G.O.C. STAFF RULE ABSTRACT

DEPARTMENT:	State Board of Accountancy
DIVISION:	Regulatory Boards
SUBJECT:	Peer Review Submission
STATUTORY AUTHORITY:	Tennessee Code Annotated, Section 63-27-104, which provides that the Board has the duty to set fees relating to the practice of respiratory care in an amount sufficient to pay all of the expenses of the Board.
EFFECTIVE DATES:	May 24, 2018, through June 30, 2019
FISCAL IMPACT:	Nominal
STAFF RULE ABSTRACT:	Rule 0020-06-.07 was drafted in response to Tennessee Code Annotated, Section 62-1-201, et seq. which grants rulemaking authority to the Tennessee State Board of Accountancy ("Board") to promulgate rules for the administration of the peer review program. This proposed rule informs licensees of which peer review documents must be submitted to the Board, and the time period and the process for submission. The rule also requires the CPA firms and the peer review administrators to submit the required documents through an electronic process, which is already commonly used in practice. This rule will not change previous regulations because it imposes a new requirement and process not addressed by any existing rule or regulation.

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.

As of January 2017, the Tennessee State Board of Accountancy (the "Board") oversees 1,760 actively licensed CPA firms. Many of these firms are small businesses that will substantially benefit from the proposed rule. The newly enacted peer review statute requires the firms to remit various documents to the Board. *See* T.C.A. § 62-1-201 *et seq.* By requiring the firms to submit the required documents via a secure website, the proposed rule seeks to reduce the expense of producing and mailing paper documents.

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

The proposed rule requires electronic submission of all peer review documents. Currently, the peer review provider utilized by the vast majority of, if not all, firms in Tennessee already has such a process in place. The proposed rule requires all Tennessee firms to authorize the provider to share the peer review documents with the Board. The proposed rule will not impose any additional costs to the firms. Likewise, no professional skill is necessary to implement the proposed rule.

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

Small businesses will need to ensure their peer review program is making documents available on the peer review program's online system. That responsibility is less burdensome than the alternative of requiring the licensee to produce and submit hard copies of the required documents. Outside of initial authorization, the peer review program will make the documentation requested in the rule available with no need for the licensee/small businesses to perform any extra steps.

The proposed rule is designed to improve the Board's oversight of the peer review program. Moreover, the electronic system streamlines the flow of documents, which, in turn, allows the Board to promptly review and ensure that peer reviews are conducted properly, and to monitor licensees for potential violations

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

The Board avers that the proposed rule is not burdensome, intrusive, or costly.

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

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

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

The proposed rule simply makes it easier for the licensee to produce and submit peer review documents to the Board by formally mandating an electronic submission system that is already in place. In other words, the proposed rule will benefit small businesses. Accordingly, small businesses should not be exempted from the proposed rule.

Impact on Local Governments

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

This proposed rules 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 0020-06-.07 was drafted in response to T.C.A.§ 62-1-201, *et seq.* which grants rulemaking authority to the Tennessee State Board of Accountancy ("Board") to promulgate rules and regulations for the administration of the peer reviews program. This rule informs licensees which peer review documents must be submitted to the Board, and the time period and the process for submission. The rule also requires the CPA firms and the peer review administrators to submit the required documents through an electronic process, which is already commonly used in practice. This rule will not change previous regulations because it imposes a new requirement and process not addressed by any existing rule or regulation.

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

T.C.A. § 62-1-201, *et seq.* 2016 Public Chapter 595 mandates the promulgation of these rules in order to establish guidelines for peer review oversight and review.

(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 licensed CPA firms will be impacted by the proposed rule. Their position is not known to the Board. However, the entities that will be most affected by the proposed rule are the AICPA and its Tennessee equivalent, the Tennessee Society of CPAs ("TSCPA"). The TSCPA supports the 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;

No Attorney General opinion or judicial ruling directly relates to the promulgation of the proposed 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 fiscal impact of these rules is nominal.

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

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

Anthony Glandorf,
Chief Counsel

Elizabeth Goldstein,
Assistant General Counsel

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

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

Anthony Glandorf,
Chief Counsel

Elizabeth Goldstein,
Assistant General Counsel

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

Wendy Garvin,
500 James Robertson Parkway,
Nashville, Tennessee 37243,
(615) 741-2550,
Wendy.Garvin@tn.gov

Anthony Glandorf,
500 James Robertson Parkway,
Nashville, Tennessee 37243,
(615) 741-3072,
Anthony.Glandorf@tn.gov

Elizabeth Goldstein,
500 James Robertson Parkway,
Nashville, Tennessee 37243,
(615) 741-3072,
Elizabeth.Goldstein@tn.gov

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

None.

