayfinding Program shall develop a proposed guide sign policy that establishes:
 1. The types of destinations and/or points of interest for which guide signs may be erected;
 2. The specific eligibility criteria under which such destinations and points of interest may be signed; and
 3. The types of signs (standard or non-standard) that will be used to sign destinations and points of interest under the proposed Wayfinding Program.
 - (b) The proposed guide sign policy must provide for the signing of any destination or point of interest that is required to be signed under applicable law, including state statutes.
 - (c) In addition, the proposed guide sign policy should provide for the signing of all destinations or points of interest previously signed by the Department under its guide sign policy for conventional state highways.
 - (d) The Department reserves the right to require that specifically designated guide signs previously installed and maintained by the Department shall remain in place under the approved Wayfinding Program. In such cases, the Department will retain responsibility for maintaining the designated signs.

(Rule 1680-3-5-.05, continued)

- (e) All signs within the Wayfinding Region must conform to the design standards of the current MUTCD, including standards for the shape, color, dimensions, legends, borders and reflectivity of signs, unless the local government has obtained approval for the use of non-standard signs from the Federal Highway Administration under the request to experiment process.
 - (f) In any event, all guide signs within the Wayfinding Region must use a consistent sign design, whether by using standard signs consistent with the MUTCD or by using a consistent design for non-standard signs as may be approved by the Federal Highway Administration under the request to experiment process.
 - (g) The local government shall submit its proposed guide sign policy to the Department's Traffic Engineering Office for review and approval.
- (2) Wayfinding Region.
- (a) The local government shall define the geographic area within its jurisdictional limits that will constitute the Wayfinding Region in which its proposed guide sign policy shall apply.
 - (b) The Wayfinding Region may include all or part of the area within the jurisdiction of the local government, subject to the approval of the Department.
 - (c) The local government shall submit a detailed map defining the proposed Wayfinding Region to the Department's Traffic Engineering Office for review and approval.
- (3) Identification of Guide Signs.
- (a) The local government shall prepare a complete inventory, and a map showing the location, of all guide signs on conventional state highways within the Wayfinding Region that have been previously installed and maintained by the Department.
 - (b) The local government shall prepare a complete list of all destinations and points of interest that it proposes to sign on conventional state highways within the Wayfinding Region and a map showing the approximate location of each proposed guide sign.
 - (c) The local government shall submit the above-described inventory, list and maps to the Department's Traffic Engineering Office for review and approval before installing any guide signs on conventional state highways under the local government's proposed guide sign policy.
- (4) Request to Experiment.
- (a) If an eligible local government proposes to use non-standard guide signs, it must obtain approval from the Federal Highway Administration as provided in the MUTCD's request to experiment process.
 - (b) The request to experiment shall be submitted to the Department's Traffic Engineering Office for review and approval. Upon approval, the Department will forward the local government's request to experiment to the Federal Highway Administration.
 - (c) The local government shall have responsibility for all aspects of the experimental process (submittal, monitoring, evaluation, reporting, termination, etc.), except as provided in the preceding subparagraph (b).

(Rule 1680-3-5-.05, continued)

- (d) The local government shall not remove any existing guide signs or install any non-standard signs on conventional state highways prior to receiving approval from the Federal Highway Administration on its request to experiment.

(5) Notice of Approval.

After all required documents have been reviewed and approved by the Department's Traffic Engineering Office as provided in this Rule, the Department will send the local government a letter agreement setting forth the terms and conditions of the approved Wayfinding Program. If accepted by the local government, the chief executive officer of the local government shall execute the letter agreement, in accordance with such procedures as may be required under local law, and return it to the Department's Traffic Engineering Office.

(6) Approval of Modifications to the Wayfinding Program.

- (a) A request to modify an approved Wayfinding Program shall be submitted in writing to the Department's Traffic Engineering Office for review and approval. If the modification is approved the Department's Traffic Engineering Office will prepare an amendment to the letter agreement, which shall be accepted in the same manner as the original agreement.
- (b) If a requested modification changes any aspect of an approved request to experiment under the MUTCD, the request shall be submitted to the Department for review and approval, and if approved the Department will forward the request to the Federal Highway Administration for approval.

Authority: T.C.A. §§ 4-3-2307 and 54-5-108. **Administrative History:** Original rule filed August 2, 2005; effective October 16, 2005.

1680-3-5-.06 INSTALLATION AND MAINTENANCE OF SIGNS.

- (1) The local government with jurisdiction over the Wayfinding Region shall have the responsibility to oversee and implement the approved Wayfinding Program, but the local government may use an outside organization or consultant to manage the daily operations of its Wayfinding Program.
- (2) The placement of all guide signs within the Wayfinding Region shall conform to the standards and guidance of the current MUTCD.
- (3) All guide signs and their structural supports, including without limitation posts, foundations and mountings, installed and maintained within the Wayfinding Region shall conform to the standards of and be crashworthy as defined in the MUTCD.
- (4) The local government shall be responsible, at its own expense, to install, maintain and/or replace as necessary all guide signs on conventional state highways within the Wayfinding Region that are included in or installed under the approved Wayfinding Program, except as follows:
 - (a) The Department will continue to maintain route designation (route shield) and directional signs as well as city destination and distance signs on conventional state highways throughout the Wayfinding Region, and
 - (b) The Department will maintain any other guide signs that it may designate to remain in place under the approved Wayfinding Program.
- (5) The local government will assume all liability for signs that are included, installed, and/or maintained within the Wayfinding Region under the approved Wayfinding Program.

(Rule 1680-3-5-.06, continued)

- (6) The Department's TODS program signs and trailblazer signs installed under the Department's LOGO sign program shall remain in place within the Wayfinding Region unless, subject to the approval of the Department and consent of any affected facility, new guide signs installed under the Wayfinding Program will sign the same facility. In such cases, the Department's LOGO and/or TODS signs shall be removed.

Authority: T.C.A. §§ 4-3-2307 and 54-5-108. **Administrative History:** Original rule filed August 2, 2005; effective October 16, 2005.

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

Board Member	Aye	No	Abstain	Absent	Signature (if required)

I certify that this is an accurate and complete copy of proposed rules, lawfully promulgated and adopted by the (board/commission/other authority) on 10/13/2017 (date as mm/dd/yyyy), and is in compliance with the provisions of T.C.A. § 4-5-222. The Secretary of State is hereby instructed that, in the absence of a petition for proposed rules being filed under the conditions set out herein and in the locations described, he is to treat the proposed rules as being placed on file in his office as rules at the expiration of ninety (90) days of the filing of the proposed rule with the Secretary of State.

Date: 10-13-17

Signature: [Handwritten Signature]

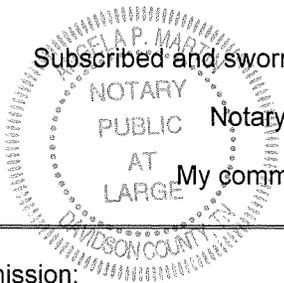
Name of Officer: John Schroer

Title of Officer: Commissioner

Subscribed and sworn to before me on: 10-13-17

Notary Public Signature: Angela P. Martin

My commission expires on: 1-6-2020



Agency/Board/Commission: _____

Rule Chapter Number(s): _____

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

Herbert H. Slatery III
 Herbert H. Slatery III
 Attorney General and Reporter
11/21/2017
 Date

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Filed with the Department of State on: 12/1/17

Effective on: 3/1/18

Tre Hargett
 Tre Hargett
 Secretary of State

G.O.C. STAFF RULE ABSTRACT

DEPARTMENT: Environment and Conservation

DIVISION: Office of General Counsel

SUBJECT: Access to Department Public Records

STATUTORY AUTHORITY: This rule is being promulgated pursuant to § 10-7-503 and under the Commissioner's authority pursuant to § 11 -1-101.

EFFECTIVE DATES: March 6, 2018 to June 30, 2018

FISCAL IMPACT: There will be a minimal shifting of expenditures between state and local governments and a minimal increase in state revenue resulting from the promulgation of this rule.

STAFF RULE ABSTRACT: This rulemaking hearing rule gives flexibility to the Commissioner to determine that it is in the best interest of the public to exempt a records request made by a federal, state, or local government agency from a fee for copies of the requested public records.

Public Hearing Comments

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

There were no comments received during the public comment period.

Regulatory Flexibility Addendum

Pursuant to T.C.A. §§ 4-5-401 through 4-5-404, prior to initiating the rule making process, 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.

There are no small businesses affected by this proposed rule.

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

There are no added costs since there are no small businesses affected by this proposed rule.

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

There are no small businesses impacted by this proposed rule, so there is no effect.

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

There are no small businesses affected by this proposed rule.

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

There are no small businesses affected by this proposed rule.

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

There are no small businesses affected by this proposed rule.

Impact on Local Governments

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

The Department anticipates a minimal impact on local governments from this rulemaking as a result of requests for copies of records that do not qualify for exemption from fees by the Commissioner.

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 this proposed rule is to give flexibility to the Commissioner to determine that it is in the best interest of the public to exempt a records request made by a federal, state, or local government agency from a fee for copies of the requested public records.

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

This rule is being promulgated pursuant to Tenn. Code Ann. § 10-7-503 and under the Commissioner's authority pursuant to Tenn. Code Ann. § 11-1-101.

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

This proposed rule affects federal, state, or local governments making a request for Department of Environment and Conservation records and requesting an exemption from all costs of producing those records when, in the Commissioner's opinion, the exemption is not in the best interest of the public.

- (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.

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

There will be a minimal shifting of expenditures between state and local governments and a minimal increase in state revenue resulting from promulgation of this rule.

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

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

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

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

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

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Rulemaking Hearing Rule(s) Filing Form

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

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

Agency/Board/Commission:	Environment and Conservation
Division:	Office of General Counsel
Contact Person:	Wayne Gregory
Address:	William R. Snodgrass Tennessee Tower 312 Rosa L. Parks Avenue, 2nd Floor Nashville, Tennessee
Zip:	37243
Phone:	(615) 253-5420
Email:	Wayne.Gregory@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
0400-01-01	Fees and Charges for Certain Departmental Services
Rule Number	Rule Title
0400-01-01-.01	Access to Department of Environment and Conservation Public Records

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

Chapter 0400-01-01
Fees and Charges for Certain Departmental Services

Amendment

Subparagraph (b) of paragraph (3) of Rule 0400-01-01-.01 Access to Department of Environment and Conservation Public Records is amended by deleting it in its entirety and substituting instead the following:

- (b) When the requesting party is a federal, state, or local government agency, the Department ~~shall~~ may provide the requested copies of public records without charge if the Commissioner determines that such reduction is in the best interest of the public. A request made by a federal, state, or local government agency on behalf of a citizen under the Tennessee Public Records Act shall be treated as a request by a citizen and charged accordingly.

Authority: T.C.A. §§ 4-5-201 et seq., 10-7-503, 10-7-504(a)(21), 11-1-101, 11-1-108, and 68-203-103.

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the Commissioner of the Department of Environment and Conservation on 10/30/2017 (mm/dd/yyyy), and is in compliance with the provisions of T.C.A. § 4-5-222.

I further certify the following:

Notice of Rulemaking Hearing filed with the Department of State on: 07/07/17

Rulemaking Hearing(s) Conducted on: (add more dates). 09/05/17

Date: 10-30-17

Signature: Robert J. Martineau, Jr.

Name of Officer: Robert J. Martineau, Jr.

Title of Officer: Commissioner



Subscribed and sworn to before me on: 10-30-17

Notary Public Signature: Kimberly Bernal Ridings

My commission expires on: November 5, 2018

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

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

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
12/4/2017
Date

Department of State Use Only

Filed with the Department of State on: 12/6/17

Effective on: 2/6/18

Joe Hargett
Joe Hargett
Secretary of State

RECEIVED
2017 DEC -6 PM 1:22
SECRETARY OF STATE
PUBLIC AFFAIRS

G.O.C. STAFF RULE ABSTRACT

DEPARTMENT: Environment and Conservation

DIVISION: Remediation

SUBJECT: Hazardous Substance Remedial Action

STATUTORY AUTHORITY: Inactive Hazardous Substance Sites are promulgated under the authority of T.C.A. §§ 68-212-206(e) and 68-212-215(e).

EFFECTIVE DATES: March 18, 2018 to June 30, 2018

FISCAL IMPACT: None

STAFF RULE ABSTRACT: This rulemaking hearing rule deletes the Lenoir City Car Works located in Lenoir City, Loudon County, Tennessee from the List of Inactive Hazardous Substance Sites. The site was a former manufacturing facility of rail cars. Spent foundry sand containing lead and arsenic was spread across the site of approximately 100 acres. The spent foundry sand was removed and consolidated into an on-site landfill. Appropriate land use restrictions, financial assurance, and an operation and maintenance plan have been established for the site. Eighty acres of the site will be available for commercial or industrial reuse.

Public Hearing Comments

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

There were no comments received during the comment period.

Regulatory Flexibility Addendum

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

This proposed rule deletes the Lenoir City Car Works located in Loudon County, Tennessee from the List of Inactive Hazardous Substance Sites.

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

There are no small businesses impacted by this rulemaking.

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

There are no small businesses impacted by this rulemaking, therefore there are no reporting, recordkeeping, and other administrative costs.

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

There will be no impact on small businesses.

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

No alternatives are available to achieve the purpose of this rulemaking

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

This rulemaking is site specific so there is no direct comparison with any federal or state counterpart.

- (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 is no effect since this rulemaking does not impact small businesses.

Impact on Local Governments

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

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

Additional Information Required by Joint Government Operations Committee

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

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

This proposed rule deletes the Lenoir City Car Works located in Lenoir City, Loudon County, Tennessee from the List of Inactive Hazardous Substance Sites. The site was a former manufacturing facility of rail cars. Spent foundry sand containing lead and arsenic was spread across the site of approximately 100 acres. The spent foundry sand was removed and consolidated into an on-site landfill. Appropriate land use restrictions, financial assurance, and an operation and maintenance plan have been established for the site. Eighty acres of the site will be available for commercial or industrial reuse.

- (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;

Inactive Hazardous Substance Sites are promulgated under the authority of T.C.A. §§ 68-212-206(e) and 68-212-215(e).

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

This proposed rule reflects successful remediation of the Lenoir City Car Works located in Lenoir City, Loudon County, Tennessee. There were no comments received during the public comment period.

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

The Board is not aware of any.

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

There will be no fiscal impact resulting from this rulemaking.

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

Tim Stewart
Division of Remediation
William R. Snodgrass Tennessee Tower
312 Rosa L. Parks Avenue, 14th Floor
Nashville, Tennessee 37243
(615) 741-4998
Tim.Stewart@tn.gov

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

Emily Urban
Assistant General Counsel
Office of General Counsel

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

Office of General Counsel
Tennessee Department of Environment and Conservation
William R. Snodgrass Tennessee Tower
312 Rosa L. Parks Avenue, 2nd Floor
Nashville, Tennessee 37243
(615) 532-0108
Emily.Urban@tn.gov

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

The Board is not aware of any additional relevant information requested by the committee.

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

For Department of State Use Only

Sequence Number: 12-13-17
 Rule ID(s): 6665
 File Date: 12/18/17
 Effective Date: 3/19/18

Rulemaking Hearing Rule(s) Filing Form

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

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

Agency/Board/Commission:	Environment and Conservation
Division:	Remediation
Contact Person:	Tim Stewart
Address:	William R. Snodgrass Tennessee Tower 312 Rosa L. Parks Avenue, 14th Floor Nashville, Tennessee
Zip:	37243
Phone:	(615) 741-4998
Email:	Tim.Stewart@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
0400-15-01	Hazardous Substance Remedial Action
Rule Number	Rule Title
0400-15-01-.13	List of Inactive Hazardous Substance Sites

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

Amendment

0400-15-01
Hazardous Substance Remedial Action

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

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

Promulgated List

SITE NUMBER

SITE NAME

LOUDON (53)

53503

Lenoir City Car Works
Lenoir City, TN

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

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

Amendment

0400-15-01

Hazardous Substance Remedial Action

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

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

Promulgated List

SITE NUMBER

SITE NAME

ANDERSON (01)

01504

D.O.E Oak Ridge
Oak Ridge, TN

01579

Dupont Smith/Atomic City
Oak Ridge, TN

01580

Anderson County Landfill
Clinton, TN

SITE NUMBER

SITE NAME

BLOUNT (05)

05501

Aluminum Co. of America
Alcoa, TN

05503

Aluminum Co. of America
Alcoa, TN

SITE NUMBER

SITE NAME

BRADLEY (06)

06505

Duracell Inc.
Cleveland, TN

SITE NUMBER

SITE NAME

CARTER (10)

10502

American Bemberg Plant
Elizabethtown, TN

10508

Old Bemberg Bldg.
Elizabethtown, TN

SITE NUMBER

SITE NAME

COCKE (15)

15504

Arapahoe/Rock Hill Labs
Newport, TN

15505 Newport Dump
Newport, TN
15508 Wall Tube and Metal
Newport, TN

SITE NUMBER

SITE NAME

DAVIDSON (19)

19511 Stauffer Chemical
Nashville, TN
19524 Municipal Landfill
Nashville, TN

SITE NUMBER

SITE NAME

FRANKLIN (26)

26501 AEDC
Arnold Air Force Station, TN

SITE NUMBER

SITE NAME

GIBSON (27)

27512 ITT Telecommunications
Milan, TN

SITE NUMBER

SITE NAME

HAMBLEN (32)

32506 BASF/Stauffer Chemical Co.
Morristown, TN
32514 Old Morristown-Hamblen Co. Landfill
Morristown, TN
32517 Neblett Road Dump
Morristown, TN
32518 Pine Brook Road Dumb
Morristown, TN

SITE NUMBER

SITE NAME

HAMILTON (33)

33527 Velsicol/Residue Hill
Chattanooga, TN
33540 Montague Park
Chattanooga, TN
33543 Hamill Road Dump #3
Chattanooga, TN
33547 Chattanooga Coke
Chattanooga, TN
33550 North Hawthorne Dump
Chattanooga, TN
33557 USVAAP
Chattanooga, TN
33584 Chattanooga Creek
Chattanooga, TN

33596	Mor-Flo Industries, Inc. Chattanooga, TN
33618	Morningside Chemicals Chattanooga, TN
33620	National Microdynamics (Lutex Chemical) Chattanooga, TN
33635	Tennessee Transformer Chattanooga, TN
33660	Electro-Lite Battery Chattanooga, TN

SITE NUMBER	SITE NAME
	HARDEMAN (35)

35506	Velsicol Chemical Toone, TN
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SITE NUMBER	SITE NAME
	HENRY (40)

40506	Henry County Boneyard Paris, TN
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SITE NUMBER	SITE NAME
	HICKMAN (41)

41504	Wrigley Charcoal Wrigley, TN
-------	---------------------------------

SITE NUMBER	SITE NAME
	JEFFERSON (45)

45503	Hodgson, Hollis Jefferson City, TN
-------	---------------------------------------

SITE NUMBER	SITE NAME
	KNOX (47)

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

47573	Knoxville, TN Dixie Barrel & Drum Co. Knoxville, TN
SITE NUMBER	SITE NAME
	LAWRENCE (50)
50502	Murray-Ohio Landfill Lawrenceburg, TN
50505	Lawrenceburg Horseshoe Bend Lawrenceburg, TN
50509	Former Murray Ohio Plant Lawrenceburg, TN
SITE NUMBER	SITE NAME
	LOUDON (53)
53502	Greenback Industries Greenback, TN
53503	Lenoir City Car Works Lenoir City, TN
SITE NUMBER	SITE NAME
	MADISON (57)
57508	American Creosote Works Jackson, TN
57510	Porter Cable Jackson, TN
57517	Boone Dry Cleaners Jackson, TN
SITE NUMBER	SITE NAME
	MARION (58)
58502	North American Environmental Whitwell, TN
SITE NUMBER	SITE NAME
	MARSHALL (59)
59502	Heil Quaker Corp. Lewisburg, TN
59503	Lewisburg Dump Lewisburg, TN
SITE NUMBER	SITE NAME
	MAURY (60)
60501	Stauffer Chemical Co.

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

79552	Carrier Corporation Collierville, TN
79561	Nilok Chemical Company Memphis, TN
79569	Chapman Chemical Co. Memphis, TN
79582	Diesel Recon Co. Memphis, TN
79598	North Hollywood Dump Memphis, TN
79604	Memphis Public Works/Jackson Pits Memphis, TN
79676	Smalley-Piper Collierville, TN
79742	Pulvair Corporation Millington, TN
79758	Old Osmose Chemical Memphis, TN
79781	John Little/Drum Memphis, TN
79798	61 Industrial Park Site Memphis, TN
79799	Tennessee Air National Guard Memphis, TN
79800	Creotox Chemical Company Memphis, TN
79805	Fiberfine of Memphis Memphis, TN
79843	Warfield Place/Pulvair Memphis, TN
79845	Walker Machine Products Collierville, TN
79897	Former Custom Cleaners Memphis, TN

SITE NUMBER

SITE NAME

SULLIVAN (82)

82514	Sperry/Unisys Bristol, TN
82516	Earhart Bristol, TN

SITE NUMBER

SITE NAME

UNICOI (86)

86501	Bumpass Cove Landfill Embreeville, TN
86502	Bumpass Cove – Fowler Erwin, TN
86505	Morrell Electric, Inc. Erwin, TN

SITE NUMBER

SITE NAME

WARREN (89)

89504	Century Electric Facility
-------	---------------------------

McMinnville, TN

SITE NUMBER

SITE NAME

WASHINGTON (90)

90510

Cash Hollow Dump
Johnson City, TN

SITE NUMBER

SITE NAME

WAYNE (91)

91501

Mallory Capacitor Co.
Waynesboro, TN

91502

Waynesboro City Dump
Waynesboro, TN

SITE NUMBER

SITE NAME

WILSON (95)

95501

TRW/Ross Gear Division
Lebanon, TN

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

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

Board Member	Aye	No	Abstain	Absent	Signature (if required)
Marty Calloway (Petroleum Business with at least 15 Underground Storage Tanks)	X				
Stacey Cothran (Solid/Hazardous Waste Management Industry)	X				
Kenneth L. Donaldson (Municipal Government)				X	
Dr. George Hyfantis, Jr. (Institution of Higher Learning)	X				
Richard "Ric" Morris (Single Facility with less than 5 Underground Storage Tanks)	X				
Alan M. Leiserson Environmental Interests	X				
Jared L. Lynn (Manufacturing experienced with Solid/Hazardous Waste)	X				
David Martin (Working in a field related to Agriculture)	X				
Beverly Philpot (Manufacturing experienced with Underground Storage Tanks/Hazardous Materials)	X				
DeAnne Redman (Petroleum Management Business)	X				
Mayor Howard Bradley (County Government)				X	
Mark Williams (Small Generator of Solid/Hazardous Materials representing Automotive Interests)	X				
Chuck Head Commissioner's Designee, Dept. of Environment and Conservation	X				
Jimmy West Commissioner's Designee, Dept. of Economic and Community Development	X				

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the Underground Storage Tanks and Solid Waste Disposal Control Board on 09/06/2017, and is in compliance with the provisions of T.C.A. § 4-5-222.

I further certify the following:

Notice of Rulemaking Hearing filed with the Department of State on: 05/01/17

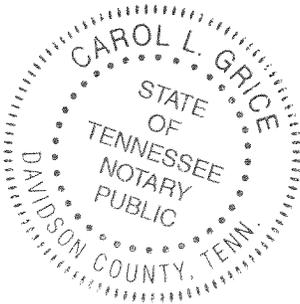
Rulemaking Hearing(s) Conducted on: (add more dates). 07/06/17

Date: 9/6/2017

Signature: Jared L. Lynn

Name of Officer: Jared L. Lynn

Title of Officer: Chairmen



Subscribed and sworn to before me on: 9/6/17

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): 0400-15-01

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

12/12/2017 Date

Department of State Use Only

Filed with the Department of State on: 12/18/17

Effective on: 3/18/18

Tre Hargett
Tre Hargett
Secretary of State

RECEIVED
2017 DEC 18 PM 2:08
SECRETARY OF STATE
PREF. NOTATIONS

G.O.C. STAFF RULE ABSTRACT

DEPARTMENT: Underground Storage Tanks and Solid Waste Disposal Control Board

DIVISION: Solid Waste Management

SUBJECT: Hazardous Waste Management

STATUTORY AUTHORITY: Tennessee Code Annotated, Section 4-5-208, and Title 68, Chapter 212; 40 CFR, Parts 260 and 261

EFFECTIVE DATES: January 4, 2018 through July 3, 2018

FISCAL IMPACT: None

STAFF RULE ABSTRACT: On July 7, 2017, the United States Court of Appeals, District of Columbia Circuit, ruled that 40 CFR § 260.43(a)(4) (commonly referred to as "Factor 4 of the legitimacy test") is unreasonable insofar as it applies to all hazardous secondary materials via § 261.2(g) (sham recycling definition) and rejected parts of the Verified Recycler Exclusion. The Underground Storage Tanks and Solid Waste Disposal Control Board (Board) adopted equivalent rules on December 2, 2015. These rules were filed with the Secretary of State on May 9, 2017, with an original effective date of August 7, 2017. In light of the court's opinion and order, the Joint Government Operations Committee stayed these rules for 75 days. The Board voted to stay these rules for an additional 75 days. The new effective date for the rules is January 4, 2018. The Board is requesting that this emergency rule become effective January 4, 2018, pursuant to Tenn. Code Ann. § 4-5-208(a)(2), in conjunction with the amendments in the rulemaking filed with the Secretary of State on May 9, 2017, effective on January 4, 2018. It is also the intent of the Board to amend the delayed rules through the rulemaking hearing rules process so they will conform to the court's July 7, 2017 opinion and order.

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

Additional Information Required by Joint Government Operations Committee

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

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

On July 7, 2017, the United States Court of Appeals, District of Columbia Circuit, ruled that 40 CFR § 260.43(a)(4) (commonly referred to as "Factor 4 of the legitimacy test") is unreasonable insofar as it applies to all hazardous secondary materials via § 261.2(g) (sham recycling definition) and rejected parts of the Verified Recycler Exclusion. The Underground Storage Tanks and Solid Waste Disposal Control Board (Board) adopted equivalent rules on December 2, 2015. These rules were filed with the Secretary of State on May 9, 2017, with an original effective date of August 7, 2017. In light of the court's opinion and order, the Joint Government Operations Committee stayed these rules for 75 days. The Board voted to stay these rules for an additional 75 days. The new effective date for the rules is January 4, 2018. The Board is requesting that this emergency rule become effective on January 4, 2018, pursuant to Tenn. Code Ann. § 4-5-208(a)(2), in conjunction with the amendments in the rulemaking filed with the Secretary of State on May 9, 2017, effective on January 4, 2018. It is also the intent of the Board to amend the delayed rules through the rulemaking hearing rules process so they will conform to the court's July 7, 2017, opinion and order.

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

These rules are being promulgated under the authority of Tenn. Code Ann. Title 68, Chapter 212, and § 4-5-208. The federal requirements adopted are compiled in 40 CFR Parts 260 and 261.

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

All generators and recyclers of hazardous waste and hazardous secondary materials are directly affected by this rulemaking.

- (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;

American Petroleum Institute v. EPA, 862 F.3d 50 (D.C. Cir. 2017)

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

There will be no fiscal impact resulting from this rulemaking.

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

Wayne Gregory
Office of General Counsel
Tennessee Department of Environment and Conservation
William R. Snodgrass Tennessee Tower
312 Rosa L. Parks Avenue, 2nd Floor
Nashville, Tennessee 37243
(615) 253-5420
Wayne.gregory@tn.gov

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

Emily Urban
Assistant General Counsel
Office of General Counsel

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

Office of General Counsel
Tennessee Department of Environment and Conservation
William R. Snodgrass Tennessee Tower
312 Rosa L. Parks Avenue, 2nd Floor
Nashville, Tennessee 37243
(615) 532-0108
Emily.Urban@tn.gov

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

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

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

For Department of State Use Only

Sequence Number: 12-11-17
 Rule ID(s): 6664
 File Date: 12/14/17
 Effective Date: 1/4/18
 Last Effective Day: 7/3/18

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:	Underground Storage Tanks and Solid Waste Disposal Control Board
Division:	Solid Waste Management
Contact Person:	Jackie Okoreeh-Baah
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Revision Type (check all that apply):

- Amendment
 New
 Repeal

Statement of Necessity:

On July 7, 2017, the United States Court of Appeals, District of Columbia Circuit, ruled that 40 CFR § 260.43(a)(4) (commonly referred to as "Factor 4 of the legitimacy test") is unreasonable insofar as it applies to all hazardous secondary materials via § 261.2(g) (sham recycling definition) and rejected parts of the Verified Recycler Exclusion. The Underground Storage Tanks and Solid Waste Disposal Control Board (Board) adopted equivalent rules on December 2, 2015. These rules were filed with the Secretary of State on May 9, 2017, with an original effective date of August 7, 2017. In light of the court's opinion and order, the Joint Government Operations Committee stayed these rules for 75 days. The Board voted to stay these rules for an additional 75 days. The new effective date for the rules is January 4, 2018. The Board is requesting that this emergency rule become effective on January 4, 2018, pursuant to Tenn. Code Ann. § 4-5-208(a)(2), in conjunction with the amendments in the rulemaking filed with the Secretary of State on May 9, 2017, effective on January 4, 2018. It is also the intent of the Board to amend the delayed rules through the rulemaking hearing rules process so they will conform to the court's July 7, 2017, opinion and order.

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
0400-12-01	Hazardous Waste Management
Rule Number	Rule Title
0400-12-01-.01	Hazardous Waste Management System: General
0400-12-01-.02	Identification and Listing of Hazardous Waste

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

http://sos-tn-gov-files.s3.amazonaws.com/forms/Rulemaking%20Guidelines_September2016.pdf.

Chapter 0400-12-01
Hazardous Waste Management

Amendments

Part 2 of subparagraph (b) of paragraph (4) of Rule 0400-12-01-.01 Hazardous Waste Management System: General is amended by adding: "This part shall not be effective until July 2, 2018." as the first sentence.

2. This part shall not be effective until July 2, 2018. In accordance with the standards and criteria in subparagraph (f) of this paragraph and the procedures in subparagraph (g) of this paragraph, the Commissioner may, on a case-by-case basis, issue a Certificate to Operate for a hazardous secondary material reclamation facility or intermediate facility where the management of the hazardous secondary materials is not addressed under a Part B permit issued under Rule 0400-12-01-.07 or the interim status standards of Rule 0400-12-01-.05.

Authority: T.C.A. §§ 68-212-101 et seq. and 4-5-201 et seq.

Subparagraph (f) of paragraph (4) of Rule 0400-12-01-.01 Hazardous Waste Management System: General is amended by adding: "This subparagraph shall not be effective until July 2, 2018." as the first sentence.

- (f) This subparagraph shall not be effective until July 2, 2018. The Commissioner may issue a Certificate to Operate for a hazardous secondary material reclamation facility or intermediate facility where the management of the hazardous secondary materials is not addressed under a Part B permit issued under Rule 0400-12-01-.07 or the interim status standards of Rule 0400-12-01-.05.

1. The Commissioner's decision will be based on the following criteria:
 - (i) The reclamation facility or intermediate facility must demonstrate that the reclamation process for the hazardous secondary materials is legitimate pursuant to subparagraph (5)(d) of this rule and its hazardous secondary material acceptance plan;
 - (ii) The reclamation facility or intermediate facility must satisfy the financial assurance condition in subitem (1)(d)1(xxiv)(VI)VI of Rule 0400-12-01-.02;
 - (iii) The reclamation facility or intermediate facility must not be subject to a formal enforcement action in the previous three years and not be classified as a significant non-complier under Rule Chapter 0400-12-01 or RCRA Subtitle C, or must provide credible evidence that the facility will manage the hazardous secondary materials properly. Credible evidence may include a demonstration that the facility has taken remedial steps to address the violations and prevent future violations, or that the violations are not relevant to the proper management of the hazardous secondary materials;
 - (iv) The intermediate or reclamation facility must have the equipment and trained personnel needed to safely manage the hazardous secondary material and must meet emergency preparedness and response requirements under paragraph (13) of Rule 0400-12-01-.02;
 - (v) If residuals are generated from the reclamation of the excluded hazardous secondary materials, the reclamation facility must have the permits required (if any) to manage the residuals, have a contract with an appropriately permitted facility to dispose of the residuals or present credible evidence that the residuals

will be managed in a manner that is protective of human health and the environment; and

(vi) The intermediate or reclamation facility must address the potential for risk to proximate populations from unpermitted releases of the hazardous secondary material to the environment (i.e., releases that are not covered by a permit, such as a permit to discharge to water or air), which may include, but are not limited to, potential releases through surface transport by precipitation runoff, releases to soil and groundwater, wind-blown dust, fugitive air emissions, and catastrophic unit failures, and must include consideration of potential cumulative risks from other nearby potential stressors.

2. To evaluate the criteria of subpart 1(vi) of this subparagraph, the Commissioner will require the petitioner to comply with subparts (i) and (ii) of this part.

(i) Prior to applying for a Certificate to Operate, the petitioner must hold at least one meeting with the public in order to solicit questions from the community and inform the community of proposed hazardous secondary material management activities.

(I) At the meeting, the petitioner must:

I. Post a sign-in sheet or otherwise provide a voluntary opportunity for attendees to provide their names and addresses; and

II. Provide a community impact statement that includes the following:

A. A description of the hazardous secondary materials to be received at the facility, including quantities and methods of management;

B. A description of security procedures proposed for the facility;

C. Information on hazard prevention and preparedness, including a summary of the arrangements with local emergency authorities;

D. A description of procedures, structures or equipment used to prevent employee exposure, hazards during unloading, runoff from handling areas, and contamination of water supplies;

E. A description of traffic patterns, traffic volume and control, condition of access roads, and the adequacy of traffic control signals; and

F. A description of the facility location information relative to flood plain and seismic activity.

(II) The petitioner must submit documentation to the Commissioner of the public notices, the community impact statement, a summary of the meeting, along with the list of attendees and their addresses, and copies of any written comments or materials submitted at the meeting.

(III) The owner or operator must provide public notice of the community meeting at least thirty (30) days prior to the meeting.

- (IV) The public notice required by item (III) of this subpart must contain language approved by the Commissioner and published in a manner specified by the Commissioner.
- (ii) The petitioner must describe how the facility is designed, constructed, operated and maintained to ensure protection of human health and the environment. Protection of human health and the environment includes, but is not limited to:
 - (I) Prevention of any releases that may have adverse effects on human health or the environment due to migration of hazardous constituents in the ground water or subsurface environment, considering:
 - I. The volume and physical and chemical characteristics of the hazardous secondary material to be managed at the facility, including its potential for migration through soil, liners, or other containing structures;
 - II. The hydrologic and geologic characteristics of the management units at the facility and the surrounding area;
 - III. The existing quality of ground water, including other sources of contamination and their cumulative impact on the ground water;
 - IV. The quantity and direction of ground-water flow;
 - V. The proximity to and withdrawal rates of current and potential ground-water users;
 - VI. The patterns of land use in the region;
 - VII. The potential for deposition or migration of hazardous constituents into subsurface physical structures, and into the root zone of food-chain crops and other vegetation;
 - VIII. The potential for health risks caused by human exposure to hazardous constituents; and
 - IX. The potential for damage to domestic animals, wildlife, crops, vegetation, and physical structures caused by exposure to hazardous constituents.
 - (II) Prevention of any releases that may have adverse effects on human health or the environment due to migration of hazardous constituents in surface water, or wetlands, or on the soil surface considering:
 - I. The volume and physical and chemical characteristics of the hazardous secondary material to be managed at the facility;
 - II. The effectiveness and reliability of containing, confining, and collecting systems and structures in preventing migration;
 - III. The hydrologic characteristics of the facility and the surrounding area, including the topography of the land around the facility;
 - IV. The patterns of precipitation in the region;
 - V. The quantity, quality, and direction of ground-water flow;
 - VI. The proximity of the unit to surface waters;

- VII. The current and potential uses of nearby surface waters and any water quality standards established for those surface waters;
 - VIII. The existing quality of surface waters and surface soils, including other sources of contamination and their cumulative impact on surface waters and surface soils;
 - IX. The patterns of land use in the region;
 - X. The potential for health risks caused by human exposure to hazardous constituents; and
 - XI. The potential for damage to domestic animals, wildlife, crops, vegetation, and physical structures caused by exposure to hazardous constituents.
- (III) Prevention of any releases that may have adverse effects on human health or the environment due to migration of hazardous constituents in the air, considering:
- I. The volume and physical and chemical characteristics of the hazardous secondary materials to be managed at the facility, including its potential for the emission and dispersal of gases, aerosols and particulates;
 - II. The effectiveness and reliability of systems and structures to reduce or prevent emissions of hazardous constituents to the air;
 - III. The operating characteristics of the units managing hazardous secondary materials;
 - IV. The atmospheric, meteorologic, and topographic characteristics of the units to be managing hazardous secondary materials at the facility and the surrounding area;
 - V. The existing quality of the air, including other sources of contamination and their cumulative impact on the air;
 - VI. The potential for health risks caused by human exposure to hazardous constituents; and
 - VII. The potential for damage to domestic animals, wildlife, crops, vegetation, and physical structures caused by exposure to hazardous constituents.

Authority: T.C.A. §§ 68-212-101 et seq. and 4-5-201 et seq.

Subparagraph (g) of paragraph (4) of Rule 0400-12-01-.01 Hazardous Waste Management System: General is amended by adding: "This subparagraph shall not be effective until July 2, 2018, in so far as it relates to the issuance of Certificates to Operate." as the first sentence.

- (g) This subparagraph shall not be effective until July 2, 2018, in so far as it relates to the issuance of Certificates to Operate. Procedures for variances from classification as a solid waste, for issuing a Certificate to Operate for a hazardous secondary material reclamation facility or intermediate facility, for variances to be classified as a boiler, and for non-waste determinations [40 CFR 260.33]

The Commissioner will use the following procedures in evaluating applications for variances from classification as a waste, applications for obtaining a Certificate to Operate for a hazardous secondary material reclamation facility or intermediate facility, applications to classify particular

enclosed controlled flame combustion devices as boilers, and applications for non-waste determinations.

1. The applicant must apply to the Commissioner for the variance, the Certificate to Operate or non-waste determination. The application must address the relevant criteria contained in subparagraph (c), (d), (e) or (f) of this paragraph, as applicable.
2. The Commissioner will evaluate the application and make a tentative decision to grant or deny the application and shall notify the petitioner of this tentative decision. If the Commissioner makes a tentative decision to grant the petition, the Commissioner shall give public notice of such tentative decision for written public comment. The public notice shall be provided by the applicant as prepared and required by the Commissioner in a newspaper advertisement or radio broadcast in the locality where the recycler is located. The applicant shall provide proof of the completion of all notice requirements to the Commissioner within ten days following conclusion of the public notice procedures. The Commissioner will accept comment on the tentative decision for thirty (30) days, and may also hold a public hearing upon request or at his discretion. Notice of the public hearing shall be given by the applicant and prepared as required by the Commissioner. The Commissioner will issue a final decision after receipt of comments and after the hearing (if any).
3.
 - (i) Except for the change described in subpart (ii) of this part. in the event of a change in circumstances that affects how a hazardous secondary material meets the relevant criteria contained in subparagraph (c), (d), (e) or (f) of this paragraph upon which a variance, Certificate to Operate or non-waste determination has been based, the applicant must send a description of the change in circumstances to the Commissioner. The Commissioner may issue a determination that the hazardous secondary material continues to meet the relevant criteria of the variance, Certificate to Operate, or non-waste determination or may require the facility to re-apply for the variance, Certificate to Operate or non-waste determination.
 - (ii) Any change made to the hazardous secondary material acceptance plan required under item (4)(d)1(xxiv)(VI)VIII of Rule 0400-12-01-.02 must be approved and the Certificate to Operate modified by the Commissioner after considering the applicable criteria of subparagraph (f) of this paragraph and following the procedures of this subparagraph prior to the change being implemented.
4. Variances, Certificates to Operate and non-waste determinations shall be effective for a fixed term not to exceed ten (10) years. No later than six (6) months prior to the end of this term, facilities must re-apply for a variance, Certificate to Operate, or non-waste determination. If a facility re-applies for a variance, Certificate to Operate, or non-waste determination within six (6) months, the facility may continue to operate under an expired variance, Certificate to Operate or non-waste determination until receiving a decision on the facility's re-application from the Commissioner.
5. Facilities receiving a variance, Certificate to Operate or non-waste determination must provide notification as required by subparagraph (5)(c) of this rule.

Authority: T.C.A. §§ 68-212-101 et seq. and 4-5-201 et seq.

Subparagraph (h) of paragraph (4) of Rule 0400-12-01-.01 Hazardous Waste Management System: General is amended by adding: "This subparagraph shall not be effective until July 2, 2018." as the first sentence.

(h) **Causes for Termination of the Certificate to Operate.** This subparagraph shall not be effective until July 2, 2018.

1. Failure of the owner or operator to comply with any condition of the Certificate to Operate;

2. The owner or operator's failure in the application or during the issuance process to disclose fully all relevant facts, or the owner or operator's misrepresentation of any relevant facts at any time;
3. A determination by the Commissioner that continuing the authorized activity endangers human health or the environment;
4. Failure of the owner or operator to timely pay the annual maintenance fees in accordance with Rule 0400-12-01-.08; or
5. At the request of the owner or operator, provided all hazardous secondary materials and residues have been removed to the satisfaction of the Commissioner.

Authority: T.C.A. §§ 68-212-101 et seq. and 4-5-201 et seq.

Subparagraph (i) of paragraph (4) of Rule 0400-12-01-.01 Hazardous Waste Management System: General is amended by adding: "This subparagraph shall not be effective until July 2, 2018." as the first sentence.

- (i) Duty to Comply with the Certificate to Operate. This subparagraph shall not be effective until July 2, 2018.
 1. The owner or operator of the hazardous secondary material reclamation or intermediate facility shall comply with the conditions of the Certificate to Operate as determined necessary by the Commissioner.
 2. Failure to comply with the conditions of the Certificate to Operate issued by the Commissioner shall subject the owner or operator of the hazardous secondary material reclamation or intermediate facility to an enforcement action, including, if applicable, operating a hazardous waste treatment, storage or disposal facility without a permit.

Authority: T.C.A. §§ 68-212-101 et seq. and 4-5-201 et seq.

Subpart (iv) of part 1 of subparagraph (d) of paragraph (5) of Rule 0400-12-01-.01 Hazardous Waste Management System: General is amended by adding "This subpart shall not be effective until July 2, 2018, in so far as it is applied through part (1)(b)7 of Rule 0400-12-01-.02." as the first sentence.

- (iv) This subpart shall not be effective until July 2, 2018, in so far as it is applied through part (1)(b)7 of Rule 0400-12-01-.02. The product of the recycling process must be comparable to a legitimate product or intermediate:
 - (I) Where there is an analogous product or intermediate, the product of the recycling process is comparable to a legitimate product or intermediate if:
 - I. The product of the recycling process does not exhibit a hazardous characteristic (as defined in paragraph (3) of Rule 0400-12-01-.02) that analogous products do not exhibit, and
 - II. The concentrations of any hazardous constituents found in appendix VIII of paragraph (30) of Rule 0400-12-01-.02 that are in the product or intermediate are at levels that are comparable to or lower than those found in analogous products or at levels that meet widely-recognized commodity standards and specifications, in the case where the commodity standards and specifications include levels that specifically address those hazardous constituents.
 - (II) Where there is no analogous product, the product of the recycling process is comparable to a legitimate product or intermediate if:

- I. The product of the recycling process is a commodity that meets widely recognized commodity standards and specifications (e.g., commodity specification grades for common metals), or

(Note: For specialty products such as specialty batch chemicals or specialty metal alloys, customer specifications would be sufficient.)

- II. The hazardous secondary materials being recycled are returned to the original process or processes from which they were generated to be reused (e.g., closed loop recycling).

(Note: There is no analogous product when the hazardous secondary material is recycled by being returned to the original production process or processes. Production process or processes includes those activities that tie directly into the manufacturing operation or those activities that are the primary operation at an establishment.)

- (III) If the product of the recycling process has levels of hazardous constituents that are not comparable to or unable to be compared to a legitimate product or intermediate per item (I) or (II) of this subpart, the recycling still may be shown to be legitimate, if it meets the following specified requirements. The person performing the recycling must conduct the necessary assessment and prepare documentation showing why the recycling is, in fact, still legitimate. The recycling can be shown to be legitimate based on lack of exposure from toxics in the product, lack of the bioavailability of the toxics in the product, or other relevant considerations which show that the product made using recycled material does not contain levels of hazardous constituents that pose a significant human health or environmental risk. The documentation must include a certification statement that the recycling is legitimate and must be maintained on-site for three years after the recycling operation has ceased. The person performing the recycling must notify the Commissioner of this activity using forms provided by the department.

(Note: To comply with the requirements of this subpart, a generator of the hazardous secondary material, product or intermediate may use its knowledge of the materials it recycles and of the recycling process to make legitimacy determinations.)

(Note: A person who meets the specific provisions included in 0400-12-01-.02(1)(b)3 Table 1, 0400-12-01-.02(1)(b)5, 0400-12-01-.02(1)(d)1(vi) through (xxii), 0400-12-01-.02(1)(f)1(ii)(III) and (IV), and 0400-12-01-.02(1)(f)1(iii)(I), are presumed to conduct legitimate recycling, except in those rare cases when it is necessary to document legitimacy in accordance with item 1(iv)(III) of this subparagraph. If, at any time, the Commissioner suspects that sham recycling may be occurring, in accordance with part (1)(b)6 of Rule 0400-12-01-.02, the Commissioner may require a person to demonstrate that the recycling in question is legitimate in accordance with this subparagraph.)

Authority: T.C.A. §§ 68-212-101 et seq. and 4-5-208

Subpart (xxiv) of part 1 of subparagraph (d) of paragraph (1) of Rule 0400-12-01-.02 Identification and Listing of Hazardous Waste is amended by adding: "This subpart shall not be effective until July 2, 2018." as the first sentence.