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

For Department of State Use Only

Sequence Number: 02-24-18
Rule ID(s): 6705
File Date: 2/23/18
Effective Date: 5/24/18

Proposed Rule(s) Filing Form

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

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

Agency/Board/Commission:	Tennessee State Board of Accountancy
Division:	Division of Regulatory Boards, Department of Commerce & Insurance
Contact Person:	Elizabeth Goldstein
Address:	500 James Robertson Parkway, Nashville, Tennessee
Zip:	37243
Phone:	615-741-3072
Email:	Elizabeth.Goldstein@tn.gov

Revision Type (check all that apply):

___ Amendment
_X_ New
___ Repeal

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

Chapter Number	**Chapter Title**
0020-06	Peer Review Program
Rule Number	**Rule Title**
0020-06-.07	Peer Review Submission

Amendment

0020-06

Rules
Of
Department Of Commerce And Insurance
Division Of Regulatory Boards
Tennessee State Board of Accountancy

Chapter 0020-06
Peer Review Program

Table of Contents

0020-06-.01 Definitions
0020-06-.02 Purpose
0020-06-.03 Review Committee
0020-06-.04 Basic Requirements
0020-06-.05 Reviewers and Reviews
0020-06-.06 Peer Review Results
0020-06-.07 Peer Review Submission

-- New Rules –
0020-06

0020-06-.07 Peer Review Submission

(1) Each firm shall submit a copy of the results of its most recently accepted peer review to the Board. The required documents include:

(a) Peer Review Report in accordance with Tenn. Comp. R. & Regs. 0020-06-.05(3);

(b) Firm's letter of response, if applicable, in accordance with Tenn. Comp. R. & Regs. 0020-06-.05(4) ;

(c) Acceptance letter from the Committee, in accordance with Tenn. Comp. R. & Regs. 0020-06-.06(1);

(d) Letter(s) reflecting the Firm's agreement to comply with additional requirements prescribed by the Committee, if applicable, in accordance with Tenn. Comp. R. & Regs. 0020-06-.06(2); and

(e) Approval letter from the Committee, if applicable, in accordance with Tenn. Comp. R. & Regs. 0020-06-.06(4).

(2) For peer reviews scheduled on or after June 1, 2018, all peer review documents referenced in Paragraph (1) shall be made available to the Board by the approved peer review program's sponsoring organization via a secured website. The documents listed in Paragraph (1)(a) through (1)(c) shall be submitted within thirty (30) days after the date of the acceptance letter. The documents listed in Paragraph (1)(d), if applicable, shall be submitted within thirty (30) days after the date on which the Firm signs the letter. The documents listed in Paragraph (1)(e), if applicable, shall be submitted within thirty (30) days after the date of the Committee's issuance.

(3) Firms shall authorize the sponsoring organization to provide the Board access to the documents in Paragraph (1) via a secure website.

Authority: T.C.A. §§ 62-1-105 and 62-1-201.

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

Board Member	Aye	No	Abstain	Absent	Signature (if required)
C. Don Royston, CPA	X				
Casey M. Stuart, CPA	X				
Stephen M. Eldridge, CPA	X				
Janet Booker-Davis, CPA	X				
Larry Elmore, CPA	X				
Kevin N. Monroe, CPA	X				
Gay Moon, CPA	X				
John G. "Gabe" Roberts, Esq.				X	
Pamela Church, CPA	X				
William "Trey" H. Watkins, III, CPA	X				
Judy Wetherbee	X				

I certify that this is an accurate and complete copy of proposed rules, lawfully promulgated and adopted by the Tennessee State Board of Accountancy on 05/05/2017 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: 2/8/2018

Signature:

Name of Officer: Anthony Glandorf

Title of Officer: Chief Counsel

CAROL L. McGLYNN STATE OF TENNESSEE NOTARY PUBLIC DAVIDSON COUNTY My Commission Expires NOV. 5, 2019

Subscribed and sworn to before me on: February 8, 2018

Notary Public Signature: Carol McGlynn

My commission expires on: Nov. 5, 2019

Rules of the Tennessee State Board of Accountancy
0020-06-.07 Peer Review Submissions