- (xxiv) This subpart shall not be effective until July 2, 2018. Hazardous secondary material that is generated and then transferred to a verified reclamation facility,

as defined in subparagraph (2)(a) of Rule 0400-12-01-.01, for the purpose of reclamation is not a solid waste, provided that:

- (I) The material is not speculatively accumulated, as defined in subpart (a)3(viii) of this paragraph;
- (II) The material is not handled by any person or facility other than the hazardous secondary material generator, the transporter, an intermediate facility or a reclaimer, and, while in transport, is not stored for more than ten (10) days at a transfer facility, as defined in subparagraph (2)(a) of Rule 0400-12-01-.01, and is packaged according to applicable Department of Transportation regulations at 49 CFR parts 173, 178, and 179 while in transport;
- (III) The material is not otherwise subject to material-specific management conditions under part 1 of this subparagraph when reclaimed, and it is not a spent lead-acid battery (see subparagraph (7)(a) of Rule 0400-12-01-.09 and subparagraph (1)(d) of Rule 0400-12-01-.12);
- (IV) The reclamation of the material is legitimate, as specified under subparagraph (5)(d) of Rule 0400-12-01-.01;
- (V) The hazardous secondary material generator satisfies all of the following conditions:
 - I. The material must be contained as defined in subparagraph (2)(a) of Rule 0400-12-01-.01. A hazardous secondary material released to the environment is discarded and a solid waste unless it is immediately recovered for the purpose of recycling. Hazardous secondary material managed in a unit with leaks or other continuing releases is discarded and a solid waste.
 - II. The hazardous secondary material generator must arrange for transport of hazardous secondary materials to a verified reclamation facility (or facilities), as defined in subparagraph (2)(a) of Rule 0400-12-01-.01, in the United States or to a reclamation facility where the management of the hazardous secondary materials is addressed under a Part B permit issued under Rule 0400-12-01-.07 or interim status standards under Rule 0400-12-01-.05 or, if not in Tennessee, under a RCRA Part B permit or interim status standards in another state. If the hazardous secondary material will be passing through an intermediate facility, the intermediate facility must be a verified intermediate facility, as defined in subparagraph (2)(a) of Rule 0400-12-01-.01, or the management of the hazardous secondary materials at that facility must be addressed under a Part B permit issued under Rule 0400-12-01-.07 or interim status standards under Rule 0400-12-01-.05, or, if not in Tennessee, under a RCRA Part B permit or interim status standards in another state, and the hazardous secondary material generator must make contractual arrangements with the intermediate facility to ensure that the hazardous secondary material is sent to the reclamation facility identified by the hazardous secondary material generator.
 - III. The hazardous secondary material generator must maintain at the generating facility for no less than three (3) years records of all off-site shipments of hazardous secondary materials. For each shipment, these records must, at a minimum, contain the following information:

- A. Name of the transporter and date of the shipment;
 - B. Name and address of each reclaimer and, if applicable, the name and address of each intermediate facility to which the hazardous secondary material was sent; and
 - C. The type and quantity of hazardous secondary material in the shipment.
- IV. The hazardous secondary material generator must maintain at the generating facility for no less than three (3) years confirmations of receipt from each reclaimer and, if applicable, each intermediate facility for all off-site shipments of hazardous secondary materials. Confirmations of receipt must include the name and address of the reclaimer (or intermediate facility), the type and quantity of the hazardous secondary materials received and the date which the hazardous secondary materials were received. This requirement may be satisfied by routine business records (e.g., financial records, bills of lading, copies of DOT shipping papers, or electronic confirmations of receipt);
- V. The hazardous secondary material generator must comply with the emergency preparedness and response conditions in paragraph (13) of this rule.
- (VI) Reclaimers of hazardous secondary material excluded from regulation under this exclusion and verified intermediate facilities, as defined in subparagraph (2)(a) of Rule 0400-12-01-.01, satisfy all of the following conditions:
- I. The reclaimer and intermediate facility must maintain at its facility for no less than three (3) years records of all shipments of hazardous secondary material that were received at the facility and, if applicable, for all shipments of hazardous secondary materials that were received and subsequently sent off-site from the facility for further reclamation. For each shipment, these records must at a minimum contain the following information:
 - A. Name of the transporter and date of the shipment;
 - B. Name and address of the hazardous secondary material generator and, if applicable, the name and address of the reclaimer or intermediate facility which the hazardous secondary materials were received from;
 - C. The type and quantity of hazardous secondary material in the shipment; and
 - D. For hazardous secondary materials that, after being received by the reclaimer or intermediate facility, were subsequently transferred off-site for further reclamation, the name and address of the (subsequent) reclaimer and, if applicable, the name and address of each intermediate facility to which the hazardous secondary material was sent.
 - II. The intermediate facility must send the hazardous secondary material to the reclaimer(s) designated by the hazardous secondary materials generator.

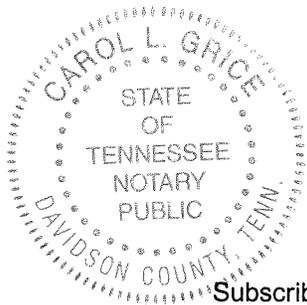
- III. The reclaimer and intermediate facility must send to the hazardous secondary material generator confirmations of receipt for all off-site shipments of hazardous secondary materials, within thirty (30) days of receipt. Confirmations of receipt must include the name and address of the reclaimer (or intermediate facility), the type and quantity of the hazardous secondary materials received and the date which the hazardous secondary materials were received. This requirement may be satisfied by routine business records (e.g., financial records, bills of lading, copies of DOT shipping papers, or electronic confirmations of receipt).
 - IV. The reclaimer and intermediate facility must manage the hazardous secondary material in a manner that is at least as protective as that employed for analogous raw material and must be contained. An "analogous raw material" is a raw material for which a hazardous secondary material is a substitute and serves the same function and has similar physical and chemical properties as the hazardous secondary material.
 - V. Any residuals that are generated from reclamation processes will be managed in a manner that is protective of human health and the environment. If any residuals exhibit a hazardous characteristic according to paragraph (3) of this rule, or if they themselves are specifically listed in paragraph (4) of this rule, such residuals are hazardous wastes and must be managed in accordance with the applicable requirements of Rules 0400-12-01-.01 through 0400-12-01-.10.
 - VI. The reclaimer and intermediate facility have financial assurance as required under paragraph (8) of this rule,
 - VII. The reclaimer and intermediate facility have been issued a Certificate to Operate under part (4)(b)2 of Rule 0400-12-01-.01 or have a Part B permit issued under Rule 0400-12-01-.07 or interim status standards under Rule 0400-12-01-.05 that address the management of the hazardous secondary materials;
 - VIII. If not operating under a Part B permit issued under Rule 0400-12-01-.07 or interim status standards under Rule 0400-12-01-.05 that address the management of the hazardous secondary materials, the reclaimer and intermediate facility develops and maintains a hazardous secondary material acceptance plan. The reclaimer only accepts hazardous secondary materials for reclamation that comply with the hazardous waste acceptance plan as approved by the Commissioner under part (4)(b)2 of Rule 0400-12-01-.01; and
- (VII) All persons claiming the exclusion under this subpart provide notification as required under subparagraph (5)(c) of Rule 0400-12-01-.01.

Authority: T.C.A. §§ 68-212-101 et seq. and 4-5-208

* 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)
Marty Calloway (Petroleum Business with at least 15 Underground Storage Tanks)	X				
Stacey Cothran (Solid/Hazardous Waste Management Industry)	X				
Kenneth L. Donaldson (Municipal Government)				X	
Dr. George Hyfantis, Jr. (Institution of Higher Learning)	X				
Richard "Ric" Morris (Single Facility with less than 5 Underground Storage Tanks)	X				
Alan M. Leiserson Environmental Interests	X				
Jared L. Lynn (Manufacturing experienced with Solid/Hazardous Waste)	X				
David Martin (Working in a field related to Agriculture)	X				
Beverly Philpot (Manufacturing experienced with Underground Storage Tanks/Hazardous Materials)	X				
DeAnne Redman (Petroleum Management Business)	X				
Mayor Howard Bradley (County Government)	X				
Mark Williams (Small Generator of Solid/Hazardous Materials representing Automotive Interests)	X				
Chuck Head Commissioner's Designee, Dept. of Environment and Conservation	X				
Jimmy West Commissioner's Designee, Dept. of Economic and Community Development	X				

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



Date: December 6, 2017

Signature: _____

Name of Officer: Jared L. Lynn

Title of Officer: Chairman

Subscribed and sworn to before me on: _____

December 6, 2017

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): 0400-12-01

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

Herbert H. Slatery III
Attorney General and Reporter

12/13/2017

Date

Department of State Use Only

Filed with the Department of State on: _____

12/14/17

Effective Date: _____

1/4/18

Effective for: _____

180

*days

Effective through: _____

7/3/18

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

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Tre Hargett

Tre Hargett
Secretary of State of Tennessee

G.O.C. STAFF RULE ABSTRACT

DEPARTMENT: Commerce and Insurance, Board of Cosmetology and Barber Examiners

DIVISION: Regulatory Boards

SUBJECT: Equipment and Location Requirements for Barber Shops; Fees; Residential Barber Services

STATUTORY AUTHORITY: 2017 Public Chapter No. 102 mandates the promulgation of these rules and sets forth relevant guidelines. Specifically, the law creates a residential barber certificate that permits barbers to provide residential services.

EFFECTIVE DATES: February 19, 2018 through June 30, 2018

FISCAL IMPACT: The promulgation of these rules is expected to increase state government revenues by a minimal amount. Because the number of barbers interested in obtaining a residential barber certificate is unknown, the accounting department for the Tennessee Department of Commerce and Insurance is unable to provide a more specific estimate.

STAFF RULE ABSTRACT: These proposed rules establish the equipment requirements and fees for residential barber certificates. The equipment requirements are related to health and safety. There are no relevant changes in previous regulations effectuated by these rules.

Regulatory Flexibility Addendum

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

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

There are approximately 1,995 licensed barber shops in the state of Tennessee. The vast majority of these shops are considered small businesses. There are also approximately 4,990 licensed master barbers in the state of Tennessee. These rules would allow master barbers to provide residential barbering services, which was previously not allowed under the law. As such, master barbers would directly benefit from these rules. Consumers would benefit because there would be more convenient access to the services provided by master barbers.

Because barber shops employ master barbers, the number of barber shops could potentially decrease if master barbers decide to leave barber shops and provide residential services as their primary source of income. Residential barbering requires much less overhead, so this option could be attractive as opposed to working in a barber shop. New small businesses will likely be created to connect consumers with residential barbers electronically.

Because 2017 Public Chapter No. 102 is only applicable to master barbers and cosmetologists are not permitted to provide residential services, it is possible that cosmetologists would lose clientele thereby impacting cosmetology shops. Cosmetologists could lose clientele because many of the services offered by master barbers are also offered by cosmetologists. There are approximately 7,129 licensed full cosmetology shops in the state of Tennessee. It is unlikely that barber shops or cosmetology shops would benefit from residential barbering services being offered, so it is possible that shop owners would not support these rules. However, these rules are required pursuant to 2017 Public Chapter No. 102. There is no way to project the overall impact of these rules at this time.

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

These rules do not have projected reporting, recordkeeping, or other administrative costs. There are fees required for issuance and renewal of the certificate as well as equipment inspections; such fees are necessary to offset the estimated costs of administering this program.

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

See response to question #1.

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

There are no less burdensome, less intrusive or less costly methods of achieving the purpose of these proposed rules.

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

These rules are required pursuant to 2017 Public Chapter No. 102, and are not comparable with any known federal or state counterparts.

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

Exempting small businesses from these rules would not be beneficial, as these rules allow master barbers to provide services that they were not previously allowed to provide under current law.

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 are not expected to have an impact on local governments.

Additional Information Required by Joint Government Operations Committee

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

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

These rules establish the equipment requirements and fees for residential barber certificates. The equipment requirements are related to health and safety. There are no relevant changes in previous regulations effectuated by these rules.

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

2017 Public Chapter No. 102 mandates the promulgation of these rules and sets forth relevant guidelines. Specifically, the law creates a residential barber certificate that permits barbers to provide residential services.

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

There are approximately 1,995 licensed barber shops in the state of Tennessee. The vast majority of these shops are considered small businesses. There are also approximately 4,990 licensed master barbers in the state of Tennessee. These rules would allow master barbers to provide residential barbering services, which was previously not allowed under the law. As such, master barbers would directly benefit from these rules. Consumers would benefit because there would be more convenient access to the services provided by master barbers.

Because barber shops employ master barbers, the number of barber shops could potentially decrease if master barbers decide to leave barber shops and provide residential services as their primary source of income. Residential barbering requires much less overhead, so this option could be attractive as opposed to working in a barber shop. New small businesses will likely be created to connect consumers with residential barbers electronically.

Because 2017 Public Chapter No. 102 is only applicable to master barbers and cosmetologists are not permitted to provide residential services, it is possible that cosmetologists would lose clientele thereby impacting cosmetology shops. Cosmetologists could lose clientele because many of the services offered by master barbers are also offered by cosmetologists. There are approximately 7,129 licensed full cosmetology shops in the state of Tennessee. It is unlikely that barber shops or cosmetology shops would benefit from residential barbering services being offered, so it is possible that shop owners would not support these rules. However, these rules are required pursuant to 2017 Public Chapter No. 102. There is no way to project the overall impact of these rules at this time.

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

There are no known opinions of the attorney general and reporter or any judicial ruling that directly relate to the rule or the necessity to promulgate the rule.

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

The promulgation of these rules is expected to increase state government revenues by a minimal amount. Because the number of barbers interested in obtaining a residential barber certificate is unknown, the accounting department for the Tennessee Department of Commerce and Insurance is unable to provide a more specific estimate.

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

Cherrelle Hooper
Assistant General Counsel

Roxana Gumucio
Executive Director

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

Cherrelle Hooper
Assistant General Counsel

Roxana Gumucio
Executive Director

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

Cherrelle Hooper
Assistant General Counsel
500 James Robertson Parkway
Nashville, TN 37243
615-532-0631
Cherrelle.Hooper@tn.gov

Roxana Gumucio
Executive Director
500 James Robertson Parkway
Nashville, TN 37243
615-532-7081
Roxana.Gumucio@tn.gov

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

None

**Department of State
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Sequence Number: 11-15-17
Rule ID(s): 6649
File Date: 11/21/17
Effective Date: 2/19/18

Proposed Rule(s) Filing Form

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

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

Agency/Board/Commission:	Tennessee Board of Cosmetology and Barber Examiners
Division:	Regulatory Boards
Contact Person:	Cherelle Hooper, Assistant General Counsel
Address:	500 James Robertson Parkway, Nashville, TN
Zip:	37243
Phone:	615-741-3072
Agency/Board/Commission:	Tennessee Board of Cosmetology and Barber Examiners
Email:	cherelle.hooper@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
0200-01	Rules of the Barber Board
Rule Number	Rule Title
0200-01-.07	Equipment and Location Requirements for Barber Shops
0200-01-.11	Fees
0200-01-.20	Residential Barber Services

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Sequence Number: _____
Rule ID(s): _____
File Date: _____
Effective Date: _____

Proposed Rule(s) Filing Form (Redline)

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

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

Agency/Board/Commission:	Tennessee Board of Cosmetology and Barber Examiners
Division:	Regulatory Boards
Contact Person:	Cherelle Hooper, Assistant General Counsel
Address:	500 James Robertson Parkway, Nashville, TN
Zip:	37243
Phone:	615-741-3072
Agency/Board/Commission:	Tennessee Board of Cosmetology and Barber Examiners
Email:	cherelle.hooper@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
0200-01	Rules of the Barber Board
Rule Number	Rule Title
0200-01-.07	Equipment and Location Requirements for Barber Shops
0200-01-.11	Fees
0200-01-.20	Residential Barber Services

Chapter 0200-01
Board of Barber Examiners
Amendments

Table of Contents Chapter 0200-01 is amended by deleting the phrase "for Barber Shops" in the title of rule 0200-01-.07 and further amended by adding new rule 0200-01-.20 "Residential Barber Services" so that, as amended, the Table of Contents shall read:

0200-01-.01 Requirements for School License	0200-01-.10 Original License Fee
0200-01-.02 Curriculum	0200-01-.11 Fees
0200-01-.03 Transcripts	0200-01-.12 Inspections
0200-01-.04 Applications for Examination	0200-01-.13 License Qualifications
0200-01-.05 Posting of Licenses	0200-01-.14 Teacher Training Programs
0200-01-.06 Expiration of Certificates of Registration	0200-01-.15 Student Kits
0200-01-.07 Equipment and Location Requirements for Barber Shops	0200-01-.16 Demonstrations
0200-01-.08 Educational Equivalent	0200-01-.17 Alcoholic Beverages
0200-01-.09 Examinations	0200-01-.18 Civil Penalties
	0200-01-.19 Mobile Shops
	<u>0200-01-.20 Residential Barber Services</u>

Table of Contents

0200-01-.07 Equipment and Location Requirements, effective January 1, 2018, is amended by adding the following, new appropriately numbered Paragraphs:

- (7) Every barber providing residential barber services pursuant to T.C.A. § 62-3-135 shall have a kit consisting of at least the following materials at all times when providing services in residences:
- (a) One (1) enclosed and labeled container with clean towels separated from other equipment;
 - (b) One (1) enclosed and labeled container solely for soiled towels;
 - (c) One (1) wet surface cape;
 - (d) One (1) cape (not wet surface);
 - (e) Trash bags;
 - (f) One (1) leak tight container for wet sterilizer solution;
 - (g) One (1) bottle of wet sterilizer solution;
 - (h) One (1) aerosol spray disinfectant for clippers;
 - (i) One (1) portable ultra violet sanitizer;
 - (j) One (1) blood spill kit;
 - (k) Extra disposable gloves;
 - (l) One (1) bottle of alcohol;
 - (m) Hand sanitizer;
 - (n) Cotton balls;
 - (o) Cotton swabs;

- (p) One (1) sharps disposal container;
- (q) Neck strips; and
- (r) Portable shampoo bowl, if required under Paragraph (8).

(8) A portable shampoo bowl shall only be required pursuant to subparagraph (7)(r) when a barber is providing services in a residence involving removal of chemicals, including, but not limited to, color, permanents, relaxers and conditioners. If a barber intends to provide such services, the portable shampoo bowl shall be available for inspection prior to the issuance of the residential barber certificate. If a barber decides to provide such services after issuance of the residential barber certificate, the barber shall be obligated to notify the board and obtain a new equipment inspection at the barber's expense.

Authority: T.C.A. §§62-3-109, 62-3-113, 62-3-128, and ~~62-3-128(a)~~, and 62-3-135.

Rule 0200-01-.11 Fees, effective January 1, 2018, is amended by inserting the following language as a new subparagraph (1)(c) following the current subparagraph (1)(b) and renumbering the subsequent subparagraphs accordingly:

(1)

(c) Residential Barber Services

1. Application (Initial and Renewal).....sixty dollars (\$60.00)
2. Certificate of registrationseventy-five dollars (\$75.00)
3. Renewal cardtwenty-five dollars (\$25.00)
4. Inspection of residential barbering kit (subsequent to issuance of residential barber certificate)seventy-five dollars (\$75.00)
5. Penalty for late renewal (permissible for up to one (1) year following expiration of registration)twenty-five dollars (\$25.00)
6. Retirement of license.....twenty-five dollars (\$25.00)

~~(e)~~(d) **Barber Schools or Colleges**

....

~~(d)~~(e) **Barber Instructors**

....

~~(e)~~(f) **Barber Shops**

....

~~(f)~~(g) **New Dual shop licenseone hundred and fifty dollars (\$150.00)**

~~(g)~~(h) **Dual shop license renewal.....one hundred dollars (\$100.00)**

~~(h)~~(i) **Dual shop penalty for late renewal.....fifty dollars (\$50.00) per year.**

~~(i)~~(j) **Certifications to other Jurisdictions**

....

-
- ~~(j)~~(k) Barber instructor assistant certificate of registration.....twenty-five dollars (\$25.00)
 - ~~(k)~~(l) Reciprocity.....one hundred dollars (\$100.00)
 - ~~(h)~~(m) In the event that any check, draft or money order for the payment of a fee to the Board of Cosmetology and Barber Examiners is returned because of insufficient funds, only cash, certified checks or money orders will be accepted for the amount due, plus a penalty fee of twenty dollars (\$20.00).
 - ~~(m)~~(n) Change of ownership in a barber school or shop due to the death of an immediate family member..... no charge.
Application must be accompanied by death certificate or notice.
 - ~~(n)~~(o) Replacement of lost, misplaced or mutilated certificate of registration.....twenty-five dollars (\$25.00).

Authority: T.C.A. §§ 62-3-113, 62-3-128, and 62-3-129, and 62-3-135.

Chapter 0200-01
Board of Barber Examiners
New Rules

The following new rule shall be effective January 1, 2018:

0200-01-20 Residential Barber Services.

- (1) An applicant for a residential barber certificate shall apply to the Board on a form prescribed by the Board accompanied by the application fee set out in 0200-01-11(1)(c).
- (2) Upon approval of the applicant's initial application for a residential barber certificate, the applicant shall undergo an inspection of the applicant's residential barber kit to ensure that the kit complies with the requirements set out by 0200-01-07(7). In the event of any initial or later inspection of a barber's residential kit, payment for the certificate of registration or of the inspection fee must be made before the inspection is completed. No residential services shall be rendered until the barber's residential kit has been approved.
- (3) If a residential barber certificate is not renewed within one (1) year of its expiration, the residential barber certificate shall not be subject to renewal and the master barber shall file a new initial application for a residential barber certificate, including paying for and passing a new residential barber kit inspection.
- (4) The expiration date of an issued or renewed residential barber certificate shall be the same as the expiration date of the applicant's master barber registration and the fees for issuance or renewal shall not be prorated irrespective of the length of such issuance.

Authority: T.C.A. §§ 62-3-113 and 62-3-135.

* 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)
Kelly Barger				X	
Jimmy Boyd	X				
Anita Charlton				X	
Nina Coppinger				X	
Frank Gambuzza	X				
Brenda Graham	X				
Judy McAllister	X				
Patricia Richmond	X				
Mona Sappenfield				X	
Amy Tanksley	X				
Ron Gillihan	X				
Yvette Granger	X				

I certify that this is an accurate and complete copy of proposed rules, lawfully promulgated and adopted by the Tennessee Board of Cosmetology And Barber Examiners on 06/05/2017, and is in compliance with the provisions of T.C.A. § 4-5-222. The Secretary of State is hereby instructed that, in the absence of a petition for proposed rules being filed under the conditions set out herein and in the locations described, he is to treat the proposed rules as being placed on file in his office as rules at the expiration of ninety (90) days of the filing of the proposed rule with the Secretary of State.



Date: 10/26/17

Signature: *Cherelle Hooper*

Name of Officer: Cherelle Hooper

Title of Officer: Assistant General Counsel

Subscribed and sworn to before me on: October 26, 2017

Notary Public Signature: *Carol L. McGlynn*

My commission expires on: Nov. 5, 2019

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

The Board of Cosmetology and Barber Examiners
 0200-01-.07 Equipment and Location Requirements
 0200-01-.11 Fees
 0200-01-.20 Residential Barber Services

Herbert H. Slatery III
 Herbert H. Slatery III
 Attorney General and Reporter

11/8/2017 Date

Department of State Use Only

Filed with the Department of State on: 11/21/17

Effective on: 2/19/19



Tre Hargett
Secretary of State

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REGISTRATIONS

G.O.C. STAFF RULE ABSTRACT

DEPARTMENT: Transportation

DIVISION: Traffic Operations

SUBJECT: Truck Lane Restrictions on Interstates and Multi-Lane Access Controlled Highways

STATUTORY AUTHORITY: Tennessee Code Annotated, Section 55-8-195

EFFECTIVE DATES: March 1, 2018 to June 30, 2018

FISCAL IMPACT: None

STAFF RULE ABSTRACT: In accordance with TC.A. § 55-8-195, TDOT Rule Chapter 1680-02-05 establishes criteria for the designation and enforcement of lane restrictions for the travel of trucks with semi-trailers on interstate highways and other multi-lane divided highways. The chapter number will be redesignated as 1680-10-02 under the administration of TDOT's Traffic Operations Division. In addition, Rule 1680-10-02-.03 (as redesignated) is amended to remove the limitation that truck tractor/semitrailer combinations will be restricted to the right two lanes. Instead, the rule as amended will allow TDOT greater flexibility in establishing truck lane restrictions, e.g., allowing trucks to travel in all lanes but the left lane in locations where there are frequent points of entry for traffic into the far right lane.

Regulatory Flexibility Addendum

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

The proposed rule change should not have any significant impact on small businesses. The effect of the proposed rule change will be to give TDOT more flexibility in establishing truck lane restrictions on multi-lane divided highways instead of limiting truck lane restrictions to the right two travel lanes. In some multi-lane highway locations, for example, it may facilitate the flow of traffic to allow trucks to travel in all lanes but the far left lane where there are frequent entry points for other traffic on the right side of the highway.

Impact on Local Governments

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

The proposed rule change should not have any significant impact on local governments. The effect of the proposed rule change will be to give TDOT more flexibility in establishing truck lane restrictions on multi-lane divided highways instead of limiting truck lane restrictions to the right two travel lanes. In some multi-lane highway locations, for example, it may facilitate the flow of traffic to allow trucks to travel in all lanes but the far left lane where there are frequent entry points for other traffic on the right side of the highway.

Additional Information Required by Joint Government Operations Committee

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

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

In accordance with T.C.A. § 55-8-195, TDOT Rule Chapter 1680-02-05 establishes criteria for the designation and enforcement of lane restrictions for the travel of trucks with semi-trailers on interstate highways and other multi-lane divided highways. The chapter number will be redesignated as 1680-10-02 under the administration of TDOT's Traffic Operations Division.

In addition, Rule 1680-10-02-.03 (as redesignated) is amended to remove the limitation that truck tractor/semi-trailer combinations will be restricted to the right two lanes. Instead, the rule as amended will allow TDOT greater flexibility in establishing truck lane restrictions, e.g., allowing trucks to travel in all lanes but the left lane in locations where there are frequent points of entry for traffic into the far right lane.

- (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. § 55-8-195

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

The Tennessee Trucking Association, the Specialized Carriers & Riggers Association, and truckers generally.

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

N/A

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

None

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

John H. Reinbold, General Counsel; Joseph Sweat, Transportation Manager 1, Traffic Operations Division.

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

John H. Reinbold, General Counsel; Joseph Sweat, Transportation Manager 1, Traffic Operations Division.

- (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

John H. Reinbold, General Counsel, Tennessee Department of Transportation, Suite 300, James K. Polk Building, 505 Deaderick Street, Nashville, TN 37243; telephone number (615) 741-2941.

Joseph Sweat, Transportation Manager 1, Traffic Operations Division, Tennessee Department of Transportation, Suite 1200, James K. Polk Building, Nashville, TN 37243; telephone number (615) 532-3431.

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

None at this time.

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Sequence Number: 12-01-17
Rule ID(s): 6656-6657
File Date: 12/1/17
Effective Date: 3/1/18

Proposed Rule(s) Filing Form

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

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

Agency/Board/Commission:	Tennessee Department of Transportation
Division:	Traffic Operations Division
Contact Person:	John H. Reinbold, General Counsel
Address:	Suite 300, James K. Polk Building, 505 Deaderick Street, Nashville, TN
Zip:	37243
Phone:	(615) 741-2941
Email:	John.Reinbold@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
1680-02-05	Truck Lane Restrictions Along Interstates and Multi-Lane Access Controlled Highways
Rule Number	Rule Title
1680-02-05-.03	Truck Lane Restrictions
Chapter Number	Chapter Title
1680-10-02	Truck Lane Restrictions Along Interstates and Multi-Lane Access Controlled Highways
Rule Number	Rule Title
1680-10-02-.03	Truck Lane Restrictions

**RULE
S OF
TENNESSEE DEPARTMENT OF TRANSPORTATION**

CHAPTER 1680-210-502
**TRUCK LANE RESTRICTIONS ALONG INTERSTATES
AND MULTI-LANE ACCESS CONTROLLED HIGHWAYS**

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1680-10-02-.01 Purpose and Scope
1680-10-02-.02 Definitions
1680-10-02-.03 Truck Lane Restrictions
1680-10-02-.04 Guidelines for Establishing Truck Lane Restrictions on Eligible Highways

1680-210-502-.01 PURPOSE AND SCOPE.

- (1) The purpose of these rules is to implement Tennessee Code Annotated § 55-8-195 by establishing criteria for the designation and enforcement of lane restrictions for truck tractors and semi trailers as defined in Tennessee Code Annotated § 55-8-101 and in these rules.
- (2) The truck lane restrictions established under these rules shall apply only in designated areas where appropriate signage has been posted on eligible highways as defined in these rules.

Authority: T.C.A. § 55-8-195. Administrative History: Original rule filed June 23, 2005; effective October 28, 2005.

1680-210-502-.02 DEFINITIONS.

- (1) "Access controlled highway" means a highway or street especially designed for through traffic, with grade-separated interchanges rather than at-grade intersections, and to which owners or occupants of abutting land or other persons have no legal right or easement of access from abutting land.
- (2) "Bus" means every motor vehicle designed for carrying more than ten (10) passengers and used for the transportation of persons, and every motor vehicle, other than a taxicab, designed and used for the transportation of persons for compensation.
- (3) "Eligible highways" means highways on the Interstate Highway System and access controlled, multilane divided highways on the state highway system that have three (3) or more lanes in each direction of travel.
- (4) "Semi trailer" means every vehicle with or without motive power, other than a pole trailer, designed for carrying persons or property and for being drawn by a motor vehicle and so constructed that some part of its weight and that of its load rests upon or is carried by another vehicle.
- (5) "Truck tractor" means every motor vehicle designed and used primarily for drawing other vehicles and not so constructed as to carry a load other than a part of the weight of the vehicle and load so drawn.

Authority: T.C.A. § 55-8-195. Administrative History: Original rule filed June 23, 2005; effective October 28, 2005.

1680-210-502-.03 TRUCK LANE RESTRICTIONS.

- (1) Except as otherwise provided in these rules, truck tractors and semi trailers shall be restricted to the right two (2) lanes of travel, or as otherwise determined by the Department of Transportation, in designated areas of eligible highways where appropriate signage has been posted.

(Rule 1680-210-502-.03, continued)

- (2) Truck lane restrictions shall not apply when truck tractors and semi-trailers are passing other motor vehicles. The passing maneuver shall be safely completed in as short a time period as feasible. The passing maneuver shall consist of passing one motor vehicle at a time.
- (3) Buses are not subject to the restrictions established in these rules.

Authority: T.C.A. § 55-8-195. *Administrative History:* Original rule filed June 23, 2005; effective October 28, 2005.

1680-210-502-.04 GUIDELINES FOR ESTABLISHING TRUCK LANE RESTRICTIONS ON ELIGIBLE HIGHWAYS.

- (1) Interstate highways and other access controlled, multilane divided highways that have three (3) or more through lanes in each direction of travel are eligible for truck lane restrictions.
- (2) Only those portions of eligible highways approved by the Department of Transportation and where appropriate signage has been installed shall be considered as having truck lane restrictions.
- (3) Truck lane restrictions shall terminate within two (2) miles of a left lane exit to allow ample time for lane transitions.
- (4) Existing truck lane restrictions may be temporarily terminated or modified during highway construction and other special events at the discretion of the Department of Transportation.
- (5) Truck lane restrictions should be avoided in areas where the average truck spacing is less than 500 feet per lane.
- (6) Signs shall be placed in accordance with the Manual on Uniform Traffic Control Devices (MUTCD) to provide motorists with notification of the restricted zone. Examples of the signs may be found in the current edition of the Tennessee Supplement to Standard Highway Signs and the MUTCD.
- (7) These rules do not apply to those portions of highways where “truck climbing lanes” have been established due to excessive grades or where special truck lane restrictions have been established in construction zones.
- (8) The Commissioner of the Department of Transportation reserves the authority to remove or modify truck lane restriction zones established under these rules.

Authority: T.C.A. § 55-8-195. *Administrative History:* Original rule filed June 23, 2005; effective October 28, 2005.

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

Board Member	Aye	No	Abstain	Absent	Signature (if required)

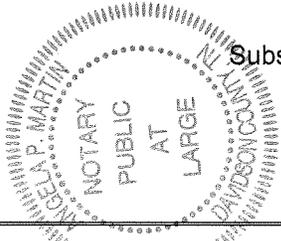
I certify that this is an accurate and complete copy of proposed rules, lawfully promulgated and adopted by the (board/commission/other authority) on 10/13/2017 (date as mm/dd/yyyy), and is in compliance with the provisions of T.C.A. § 4-5-222. The Secretary of State is hereby instructed that, in the absence of a petition for proposed rules being filed under the conditions set out herein and in the locations described, he is to treat the proposed rules as being placed on file in his office as rules at the expiration of ninety (90) days of the filing of the proposed rule with the Secretary of State.

Date: 10-13-17

Signature: John Schroer

Name of Officer: [Signature]

Title of Officer: Commissioner



Subscribed and sworn to before me on: 10-13-17

Notary Public Signature: Angela P. Martin

My commission expires on: 1-6-2020

Agency/Board/Commission: _____

Rule Chapter Number(s): _____

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

Herbert H. Slatyer III

Herbert H. Slatyer III
Attorney General and Reporter

11/21/2017

Date

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Filed with the Department of State on: 12/1/17

Effective on: 3/1/18

Tre Hargett

Tre Hargett
Secretary of State

G.O.C. STAFF RULE ABSTRACT

DEPARTMENT: Labor and Workforce Development

DIVISION: Bureau of Workers' Compensation

SUBJECT: Electronic Medical Billing for Workers' Compensation

STATUTORY AUTHORITY: Tennessee Code Annotated, Section 50-6-202

EFFECTIVE DATES: March 13, 2018 through June 30, 2018

FISCAL IMPACT: Minimal

STAFF RULE ABSTRACT: These rules provide a procedural framework for electronic billing and payment of medical services and products provided to an injured employee subject to the Tennessee workers' compensation fee schedules.

Public Hearing Comments

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

PUBLIC COMMENTS AND RESPONSES

Comment (Farrar and Bates): Concern about the time tables involved. It would be nearly impossible to get electronic billing and records receipt and electronic payments to vendors up and running in less than one year. Suggestion: Delay implementation effective date.

Response: The Bureau agrees and will delay implementation until July 1, 2018.

Comment (Optum): We support the proposed rules with these recommendations:

1. We know that the Bureau has submitted its draft companion guide, referenced in 0800-02-26-.02(5), to the appropriate committee within IAIABC for review. We strongly encourage the Bureau to work closely with IAIABC and to consider and incorporate the resulting recommendations provided by their committee.
2. Proposed 0800-02-26-.05(2) provides for exemptions for certain providers and payers to be granted by the Bureau. We recommend the Bureau publish, and update as needed, a list of exempt entities on its website so that the other parties in the transaction are aware of and certain if the entity billing them or the payer they are submitting bills to is waived from the requirement to transact electronically. This would prevent confusion between the parties.
3. We believe it might be prudent for the Bureau to alter the EFT and electronic payment mandate found within 0800-02-26-.05(6)(b) of the proposed rules to permit the parties to agree to an alternate method of payment that may include non-electronic payment (not just an electronic alternate). We are concerned that some providers, even those who may not be exempted from the process under the proposed rule language in 0800-02-26-.05(2), may find it cumbersome and taxing to set up electronic payment with the many payers within the workers' compensation system they are billing.
4. Given the uncertainty as to the rule-making timeline (when the final rule adoption date will be), we believe it might be best to amend the compliance dates for payers and providers found in proposed 0800-02-26-.05(1)(d) and (e) to be four months from the final rule adoption date for payer compliance and six months from the final rule adoption date for provider compliance. This should ensure adequate time for stakeholders to achieve compliance.
5. We recommend references in the proposed rules that state "(insert relevant jurisdiction statute or rule citation)" or similar instructions be replaced with the applicable Tennessee statute or rule citation, or they should otherwise be removed if not applicable.

Response:

1. The bureau agrees and will do so.
2. The bureau agrees and will do so.
3. The bureau is aware of these concerns. We disagree with the comment. We are aware of the data. Standard practices have been adopted regarding enrollment. Parties can apply for exemption.
4. The Bureau agrees to extend these deadlines.
5. The Bureau agrees and will add the applicable statutory reference.

Comment (Tennessee Medical Association):

1. In 0800-02-26-.05(4)(d)(2), add the phrase "and shall be considered by the payer as timely filed." TMA is concerned that payers will reject the resubmitted claim as not timely filed even if the resubmission is within the time period specified by the rule.
2. In 0800-02-26-.05(10)(a) TMA urges the bureau to prohibit payers from charging or passing along EFT fees that are a percentage of the claim submitted. Payers have usurious arrangements with unsuspecting providers: virtual credit cards and EFT. This practice should be banned as an excessive fee.

Response:

1. The Bureau agrees and this change will be made.
2. The Rule provides ACH EFT as already established in (6)(b) as the standard transaction rules. No change is

needed.

Comment (Siskin Spine/Rehab): "Does your EPM/EMR have the capability of creating and transmitting an electronic claim with an attachment?" When our practice checked with Navicure, the national clearinghouse that we use, they also do not have the capability and referred us to a third party. Of great concern with a new state statute and mandate that all claims be sent electronic, it creates a new opportunity for more middlemen to come between physician/practices and payment for the services they render. We are already drowning in this arena with too many cooks in the kitchen taking pieces of payment for service when the entity taking a cut of the pie, provides no meaningful benefit to the patient or the practice. A good example of a similar scenario is our credit card company. We switched with the promise of lowering the cost of taking credit cards. The discount rate is great at ~1.5%. However, they now add additional fees that equal the discount rate. Our last statement reflected a total rate of ~3% with only half being the discount rate for taking a credit card payment and the other half being added, associated fees.

Response: Most vendors provide for this service. Educational information is available with service providers. Meetings with constituent groups have occurred. P2P Clearinghouse in Memphis is the solution provider for Navicure as to electronic attachments. No change to rule is needed. However, TMA is evaluating co-sponsorship with one or more clearinghouses to provide educational webinars for its constituents regarding available solutions.

This is a stakeholder educational issue and they should be educated on what questions to ask when speaking with their IT vendor. We feel it is an education issue. Payers are looking for a standard gateway as CMS has a standard gateway specifying payer EDI agents responsible for normalizing data from submitters and delivering a standard format per payer specification. There are different levels of EDI readiness which is why clearinghouses are utilized to help stakeholders comply with requirements. Refer to the above NACHA document for average card payment. TN regulations already state that there needs to be agreement between payer and provider if alternative payment is used such as a card. In the agreement there should be transparency as to the card transaction fee. This is no different than if an individual signs up for a credit card.

Comment (Tennessee Hospital Association): Moving to electronic billing is generally a positive step and we appreciate the Bureau's interest and work on this proposed rule. We do have a few recommendations that we believe will strengthen the rules.

Page 7, (4) (e) Acknowledgement: The proposed rule states that a payer shall acknowledge receipt of an electronic medical bill within two business days. Obviously, the shortest possible turnaround time is the best but, in this instance, we do not believe this is always possible for the payer. For example, a vendor used in the industry has a 5 day eligibility check timeframe in which to match a provider's claim to the payer's claim. Therefore, THA recommends that the proposed 2 business day timeframe be extended to 5 days to allow for payer compliance.

Pages 7 & 8, (4) (d & e), Acknowledgment: THA's recommendation is to change the resubmission time for a bill to 45 days (from 60 days) in both (d) and (e). 45 days is the industry standard.

Page 8 & 9 Electronic Documentation: We received significant feedback from our members around this issue; this was the part of the rule that gave them the most concern. While they are in agreement with the goal, smaller facilities may have different capabilities than larger facilities; additionally, the process of fulfilling documentation requests has several aspects which can be time-consuming.

Pages 8 & 9, (5) - Our members made several recommendations regarding options for submission of documentation here:

1. (5) (a) This section states that "electronic documentation, including but not limited to medical reports and records submitted electronically that support an electronic medical bill, may be required by the payer before payment may be remitted to the health care provider...."

Hospitals are concerned that this language is open ended and could allow a payer to request anything in order to delay processing. Therefore, please delete "including but not limited to" or state specifically what other documentation can be requested under this rule.

2. (5) (b) - Submission electronically via e-mail or fax should only occur if this can be accomplished securely by both parties. Even then, there is a concern that faxes sent by payers requesting documentation may be missed since hospitals rarely use them anymore and may not see them quickly. Submission of documentation via a web portal/secure FPT, etc. would likely be the most secure method and, if the provider has the capability to set up their own secure transfer that the payer can access, the hospital would know exactly when the data

was submitted and made available.

3. (5) (d) As the proposed rule is worded, it states that the required time for a provider's submission of documentation begins within 7 business days of the payer's request. The required time for documentation submission should start at the point of the hospital's receipt of the request.

Response: The Bureau disagrees. After consultation with the IAIABC implementation committee, it was determined that the two-business day timeframe is successfully utilized in other states adopting the e-billing model rules.

The Bureau disagrees with the suggested change to 45 days. After consultation with IAIABC implementation committee, the 45-day period is deemed sufficient.

The attachment issue has been previously addressed.

1. The Bureau agrees in part. The language limits the scope of attachments to only those necessary to support the bill submitted. "Properly submitted and complete bill" is defined in Rule 0800-02-17-.03. Reference to this rule has been added.

2. The Bureau agrees and has added "...in accordance with HIPAA requirements" at the end of (5)(b).

3. The Bureau agrees in part and has made the following change: "provider's receipt of payer's request" instead of "payer's request".

Comment: Greenberg Traurig: We applaud the Bureau's efforts to address electronic submission and processing of medical bills but believe the Proposed Rule should be modified slightly to mirror ERA/EFT standards currently in place for HIPAA-covered transactions of health plans.

Response: The Bureau disagrees in part with the comment, since the rule as written complies with the applicable standards by requiring the standard EFT transaction be offered but allows parties by agreement to select a different electronic payment method. This permits transparency and disclosure of fees above the standard transaction requirements in proportion to value-added services. The bureau agrees in part with the suggestion regarding the ERA being sent within three (3) business days and the following change has been made: "The ERA shall be sent before five (5) business days or within three (3) business days prior to".

Comment (AIA): In general, AIA supports an eventual move to electronic billing, processing and payment of workers' compensation medical services and products. However, given the significant challenges currently posed by the electronic payment aspect, we request that implementation be delayed until the relevant technology is proven both capable and affordable for payers and health care providers alike.

While a handful of states have implemented electronic medical billing requirements for workers' compensation, we are aware of only one state (Wisconsin) that has actually implemented electronic payment requirements – and it is our understanding that very few smaller health care providers are participating. We believe this cautious approach to mandating electronic payment appropriately recognizes the difficulties inherent in transmitting the large volume of information required (e.g., explanation of amounts billed, deducted and paid) through established automated clearing house (ACH) transactions, which do not support large attachments. Even if workers' compensation insurers and other payers were able to meet the proposed deadline for commencing electronic payments, the current process is expensive, technologically difficult, and may create additional processing burdens for health care providers who are paid electronically.

In lieu of the currently proposed deadlines for all aspects of the rule (1/1/18 for payers and 6/1/18 for health care providers), we recommend establishing a uniform 6/1/18 deadline for both payers and health care providers with respect to electronic billing, while electronic payment should remain voluntary (i.e., if both parties agree) until there is evidence of capable and affordable technology options.

Response: The bureau agrees in part and the effective date of implementation has been changed to July 1, 2018. After consultation with the IAIABC, it appears that the relevant technology is available and is being utilized effectively by other states who have adopted electronic medical billing.

Comment (Claims Management Inc.): Overall, the proposed rules appear fair and reasonable, like requiring a 15 day payment period for e-bills and not allowing the resubmission of a duplicate bill for 60 calendar days if an accepted acknowledgement is received.

The only portion that appears somewhat burdensome is the EFT requirement. I don't believe any other state mandates that medical providers be paid via EFT when bills are submitted via EFT. If addressed, other states make it optional for the medical providers to request EFT payments from payers. I understand the concept and wanting to move that direction, but many providers and payers are not adequately set up for this with the requirement to provide and receive the mandated 835.

Response: The Bureau disagrees. Some providers may not have obtained the technology or activated that utility within their current technology; however, payers such as Liberty Mutual have demonstrated that they are currently using EFT with approximately 43% of workers' compensation e-bills submitted by providers. This indicates there is no need to revise the proposed rule.

Regulatory Flexibility Addendum

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

1. The type or types of small business and an identification and estimate of the number of small businesses subject to the proposed rule that would bear the cost of, or directly benefit from the proposed rule: The amended rules will affect small employers that fall under the Tennessee Workers' Compensation Laws, which would be employers with at least five employees, or for those in the construction industry at least one employee. There should be no additional costs associated with these rule changes.
2. The projected reporting, recordkeeping and other administrative costs required for compliance with the proposed rule, including the type of professional skills necessary for preparation of the report or record. There is no additional record keeping requirement or administrative cost associated with these rule changes.
3. A statement of the probable effect on impacted small businesses and consumers: These rules should not have any impact on consumers or small businesses.
4. A description of any less burdensome, less intrusive or less costly alternative methods of achieving the purpose and objectives of the proposed rule that may exist, and to what extent the alternative means might be less burdensome to small business: There are no less burdensome methods to achieve the purposes and objectives of these rules.
5. Comparison of the proposed rule with any federal or state counterparts: None.
6. Analysis of the effect of the possible exemption of small businesses from all or any part of the requirements contained in the proposed rule: Exempting small businesses could frustrate the small business owners' access to the services provided by the Bureau of Workers' Compensation and timely medical treatment for injured workers, which would be counter-productive.

Impact on Local Governments

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

These proposed rules will have little, if any, impact on local governments.

Additional Information Required by Joint Government Operations Committee

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

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

These rules provide a procedural framework for electronic billing and payment of medical services and products provided to an injured employee subject to the Tennessee workers' compensation fee schedules.

- (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 pursuant to Tennessee Code Annotated § 50-6-202, which requires the adoption of electronic medical billing in Tennessee.

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

All parties to a workers' compensation claim will be affected by the adoption or rejection of these rules.

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

None

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

The overall effect will have little fiscal impact upon state or local government.