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

Herbert H. Slatery III
Attorney General and Reporter

2/21/2018
Date

Department of State Use Only

Filed with the Department of State on: 2/23/18

Effective on: 5/24/18

Tre Hargett
Secretary of State

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RULES UNIT

G.O.C. STAFF RULE ABSTRACT

DEPARTMENT:	State Board of Accountancy
DIVISION:	Regulatory Boards
SUBJECT:	Licensing and Registration Requirements
STATUTORY AUTHORITY:	There are no known federal laws or regulations mandating promulgation of these rules. Tennessee Code Annotated, Section 62-1-105(e) authorizes the Board to adopt rules to enforce the Tennessee Accountancy Act of 1998.
EFFECTIVE DATES:	May 24, 2018, through June 30, 2019
FISCAL IMPACT:	Nominal
STAFF RULE ABSTRACT:	Recent amendments to Rule 0020-01-.08(7) reduced the time period for which a license is considered to be expired from one (1) year to six (6) months. The proposed amendments to Rule 0020-01-.01 (h) simply reflect that reduction. Specifically, the proposed amendments define an "Expired License" as a license that is more than six (6) months past its expiration date. Under the current version of Rule 0020-01-.01 (h), a license is expired if it is more than one (1) year past its expiration date. If adopted, Rule 0020-01 -.01 (h) will benefit all licensees by clarifying when a license must be renewed before it expires. The proposed amendments to Rule 0020-01 -.01 U) alter the definition of a "license" to be more in line with the statutory definition set forth in T.C.A. § 62-1-103(7). This consistency will help eliminate confusion among licensees, as "License" is mentioned throughout the Board's rules. The proposed amendments to Rule 0020-05-.04 prescribe how a licensee can receive credit for completing CPE programs that are not already accounted for in the Rules. Specifically, the proposed amendments require a licensee to seek the Board's approval before attending such

programs. The proposed amendments also caution that a licensee will not receive credit if he or she fails to obtain the Board's approval prior to attendance.

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.

Recent amendments to Rule 0020-01-.08(7) reduced the time period for which a license is considered to be expired from one (1) year to six (6) months. The proposed amendments to Rule 0020-01-.01(h) simply reflect that reduction. The Tennessee State Board of Accountancy ("Board") governs over 2,000 registered firms. While a vast majority of those firms are small businesses, they will neither bear the cost of nor directly benefit from the proposed amendment to Rule 0020-01-.01(h) because the proposed amendments merely promote consistency throughout the rules.

The proposed amendments to Rule 0020-01-.01(j) alters the definition of a "license" to be more in line with the statutory definition set forth in T.C.A. § 62-1-103(7). The Board currently governs over 2,000 registered firms, and a vast majority of these firms are considered a small business. These firms, however, will likely not bear the cost or directly benefit from the proposed amendments.

The proposed amendments to Rule 0020-05-.04 directly affect the licensee by restricting the manner by which CPE programs that fall outside of the normally accepted programs will be evaluated by the Board. The Board currently oversees about 2,000 registered firms and a vast majority of these firms are considered a small business. The proposed amendments, however, are unlikely to impose a monetary burden or confer financial benefit to these firms.

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

The proposed amendments to Rule 0020-01-.01(h) were drafted in response to the recent amendments to Rule 0020-01-.08(7), which reduced the time period for which a license is considered to be expired from one (1) year to six (6) months. The proposed amendments here should have been made when Rule 0020-01-.08(7) was amended. A licensee is responsible for renewing the license within six (6) months past the expiration date. Similar to Rule 0020-01-.08(7), the proposed amendments Rule 0020-01-.01(h will not impose any additional cost or require a new set of skills.

The proposed amendments to Rule 0020-01-.01(j) will not impose any additional reporting, recordkeeping, or other administrative costs for compliance. In fact, the amendments merely reflect the statutory definition of a "License" found in T.C.A. § 62-1-103(7).

The proposed amendments to Rule 0020-05-.04 will not impose any additional reporting, recordkeeping, and other administrative costs required for compliance. All licensees, without exception, must comply with CPE requirements. The proposed amendments simply prescribe the types of CPE courses that may be submitted for approval and when they must be submitted. All licensees are required to timely manage their CPE courses and corresponding approval.

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

The proposed amendments to Rule 0020-01-.01(h) were drafted in response to the recent amendments to Rule 0020-01-.08(7), which reduced the time period for which a license is considered to be expired from one (1) year to six (6) months. The proposed amendments here should have been made when Rule 0020-01-.08(7) was amended. The proposed amendments will likely reduce confusion among licensees about license renewal requirements. Consumers will also be better protected because the proposed amendments encourage licensees to timely renew their license and to remain in good standing.