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

Troy Haley, Legislative Liaison and Director of Administrative Legal Services

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

Troy Haley, Legislative Liaison and Director of Administrative Legal Services

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

Tennessee Bureau of Workers' Compensation
220 French Landing Drive, Floor 1-B
Nashville, TN 37243
(615) 532-0179
troy.haley@tn.gov

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

None

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Sequence Number: 12-10-17
 Rule ID(s): 6663
 File Date: 12/13/17
 Effective Date: 3/13/18

Rulemaking Hearing Rule(s) Filing Form

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

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

Agency/Board/Commission:	Tennessee Department of Labor and Workforce Development
Division:	Bureau of Workers' Compensation
Contact Person:	Troy Haley
Address:	220 French Landing Drive 1-B, Nashville, TN 37243
Phone:	615-532-0179
Email:	troy.haley@tn.gov

Revision Type (check all that apply):

- Amendment
 New
 Repeal

(Place substance of rules and other info here. Statutory authority must be given for each rule change. For information on formatting rules go to <http://state.tn.us/sos/rules/1360/1360.htm>)

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

Chapter Number	Chapter Title
0800-02-26	Electronic Medical Billing for Workers' Compensation
Rule Number	Rule Title
0800-02-26-.01	Purpose
0800-02-26-.02	Definitions
0800-02-26-.03	Formats for Electronic Medical Bill Processing
0800-02-26-.04	Billing Code Sets
0800-02-26-.05	Electronic Medical Billing, Reimbursement, and Documentation
0800-02-26-.06	Employer, Insurance Carrier, Managed Care Organization, or Agents' Receipt of Medical Bills from Health Care Providers

0800-02-26-.07	Communication Between Health Care Providers and Payers
0800-02-26-.08	Medical Documentation Necessary for Billing Adjudication
0800-02-26-.09	Compliance and Penalty
0800-02-26-.10	Effective Date

Electronic Medical Billing for Workers' Compensation
0800-02-26
New Rules

0800-02-26-.01 Scope.

- (1) The purpose of this rule is to provide a legal framework for electronic billing, processing, and payment of medical services and products provided to an injured employee and data reporting subject to Tennessee Code Annotated § 50-6-202.

Authority: T.C.A. § 50-6-202 (a)-(c). *Administrative History:* Original rule filed _____; effective _____.

0800-02-26-.02 Definitions.

- (1) "Business day" means Monday through Friday, excluding days on which a holiday is observed by this jurisdiction.
- (2) "CAQH CORE" Council for Affordable Quality Healthcare Committee on Operating Rules for Information Exchange is a national standards organization that develops operating rules for the business aspects of the United States Department of Health and Human Services (HHS) mandates for electronic healthcare transactions.
- (3) "Clearinghouse" means a public or private entity, including a billing service, repricing company, community health management information system or community health information system, and "value-added" networks and switches, that is an agent of either the payer or the provider and that may perform the following functions:
 - (a) Processes or facilitates the processing of medical billing information received from a client in a nonstandard format or containing nonstandard data content into standard data elements or a standard transaction for further processing of a bill related transaction; or
 - (b) Receives a standard transaction from another entity and processes or facilitates the processing of medical billing information into nonstandard format or nonstandard data content for a client entity.
- (4) "CMS" means the Centers for Medicare and Medicaid Services of the United States Department of Health and Human Services (HHS), the federal agency that administers these programs.
- (5) "Companion Guide" means the Tennessee Bureau of Workers' Compensation Electronic Billing and Payment Companion Guide, based on IAIABC National Companion Guide, and is a separate document which gives detailed information for Electronic Data Interchange (EDI) medical billing and payment for the workers' compensation industry using national standards and Tennessee jurisdictional procedures.
- (6) "Complete electronic medical bill" means a medical bill that meets all of the criteria enumerated in 0800-02-26.05(3).
- (7) "Electronic" refers to communication between computerized data exchange systems that complies with the standards enumerated in this rule.
- (8) "Health care provider" means a person or entity, appropriately certified or licensed, as required, who provides medical services or products to an injured worker in accordance with 0800-02-06. Health Care Providers are responsible for the acts or omissions of their agents related to the performance of electronic

medical billing services.

- (9) "Health care provider agent" means a person or entity that contracts with a health care provider establishing an agency relationship to process bills for services provided by the health care provider under the terms and conditions of a contract between the agent and health care provider. Such contracts may permit the agent to submit bills, request reconsideration, receive reimbursement, and seek medical dispute resolution for the health care provider services billed in accordance with Tennessee Workers' Compensation Act and bureau rules.
- (10) "Health Plan Identifier" or "HPID" means an identifier for health plans (as defined in 45 CFR 160.103) that need to be identified in standard transactions.
- (11) "National Provider Identification Number" or "NPI" means the unique identifier assigned to a health care provider or health care facility by the Secretary of the United States Department of Health and Human Services.
- (12) "Other Entity Identifier" or "OEID" means an identifier for entities that are not health plans, health care providers, or "individuals"(as defined in 45 CFR 160.103), but that need to be identified in standard transactions (including, for example, workers' compensation payers, third party administrators, transaction vendors, clearinghouses, and other payers).
- (13) "Operating Rules" means the necessary business rules and guidelines for the electronic exchange of information that are not defined by a standard or its implementation specifications.
- (14) "Payer" means the employer, its insurer or authorized self-insured employer or an entity authorized to make payments on behalf of the insurer or authorized self-insured employer legally responsible for paying the workers' compensation medical bills. Payers are responsible for the acts or omissions of their agents related to the performance of electronic medical billing services.
- (15) "Payer agent" here is broadly construed to mean any person or entity that performs medical bill related processes for the payer responsible for the bill. These processes include, but are not limited to, reporting to government agencies, electronic transmission, forwarding, or receipt of documents, review of reports, adjudication of bills, and their final payment.
- (16) "Supporting documentation" means those documents necessary for the payer to process a bill. These include, but are not limited to, any written authorization received from the third party administrator or any other records as required by 0800-02-26-.05.
- (17) "Technical Report Type 3" (TR3 Implementation Guide) is an ASC X12 published document for national electronic standard formats that specifies data requirements and data transaction sets, as referenced in 0800-02-26-.03 of this rule.

Authority: T.C.A. § 50-6-202 (a)-(c). Administrative History: Original rule filed _____; effective _____.

0800-02-26-.03 Formats for Electronic Medical Bill Processing.

- (1) For electronic transactions, the most current version of the following electronic medical bill processing standards shall be used:

(a) Billing:

1. Professional Billing -- the ASC X12 Standards for Electronic Data Interchange Technical Report Type 3, Health Care Claim: Professional (837), May 2006, ASC X12, 005010X222 and Type 3 Errata to Health Care Claim: Professional (837), June 2010, ASC X12, 005010X222A1.

2. Institutional/Hospital Billing -- the ASC X12 Standards for Electronic Data Interchange Technical Report Type 3, Health Care Claim: Institutional (837), May 2006, ASC X12N/005010X223, Type 1 Errata to Health Care Claim: Institutional (837), ASC X12

Standards for Electronic Data Interchange Technical Report Type 3, October 2007, ASC X12N/005010X223A1, and Type 3 Errata to Health Care Claim: Institutional (837), June 2010, ASC X12, 005010X223A3.

3. Dental Billing -- the ASC X12 Standards for Electronic Data Interchange Technical Report Type 3, Health Care Claim: Dental (837), May 2006, ASC X12N/005010X224, Type 1 Errata to Health Care Claim: Dental (837), ASC X12 Standards for Electronic Data Interchange Technical Report Type 3, October 2007, ASC X12N/005010X224A1, and Type 3 Errata to Health Care Claim: Dental (837), June 2010, ASC X12, 005010X224A2.

4. Retail Pharmacy Billing -- the Telecommunication Standard Implementation Guide, Version D, Release 0 (Version D.0), August 2007, National Council for Prescription Drug Programs and the Batch Standard Batch Implementation Guide, Version 1, Release 2 (Version 1.2), January 2006, National Council for Prescription Drug Programs.

(b) Acknowledgment:

1. Electronic responses to ASC X12N 837 transactions:

(i) the ASC X12 Standards for Electronic Data Interchange TA1 Interchange Acknowledgment contained in the standards adopted under subsection (A)(1) of this section;

(ii) the ASC X12 Standards for Electronic Data Interchange Technical Report Type 3, Implementation Acknowledgment for Health Care Insurance (999), June 2007, ASC X12N/005010X231; and

(iii) the ASC X12 Standards for Electronic Data Interchange Technical Report Type (iii) Health Care Claim Acknowledgment (277CA), January 2007, ASC X12N/005010X214.

2. Electronic responses to NCPDP transactions:

(i) The Response contained in the standards adopted under subsection (1)(a) of this section.

(c) Electronic Remittance Advice (ERA) -- the ASC X12 Standards for Electronic Data Interchange Technical Report Type 3, Health Care Claim Payment/Advice (835), April 2006, ASC X12N/005010X221 and Type 3 Errata to Health Care Claim Payment/Advice (835), June 2010, ASC X12, 005010X221A1.

(d) ASC X12 Ancillary Formats

1. The ASC X12N/005010X213 Request for Additional Information (277) is used to request additional attachments that were not originally submitted with the electronic medical bill.

2. Health Claim Status Request and Response

(e) Documentation submitted with an electronic medical bill in accordance with 0800-02-26-.05 (5) (relating to Medical Documentation): ASC X12N Additional Information to Support a Health Claim or Encounter (275), February 2008, ASC X12, 005010X210.

(2) Insurance carriers and health care providers may exchange electronic data in a non-prescribed format by mutual agreement. All data elements required in the Tennessee-prescribed formats shall be present in any mutually agreed upon format.

(3) The implementation specifications for the ASC X12N and the ASC X12 Standards for Electronic Data Interchange may be obtained from the ASC X12, 7600 Leesburg Pike, Suite 430, Falls Church, VA 22043; Telephone (703) 970-4480; and FAX (703) 970-4488. They are also available through the Internet at <http://store.x12.org/>. A fee is charged for all implementation specifications.

- (4) The implementation specifications for the retail pharmacy standards may be obtained from the National Council for Prescription Drug Programs, 9240 East Raintree Drive, Scottsdale, AZ 85260; Telephone (480) 477-1000; and FAX (480) 767-1042. They are also available through the Internet at <http://www.ncdp.org>. A fee is charged for all implementation specifications.
- (5) Nothing in this section will prohibit payers and health care providers from using a direct data entry methodology for complying with these requirements, provided the methodology complies with the data content requirements of the adopted formats and these rules.
- (6) Whenever the formats enumerated in section (1) for billing, acknowledgment, remittance, and documentation are replaced with a newer version, the most recent standard shall be used. The requirement to use a new version will commence on the effective date of the new version as published in the Code of Federal Regulations.

Authority: T.C.A. § 50-6-202 (a)-(c). Administrative History: Original rule filed _____; effective _____.

0800-02-26-.04 Billing Code Sets.

Billing codes and modifier systems identified below are valid codes for the specified workers' compensation transactions, in addition to any code sets defined by the standards adopted in 0800-02-26-.04.

- (1) "CDT-4 Codes" -- codes and nomenclature prescribed by the American Dental Association.
- (2) "CPT® Codes" -- the procedural terminology and codes contained in the "Current Procedural Terminology," as published by the American Medical Association and as adopted in the appropriate fee schedule effective on the date of service. See 0800-02-17.
- (3) "Diagnosis Related Group (MS-DRG)" -- the inpatient classification scheme used by CMS for hospital inpatient reimbursement. The MS-DRG system classifies patients based on principal diagnosis, surgical procedure, age, presence of co-morbidities and complications, and other pertinent data that demonstrate similar resource consumption and length of stay patterns as defined by Medicare.
- (4) "HCPCS" -- CMS' Healthcare Common Procedure Coding System, a coding system which describes products, supplies, procedures, and health professional services and which includes the American Medical Association's (AMA's) Physician "Current Procedural Terminology, CPT®, codes, alphanumeric codes, and related modifiers.
- (5) "ICD-9-CM Codes" -- diagnosis and procedure codes in the International Classification of Diseases, Ninth Revision, Clinical Modification published by the United States Department of Health and Human Services are adopted by reference.
- (6) "ICD-10-CM/PCS Codes" -- diagnosis and procedure codes in the International Classification of Diseases, Tenth Edition, Clinical Modification/Procedure Coding System maintained and published by the United States Department of Health and Human Services are adopted by reference.
- (7) "NDC" -- National Drug Codes of the United States Food and Drug Administration.
- (8) "Revenue Codes" -- the 4-digit coding system developed and maintained by the National Uniform Billing Committee for billing inpatient and outpatient hospital services, home health services, and hospice services.
- (9) "National Uniform Billing Committee Codes" -- code structure and instructions established for use by the National Uniform Billing Committee (NUBC), such as occurrence codes, condition codes, or prospective payment indicator codes. As of the date of publication of this model rule, these are known as UB04 codes.
- (10) "Narrative Medical Reports" required by 0800-02-17-.15 shall use the procedure codes WC101, WC 102 and WC 103 as specified therein. (eBill Companion Guide – Chapter 2.8)

Authority: T.C.A. § 50-6-202 (a)-(c). Administrative History: Original rule filed _____; effective _____.

0800-02-26-.05 Electronic Medical Billing, Reimbursement, and Documentation.

(1) Applicability

- (a) This section outlines the exclusive process for the initial exchange of electronic medical bill and related payment processing data for professional, institutional/hospital, pharmacy, and dental services.
- (b) Unless exempted from this process in accordance with subsection (2) of this section, payers or their agents shall:
 - 1. Accept electronic medical bills submitted in accordance with the adopted standards;
 - 2. Transmit acknowledgments and remittance advice in compliance with the adopted standards in response to electronically submitted medical bills; and
 - 3. Support methods to receive electronic documentation required for the adjudication of a bill, as described in 0800-02-26-.08 below.
- (c) A health care provider shall:
 - 1. Implement a software system capable of exchanging medical bill data in accordance with the adopted standards, or contract with a clearinghouse to exchange its medical bill data;
 - 2. Submit medical bills as defined by 0800-02-26-.03(1)(a) to any payers that have established connectivity to the health care provider's system or clearinghouse;
 - 3. Submit required documentation in accordance with subsection (5) below; and
 - 4. Receive and process any acceptance or rejection acknowledgment from the payer.
- (d) Payers shall be able to exchange electronic data by January 1, 2018, unless exempted from the process in accordance with subsection (2) of this section.
- (e) Health care providers or their agents shall be able to exchange electronic data by June 1, 2018, unless exempted from the process in accordance with subsection (2) of this section.

(2) Exceptions to Mandatory Participation

- (a) A health care provider is waived from the requirement to submit medical bills electronically to a payer if:
 - 1. The health care provider employs 10 or fewer full-time employees (used by Medicare), or
 - 2. The health care provider submitted fewer than one hundred twenty (120) bills for workers' compensation treatment in the previous calendar year.
 - 3. The Bureau of Workers' Compensation may grant an exception on a case-by-case basis if the health care provider establishes that electronic billing will result in an unreasonable financial burden.
- (b) A payer is waived from the requirement to receive medical bills electronically from health care providers if:
 - 1. The payer processed fewer than two hundred fifty (250) medical bills for workers' compensation treatment or services in the previous calendar year.
 - 2. The Bureau of Workers' Compensation may grant an exception on a case-by-case basis if the payer establishes that electronic billing will result in an unreasonable financial burden.

(3) Complete Electronic Medical Bill. To be considered a complete electronic medical bill, the bill or supporting transmissions shall:

- (a) Be submitted in the correct billing format;
- (b) Be transmitted in compliance with the format requirements described in 0800-02-26-.03 of this rule;
- (c) Include in legible text all supporting documentation for the bill, including, but not limited to, medical reports and records, evaluation reports, narrative reports, assessment reports, progress reports/notes, clinical notes, hospital records and diagnostic test results that are expressly required by Rule 0800-02-17-.03;
- (d) Identify the:
 - 1. Injured employee;
 - 2. Employer;
 - 3. Insurance carrier, third party administrator, managed care organization or its agent; Health care provider;
 - 4. Medical service product; and
 - 5. Any other requirements as presented in the Tennessee electronic billing companion guide; and
- (e) Use current and valid codes and values as defined in the applicable formats referenced in the jurisdictional regulatory requirements.

(4) Acknowledgement

- (a) An Interchange Acknowledgment (TA1) notifies the sender of the receipt of, and certain structural defects associated with, an incoming transaction.
- (b) An Implementation Acknowledgment (ASC X12 999) transaction is an electronic notification to the sender of the file that it has been received and has been:
 - 1. Accepted as a complete and structurally correct file, or
 - 2. Rejected with a valid rejection error code.
- (c) A Health Care Claim Acknowledgment (ASC X12 277CA) is an electronic acknowledgment to the sender of an electronic transaction that the transaction has been received and has been:
 - 1. Accepted as a complete, correct submission, or
 - 2. Rejected with a valid rejection error code.
- (d) A payer shall acknowledge receipt of an electronic medical bill by returning an Implementation Acknowledgment (ASC X12 999) within one (1) business day of receipt of the electronic submission.
 - 1. Notification of a rejected bill is transmitted using the appropriate acknowledgment when an electronic medical bill does not meet the definition of a complete electronic medical bill as described in 0800-02-26-.05(5) or does not meet the edits defined in the applicable implementation guide or guides.
 - 2. A health care provider or its agent shall not submit a duplicate electronic medical bill earlier than 60 calendar days from the date originally submitted if a payer has acknowledged acceptance of the original complete electronic medical bill. A health care provider or its agent may submit a corrected medical bill electronically to the payer after receiving notification of a rejection. The corrected medical bill is submitted as a new, timely original bill if resubmitted within 60 days of the notice of rejection.

(e) A payer shall acknowledge receipt of an electronic medical bill by returning a Health Care Claim Acknowledgment (ASC X12 277CA) transaction (detail acknowledgment) within two (2) business days of receipt of the electronic submission.

1. Notification of a rejected bill is transmitted in an ASC X12N 277CA response or acknowledgment when an electronic medical bill does not meet the definition of a complete electronic medical bill or does not meet the edits defined in the applicable implementation guide or guides.

2. A health care provider or its agent shall not submit a duplicate electronic medical bill earlier than 60 calendar days from the date originally submitted if a payer has acknowledged acceptance of the original complete electronic medical bill. A health care provider or its agent may submit a corrected medical bill electronically to the payer after receiving notification of a rejection. The corrected medical bill is submitted as a new, timely original bill if resubmitted within 60 days of the notice of rejection.

(f) Acceptance of a complete medical bill is not an admission of liability by the payer. A payer may subsequently reject an accepted electronic medical bill if the employer or other responsible party named on the medical bill is not legally liable for its payment.

1. The rejection is transmitted by means of an 835 transaction.

2. The subsequent rejection of a previously accepted electronic medical bill shall occur no later than fifteen (15) business days from the date of receipt of the complete electronic medical bill.

3. The transaction to reject the previously accepted complete medical bill shall clearly indicate that the reason for rejection is that the payer is not legally liable for its payment.

(g) Acceptance of an incomplete medical bill does not satisfy the written notice of injury requirement from an employee or payer as required in TCA 50-6-201.

(h) Acceptance of a complete or incomplete medical bill by a payer does not begin the time period by which a payer shall accept or deny liability for any alleged claim related to such medical treatment.

(i) Transmission of an Implementation Acknowledgment under 0800-02-26-.05(4)(b), and acceptance of a complete, structurally correct file serves as proof of the received date for an electronic medical bill in 0800-02-26-.05(3).

(5) Electronic Documentation

(a) Electronic documentation, including but not limited to medical reports and records submitted electronically that support an electronic medical bill, may be required by the payer before payment may be remitted to the health care provider, in accordance with regulations established by the Bureau of Workers' Compensation here and in 0800-02-17. Further information is available in the Tennessee Bureau of Workers' Compensation Electronic Billing and Payment Companion Guide, a copy of which is available on the Bureau website and is adopted herein by reference.

(b) Complete electronic documentation shall be submitted by secure fax, secure encrypted electronic mail, or in a secure electronic format as defined in 0800-02-26-.03.

(c) The electronic transmittal, either by secure fax or by secure encrypted electronic mail or any other secure electronic format, shall prominently contain the following details on its cover sheet or first page of the transmittal:

1. The name of the injured employee,

2. Identification of the worker's employer, the employer's insurance carrier, or the third party administrator or its agent handling the workers' compensation claim;

3. Identification of the health care provider billing for services to the injured worker, and where applicable, its agent;
 4. Date(s) of service;
 5. The workers' compensation claim number assigned by the payer, if established by the payer; and
 6. The unique attachment indicator number.
- (d) When requested by the payer, a health care provider or its agent shall submit electronic documentation within seven (7) business days of the payer's request.
1. Electronic documentation may be submitted simultaneously with the electronic medical bill.
 2. Electronic documentation may be submitted separately from the electronic medical bill within seven (7) business days of successful submission of the electronic medical bill.
- (6) Electronic Remittance Advice (ERA) and Electronic Funds Transfer (EFT)
- (a) An Electronic Remittance Advice (ERA) is an Explanation of Benefits (EOB) or Explanation of Review (EOR), submitted electronically, regarding payment or denial of a medical bill, recoupment request, or receipt of a refund.
 - (b) All payments for service are required to be paid via electronic funds transfer (EFT) unless an alternate electronic method is agreed upon by the payer and provider. The operating rules must comply with the Committee on Operating Rules for Information Exchange of the Council for Affordable Quality Health Care to comply with applicable Federal standards.
 - (c) The ERA shall contain the appropriate Group Claim Adjustment Reason Codes, Claim Adjustment Reason Codes (CARC) and associated Remittance Advice Remark Codes (RAR) as specified in the Code Value Usage in Health Care Claim Payments and Subsequent Claims Technical Report Type 2 (TR2) Workers' Compensation Code Usage Section and for pharmacy charges, the National Council for Prescription Drugs Program (NCPDP) Reject Codes, denoting the reason for payment, adjustment, or denial.
 - (d) The ERA shall be sent before five (5) business days of:
 1. The expected date of receipt by the medical provider of payment from the payer, or
 2. The date of the bill's rejection by the payer.
- (7) Requirements for Health Care Providers Exempted from Electronic Billing
- (a) Health care providers exempted from electronic medical billing pursuant to 0800-02-26-.05 (2) shall submit paper medical bills for payment in the following formats as applicable:
 1. On the current standard forms used by the Centers for Medicare and Medicaid Services (CMS);
 2. On the current National Council for Prescription Drug Programs (NCPDP) Workers' Compensation/Property and Casualty Universal Claim Form (WC/PC UCF);
 3. On the current American Dental Association (ADA) Claim Form.
- (8) Resubmissions
- (a) A health care provider or its agent shall not submit a duplicate medical bill earlier than 30 calendar days from the date originally submitted unless the payer has rejected the medical bill as incomplete in accordance with 0800-02-26-.06 (Employer, Insurance Carrier, Managed Care Organization, or Agents' Receipt of Medical Bills from Health Care Providers). A health care provider or its agent may submit a

corrected medical bill to the payer after receiving notification of the rejection of an incomplete medical bill. The corrected medical bill is submitted as a new, timely original bill if resubmitted within 60 calendar days of the notice of rejection.

(9) Connectivity

- (a) Unless the payer or its agent is exempted from the electronic medical billing process in accordance with 0800-02-26-.05 (Electronic Medical Billing, Reimbursement, and Documentation), it should attempt to establish connectivity through a trading partner agreement with any clearinghouse that requests the exchange of data in accordance with 0800-02-26-.03 (Formats for Electronic Medical Bill Processing).

(10) Fees

- (a) No party to the electronic transactions shall charge excessive fees of any other party in the transaction. A payer or clearinghouse that requests another payer or clearinghouse to receive, process, or transmit a standard transaction shall not charge fees or costs in excess of the fees or costs for normal telecommunications that the requesting entity incurs when it directly transmits, or receives, a standard transaction.

- (11) A health care provider agent may charge reasonable fees related to data translation, data mapping, and similar data functions when the health care provider is not capable of submitting a standard transaction. In addition, a health care provider agent may charge a reasonable fee related to:

- (a) Transaction management of standard transactions, such as editing, validation, transaction tracking, management reports, portal services and connectivity; and
- (b) Other value added services, such as electronic file transfers related to medical documentation.

- (12) A payer or its agent shall not reject a standard electronic transaction on the basis that it contains data elements not needed or used by the payer or its agent or that the electronic transaction includes data elements that exceed those required for a complete bill as enumerated in 0800-02-26-.05(3).

- (13) A health care provider that has not implemented a software system capable of sending standard transactions is required to use a secure Internet-based direct data entry system offered by a payer if the payer does not charge a transaction fee. A health care provider using an Internet-based direct data entry system offered by a payer or other entity shall use the appropriate data content and data condition requirements of the standard transactions.

- (14) The payer's failure to comply with any requirements of this rule will result in an administrative violation under 0800-02-17-.13, 0800-02-18-.15, 0800-02-19-.06, 0800-02-01-.10, or TCA 50-6-125 as applicable.

Authority: T.C.A. § 50-6-202 (a)-(c). Administrative History: Original rule filed _____; effective _____.

0800-02-26-.06 Employer, Insurance Carrier, Managed Care Organization, or Agents' Receipt of Medical Bills from Health Care Providers

- (1) Upon receipt of medical bills submitted in accordance with 0800-02-26-.03, 0800-02-26-.04, and 0800-02-26-.05, a payer shall evaluate each bill's conformance with the criteria of a complete electronic medical bill.

- (a) A payer shall not reject medical bills that are complete, unless the bill is a duplicate bill.

- (b) Upon receipt of an incomplete medical bill, a payer or its agent shall either:

1. Complete the bill by adding missing health care provider identification or demographic information already known to the payer within 15 business days; or,
2. Reject the incomplete bill, in accordance with subsection .06(6).

- (2) The received date of an electronic medical bill is the date all of the contents of a complete electronic bill are successfully received by the claims payer.
- (3) The payer may contact the medical provider to obtain the information necessary to make the bill complete.
 - (a) Any request by the payer or its agent for additional documentation to pay a medical bill shall:
 1. Be made by telephone or electronic transmission unless the information cannot be sent by those media, in which case the sender shall send the information by mail or personal delivery;
 2. Be specific to the bill or the bill's related episode of care;
 3. Describe with specificity the clinical and other information to be included in the response;
 4. Be relevant and necessary for the resolution of the bill;
 5. Be for information that is contained in or is in the process of being incorporated into the injured employee's medical or billing record maintained by the health care provider; and
 6. Indicate the specific reason for which the insurance carrier is requesting the information.
 - (b) If the payer or its agent obtains the missing information and completes the bill to the point that it can be adjudicated for payment, the payer shall document the name and telephone number of the person who supplied the information.
 - (c) Health care providers and payers, or their agents, shall maintain documentation of any pertinent internal or external communications that are necessary to make the medical bill complete.
- (4) A payer shall not reject or deny a medical bill except as provided in subsection (1) of this section. When rejecting or denying an electronic medical bill, the payer shall clearly identify the reason(s) for the bill's rejection or denial by utilizing the appropriate codes in the standard transactions pursuant to 0800-02-26-.05(4)(c)(2).
- (5) The rejection of an incomplete medical bill in accordance with this section fulfills the obligation of the payer to provide to the health care provider or its agent information related to the incompleteness of the bill.
- (6) Payers shall timely reject incomplete bills or request additional information needed to reasonably determine the amount payable.
 - (a) For bills submitted electronically, the rejection of the entire bill or the rejection of specific service lines included in the initial bill shall be sent to the submitter within two business days of receipt.
 - (b) If bills are submitted in a batch transmission, only the specific bills failing edits shall be rejected.
 - (c) If there is a technical defect within the transmission itself that prevents the bills from being accessed or processed, the transmission will be rejected with a TA1 and/or a 999 transaction, as appropriate.
- (7) If a payer has reason to challenge the coverage or amount of a specific line item on a bill, but has no reasonable basis for objections to the remainder of the bill, the uncontested portion shall be paid timely, as in subsection H below.
- (8) Payment of all uncontested portions of a complete medical bill shall be made to the provider within 15 calendar days of receipt of the original bill, or receipt of additional information requested by the payer allowed under the law. Amounts paid after this (15) calendar day review period will accrue an interest of (2.08) percent per month after the due date. The interest payment shall be made at the same time as the medical bill payment. (Refer to the 835 TR3 of the Tennessee Companion Guide for specific instruction on reporting interest payments.)

- (9) A payer shall not reject or deny a medical bill except as provided in subsection (1). When rejecting or denying a medical bill, the payer shall also communicate to the provider the reason(s) for the medical bill's rejection or denial.
- (10) The payer's failure to comply with any requirements of this rule will result in an administrative violation in accordance with 0800-02-17, 0800-02-18, 0800-02-19, 0800-02-01, or TCA 50-6-125 as applicable.

Authority: T.C.A. § 50-6-202 (a)-(c). Administrative History: Original rule filed _____; effective _____.

0800-02-26-.07 Communication Between Health Care Providers and Payers

- (1) Any communication between the health care provider and the payer related to medical bill processing shall be of sufficient specific detail to allow the responder to easily identify the information required to resolve the issue or question related to the medical bill. Generic statements that simply state a conclusion such as "payer improperly reduced the bill" or "health care provider did not document" or other similar phrases with no further description of the factual basis for the sender's position do not satisfy the requirements of this Section.
- (2) The payer's utilization of the Claim Adjustment Group Codes, Claim Adjustment Reason Codes, and/or the Remittance Advice Remark Codes, or as appropriate, the NCPDP Reject/Payment Codes, when communicating with the health care provider or its agent or assignee, through the use of the 835 transaction, provides a standard mechanism to communicate issues associated with the medical bill.
- (3) Communication between the health care provider and payer related to medical bill processing shall be made by telephone or electronic transmission unless the information cannot be sent by those media, in which case the sender shall send the information by mail or personal delivery.
- (4) The payer's failure to comply with any requirements of this rule will result in an administrative violation in accordance with 0800-02-17, 0800-02-18, 0800-02-19, 0800-02-01, or TCA 50-6-125 as applicable.

Authority: T.C.A. § 50-6-202 (a)-(c). Administrative History: Original rule filed _____; effective _____.

0800-02-26-.08 Medical Documentation Necessary for Billing Adjudication

- (1) Medical documentation includes all medical reports and records permitted or required in accordance with TCA 50-6-204(a)(2)(A)-(D).
- (2) For the purposes of these Rules, requests for medical reports shall not require any releases by the patient pursuant to TCA 50-6-204(a)(2)(A)-(D).
- (3) Any request by the payer for additional documentation to process a medical bill shall conform to the requirements of 0800-02-26-.06(3).
- (4) It is the obligation of an insurer or employer to furnish its agents with any documentation necessary for the resolution of a medical bill.
- (5) Health care providers, health care facilities, third-party biller/assignees, and claims administrators and their agents shall comply with all applicable Federal and jurisdictional rules related to privacy, confidentiality, and security.

Authority: T.C.A. § 50-6-202 (a)-(c). Administrative History: Original rule filed _____; effective _____.

0800-02-26-.09 Compliance and Penalty

- (1) Any electronically submitted bill determined to be complete but not paid within 15 calendar days or objected to within 15 business days will be subject to penalties of not less than \$50.00 nor more than \$5,000.00. Disputes on medical bill payments between providers and payers may be submitted to the Medical Payment Committee pursuant to TCA 50-6-125.
- (2) The Tennessee Bureau of Workers' Compensation may impose a civil monetary penalty if it determines that a payer has failed to comply with the electronic claims acceptance and response process by the effective date adopted in 0800-02-26-.10. The amount of a civil monetary penalty will be up to \$500.00 for each violation, but shall not exceed \$5,000.00 for identical violations during a calendar year.

Authority: T.C.A. § 50-6-202 (a)-(c). Administrative History: Original rule filed _____; effective _____.

0800-02-26-.10 Effective Date

- (1) These Rules are required for all medical services and products provided on or after July 1, 2018. For medical services and products provided prior to July 1, 2018, medical billing and processing shall be in accordance with the rules in effect at the time the health care was provided unless both payer and provider elect to comply with these Rules.

Authority: T.C.A. § 50-6-202 (a)-(c). Administrative History: Original rule filed _____; effective _____.

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

Board Member	Aye	No	Abstain	Absent	Signature (if required)

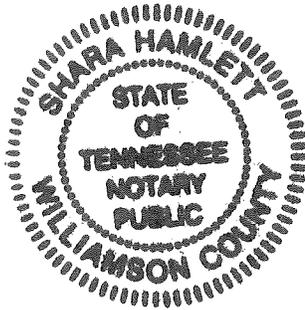
I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the Tennessee Bureau of Workers' Compensation on November 2, 2017 and is in compliance with the provisions of T.C.A. § 4-5-222.

I further certify the following:

Notice of Rulemaking Hearing filed with the Department of State on June 2, 2017.

Rulemaking Hearing Conducted on August 29, 2017.

Date: November 2, 2017
 Signature: Abbie Hudgens
 Name of Officer: Abbie Hudgens
 Title of Officer: Administrator, Bureau of Workers' Compensation
 Subscribed and sworn to before me on: November 2, 2017
 Notary Public Signature: [Signature]
 My commission expires on: 2/19/20



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

Herbert H. Slatery III
 Herbert H. Slatery III
 Attorney General and Reporter
 Date: 12/12/2017

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Filed with the Department of State on: 12/13/17
 Effective on: 3/13/18
[Signature]
 Tre Hargett
 Secretary of State

G.O.C. STAFF RULE ABSTRACT

DEPARTMENT: State Board of Education

DIVISION:

SUBJECT: Individual Education Accounts

STATUTORY AUTHORITY: Tennessee Code Annotated, Section 49-10-1401, et seq.

EFFECTIVE DATES: March 21, 2018 through June 30, 2018

FISCAL IMPACT: These revisions will not affect state or local expenditures.

STAFF RULE ABSTRACT: These rules effectuate the Individualized Education Act as required by Public Chapter 431 (2015). The Act provides options for account holders to choose the educational opportunities that best meet the individual needs of the eligible child by giving him or her direct access to state and local public education funds. The Board and the Department are committed to an ongoing review of the proposed rules based on feedback from stakeholders and members of the public. As part of that ongoing review, the Board and the Department identified clean-up edits to the rules to make them consistent with state law with regard to student eligibility, approved uses of funds, and to clarify the appeals review process and timeline. These amendments also address changes in the Act as provided in Public Chapter 305 (2017).

Public Hearing Comments

There were no oral comments received at the public hearing. The State Board of Education and the Department of Education did received written feedback which is attached to this form along with the response.

Regulatory Flexibility Addendum

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

Not applicable

Impact on Local Governments

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

The rule does not have a projected impact on local governments.

Additional Information Required by Joint Government Operations Committee

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

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

These rules effectuate the Individualized Education Act as required by Public Chapter 431 (2015). The Act provides options for account holders to choose the educational opportunities that best meet the individual needs of the eligible child by giving him or her direct access to state and local public education funds. The Board and the Department are committed to an ongoing review of the proposed rules based on feedback from stakeholders and members of the public. As part of that ongoing review, the Board and the Department identified clean-up edits to the rules to make them consistent with state law with regard to student eligibility, approved uses of funds, and to clarify the appeals review process and timeline. These amendments also address changes in the Act as provided in Public Chapter 305 (2017).

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

Tennessee Public Chapters Nos. 305 (2017), 431 (2015), 620 (2015), and 793 (2015). T.C.A. §§ 49-10-140 *et seq.* establish the IEA program and its guidelines as well as mandates the promulgation of rules for the program.

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

Parents of students with disabilities and local school districts are most directly affected by this rule who have neither urged nor rejected adoption of this rule. The State Board of Education and the Tennessee Department of Education urge adoption of this rule.

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

None

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

These revisions will not affect state or local expenditures

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

Elizabeth Taylor
Elizabeth.Taylor@tn.gov

Nathan James
Nathan.James@tn.gov

Elizabeth Fiveash
Elizabeth.Fiveash@tn.gov

Rebecca Wright
Rebecca.E.Wright@tn.gov

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

Elizabeth Taylor
Elizabeth.Taylor@tn.gov

Nathan James
Nathan.James@tn.gov

Elizabeth Fiveash
Elizabeth.Fiveash@tn.gov

Rebecca Wright
Rebecca.E.Wright@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

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710 James Robertson Parkway
Nashville, TN 37243
(615) 741-4558

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

N/A

Elizabeth Taylor

From: Rebecca E. Wright
Sent: Monday, October 2, 2017 10:27 AM
To: sheniapellum@gmail.com
Cc: Elizabeth Taylor; Rebecca E. Wright; Rebecca E. Wright
Subject: RE: IEA Rules Proposal

Hello Ms. Pellum,

Thank you for submitting comments on the proposed revisions to the rules for the Individualized Education Account (IEA) Program!

Regarding the definitions of online learning programs/courses and curriculum, the proposed revisions do broaden the definitions and provide more flexibility for account holders. The department has posted an addendum to the 2017-18 IEA Parent Handbook that explains these revisions; the addendum is posted on the IEA webpage: <http://www.tn.gov/education/topic/iea-resources>. To determine whether curriculum materials, including books and other instructional materials, meet the revised definition, please submit the Curriculum Pre-Approval Form. To determine whether online learning programs/courses meet the revised definition, please email IEA.Questions@tn.gov.

Regarding your proposal to use of IEA funds to pay for consumable education supplies, internet access, and co-op classes, these expenses are not listed as approved expenses in the state law so the state law would need to be revised to include these expenses in order for IEA funds to be able to be used to pay for them. Neither the department nor the State Board of Education has the authority to change the state law. You can contact your state legislators to share your feedback regarding this matter.

Regarding the use of funds for out of state field trips, the department will consider your feedback, and will contact account holders if this is changed in future years.

Best,

Rebecca

Rebecca E. Wright | Director, Individualized Education Account Program Andrew Johnson Tower, 9th Floor
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-----Original Message-----

From: Shenja Pllum [mailto:sheniapllum@gmail.com]

Sent: Thursday, September 28, 2017 11:06 AM

To: Elizabeth Taylor <Elizabeth.Taylor@tn.gov>

Subject: IEA Rules Proposal

Ms. Taylor,

I have been a part of the IEA program since day 1. There are some concerns or thoughts I would like to bring to attention:

1. Nonpublic online learning programs: children with special needs sometimes need alternative type learning curriculums. Our local school systems utilize these programs online during the normal course of school. Programs like ABC Mouse, Brain Beat, study island, and various online math and reading sites. Not only do they help in reenforcing and teaching skills but they also allow the students to have various modes of instruction. Children with special needs sometimes need more than a text book or just online curriculum. They need to see and access the learning curriculums and activities in various ways to retain the information. Currently programs like this are not covered as an approved expense. Online curriculums are not covered, because they fall into the classification of "non-public schools" however these online curriculums and programs are not "schools" - most are not accredited programs, because they are not schools. They don't provide a teacher. The parent or teacher in school utilizes these programs to further progress the students learning. These programs are made available to students in schools, and special requests can be made in IEP processes for special programs for students when normal curriculum is not working for that student. iEA students should be able to have access to these subscription based, and online based learning programs that are not available on cd rom - and they should not be classified as "Schools" they should fall under "curriculum"

2. Use of funds for consumable items:

School districts are allowed to purchase a set amount of supplies per student per school year. Things like printer/copier ink (schools provide copiers and ink everyday to teachers), x number of reams of printer paper per student per year (for IEA I would propose 2 reams of all purpose printer paper per month), art supplies and science project supplies should be included in approved expenses, even if that requires us to submit the science project for approval with a list of supplies needed for that experiment.

Manipulative and tactile learning helpers should continued to be allowed. We should be able to also purchase books, reading books, up to a set amount of expenses per quarter - ex: no more than \$50 spent on supplemental reading. The online public school option k12 allows for an "internet" allowance of \$9.99 per month per child. Since the inet is used in daily instruction. This is an online public school. I would propose that x amount of funds be allowed per month for internet access. It should not in any way cover the entire bill but a \$9.99 or 10.00 allowance per month for inet access from funds should not in any way cover an entire bill. Even the public school system provides internet use for the students.

3. Field Trips: Field trips for out of state should be considered, but not overnight expenses or travel. For instance, Huntsville Space Center, it is out of state, but it is within a one day (drive there, have trip, and come home). So some out of state field trips should be considered, but only for the admission of the IEA student.

The IEA program currently limits a parents abilities to provide unique learning opportunities for the children in the program, by restricting us only to book curriculum or cd rom/DVD rom based curricula. It should include online based learning sites as curriculum as well. These restrictions are "more" than the public school system allows for, and the entire purpose of this program is so that we can provide a customized education for our special needs children, yet we are more limited than the public schools are in what we can utilize and provide.

I would also propose that co-op classes be included into the IEA program. These co-op opportunities allow the children to have socialization with other children for small periods of time in a learning environment. They include a teacher and a curriculum. The co-op classes allow "trained teachers" to teach in specific subjects. These are useful to allow some socialization and can be enrolled on a class per class basis. Most co-op classes though fall under non-public church based programs I do believe. And that category does not seem to be a covered category, though a religious based private school is.

Thank you for your time. I wanted to bring these to attention for consideration. We love the IEA program, but we are concerned about the limitations that exceed the limitations of the local school system.

Feel free to contact me if you would like further clarification on anything I have brought to attention.

Shenia Pllum
615-965-2704

Sent from my iPhone

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Sequence Number: 12-17-17
Rule ID(s): 6669
File Date: 12/21/17
Effective Date: 3/21/18

Rulemaking Hearing Rule(s) Filing Form

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

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

Agency/Board/Commission:	State Board of Education
Division:	
Contact Person:	Elizabeth Taylor
Address:	710 James Robertson Pkwy
Zip:	1st Floor
Phone:	Nashville, TN
Email:	37243

Revision Type (check all that apply):

- Amendment
 New
 Repeal

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

Chapter Number	Chapter Title
0520-01-11	Individual Education Accounts
Rule Number	Rule Title
0520-01-11-.01	Purpose
0520-01-11-.02	Definitions
0520-01-11-.03	Application
0520-01-11-.04	Term of the IEA
0520-01-11-.05	Agreement and Funds Transfer
0520-01-11-.06	Use of Funds
0520-01-11-.07	Monitoring and Compliance
0520-01-11-.08	Participating Schools
0520-01-11-.09	Return to Local Education Agency
0520-01-11-.10	Appeal Procedures
0520-01-11-.11	Conflict of Interest

**RULES
OF
STATE BOARD OF EDUCATION
CHAPTER 0520-01-11
INDIVIDUALIZED EDUCATION ACCOUNTS**

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0520-01-11-.01 PURPOSE.

The purpose of these rules is to effectuate the Individualized Education Act as required by ~~Public Chapter 431 (2015)~~, T.C.A. § 49-10-1401, *et seq.*

Authority: T.C.A. §§ 49-1-302, 49-10-1401, *et seq.*

0520-01-11-.02 DEFINITIONS.

- (1) "Account holder" means a parent as defined in subsection (18) of this section or a student who has attained the age of majority who signs the IEA contract, is the ~~account holder~~ Account Holder for the IEA funds, and is responsible for complying with all of the requirements of the IEA Program.
- (2) "Act" means the Individualized Education Act.
- (3) "Agreement" means a document signed by a parent of an ~~participating eligible~~ eligible student or an eligible ~~a participating~~ student who has attained the age of majority and a designee of the Department, which qualifies the parent or student who has attained the age of majority to participate in the Program.
- (4) ~~"Standard Application Form"~~ "Standard Application Form" means a document whereby parents and participating eligible students may seek to establish an Individualized Education Account (IEA).
- (5) ~~"Computer hardware or other technological devices"~~ "Computer hardware or other technological devices" means computer hardware or technological devices approved by the Department or a licensed treating physician that is used for the student's educational needs. Computer hardware and technological devices must meet one (1) of the following criteria:
 - (a) Is a required device for communication or for physical access to instruction due to the adverse impact of the disability for which the student qualifies to receive an IEA, or
 - (b) Allows a student to access instruction or instructional content.

- (6) "Criminal background check" at a minimum shall include, but not be limited to, a check of the following: Tennessee's Sex Offender Registry and the Abuse Registry of the Tennessee Department of Health. All providers as defined in subsection (23) of this section and employers of providers must maintain documentation that any persons providing services to participating students ~~has~~ have undergone a fingerprint based criminal history records check conducted by the Tennessee Bureau of Investigation (TBI) and forwarded by the TBI to the Federal Bureau of Investigation for processing pursuant to the National Child Protection Act. All participating schools must maintain documentation that all persons working on school grounds when students are present and/or providing services to students have undergone a fingerprint based criminal history records check conducted by the Tennessee Bureau of Investigation (TBI) and forwarded by the TBI to the Federal Bureau of Investigation for processing pursuant to the National Child Protection Act.
- (7) "Department" means the Tennessee Department of Education.
- (8) "Educational purposes" means tuition, fees, and/or required textbooks at a participating school ~~the curriculum of a participating school and educational therapies.~~ Fees do not include: room and board or meals, meal plans, food, or consumable materials.
- (9) "Educational therapies" means individualized services designed to develop or improve academic performance through instructional and therapeutic techniques, and provided by therapists that meet the requirements set by the Department and the State Board of Education.
- (10) "Eligible postsecondary institution" means a ~~Tennessee public~~ community college, ~~college of applied technology, or university of the University of Tennessee system or a locally governed state university within the Tennessee Board of Regents systems~~ university of the University of Tennessee system ~~or the Tennessee Board of Regents system,~~ a Tennessee public postsecondary institution, or an accredited a private postsecondary institution, such as an institution accredited by one (1) of the following: any accreditation division of AdvancED (the North Central Association Commission on Accreditation and School Improvement (NCA CASI), the Northwest Accreditation Commission (NWAC), and the Southern Association of Colleges and Schools Council on Accreditation and School Improvement (SACS CASI)), the Middle States Association of Colleges and Schools (MSA), the New England Association of Schools and Colleges (NEASC), the Western Association of Schools and Colleges (WASC), or the Council on Occupational Education (COE).
- (11) "Eligible student" means:
- (a) A resident of this state with an active Individualized Education Program (IEP) in accordance with 34 C.F.R § 300 et seq., § 49-10-102, and regulations of the State Board of Education with one (1) ~~any~~ of the following disabilities as defined by the rules of the State Board of Education 0520-01-09-.02 as the primary or secondary disability in effect at the time the Department receives the request for participation in the program the ~~Programs~~ documented in their individualized education program (IEP) at the time of their application and defined in the rules of the State Board of Education 0520-01-09-.02:
1. Autism;
 2. Deaf-blindness;

~~2-3. Developmental delay;~~

~~3-4. Hearing impairments;~~

~~5. Intellectual disability;~~

~~4-6. Multiple disabilities;~~

~~5-7. Orthopedic impairments;~~

~~6-8. Traumatic brain injury; or~~

~~7. Visual impairments.~~

~~8-9. Has an IEP in effect at the time the Department receives the request for participation in the program; and~~

(b) Has an active Individualized Education Program (IEP) in accordance with 34 C.F.R § 300 et seq., § 49-10-102, and regulations of the State Board of Education with one (1) of the disabilities pursuant to subdivision (3)(A) as the primary or secondary disability in effect at the time the Department receives the request for participation in the Program; and

(b)(c) Meets at least one (1) of the following requirements:

1. Was previously enrolled in and attended a Tennessee public school for the one (1) full school year immediately preceding the school year in which the student receives an individualized education account (IEA) in a Tennessee public school during the two (2) semesters immediately preceding the semester in which the student receives an IEA; For the purposes of these rules, prior two (2) full semesters in enrollment one (1) full school year means that the student was counted in the enrollment figures for the LEA(s) for the entire school year as reported in the state's student information system, that the student was counted in the enrollment figures for the Local Education Agency (LEA) in months two (2), three (3), six (6) and seven (7) for purposes of calculating the basic education program (BEP) funding.
2. Has not previously attended a K-12 school in Tennessee, or but is currently eligible to enroll in a kindergarten program in a public school in this state; Students meeting this eligibility requirement shall inform the LEA in which they reside of the student's intent to enroll in the program prior to August 1 of the year in which they are enrolled in the IEA program;
3. Has not previously attended a school in Tennessee during the one (1) full school year two (2) semesters immediately preceding the school year semester in which the student receives an IEA, and is eligible to enroll in a public school in this state. When a student has an active IEP in another state and moves to Tennessee, the student shall submit a copy of the student's IEP from the student's previous out-of-state school to the Department as part of the application to participate in the IEA Program and inform the school district in which he/she resides that the student is enrolling in the IEA Program; or When a student has an active IEP in another state

and moves to Tennessee, the student shall register with the LEA in which he/she resides in order to be eligible to participate in the IEA program. The LEA shall then request a copy of the student's IEP from the student's previous out-of-state school;

2. _____

4. _____ Received an IEA in the previous school year; or

5.3. _____ If a student has an IEP prior to enrolling in kindergarten, the student will be eligible to receive an IEA without having to attend a Tennessee public school; however, the student would have to register with the LEA in which they reside for purposes of calculating the amount of IEA funding the student would be eligible to receive.