Consumers and small businesses will likely benefit because the proposed amendments to Rule 0020-01-.01(j) clarify the existing rules and promote consistency of the term "license." Accordingly, the proposed amendments will not have any negative effect on small businesses and consumers.

The proposed amendments to Rule 0020-05-.04 will benefit consumers because the amendments enhance the Board's ability to oversee CPE programs, and to monitor licensees for potential violations. The Board's oversight of these programs is essential for ensuring that licensees are properly educated on changes to existing practices.

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

The Board avers that the proposed amendments to Rules 0020-01-.01(h), 0020-01-.01(j), and 0020-05-.04 are not burdensome, intrusive, or costly to small businesses.

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

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

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

Licensees should be held to the same renewal requirements. If licensees working for small businesses were exempted from the license renewal time period, it would likely create confusion among the licensees.

Exemption from Rule 0020-01-.01(j) would not benefit small businesses because the proposed amendments merely bring the definition of a "license" under the Rules in conformity with T.C.A. § § 62-1-103(7).
Exemption from Rule 0020-05-.04 would not benefit small businesses because all licensees, even those working for a small business, must maintain their CPE hours. The proposed amendments do not impose any new requirements on small businesses. Rather, the proposed amendments only clarify when a licensee can submit his or her CPE hours from sources that are currently not sanctioned by the Board. CPE hours are vital in ensuring that licensees remain knowledgeable about current trends and important changes in the profession.

Impact on Local Governments

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

This proposed rules 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;

Recent amendments to Rule 0020-01-.08(7) reduced the time period for which a license is considered to be expired from one (1) year to six (6) months. The proposed amendments to Rule 0020-01-.01(h) simply reflect that reduction. Specifically, the proposed amendments define an "Expired License" as a license that is more than six (6) months past its expiration date. Under the current version of Rule 0020-01-.01(h), a license is expired if it is more than one (1) year past its expiration date. If adopted, Rule 0020-01-.01(h) will benefit all licensees by clarifying when a license must be renewed before it expires.

The proposed amendments to Rule 0020-01-.01(j) alter the definition of a "license" to be more in line with the statutory definition set forth in T.C.A. § 62-1-103(7). This consistency will help eliminate confusion among licensees, as "License" is mentioned throughout the Board's rules.

The proposed amendments to Rule 0020-05-.04 prescribe how a licensee can receive credit for completing CPE programs that are not already accounted for in the Rules. Specifically, the proposed amendments require a licensee to seek the Board's approval before attending such programs. The proposed amendments also caution that a licensee will not receive credit if he or she fails to obtain the Board's approval prior to attendance.

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

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

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

The proposed amendments to Rule 0020-01-.01(h) and Rule 0020-01-.01(j) will impact all licensed CPAs. Their position, however, is unknown to the Board.

The proposed amendments to Rule 0020-05-.04 will impact all licensed CPAs.
Their position, however, is unknown to the Board.

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

No Attorney General opinion or judicial ruling directly relates to the promulgation of these proposed amendments.

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

The fiscal impact of these rules is nominal.

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

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

Anthony Glandorf,
Chief Counsel

Elizabeth Goldstein,
Assistant General Counsel

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

Wendy Garvin,
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Anthony Glandorf,
Chief Counsel

Elizabeth Goldstein,
Assistant General Counsel

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

Wendy Garvin,
500 James Robertson Parkway,
Nashville, Tennessee 37243,
(615) 741-2550,
wendy.garvin@tn.gov

Anthony Glandorf,
500 James Robertson Parkway,
Nashville, Tennessee 37243,
(615) 741-3072,
Anthony.Glandorf@tn.gov

Elizabeth Goldstein,
500 James Robertson Parkway,
Nashville, Tennessee 37243,
(615) 741-3072,
Elizabeth.Goldstein@tn.gov

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

None.