- (12) "Fee for service transportation provider" means a commercial transportation provider including a taxi or bus service. It does not include private transportation by a parent or participating student in accordance with the conflict of interest provision in these rules.
- (13) "Financial institution" or "private financial management firm" means an institution selected by the Department to administer the individualized education accounts.
- (14) "IEA" means a Tennessee individualized education account.
- (15) "IEP" means an individualized education program developed by a public school pursuant to the Individuals with Disabilities Education Act at 20 U.S.C. §1400, et seq.
- (16) "~~Local education~~ Education agency Agency (LEA)," "school system," "public school system," "local school system," "school district," or "local school district" means any county school system, city school system, special school district, unified school system, metropolitan school system or any other local public school system or school district created or authorized by the general assembly.
- (17) "~~Nonpublic online learning program or course" means online programs or courses that meet the requirements set by the Department designated and approved by the Department.~~
- (18) "~~Parent" means the parent, legal guardian, person who has custody of the child, or person with caregiving authority for the child; means the parent, legal guardian, person who has custody of the child pursuant to an order of a court of competent jurisdiction, or person with caregiving authority pursuant to a power of attorney for care of a minor child pursuant to T.C.A. § Title 34, Chapter 6, Part 3.~~
- (19) "Participating school" means a nonpublic school that meets the requirements established in T.C.A. § 49-10-1401, et seq. And seeks to enroll eligible students. ~~the Act, and meets related rules, regulations, policies, and procedures of the State Board of Education state board of education and the Department. Participating schools must be a Category I, II, or III nonpublic school pursuant to the rules of the State Board of Education Chapter 0520-07-02.~~
- (20) "Participating student" means an eligible student whose parent is participating in the IEA program ~~IEA program~~ or an eligible student who has attained the age of majority and is participating in the IEA P ~~IEA P~~ program.

- (21) "Physician" means a person licensed under T.C.A. § Title 63, Chapter 6 or T.C.A. § Title 63, Chapter 9.
- (22) "Program" means the individualized education account (IEA) program created in T.C.A. § 49-10-1401, et seq.
- (23) "Provider" means an individual or business that meets the requirements for accreditation or licensure established by the Tennessee Department of Health pursuant to T.C.A. Title § 63 or T.C.A. § Title 68 or Tennessee Department of Education and pursuant to the application and approval process created by the Departments of ~~education~~ Education and health ~~Health~~ for participating providers.
- ~~(24)~~ "Technological device" means ~~any item, piece of equipment, or product system, whether acquired commercially off the shelf, modified, or customized, that is used to increase, maintain, or improve the functional capabilities of a child with a disability in the curriculum of a participating school or the program of a participating provider.~~
- ~~(25)~~(24) "Tutoring services" means services provided by a tutor that meets the requirements set by the Department. ~~accredited by a state, regional, or national accrediting organization.~~

Authority: T.C.A. §§ 49-1-302 and 49-10-1401 et seq.

0520-01-11-.03 ~~APPLICATION~~03 APPLICATION.

- (1) To apply to receive an IEA the parent of an eligible student, or an eligible student who has attained the age of majority, must ~~first request an IEA by filing a notice of intent with the Department and fully completing~~ complete an application a Standard Application Form available through the Department's website or through the Department's office by the deadline set by the Department.
- (a) A school district, a nonpublic school, or the Department may assist a parent of an eligible student or and eligible student who has attained the age of majority in filing the Standard Application Form.
- (b) ~~An application~~ The Standard Application Form must include all information requested by the Department and must be approved by the Department.
- (2) The Department shall make a determination of eligibility to participate in the Program and notify the parent of an eligible student, or and eligible student who has reached the age of majority.
- ~~(2)~~(3) Once an completed Standard Application Form ~~application~~ has been approved the parent of an eligible student, or an eligibler student who has reached the age of majority shall complete the enrollment procedures set by the Department to become enrolled in the pProgram, including execution of an Agreement to participate in the Program.

Authority: T.C.A. §§ 49-1-302 and 49-10-1405

0520-01-11-.04 ~~TERM~~04 TERM OF THE IEA

- (1) For purposes of continuity of educational attainment, a student who enrolls in the ~~program~~ Program shall remain eligible until the participating student meets one of the following, whichever occurs first:
- (a) Enrolls full-time in a public school ~~in the LEA in which the parent or student who has attained the age of majority resides;~~
 - (b) Graduates from high school. The student may continue in the ~~program~~ Program until such time as he or she receives a high school diploma, or receives a passing score on all subtests of the GED or HiSET. Certificates of attendance do not constitute graduation from high school for the purpose of this ~~program~~ Program; or
 - (c) Reaches twenty-two (22) years of age. The student may complete the school year in which he or she reaches the age of twenty-two (22), provided a student shall not be enrolled in the ~~program~~ Program past August 15 of the next school year after they have reached twenty-two (22) years of age.
- (2) The ~~account~~ Account holder ~~Holder~~ may remove the participating student from the nonpublic school and place the student in a public school. The ~~account~~ Account h ~~Holder~~ shall complete the procedures for withdrawal from the IEA p ~~Program set by the Department.~~ of the student's withdrawal from the IEA program
- (3) ~~Upon reasonable notice to the Department, T~~ the student's parent (or a student who has attained the age of majority) Account Holder may move the student from one participating nonpublic school to another participating nonpublic school in accordance with procedures set by the Department.
- (4) In order for students to continue in the ~~program~~ Program, the ~~parent or participating student who has attained the age of majority~~ Account Holder shall annually renew the IEA by following the procedures posted on the Department's website.
- (5) After graduating from high school or reaching twenty-two (22) years of age, unused funds in an IEA from prior years can be used in subsequent years, up to four (4) consecutive years after a student has aged out of the p ~~Program, provided the student attends or takes courses from an eligible postsecondary institution and the expenditures are determined to be qualifying expenses.~~
- ~~(5)~~ (6) Account holders ~~Holder~~ are not required to spend the entire sum each year; however, a portion of the funds must be used each year on approved expenses for the benefit of the student enrolled in the IEA ~~program~~ Program and overall spending must equal fifty (50) percent of the annual award at the close of each contract year (twelve [12] months) by the deadline for submission of the last expense report of the contract year.
- (a) If overall spending does not equal fifty (50) percent by the deadline for submission of the last expense report ~~at the close of the contract year~~ and if the IEA is renewed for the following year, the Department will subtract the difference from the payments in the next contract year. If a student withdraws from the ~~IEA program~~ IEA Program or if the IEA is not renewed, the IEA shall be closed and any remaining funds shall be returned to the state treasurer to be placed in the ~~basic~~ Basic education ~~Education program~~ Program (BEP) account of the education trust fund of 1992 under §§ 49-3-357 and 49-3-358.

Authority: T.C.A. § 49-1-302

~~0520-01-11-05 AGREEMENT~~ 05 AGREEMENT AND FUNDS TRANSFER.

- (1) Upon notification by the Department that an IEA may be established, a parent of an eligible student, or an eligible student who has attained the age of majority shall sign an agreement to:
 - (a) Provide an education for the participating student in at least the subjects of reading, grammar, English language arts, mathematics, social studies, and science;
 - (b) Not ~~to~~ enroll the participating student in a public school during the time the student is enrolled in the IEA Program; and
 - (c) Release the LEA in which the student resides and the school for which the student is zoned to attend from all obligations to educate the student during the time the student is enrolled in the IEA Program.
- (2) ~~The Department shall provide the Agreement template shall be available on the Department's website to parents of an eligible student or eligible students or students who have attained the age of majority.~~ Parents of an eligible student or eligible students that who have attained the age of majority shall complete the Agreement and submit it along with all information requested by the Department by the date set by the Department before the first IEA payment is disbursed.
- (3) Participation in the Program shall have the same effect as a parental refusal to consent to the receipt of specially designed instruction and related services pursuant to the Individuals with Disabilities Education Act at 20 U.S.C. §1414.
- (4) The Agreement shall be signed by the parent of an eligible student or by the eligible student who has attained the age of majority and a designee of the Department to be effective. The Agreement shall specify the anticipated participating school or participating provider(s), acceptable uses of IEA funds, and the responsibilities of the parent of an eligible student or an eligible student or student that who has attained the age of majority, the duties of the Department, and shall specify the financial institution to which the IEA funds shall be electronically transferred.
- (5) ~~Upon~~ After receipt of the completely signed agreement, the Department shall remit the first payment to the IEA via electronic funds transfer. IEA funds shall be remitted to the IEA thereafter until termination of the Agreement.
- (6) The Department shall establish procedures to effectuate the funds transfer process and dates on which each IEA payment shall be disbursed.
- (7) After the initial payment to the IEA, the Account Hholder shall submit expense reports and receipts for all IEA funds expended ~~by the date set by the Department following in accordance with the procedures set by the Department~~ before the next IEA payment is disbursed.
- (8) In accordance with the procedures of the Department, the Department may remove any ~~account holder~~ Account Holder from eligibility for an IEA if the Account Hholder fails to comply with the terms of the IEA agreement or applicable laws, rules or procedures, or misuses monies. The Account Hholder may appeal the Department's decision pursuant to the appeals procedures in the rules of the State Board of Education.

- (9) If the Department determines that IEA funds have been misspent, the Department shall notify the Account Holder, and the Account Holder shall repay the misspent amount in the manner and within the timeframe set by the Department. The Department is authorized to freeze and/or withdraw funding directly from the student's IEA for reasons including, but not limited to, fraud, misuse of funds, Account Holder failure to comply with the terms of the state laws, rules, procedures or the Agreement, if the student returns to the LEA, or if funds were deposited into the account in error. An Account Holder may appeal the Department's decision pursuant to the appeals procedures in the rules of the State Board of Education.

Authority: T.C.A. § 49-1-302

0520-01-11-.06 ~~USE~~ USE OF FUNDS.

- (1) Account Holders shall agree to use the funds deposited in the IEA for any, or any combination of, the following expenses:
- (a) Tuition or fees at a participating school;
 - (b) Textbooks required by a participating school;
 - (c) Tutoring services provided by an individual tutor that meets the requirements set by the Department and the State Board of Education, which may include but not be limited to er a tutoring organization accredited by one (1) of the following: any accreditation division of AdvancED (the North Central Association Commission on Accreditation and School Improvement (NCA CASI), the Northwest Accreditation Commission (NWAC), and the Southern Association of Colleges and Schools Council on Accreditation and School Improvement (SACS CASI)), the Middle States Association of Colleges and Schools (MSA), the New England Association of Schools and Colleges (NEASC), the Western Association of Schools and Colleges (WASC), or the Council on Occupational Education (COE);
 - (d) Payment for purchase of curriculum, defined as instructional educational materials for an academic -complete-course of study for a particular content-area or grade level, including any supplemental materials required by the curriculum;
 - (e) Fees for transportation paid to a fee-for-service transportation provider. Transportation fees can only be used for transportation to participating schools and providers (including approved tutors and therapists);
 - (f) Tuition or fees for a nonpublic online learning program or course that meets the requirements set by the Department~~provided by a Category III nonpublic school pursuant to the rules of the State Board of Education Chapter 0520-07-02;~~
 - (g) Fees for nationally standardized norm-referenced achievement tests, Advanced Placement examinations, or any examinations related to college or university admission;

- (h) Contributions to a Coverdell education savings account established under 26 U.S.C. § 530 for the benefit of the participating student;
- (i) Educational therapies or services for participating students ~~from a licensed or accredited practitioner or provider~~ provided by a therapist who meets the qualifications set by the Department and the State Board of Education;
- (j) Services provided under a contract with a public school, including individual classes and extracurricular programs;
- (k) Tuition or fees at an eligible postsecondary institution. ~~Eligible postsecondary institutions include Tennessee public community colleges, colleges of applied technology, or universities of the University of Tennessee system or locally governed state universities within the Tennessee Board of Regents systems~~ community colleges, colleges of applied technology, or universities of the University of Tennessee system or the Tennessee Board of Regents system, Tennessee public postsecondary institutions, or private postsecondary institutions accredited by one (1) of the following: any accreditation division of AdvancED (the North Central Association Commission on Accreditation and School Improvement (NCA CASI), the Northwest Accreditation Commission (NWAC), and the Southern Association of Colleges and Schools Council on Accreditation and School Improvement (SACS CASI)), the Middle States Association of Colleges and Schools (MSA), the New England Association of Schools and Colleges (NEASC), the Western Association of Schools and Colleges (WASC), or the Council on Occupational Education (COE).
- (l) Textbooks required for courses at an eligible postsecondary institution;
- (m) Fees for the management of the IEA by private financial management firms;
- (n) Computer hardware and technological devices approved by the Department or a licensed treating physician, if the computer hardware is used for the student's educational needs and is a required device for communication or physical access to instruction due to the adverse impact of the disability for which the student qualifies to receive an IEA or allows a student to access instruction or instructional content. Before purchasing computer hardware or technological devices using IEA funds, Account Holders must receive notification of pre-approval from the Department. An account holder- Account Holder may request pre-approval for computer hardware and technological devices by:
 1. Completing and submitting the Department's pre-approval form; or
 2. Submitting the Physician's pre-approval form completed by a licensed treating physician.
- (o) Contributions to an Achieving a Better Life Experience (ABLE) account, for the benefit of a participating student; provided, that the funds are used only for the student's education expenses subject to the rules established by the ABLE Program and that the student meets the qualifications to participate in the ABLE Program pursuant to the ABLE Act, and § 529A of the Internal Revenue Code of 1986 (26 U.S.C. § 529A), as amended, and all rules, regulations, notices, and interpretations released by the United States department of treasury, including the internal revenue service.

- (2) ~~Account H~~holders shall obtain pre-approval for educational therapies, ~~and/or-tutoring services, and~~ any other expenses identified by the Department. ~~that the Department requires pre-approval for.~~ If pre-approval is not obtained, the expense will be deemed an unapproved expenditure. An account holder- Account Holder may request pre-approval by completing and submitting the Department's pre-approval form.

Authority: T.C.A. § 49-1-302

0520-01-11-07 ~~MONITORING~~ MONITORING AND COMPLIANCE.

- (1) The Department shall conduct fiscal and program compliance reviews of all IEAs pursuant to procedures developed by the Department for this purpose. ~~The Department shall conduct random reviews as determined appropriate pursuant to procedures established by the Department for this purpose.~~
- (2) The Department shall conduct an annual review of all IEAs.
- (3) The Department shall establish or contract for the establishment of an online anonymous fraud reporting service and an anonymous telephone hotline for reporting fraud. Individuals may notify the Department of any alleged violation by an account holder, nonpublic school, school district, or participating school(s), or participating provider(s) of state laws, rules, or procedures relating to the program the Program participation. The Department shall conduct an inquiry of any written report of fraud, or make a referral to the appropriate agency for an investigation.
- (4) ~~The Department may terminate a participating school/ participating provider or participating student/ parent from participation in the program upon finding that a participating school/ provider or student/ parent has failed to comply with the provisions of the Act, rules, or procedures. The Department may prohibit a provider from receiving IEA funds in the future upon finding that a participating school or student/ parent has failed to comply with the provisions of the Act, rules, or procedures. A participating school/ participating provider or participating student/ parent may appeal the Department's decision pursuant to the appeals procedures in the rules of the State Board of Education.~~
- (5) ~~Notice of termination shall be provided to participating schools and participating student/ parent electronically and via first-class USPS mail.~~

Authority: T.C.A. § 49-1-302

0520-01-11-08 ~~PARTICIPATING~~ PARTICIPATING SCHOOLS, AND PROVIDERS.

- (1) For the purposes of the IEA Program, a participating nonpublic school is considered to have an inclusive educational setting if the following two (2) criteria are met:

- (a) Students with disabilities are educated with non-disabled children; and
 - (b) No more than fifty (50) percent (%) of the students in an individual classroom or setting are students with disabilities.
- (2) Nonpublic schools interested in enrolling students receiving IEAs shall submit an application to the Department by the deadline set by the Department.
- (a) The Department shall determine the application process for nonpublic schools to participate in ~~the program~~ the Program. The Department shall create a standard application which shall include, at a minimum, the eligibility requirements set forth in the Act and these rules, and may also include additional eligibility requirements set by the Department.
 - (b) The Department shall review the application and notify the school as to whether the school meets the requirements to enroll students receiving IEAs.
 - (c) If the Department determines that a school is eligible to enroll students receiving IEAs, the Department shall list the school on the Department's website.
- (3) Participating schools shall include in their initial application to participate in ~~the IEA program~~ IEA Program and in their annual renewal application the maximum number of students receiving IEAs the school has the capacity to enroll.
- (a) Participating schools must demonstrate financial viability to repay any funds that may be owed to the state by filing with the Department with the application, ~~prior to the start of each school year~~, financial information verifying the school has the ability to pay an aggregate amount equal to the amount of the scholarships ~~IEA funds~~ expected to be paid during the school year ~~set by the Department~~. The school may comply with this requirement by filing a surety bond payable to the state from a surety, and in an amount determined by the Department.
 - (b) Participating schools shall provide to the Department all required ~~for a student's participation~~ documentation, including the school calendar and the nonpublic school's and student's fee schedules.
- (4) Participating schools ~~and participating providers~~ shall:
- (a) Be academically accountable to the ~~account holder~~ Account Holder for meeting the educational needs of the student by:
 1. At a minimum, annually providing to the ~~account holder~~ Account Holder a written explanation of the student's progress; and
 2. Cooperating with the parent of a student enrolled in the IEA ~~P~~Program, or a student enrolled in the ~~IEA program~~ IEA Program who has attained the age of majority, who chooses for the student to participate in the statewide assessments.
 - (b) Comply with all health and safety laws or codes that apply to nonpublic schools and the profession of the participating provider;

- (c) Certify that they shall not discriminate against students or applicants on the basis of race, color, or national origin;
 - (d) Conduct criminal background checks on employees;
 - (e) Exclude from employment any person not permitted by state law to work in a nonpublic school or as a participating provider; and
 - (f) Exclude from employment any person who might reasonably pose a threat to the safety of students.
- (5) The funds in an IEA may be used only for educational purposes. Participating schools, postsecondary institutions, and education providers that enroll participating students shall provide ~~account holders~~ Account Holders with a receipt for all qualifying expenses.
- (6) Participating schools shall verify each student's continued enrollment and attendance by following the procedures posted on the Department's website ~~and by the deadline set by the Department~~. The Department may suspend or remove a school from participating in the ~~IEA program~~ IEA Program if the school fails to verify a student's continued enrollment and attendance. A participating school ~~or participating provider~~ may appeal the Department's decision pursuant to the appeals procedures in the rules of the State Board of Education.
- ~~(6)(7)~~ Participating schools shall annually submit to the Department the graduation and completion information of participating students ~~by following the in accordance with procedures posted on the Department's website and by the deadline set by the Department. The Department may suspend or remove a school from participating in the IEA program if the school fails to submit the graduation and completion information of participating students. A participating school may appeal the Department's decision pursuant to the appeals procedures in the rules of the State Board of Education.~~
- ~~(7)(8)~~ Annually, participating schools shall submit a notice to the Department if they intend to continue participating in ~~the program~~ the Program by following the procedures developed by the Department.
- ~~(8)(9)~~ The Department may require participating schools to submit to the Department a financial audit of the school conducted by a certified public accountant. Such audit shall include a statement that the report is free of material misstatements and fairly represents the participating school's maximum total tuition and fees. Any funds determined by the Department to be expended in a manner inconsistent with this part shall be returned to the state.
- ~~(9)(10)~~ The Department may suspend or terminate a participating school ~~or participating provider~~ from participating in ~~the program~~ the Program if the Department determines the school ~~or provider~~ has failed to comply with the requirements of the Act, these rules, and/or the procedures set by the Department.
- (a) If the Department suspends or terminates a school's ~~or provider's~~ participation, the Department shall notify affected participating students ~~and/or their parent of the~~ the Account Holder of the decision. If a participating school ~~or provider~~ is suspended or if a participating school ~~or provider~~ withdraws from ~~the program~~ the Program, affected participating students remain eligible to participate in ~~the program~~ the Program.

- (b) A participating school or ~~participating provider~~ may appeal the Department's decision pursuant to the appeals procedures in the Rules of the State Board of Education.

~~(10)~~(11) If a student withdraws from a participating school and transfers to another participating nonpublic school or returns to the LEA, the participating school shall refund the tuition and fees on a prorated basis based on the number of days the student was enrolled in the school. If the student transfers to another participating nonpublic school, the funds shall be returned to the student's IEA. If the student returns to the LEA, the funds from the IEA shall be returned to the state treasurer to be placed in the basic education program (BEP) account of the education trust fund of 1992 under §§ 49-3-357 and 49-3-358.

~~(11)~~(12) Third parties are prohibited from sending IEAs to collections in order to settle unpaid debts. All contracts entered into are the responsibility of the private parties involved.

Authority: T.C.A. §§ ~~49~~ 49-1-302 and 49-10-1405

0520-01-11-.09 ~~RETURN~~ RETURN TO LOCAL EDUCATION AGENCY.

- (1) A participating student may return to the LEA ~~in which the student resides and the school which the student is zoned to attend~~ upon termination of the student's participation in ~~the program~~ the Program.
- (2) If the student transfers from a nonpublic school and enrolls in the LEA ~~for which the student is zoned to attend~~, the parent or student shall notify the Department and the LEA in which the student resides, by following the procedures and timeline set by the Department.
- (3) Upon termination of a student's participation in the program ~~the Program~~, a student's return to the LEA, the Department shall close the participating student's IEA. Upon a student's withdrawal from the nonpublic school, participating schools and providers shall send all educational records of the participating student to the LEA or other nonpublic school identified by the parent.
- (4) The LEA shall enroll the student and provide instruction in the general education curriculum.
- (5) If the parent or student who has attained the age of majority requests, in writing, an evaluation for eligibility pursuant to the Individuals with Disabilities Education Act, the LEA shall treat the request as a request for an initial evaluation under 34 C.F.R. § 300.301.

Authority: T.C.A. §§ ~~49~~ 49-1-302 and 49-10-1403

0520-01-11-.10 ~~APPEAL~~ APPEAL PROCEDURES.

- (1) Participating schools and providers may appeal the denial, suspension, or termination of the entity's participation in the ~~IEA program~~, IEA Program and a parent or student who has attained the age of majority may appeal a denial of determination of eligibility, ~~preauthorization request~~, a denial of an expense paid for using IEA funds, or removal of the student from the ~~IEA program~~ IEA Program pursuant to the following two (2) step appeal process:
 - (a) Step one (1): ~~The appeal should~~ shall be on the form provided by the Department and should shall be submitted to the commissioner of education within ten (10) business days

of receipt of the notice of application denial, suspension, termination, and/or removal. Notice of application denial, suspension, termination, and/or removal shall be provided electronically and via first-class USPS mail and be deemed received three (3) business days after the date of postmark. The appeal shall be reviewed by the commissioner of education, or the commissioner's designee, and a decision shall be issued within forty-five (45) calendar days. ~~The commissioner of education, or the commissioner's designee shall review the appeal within thirty (30) calendar days. The commissioner's decision shall be rendered within ten (10) business days of the date of the review.~~

- (b) Step two (2): ~~The account holder~~ Account Holder or participating school shall be notified of the commissioner's decision ~~for~~ in the step one (1) appeal electronically and via first-class USPS. Such notice shall be deemed received three (3) business days after the date of postmark. An appeal of the commissioner's decision in step one (1) shall be filed with the commissioner by the ~~account holder~~ Account Holder or participating school within thirty calendar (30) days and shall conform to the Uniform Administrative Procedures Act (T.C.A. Title 4, Chapter 5).

Authority: T.C.A. § 49-1-302

0520-01-11-.11 -CONFLICT OF INTEREST.

- (1) Use of IEA funds must be for the sole benefit of the participating student for which the IEA is established. Any services, resources, and/or equipment purchased using IEA funds shall only be used by the participating student whose IEA paid for said services, resources, and/or equipment.
- (a) It is a conflict of interest and is considered a misuse of IEA funds against ~~IEA program~~ IEA Program rules and procedures for a family member of a participating student, including step parent, or member of an eligible student's household to derive any financial benefit from the ~~IEA program~~ IEA Program
- (b) It is also a conflict of interest and against ~~IEA program~~ IEA Program rules and procedures for a family member of a participating student, including a step parent, or a member of a participating student's household to provide a professional recommendation or approval for a service or the use of computer hardware or other technological device for the participating student.

Authority: T.C.A. § 49-1-302

501 WEST CHURCH AVENUE
KNOXVILLE, TN 37902
TELEPHONE 865-523-2300 • FAX 8655256532

HARTGROVE, LILLIAN

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TN 37902
UNITED STATES OF AMERICA

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Rate Plan:
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Confirmation Number: 3382954747

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10/18/2017	5262013	MARBLE CITY KITCHEN	\$30.13
10/18/2017	5262366	VALET PARKING	\$20.00
10/18/2017	5262366	STATE TAX MISC	\$1.85
10/19/2017	5263452	VALET PARKING	\$20.00
10/19/2017	5263452	STATE TAX MISC	\$1.85
10/20/2017	5263865	MC *8870	(\$73.83)
		BALANCE	\$0.00

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

Board Member	Aye	No	Abstain	Absent	Signature (if required)
Bawcum	X				
Chancey	X				
Cobbins	X				
Edwards	X				
Ferguson	X				
Hartgrove	X				
Kim	X				
Wiseman	X				
Rolston	X				
Tucker	X				

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the Tennessee State Board of Education on 10/20/2017, and is in compliance with the provisions of T.C.A. § 4-5-222.

I further certify the following:

Notice of Rulemaking Hearing filed with the Department of State on: 07/28/2017

Rulemaking Hearing(s) Conducted on: (add more dates). 09/28/2017

Date: 11/9/17

Signature: [Handwritten Signature]

Name of Officer: Elizabeth Taylor

Title of Officer: General Counsel

Subscribed and sworn to before me on: 11/9/17

Notary Public Signature: [Handwritten Signature]

My commission expires on: 3-8-21



Agency/Board/Commission: Tennessee State Board of Education

Rule Chapter Number(s): 0520-01-11 Individual Education Accounts

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
12/15/2017 Date

Department of State Use Only

Filed with the Department of State on: 12/21/17

Effective on: 3/21/18


Tre Hargett
Secretary of State

RECEIVED
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SECRETARY OF STATE
SIGNATURES

G.O.C. STAFF RULE ABSTRACT

DEPARTMENT: State Board of Education

DIVISION:

SUBJECT: Educator Licensure

STATUTORY AUTHORITY: Tennessee Code Annotated, Sections 49-1-302(a)(5)(A), 49-5-108, and 49-5-210

EFFECTIVE DATES: March 5, 2018 through June 30, 2018

FISCAL IMPACT: There will be no substantial fiscal impact to state or local governments as a result of these revisions.

STAFF RULE ABSTRACT: Rule 0520-02-03-.09 governs the process of the State Board of Education issuing formal reprimands of educators as well as the denial, suspension, and revocation of educator licenses for certain instances of misconduct. This item amends the prior Educator Licensure Rule 0520-02-03-.09 to include a clearly defined discipline schedule that imposes a specified range of discipline for the enumerated offenses. These revisions also define and explain the types of offenses for which educators may be disciplined. By doing so, both the State Board and those persons holding educator licenses will have a clear understanding and expectation of the discipline imposed for educator indiscretions.

Public Hearing Comments

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

Please see attached document.

Regulatory Flexibility Addendum

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

This rule does not affect small businesses.

Impact on Local Governments

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

This rule will not impact local governments.

Additional Information Required by Joint Government Operations Committee

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

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

Rule 0520-02-03-.09 governs the process of the State Board of Education issuing formal reprimands of educators as well as the denial, suspension, and revocation of educator licenses for certain instances of misconduct. This item amends the prior Educator Licensure Rule 0520-02-03-.09 to include a clearly defined discipline schedule that imposes a specified range of discipline for the enumerated offenses. These revisions also define and explain the types of offenses for which educators may be disciplined. By doing so, both the State Board and those persons holding educator licenses will have a clear understanding and expectation of the discipline imposed for educator indiscretions.

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

T.C.A. § 49-5-108 vests complete jurisdiction over the issuance and administration of licenses for supervisors, principals, and public school teachers in the State Board of Education (State Board). Moreover, the State Board has the duty and the power to adopt policies governing the qualifications, requirements, and standards of and provide the licenses and certificates for all public school teachers, principals, assistant principals, supervisors and directors of schools and to adopt policies governing the revocation of licenses and certificates for misconduct. T.C.A. § 49-1-302(a)(5)(A).
T.C.A. § 4-5-210 mandates that rules related to guides of practice that must be complied with in order to maintain a person's license, certification, or registration in order to practice a profession shall be promulgated in accordance with the Uniform Administrative Procedures Act.

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

This rule most directly affects educators and local boards of education. The State Board sought feedback from stakeholders including the Tennessee Education Association (TEA), Tennessee Organization of School Superintendents (TOSS), and the Tennessee Association of School Personnel Administrators (TASPA). TEA provided feedback some of which was incorporated in the rule revisions. The other organizations did not provide feedback. TEA urges rejection of this rule. The State Board urges adoption of this rule and has not received any objection from the other stakeholders consulted.

- (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;

There will be no substantial fiscal impact to state or local governments as a result of these revisions.

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

Elizabeth Taylor
Elizabeth.Taylor@tn.gov

Nathan James
Nathan.James@tn.gov

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

Elizabeth Taylor
Elizabeth.Taylor@tn.gov

Nathan James
Nathan.James@tn.gov

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

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

N/A

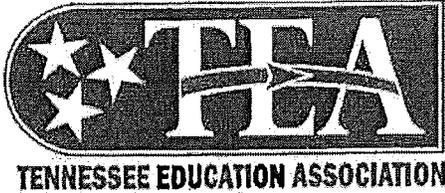


**0520-02-03-.09 DENIAL, FORMAL REPRIMAND, SUSPENSION, AND REVOCATION
PUBLIC COMMENT RESPONSES**

On September 19, 2017, the State Board of Education held a rulemaking hearing for Emergency Rule 0520-02-03-.09. Two speakers made public comments.

The first speaker asked for clarification regarding who was to make the finding that the educator committed one of the offenses listed in the rule. The State Board responded that the State Board would make the finding that the educator has committed one of the prohibited acts based on the report from the school district or other source.

The second speaker presented on behalf of the Tennessee Educator Association (TEA) and summarized written feedback that was provided to the board and that is attached to this document. The State Board responded to these comments in writing, which is also attached to this document. TEA submitted follow-up comments which are also attached.



To: Tennessee State Board of Education
From: Tennessee Education Association
Date: September 19, 2017
Re: Rulemaking Hearing

I. The State Board of Education (State Board) lacks statutory authority to promulgate rules concerning the suspension or formal reprimand of license holders.

The authority cited by the State Board for the promulgation of its proposed rule is Tenn. Code Ann. § 49-1-302. That statute provides the State Board with the duty and power to adopt policies governing the revocation of licenses and certificates for misconduct. See Tenn. Code Ann. § 49-1-302(a)(5)(A)(iv). The cited statute does not, however, empower the State Board to promulgate rules regarding the suspension or formal reprimand of educator licenses. The authority cited by the State Board is simply inadequate to promulgate this rule.

II. The definitions under the proposed rules are overbroad, confusing, illogical, unfair, and overly punitive.

1. Definition of "Conviction" (Proposed Rule 0520-02-03-.09(1)(a) & -.09(4))

Tenn. Code Ann. § 49-5-417 authorizes the State Board to revoke educator licenses without the right to a hearing if the State Board receives a certified copy of a criminal record showing that the educator has been "convicted" of any of the following offenses: statutory rape by an authority figure; knowingly manufacturing, delivering, selling, or possessing a controlled substance with intent to manufacture, deliver, or sell; and various serious felonies, such as murder, kidnapping, especially aggravated robbery, rape, aggravated arson, and aggravated child abuse.

The proposed rule exceeds the statutory mandate of § 49-5-417 as it expands the definition of "conviction" and expands the list of offenses that will result in an automatic revocation without a right to a hearing. See Proposed Rule 0520-02-03-.09(4)(a). As a result, the proposed rule serves to unlawfully deny educators their statutory right to a contested-case hearing under the Uniform Administrative Procedures Act (UAPA) for the "conviction" of offenses that are not specifically listed in § 49-5-417.

In 2014 the Tennessee Supreme Court held that in its legal sense, the word "conviction" requires a formal adjudication by a court *and* the entry of a judgment of conviction. *Rodriguez v. State*, 437 S.W.3d 450 (Tenn. 2014). Notwithstanding the limit of the State Board's authority and the definition of the word "conviction," the State Board is nonetheless attempting to promulgate a rule

automatically revoke an educator's license without the right to a hearing when that educator is granted pretrial or judicial diversion. Under Tennessee law, however, pretrial and judicial diversions are not "convictions" because they are not accompanied by a formal adjudication and the entry of a judgment of conviction. See *Pizzillo v. Pizzillo*, 884 S.W.2d 749, 753 (Tenn. Ct. App. 1994), *State v. Poplar*, 612 S.W.2d 498, 500 (Tenn. Crim. Ct. App. 1980), *Rodriguez*, 437 S.W.3d at 456.

All of the offenses currently listed in § 49-5-417, including statutory rape by an authority figure, are felonies and are not eligible for pretrial diversion. Other than a few certain drug offenses, none of the other felonies are even eligible for judicial diversion.

To be clear, other than the specific crimes listed in Tenn. Code Ann. § 49-5-417, an educator has an absolute right to a hearing under the UAPA that cannot be abrogated by state rule. See Tenn. Code Ann. §§ 4-5-101 *et seq.* As such, the State Board has exceeded the authority given to it by the General Assembly.

2. Definition of "Inappropriate Communications (Explicit)" (Proposed Rule 0520-02-03-.09(1)(c))

Under this proposed rule, an educator who engages in "inappropriate communications" of an explicit nature with a student is subject to permanent revocation of his or her license. As defined, "inappropriate communications (explicit)" means "any communication between an educator and a student that describes, represents, or alludes to sexual activity or any other illicit activity." 0520-02-03-.09(1)(c). The Merriam-Webster definition of "illicit" is "not permitted," "unlawful." This language is too broad and is likely to be confusing to teachers. For example, a health teacher or a biology teacher, in the course of his or her teaching duties, is likely to teach curriculum that refers to the sexual activity of plants or animals. Another example is a school counselor who is approached by a student regarding pregnancy, unwanted sexual advances, etc. Similarly, a history teacher or an English teacher is likely to be required to teach curriculum that refers to illegal or illicit activities of historical figures or of governments. More significantly, anyone who teaches the family-life curriculum (Tenn. Code Ann. §§ 49-6-1301 *et seq.*) will be discussing such topics as abstinence, gateway sexual activity, sexual activity, sexual contact, sexual intercourse, and sexually transmitted diseases.

The definition of "inappropriate communications (explicit)" is too broad and overreaching, as it can capture all of the above examples. It disregards the educator's role in addressing student concerns and behavior that are present in all of our public schools and could prohibit educators from discussing reports of abuse, which is inconsistent with the mandatory reporting requirements under Tennessee law. See Tenn. Code Ann. §§ 39-1-403 & -605.

If an educator's license can be permanently revoked, then the State Board must clearly describe and define the conduct that will result in such an action. As written, the proposed definition of "inappropriate communication (explicit)" is vague and overbroad and fails to put educators on notice as to what specific conduct will subject them to a licensure action.

3. Definition of "Inappropriate Physical Contact" (Proposed Rule 0520-02-03-.09(1)(c))

“Inappropriate physical contact” is defined as “unnecessary and unjustified physical contact with a student. Examples of such unnecessary and unjustified physical contact include sexual contact, physical altercations, horseplay, tickling, improper use of corporal punishment, and rough housing.” 0520-02-03-.09(1)(e). Under the proposed rule an educator who engages in inappropriate physical contact can receive a two-year suspension of his or her license.

The term “unnecessary and unjustified” is too nebulous. For example, what about a high-school teacher who intervenes during a student fight that results in one of the students falling and being injured? Was her intervention an unnecessary and unjustified physical contact? How could she know that in advance of the emergent situation? What about a coach that models a wrestling hold? Is such an activity unnecessary and unjustified? Is it unnecessary and unjustified for a teacher to grab a student who is running in front of a bus? This proposed rule potentially places students in dangerous situations because it serves to confuse teachers as to what they can and should do in various student-teacher interactions.

Also, the term “corporal punishment” is something that is determined at the local level. Local policies regarding corporal punishment vary among LEAs statewide. What is appropriate in one LEA might be inappropriate in another despite the fact that educators may administer corporal punishment in exactly the same way. The proposed rule is overbroad, confusing, and represents a lack of appreciation or knowledge of the reality of the daily interaction that teachers have with students.

4. Definition of “Official School Business” (Proposed Rule 0520-02-03-.09(1)(j))

“Official school business” is defined as “*any activity* undertaken by an educator in an official capacity and in connection with the educator’s employment.” 0520-02-03-.09(1)(j). This term is used under 0520-02-03-.09(3)(c) where the State Board can suspend or revoke an educator’s license for being on “official school business” while consuming alcohol. This language is so broad that an educator’s license could be suspended or revoked because that educator consumed alcohol during an evening social event at an out-of-state conference. It can also include an educator drinking a glass of wine at home while that educator is grading papers. Both are examples of activities undertaken by educators in an official capacity and in connection with their employment.

III. Substantive problems with the proposed rule make it overbroad, confusing, illogical, unfair, and overly punitive.

1. “Unprofessionalism” (Proposed Rule 0520-02-03-.09(4)(c)5.(i) & (iv))

Under the proposed rule a teacher who is found to have administered “inappropriate disciplinary measures” to a student is subject to a disciplinary action within the range of a one-year suspension up to and including permanent revocation. The term “inappropriate disciplinary measures,” however, is not defined and is not found anywhere else in the rule. How does “inappropriate disciplinary measures” differ from “inappropriate physical contact,” which is defined at 0520-02-03-.09(1)(e) and includes “improper use of corporal punishment”? Would “write offs” be considered

an “inappropriate disciplinary measure”? The bottom line is that educators are left to speculate as to what the State Board means by “inappropriate disciplinary measures.”

Similarly, a teacher who is found to have “inappropriately used school property” will be subject to a disciplinary action within the range of a suspension for no less than three months up to and including revocation. “School property” is defined so broadly, however, that an improper use of school property could include an educator checking his or her personal e-mail account on a school computer. Without any examples of what is meant by “inappropriately used school property,” educators are left to speculate as to the specific conduct that will result in a licensure action.

2. “Testing Breaches” (Proposed Rule 0520-02-03-.09(1)(g) & (h) and -.09(4)(c)4.(i) & (ii))

The proposed rule defines the difference between major- and minor-testing breaches. The only difference being that a major breach is one that results in test-score nullification, while a minor breach does not. The rule then provides that an individual who is found to have committed a minor-testing breach shall be subject to disciplinary action within the range of a letter of reprimand up to and including a one-year suspension. A major-testing breach, however, will subject a teacher to a one-year suspension up to and including revocation.

What if the breach was the result of an innocent mistake? What if the breach was the result of incorrect information shared by a testing coordinator or the result of a situation that was not addressed in training? Even if the breach did cause the nullification of scores, the penalty for an innocent mistake or for relying on incorrect information is simply unfair.

3. Violation of Teacher Code of Ethics (Proposed Rule 0520-02-03-.09(4)(c)8.)

Under the proposed rule an educator who is found to have violated the teacher code of ethics is subject to a disciplinary action falling within the range of a one-year suspension up to and including revocation. Under Tennessee law, however, a violation of the teacher code of ethics does not necessarily even arise to unprofessional conduct unless the violation is one that is adjudged to make the educator “obnoxious as a member of the profession.” See Tenn. Code Ann. § 49-5-501(3)(D). Thus, while a teacher who violates the teacher code of ethics may not be subject to any disciplinary action at his or her place of employment, the State Board would subject that same teacher to at least a one-year suspension of that educator’s license. What standards or circumstances will the State Board use to determine which teachers will have their license suspended and those whose license will be revoked? It seems overly severe to take an action against an educator’s license for violating the teacher code of ethics in such an insignificant manner that it would not have resulted in any workplace discipline.

4. “Similar Offenses” (Proposed Rule 0520-02-03-.09(4)(d))

The State Board is proposing language whereby “actions related or similar to the above-enumerated offenses shall carry recommended disciplinary action commensurate with the range established for the similar offense.” What are “the above-enumerated offenses”? Are they the offenses in the Tennessee Code Annotated? Or are they any of the offenses listed in the proposed rule? Given that many of the “above-enumerated offenses” are vague, overbroad, undefined, or ambiguous, educators

will not have notice of what conduct is specifically prohibited by the State Board's rule and what conduct may be related or similar to that conduct.

IV. The proposed rule uses inconsistent terms and language, ambiguous language, and undefined terms.

Some of the most glaring examples of the State Board's proposed rule using inconsistent terms and language, ambiguous language, and undefined terms are found under 0520-02-03-.09(4). For example: Under Rule 0520-02-03-.09(4)(c)2.(i)–(iv), the term “illicit substances” is used; but the term “illegal drugs” is used under 0520-02-03-.09(3)(b) and (c). Also, the disciplinary range under 0520-02-03-.09(4)(c)2.(i) & (ii) for an educator using or possessing alcohol or illicit substances while on school premises or property is the same regardless of whether children are present. Also, “children” is used instead of “students” in 0520-02-03-.09(4)(c)2.(i)–(iv). Is the State Board trying to make a distinction between “children” and “students”?

Further, 0520-02-03-.09(4)(c)2.(i)–(iv) uses the term “using” regarding alcohol or illicit substances, whereas 0520-02-03-.09(3)(c) uses the terms “possessing” and “consuming.” How will this be applied to chemistry teachers who may be “using” alcohol during a science experiment? “Consuming” and “using” have different meanings. The inconsistent use of these terms makes the proposed rule vague and confusing.

In addition, 0520-02-03-.09(4)(c)2.(iii) & (iv) provide for disciplinary ranges for those educators participating in a “school related activity.” A “school related activity” is defined as “any activity *in which a student participates*, including but not limited to classes, meetings, extracurricular activities, clubs, athletics, and field trips, sponsored by the school, state educational agency, or local educational agency.” Rule 0520-02-03-.09(1)(o) (emphasis added). Yet 0520-02-03-.09(4)(c)2.(iii) & (iv) make a distinction between those participating in a “school related activity” *with children present* and a “school related activity” *without children present*. How can an educator participate in a “school related activity” without children present? And is there a distinction being made between “children” and “students”?

The definition of “other good cause” includes the “failure to report *licensure actions* under parts (3) or (4).” 0520-02-03-.09(1)(k). Whose duty is it to report “licensure actions”? Licensure actions are under the purview of the State Board. Directors of schools are to report suspensions, dismissals, and resignations of educators. It can only be assumed, then, that the State Board means the failure of a director of schools or his or her designee to report as required by paragraph (2). Also, if the director's designee fails to report, who is subject to a licensure action? The designee or the director? Is there a disciplinary range for a director or his or her designee when he or she fails to report or fails to submit a report within 30 days of an educator's suspension, dismissal, or resignation?

Rule 0520-02-03-.09(4)(c)3.(i) & (ii) provide disciplinary ranges for an educator who is “found to be negligent in his or her *commission of duties*.” Nothing in the proposed rule, however, explains what “commission of duties” means. The duties of teachers are provided by Tenn. Code Ann. § 49-5-201(a)(1)–(12). Are these the “commission of duties” that the State Board is referring to? Or is it trying to reach something beyond those duties? Further, 0520-02-03-.09(4)(c)3.(i) & (ii)

differentiate between being negligent in the commission of duties that results in “harm” and being negligent in the commission of duties that does not result in “harm” to a child. But “harm” is not defined. So what kind of “harm” is the State Board referring to and how will it determine that “harm” has resulted from the educator being negligent in the commission of his or her duties?

“Inappropriate physical contact with harm” is defined as contact “that results in physical or mental harm or the potential of physical or mental harm to a student.” 0520-02-03-.09(1)(f). But nowhere in the State Board’s proposed rule does it define “physical or mental harm.” Nor does the proposed rule provide what is meant by “the *potential* of physical or mental harm to a student.” Will the statutory definitions of “child abuse and neglect” and “child sexual abuse” be used? Or will there be a lesser standard? No matter what definitions and standards are used, the State Board needs to provide clear definitions and standards in its proposed rule so that educators understand them.

Under 0520-02-03-.09(4)(g), the State Board also proposes that it can impose a disciplinary action outside of the uniform discipline range “upon good cause shown in extraordinary circumstances.” But nothing in the proposed rule defines what is meant by “good cause shown in extraordinary circumstances.” Without describing what this means, the State Board can subjectively determine when it can deviate from the uniform discipline range. Moreover, how will the State Board inform the educator that it found good cause in an extraordinary circumstance allowing it to deviate from the uniform discipline range?

V. The separate parts of the proposed rule are not properly referenced.

Although the structure of the State Board’s proposed rule meets the rule structure found under Tenn. Comp. R. & Regs. 1360-01-02-.03(4), the proposed rule is inconsistent with how the separate parts should be referenced within the rule. “Rules shall be organized, numbered *and referenced* according to the following outline form:

(1) Paragraph

(a) subparagraph

1. part

(i) subpart

(1) item

I. subitem

A. section

(A) subsection.”

Tenn. Comp. R. & Regs. 1360-01-02-.03(4) (emphasis added). Here is a list of where the parts of the rule are not properly referenced:

- Subparagraph (1)(f): It should be “as described in *subparagraph (e)*,” not “*subsection (e)*.”
- Subparagraph (1)(k): It should be “failure to report . . . under *paragraph (2)*,” not “*parts (3) or (4)*.”
- Paragraph (2), Notification of Office of Educator Licensing: It should be “under *paragraph (3) or (4)*,” not “under *parts (3) or (4)*.”
- Subparagraph (3)(g): It should be “*subparagraph (1)(k)*,” not “*section (1)(k)*.”
- Subparagraph (3)(h): It should be “*paragraph (4)*,” not “*part (4)*.”
- Subparagraph (4)(e): It should be “Nothing in the *rule*,” not “Nothing in this *part*.”
- Part (5)(a)1.: It should be “under *paragraph (3) or (4)* of this rule,” not “under *parts (3) or (4)* of this rule.”
- Part (5)(b)1.: It should be “under *paragraph (3) or (4)* of this rule,” not “under *parts (3) or (4)* of this rule.”
- Part (5)(b)2.: It should be “under *paragraph (3) or (4)* of this rule,” not “under *parts (3) or (4)* of this rule.”
- Part (5)(b)3.: It should be “nothing in this *rule*,” not “nothing in this *section*.”
- Paragraph (8): It should be “*paragraph (3) or (4)* of this rule,” not “*parts (3) or (4)* of this rule.”

Elizabeth Taylor

From: Russell Dyer <rdyer@clevelandschools.org>
Sent: Wednesday, August 30, 2017 8:13 AM
To: Elizabeth Taylor
Subject: Rulemaking Hearing - Denial, etc.

Ms. Taylor,

I am writing in support of the rules put in place by the state board concerning denial, formal reprimand, suspension, and revocation of teacher licenses in our state. For too long, the process has been ambiguous and hard to understand in our state. I've worked as a Human Resources Supervisor for a number of years in Shelby County and then as Chief of Staff for Collierville Schools before my current position as Superintendent in Cleveland. In each of those jobs issues have developed and we spent hours and days figuring out if the situation should or should not be reported. I especially like the rubric found on page 8.

I will try to attend in person for the hearing on September 19, but either way I look forward to seeing where this goes,

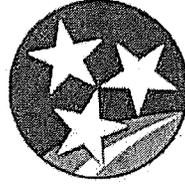
Thank you,
Russell

—
Dr. Russell Dyer, Director of Schools
Cleveland City Schools
4300 Mouse Creek Rd. NW
423-472-9571

Twitter - @drrusselldyer

Our *mission* is to educate and equip students with the academic, social, and emotional skills necessary to be successful and productive

Our *vision* is to inspire and educate thriving and confident students who become exceptional life learners and contributing citizens in their community.



TENNESSEE
STATE BOARD OF EDUCATION

TO: Tennessee Education Association (TEA)

FROM: Tennessee State Board of Education

DATE: October 5, 2017

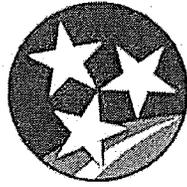
RE: Rulemaking Hearing Responses

I. The Tennessee State Board of Education's authority to promulgate rules concerning the suspension and formal reprimand of license holders.

T.C.A. § 49-5-108 vests *complete jurisdiction* over the issuance and administration of licenses for supervisors, principals, and public school teachers in the State Board of Education (State Board). Moreover, the State Board has the duty and the power to adopt policies governing the qualifications, requirements, and standards of and provide the licenses and certificates for all public school teachers, principals, assistant principals, supervisors and directors of schools and to adopt policies governing the revocation of licenses and certificates for misconduct. T.C.A. § 49-1-302(a)(5)(A). In promulgating rule 0520-02-03-.09, the State Board has exercised its statutory jurisdiction over the issuance and administration of educator licenses and its duty and power to set the qualifications, requirements, and standards for maintaining an educator license and to revoke licenses and certificates for misconduct.

II. Definitions

1. Conviction – The State Board has amended the definition to align with the definition contained in T.C.A. § 40-39-202.
2. Inappropriate Communications Explicit – The State Board has added language to clarify its intent that communication regarding sexual activity or illicit activity for educational purposes, such as the teaching of family-life curriculum, is exempt from this rule.
3. Inappropriate Physical Contact – In subparagraph (4)(e) (revised subparagraph (5)(d)), the State Board unambiguously protects the educator's right to exercise his or her lawful authority to use reasonable force when necessary under the circumstances to correct or restrain a student or prevent bodily harm or death to another person pursuant to T.C.A. § 49-6-4107. In addition, the State Board has added "unlawful" to the definition of "inappropriate physical contact" to clarify that lawful physical contact (ex. the use of force pursuant to T.C.A. 49-6-4107 or the



TENNESSEE
STATE BOARD OF EDUCATION

authorized used of corporal punishment pursuant to T.C.A. § 49-6-4103) is not a violation of the rule.

It is important to note that for many of the enumerated offenses in the rule, the State Board reviews the educator's license after local education agencies (LEAs) report that the educator has been terminated, suspended, or has resigned following allegations of misconduct. As noted in TEA's written feedback, the use of corporal punishment is within the discretion of LEAs and local policies vary among LEAs. Therefore, an LEA would not report an educator for misconduct unless his or her use of corporal punishment was outside of the LEA policy and thus unlawful and unauthorized.

4. The State Board's objective is not to penalize educators who consume alcohol during their personal time. Again, the State Board takes action based on reports from LEAs, and the examples stated in TEA's feedback would not be something for which LEAs would report educators. In addition, the State Board has added examples of "official school business" to the rule.

III. Substantive problems

1. "Unprofessionalism" - Inappropriate disciplinary measures was removed as this offense can be addresses via the inappropriate physical contact and/or violation of the teacher code of ethics offenses. The State Board believes that the plain language of "inappropriate use of school property" is clear.
2. "Testing Breaches" - Minor testing breaches and major testing breaches have different impacts and thus different discipline ranges. Major testing breaches, which result in the nullification of test scores, have a far-reaching impact that affects multiple levels of student, district, and school data. Moreover, it is important to note that the State Board staff conducts investigations into allegations of misconduct reported by the LEA. Such investigations are to determine that facts of the case and whether there are any mitigating factors. As stated in the rule, the State Board can impose discipline outside the range upon good cause shown in extraordinary circumstances.
3. "Teacher Code of Ethics" – T.C.A. 49-5-501(3)(D) describes how the Teacher Code of Ethics is to be considered by local boards of education in tenure cases, not how the State Board reviews reports of misconduct. If an educator did not face any disciplinary action at the district level for a violation of the teacher code of ethics, there would be no district report upon which the State Board would be able to take action.

4. "Similar Offenses" - The State Board has clarified that the enumerated offenses are the offenses contained in rule 0520-02-03-.09.

IV. Inconsistent terms and language, ambiguous language, and undefined terms

The State Board has considered this feedback and made changes where appropriate. Specifically, "Illicit" has been replaced with "illegal," the rule clarifies that *consuming* alcohol and *using* drugs are violations, and "children" has been replaced with "students."

Regarding a school related activity without children present, the most frequently seen example is an overnight field trip where an educator consumes alcoholic beverages in his or her hotel room, in the hotel lobby, or in a hotel restaurant while serving as a chaperone. Here, as a chaperone, the educator has an ongoing duty to ensure the health, safety, and welfare of students attending the trip and consuming alcohol while on duty will be considered a violation.

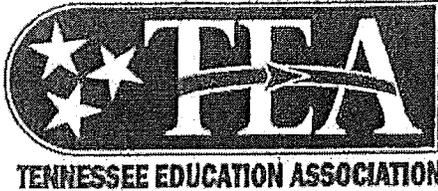
The State Board has clarified that the duty to report applies to reporting educators who have been suspended or dismissed, or who have resigned, following allegations of conduct which, if substantiated, would warrant consideration for license suspension or revocation under paragraphs (3), (4), or (5) of the rule as required by paragraph (2) of the rule. If the designee of the director fails to report, the director may be subjected to licensure action from a formal reprimand up to and including a one-year suspension.

"Commission of duties," "physical harm," and "mental harm" will be construed by the State Board based on the plain language of the rule and their ordinary meanings.

Regarding the Board's deviation from the discipline schedule, the State Board has adopted a License Denial, Suspension, and Revocation Procedure Policy 5.501, which explains the State Board's procedure for reviewing licensure cases. The policy will be updated to correspond with the newly promulgated rule and will explain how educators can present mitigating information to the State Board for review, how the State Board will consider mitigating and/or aggravating circumstances, and how the State Board will determine whether there is good cause shown to deviate from the uniform discipline range.

V. References to the Rule Parts

The State Board has considered this feedback and made changes where appropriate.



October 19, 2017

Mr. B. Fielding Rolston, Chairman
Tennessee State Board of Education
710 James Robertson Parkway, 1st Floor
Nashville, TN 37243

Dear Chairman Rolston and Members of the Board:

Attached you will find the Tennessee Education Association's reply to the State Board's October 5, 2017, rulemaking hearing responses. As you can determine, the TEA remains particularly concerned that the State Board has exceeded its statutory authority in attempting to promulgate Rule 0520-02-03-.09. Beyond that, there remain several provisions in the proposed rule that are concerning and that we believe need further adjustment. We have attempted to set forth those concerns in our reply.

TEA remains willing to work with the State Board to move forward in assuring that the health, safety and welfare of Tennessee's school children are protected.

Should you have any questions, please do not hesitate to contact me.

Best regards,

A handwritten signature in cursive script, appearing to read "Carolyn Crowder".

Carolyn Crowder
Executive Director
Tennessee Education Association

CC:jad

Enclosures

cc: Elizabeth Taylor, Esq., General Counsel, State Board of Education
State Board of Education Members
Sara Heyburn Morrison, Executive Director, State Board of Education



To: Tennessee State Board of Education
From: Tennessee Education Association
Date: October 19, 2017
Re: Reply to October 5, 2017 Letter from the Tennessee State Board of Education

At the September 19, 2017 rulemaking hearing, the TEA presented the State Board of Education's (State Board) legal staff with many comments and concerns about the propriety and appropriateness of proposed rule 0520-02-03-.09, the rule concerning the denial, suspension, and revocation of educator licenses. Following the rulemaking hearing those same comments and concerns were shared with each member of the Board.¹

On October 5, the Board's legal counsel provided the State Board's response to the TEA's concerns. That response indicated that specific changes to portions of the proposed rule would be suggested at the October 20 State Board meeting.² This communication is responsive to the October 5 response and asks the Board to further consider the concerns identified below.

I. The State Board's authority to promulgate rules regarding the revocation, suspension, and formal reprimand of license holders.

We agree that the State Board has complete jurisdiction over the "*issuance and administration of licenses*" for educators. Tenn. Code Ann. § 49-5-108(a)(1) (emphasis added). We also agree that the State Board "is authorized, empowered and directed to set up rules and regulations governing the *issuance of licenses* for supervisors, principals and public school teachers." *Id.* -108(c) (emphasis added). We further agree that the State Board can promulgate rules and regulations "to suspend, deny or revoke the license or certificate of a teacher who is delinquent or in default" of a student loan. *Id.* -108(d)(2). When it comes to the revocation of an educator's license for misconduct, however, the State Board has no statutory authority to promulgate a rule. In fact, the statute authorizes the Board to only adopt *policies* regarding "the revocation of licenses and certificates for misconduct." *Id.* 49-1-302(a)(5)(A)(iv). The statute does *not* confer upon the Board the power or authority to promulgate *rules* governing the revocation, suspension, or formal reprimand of licenses for misconduct.

The Uniform Administrative Procedures Act (UAPA) explains the distinction between "policies" and "rules." A "policy" is a set of decisions, procedures, and practices pertaining to the internal operation or actions of any agency. *Id.* 4-5-102(10). A "rule," on the other hand, is an agency

¹ A copy of TEA's comments and concerns are attached.

² A copy of the October 5, 2017, communication is attached.

statement of general applicability that implements or prescribes law or policy or describes the procedures or practice requirements of an agency. *Id.* -102(12).

In other words, a “policy” deals only with the internal management of state government. A policy does not affect the private rights, privileges, and procedures available to the public. As such, it does not need to be promulgated under the UAPA procedures for the promulgation of rules. See Tenn. Code Ann. § 4-5-102(12)(A). A “rule,” on the other hand, does affect the private rights, privileges, or procedures available to the public; and a State agency must promulgate a “rule” under the UAPA. See *Abdur Rahman v. Bredesen*, 181 S.W.3d 292, 312 (Tenn. 2005); *Mandela v. Campbell*, 978 S.W.2d 531, 533–34 (Tenn. 1998); *State Board of Regents of University v. Gray*, 561 S.W.2d 140 (Tenn. 1978).

When the legislature authorized the State Board to adopt policies in Tenn. Code Ann. § 49-1-302(a)(5)(A)(iv), it knew that policies and rules were distinct. See, e.g., *Hardy v. Tournament Players Club at Southwind, Inc.*, 513 S.W.3d 427, 444 (Tenn. 2017) (legislature is presumed to know the law); *State v. Hawk*, 170 S.W.3d 547, 552 (Tenn. 2005) (same); *State v. Mixon*, 983 S.W.2d 661, 669 (Tenn. 1999) (same); *Hamby v. McDaniel*, 559 S.W.2d 774, 776 (Tenn. 1977) (same). The legislature chose to authorize the State Board to adopt policies, not rules. As such, the State Board lacks any authority to adopt Rule 0520-02-03-.09 regarding the revocation, suspension, or formal reprimand of an educator’s license for misconduct.

II. Definitions.

I. Conviction.

The State Board did not respond to the TEA’s concern regarding the automatic revocation of an educator’s license *without a right to a hearing* upon the “conviction” of certain listed offenses. See Revised Proposed Rule 0520-02-03-.09(4)(a)1. & 2. The authority to automatically revoke an educator’s license without a right to a hearing exists under Tenn. Code Ann. § 49-5-417. Nothing in that section grants or authorizes the State Board to expand upon the offenses listed there for which an educator’s license can be automatically revoked without a right to a hearing. Likewise, nothing under Tenn. Code Ann. § 49-5-413 grants or authorizes the State Board to automatically revoke an educator’s license without a right to a hearing for the reasons stated in its Revised Proposed Rule 0520-02-03-.09(4)(a)2. So unless an educator has been convicted of an offense listed under § 49-5-417, an educator has an absolute right to a hearing under the UAPA. See Tenn. Code Ann. §§ 4-5-101 *et seq.* The State Board has no authority to abrogate this right by state rule.

Further, it is improper for the State Board to use the definition of “conviction” from another unrelated part of a statute and apply that definition to the word “convicted” in § 49-5-417. The meaning of “convicted” in § 49-5-417 must be derived from how it is used there and not by how the State Board wants to define it. As we already stated at the rulemaking hearing, the Tennessee Supreme Court has held that in its legal sense, the word “conviction” requires (1) a formal adjudication by a court and (2) the entry of a judgment of conviction. *Rodriguez v. State*, 437 S.W.3d 450 (Tenn. 2014). So unless both of those requirements have been met for the offenses listed in § 49-5-417, then an educator has not been “convicted” and therefore cannot have his or her license automatically revoked without a right to a hearing. We are therefore requesting the State Board to

revise its proposed rule so that it comports with the plain language of § 49-5-417 and the legal definition of "conviction."

2. Inappropriate Communications Explicit.

We thank the State Board for adding language to clarify that communications regarding sexual activity or illicit activity for educational purposes (such as the teaching of the family-life curriculum) is exempt from this rule. More clarification, however, is needed as it pertains to school counselors, who may be approached by students regarding pregnancy, unwanted sexual advances, etc., and other educators, who may be approached by students about sexual abuse or drug abuse. Again, the language disregards the educator's role in addressing student concerns and behavior that are present in all of our public schools and could prohibit educators from discussing reports of abuse, which is inconsistent with the mandatory reporting requirements under Tennessee law. See Tenn. Code Ann. §§ 37-1-403 & -605.

3. Inappropriate Physical Contact.

The State Board's addition of the word "unlawful" to the definition of "inappropriate physical contact" still does not cure the problem regarding the "improper use of corporal punishment." Revised Proposed Rule 0520-02-03-.09(1)(e). If the State Board desires to reach certain conduct, then the rule must apply to everyone equally. Because corporal punishment is decided at the local level, however, each jurisdiction has its own standards. It therefore makes no sense as to why one educator would have a licensure action for spanking a child and another educator would not have a licensure action for spanking a child only because one local policy permits spanking and the other does not. Both committed the same act but only one will be subjected to a licensure action. The only thing that would make sense would be to use the standards of child abuse and child neglect (see, e.g., Tenn. Code Ann. § 37-1-403), as those standards would apply to everyone regardless of what the local policies are pertaining to the use of corporal punishment. We are therefore requesting the State Board to revise this language.

4. Official School Business.

Proposed Rule 0520-02-03-.09(3)(c) provides that an educator's license may be disciplined if that educator is on "official school business" (which is defined as "any activity undertaken by an educator in an official capacity and in connection with the educator's employment" and includes "conferences") while possessing or consuming alcohol. An example we provided dealt with an educator attending an out-of-state conference and consuming alcohol during dinner. The State Board responded that its objective is not "to penalize educators who consume alcohol during their *personal time*" . . . and that "the examples stated in TEA's feedback would not be something for which LEAs would report . . ." Under the plain language of the rule, however, an educator's license can be disciplined if that educator consumes alcohol during dinner at an overnight conference because the conference is "official school business." Nothing in the proposed rule says anything about "personal time" or how "personal time" would be determined by the State Board.

Also, it does not matter whether LEAs report the kinds of conduct in the examples we provided, as the State Board has the authority to take an action against an educator's license regardless of whether any director's report is filed. For example, an individual (like a parent) could complain to the State

Board about an educator consuming alcohol while that educator was attending a conference. Since the State Board's intent is not to penalize educators who consume alcohol during their "personal time," we are requesting the State Board to provide clarification on what would constitute "personal time," for example, in the context of an educator attending an overnight conference.

III. Substantive problems.

1. "Teacher Code of Ethics."

We reiterate our concern with the State Board's proposed rule that an educator who is found to have violated *any provision* of the teacher code of ethics (Tenn. Code Ann. §§ 49-5-1001 *et seq.*) is subject to a disciplinary action falling within the range of a one-year suspension up to and including revocation. Under Tennessee law a violation of the teacher code of ethics does not necessarily arise to unprofessional conduct unless the violation is one that is adjudged to make the educator "obnoxious as a member of the profession." See Tenn. Code Ann. § 49-5-501(3)(D). Thus, while an educator who violates the teacher code of ethics may not be subject to any disciplinary action at his or her place of employment, the State Board's proposed rule gives it the authority to subject that same educator to a one-year suspension of his or her license.

The State Board responded, however, that "if an educator did not face any disciplinary action at the district level for a violation of the teacher code ethics, there would be no district report upon which the State Board would be able to take action." Again, nothing prevents the State Board from taking a licensure action regardless of whether the teacher was disciplined at the local level and regardless of whether any director's report was filed. If the State Board becomes aware of conduct that it believes violated *any provision* of the teacher code of ethics, it has, under the proposed rule, the authority to take a licensure action against that educator. We are therefore requesting the State Board to revise its language so that the standard of violating the teacher code of ethics is at least comparable to the language of Tenn. Code Ann. § 49-5-501(3)(D) (Disregard of the teacher code of ethics . . . in such manner as to make one obnoxious as a member of the profession).

IV. Inconsistent terms and language, ambiguous language, and undefined terms.

1. "Negligent in the commission of duties."

The State Board's response that "commission of duties" will be construed by the State Board based on the plain language of the rule and its ordinary meaning is discouraging. Based upon that response, "negligence in the commission of duties" would mean anything that an educator is directed to do, even if the educator is directed to perform a noninstructional duty. For instance, Tenn. Code Ann. § 49-5-201(a)(1)-(12) provides the statutory duties of a teacher, but many teachers are directed to perform duties that are statutorily required to be assigned to educational assistants. This includes lunchroom duty, bus duty, recess or playground duty, before or after school duty, or other related duties. Tenn. Code Ann. § 49-2-303(b)(7)(A)(i)-(v). Moreover, all of these noninstructional duties carry the potential for "harm," which is also not defined, for students. As such, an educator's license can be disciplined for being negligent in the commission of a duty that should have been assigned to an educational assistant.



TENNESSEE EDUCATION ASSOCIATION

To: Tennessee State Board of Education
 From: Tennessee Education Association
 Date: September 19, 2017
 Re: Rulemaking Hearing

I. The State Board of Education (State Board) lacks statutory authority to promulgate rules concerning the suspension or formal reprimand of license holders.

The authority cited by the State Board for the promulgation of its proposed rule is Tenn. Code Ann. § 49-1-302. That statute provides the State Board with the duty and power to adopt policies governing the revocation of licenses and certificates for misconduct. See Tenn. Code Ann. § 49-1-302(a)(5)(A)(iv). The cited statute does not, however, empower the State Board to promulgate rules regarding the suspension or formal reprimand of educator licenses. The authority cited by the State Board is simply inadequate to promulgate this rule.

II. The definitions under the proposed rules are overbroad, confusing, illogical, unfair, and overly punitive.

1. Definition of "Conviction" (Proposed Rule 0520-02-03-.09(1)(a) & -.09(4))

Tenn. Code Ann. § 49-5-417 authorizes the State Board to revoke educator licenses without the right to a hearing if the State Board receives a certified copy of a criminal record showing that the educator has been "convicted" of any of the following offenses: statutory rape by an authority figure; knowingly manufacturing, delivering, selling, or possessing a controlled substance with intent to manufacture, deliver, or sell; and various serious felonies, such as murder, kidnapping, especially aggravated robbery, rape, aggravated arson, and aggravated child abuse.

The proposed rule exceeds the statutory mandate of § 49-5-417 as it expands the definition of "conviction" and expands the list of offenses that will result in an automatic revocation without a right to a hearing. See Proposed Rule 0520-02-03-.09(4)(a). As a result, the proposed rule serves to unlawfully deny educators their statutory right to a contested-case hearing under the Uniform Administrative Procedures Act (UAPA) for the "conviction" of offenses that are not specifically listed in § 49-5-417.

In 2014 the Tennessee Supreme Court held that in its legal sense, the word "conviction" requires a formal adjudication by a court *and* the entry of a judgment of conviction. *Rodriguez v. State*, 437 S.W.3d 450 (Tenn. 2014). Notwithstanding the limit of the State Board's authority and the definition of the word "conviction," the State Board is nonetheless attempting to promulgate a rule

that can automatically revoke an educator's license without the right to a hearing when that educator is granted pretrial or judicial diversion. Under Tennessee law, however, pretrial and judicial diversions are not "convictions" because they are not accompanied by a formal adjudication and the entry of a judgment of conviction. See *Pizzillo v. Pizzillo*, 884 S.W.2d 749, 753 (Tenn. Ct. App. 1994), *State v. Poplar*, 612 S.W.2d 498, 500 (Tenn. Crim. Ct. App. 1980), *Rodriguez*, 437 S.W.3d at 456.

All of the offenses currently listed in § 49-5-417, including statutory rape by an authority figure, are felonies and are not eligible for pretrial diversion. Other than a few certain drug offenses, none of the other felonies are even eligible for judicial diversion.

To be clear, other than the specific crimes listed in Tenn. Code Ann. § 49-5-417, an educator has an absolute right to a hearing under the UAPA that cannot be abrogated by state rule. See Tenn. Code Ann. §§ 4-5-101 *et seq.* As such, the State Board has exceeded the authority given to it by the General Assembly.

2. Definition of "Inappropriate Communications (Explicit)" (Proposed Rule 0520-02-03-.09(1)(c))

Under this proposed rule, an educator who engages in "inappropriate communications" of an explicit nature with a student is subject to permanent revocation of his or her license. As defined, "inappropriate communications (explicit)" means "*any communication* between an educator and a student that describes, represents, or alludes to sexual activity or any other illicit activity." 0520-02-03-.09(1)(c). The Merriam-Webster definition of "illicit" is "not permitted," "unlawful." This language is too broad and is likely to be confusing to teachers. For example, a health teacher or a biology teacher, in the course of his or her teaching duties, is likely to teach curriculum that refers to the sexual activity of plants or animals. Another example is a school counselor who is approached by a student regarding pregnancy, unwanted sexual advances, etc. Similarly, a history teacher or an English teacher is likely to be required to teach curriculum that refers to illegal or illicit activities of historical figures or of governments. More significantly, anyone who teaches the family-life curriculum (Tenn. Code Ann. §§ 49-6-1301 *et seq.*) will be discussing such topics as abstinence, gateway sexual activity, sexual activity, sexual contact, sexual intercourse, and sexually transmitted diseases.

The definition of "inappropriate communications (explicit)" is too broad and overreaching, as it can capture all of the above examples. It disregards the educator's role in addressing student concerns and behavior that are present in all of our public schools and could prohibit educators from discussing reports of abuse, which is inconsistent with the mandatory reporting requirements under Tennessee law. See Tenn. Code Ann. §§ 39-1-403 & -605.

If an educator's license can be permanently revoked, then the State Board must clearly describe and define the conduct that will result in such an action. As written, the proposed definition of "inappropriate communication (explicit)" is vague and overbroad and fails to put educators on notice as to what specific conduct will subject them to a licensure action.

3. Definition of "Inappropriate Physical Contact" (Proposed Rule 0520-02-03-.09(1)(e))

"Inappropriate physical contact" is defined as "unnecessary and unjustified physical contact with a student. Examples of such unnecessary and unjustified physical contact include sexual contact, physical altercations, horseplay, tickling, improper use of corporal punishment, and rough housing." 0520-02-03-.09(1)(e). Under the proposed rule an educator who engages in inappropriate physical contact can receive a two-year suspension of his or her license.

The term "unnecessary and unjustified" is too nebulous. For example, what about a high-school teacher who intervenes during a student fight that results in one of the students falling and being injured? Was her intervention an unnecessary and unjustified physical contact? How could she know that in advance of the emergent situation? What about a coach that models a wrestling hold? Is such an activity unnecessary and unjustified? Is it unnecessary and unjustified for a teacher to grab a student who is running in front of a bus? This proposed rule potentially places students in dangerous situations because it serves to confuse teachers as to what they can and should do in various student-teacher interactions.

Also, the term "corporal punishment" is something that is determined at the local level. Local policies regarding corporal punishment vary among LEAs statewide. What is appropriate in one LEA might be inappropriate in another despite the fact that educators may administer corporal punishment in exactly the same way. The proposed rule is overbroad, confusing, and represents a lack of appreciation or knowledge of the reality of the daily interaction that teachers have with students.

4. Definition of "Official School Business" (Proposed Rule 0520-02-03-.09(1)(j))

"Official school business" is defined as "*any activity* undertaken by an educator in an official capacity and in connection with the educator's employment." 0520-02-03-.09(1)(j). This term is used under 0520-02-03-.09(3)(c) where the State Board can suspend or revoke an educator's license for being on "official school business" while consuming alcohol. This language is so broad that an educator's license could be suspended or revoked because that educator consumed alcohol during an evening social event at an out-of-state conference. It can also include an educator drinking a glass of wine at home while that educator is grading papers. Both are examples of activities undertaken by educators in an official capacity and in connection with their employment.

III. **Substantive problems with the proposed rule make it overbroad, confusing, illogical, unfair, and overly punitive.**

1. "Unprofessionalism" (Proposed Rule 0520-02-03-.09(4)(c)5.(i) & (iv))

Under the proposed rule a teacher who is found to have administered "inappropriate disciplinary measures" to a student is subject to a disciplinary action within the range of a one-year suspension up to and including permanent revocation. The term "inappropriate disciplinary measures," however, is not defined and is not found anywhere else in the rule. How does "inappropriate disciplinary measures" differ from "inappropriate physical contact," which is defined at 0520-02-03-.09(1)(e) and includes "improper use of corporal punishment"? Would "write offs" be

considered an “inappropriate disciplinary measure”? The bottom line is that educators are left to speculate as to what the State Board means by “inappropriate disciplinary measures.”

Similarly, a teacher who is found to have “inappropriately used school property” will be subject to a disciplinary action within the range of a suspension for no less than three months up to and including revocation. “School property” is defined so broadly, however, that an improper use of school property could include an educator checking his or her personal e-mail account on a school computer. Without any examples of what is meant by “inappropriately used school property,” educators are left to speculate as to the specific conduct that will result in a licensure action.

2. “Testing Breaches” (Proposed Rule 0520-02-03-.09(1)(g) & (h) and -.09(4)(c)4.(i) & (ii))

The proposed rule defines the difference between major- and minor-testing breaches. The only difference being that a major breach is one that results in test-score nullification, while a minor breach does not. The rule then provides that an individual who is found to have committed a minor-testing breach shall be subject to disciplinary action within the range of a letter of reprimand up to and including a one-year suspension. A major-testing breach, however, will subject a teacher to a one-year suspension up to and including revocation.

What if the breach was the result of an innocent mistake? What if the breach was the result of incorrect information shared by a testing coordinator or the result of a situation that was not addressed in training? Even if the breach did cause the nullification of scores, the penalty for an innocent mistake or for relying on incorrect information is simply unfair.

3. Violation of Teacher Code of Ethics (Proposed Rule 0520-02-03-.09(4)(c)8.)

Under the proposed rule an educator who is found to have violated the teacher code of ethics is subject to a disciplinary action falling within the range of a one-year suspension up to and including revocation. Under Tennessee law, however, a violation of the teacher code of ethics does not necessarily even arise to unprofessional conduct unless the violation is one that is adjudged to make the educator “obnoxious as a member of the profession.” See Tenn. Code Ann. § 49-5-501(3)(D). Thus, while a teacher who violates the teacher code of ethics may not be subject to any disciplinary action at his or her place of employment, the State Board would subject that same teacher to at least a one-year suspension of that educator’s license. What standards or circumstances will the State Board use to determine which teachers will have their license suspended and those whose license will be revoked? It seems overly severe to take an action against an educator’s license for violating the teacher code of ethics in such an insignificant manner that it would not have resulted in any workplace discipline.

4. “Similar Offenses” (Proposed Rule 0520-02-03-.09(4)(d))

The State Board is proposing language whereby “actions related or similar to the above-enumerated offenses shall carry recommended disciplinary action commensurate with the range established for the similar offense.” What are “the above-enumerated offenses”? Are they the offenses in the Tennessee Code Annotated? Or are they any of the offenses listed in the proposed rule? Given that many of the “above-enumerated offenses” are vague, overbroad, undefined, or

ambiguous, educators will not have notice of what conduct is specifically prohibited by the State Board's rule and what conduct may be related or similar to that conduct.

IV. The proposed rule uses inconsistent terms and language, ambiguous language, and undefined terms.

Some of the most glaring examples of the State Board's proposed rule using inconsistent terms and language, ambiguous language, and undefined terms are found under 0520-02-03-.09(4). For example: Under Rule 0520-02-03-.09(4)(c)2.(i)-(iv), the term "illicit substances" is used; but the term "illegal drugs" is used under 0520-02-03-.09(3)(b) and (c). Also, the disciplinary range under 0520-02-03-.09(4)(c)2.(i) & (ii) for an educator using or possessing alcohol or illicit substances while on school premises or property is the same regardless of whether children are present. Also, "children" is used instead of "students" in 0520-02-03-.09(4)(c)2.(i)-(iv). Is the State Board trying to make a distinction between "children" and "students"?

Further, 0520-02-03-.09(4)(c)2.(i)-(iv) uses the term "using" regarding alcohol or illicit substances, whereas 0520-02-03-.09(3)(c) uses the terms "possessing" and "consuming." How will this be applied to chemistry teachers who may be "using" alcohol during a science experiment? "Consuming" and "using" have different meanings. The inconsistent use of these terms makes the proposed rule vague and confusing.

In addition, 0520-02-03-.09(4)(c)2.(iii) & (iv) provide for disciplinary ranges for those educators participating in a "school related activity." A "school related activity" is defined as "any activity *in which a student participates*, including but not limited to classes, meetings, extracurricular activities, clubs, athletics, and field trips, sponsored by the school, state educational agency, or local educational agency." Rule 0520-02-03-.09(1)(o) (emphasis added). Yet 0520-02-03-.09(4)(c)2.(iii) & (iv) make a distinction between those participating in a "school related activity" *with children present* and a "school related activity" *without children present*. How can an educator participate in a "school related activity" without children present? And is there a distinction being made between "children" and "students"?

The definition of "other good cause" includes the "failure to report *licensure actions* under parts (3) or (4)." 0520-02-03-.09(1)(k). Whose duty is it to report "licensure actions"? Licensure actions are under the purview of the State Board. Directors of schools are to report suspensions, dismissals, and resignations of educators. It can only be assumed, then, that the State Board means the failure of a director of schools or his or her designee to report as required by paragraph (2). Also, if the director's designee fails to report, who is subject to a licensure action? The designee or the director? Is there a disciplinary range for a director or his or her designee when he or she fails to report or fails to submit a report within 30 days of an educator's suspension, dismissal, or resignation?

Rule 0520-02-03-.09(4)(c)3.(i) & (ii) provide disciplinary ranges for an educator who is "found to be negligent in his or her *commission of duties*." Nothing in the proposed rule, however, explains what "commission of duties" means. The duties of teachers are provided by Tenn. Code Ann. § 49-5-201(a)(1)-(12). Are these the "commission of duties" that the State Board is referring to? Or

is it trying to reach something beyond those duties? Further, 0520-02-03-.09(4)(c)3.(i) & (ii) differentiate between being negligent in the commission of duties that results in "harm" and being negligent in the commission of duties that does not result in "harm" to a child. But "harm" is not defined. So what kind of "harm" is the State Board referring to and how will it determine that "harm" has resulted from the educator being negligent in the commission of his or her duties?

"Inappropriate physical contact with harm" is defined as contact "that results in physical or mental harm or the potential of physical or mental harm to a student." 0520-02-03-.09(1)(f). But nowhere in the State Board's proposed rule does it define "physical or mental harm." Nor does the proposed rule provide what is meant by "the *potential* of physical or mental harm to a student." Will the statutory definitions of "child abuse and neglect" and "child sexual abuse" be used? Or will there be a lesser standard? No matter what definitions and standards are used, the State Board needs to provide clear definitions and standards in its proposed rule so that educators understand them.

Under 0520-02-03-.09(4)(g), the State Board also proposes that it can impose a disciplinary action outside of the uniform discipline range "upon good cause shown in extraordinary circumstances." But nothing in the proposed rule defines what is meant by "good cause shown in extraordinary circumstances." Without describing what this means, the State Board can subjectively determine when it can deviate from the uniform discipline range. Moreover, how will the State Board inform the educator that it found good cause in an extraordinary circumstance allowing it to deviate from the uniform discipline range?

V. The separate parts of the proposed rule are not properly referenced.

Although the structure of the State Board's proposed rule meets the rule structure found under Tenn. Comp. R. & Regs. 1360-01-02-.03(4), the proposed rule is inconsistent with how the separate parts should be referenced within the rule. "Rules shall be organized, numbered *and referenced* according to the following outline form:

(1) Paragraph

(a) subparagraph

1. part

(i) subpart

(I) item

I. subitem

A. section

(A) subsection."

Tenn. Comp. R. & Regs. 1360-01-02-.03(4) (emphasis added). Here is a list of where the parts of the rule are not properly referenced:

- Subparagraph (1)(f): It should be “as described in *subparagraph (e)*,” not “*subsection (e)*.”
- Subparagraph (1)(k): It should be “failure to report . . . under *paragraph (2)*,” not “*parts (3) or (4)*.”
- Paragraph (2), Notification of Office of Educator Licensing: It should be “under *paragraph (3) or (4)*,” not “under *parts (3) or (4)*.”
- Subparagraph (3)(g): It should be “*subparagraph (1)(k)*,” not “*section (1)(k)*.”
- Subparagraph (3)(h): It should be “*paragraph (4)*,” not “*part (4)*.”
- Subparagraph (4)(e): It should be “Nothing in the *rule*,” not “Nothing in this *part*.”
- Part (5)(a)1.: It should be “under *paragraph (3) or (4)* of this rule,” not “under *parts (3) or (4)* of this rule.”
- Part (5)(b)1.: It should be “under *paragraph (3) or (4)* of this rule,” not “under *parts (3) or (4)* of this rule.”
- Part (5)(b)2.: It should be “under *paragraph (3) or (4)* of this rule,” not “under *parts (3) or (4)* of this rule.”
- Part (5)(b)3.: It should be “nothing in this *rule*,” not “nothing in this *section*.”
- Paragraph (8): It should be “*paragraph (3) or (4)* of this rule,” not “*parts (3) or (4)* of this rule.”



TENNESSEE
STATE BOARD OF EDUCATION

TO: Tennessee Education Association (TEA)

FROM: Tennessee State Board of Education

DATE: October 5, 2017

RE: Rulemaking Hearing Responses

I. The Tennessee State Board of Education's authority to promulgate rules concerning the suspension and formal reprimand of license holders.

T.C.A. § 49-5-108 vests *complete jurisdiction* over the issuance and administration of licenses for supervisors, principals, and public school teachers in the State Board of Education (State Board). Moreover, the State Board has the duty and the power to adopt policies governing the qualifications, requirements, and standards of and provide the licenses and certificates for all public school teachers, principals, assistant principals, supervisors and directors of schools and to adopt policies governing the revocation of licenses and certificates for misconduct. T.C.A. § 49-1-302(a)(5)(A). In promulgating rule 0520-02-03-.09, the State Board has exercised its statutory jurisdiction over the issuance and administration of educator licenses and its duty and power to set the qualifications, requirements, and standards for maintaining an educator license and to revoke licenses and certificates for misconduct.

II. Definitions

1. Conviction – The State Board has amended the definition to align with the definition contained in T.C.A. § 40-39-202.
2. Inappropriate Communications Explicit – The State Board has added language to clarify its intent that communication regarding sexual activity or illicit activity for educational purposes, such as the teaching of family-life curriculum, is exempt from this rule.
3. Inappropriate Physical Contact – In subparagraph (4)(e) (revised subparagraph (5)(d)), the State Board unambiguously protects the educator's right to exercise his or her lawful authority to use reasonable force when necessary under the circumstances to correct or restrain a student or prevent bodily harm or death to another person pursuant to T.C.A. § 49-6-4107. In addition, the State Board has added "unlawful" to the definition of "inappropriate physical contact" to clarify that lawful physical contact (ex. the use of force pursuant to T.C.A. 49-6-4107 or the



TENNESSEE
STATE BOARD OF EDUCATION

authorized use of corporal punishment pursuant to T.C.A. § 49-6-4103) is not a violation of the rule.

It is important to note that for many of the enumerated offenses in the rule, the State Board reviews the educator's license after local education agencies (LEAs) report that the educator has been terminated, suspended, or has resigned following allegations of misconduct. As noted in TEA's written feedback, the use of corporal punishment is within the discretion of LEAs and local policies vary among LEAs. Therefore, an LEA would not report an educator for misconduct unless his or her use of corporal punishment was outside of the LEA policy and thus unlawful and unauthorized.

4. The State Board's objective is not to penalize educators who consume alcohol during their personal time. Again, the State Board takes action based on reports from LEAs, and the examples stated in TEA's feedback would not be something for which LEAs would report educators. In addition, the State Board has added examples of "official school business" to the rule.

III. Substantive problems

1. "Unprofessionalism" - Inappropriate disciplinary measures was removed as this offense can be addressed via the inappropriate physical contact and/or violation of the teacher code of ethics offenses. The State Board believes that the plain language of "inappropriate use of school property" is clear.
2. "Testing Breaches" - Minor testing breaches and major testing breaches have different impacts and thus different discipline ranges. Major testing breaches, which result in the nullification of test scores, have a far-reaching impact that affects multiple levels of student, district, and school data. Moreover, it is important to note that the State Board staff conducts investigations into allegations of misconduct reported by the LEA. Such investigations are to determine the facts of the case and whether there are any mitigating factors. As stated in the rule, the State Board can impose discipline outside the range upon good cause shown in extraordinary circumstances.
3. "Teacher Code of Ethics" - T.C.A. 49-5-501(3)(D) describes how the Teacher Code of Ethics is to be considered by local boards of education in tenure cases, not how the State Board reviews reports of misconduct. If an educator did not face any disciplinary action at the district level for a violation of the teacher code of ethics, there would be no district report upon which the State Board would be able to take action.

4. "Similar Offenses" - The State Board has clarified that the enumerated offenses are the offenses contained in rule 0520-02-03-.09.

IV. Inconsistent terms and language, ambiguous language, and undefined terms

The State Board has considered this feedback and made changes where appropriate. Specifically, "illicit" has been replaced with "illegal," the rule clarifies that *consuming* alcohol and *using* drugs are violations, and "children" has been replaced with "students."

Regarding a school related activity without children present, the most frequently seen example is an overnight field trip where an educator consumes alcoholic beverages in his or her hotel room, in the hotel lobby, or in a hotel restaurant while serving as a chaperone. Here, as a chaperone, the educator has an ongoing duty to ensure the health, safety, and welfare of students attending the trip and consuming alcohol while on duty will be considered a violation.

The State Board has clarified that the duty to report applies to reporting educators who have been suspended or dismissed, or who have resigned, following allegations of conduct which, if substantiated, would warrant consideration for license suspension or revocation under paragraphs (3), (4), or (5) of the rule as required by paragraph (2) of the rule. If the designee of the director fails to report, the director may be subjected to licensure action from a formal reprimand up to and including a one-year suspension.

"Commission of duties," "physical harm," and "mental harm" will be construed by the State Board based on the plain language of the rule and their ordinary meanings.

Regarding the Board's deviation from the discipline schedule, the State Board has adopted a License Denial, Suspension, and Revocation Procedure Policy 5.501, which explains the State Board's procedure for reviewing licensure cases. The policy will be updated to correspond with the newly promulgated rule and will explain how educators can present mitigating information to the State Board for review, how the State Board will consider mitigating and/or aggravating circumstances, and how the State Board will determine whether there is good cause shown to deviate from the uniform discipline range.

V. References to the Rule Parts

The State Board has considered this feedback and made changes where appropriate.

Elizabeth Taylor

From: Russell Dyer <rdyer@clevelandschools.org>
Sent: Wednesday, August 30, 2017 8:13 AM
To: Elizabeth Taylor
Subject: Rulemaking Hearing - Denial, etc.

Ms. Taylor,

I am writing in support of the rules put in place by the state board concerning denial, formal reprimand, suspension, and revocation of teacher licenses in our state. For too long, the process has been ambiguous and hard to understand in our state. I've worked as a Human Resources Supervisor for a number of years in Shelby County and then as Chief of Staff for Collierville Schools before my current position as Superintendent in Cleveland. In each of those jobs issues have developed and we spent hours and days figuring out if the situation should or should not be reported. I especially like the rubric found on page 8.

I will try to attend in person for the hearing on September 19, but either way I look forward to seeing where this goes.

Thank you,
Russell

—
Dr. Russell Dyer, Director of Schools
Cleveland City Schools
4300 Mouse Creek Rd. NW
423-472-9571

Twitter - @drrusselldyer

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Our *vision* is to inspire and educate thriving and confident students who become exceptional life learners and contributing citizens in their community.

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Sequence Number: 12-06-17
Rule ID(s): 6659
File Date: 12/5/17
Effective Date: 7/5/18

Rulemaking Hearing Rule(s) Filing Form

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

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

Agency/Board/Commission:	State Board of Education
Division:	
Contact Person:	Elizabeth Taylor
Address:	Andrew Johnson Tower, 1st Floor
Zip:	710 James Robertson Pkwy
Phone:	37243
Email:	615-253-5707

Revision Type (check all that apply):

- Amendment
 New
 Repeal

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

Chapter Number	Chapter Title
0520-02-03	Educator Licensure
Rule Number	Rule Title
0520-02-03-.09	Denial, Formal Reprimand, Suspension, and Revocation

**RULES
OF
THE STATE BOARD OF EDUCATION**

**CHAPTER 0520-02-03
EDUCATOR LICENSURE**

0520-02-03-.09 DENIAL, FORMAL REPRIMAND, SUSPENSION, AND REVOCATION.

(1) Definitions and Examples:

- (a) Conviction - Means a judgment entered by a court upon a plea of guilty, a plea of nolo contendere, a finding of guilt by a jury or the court notwithstanding any pending appeal or habeas corpus proceeding arising from the judgment. Conviction includes, but is not limited to, a conviction by a federal court or military tribunal, including a court-martial conducted by the armed forces of the United States, and a conviction, whether upon a plea of guilty, a plea of nolo contendere, or a finding of guilt by a jury or the court, in any other state of the United States, other jurisdiction, or other country. Conviction also includes a plea taken in conjunction with § 40-35-313 or its equivalent in any other jurisdiction. ~~Conviction on a plea of guilty, a plea of [no contest], or an order granting diversion under T.C.A. §§ 40-15-101 et seq. or 40-35-313.~~
- (b) Formal Reprimand - A less harsh licensing action than the suspension, revocation, or denial of a license, which admonishes an educator for certain conduct under this rule. An educator who has been reprimanded by the Board will receive a letter from the State Board of Education, which will become part of the educator's state and local record, indicating that the inappropriate conduct is discouraged and shall be subject to further disciplinary action if repeated.
- (c) Inappropriate Communication (Explicit) - Any communication between an educator and a student that describes, represents, or alludes to sexual activity or any other illicit activity. This shall not be construed to prevent an educator from communication regarding sexual or illicit activities for educational purposes such as in teaching family-life curriculum pursuant to T.C.A. § 49-6-1307 et seq or drug abuse resistance education pursuant to T.C.A. § 49-1-402.
- (d) Inappropriate Communication (Non-Explicit) – Any communication between an educator and a student that is beyond the scope of the educator's professional responsibilities. Examples of such non-explicit inappropriate communications include, but are not limited to, those communications that discuss the teaching staff member's or student's past or current romantic relationships; those that include the use of profanities or obscene language; those that are harassing, intimidating, or bullying; those that attempt to establish an inappropriate personal relationship with a student; and those that are related to personal or confidential information regarding another school staff member or student.
- (e) Inappropriate Physical Contact — Unlawful, unnecessary, and/or unjustified physical contact with a student. Examples of such unnecessary and unjustified contact include, but

are not limited to sexual contact, physical altercations, horseplay, tickling, improper use of corporal punishment, and rough housing.

- (f) Inappropriate Physical Contact With Harm – Inappropriate physical contact as described in subsectionsubparagraph (e) above that results in physical or mental harm or the potential of physical or mental harm to a student.
- (g) Major Testing Breach - A breach of test security that results in nullification of test scores, as determined by the Department of Education.
- (h) Minor Testing Breach - A breach of test security that does not result in nullification of any test scores, as determined by the Department of Education.
- (i) Negligence - Failure to exercise the care toward others that a reasonable or prudent person would exercise under the circumstances or taking action that a reasonable person would not.
- (j) Official School Business – Any activity undertaken by an educator in an official capacity and in connection with the educator’s employment. Examples include, but are not limited to, conferences, professional development, trainings, and seminars.
- (k) Other Good Cause – Conduct that calls into question the fitness of an educator to hold a license including, but not limited to, noncompliance with security guidelines for Tennessee Comprehensive Assessment Program (TCAP) or successor tests pursuant to T.C.A. § 49-1-607, failure to report licensure actions as required under paragraph (2), ~~under parts (3) or (4),~~ or violation of any provision in the Teacher Code of Ethics as contained in T.C.A. § 49-5-10031, *et seq.*
- (l) Permanent Revocation – The nullification of an educator’s license without eligibility for future reinstatement.
- (m) School Premises – Any real property and/or land owned, leased, managed, controlled, or under the custody of a state or local education agency, school system, or school.
- (n) School Property – Any property owned, leased, managed, controlled, or under the custody of a state or local education agency, school system, or school.
- (o) School Related Activity – Any activity in which a student participates, including but not limited to classes, meetings, extracurricular activities, clubs, athletics, and field trips, sponsored by the school, state educational agency, or local educational agency.
- (p) Suspension – The nullification of an educator’s license for a predetermined term, after which the license is automatically reinstated. Reinstatement may be subject to the completion of terms and conditions contained in the order of suspension.
- (q) Revocation – The nullification of an educator’s license for a period of at least five (5) years, after which an educator may petition the State Board for reinstatement.

(2) Notification of Office of Educator Licensing - It is the responsibility of the Director of Schools of the employing public or non-public school or school system or his or her designee to inform the Office of Educator Licensing of licensed educators who have been suspended or dismissed, or who have resigned, following allegations of conduct which, if substantiated, would warrant consideration for license suspension or revocation under partsparagraphs (3), (4), or (5). The report shall be submitted within thirty (30) days of the suspension, dismissal, or resignation. The Director of Schools or his or her designee shall also report felony convictions of licensed educators within thirty (30) days of receiving knowledge of the conviction. School systems have a duty to respond to State Board inquiries -and provide to the State Board, except when prohibited by law, -any available documentation -requested concerning the allegations contained in the notice.

(3) The State Board of Education may revoke, suspend, formally reprimand, or refuse to issue or renew an educator's license for any of the following reasons:

(a) Conviction of a felony;

(b) Conviction of possession of illegal drugs;

(c) Being on school premises, at a school-related activity involving students, or on official school business, while possessing or consuming alcohol or illegal drugs;

(d) Falsification or altering of a license or documentation required for licensure;

(e) Inappropriate physical contact with a student;

(f) Denial, suspension, or revocation of a license or certificate in another jurisdiction for reasons which would justify denial, suspension, or revocation under this rule;

(g) Other good cause as defined in sectionsubparagraph (1)(k) of this rule; or

(h) Any offense contained in partparagraphs (4) and/or (5) of this rule.

~~(1) The State Board of Education may revoke, suspend, reprimand formally, or refuse to issue or renew a license for the following reasons:~~

~~(a) Conviction of a felony;~~

~~(b) Conviction of possession of narcotics;~~

~~(c) Being on school premises, at a school-related activity involving students, or on official school business while documented as being under the influence of, possessing or consuming alcohol or illegal drugs;~~

~~(d) Falsification or alteration of a license or documentation required for licensure;~~

~~(e) Denial, suspension or revocation of a license or certificate in another jurisdiction for reasons which would justify denial, suspension or revocation under this rule; or~~

~~(f) Other good cause.~~

~~1. For purposes of part (f), "other good cause" shall include, but is not limited to, the following:~~

~~(i) Noncompliance with security guidelines for Tennessee Comprehensive Assessment Program (TCAP) or successor tests pursuant to T.C.A. § 49-4-607~~

~~(ii) Default on a student loan pursuant to T.C.A. § 49-5-108(d)(2)~~

- ~~(iii) Failure to report licensure actions under part (e), or~~
- ~~(iv) Violation of any provision in the Teacher Code of Ethics as contained in T.C.A. §§ 49-5-1003.~~

~~2. For purposes of this part, "conviction" includes entry of a plea of guilty or nolo contendere or entry of an order granting pre-trial or judicial diversion, in addition to a judgment of conviction.~~

(4) Disciplinary Actions Automatic Revocation and Suspension

(a) Automatic Revocation of License – The State Board of Education shall automatically revoke, without the right to a hearing, the license of an educator for the following:

1. Upon receiving verification of the identity of the licensed educator together with a certified copy of a criminal record showing that the licensed educator has been convicted of any the following offenses listed at T.C.A. §§ 39-17-417, a sexual offense or a violent sexual offense as defined in T.C.A. 40-39-202, any offense in title 39, chapter 13, T.C.A. 39-14-301 and T.C.A. 39-14-302, T.C.A. 39-14-401 and T.C.A. 39-14-404, T.C.A. 39-15-401 and T.C.A. 39-15-402, T.C.A. 39-17-1320, or any other offense in title 39, chapter 17, part 13 (including conviction for the same or similar offense in any jurisdiction).
2. Upon receiving verification of the identity of the licensed educator together with a report from the Department of Children's Services (DCS) stating that DCS has found the educator to have been a perpetrator of child abuse, severe child abuse, child sexual abuse, or child neglect as stated in T.C.A. § 49-5-413.
3. The Board will notify persons whose licenses are subject to automatic revocation at least thirty (30) days prior to the board meeting at which such revocation shall occur.

(b) Automatic Suspension of License - The State Board of Education shall automatically suspend, without the right to a hearing, the license of an educator upon receiving notice from the responsible state agency of the identity of the licensed educator together with notification that the educator has committed any of the following offenses:

1. Default on a student loan pursuant to T.C.A. § 49-5-108(d)(2); or
2. Failure to comply with an order of support for alimony or child support, pursuant to T.C.A. §36-5-706.
3. The Board will notify persons whose licenses are subject to automatic suspension at least thirty (30) days prior to the board meeting at which such suspension shall occur.

~~Automatic Revocation of License — The State Board of Education shall automatically revoke, without the right to a hearing, the license of an educator upon receiving verification of the identity of the licensed educator together with a certified copy of a criminal record showing that the licensed educator has been convicted of any offense listed at T.C.A. §§ 40-35-501(i)(2), 39-17-417, a sexual offense or a violent sexual offense as defined in 40-39-202, any offense in title 39, chapter 13, 39-14-301 and 39-14-302, 39-14-401 and 39-14-404, 39-15-401 and 39-15-402, 39-17-1320, or any other offense in title 39, chapter 17, part 13 (including conviction for the same or similar offense in any jurisdiction). The Board~~

~~will notify persons whose licenses are subject to automatic revocation at least thirty (30) days prior to the Board meeting at which such revocation shall occur.~~

~~(g) Automatic Revocation of License. The State Board of Education shall automatically revoke the license of a licensed teacher or administrator without the right to a hearing upon receiving verification of the identity of the teacher or administrator together with a certified copy of a criminal record showing that the teacher or school administrator has been convicted of any felony or offense listed at T.C.A. §§ 40-35-501(i)(2), 39-17-417, a sexual offense or a violent sexual offense as defined in 40-39-202, any offense in title 39, chapter 13, 39-14-301 and 39-14-302, 39-14-401 and 39-14-404, 39-15-401 and 39-15-402, 39-17-1320, or any other offense in title 39, chapter 17, part 13 (including conviction on a plea of guilty or nolo contendere, conviction for the same or similar offense in any jurisdiction, or conviction for the solicitation of, attempt to commit, conspiracy, or acting as an accessory to such offenses). The Board will notify persons whose licenses are subject to automatic revocation at least thirty (30) days prior to the Board meeting at which such revocation shall occur.~~

~~Automatic Suspension of License. The State Board of Education shall automatically suspend the license of an licensed n teacher or administrator an educator for the following offenses:~~

~~Default on a student loan pursuant to T.C.A. § 49-5-108(d)(2); or~~

~~Failure to comply with an order of support for alimony or child support, pursuant to TCA §36-5-706.~~

(5) Disciplinary Actions

(a) For the following categories of offenses, the State Board of Education shall impose uniform disciplinary action upon its findings as detailed below:

1. Conviction of a felony

(i) Upon receiving notification that an individual has been convicted of a felony, the board shall may revoke or permanently revoke the convicted individual's educator license.

2. Use or possession of alcohol or ~~illicit~~ illegal substances

(i) An individual holding an educator's educator's license who is found to be in possession of, or otherwise using consuming, alcohol, or using illegal substances while on school grounds premises or property when children are present, shall be subject to a disciplinary action within the range of suspension for not less than one (1) year, up to and including revocation.

(ii) An individual holding an educator's educator's license who is found to be in possession of, or otherwise using, consuming alcohol, or using illegal illicit substances while on school grounds premises or property when without children are not present, shall be subject to a disciplinary action

within the range of suspension for not less than one (1) year, up to and including revocation.

(iii) An individual holding an ~~educator's~~educator's license who is found to be in possession of, ~~or otherwise using, or consuming~~ alcohol or ~~illicit~~using illegal substances while ~~notwhile not~~ on school grounds~~premises or property~~, but while participating in school related activities with children present, shall be subject to a disciplinary action within the range of suspension for not less than one (1) year, up to and including revocation.

(iv) An individual holding an ~~educator's~~educator's license who is found to be in possession of, ~~or otherwise using,~~consuming alcohol or ~~illicit~~illegal substances ~~while~~while not on school grounds~~premises or property~~, but participating in school related activities without children present, shall be subject to a disciplinary action within the range of suspension for not less than six (6) months, up to and including a two (2) - years, suspension.

3. Negligence in the commission of duties as an educator

(i) An individual holding an educator's license who is found to be negligent in his or her commission of duties as an educator in such a manner that does not result in harm to a child, shall be subject to a disciplinary action within the range of a letter of formal reprimand, up to and including a two (2) - year suspension.

(ii) An individual holding an educator's license who is found to be negligent in their commission of duties as an educator in such a manner that results in harm to a child, shall be subject to a disciplinary action within the range of suspension for ~~not~~no less than one (1) year, up to and including permanent revocation.

~~(i) Nothing in this part shall prevent a teacher or principal from exercising his or her lawful authority to reasonable force when necessary under the circumstances to correct or restrain a student or prevent bodily harm or death to another person pursuant to 49-6-4107.~~

4. Testing breaches

(i) An individual holding an educator's license who is found to have committed a ~~minor breach of test security~~minor testing breach, which shall be defined as ~~a breach of test security that does not result in nullification of any test scores,~~testing breach shall be subject to a disciplinary action within the range of a letter of formal reprimand up to and including a suspension not to exceed one (1) year.

(ii) An individual holding an educator's license who is found to have committed a ~~major testing breach~~breach of test security, which shall be defined as ~~a breach of test security that results in nullification of test scores,~~ shall be subject to a disciplinary action within the range of a suspension of ~~not~~no less than one (1) year, up to and including revocation.

5. Unprofessionalism

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~~— An individual holding an educator's license who is found to have administered inappropriate disciplinary measures to a student, shall be subject to a disciplinary action within the range of a suspension for not less than one (1) year, up to and including permanent revocation.~~

(i) An individual holding an educator's license who is found to have engaged in non-explicit inappropriate communication with a student, shall be subject to a disciplinary action within the range of a suspension for not less than three (3) months, up to and including revocation.

(ii) An individual holding an educator's license who is found to have engaged in inappropriate communication of an explicit nature with a student, shall be subject to permanent revocation.

(iii) An individual holding an educator's license who is found to have inappropriately used school property, shall be subject to a disciplinary action within the range of a suspension for not less than three (3) months, up to and including revocation.

6. Inappropriate Physical Contact

(i) An individual holding an educator's license who is found to have engaged in inappropriate physical contact with a student that does not result in harm or potential harm to the student shall be subject to a disciplinary action within the range of a formal reprimand up to and including suspension for two (2) years.

(ii) An individual holding an educator's license who is found to have engaged in inappropriate physical contact with a student that results in harm or potential harm to the student shall be subject to a disciplinary action within the range of a suspension for not less than two (2) years up to and including permanent revocation.

7. Falsification of Licensure Documentation - An individual holding an educator's license who is found to have falsified licensure documentation shall be subject to a disciplinary action within the range of revocation or permanent revocation.

8. Violation of the Teacher Code of Ethics - An individual holding an educator's license who is found to have violated the teacher code of ethics shall be subject to a disciplinary action within the range of suspension for no less than one (1) year one (1) year up to and including revocation.

(b) Similar offenses — Actions related or similar to the above enumerated above-enumerated offenses shall carry recommended disciplinary action commensurate with the range established for the similar offense.

(c) Nothing in this part shall prevent an educator from exercising his or her lawful authority to use reasonable force when necessary under the circumstances to correct or restrain a student or prevent bodily harm or death to another person pursuant to T.C.A. § 49-6-4107.

(d) Repeated violations — Individuals holding an educator’s license who are subject to multiple disciplinary actions by the Board, shall face disciplinary action in excess of the recommended ranges. A ~~fourth~~ third violation, regardless of severity, shall be subject to a recommendation ~~for~~ of revocation.

(h)(e) Nothing in this rule shall prohibit the State Board from imposing a disciplinary action outside of the uniform discipline range upon good cause shown in extraordinary circumstances.

Discipline Schedule — the following chart outlines the disciplinary ranges for the offenses listed as indicated by the shaded squares.

		Letter of Formal Reprimand	Suspension of 3-6 months	Suspension of 6 months – 1 Year	Suspension of 1 Year-18 Months	Suspension of 18 months – 2 Years	Suspension of 2 years – Revocation
Class 4	Minor testing breaches						
	Negligence with no harm to a student						
Class 3	Unprofessionalism – Inappropriate Communication (Non-Explicit)						
	Unprofessionalism – Inappropriate Use of School Property						
	Intoxication – off school grounds w/o children						
Class 2	Major testing breaches						
	Negligence with harm to a student						
Class 1	Intoxication – on school grounds, w/o children	-	-	-	-	-	-
	Intoxication – on school grounds w/ children	-	-	-	-	-	-
	Intoxication – off school grounds w/ children	-	-	-	-	-	-
	Unprofessionalism – Inappropriate	-	-	-	-	-	-

Communication (Explicit)						
Felony conviction	-	-	-	-	-	

(6) Restoration of License

(a) Suspension

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1. A person whose license has been suspended under ~~parts paragraphs (3), (4), or (5)~~ shall ~~may~~ have ~~the~~ ~~his or her~~ educator's license restored after the period of suspension has been completed, and, where applicable, the person has complied with ~~any~~ all terms prescribed by the State Board. Suspended licenses are subject to the expiration and renewal rules of the State Board.

(b) Denial or Revocation

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1. A person whose license has been denied or revoked under ~~parts paragraphs (3), (4), or (5)~~ of this rule may apply to the State Board to have the license issued or restored upon application showing that the cause for denial or revocation no longer exists and that the person has complied with any terms imposed in the order of denial or revocation. In the case of a felony conviction, before an application will be considered, the person must also show that any sentence imposed, including any pre-trial diversion or probationary period, has been completed. Application for such issuance or restoration shall be made to the Office of Educator Licensing and forwarded to State Board counsel.
2. A person whose license has been revoked under ~~parts paragraphs (3), (4), or (5)~~ of this rule shall not be eligible to reapply for licensure for a period of ~~not~~ no less than five (5) years from the time at which the license was initially revoked.
3. In any deliberation by the Board of Education to restore a license that has been revoked, there will be a rebuttable presumption that ~~an educator~~ teacher whose license has been revoked is unfit for licensure. Nothing in this section is intended to guarantee restoration of a license.

(7) Presumptive Denial – There shall be a rebuttable presumption that Any person applying for an educator's license who has committed an offense that would subject him or her to revocation if licensed shall be presumed ineligible to receive a Tennessee educator's license.

(8) Scope of Disciplinary Action – A person whose license has been denied, suspended, or revoked may not serve as a volunteer or be employed, directly or indirectly, as an educator, paraprofessional, aide, substitute teacher, or in any other position during the period of the denial, suspension, or revocation.

(9) Notice of Hearing — Any person who is formally reprimanded or whose license is to be denied, suspended, or revoked under ~~parts paragraphs~~ (23) or who is refused a license or certificate under ~~part (3)(5)~~ of this rule shall be entitled to written notice and an opportunity for a hearing to be conducted as a contested case under the Tennessee Uniform Administrative Procedures Act, T.C.A. § 4-5-301, *et seq.*

(2) Discipline Schedule — the following chart outlines the disciplinary ranges for the offenses listed as indicated by the shaded squares.

(10) Discipline Schedule – The following chart outlines the least and greatest disciplinary ranges for the offenses listed as indicated by the shaded squares.

	<u>Letter of Formal Reprimand</u>	<u>Suspension of 3- months up to and including 6 months</u>	<u>Suspension of 6 months up to and including -1 Year</u>	<u>Suspension of 1 Year up to and including -18 Months</u>	<u>Suspension of 18 months up to and including- 2 Years</u>	<u>Suspension of 2 years up to and including -Revocation</u>	<u>Revocation</u>	<u>Permanent Revocation</u>
Minor Testing Breach								
Negligence w/o Harm or Potential Harm								
Inappropriate Physical Contact w/o Harm								
Unprofessionalism — Inappropriate Communication (Non-Explicit)								
Unprofessionalism — Inappropriate Use of School Property								
Possession/Intoxication Use - Off School Premises/Property w/o Children Present During School Related Activity								
Possession/Use - Off School Premises/Property w/ Children								
Possession/Use - On School Premises/Property w/o Children								
Possession/Use - On School Premises/Property w/ Children								
Major Testing Breach								
Violation of Teacher Code of Ethics								
Negligence w/ Harm or Potential Harm to a Student								
Inappropriate Disciplinary Measures Negligence with harm or potential harm to a student								
Inappropriate Physical Contact with Harm Inappropriate Disciplinary Measures								
Felony Conviction								

Falsification of Licensure Documentation	-	-	-	-	-	-		
Unprofessionalism - Inappropriate Communication (Explicit)	-	-	-	-	-	-		

~~(3) Notification of Office of Educator Licensing – It is the responsibility of the superintendent of the employing public or non-public school or school system to inform the Office of Educator Licensing of licensed teachers or administrators who have been suspended or dismissed, or who have resigned, following allegations of conduct which, if substantiated, would warrant consideration for license suspension or revocation under parts (1) or (2). The report shall be submitted within thirty (30) days of the suspension, dismissal or resignation. The superintendent shall also report felony convictions of licensed teachers or administrators within thirty (30) days of receiving knowledge of the conviction.~~

Authority: *T.C.A. §§ 49-1-302, 49-1-607, 49-5-108. Administrative History: Repeal and new rule filed December 18, 2015; effective March 18, 2015. A stay of the rule was filed January 28, 2015; new effective date June 1, 2015. Amendment filed May 29, 2015; effective August 27, 2015. Emergency rule filed August 27, 2015; effective through February 23, 2016. Repeal and new rules filed October 27, 2015; effective January 25, 2016.*

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

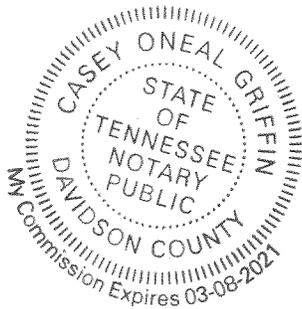
Board Member	Aye	No	Abstain	Absent	Signature (if required)
Bawcum	X				
Chancey	X				
Cobbins	X				
Edwards	X				
Ferguson	X				
Hartgrove	X				
Kim	X				
Rolston	X				
Tucker	X				
Wiseman	X				

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the Tennessee State Board of Education on October 20, 2017, and is in compliance with the provisions of T.C.A. § 4-5-222.

I further certify the following:

Notice of Rulemaking Hearing filed with the Department of State on: 07/28/2017

Rulemaking Hearing(s) Conducted on: (add more dates). 09/19/2017



Date: 11/29/2017

Signature: [Handwritten Signature]

Name of Officer: Elizabeth Taylor

Title of Officer: General Counsel

Subscribed and sworn to before me on: 11/29/17

Notary Public Signature: [Handwritten Signature]

My commission expires on: 3-8-21

Agency/Board/Commission: Tennessee State Board of Education

Rule Chapter Number(s): 0520-01-03-.09 Denial, Formal Reprimand, Suspension, and Revocation

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
Herbert H. Slatery III
Attorney General and Reporter
12/5/2017
Date

Department of State Use Only

Filed with the Department of State on: 12/5/17

Effective on: 1/5/18

Tre Hargett
Tre Hargett
Secretary of State

RECEIVED
2017 DEC -5 PM 1:00
SECRETARY OF STATE
POLICY SERVICES

G.O.C. STAFF RULE ABSTRACT

DEPARTMENT: Commerce and Insurance

DIVISION: Fire Prevention

SUBJECT: Fire Prevention, Building, Plumbing and Mechanical Inspector Certification Standards and Qualifications

STATUTORY AUTHORITY: Tennessee Code Annotated, Sections 68-120-113 and 68-120-118

EFFECTIVE DATES: March 19, 2018 through June 30, 2018

FISCAL IMPACT: Minimal

STAFF RULE ABSTRACT: The rulemaking changes allow the State Fire Marshal to issue certifications with denoted specialties that designate an inspector as certified in residential and/or commercial in building, plumbing, and mechanical areas.

Rule 0780-02-16-.01, General Requirements, is amended to remove the requirement that applications be submitted by certified mail. Furthermore, the amendments remove the three (3) year grace period for obtaining certification that began in 2008 and has since expired but continues to allow for a twelve (12) month grace period from the date of employment to obtain certification as provided by T.C.A. §§ 68-120-113 and 68-120-118.

Rule 0780-02-16-.02, Definitions, is amended to add "State Fire Marshal" and "Pre-Fire Planning Inspection" as defined terms. Additionally, certifications have been further defined to reflect the differences between commercial and residential building, commercial and residential plumbing, and commercial and residential mechanical codes and the certifications applicable to each.

Rule 0780-02-16-.03, Certification, is amended to simplify instructions for registration and to reflect the certifications available in both residential and commercial.

Rule 0780-02-16-.04, Applicable Standards, Organizations and Courses, is amended to replace "Division" with "State Fire Marshal" for uniformity and to provide clarity in the professional building and codes organizations recognized by the State Fire Marshal.

Rule 0780-02-16-.05, Standards and Qualifications, is amended to replace "Division" with "State Fire Marshal" and "will" with "shall" for purposes of uniformity.

Rule 0780-02-16-.06, Renewal of Certification, is amended to simplify instructions and continuing education requirements for recertification.

Rule 0780-02-16-.07, Revocation, Suspension, or Denial of Certification, is amended to allow the State Fire Marshal the authority to refuse to issue or renew, deny, revoke, or suspend certification or recertification under certain conditions in accordance with the Uniform Administrative Procedures Act, T.C.A. Title 4, Chapter 5.

Rule 0780-02-16-.08, Expedited Applications and Active Military Service, is added to comply with T.C.A. § 4-3-1304, which requires rulemaking to allow for expedited licensure of military applicants or their spouses, as well as a grace period for renewal of permits and licenses, should requirements for renewal not be met while the applicant is serving on military duty.

Public Hearing Comments

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

Comment 1

There was a comment that the proposed rulemaking changes will help rural communities.

Agency Response to Comment 1: The Department agrees that the proposed rulemaking changes will help certified inspectors in rural communities obtain their certification in a designated specialty more easily.

Comment 2

There was a comment that it would be better for certified inspectors if the thirty-six (36) hours of continuing education counted for all specialties in which an inspector is certified.

Agency Response to Comment 2: The Department agrees with this comment. The rule as proposed allows continuing education hours to count toward any specialty to which the instruction is related.

Comment 3

There was a comment that requested increased flexibility in the consideration of whether continuing education credits are considered "related" to a specialty of an inspector.

Agency Response to Comment 3: The Department appreciates the comment and will consider the request in the future. However, the comment could be addressed by policy rather than through 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. Types and estimated number of small businesses directly affected:

Small businesses involved in the inspection and certification of applicable building, fire, plumbing, mechanical or fuel gas codes will be affected by the promulgation of these rules.

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

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

3. Probable effect on small businesses:

Small businesses involved in the inspection and certification of applicable building, fire, plumbing, mechanical or fuel gas codes will be affected by the promulgation of these rules.

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

The amended rules are not anticipated to impact small businesses more than the current rules provide. There has not been a less burdensome, intrusive, or costly alternative method identified or recommended for use.

5. Comparison with federal and state counterparts:

There are no federal counterparts to these rules.

6. Effect of possible exemption of small businesses:

There are no possible exemptions for small businesses to the requirements contained in these rules.

Impact on Local Governments

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

The amended rules will positively impact local governments which employ building, fire, plumbing, and mechanical inspectors certified by the State Fire Marshal in their respective jurisdictions by allowing for greater flexibility in hiring inspectors with particular specialties.

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 rulemaking changes allow the State Fire Marshal to issue certifications with denoted specialties that designate an inspector as certified in residential and/or commercial in building, plumbing, and mechanical areas.

Rule 0780-02-16-.01, General Requirements, is amended to remove the requirement that applications be submitted by certified mail. Furthermore, the amendments remove the three (3) year grace period for obtaining certification that began in 2008 and has since expired but continues to allow for a twelve (12) month grace period from the date of employment to obtain certification as provided by T.C.A. §§ 68-120-113 and 68-120-118.

Rule 0780-02-16-.02, Definitions, is amended to add "State Fire Marshal" and "Pre-Fire Planning Inspection" as defined terms. Additionally, certifications have been further defined to reflect the differences between commercial and residential building, commercial and residential plumbing, and commercial and residential mechanical codes and the certifications applicable to each.

Rule 0780-02-16-.03, Certification, is amended to simplify instructions for registration and to reflect the certifications available in both residential and commercial.

Rule 0780-02-16-.04, Applicable Standards, Organizations and Courses, is amended to replace "Division" with "State Fire Marshal" for uniformity and to provide clarity in the professional building and codes organizations recognized by the State Fire Marshal.

Rule 0780-02-16-.05, Standards and Qualifications, is amended to replace "Division" with "State Fire Marshal" and "will" with "shall" for purposes of uniformity.

Rule 0780-02-16-.06, Renewal of Certification, is amended to simplify instructions and continuing education requirements for recertification.

Rule 0780-02-16-.07, Revocation, Suspension, or Denial of Certification, is amended to allow the State Fire Marshal the authority to refuse to issue or renew, deny, revoke, or suspend certification or recertification under certain conditions in accordance with the Uniform Administrative Procedures Act, T.C.A. Title 4, Chapter 5.

Rule 0780-02-16-.08, Expedited Applications and Active Military Service, is added to comply with T.C.A. § 4-3-1304, which requires rulemaking to allow for expedited licensure of military applicants or their spouses, as well as a grace period for renewal of permits and licenses, should requirements for renewal not be met while the applicant is serving on military duty.

- (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. §§ 68-120-113 and 68-120-118 authorize the Commissioner of Commerce and Insurance, under the authority as State Fire Marshal, to promulgate reasonable rules and regulations relative to the standards and qualifications for certification of all municipal, county, and state employed officials having jurisdiction to enforce fire, building, plumbing, mechanical, or fuel gas codes.

- (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;

Building, plumbing, mechanical, and fuel gas codes inspectors as well as local governments which employ building, fire, plumbing, and mechanical inspectors.

- (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;

Minimal.

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

Gary Farley, Director of Electrical, Residential, and Marina Inspections Section and the Permits & Licensing Section, Department of Commerce and Insurance, Division of Fire Prevention; Alexis Braun, Assistant General Counsel, 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;

Gary Farley, Director of Electrical, Residential, and Marina Inspections Section and the Permits & Licensing Section, Department of Commerce and Insurance, Division of Fire Prevention; Alexis Braun, Assistant General Counsel, 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

Gary Farley, Director of Electrical, Residential, and Marina Inspections Section and the Permits & Licensing Section, Department of Commerce and Insurance, Division of Fire Prevention: 500 James Robertson Parkway, 9th Floor, Nashville, TN 37243, Gary.Farley@tn.gov, (615) 741-5805; Alexis Braun, Assistant General Counsel, Department of Commerce and Insurance: 500 James Robertson Parkway, 8th Floor, Nashville, TN 37243, Alexis.Braun@tn.gov, (615) 253-1838

- (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: 12-15-17
 Rule ID(s): 6667
 File Date: 12/19/17
 Effective Date: 3/19/18

Rulemaking Hearing Rule(s) Filing Form

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

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

Agency/Board/Commission:	Department of Commerce and Insurance
Division:	Division of Fire Prevention
Contact Person:	Alexis Braun
Address:	500 James Robertson Pkwy.; Davy Crockett Tower, 8 th Floor; Nashville, TN
Zip:	37243
Phone:	(615) 253-1838
Email:	Alexis.Braun@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
0780-02-16	Fire Prevention, Building, Plumbing and Mechanical Inspector Certification Standards and Qualifications
Rule Number	Rule Title
0780-02-16-.01	General Requirements
0780-02-16-.02	Definitions
0780-02-16-.03	Certification
0780-02-16-.04	Acceptable Standards, Organizations and Courses
0780-02-16-.05	Standards and Qualifications
0780-02-16-.06	Renewal of Certification
0780-02-16-.07	Denial, Suspension, or Revocation of Certification
0780-02-16-.08	Expedited Applications and Active Military Service

**RULES
OF
DEPARTMENT OF COMMERCE AND INSURANCE
DIVISION OF FIRE PREVENTION**

CHAPTER 0780-02-16

**FIRE PREVENTION, BUILDING, PLUMBING, AND MECHANICAL INSPECTOR
CERTIFICATION STANDARDS AND QUALIFICATIONS**

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0780-02-16-.04	Acceptable Standards, Organizations and Courses	0780-02-16-.08	Expedited Applications and Active Military Service

0780-02-16-.01 GENERAL REQUIREMENTS.

- (1) The purpose of inspector certification is to establish uniform minimum requirements designed to increase the level of competency and reliability of code enforcement personnel, to the level that will enhance each local government's ability to protect the lives and property of its citizens from improper construction, fire, and related hazards.
- (2) Whenever anyAll applications or documents is sentfor certification shall be submitted to the State Fire Marshal's Office regarding certification, mailing by certified mail to the State of Tennessee, Department of Commerce and Insurance, Division State Fire Marshal of Fire Prevention, will be required. All applications for initial certification and recertification shall be completed, in full, on forms approved by the State Fire Marshal's Office.
- (23) The applicant for certification shall showprovide satisfactory proof satisfactory to the DivisionState Fire Marshal, or designee, that he or shethe applicant understands applicable building, fire, plumbing, mechanical, or fuel gas codes, through the regulations set out hereineestablished in Tenn. Comp. R. & Regs. 0780-02-16. Post aApplication matters not specifically addressed in these rulesherein will be at the discretion of the DivisionState Fire Marshal, or designee.
- (3) A certification will be valid for a period of three (3) years from the date of issuance.
- (4) Whenever the certification holder a certified inspector performs inspections pursuant to this chapter Tenn. Comp. R. & Regs. 0780-02-16, the holderinspector shall carry in his or her possession a certification identification card issued by the Division State Fire Marshal's Office. Specialties in which the inspector is authorized to perform inspections may be listed on the certification identification card.
- (5) Any building or fire inspector new applicant for certification has up to twelve (12) months from July 1, 1994, for those employed on this date, or twelve (12) months from their date of employment for those hired after this date to satisfy the requirements for certification and submit the required application to the State Fire Marshal's Office, therefore, all All requirements for certification mustshall be met within this time framesatisfied within the first twelve (12) months of employment or excused for just cause by the Division State Fire Marshal, or designee. A new applicant shall be eligible to utilize the twelve (12) month period only once, unless otherwise authorized by the State Fire Marshal, or designee.

- ~~(6)~~ A plumbing or mechanical inspector, if employed on July 1, 2008, shall be deemed to meet the certification requirements of Tenn. Code Ann. §68-120-118 for three (3) years from the date of certification. On the expiration date of the three (3) year period, all plumbing and mechanical inspectors previously deemed to have met the certification requirements as set out by Tenn. Code Ann. §68-120-118(a)(1) shall be required to meet all requirements of Tenn. Code Ann. §68-120-118(a)(2) in order to be re-certified. A plumbing or mechanical inspector applicant for certification, if employed after July 1, 2008, has twelve (12) months from the date of employment to receive certification. All requirements for certification and re-certification must be met within these time frames or excused for just cause by the Division.
- (76) Municipalities and counties shall notify the sState fFire mMarshal's Office within sixty (60) days after any new code official subject to inspector who is required to obtain certification is hired. The notice shall be on a form provided by the sState fFire mMarshal's Office for this purpose and shall contain the name of the newly hired officialinspector and the date of employment.
- ~~(87)~~ Persons who deconduct fire prevention inspections or pre-fire planning inspections need notare not required to be certified unless part of their regular duties also includes fire, code or building, plumbing, mechanical, or fuel gas code inspections.
- ~~(9)~~ The purpose of this certification requirement will be to establish uniform minimum requirements designed to increase the level of competency and reliability of code enforcement personnel, to the level that will enhance each local government's ability to protect the lives and property of its citizens from improper construction, fire, and related hazards.

Authority: T.C.A. §§68-102-113, 68-120-106, 68-120-113, and 68-120-118. Administrative History: Original rule filed July 28, 1993; effective October 11, 1993. Repeal and new rule filed August 22, 2008; effective November 5, 2008. Amendment filed September 25, 2009; effective February 28, 2010.

0780-02-16-.02 DEFINITIONS.

- (1) "Department" shall mean the Tennessee Department of Commerce and Insurance.
- (2) "Division" shall mean the Division of Fire Prevention, also known as the State Fire Marshal's Office.
- (3) "Chapter" refers to Tennessee Code Annotated Section 68-120-101, et. seq.
- (4) "Certification" shall mean that designation or certificate, to be conferred on the applicant by the State Fire Marshal after making application and showing a satisfactory requisite of understanding of applicable building, fire, plumbing, mechanical, or fuel gas codes.
- (5) "Continuing Education" means training courses attended by certificate holders which are directly related to area(s) of certification or to the relevant code(s) for the purpose of attaining credit for re-certification. The material covered in the course(s) shall provide information that is valuable to certificate holders in their duty as officials having jurisdiction to enforce the applicable fire, building, plumbing, mechanical, or fuel gas code. All training courses are approved in the discretion of the Division, and the number of credit hours awarded for participation in a course is determined by the Division.
- (61) "Building Code Inspection" means an inspection for the purpose of enforcing and determining compliance with the adopted building code and as a result of which citations for failure to comply may be issued or other remedies or measures for enforcement of the building code may be invoked.
- ~~(72)~~ "Building Code Officialinspector" means the officers and their duly authorized

~~representatives an individual who have as part of their~~his/her regular duties the performance of ~~performs~~ building code inspections, or the resolution of ~~resolves~~ conflicts relative to application of the adopted building code. The ~~official's~~inspector's status shall be determined by job duties rather than job title.

- (3) "Certification" means the designation and authorization conferred by the State Fire Marshal, or designee, on a municipal, county and state employed inspector, who has made application and provided the satisfactory requisite understanding of applicable building, fire, plumbing, mechanical, or fuel gas codes, to conduct or perform inspections and enforces adopted codes.
- (4) "Chapter" means Tenn. Code Ann. § 68-120-101 et seq.
- (5) "Continuing Education" means training courses related to the knowledge and enforcement of relevant code(s) and which are approved by the State Fire Marshal, or designee, for a designated specialty or specialties. The State Fire Marshal, or designee, shall specify the amount of credit hours awarded for approved training courses.
- (6) "Department" means the Tennessee Department of Commerce and Insurance.
- (~~87~~) "Fire Code Inspection" means an inspection for the purpose of enforcing and determining compliance with the adopted fire code and as a result of which citations for failure to comply may be issued or other remedies or measures for enforcement of the fire code may be invoked.
- (~~98~~) "~~Fire Code Official~~Inspector" means the ~~officers and their duly authorized representatives an individual who have as part of their~~his/her regular duties the performance of ~~performs~~ fire code inspections, or the resolution of ~~resolves~~ conflicts relative to application of the adopted fire code. The ~~official's~~ inspector's status shall be determined by job duties rather than job title.
- (~~109~~) "Fire Prevention Inspection" means an inspection conducted by fire department personnel other than a fire code ~~official as defined herein~~inspector. This inspection is advisory in nature (i.e. maintenance and housekeeping) by the fire department personnel. ~~This inspection and may result in a fire code inspection.~~
- (10) "~~Pre-Fire Planning Inspection" means a walk through inspection for the purpose of determining building layout and other building conditions to aid fire fighters if a fire occurs.~~
- (~~1210~~) "Mechanical Code Inspection" means an inspection for the purpose of enforcing and determining compliance with the adopted mechanical or fuel gas codes and as a result of which citations for failure to comply may be issued or other remedies or measures for enforcement of the mechanical or fuel gas codes may be invoked.
- (~~1311~~) "~~Mechanical Code Official~~Inspector" means the ~~officers and their duly authorized representatives an individual who have as part of their~~his/her regular duties the performance of ~~performs~~ mechanical or fuel gas code inspections, or the resolution of ~~resolves~~ conflicts relative to application of the relevant adopted mechanical or fuel gas code. The ~~official's~~inspector's status shall be determined by job duties rather than job title.
- (~~1412~~) "Plumbing Code Inspection" means an inspection for the purpose of enforcing and determining compliance with the adopted plumbing codes and as a result of which citations for failure to comply may be issued or other remedies or measures for enforcement of the plumbing codes may be invoked.
- (~~1513~~) "~~Plumbing Code Official~~Inspector" means the ~~officers and their duly authorized representatives an individual who have as part of their~~his/her regular duties the performance of ~~performs~~ plumbing code inspections, or the resolution of ~~resolves~~ conflicts

relative to application of the ~~relevant adopted plumbing code~~. The ~~official's inspector's status~~ shall be determined by job duties rather than job title.

- (14) "Pre-Fire Planning Inspection" means a walk-through inspection for the purpose of determining building layout and other building conditions to aid firefighters if a fire occurs.
- (15) "Specialty" or "specialties" means the designated field(s) of code(s) in which an inspector is certified and authorized to inspect, and which includes the following: Fire, Building Commercial, Building Residential, Mechanical Commercial, Mechanical Residential, Plumbing Commercial and Plumbing Residential.
- (16) "State Fire Marshal" means the Commissioner of the Department of Commerce and Insurance.
- (17) "State Fire Marshal's Office" means the Division of Fire Prevention at the Department of Commerce and Insurance.

Authority: T.C.A. §§ 68-102-113, 68-120-106, 68-120-113, and 68-120-118. Administrative History: Original rule filed July 28, 1993; effective October 11, 1993. Repeal and new rule filed August 22, 2008; effective November 5, 2008. Amendments filed September 25, 2009; effective February 28, 2010.

0780-02-16-.03 REGISTRATION/CERTIFICATION.

- ~~(1) Any person required to be certified should contact the Division in order to obtain information detailing the steps that they must take.~~
- (21) An applicant for certification shall contact the Division's office in Nashville, Tennessee, and obtain the required application form to be filled out completely and returned to that office with the required fee of forty five (\$45.00) dollars. Any applicant seeking to obtain initial certification as a certified inspector may contact the State Fire Marshal's Office in Nashville or go to the department's website to acquire a copy of the required application form. An applicant shall submit a completed application form and eligibility verification form along with the required fee of forty-five dollars (\$45.00) to the State Fire Marshal's Office prior to obtaining certification.
- (32) The applicant must show proof of successful completion of a recognized and accepted training course and/or examination which will test their knowledge and skills of building, fire safety, plumbing, mechanical, or fuel gas code inspection. An applicant shall submit proof of successfully completing a recognized and accepted training course provided by professional building codes organizations identified in Tenn. Comp. R. & Regs. 0780-02-16-.04, and/or examination approved and recognized by the State Fire Marshal, or designee, which tested knowledge and skills in the specialty or specialties in which the applicant seeks certification.
- (43) The ~~Division will~~ State Fire Marshal's Office shall issue an initial certificate and identification card upon its assurance that the applicant has satisfied all certification requirements in the specialty or specialties in which the applicant seeks certification. The certificate and identification card will be mailed to the applicant at the business address given provided on the application form and will shall be valid for a period of three (3) years from the date of issuance.
- (4) Upon obtaining an additional specialty or specialties, a certified inspector may apply to have the specialty or specialties added to his/her certificate and identification card for no additional fee. The certification with one or more newly added specialties will expire on the date of the original certification.

Authority: T.C.A. §§68-102-113, 68-120-106, 68-120-113, and 68-120-118. Administrative History: Original rule filed July 28, 1993; effective October 11, 1993. Repeal and new rule filed August 22, 2008;

0780-02-16-.04 ACCEPTABLE STANDARDS, ORGANIZATIONS AND COURSES.

- (1) The State Fire Marshal, or designee, shall determine the acceptable requirements for certification and each specialty in which an inspector performs inspections.
- (2) The Division will State Fire Marshal, or designee, shall recognize and accept certification by from the following professional building codes organizations as providing the appropriate level of standards and qualifications necessary for certification— under this Chapter. The Division will determine the acceptable certification needed for the code enforcement discipline in which the applicant performs.
 - (4a) International Code Council (ICC);
 - (2b) National Fire Protection Association (N.F.P.A.);
 - (3) ~~Council of American Building Officials (C.A.B.O.);~~
 - (4c) Other appropriate professional building and fire code organizations which the Division sees fit to recognized by the State Fire Marshal, or designee; or,
 - (5d) Successful completion of an equivalent examination administered at the discretion of the ~~Division~~ State Fire Marshal, or designee.

Authority: T.C.A. §§68-102-113, 68-120-106, 68-120-113, and 68-120-118. Administrative History: Original rule filed July 28, 1993; effective October 11, 1993. Repeal and new rule filed August 22, 2008; effective November 5, 2008.

0780-02-16-.05 STANDARDS AND QUALIFICATIONS.

In order to enable applicants for certification the opportunity to acquire the knowledge and skills required to attain certification, the ~~Division will~~ State Fire Marshal, or designee, shall establish or contract for training courses which meet the minimum standards and qualifications necessary for certification under this chapter. These training courses ~~will~~ shall be made available to governmental employees and other individuals with building, fire safety, plumbing, mechanical, or fuel gas code inspection enforcement responsibilities.

Authority: T.C.A. §§68-102-113, 68-120-106, 68-120-113(f), and 68-120-118(f). Administrative History: Original rule filed July 28, 1993; effective October 11, 1993. Repeal and new rule filed August 22, 2008; effective November 5, 2008. Amendment filed September 25, 2009; effective February 28, 2010.

0780-02-16-.06 ~~RE-CERTIFICATION~~ RENEWAL OF CERTIFICATION.

- (1) Certification is valid for three (3) years. ~~In order to obtain re-certification~~ To renew a certification, inspectors must ~~submit a completed renewal application along with a fee of thirty-five dollars (\$35.00) dollars to the Division along with the renewal application~~ State Fire Marshal's Office. The Division will ~~State Fire Marshal's Office shall send each certificate holder~~ certified inspector an renewal application for re-certification at least sixty (60) days prior to the date of expiration of the original certificate. The renewal application for re-certification will be mailed by the Division State Fire Marshal's Office to the last known business address, unless the certificate holder ~~inspector~~ has requested otherwise.
- (2) ~~Certificate holders will~~ Certified inspectors shall have up to sixty (60) days following the expiration of their certification to fulfill all requirements for re-certification ~~renewal of certification. All applications for renewal of certification filed during this late period must~~ shall

~~be accompanied by a late penalty fee of ten dollars (\$10.00) dollars in addition to the re-~~
~~Certification fee of thirty-five dollars (\$35.00) dollars. Certifications are invalid~~
~~during this late period and inspections may shall not be performed by the inspector until an~~
~~application for renewal of certification is approved obtained.~~

- (3) If the sixty (60) day late period has expired prior to an inspector fulfilling all requirements for renewal of certification, then the inspector shall apply for a new certification in accordance with T.C.A. §§ 68-120-113 and 68-120-118, and Tenn. Comp. R. & Regs. 0780-02-16.
- (34) Re-certification requirements can be met through one of the following three methods Certified inspectors may renew certification as follows:
- (a) Attendance and successful completion of Division State Fire Marshal, or designee, approved training courses which provide instruction directly related to certificate holders' area(s) of certification an inspector's specialty or to the appropriate code(s) for the purpose of attaining credit for re-certification renewal of certification. Training courses should be approved in advance to receive credit; however, the Division State Fire Marshal, or designee, in #shis/her discretion, may approve a course and award specified hours of credit after it is given. Organizations are encouraged to submit courses to the State Fire Marshal's Office for approval by the Division for credit toward re-certification at least fourteen (14) days prior to the scheduled date of the course. There is a minimum requirement of thirty-six (36) hours of continuing education during the three (3) year certification period in order to obtain re-certification renew certification by this method. Proof of completion of thirty-six (36) hours of continuing education within thirty-six (36) months prior to re-certification must renewal of certification shall be attached to the application for re-certification when it is submitted to the Division State Fire Marshal's Office. If certificate holders possess multiple certifications, certificate holders must show that they have obtained thirty six (36) hours of continuing education within thirty six (36) months prior to re-certification. Continuing education hours may count toward multiple re-certifications. In addition, certificate holders may request in writing to the Division that renewal dates for their multiple certifications be made the same date. To accommodate such requests, the Division may pro-rate the certification fee by one-third (1/3) or two-thirds (2/3) depending on the unused portion of a certification period. The Division State Fire Marshal's Office will not be responsible for training expenses incurred by certificate holders inspectors.
 - (b) Successful completion of an examination administered at the discretion of the Division State Fire Marshal, or designee.
 - (c) Successful completion during the previous three (3) years of the next higher level of certification offered by a recognized and approved certifying professional building codes organization as listed in Rule Tenn. Comp. R. & Regs. 0780-02-16-.04.

Authority: T.C.A. §§68-102-113, 68-120-106, 68-120-113, and 68-120-118. Administrative History: Original rule filed July 28, 1993; effective October 11, 1993. Repeal and new rule filed August 22, 2008; effective November 5, 2008. Amendment filed September 25, 2009; effective February 28, 2010.

0780-02-16-.07 DENIAL, SUSPENSION, OR REVOCATION OF CERTIFICATION.

- (1) The Division may revoke, modify, suspend, or condition its certification of an individual if it finds, after appropriate investigation, notice and hearing, that; The State Fire Marshal, or designee, may refuse to issue, renew, or deny any application for certification or recertification if the specified requirements have not been fulfilled.
- (2) The State Fire Marshal, or designee, may revoke, modify, suspend, or condition the certification of an inspector if the State Fire Marshal, or designee, finds that the inspector

has violated this chapter or any rule or regulation lawfully promulgated under this chapter, including, but not limited to:

- (a) the requirements for certification had not been met prior to certification; or
 - (b) any continuing responsibilities associated with certification are not being fulfilled; or
 - (c) the ~~certificate holder~~inspector is not properly enforcing the provisions of this chapter; or
 - (d) any fraud, collusion, misrepresentation or substantial mistake was involved in the procurement of certification; or
 - (e) the inspector conducted an inspection on work performed or installations made by the inspector or by a member of the inspector's immediate family, or the inspector conducted an inspection on work performed or installations made by an entity or organization owned by the inspector or owned by any member of the inspector's immediate family.
- (23) Any certification holder whose certification is revoked may appeal such revocation pursuant to The provisions of the Uniform Administrative Procedures Act, compiled in Tennessee Code, Annotated, Title 4, Chapter 5, shall govern all matters concerning the hearing and judicial review of any contested case arising under this chapter and any applicable rules and regulations.

Authority: T.C.A. §§ 68-120-113, 68-120-106, and 68-102-113. Administrative History: Original rule filed July 28, 1993; effective October 11, 1993.

0780-02-16-08 EXPEDITED APPLICATIONS AND ACTIVE MILITARY SERVICE

- (1) An applicant for certification meeting the requirements of T.C.A. § 4-3-1304(d)(1) may:
 - (a) Be issued a certification upon application and payment of all fees required for the issuance of such certification if, in the opinion of the State Fire Marshal, or designee, the requirements for certification of such other state are substantially equivalent to that required in Tennessee; or
 - (b) Be issued a temporary certification as described herein if the State Fire Marshal, or designee, determines that the applicant's certification does not meet the requirements for substantial equivalency, but that the applicant could perform additional acts, including, but not limited to, education, training, or experience, in order to meet the requirements for the certification to be substantially equivalent. The State Fire Marshal's Office may issue a temporary certification upon application and payment of all fees required for issuance of a regular certification of the same type which shall allow such person to perform services as if fully certified for a set period of time that is determined to be sufficient by the State Fire Marshal, or designee, for the applicant to complete such requirements.
 - (i) After completing those additional requirements and providing the State Fire Marshal's Office with sufficient proof thereof as may be required, a full certification shall be issued to the applicant with an issuance date of the date of the original issuance of the temporary certification and an expiration date as if the full certification had been issued at that time.

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

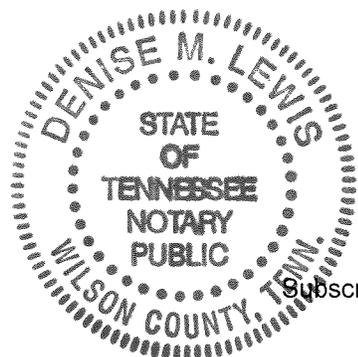
Board Member	Aye	No	Abstain	Absent	Signature (if required)
N/A					

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

I further certify the following:

Notice of Rulemaking Hearing filed with the Department of State on: 06/09/2017

Rulemaking Hearing(s) Conducted on: (add more dates). 08/07/2017



My Commission Expires

Date: 10/18/17

Signature: Julie Mix McPeak

Name of Officer: Julie Mix McPeak

Title of Officer: Commissioner of Commerce & Insurance

Subscribed and sworn to before me on: 10/18/17

Notary Public Signature: Denise M Lewis

My commission expires on: 1/15/17

Agency/Board/Commission: _____

Rule Chapter Number(s): _____

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

Herbert H. Slatery III
 Herbert H. Slatery III
 Attorney General and Reporter
12/18/2017
 Date

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Department of State Use Only

Filed with the Department of State on: 12/19/17

Effective on: 3/19/18

Tre Hargett
 Tre Hargett
 Secretary of State

G.O.C. STAFF RULE ABSTRACT

DEPARTMENT: Commerce and Insurance

DIVISION: Fire Prevention

SUBJECT: Electrical Installations

STATUTORY AUTHORITY: Tennessee Code Annotated, Sections 68-102-113, 68-102-143, and 68-102-603

EFFECTIVE DATES: March 19, 2018 through June 30, 2018

FISCAL IMPACT: The Department anticipates no change in state or local government revenues or expenditures.

STAFF RULE ABSTRACT:

The amendments to Tenn. Comp. R. & Regs. 0780-02-01-.02 [Adoption by Reference] adopts the 2017 edition of the NEC to become effective July 1, 2018. The rule also makes arc fault circuit interrupters (AFCI) optional in bathrooms, laundry areas, garages, unfinished basements as defined in NEC and for branch circuits dedicated to supplying refrigeration equipment. Finally, the rule allows utility companies to make AFCI optional under Section 110.24.

The amendments to Tenn. Comp. R. & Regs. 0780-02-01-.04 [Inspections] include correction of citations and terminology. The substantive changes will allow deputy fire marshals to perform electrical inspections where the need arises, so long as they are properly certified. Furthermore, the amendments provide that an inspection will be required on the re-connections of electrical power to a building and for temporary service poles. Additionally, supplying of electrical power for final inspections will be required in residential and commercial buildings in which the electrical power has been disconnected. The amendments also add the requirement that all signs receiving electrical power shall be inspected.

The amendments to Tenn. Comp. R. & Regs. 0780-02-01-.05 [Permits] clarify that the permit application fee of five dollars (\$5.00) is in addition to all other required inspection

fees. Another change will delete language related to the electrician registration program, which is no longer in effect through the Division of Fire Prevention. This registration program is currently handled by the Tennessee Board for Licensing Contractors.

The amendments to Tenn. Comp. R. & Regs. 0780-02-01-.11 [Dwelling Units] are related to the electrical standards applicable to dwelling units. Paragraph (2) addressing lighting in clothes closets is deleted entirely. The section is irrelevant in light of the language in the 2017 edition of the NEC. The amendments to Paragraph (4) relate to smoke alarm requirements for newly constructed one and two family dwellings. The amendments reflect the statutory changes made in T.C.A. § 68-102-151. The primary changes in this paragraph clarify that the statute is applicable to newly constructed homes and changes the term smoke detector to smoke alarm, which is more commonly used in the industry. Additionally, the rule clarifies smoke alarms must be installed in accordance with building standards adopted by the State Fire Marshal pursuant to Tenn. Code Ann. § 68-120-101 rather than the 2003 International Residential Code.

The most substantive statutory change to the smoke alarm section is the removal of the previous exemption which exempted a one family dwelling unit built and occupied by the family from the smoke alarm requirements. Paragraph (8) was added to the rule to clarify that light fixtures in crawl spaces of dwelling units shall have guarded covers and is identical to the requirement for the installation of HVAC units in Tenn. Comp. R. & Regs. 0780-02-01-.13. The 2017 NEC addresses the requirements in paragraph (10), making it unnecessary, and the amendment deletes paragraph (10) entirely.

The amendment to Tenn. Comp. R. & Regs. 0780-02-01-.15 [Used Manufactured Homes] reflects the adoption of the 2017 NEC.

The amendment to Tenn. Comp. R. & Regs. 0780-02-01-.20 [Local Government Authorization to Perform Electrical Inspections] clarifies that the State retains jurisdiction for electrical inspections over state owned and state leased buildings in jurisdictions where local governments have been authorized to conduct electrical inspections.

The amendment to Tenn. Comp. R. & Regs. 0780-02-01-.22 [Boat Docks and Marinas] clarifies the appropriate section of the NEC to be used when the time of the installation cannot be determined. Additionally, the rules

add language permitting voltage in yard and pier distributions systems to exceed the maximum voltage specified in the NEC if written documentation is submitted from a licensed engineer.

Public Hearing Comments

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

Comments 1-17 were received during the public hearing on September 11, 2017. The remaining comments were received in writing during the open comment period.

Comment 1

Mr. Keith Waters from Schneider Electric spoke in support of adopting the 2017 NEC without amendment. Waters highlighted the differences between the 2008 and the 2017 versions, including the expanded protection against electrocution risk by increasing the requirement of AFCI and GFCI devices. He also highlighted the new installation guidelines for PV solar electrical systems and for energy storage systems.

Response 1

The Department thanks Mr. Waters for his comments and for participating in the hearing.

Comment 2

Mr. Charlie Monks from Eaton Corporation, former volunteer firefighter and electrician spoke about the benefits AFCIs can provide in a home. He also spoke to the difference in price and estimated that it would be an increase of about \$500 per home. Mr. Monks addressed reliability of the product and noted that AFCIs have clear installation guidelines, are no more labor intensive than other devices and have diagnostic codes available to assist in troubleshooting.

Response 2

The Department thanks Mr. Monk for his comments and for participating in the hearing.

Comment 3

Mr. Scott White from State Farm Insurance, the largest insurer of homes in Tennessee, spoke urging the adoption of the 2017 NEC without amendment. Mr. White noted that TN is the sixth (6th) in the nation for civilian structure fire fatalities, which is about twice the national average. Mr. White additionally noted that the NEC is a minimum standard that has been well-vetted with input from many interests throughout the nation. State Farm feels that adopting a modern electrical code will help save lives and protect property.

Response 3

The Department thanks Mr. White for his comments and for participating in the hearing.

Comment 4

Mr. Ron Bethea, Chief Electrical Inspector for Memphis and Shelby County Codes Enforcement, urged adoption and full implementation of the 2017 NEC. Mr. Bethea noted that more and more electronic devices are being brought into homes now, that electrical systems in homes are becoming more complicated while the number of skilled electricians available continues to decline. Mr. Bethea concludes that it's even more important to leverage technological advancements to protect residential wiring systems. Mr. Bethea explained the technical benefits of the AFCI. Finally, Mr. Bethea also requested the amendment limiting the number of outlets on a circuit be eliminated, which would lessen the cost of full implementation of AFCIs.

Response 4

The Department thanks Mr. Bethea for his comments and for participating in the hearing.

Comment 5

Mr. Keith Stager, resident of Franklin, TN, spoke in support of full implementation of the 2017 NEC. Mr. Stager noted that he has participated at national NFPA conferences and has seen how all parties are able to participate in the drafting process and during the code review process. Mr. Stager concluded by saying that full adoption of the 2017 NEC would be in the best interest of the citizens of Tennessee.

Response 5

The Department thanks Mr. Stager for his comments and for participating in the hearing.

Comment 6

Mr. Dennis Epperson, President of the Home Builders Association of Tennessee and a builder from Cleveland, spoke against the full implementation of the 2017 NEC as it related to AFCIs. Mr. Epperson said the AFCI isn't justified because it cannot stop an arc from occurring, but can only mitigate it. Mr. Epperson estimated the cost of implementation between \$1,000 and \$2,000 per home. Mr. Epperson cited the callbacks as a problem with AFCIs and then stated that most homes that burn are older than 20 years.

Response 6

The Department thanks Mr. Epperson for his comments and for participating in the hearing but respectfully disagrees with his assessment. Mitigating an arc is a safety benefit if it prevents an electrical fire from igniting.

Comment 7

Ms. Charlotte Peak, a home builder from Cleveland, spoke against the full implementation of the AFCI. Ms. Peak also stated that AFCIs can only mitigate arc potential effects and do not detect ground faults. Ms. Peak pointed to a number of reports from the U.S. Commercial Product Safety Commission before the 1999 version of the NEC was adopted saying that the benefits of the technology were overblown. Ms. Peak noted that the 2012 report clarified some of the data but said that it included single-family and multi-family dwellings, mobile homes and motor homes. Ms. Peak reiterated that most fires occur in homes that are more than 20 years old and that since 1999, changes in codes and product safety standards mitigate against fire in newer homes even as they age. Ms. Peak did note that electrical issues have become an increasing larger player in residential fires, which was reported by the U.S. Fire Administration in 2016. Ms. Peak explained that older homes were wired with fewer receptacles, which caused homeowners to overload those outlets. Ms. Peak concluded her statement noting that the primary reason for house fires in Tennessee is grease fires in the kitchens and suggested that the Department remove all frying pans in the kitchens.

Response 6

The Department thanks Ms. Peak for her comments and for participating in the hearing but respectfully disagrees with her assessment. Mitigating an arc is a safety benefit if it prevents an electrical fire from igniting, and that information presented at the hearing demonstrates clearly that new and old homes do burn. Finally, the Department recognizes that kitchen fires do cause a significant amount of property damage in Tennessee, but the Department believes that removing all frying pans from kitchens in Tennessee is not a reasonable regulation.

Comment 7

Ms. Susan Ritter, Executive Vice President for the Home Builders Association of Tennessee, spoke against full implementation of the 2017 NEC. Ms. Ritter noted that the reliability of the AFCIs are bleak and that callbacks are numerous. Ms. Ritter reported that new appliances trip the AFCIs, which can ruin the contents of a refrigerator or freezer. Ms. Ritter also noted that South Dakota exempted life support equipment from AFCI requirements. Ms. Ritter estimated that the cost of implementing the full AFCI requirement would be \$1,000 to \$3,000 for new homes, but that new homes are already safe without AFCI protection. Ms. Ritter stated that for every \$1,000 increase in the cost of a home, 4,296 homeowners will no longer qualify for a mortgage.

Response 7

The Department thanks Ms. Ritter for her comments and for participating in the hearing but respectfully disagrees with her assessment. The Homebuilders have been unable to provide data relating to nuisance callbacks, only anecdotal accounts, which is not reliable. Further, the claim that an increase in \$1,000 prevents 4,296 homeowners from qualifying for a mortgage is an economic development concern, which is best addressed by the General Assembly, THDA and the Department of Economic and Community Development. The Department of Commerce and Insurance is charged with establishing minimal safety standards.

Comment 8

Mr. Don Glays, Executive Director of the West Tennessee Home Builders Association, conferred with association members and codes inspections officials from Memphis, Shelby County, Bartlett and Collierville, and they request the removal of the Tenn. Comp. R. & Regs 0780-02-01-.11(10) limiting the number of outlets on a circuit. Mr. Glays stated that appliances have become more efficient over the years and those appliances are used less often at the same time.

Response 8

The Department thanks Mr. Glays for his comments and for participating in the hearing.

Comment 9

Mr. David Windrow, Deputy Chief of Operations with Brentwood Fire and Rescue, spoke on behalf of the more than 500 members of the Tennessee Fire Chief's Association who support adopting the 2017 NEC without amendments. Mr. Windrow noted that amendments make the codes enforcement more difficult for inspectors and weaken the safety measures included in the standards, which were created by consensus process. Mr. Windrow noted that they are concerned with protecting lives of Tennesseans, but also with protecting the firefighters who go into the homes. Mr. Windrow also noted that in his jurisdiction (Spring Hill, Franklin and Brentwood), they respond to fires at homes that are new builds, and not just old homes. Additionally, Mr. Windrow said that while there are things that we cannot control, we should take action to prevent things we can. The first two known causes of fires in homes are cooking and smoking- things the fire services cannot directly control. But, Mr. Windrow noted, the Department can control the building standards and code adoption. Ten people died in Memphis last year because of a malfunctioning air conditioning unit, which Mr. Windrow stated should be a litmus test for this code adoption. Finally, Mr. Windrow stated that the position of the Association is that the code should be adopted without amendment.

Response 9

The Department thanks Mr. Windrow for his comments and for participating in the hearing.

Comment 10

Mr. Randy Safer, Southern Regional Director for the National Fire Protection Association, spoke in favor of adopting 2017 NEC without amendment. Mr. Safer noted that cooking is the number one cause of fires in Tennessee but not the number one cause of fire deaths. Most fire deaths occur at night while people are sleeping, and many are from electrical malfunctions. Further, Mr. Safer noted that a new home in Tennessee is built to electrical standards that are ten (10) years old though most people looking to buy new homes assume the new home is built to a current safety standard. Mr. Safer acknowledged that new homes are beautiful, but he also noted that new homes do burn and they burn faster. With open floor plans and changes in building materials, flames spread faster, which is a danger to homeowners and firefighters. Given that increased risk to life, Mr. Safer urged adoption of 2017 NEC without amendment.

Response 10

The Department thanks Mr. Safer for his comments and for participating in the hearing.

Comment 11

Mr. Pankay Lal with Schneider Electric spoke to support adoption of the 2017 NEC without amendment. Mr. Lal

testified that AFCIs can help stop a fire before it starts. He noted that fire alarms are beneficial to homeowners, but they trigger an alarm after sensing smoke in the home. The AFCI can help prevent the fire before it occurs, and it's usually protecting against something hidden behind the wall that homeowners cannot see. As to cost, Mr. Lal reported that, after installation, AFCIs will cost between 0.01-0.025 percent of the total cost of the home depending on size and number of circuits. As to the technology, Mr. Lal noted that troubleshooting is a feature provided by all the manufacturers, and nuisance tripping rarely occurs. According to Schneider's data, neither is significant enough to stop adoption of AFCIs. Mr. Lal noted that AFCIs can help stop fires like airbags prevent injury from car wrecks.

Response 11

The Department thanks Mr. Lal for his comments and for participating in the hearing.

Comment 12

Mr. Andrew Pieri, Director of Development with City of Portland, requested clarification in the rules regarding who can conduct electrical inspections and requested an increase in the five dollar (\$5.00) issuing agent fee to ten dollars (\$10.00) since it does not cover current expenses.

Response 12

The Department thanks Mr. Pieri for his comments and for participating in the hearing, but the Department does not plan on requesting a change in the fee at this time.

Comment 13

Mr. Andrew Lee requested adoption of 2017 NEC without amendment. Mr. Lee noted that the extra cost of the AFCI isn't what is primarily driving up the cost of the construction and asked what the cost would be of losing a loved one in a fire, the ongoing hospitalizations and surgeries for burn victims injured in a fire. With the current construction boom, Mr. Lee noted that people rely on legislation and rules to ensure highest safety standards. Mr. Lee reiterated that electrical fires are in the top three causes of fires and that bringing electrical codes to current standards and the expanded use of AFCIs will help lower that number. If proven technology exists to stop fires, Mr. Lee stated that technology needs to be required, not listed as optional.

Response 13

The Department thanks Mr. Lee for his comments and for participating in the hearing.

Comment 14

Mr. Randy Dollar from Siemens addressed the reliability of the AFCI technology. Mr. Dollar noted that nuisance tripping is usually only raised as an issue during codes adoption discussions and that Siemens does track nuisance calls and maintains state-specific data. For Tennessee in the last year, Mr. Dollar testified that Siemens received four (4) calls and only one (1) was a nuisance call. Two (2) of the complaints were a result of faulty installation/wiring in the house and the last call was a noise issue, not a safety issue, and was resolved. Mr. Dollar also addressed the cost of AFCI and encouraged parties to look at the information readily available online, and using that information, Mr. Dollar calculated the cost overestimating minimum circuits in a house and calculated that the cost would be less than one dollar (\$1.00) a month over the life of the mortgage. Additionally, Mr. Dollar noted that the Building Code Effectiveness Grading Schedule is used to evaluate each state and municipality, which affects homeowners' insurance rates. Mr. Dollar testified that two of the questions the Schedule asks is "does your community adopt and enforce the latest edition of nationally recognized codes?" and "are the codes amended to weaken the requirements of the nationally recognized code?" Mr. Dollar noted that adopting 2017 with no amendments will help homeowners' insurance rates.

Response 14

The Department thanks Mr. Dollar for his comments and for participating in the hearing.

Comment 15

Mr. Chris Finen, licensed engineer with the Eaton Corporation, spoke in favor of adopting the 2017 edition of the NEC without amendments. Mr. Finen noted that AFCIs are not new devices; the devices are in their third decade of manufacture, and nuisance tripping has been almost entirely eliminated. Mr. Finen pleaded against reducing the protection AFCIs can offer because of the remaining but minimal nuisance tripping. Finally, Mr. Fine asked the State Fire Marshal not to ignore the opinions of the fire experts like Consumer Protection Safety Commission, Underwriters Lab, United States Fire Administration, Electrical Safety Foundation International, National Association of State Fire Marshals, and others who endorse 2017 NEC without amendment.

Response 15

The Department thanks Mr. Finen for his comments and for participating in the hearing.

Comment 16

Ms. Susan Newman Scarce spoke as a homeowner, mother, grandmother, representative of International Association of Electrical Inspectors and a panel member for the NEC urging adoption of the 2017 NEC without amendment. Ms. Scarce testified that the current electrical standard is almost ten (10) years old. Ms. Scarce explained that the codes require worldwide communication are minimum standards and that lessening the standards is an injustice to the citizens of the state. Ms. Scarce testified that new homes do burn because they are not built to current standards. Ms. Scarce noted that if Tennessee maintains the current adopted standard, that standard is really the 2002 standard regarding AFCI protection, which is different from GFCI. Ms. Scarce rhetorically asked that if the electrical standards go back to 2002, will everything including the electronics we use and the price of our new homes also revert to 2002 standards? Further, Ms. Scarce testified that if there is a problem with nuisance tripping, the statistics don't show it.

Response 16

The Department thanks Ms. Scarce for her comments and for participating in the hearing.

Comment 17

Mr. Felician Arriaga spoke requesting that the Department maintain the current AFCI standard. Mr. Arriaga testified that the homebuilders would pass the increased cost off to the electricians. Ms. Arriaga also asked that the Department provide a document to distinguish the different code adoptions across jurisdictions.

Response 17

The Department thanks Mr. Arriaga for his comments and for participating in the hearing.

Comment 18

Ms. Jean Joseph, a burn victim and resident of New Orleans, submitted a written comment supporting adoption of 2017 NEC without amendment. Ms. Joseph suffered 2nd, 3rd, and 4th degree burns over 50% of her body after a FEMA trailer exploded in August 2006. Ms. Joseph urged Tennessee to adopt safety standards that are consistent with the standards adopted in other states.

Response 18

The Department thanks Ms. Joseph for her comments.

Comment 19

Ms. Nicole Acton submitted a written comment supporting the adoption of the 2017 NEC with full AFCI protection. Ms. Acton's mother is a burn victim, and Ms. Acton wrote of the lifelong impact of a burn injury. Ms. Acton noted that AFCI's prevent arcing that can cause electrical fires and prevents the damage before it occurs. Ms. Acton noted that the AFCIs protect families and children in Tennessee and their implementation should be expanded.

Response 19

The Department thanks Ms. Acton for her comments.

Comment 20

Mr. Brian Holland with the National Electrical Manufacturers Association (NEMA) wrote to urge adoption of the 2017 NEC without amendment. Mr. Holland testified that current code ensures compatibility with electrical product safety standards, manufacturer's installation instructions, and other installation guidelines that impact electrical products. The complete set of rules creates a system of protection and by amending out any one requirement, that system is substantially compromised. Mr. Holland suggested that the decision makers think of the NEC as an automobile. The seatbelts, air bags, and antilock brakes all work together to reduce crashes and to save lives. Mr. Holland noted that if any one of those life safety products is removed, traffic deaths are certain to rise. Mr. Holland noted that as reported in a previous hearing, Tennessee is averaging 11 deaths per 1,000 fires which is twice the national average. 77% of the fire related deaths have occurred in residential structures. According to Mr. Holland, the Consumer Product Safety Commission (CPSC) estimates that approximately 50% of the residential electrical fires that occur each year in the United States could have been prevented by AFCI protection. NEMA strongly urges the Department to keep the 2017 NEC requirements for AFCI protection intact, with no amendments.

Response 20

The Department thanks Mr. Holland for his comments.

Comment 21

Mr. Gary Loftis, professional engineer, wrote to urge adopting the 2017 NEC. Mr Loftis also requested that the Department include amended language regarding boat docks and marinas to clarify existing requirements and to reduce redundancies.

Response 21

The Department thanks Mr. Loftis for his comments.

Comment 22

Ms. Patricia Pennington, licensed general contractor from Cleveland, wrote urging adoption of the 2017 NEC with the amendment to make AFCI optional in all rooms except the bedroom.

Response 22

The Department thanks Ms. Pennington for her comments.

Comment 23

Mr. Paul Rice wrote to the department urging amending the 2017 NEC to require AFCIs in bedrooms and optional in all other rooms. Mr. Rice also submitted an unsigned/unattributed White Paper for the Department's review and the letter from the Home Builders Association of Tennessee signed by Ms. Ritter and Mr. Epperson.

Response 23

The Department thanks Mr. Rice for his comments.

Comment 24

Ms. Ashley Rutledge submitted a comment through Representative Rusty Crowe urging adoption of the 2017 NEC without amendment. Ms. Rutledge's letter addresses the cost of the device noting that the devices adds less than \$1 a month over the life of the mortgage. Ms. Rutledge also notes that some say nuisance calls are a problem, but Ms. Rutledge writes that the data does not support that claim. Ms. Rutledge also noted that the 2017 NEC was vetted over a 3 year process and that the standards established therein are considered necessary for safety.

Response 24

The Department thanks Ms. Rutledge for her comments.

Comment 25

Mr. Jeffrey Sargent with the National Fire Protection Association (NFPA) wrote to urge the adoption of the 2017 NEC without amendment. Mr. Sargent noted that the 2008 NEC is a sound standard but that the advancements in the electrical industry have outpaced the 2008 code making Tennessee about a decade behind. According to Mr. Sargent, the 2017 NEC contains new requirements that reflect current technology and provides for better materials and methods for electrical installations. Mr. Sargent also noted that the changes in the code create cost savings for consumers, even when compared to the 2014 NEC.

Response 25

The Department thanks Mr. Sargent for his comments.

Comment 26

Ms. Misty Patterson, President of the Clarksville Home Builders Association, wrote urging the adoption of the 2017 NEC with amendment to make AFCI mandatory in bedrooms and optional in all other rooms.

Response 26

The Department thanks Ms. Patterson for her comments.

Comment 27

Mr. Cesar Escarcega, Plant Manager at Eaton, wrote urging the adoption of the 2017 NEC and maintaining the AFCI requirement throughout the home. Mr. Escarcega noted that Eaton, which employs almost 500 people in Tennessee and about 250 in the Cleveland plant, is a world leader in the development, manufacture and sale of electrical products. Mr. Escarcega noted that the AFCI expansion to other rooms in the home will help prevent electrical fires and can save lives. Mr. Escarcega indicated that the cost of the AFCI has been overstated and that nuisance issues are usually the result of faulty wiring.

Response 27

The Department thanks Mr. Escarcega for his comments.

Comment 28

Ms. Susan Ritter, on behalf of the Home Builders Association of Tennessee, submitted an amended statement requesting adoption of the 2017 NEC allowing AFCI throughout the house but requested that bathrooms, laundry rooms, garages, unfinished basements and kitchens be exempt from AFCI requirements.

Response 28

The Department thanks the Home Builders Association for its amended comments.

Comment 29

Mr. Daniel P. Johnson, President of the Tennessee Fire Safety Inspectors Association, submitted a comment to support adoption of the 2017 NEC without amendment. Mr. Johnson wrote that the inspectors work very hard to make sure adopted codes are enforced to ensure the safety of Tennesseans but that homes built to standards a decade old should be troubling to citizens. Mr. Johnson noted that 2016 marked the highest number of fire fatalities in Tennessee in 6 years- 113. As of September 1, 2017, 59 fire deaths had been reported. Mr. Johnson wrote that seatbelts, airbags and smart driver technologies are used every day to reduce accidents in cars, and that there are similar technological improvements in home building, including GFCI and AFCI. These devices have helped reduce electrical fires, electrocution and provide advanced alerts and warnings. As fire safety inspectors, Mr. Johnson writes that they see from the front lines what AFCIs can do to prevent electrical fires. The devices have provided protection in bedrooms and that protection should be expanded into the kitchen and laundry areas where increasing amounts of electrical use (charging stations and corded appliance use) occurs.

Response 29

The Department thanks Mr. Johnson for his comments.

Regulatory Flexibility Addendum

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

The Department has considered whether these rules will have an economic impact on small businesses (those with 50 or fewer employees). These rules govern electrical installations in Tennessee in commercial and residential properties and for boat docks and marinas. Because of the scope of the rules, small businesses will likely be impacted.

1. The type or types of small businesses and an identification and estimate of the number of small businesses subject to the proposed rule that will bear the cost of, or directly benefit from the proposed rule:
The Board for Licensing Contractors reported that 6,320 residential building contractors are licensed in Tennessee, but it cannot determine which ones are small businesses. The Board has also licensed approximately 10,000 limited licensed electricians. The rule addresses code adoption and clarifies when inspections are made. The rule alone imposes no additional costs. Owners of new homes built to a modern and current electrical code will directly benefit from the adoption of updated codes.
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 rule requires no additional reporting, recordkeeping or administrative compliance.
3. A statement of the probable effect on impacted small businesses and consumers;
The probable effect cannot be determined as the code allows for alternative cost-saving methods. It is not, however, anticipated to have a greater impact than current standards.
4. A description of any less burdensome, less intrusive or less costly alternative methods of achieving the purpose and objectives of the proposed rule that may exist, and to what extent the alternative means might be less burdensome to small business;
There are no less burdensome methods for achieving the purpose of the proposed rule.
5. A comparison of the proposed rule with any federal or state counterparts; and
There is no federal counterpart.

Following is a list of state counterparts as of November 2017:

2017 NEC: 12 states; TX, CO, ID, MA, MN, NE, ND, OR, SD, VT, WA, WY

2014 NEC: 25 states; AL, AR (moving to 2017 NEC in December 2017), GA (moving to 2017 NEC in early 2018), KY (moving to 2017 NEC in early 2018), NC, OK, SC, WV, AK, CA, CT, DE, HI, IA, ME, MD, MI, MT, NH, NJ, NM, NY, OH, RI, UT

2011 NEC: 4 states; FL, LA, VA, WI

2008 NEC: 3 states; IN, PA, TN

No statewide NEC: 6 states; AZ, IL, KS, MS, MO, NV

6. Analysis of the effect of the possible exemption of small businesses from all or any part of the requirements contained in the proposed rule.
The Department establishes the minimum electrical standard across the state for the protection of life and property. Exempting small businesses from minimum safety standards would undermine the purpose of the proposed rule and the statutory obligation of the Department of Commerce and Insurance, Division of Fire Prevention.

Impact on Local Governments

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

The rule proposed may 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 Tenn. Comp. R. & Regs. 0780-02-01-.02 [Adoption by Reference] adopts the 2017 edition of the NEC to become effective July 1, 2018. The rule also makes arc fault circuit interrupters (AFCI) optional in bathrooms, laundry areas, garages, unfinished basements as defined in NEC and for branch circuits dedicated to supplying refrigeration equipment. Finally, the rule allows utility companies to make AFCI optional under Section 110.24.

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The most substantive statutory change to the smoke alarm section is the removal of the previous exemption which exempted a one family dwelling unit built and occupied by the family from the smoke alarm requirements. Paragraph (8) was added to the rule to clarify that light fixtures in crawl spaces of dwelling units shall have guarded covers and is identical to the requirement for the installation of HVAC units in Tenn. Comp. R. & Regs. 0780-02-01-.13. The 2017 NEC addresses the requirements in paragraph (10), making it unnecessary, and the amendment deletes paragraph (10) entirely.

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The amendment to Tenn. Comp. R. & Regs. 0780-02-01-.20 [Local Government Authorization to Perform Electrical Inspections] clarifies that the State retains jurisdiction for electrical inspections over state owned and state leased buildings in jurisdictions where local governments have been authorized to conduct electrical inspections.

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- (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 § 68-102-113, which requires the state fire marshal to establish minimum electrical standards; § 68-102-

143, which allows the Commissioner to appoint deputies to perform electrical inspections; and § 68-102-603, which gives the Department jurisdiction to conduct inspections of commercial marinas.

- (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;

Electrical Inspectors: No position taken
Local Jurisdictions with exempt status: No position taken
Licensed electricians: No position taken
Insurance companies: State Farm is on record urging adoption of 2017 NEC without amendment
Homebuilders: Urge adoption on all points except the AFCI requirement throughout the kitchen
Fire Service: Urge adoption of 2017 NEC without amendment
Burn Victims: Urge adoption of 2017 NEC without amendment
Manufacturers: Urge adoption of 2017 NEC without amendment
IAEA, NFPA, NEMA: Urge adoption of 2017 NEC without amendment

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

Attorney General Opinion No. 99-148.

- (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 anticipates no change in state or local government revenues or expenditures.

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

Gary Farley, Director of Fire Prevention Inspections and Permits & Licensing Section
Mary Beth Gribble, Director of Programs and Policy Development

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

Gary Farley, Director of Fire Prevention Inspections and Permits & Licensing Section
Mary Beth Gribble, Director of Programs and Policy Development
Leigh Ferguson, Chief Counsel for Fire Prevention and Law Enforcement

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

Department of Commerce and Insurance
500 James Robertson Parkway
Nashville, TN 37243

Gary Farley, 615-532-5805, gary.farley@tn.gov
Mary Beth Gribble, 615-532-3272, marybeth.gribble@tn.gov
Leigh Ferguson, 615-360-4435, leigh.j.ferguson@tn.gov

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

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Sequence Number: 12-14-17
Rule ID(s): 6666
File Date: 12/19/17
Effective Date: 3/19/18

Rulemaking Hearing Rule(s) Filing Form

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

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

Agency/Board/Commission:	Department of Commerce and Insurance
Division:	Fire Prevention
Contact Person:	Leigh Ferguson
Address:	500 James Robertson Parkway
Zip:	37243
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Revision Type (check all that apply):

- Amendment
 New
 Repeal

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

Chapter Number	Chapter Title
0780-02-01	Electrical Installations
Rule Number	Rule Title
0780-02-01-.02	Adoption by Reference
0780-02-01-.04	Inspections
0780-02-01-.05	Permits
0780-02-01-.07	Special Occupancies
0780-02-01-.11	Dwelling Units
0780-02-01-.15	Used Manufactured Homes
0780-02-01-.20	Local Government Authorization to Perform Electrical Inspections
0780-02-01-.22	Boat Docks and Marinas

**RULES
OF
DEPARTMENT OF COMMERCE AND INSURANCE
DIVISION OF FIRE PREVENTION**

**CHAPTER 0780-02-01
ELECTRICAL INSTALLATIONS**

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0780-02-01-.01 SCOPE.

- (1) The provisions of this chapter shall apply to:
- (a) Installation of electrical conductors and equipment within or on public and private buildings or other structures, including manufactured homes, modular building units and recreational vehicles not otherwise exempt under the provisions of Tenn. Code Ann. Title 68, Chapters 102 and 126; and floating buildings and other premises such as yards, carnivals, parking and other lots; and industrial substations.
 - (b) Installation of conductors that connect to the supply of electricity.
 - (c) Installations of other outside conductors on the premises.

Authority: T.C.A. §§ 68-102-113, 68-102-143, and 68-102-150.

0780-02-01-.02 ADOPTION BY REFERENCE.

- (1) Unless otherwise provided by applicable law or the provisions of this chapter, the required minimum standards for materials, installations, use of facilities, equipment, devices and appliances conducting, conveying, consuming or using electrical energy in, or in connection with, any building, structure, or any premises located in this State of Tennessee shall be those prescribed in the National Electrical Code, 2008~~2017~~ edition, published by the National Fire Protection Association, 1 Batterymarch Park, Quincy, Massachusetts 02169, effective October 1, 2018~~2017~~, except that:
- (a) Section 110.24, Available Fault Current shall be optional; and
 - (b) Arc Fault Circuit Interrupters (AFCIs) shall be optional for bathrooms, laundry areas, garages, unfinished basements, which are portions or areas of the basement not intended as habitable rooms and limited to storage, work or similar area, and for branch circuits dedicated to supplying refrigeration equipment.

Authority: T.C.A. §§ 68-102-113 and 68-102-143.

0780-02-01-.03 APPROVAL OF ELECTRICAL PRODUCTS.

(1) Approved Testing Laboratories.

(a) The Commissioner of Commerce and Insurance, or designee, will accept as satisfactory (when properly installed or used) materials, equipment, devices, or applicants which:

1. Display a label, symbol, or other identifying mark of one of the following independent testing laboratories:

American Gas Association Laboratories
8501 East Pleasant Valley Road
Cleveland, Ohio 44131

Applied Research Laboratories
5371 Northwest 161 Street
Miami, Florida 33014

Canadian Standards Association (CSA)
Rexdale Boulevard
Rexdale, Ontario, Canada M9W 1R3

Detroit Testing Laboratory, Inc.
8720 Northend Avenue
Oak Park, Michigan 48237
(Power-operated dispensing devices for petroleum products only)

ETL Testing Laboratories, Inc.
Industrial Park
Cortland, New York 13045

FM Approvals LLC
1151 Boston-Providence Turnpike
Norwood, Massachusetts 02062

MET Electrical Testing Company, Inc.
916 West Patapsco Avenue
Baltimore, Maryland 21230

NSF International
789 N. Dixboro Road
Ann Arbor, Michigan 48113

QPS Evaluation Services Inc.
81 Kelfield Street, Unit 8,
Toronto, Ontario, M9W 5A3

SGS North America Inc.
620 Old Peachtree Road, Suite 100
Suwanee, GA 30024

TÜV Rheinland of North America, Inc.

12 Commerce Road
Newtown, CT 06470

TÜV SÜD America, Inc.
10 Centennial Drive
Peabody, Massachusetts 01960

Underwriters Laboratories, Inc.
333 Pfingsten Road
Northbrook, Illinois 60062

or,

2. Are certified by another independent testing agency or laboratory to meet a standard which, in the Commissioner's, or designee's, judgment, provides an adequate level of safety by being:
 - (i) recognized nationally as an electrical product safety standard;
 - (ii) revised periodically to accommodate the latest developments in electrical products and installations; and
 - (iii) developed by the publisher in a manner which affords adequate opportunity for presentation and consideration of views of industry groups, experts, users, consumers, governmental authorities, and others having broad experience in the field involved.
 - (b) Any standard which is accepted by the American National Standards Institute (ANSI) shall be deemed to satisfy the requirements of part 2 of subparagraph (a) above.
 - (c) Where there is no published standard for a product under consideration which meets the requirements of part 2 of subparagraph (a) above, the testing agency or laboratory must identify, and justify the adequacy of, the standard or specifications on which its certification is based.
 - (d) Components of certified products must be evaluated for compliance with applicable safety standards, and determined to be suitable for use in such products.
- (2) In lieu of evaluation by a testing agency or laboratory in accordance with paragraph (1)(a) above, the Commissioner of Commerce and Insurance, or designee, may consider other satisfactory evidence that a product meets safe and proper standards

Authority: T.C.A. §§ 68-102-113, 68-102-143, and 68-102-150.

0780-02-01-.04 INSPECTIONS.

- (1) Inspections of electrical installations ~~will~~may be conducted by deputy inspectors appointed under contract with the Commissioner of Commerce and Insurance pursuant to T.C.A. § 68-102-143. In circumstances where the need arises as determined by the Commissioner of Commerce and Insurance, or designee, ~~supervisors of deputy inspectors~~deputy fire marshals are authorized to conduct inspections of electrical installations.
 - (a) Fees for such inspections for services, including all circuits connected thereto, based on total ascertainable ampere capacity, are specified in ~~rule~~Tenn. Comp. R. & Regs. 0780-02-01-.21. If the total ampere capacity is not ascertainable, the inspector may

negotiate the fee based on the estimated number of required inspections; however, any such fee shall be subject to review and approval by the Commissioner of Commerce and Insurance, or designee, prior to issuance of a permit.

- (b) Fees charged for additional inspections, including inspections necessitated by rejections and inspections for circuits not previously connected to the service, shall be based on the ascertainable ampere capacity of the service or ascertainable ampere capacity of the previously unconnected circuit, and shall not exceed the maximum amounts specified in the Tenn. Comp. R. & Regs. 0780-02-01-.21.
 - (c) Inspectors may not charge mileage in excess of the standard travel reimbursement rate, as determined by the Tennessee Department of Finance and Administration, per mile each way for any special trip(s) requested by a property owner or contractor. This mileage charge must be approved in advance by the Commissioner of Commerce and Insurance, or designee.
- (2) (a) Inspections ~~are~~shall be required on:
- 1. Complete new installations;;
 - 2. HVAC equipment;;
 - 3. New services, re-connections, or changes in services to existing installations;;
 - 4. Additions to existing installations, such as swimming pools, water well pumps to the wellhead, motor installations, additional rooms or spaces to existing buildings, grain drying equipment and out buildings;;
 - 5. Heat cable installations before being concealed by plaster, sheet rock, or other methods;;
 - 6. Conduit or raceways in or under masonry before covering with concrete or other permanent materials;;
 - 7. Conductors or raceways installed in all structures. This inspection is required prior to the concealing of such conductors or raceways by wall covering materials or by insulation;;
 - 8. Temporary services, which include temporary service poles and temporary service releases;; and
 - 9. Electrical signs.
- (b) A minimum of two (2) inspections shall be required on wiring installed within or on public and private buildings or other structures. The installer shall notify the electrical inspector in writing whenever any part of a wiring installation is to be hidden from view by insulation or the permanent placement of part of the building. No wiring or raceways shall be concealed until it has been inspected and approved by the inspector. A final inspection shall be requested upon completion of the entire electrical installation.
- (3) When the initial ("rough-in") inspection is conducted:
- (a) All applicable circuit conductors and outlet boxes ~~must~~shall be installed;
 - (b) All joints shall be made; and

(c) All grounding connections ~~must~~shall be in compliance with Section 300.10 of the 2008~~17~~ edition of the National Electrical Code except as set forth in the exceptions enumerated in this subparagraph.

1. Exception No. 1: Where that portion of an installation which constitutes service conductors and equipment is changed or modified.
 2. Exception No. 2: Where all wiring or raceway is exposed.
 3. Exception No. 3: The requirements of (a) above shall not apply where inspection is performed on raceway systems only.
- (4) The electrical ~~contractor, or the Mechanical Contractor, or the permit holder is~~shall be responsible for ~~making sure~~ensuring the inspector has access to the ~~job to be~~ site for inspectioned.
 - (5) The installer ~~permit holder~~ shall notify the inspector when the electrical installation is ready for inspection.
 - (6) Except as provided in ~~rule~~Tenn. Comp. R. & Regs. 0780-02-01-.05(2) and for installers licensed in accordance with T.C.A. Title 69, Chapter 10, the inspector shall not issue a final certificate of approval on an installation performed by any person, firm, corporation or legal entity not duly licensed in accordance with T.C.A. Title 62, Chapter 6.
 - (7) It is not intended that electric service to an existing installation be disrupted pending inspection of additions or changes to such service; however, an inspection ~~is~~shall be required within seven (7) days of re-connection by the Power Supplier.
 - (8) Whenever service equipment has been changed out or upgraded on any existing structures, a safety inspection will be conducted pursuant to ~~Tenn. Code Ann. § 68-102-143(5)~~.
 - (9) Inspections ~~are~~shall not be required on:
 - (a) Minor repair work, such as replacement of lamps or connection of portable devices to suitable receptacles which have been permanently installed; and
 - (b) Installation, alteration, or repair of electric wiring or equipment installed by an electrical distribution agency for use in the generation, transmission, distribution, or metering of electrical energy.
 - (10) The inspector shall not issue a final certificate of approval on an installation if a building permit has not been obtained, if required, plans have not been reviewed and approved by the Department of Commerce and Insurance, if required, or all inspections have not been performed pursuant to ~~rule~~Tenn. Comp. R. & Regs. 0780-02-23-.07.
 - (11) For residential and commercial buildings, electrical power shall be supplied to the building in order for inspector to perform final inspection.

Authority: T.C.A. §§ 68-102-113, 68-102-143, and 68-102-150.

0780-02-01-.05 PERMITS.

- (1) No electrical wiring on which an inspection is required by this chapter shall be installed without securing an electrical permit from the power distributor, local building official, Commissioner, or designee, or other issuing agent authorized by the Commissioner, or

designee. The permit ~~must~~shall be secured in the area where the work is to be performed; unless, the permit is secured from the Commissioner, or designee. Issuing agents may charge a fee of no more than five dollars (\$5.00) for the issuing of a permit. This fee is in addition to all applicable inspection fees in Tenn. Comp. R. & Regs. 0780-02-01-.21.

- (2) Residential and Non-residential Property Owner's Permits
 - (a) Any person may perform electrical work (for which an inspection is required) upon his/her own residence provided he/she first applies for and obtains a residential property owner's electrical permit. This permit shall only extend to the applicant and the immediate members of the applicant's family. The permit shall not authorize assistance by any other person not duly licensed in accordance with T.C.A. Title 62, Chapter 6. A residential property owner's permit shall automatically expire upon completion of the work for which the permit was issued. All work done under such permit shall be subject to regular inspection requirements and fees and other applicable laws and regulations. Only one (1) property owner's permit may be obtained within a twelve (12) month period unless the property owner can establish loss of his/her home by fire, windstorm, etc.; and,
 - (b) Any non-residential property owner may obtain a permit for electrical work to be performed on his/her property by an employee(s) licensed pursuant to T.C.A. Title 62, Chapter 6, or T.C.A. Title 69, Chapter 10, who will be performing the work in accordance with his/her duties as an employee(s) of the property owner. A non-residential property owner's permit shall be limited to the specific property listed on the permit and shall automatically expire upon completion of the work for which the permit was issued. All work done under such permit shall be subject to regular inspection requirements and fees and other applicable laws and regulations.
- (3) No permit ~~will~~shall be required for installation of electrical systems by manufacturers of factory-manufactured structures, recreational vehicles, or modular building units; ~~however, such manufacturers shall register with the Division of Fire Prevention of the Department of Commerce and Insurance, as required by Tenn. Code Ann. §68-102-150. This rule in no way does not exempts~~ owners of any manufactured home, recreational vehicle or modular building unit from the required installation permit and inspection governed by this chapter.
- (4) When applying for a permit, an applicant shall present:
 - (a) A check or money order in the amount of the permit fee for inspection(s), payable to the Department of Commerce and Insurance of the State of Tennessee; and
 - (b) Except for a residential property owner's permit, proof of licensure pursuant to T.C.A. Title 62, Chapter 6 or T.C.A. Title 69, Chapter 10. For a non-residential property owner's permit, the license number of the employee(s) to perform the work and certification that the employee(s) licensed pursuant to T.C.A. Title 62, Chapter 6 or T.C.A. Title 69, Chapter 10, will be performing the work in accordance with his/her duties as an employee(s) of the property owner.
- (5) All electrical permits are non-transferable.
- (6) In the event of rejection of an electrical installation by the inspector, a new electrical permit must be applied for and obtained.
- (7) Every electrical permit shall expire two (2) years from the date of issue unless:
 - (a) the inspector determines that substantial progress has been made in the work authorized by the permit; and

- (b) the permit holder is granted an exception after submitting a written request to the Director of the Electrical Section of the Division of Fire Prevention.

No electrical work for which a permit is required shall be commenced in any building or premises until a permit to perform such work is obtained.

- (8) A copy of the permit shall be placed in the service equipment enclosure as soon as such enclosure is installed.
- (9) If a refund for a permit fee for inspection is requested, eighty-five ~~(85%)~~ percent (85%) of the permit fee, the fee that would have been paid to the inspector for the inspection, will be refunded. The remaining fifteen ~~(15%)~~ percent (15%) of the permit fee is non-refundable to cover administrative and processing costs. Requests for refunds ~~must~~ shall be made to the Division of Fire Prevention on the applicable form, completed in full, ~~and must be made~~ prior to an inspection being performed.
- (10) A returned check will result in the revocation of an issued permit.

Authority: T.C.A. §§ 68-102-113, 68-102-143, and 68-102-150.

0780-02-01-.06 EMERGENCY SITUATIONS.

- (1) Power suppliers may energize services under emergency conditions resulting from windstorm, earthquakes or other catastrophic occurrences.
- (2) Connections for emergency or delayed inspections shall not be made unless a permit has been obtained.

Authority: T.C.A. §§ 68-102-113 and 68-102-150.

0780-02-01-.07 SPECIAL OCCUPANCIES.

- (1) All lighting fixtures in barns and other outbuildings shall be of the non-conductor type directly fastened to the outlet box. Drop lights shall not be installed in barns or other buildings, unless specifically approved for the purpose used. All convenience receptacles in outbuildings shall be at least three (3) feet above floor level. Wiring in hay mows shall be installed in conduit or otherwise protected against mechanical injury.
- (2) Conductors serving swimming pools which originate at a dwelling unit service equipment or sub-panel located on the interior of the dwelling unit may be installed utilizing the appropriate wiring methods contained in Chapter 3 of the 2008~~17~~ edition of the National Electrical Code. The wiring method shall comply with Article 680, 2008~~17~~ edition of the National Electrical Code regarding that portion of the installation on the exterior of the dwelling unit.

Authority: T.C.A. §§ 68-102-113, 68-102-143, and 68-102-150.

0780-02-01-.08 METER LOCATION.

- (1) The power supplier will determine the physical location of the meter base.
- (2) For multi-occupancy structures, metering equipment shall be identified to indicate the occupancy serviced.

Authority: T.C.A. §§ 68-102-113, 68-102-143, and 68-102-150.

0780-02-01-.09 INSTALLATIONS SERVICED BY MULTIPLE SOURCES. Transfer equipment associated with installations served by alternate sources of supply shall be equipped with the necessary equipment to prevent backfeed of power onto the power supplier's system when the power supplier's local system is not energized by its own source of power. Protective equipment and installation of equipment to prevent backfeed shall be approved by the power supplier.

Authority: T.C.A. §§ 68-102-113 and 68-102-150.

0780-02-01-.10 SERVICE ENTRANCE CONDUCTORS. Service entrance conductors shall be installed in conduit where such conductors serve a structure with exterior walls of brick, stone, masonry, metal or metal-clad.

Authority: T.C.A. §§ 68-102-113 and 68-102-150.

0780-02-01-.11 DWELLING UNITS.

- (1) Where installed as separate units, ovens and cooktop units shall be served by individual circuits.
- ~~(2) Light fixtures in clothes closets twenty-eight (28") inches or less in depth shall be mounted on the ceiling or wall above the door. These fixtures shall be so located that the fixture is within four (4") inches of the intersection of the ceiling and entrance wall. Such fixtures shall be thermally protected and either incandescent recessed with solid lens or fluorescent with single bulb holder fixtures. Fixtures installed in closets of larger dimensions shall comply with the 200817 edition of the National Electrical Code.~~
- ~~(32) Only designated circuits shall be energized following a "service entrance release" inspection. Such an inspection shall only be valid for a period of forty-five (45) days from the date of inspection.~~
- ~~(43) All electrical connection, including HVAC equipment, willshall be completed and inspected prior to final approval pursuant to Tenn. Code Ann. §§ 68-102-143(c) and (e), except as defined in paragraph (32) of this section.~~
- ~~(54) Except as provided in Tenn. Code Ann. § 68-120-111(b), nNo newly constructed one-family and-or two-family dwellings shall be approved for connection of new electric service on a permanent basis under T.C.A. § 68-102-143, unless suchthe dwelling is equipped with at least one (1) a smoke detectoralarm which, when activated, initiates an alarm audible in every sleeping room. The detector or detectors shall bethat has been:~~
 - (a) Listed in accordance with the standards of Underwriters' Laboratories, or another testing agency or laboratory accepted by the state fire marshal; and
 - (b) Installed in accordance with the 2003 International Residential Code, published by the International Code Council, Inc.; building construction safety standards adopted pursuant to T.C.A. § 68-120-101 and in accordance with the manufacturer's directions, unless those directions conflict with applicable codes that are standards adopted by the state fire marshal. Notwithstanding the provisions of the 2003 International Residential Code building construction safety standards adopted pursuant to T.C.A. § 68-120-101, battery operated smoke detectorsalarms shall be permitted when installed in buildings

without commercial power.

- (65) Service equipment shall have only one (1) main means of disconnecting services of two hundred twenty-five (225) amps or below.
- (76) The installation of receptacles for island counter spaces and peninsular counter spaces below the countertop shall be optional.
- (87) Receptacles ~~are~~ shall not ~~be~~ required in the wall space behind doors which may be opened fully against a wall surface. Wall space measurement shall begin at the edge of the door when fully opened.
- (8) Light fixtures in crawl spaces shall have guarded covers.
- (9) Occupancy of a dwelling ~~is~~ shall be prohibited before final inspection has been completed and approved.
- (10) ~~In Article 210.12(B) of the 2008 edition of the National Electrical Code, arc-fault circuit interrupters, combination type, shall be required for all bedrooms and in all other rooms shall be optional. There shall be a maximum of no more than ten thirteen (10) outlets on a fifteen (15) ampere circuit or no more than twelve (12) outlets on a twenty (20) ampere circuit.~~
- (140) In Article 334.15(C) of the 20082017 edition of the National Electrical Code, Nonmetallic-Sheathed Cable shall not be required to be run through bored holes in unfinished basements and crawl spaces with less than four (4') feet (4') and six (6") inches (6") of clearance.
- (12) ~~In Article 406.8(B) of the 2008 edition of the National Electrical Code, the installation of listed weather resistant type receptacles shall be optional.~~

Authority: T.C.A. §§ 68-102-113, 68-102-143, 68-102-150 and 68-120-111.

0780-02-01-12 OVERCURRENT PROTECTION. Circuit breakers used as overcurrent protection for circuits serving devices not requiring a grounded (neutral) conductor, such as a 240V water heater, shall be multipole breakers. Single pole circuit breakers with tie handles shall not be approved for this purpose.

Authority: T.C.A. §§ 68-102-113 and 68-102-150.

0780-02-01-13 WORK SPACE ABOUT HVAC EQUIPMENT.

- (1) Installation in attic spaces.
 - (a) Entrance way providing access to equipment shall not be less than the largest piece of equipment to be replaced.
 - (b) There shall be a vertical clearance of at least four (4) feet and six (6) inches for use by those conducting necessary examination. In addition there shall be a walkway not less than twenty-four (24) inches wide on the ceiling joist running from the attic opening to the equipment, without an obstruction.
- (2) Installation in crawl spaces underneath buildings.
 - (a) Entrance way providing access to equipment shall not be less than the largest piece of equipment to be replaced.

- (b) There shall be a vertical clearance of at least four (4') feet and six (6") inches unobstructed crawl space to the unit.
- (c) If four (4') feet and six (6") inches of clearance cannot be maintained, the unit shall be located no more than twelve (12') feet from the entrance opening and a clear unobstructed crawl space not less than thirty (30") inches in height and twenty-four (24") inches in width shall be maintained.
- (d) Light fixtures in crawl spaces shall have guarded covers.

Authority: T.C.A. §§ 68-102-113, 68-102-143, and 68-102-150.

0780-02-01-.14 REPEALED.

Authority: T.C.A. §§ 68-102-113 and 68-102-150. Administrative History: Original rule certified June 10, 1974. Amendment filed October 24, 1974; effective January 17, 1975. Amendment filed April 20, 1978; effective May 22, 1978. Repeal and new rule filed October 27, 1981; effective December 11, 1981. Repeal and new rule filed June 28, 1984; effective July 28, 1984. Repeal and new rule filed March 12, 1987; effective April 26, 1987. Repeal filed June 27, 1990; effective August 11, 1990.

0780-02-01-.15 USED MANUFACTURED HOMES.

- (1) Manufactured homes shall have listed, enclosed-type service-entrance equipment located inside the manufactured home, with proper rated overcurrent protection for each branch circuit. Overcurrent protection for circuits of twenty (20) amperes or less may be either circuit breakers, or plug fuses and fuse holders of Type "S", and shall be of the time-delay type. The manufactured home disconnecting means located inside shall be fed from an outside location with a feeder from the main service entrance for such manufactured home. If the supply or feeder from the main service to the disconnecting means located inside does not have a grounding conductor as required by Article 550 of the ~~2008~~2017 edition of the National Electrical Code, one shall be installed.
- (2) Inspection shall be both visual and mechanical; switch and receptacle plates and light fixtures will be removed to check conductor connections, insulation of splices, boxes, and general code requirements.
- (3) After the mechanical test and visual inspections have been made, a safety inspection certificate may be issued as determined by the inspector.

Authority: T.C.A. §§ 68-102-113, 68-102-143, 68-102-147, and 68-102-150.

0780-02-01-.16 REPEALED.

Authority: T.C.A. §68-102-113. Administrative History: Original rule filed June 27, 1990; effective August 11, 1990. Repeal filed July 15, 2003; effective September 28, 2003.

0780-02-01-.17 LOCAL ORDINANCES.

No city, county, town, municipal corporation, metropolitan government or political subdivision of this state shall adopt or enforce any ordinance prescribing less stringent electrical standards than those established hereunder as determined by the Division.

(Rule 0780-02-01-.18, continued)

Authority: T.C.A. §§ 68-102-113, 68-102-143, and 68-102-150.

0780-02-01-.18 PERMIT ISSUING AGENTS.

- (1) All individuals, including all business entities, municipalities, and cooperatives, who undertake to issue electrical permits under this chapter must hold a current contract with the Department of Commerce and Insurance, as administered through the Electrical Section of the Division of Fire Prevention.
- (2) State deputy electrical inspectors and their immediate families are ineligible to become issuing agents. Additionally, without prior approval from the Department, no individual or business entity in any way related to or financially associated with any Department official will be allowed to become an issuing agent.

Authority: T.C.A. §§ 68-102-113 and 68-102-143.

0780-02-01-.19 REPEALED.

Authority: T.C.A. §68-102-113. Administrative History: Original rule filed October 15, 1999; effective December 29, 1999. Repeal filed July 15, 2003; effective September 28, 2003.

0780-02-01-.20 LOCAL GOVERNMENT AUTHORIZATION TO PERFORM ELECTRICAL INSPECTIONS.

- (1)
 - (a) Pursuant to T.C.A. § 68-102-143(b)(1), the Commissioner of Commerce and Insurance may authorize a local government to conduct electrical inspections through the local government's appointed deputy inspectors. This inspection authority shall cover all types of electrical installations in accordance with the law, except for state owned or state leased properties and Electric Vehicle Supply Equipment (EVSE) which remain under the jurisdiction of the Commissioner. ~~However, authorized local jurisdictions that have adopted the 200814 NEC National Electrical Code or a subsequent code edition and have been trained on the installation of EVSEs by the Division of Fire Prevention of the Department of Commerce and Insurance will be allowed to inspect such installations.~~
 - (b) Deputy inspectors appointed in such a manner are authorized to inspect electrical installations upon receipt of a request from the owner of the property or from any person, association or corporation supplying electrical energy to the installations, or from municipal governing bodies, or from the county legislative body of the county in which the installations are located and the inspectors for their compensation are authorized to charge for and received a fee for each inspection.
 - (c) If a conflict arises between the state fire marshal and the local government relative to the application or interpretation of the same or substantially identical electrical safety standards, then the determination of the state fire marshal shall supersede the conflicting application or interpretation by the local government.
 - (d) This rule sets forth the criteria by which local governments may seek authorization to perform electrical inspections and procedures by which the Commissioner, or designee, may review such authorization.

- (2) Initial Authorization.
 - (a) Prior to being authorized to perform electrical inspections, the local government, through the county executive, the county commission, the mayor or the city council, shall make a written request to the state fire marshal.
 - (b) The request shall be completed on a form approved by the state fire marshal and shall contain the following information:
 - 1. The title(s) and edition(s) of the code(s) that will be adopted and enforced;
 - 2. The number and types of inspections of each installation (final, rough-in, temporary, HVAC, service release, re-inspect) that will be conducted;
 - 3. A detailed description of the permit issuance and record-keeping process for all inspection activities;
 - 4. The names of all persons who are employed by the local government to perform electrical inspections and who have successfully completed the respective certification examinations of the International Association of Electrical Inspectors (IAEI- 1 & 2 Family and Electrical General or Electrical Commercial), the International Code Council (ICC- Residential Electrical Inspector and Commercial Electrical Inspector), or any other certification designations approved by the Commissioner, or designee. All necessary certifications shall be obtained prior to performing electrical inspections.
 - (c) After receipt of the information required in paragraph (2)(b) of this rule, the state fire marshal will schedule a pre-authorization review to take place at the applying local government's office. During this review, the state fire marshal may review any and all records related to the local government's proposed electrical inspection program, including the certification records of persons employed to perform electrical inspections.
 - (d) If after consideration of the information required in paragraph (2)(b) of this rule and after the pre-authorization review the state fire marshal determines that the local government can adequately enforce electrical codes and conduct electrical inspections, the state fire marshal may authorize the local government to conduct electrical inspections.
- (3) The local government's adopted electrical code publication shall be current within seven (7) years of the date of the latest edition thereof, unless otherwise approved by the state fire marshal.
- (4) Review of Local Government Authorization.
 - (a) For any local government that was authorized to conduct electrical inspections before January 1, 2005, the state fire marshal will conduct a review as soon as practicable of the local government's authorization to conduct electrical inspections to determine whether the local government is adequately enforcing the adopted electrical codes and is properly performing inspections.
 - (b) For any local government that is authorized to conduct electrical inspections on or after January 1, 2005, the state fire marshal will conduct a review of the local government's authorization to conduct electrical inspections to determine whether the local government is adequately enforcing the adopted electrical codes, is properly

performing inspections and is otherwise in compliance with the information originally submitted to the state fire marshal for purposes of gaining authorization to perform electrical inspections. The review provided by this paragraph shall take place at least once every three (3) years.

- (c) Each local government that is reviewed pursuant to this paragraph will be notified of the review in writing. When a local government is subject to the review provided by this paragraph, the local government shall submit the information required for initial authorization by paragraph (2)(b) of this rule on a form provided by the state fire marshal within thirty (30) days of its receipt of the form.
- (d) As part of the review, the state fire marshal may also conduct an on-site visit to the local government to review the electrical permit and inspection process.
- (e) The state fire marshal may request any other documentation it deems necessary for the local government to evidence compliance with the requirements for initial authorization set forth in paragraph (2)(b) of this rule.
- (f) Report of Review.
 - 1. After conclusion of the review, the state fire marshal will notify the local government in writing whether there are any area(s) in which the local government is not adequately enforcing the adopted electrical codes or properly performing inspections.
 - 2. If the local government is not adequately enforcing the adopted electrical codes or properly performing inspections, the notification will contain recommended corrective action, and the local government will be directed to submit a plan of corrective action to the state fire marshal within thirty (30) days after its receipt of the notification. The plan of corrective action shall be sufficiently detailed so as to ensure compliance with all requirements for initial authorization.
 - 3. Within thirty (30) days after receipt of the local government's plan of corrective action, the state fire marshal shall either approve or disapprove the plan. If the plan is approved, the state fire marshal may conduct periodic follow-up reviews to ensure continued compliance with the plan. If the plan is not approved, the state fire marshal may remove the local government's authorization to conduct electrical inspections.

Authority: T.C.A. §§ 68-102-113 and 68-102-143(b)(1).

0780-02-01-.21 INSPECTION FEES.

The inspection fee for each inspection for services shall not exceed the following:

	Fee
Final Inspection	
0-200 ampere capacity	\$35.00
201-400 ampere capacity	\$40.00
401-600 ampere capacity	\$50.00
601-1000 ampere capacity	\$90.00
1,001 ampere capacity and above ("Nonstandard permit")	Fee is negotiable; however, any such fee shall be subject to review and approval by

	the commissioner, or designee.
Rough-in Inspection	
0-1,000 ampere capacity	\$35.00
1,001 ampere capacity and above	\$35.00
Re-inspection	
Based on rejection of 0-1,000 ampere capacity	\$35.00
Based on rejection of 1,001 ampere capacity and above	\$35.00
Inspection of a dwelling unit's heating and/or cooling system (e.g. HVAC)	\$35.00
Consultation Inspection (optional/available upon request)	\$50.00
Service Release Inspection (valid for 45 days)	Fee is based on ampere capacity of service.
Inspection of Boat Docks and Marinas	Fee is negotiable based upon the number of subpanels, panels and the ampere capacity of service; however, any such fee shall be subject to review and approval by the commissioner, or designee.

Authority: T.C.A. §§ 68-102-113, 68-102-143(b)(2) 68-102-602, and 68-102-603.

0780-02-01-.22 BOAT DOCKS AND MARINAS.

- (1) Safety inspections of boat docks and marinas shall include, but are not limited to, a review of all sources of electrical supply, including ship-to-shore power pedestals, submergible pumps, and sewage pump-out facilities, that could result in unsafe electrical current in the water for the purpose of ensuring compliance with the standards for maintenance of electrical wiring and equipment that were applicable to the marina at the time of installation.
- (2) (a) In the event that a deficiency is found during a safety inspection, any subsequent inspection required for the inspection of repairs made to address such deficiency shall be conducted by a deputy electrical inspector commissioned under T.C.A. § 68-102-143, and in accordance with T.C.A. § 68-102-143 and Tenn. Comp. R. & Regs. 0780-02-01.
- (b) The permit fee for inspection of boat docks and marinas are negotiable based upon the number of subpanels, panels and the ampere capacity of service; however, any such fee shall be subject to review and approval by the Commissioner of Commerce and Insurance, or designee.
- (3) Any main overcurrent protective device, installed or replaced on or after April 1, 2015, that feeds a marina shall have ground-fault protection not exceeding one hundred milliamperes (100 mA). Ground-fault protection not exceeding one hundred milliamperes (100 mA) of each individual branch or feeder circuit shall be permitted as a suitable alternative. Each marina operator may determine the devices that it will utilize to achieve the one hundred milliamperes (100 mA) limit that is required herein, including, but not limited to, the use of

~~equipment leakage circuit interrupters or ground fault circuit interrupters and meet all requirements in Article 555.3 in the edition of the National Electrical Code adopted in Tenn. Comp. R. & Regs. 0780-02-01-.02.~~

- (4) Inspections shall be performed in accordance with the adopted electrical code edition effective at the time of installation. If the time of installation cannot be determined, the installation ~~will~~shall be inspected in accordance with the pertinent section related to Marinas and Boatyards, Article 555 in the edition of the National Electrical Code adopted in Tenn. Comp. R. & Regs. 0780-02-01-.02, unless otherwise authorized by the Commissioner of Commerce and Insurance, or designee.
- (5) The regulation regarding a maximum of one thousand (1000) volts phase to phase being Permitted in yard and pier distribution systems as specified in Article 555.4, Distribution System of the edition of the National Electrical Code adopted in Tenn. Comp. R. & Regs. 0780-02-01-.02, may be exceeded if written documentation is submitted from an engineer licensed in the State of Tennessee approving the additional voltage.

Authority: T.C.A. §§ 68-102-113, 68-102-143(b)(2), 68-102-602, and 68-102-603.

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

Board Member	Aye	No	Abstain	Absent	Signature (if required)
N/A					

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

I further certify the following:

Notice of Rulemaking Hearing filed with the Department of State on: July, 14, 2017

Rulemaking Hearing(s) Conducted on: (add more dates). September 11, 2017



Date: 11/20/17

Signature: Julie Mix McPeak

Name of Officer: Julie Mix McPeak

Title of Officer: Commissioner of Commerce and Insurance

Subscribed and sworn to before me on: 11/20/17

Notary Public Signature: Renise M Lewis

My commission expires on: 1/15/20

Agency/Board/Commission: _____

Rule Chapter Number(s): _____

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
 Herbert H. Slatery III
 Attorney General and Reporter
12/18/2017
 Date

RECEIVED
 2017 DEC 19 AM 10:46
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 PUBLIC AFFAIRS

Department of State Use Only

Filed with the Department of State on: 12/19/17

Effective on: 3/19/18

Tre Hargett

Tre Hargett
 Secretary of State

G.O.C. STAFF RULE ABSTRACT

DEPARTMENT: Commerce and Insurance

DIVISION: Regulatory Boards, Board of Cosmetology and Barber
Examiners

SUBJECT: Licensing and Sanitary Rules

STATUTORY AUTHORITY: Acts 2017, Public Chapter 227

EFFECTIVE DATES: March 12, 2018 through June 30, 2018

FISCAL IMPACT: None

STAFF RULE ABSTRACT: These rules eliminate references to the shampooing
technician license.

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;

Small businesses could potentially hire a wider variety of persons to conduct shampooing without the necessity of any state license. Most licensed cosmetology shops are defined as small businesses under T.C.A. § 4-5-102(13). There are approximately 8,769 licensed cosmetology shops in the state of Tennessee.

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

These rules do not have projected reporting, recordkeeping, or other administrative costs.

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

Small businesses will likely have a wider variety of persons to employ to conduct shampooing. Consumers will likely have a wider variety of persons to shampoo their hair.

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

There are no less burdensome, less intrusive or less costly methods of achieving the purpose of these proposed rules.

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

These rules are required pursuant to 2017 Public Chapter No. 227 and are comparable with other states that do not require a shampoo technician license for those who engage solely in shampooing. There are no known federal counterparts to these rules.

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

These rules do not impose any new requirements upon small businesses and therefore, an analysis of a possible exemption of small businesses is not necessary or available.

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 are not expected to have an impact on local governments.

Additional Information Required by Joint Government Operations Committee

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

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

These rules eliminate references to the shampooing technician license.

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

Public Chapter No. 227, effective date April 28, 2017, mandates 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;

Actively licensed shampoo technicians, cosmetology shop owners, and job seekers are most directly affected by these rules. It is unknown whether such persons urge adoption or rejection of these amendments.

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

There are no opinions or rulings directly related to these rules or the necessity of the 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 impact on state or local government revenues and expenditures.

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

Cherrelle Hooper
Assistant General Counsel

Roxana Gumucio
Executive Director

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

Cherrelle Hooper
Assistant General Counsel

Roxana Gumucio
Executive Director

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

Cherrelle Hooper
Assistant General Counsel
500 James Robertson Parkway
5th Floor

Nashville, TN 37243
615-532-0631
Cherelle.Hooper@tn.gov

Roxana Gumucio
Executive Director – Tennessee Board of Cosmetology and Barber Examiners
500 James Robertson Parkway
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(I) Any additional information relevant to the rule proposed for continuation that the committee requests.

None.

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

For Department of State Use Only

Sequence Number: 12-09-17
 Rule ID(s): 6661-6662
 File Date: 12/12/17
 Effective Date: 3/12/18

Proposed Rule(s) Filing Form

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

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

Agency/Board/Commission:	Tennessee Board of Cosmetology and Barber Examiners
Division:	Regulatory Boards
Contact Person:	Cherelle Hooper, Assistant General Counsel
Address:	500 James Robertson Parkway, Nashville, TN
Zip:	37243
Phone:	615-741-3072
Email:	cherelle.hooper@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
0440-01	Licensing
Rule Number	Rule Title
0440-01-.01	Requirements for School License
0440-01-.03	Curriculum
0440-01-.05	Requirements for Schools
0440-01-.07	Student Kits
0440-01-.10	Original License Fee
0440-01-.11	Teacher Training Programs
0440-01-.12	Demonstrations
0440-01-.13	Fees
0440-01-.14	Civil Penalties

Chapter Number	Chapter Title
0440-02	Sanitary Rules
Rule Number	Rule Title
0440-02-.01	Definitions
0440-02-.08	Attire
0440-02-.12	Communicable Diseases

Chapter 0440-01
Licensing

Amendments

Rule 0440-01-.01 Requirements For School License is amended by deleting subparagraph (3)(d) and relettering the subsequent subparagraph so that, as amended, paragraph (3) shall read:

(3) Requirements for Instructional Floor Space

- (a) "Instructional floor space" means the floor space of a school designated primarily for the instruction of students and shall not include such spaces as storage, restrooms, utility rooms, passageways, or inhabited administrative spaces such as reception areas, offices and break areas.
- (b) A school of cosmetology offering a manicuring curriculum shall also be equipped with adequate instructional floor space for manicuring so as not to compromise or disrupt the teaching of cosmetology curriculum prescribed in Rule 0440-01-.03.
- (c) A school of cosmetology offering a natural hair styling curriculum shall also be equipped with adequate instructional floor space for natural hair styling so as to not compromise or disrupt the teaching of cosmetology curriculum prescribed in Rule 0440-01-.03.
- ~~(d) A school of cosmetology offering a shampooing curriculum shall also be equipped with adequate instructional floor space for shampooing so as to not compromise or disrupt the teaching of cosmetology curriculum prescribed in Rule 0440-01-.03.~~
- (d) ~~(e)~~ A school of cosmetology offering an aesthetics curriculum shall also be equipped with adequate instructional floor space for aesthetics so as not to compromise or disrupt the teaching of cosmetology curriculum prescribed in Rule 0440-01-.03.

Authority: T.C.A. §§62-4-105(e), 62-4-120(~~f~~), 62-4-122, 62-4-122(g)(2), 62-4-116, and 62-4-117.

Rule 0440-01-.03 Curriculum is amended by deleting subparagraph (3)(d) and relettering the subsequent subparagraphs so that, as amended, paragraph (3) shall read:

- (3) (a) The fifteen hundred (1,500) clock hours/ 45 credit hours of instruction required of applicants for a license to practice cosmetology shall be apportioned as follows:
 - 1. General.....300 clock hours/ 9 credit hours
Sterilization, sanitation and bacteriology, anatomy and physiology, shop ethics, personality and salesmanship, state law.
 - 2. Chemical.....600 clock hours/ 18 credit hours
Permanent waves, hair relaxer, hair coloring, bleaching and toning, sculptured nails, hair structure and chemistry.
 - 3. Physical.....600 clock hours/ 18 credit hours
Shampooing and rinses, hair and scalp care, hair shaping, hairdressing and styling, facials, arching, lash and brow tinting, manicures and pedicures.
- (b) The six hundred (600) clock hours/ 18 credit hours of instruction required of an applicant for a license to practice manicuring shall be apportioned as follows:
 - 1. General.....150 clock hours/ 4.5 credit hours
Sanitation and bacteriology, anatomy and physiology, state law, salon management, and ethics.
 - 2. Chemical.....100 clock hours/ 3 credit hours

Product knowledge, ingredients and usage of materials, manicuring and pedicuring, EPA and OSHA requirements.

3. Physical.....350 clock hours/ 10.5 credit hours
Massage, manicuring, pedicuring, nail care, nail artistry, nail wraps, sculptured nails, nail tips, gel nails, and nail safety.

(c) The seven hundred and fifty (750) clock hours/ 22.5 credit hours of instruction required of an applicant for a license to practice aesthetics shall be apportioned as follows:

1. General.....150 clock hours/ 4.5 credit hours
Sterilization, sanitation and bacteriology, professional ethics, personality, salesmanship, anatomy and physiology, and state law.
2. Chemical.....150 clock hours/ 4.5 credit hours
Skin conditions and disorders, nutrition, aging factors, product ingredients and usage, waxing, lash and brow tinting, OSHA and EPA requirements.
3. Physical.....450 clock hours/ 13.5 credit hours
Massage movements and manipulations, masks and packs, facial treatments with and without the use of machines, skin analysis and consultation, application of all products and machines, color psychology, make-up and corrective make-up arching.

(d) ~~The three hundred (300) clock hours/ 9 credit hours of instruction required of an applicant for a license to practice shampooing shall be apportioned as follows:~~

- ~~1. General.....100 clock hours/ 3 credit hours
Sanitation, sterilization, bacteriology, anatomy, physiology, state law, shampooing and draping, hair and scalp massage.~~
- ~~2. Chemical.....50 clock hours/ 1.5 credit hours
Chemistry and composition of shampoos and conditioners, product knowledge, EPA and OSHA requirements.~~
- ~~3. Physical.....150 clock hours/ 4.5 credit hours
Hair and scalp massage, hair and scalp care, shampooing and rinsing foreign material from hair, shop management (answering phone, scheduling appointments, ordering supplies, taking inventory, and selling to clients).~~

(e) ~~(e)~~ The three hundred (300) clock hours/ 9 credit hours of instruction required of an applicant for a natural hair stylist license shall be apportioned as follows:

1. General.....120 clock hours/ 3.6 credit hours
Sanitation, sterilization, bacteriology, shampooing, draping, disorders of hair and scalp, state law and salon management.
2. Physical.....180 clock hours/ 5.4 credit hours
Twisting, wrapping, weaving, extending, locking, braiding and natural hair styling, by hand or mechanical appliances.

(e) ~~(f)~~ The three hundred (300) clock hours/ 9 credit hours of instruction required of applicants for an instructor's license shall include no less than a total of one hundred (100) clock hours/ 3 credit hours in lesson planning and motivation.

Authority: T.C.A. §§62-4-105(e), 62-4-108, 62-4-110, and 62-4-120(k).

Rule 0440-01-.05 Requirements For Schools is amended by deleting the phrase "shampoo technician" wherever it appears in subparagraph (1)(b) so that, as amended, subparagraph (1)(b) shall read:

(1)

- (b) Provide to prospective students (before enrollment) published materials which explain requirements for licensure as a cosmetologist, manicurist, instructor, ~~shampoo technician~~, natural hair stylist, or aesthetician in the State of Tennessee; however, if a school is licensed to provide instruction solely in natural hair styling, manicuring or aesthetics, the school shall only be responsible for providing documentation relative to licensure in the field in which the school provides instruction;

Authority: T.C.A. §§62-4-105(e) and 62-4-122.

Rule 0440-01-.07 Student Kits is amended by deleting paragraph (4) in its entirety and renumbering subsequent paragraphs accordingly.

- ~~(4) Each student, with school assistance, shall be required to have a kit consisting of the following materials, for a course in shampooing after fifty (50) hours of enrollment.~~
 - ~~(a) one (1) theory book~~
 - ~~(b) one (1) workbook~~
 - ~~(c) one (1) shampoo kit~~
 - ~~(d) one (1) mannequin~~
 - ~~(e) one (1) cape~~
 - ~~(f) massage cream~~
 - ~~(g) cosmetology law book~~

Authority: T.C.A. §62-4-105(e).

Rule 0440-01-.10 Original License Fee is amended by deleting the phrase "shampoo technician" wherever it appears in paragraph (1) so that, as amended, paragraph (1) shall read:

- (1) If the fee for an original license as a cosmetologist, manicurist, ~~shampoo technician~~, natural hair stylist, aesthetician or instructor is not paid within six (6) months after the applicant is notified that he or she has passed the examination, then such applicant must submit a new application for examination and be retested. For good cause shown, this provision may be waived by the Board.

Authority: T.C.A. §62-4-105(e).

Rule 0440-01-.11 Teacher Training Programs is amended by deleting the phrase "shampooing" wherever it appears in paragraph (1) so that, as amended, paragraph (1) shall read:

- (1) An application for approval of a teacher training program in cosmetology, aesthetics, manicuring, ~~shampooing~~ or natural hair styling shall include:
 - (a) a summary of the education and experience of each instructor for the program;
 - (b) the scheduled dates of the program; and
 - (c) the proposed curriculum of the program.

Authority: T.C.A. §§62-4-105(e) and 62-4-114.

Rule 0440-01-.12 Demonstrations is amended by deleting the phrase "shampoo technician" wherever it appears in paragraph (1) so that, as amended, paragraph (1) shall read:

- (1) Any person who does not hold a valid license as a cosmetologist, manicurist, aesthetician, ~~shampoo technician~~, natural hair stylist or cosmetology instructor may not demonstrate any teaching practice of cosmetology in a shop or school.

Authority: T.C.A. §§62-4-105(e) and 62-4-108.

Rule 0440-01-.13 Fees is amended by deleting the text of the rule in its entirety and substituting, instead, the following so that, as amended, the rule shall read:

- (1) Application/examination
 - (a) A candidate shall schedule the test needed for a specific license (cosmetologist, manicurist, instructor, aesthetician, ~~shampoo technician~~, or natural hair stylist) with the Board's designated testing agency and pay an examination fee that will include any fees charged by the designated testing agency.
 - (b) The Board shall set the examination fee through choosing a contractor from a solicitation process pursuant to T.C.A. § 12-3-501, et seq. and the Comprehensive Rules and Regulations of the Central Procurement Office found at Tenn. Comp. R. & Reg. Chapter 0690-03-01, or any other predecessor rules and laws of the State of Tennessee regarding the procurement of such contracts.

- (2) Original License
 - (a) Cosmetologist..... sixty dollars (\$60.00)
 - (b) Manicurist..... sixty dollars (\$60.00)
 - (c) Instructor..... eighty dollars (\$80.00)
 - (d) Aesthetician..... sixty dollars (\$60.00)
 - ~~(e) Shampoo Technician..... sixty dollars (\$60.00)~~
 - (e)(f) Natural Hair Stylist..... sixty dollars (\$60.00)

- (3) Renewal
 - (a) Cosmetologist..... sixty dollars (\$60.00)
 - (b) Manicurist..... sixty dollars (\$60.00)
 - (c) Instructor..... seventy dollars (\$70.00)
 - (d) Aesthetician..... sixty dollars (\$60.00)
 - ~~(e) Shampoo Technician..... sixty dollars (\$60.00)~~
 - (e)(f) Natural Hair Stylist..... sixty dollars (\$60.00)

- (4) Penalty for late renewal
 - (a) Cosmetologist, manicurist, instructor, aesthetician, ~~shampoo technician~~, and natural hair

- stylist.....twenty-five dollars (\$25.00)
- (5) Cosmetology, manicure, skin care, natural hair stylist or manicure/skin care shops
- (a) Inspection (new shop, relocated shop, shop with change of ownership)
.....fifty dollars (\$50.00)
- (b) License
- new shop.....one hundred dollars (\$100.00)
relocated shop.....one hundred dollars (\$100.00)
change of ownership.....one hundred dollars (\$100.00)
- (c) Renewal.....seventy five dollars (\$75.00)
- (d) Penalty for late renewal.....fifty dollars (\$50.00)
- (e) Change of name only.....ten dollars (\$10.00)
- (f) Change of ownership due to death of immediate family, no charge, with a copy of the death certificate or obituary.
- (g) New Dual shop licenseone hundred and fifty dollars (\$150.00)
- (h) Dual shop license renewal.....one hundred dollars (\$100.00)
- (i) Dual shop penalty for late renewal.....fifty dollars (\$50.00) per year
- (6) School
- (a) Application/license (new school)three hundred and fifty dollars (\$350.00)
- (b) License for relocated or change of ownership for a school
.....one hundred and seventy-five dollars (\$175.00)
- (c) Penalty for late monthly report from schools of hours attended by students
.....twenty-five dollars (\$25.00)
- (d) Annual school renewal.....one hundred and fifty dollars (\$150.00)
- (7) Replacement or correction of license
- (a) Lost, misplaced or mutilated license.....twenty-five dollars (\$25.00)
- (b) Change of name by any cosmetologist, aesthetician, manicurist, instructor, shampooe technician, natural hair stylist or shampoo/manicurist.....ten dollars (\$10.00)
- (c) Certification for licenseefifty dollars (\$50.00)
1. Fee should be sent with:
- (i) written request for certification
- (ii) I.D. number
- (d) Student certification of hours.....twenty-five dollars (\$25.00)
1. Fee should be sent with:
- (i) certification request form
- (ii) completion/withdrawal form (unless previously submitted)
- (8) Surcharge to issue manicurist license to former shampoo/manicurist as in ~~Tenn. Code Ann.~~

T.C.A. § 62-4-131(c).....twenty-five dollars (\$25.00)

- (9) Reciprocity.....one hundred dollars (\$100.00)

The fee for application through reciprocity must be received along with the applicant's initial application documents. Any reciprocity application received without this fee shall be incomplete and will not be considered.

- (10) Retiring a license.....fifty dollars (\$50.00)

- (11) In the event that any check, draft or order for the payment of a fee to the Board of Cosmetology and Barber Examiners is returned because of insufficient funds, only cash, certified check or money order will be accepted for the amount due, plus twenty dollars (\$20.00) additional fee.

- (12) Applications for licensure of a salon are valid for ninety (90) days after approval by the Board. Failure to obtain an approved inspection for operation within the ninety (90) days shall invalidate the application and require a new application and fee.

Authority: T.C.A. §§ 62-4-105(e), 62-4-110, 62-4-112, 62-4-115, 62-4-117, 62-4-118, 62-4-120, 62-4-121, 62-4-131 and 62-4-132

Rule 0440-01-.14 Civil Penalties is amended by deleting paragraph (3).

- (3) ~~Any owner, manager, or cosmetologist requesting an individual, with a shampoo license only, to perform any services other than those listed for shampooing will be subject to a five hundred dollar (\$500.00) penalty.~~

Authority: T.C.A. §§ 56-1-308 and 62-4-105(e).

Chapter 0440-02
Sanitary Rules

Amendments

Rule 0440-02-.01 Definitions is amended by deleting subparagraph (1)(b) in its entirety and substituting instead the following language so that, as amended, the subparagraph shall read:

(1)

- (b) "Licensee" means any person holding a valid license (issued by the Board) as a cosmetologist, manicurist, aesthetician, shampoo/manicurist, instructor, or natural hair stylist ~~or shampoo technician;~~

Authority: T.C.A. §§62-4-102, 62-4-105(e), and 62-4-134.

Rule 0440-02-.08 Attire is amended by deleting the text of the rule in its entirety and substituting, instead, the following:

- (1) ~~Shops. Any licensee actively engaged in the practice of cosmetology, manicuring, natural hair styling, shampooing or aesthetics in a shop must wear an identification tag, with file number.:~~
(a) ~~an identification tag, with file number.~~
- (2) ~~Schools. All students in a school of cosmetology must wear a uniform prescribed by the school. All instructors must wear name tag with identification number.~~
- (3) ~~Apprenticeship Students. All students participating in an apprenticeship program in a licensed school must wear attire prescribed by the school and participating shop collectively. The student must wear a name tag identifying the student as an apprenticeship student and identifying the school under which the student is participating in the apprenticeship program.~~

Authority: T.C.A. §62-4-105(e).

Rule 0440-02-.12 Communicable Diseases is amended by deleting the phrase "shampoo technician" wherever it appears in paragraph (2) so that, as amended, paragraph (2) shall read:

- (2) No cosmetologist, manicurist, aesthetician, ~~shampoo technician~~, shampoo/manicurist, instructor or natural hair stylist who knowingly has an infectious or contagious disease or parasitic infestation in a communicable stage shall give service in a school or shop.

Authority: T.C.A. §§62-4-105(e) and 62-4-125.

* 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)
Kelly Barger				X	
Jimmy Boyd	X				
Anita Charlton				X	
Nina Coppinger				X	
Frank Gambuzza	X				
Brenda Graham	X				
Judy McAllister	X				
Patricia Richmond	X				
Mona Sappenfield				X	
Amy Tanksley	X				
Ron Gillihan	X				
Yvette Granger	X				

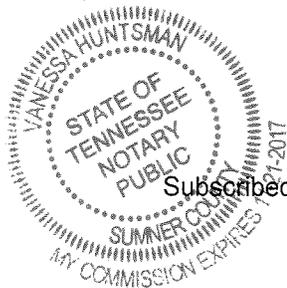
I certify that this is an accurate and complete copy of proposed rules, lawfully promulgated and adopted by the Tennessee Board of Cosmetology and Barber Examiners on 06/05/2017, and is in compliance with the provisions of T.C.A. § 4-5-222. The Secretary of State is hereby instructed that, in the absence of a petition for proposed rules being filed under the conditions set out herein and in the locations described, he is to treat the proposed rules as being placed on file in his office as rules at the expiration of ninety (90) days of the filing of the proposed rule with the Secretary of State.

Date: 10/13/2017

Signature: *Cherelle Hooper*

Name of Officer: Cherelle Hooper

Title of Officer: Assistant General Counsel



Subscribed and sworn to before me on: 10/13/2017

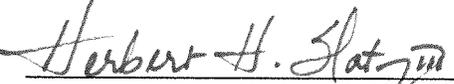
Notary Public Signature: *Vanessa Huntsman*

My commission expires on: 11/21/2017

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

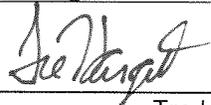
Chapter Number	Chapter Title
0440-01	Licensing
Rule Number	Rule Title
0440-01-.01	Requirements for School License
0440-01-.03	Curriculum
0440-01-.05	Requirements for Schools
0440-01-.07	Student Kits
0440-01-.10	Original License Fee
0440-01-.11	Teacher Training Programs
0440-01-.12	Demonstrations
0440-01-.13	Fees
0440-01-.14	Civil Penalties

Chapter Number	Chapter Title
0440-02	Sanitary Rules
Rule Number	Rule Title
0440-02-.01	Definitions
0440-02-.08	Attire
0440-02-.12	Communicable Diseases


Herbert H. Slatery III
Attorney General and Reporter
12/4/2017
Date

Department of State Use Only

Filed with the Department of State on: 12/12/17
Effective on: 3/12/18


Tre Hargett
Secretary of State

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REGISTRATIONS

G.O.C. STAFF RULE ABSTRACT

DEPARTMENT: Finance and Administration

DIVISION: TennCare

SUBJECT: Administrative Fees

STATUTORY AUTHORITY: Tennessee Code Annotated, Section 10-7-503(g)

EFFECTIVE DATES: March 19, 2018 through June 30, 2018

FISCAL IMPACT: None

STAFF RULE ABSTRACT: This rule chapter is being repealed pursuant to T.C.A. § 10-7-503(g), which requires that each agency adopt a public records policy. The Division of TennCare has adopted the model policy drafted by the Comptroller's Office of Open Records Counsel and must repeal the outdated fee schedule rule which conflicts with the fee schedule contained in the model policy.

Regulatory Flexibility Addendum

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

This rule will not have any impact on small businesses.

Impact on Local Governments

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

This rule will not have any impact on local governments.

Additional Information Required by Joint Government Operations Committee

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

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

This rule chapter is being repealed pursuant to T.C.A. § 10-7-503(g), which requires that each agency adopt a public records policy. The Division of TennCare has adopted the model policy drafted by the Comptroller's Office of Open Records Counsel and must repeal the outdated fee schedule rule which conflicts with the fee schedule contained in the model policy.

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

T.C.A. § 10-7-503(g) requires adoption of a public records inspection policy based upon the Comptroller's model policy. Adoption of the policy requires repeal of rules containing potentially conflicting information.

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

Any citizen of Tennessee who seeks access to public records held by the Division of TennCare is positively affected by repeal of this chapter. The Division is not aware of any 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;

None.

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

None.

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

Donna K. Tidwell
Deputy General Counsel

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

Donna K. Tidwell
Deputy General Counsel

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

Division of TennCare
310 Great Circle Road
Nashville, TN 37243
(615) 507-6852
donna.tidwell@tn.gov

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

GW10117293

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Sequence Number: 12-16-17
 Rule ID(s): 6668
 File Date: 12/19/17
 Effective Date: 3/19/18

Proposed Rule(s) Filing Form

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

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

Agency/Board/Commission:	Tennessee Department of Finance and Administration
Division:	Division of TennCare
Contact Person:	George Woods
Address:	Division of TennCare 310 Great Circle Road Nashville, TN
Zip:	37243
Phone:	(615) 507-6446
Email:	george.woods@tn.gov

Revision Type (check all that apply):

- Amendment
 New
 Repeal

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

Chapter Number	Chapter Title
1200-13-11	Administrative Fees
Rule Number	Rule Title
1200-13-11-.01	Fees

Place substance of rules and other info here. Please be sure to include a detailed explanation of the changes being made to the listed rule(s). Statutory authority must be given for each rule change. For information on formatting rules go to http://sos-tn-gov-files.s3.amazonaws.com/forms/Rulemaking%20Guidelines_September2016.pdf.

Repeal

Rules of the Tennessee Department of Finance and Administration, Division of TennCare, are amended by repealing Chapter 1200-13-11 Administrative Fees in its entirety.

Authority: T.C.A. §§ 4-5-202, 10-7-503, and 71-5-105.

I certify that this is an accurate and complete copy of proposed rules, lawfully promulgated and adopted by the Division of TennCare on 11 / 13 / 2017, and is in compliance with the provisions of T.C.A. § 4-5-222. The Secretary of State is hereby instructed that, in the absence of a petition for proposed rules being filed under the conditions set out herein and in the locations described, he is to treat the proposed rules as being placed on file in his office as rules at the expiration of ninety (90) days of the filing of the proposed rule with the Secretary of State.



Date: 11/13/17

Signature: Wendy Long MD

Name of Officer: Wendy Long, M.D., M.P.H.

Director, Division of TennCare

Title of Officer: Tennessee Department of Finance and Administration

Subscribed and sworn to before me on: 11/13/17

Notary Public Signature: Robin A. Page

My commission expires on: 11/3/2020

Agency/Board/Commission: Division of TennCare

Rule Chapter Number(s): 1200-13-11

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

Herbert H. Slatery III

Herbert H. Slatery III
Attorney General and Reporter

12/18/2017

Date

Department of State Use Only

Filed with the Department of State on: 12/19/17

Effective on: 3/19/18

Tre Hargett

Tre Hargett
Secretary of State

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