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

For Department of State Use Only

Sequence Number: 02-25-18
Rule ID(s): 6706-6707
File Date: 2/23/18
Effective Date: 5/24/18

Proposed Rule(s) FILING FORM

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

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

Agency/Board/Commission:	Tennessee State Board of Accountancy
Division:	Division of Regulatory Boards, Department of Commerce & Insurance
Contact Person:	Elizabeth Goldstein
Address:	500 James Robertson Parkway, Nashville, Tennessee
Zip:	37243
Phone:	615-741-3072
Email:	Elizabeth.Goldstein@tn.gov

Revision Type (check all that apply):
X Amendment
___ New
___ Repeal

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

Chapter Number	**Chapter Title**
0020-01	Board of Accountancy, Licensing and Registration Requirements
Rule Number	**Rule Title**
0020-01-.01	Definitions
Chapter Number	**Chapter Title**
0020-05	Continuing Education
Rule Number	**Rule Title**
0020-05-.04	Qualifying Programs

0020-01 Amendments

Rule 0020-01-.01(1)(h) Definitions is amended by deleting the phrase "one year" and substituting instead the phrase "six months" so that as amended, the subparagraph shall read:

(h) "Expired License" means a license that is more than ~~one year~~ six months past the expiration date of the license;

Rule 0020-01-.01(1)(j) is amended by deleting the subparagraph and substituting instead the following:

~~(j) "License" or "Licensing" means a CPA certificate or a public accountant registration granted by the Board;~~

(j) "License" means a certificate issued under T.C.A. § 62-1-107, a permit issued under T.C.A. § 62-1-108, or a registration under T.C.A. § 62-1-109, or, in each case, a certificate, license, or permit issued under corresponding provisions of prior law;

Authority: T.C.A. §§ 62-1-103, 62-1-105, 62-1-108, and 62-1-111(a).

0020-05 Amendments

Rule 0020-05-.04 Qualifying Programs is amended by deleting the rule in its entirety and substituting the rule with the following language so that as amended the rule shall read:

(1) In order to qualify for credit toward satisfaction of the requirements of rule 0020-05-.03, a continuing education program must:

(a) Be a program of learning which contributes directly to the professional competence of the licensee; and

(b) Meet the Statements on Standards for Continuing Professional Education Programs jointly approved by NASBA and AICPA.

(2) Programs requiring attendance may be considered for credit if:

(a) An outline is prepared and preserved;

(b) The program is at least one (1) credit hour [one (1) credit hour = fifty (50) minute period];

(c) The program is conducted by a qualified instructor, discussion leader, or lecturer; and

(d) A record of registration or attendance is maintained.

(3) Subject to compliance with paragraphs 1 and 2 of this rule, the following are deemed to be qualifying programs:

(a) Professional development programs of the AICPA, and state accounting societies and their chapters;

(b) Technical sessions at meetings of the AICPA, NASBA, and state accounting societies and their chapters;

(c) University or college courses provided that:

1. For credit courses, each semester hour credit shall equal fifteen (15) continuing education credit hours, and each quarter hour credit shall equal (10) continuing education credit hours;

2. For non-credit short courses, continuing education credit shall equal actual time in class;

(d) Organized in-firm or in-house (includes any company that gives training for their employees and others) educational programs presented for employees and others without charge; and

(e) Programs of other organizations (accounting, industrial, professional, etc.) recognized by the Board.

(4) Formal correspondence or other individual study programs, including those administered via computer, which require registration and provide evidence of satisfactory completion, may qualify for continuing education credit. The number of credit hours of continuing education will be determined by the Board. Such programs taken after January 1, 1999, excluding those offered by the AICPA and state CPA societies, must be approved by the Board or its designee, NASBA's Quality Assurance Program.

(5) Continuing education credit will be allowed for service as an instructor, discussion leader or speaker at any program for which participants are eligible to receive continuing education credit. Credit for such service will be awarded on the first presentation only, unless a program has been substantially revised. The amount of credit awarded shall not exceed three times the number of class hours; provided however, credit hours awarded under this paragraph shall not exceed fifty percent (50%) of the total number of credit hours required by this chapter within any two-year period. A licensee who receives credit for services as an instructor, discussion leader, or speaker of a CPE course cannot also receive credit for attendance at the same or substantially same course that the licensee served as an instructor, discussion leader, or speaker within the preceding twelve month period.

(6) In the board's discretion, continuing education credit may be allowed for writing articles and books, provided that their preparation contributes to the professional competence of the license holder. Credit for such preparation may be awarded on a self-declaration basis of up to fifty percent (50%) of the two (2) year continuing education requirement. Additional credit may be awarded in exceptional circumstances, upon the written request of the license holder, accompanied by a copy of the article(s) or books(s) and a statement of justification. No credit shall be given for unpublished book(s) or article(s).

(7) Continuing education credit may be allowed for the reading of professional journals and the taking of an examination related thereto. Credit hours obtained under this paragraph are limited to twenty percent (20%) of the total number of credit hours required by this chapter within any two (2)-year period and may not be used to meet the requirements of subparagraphs (1)(a), (b) and (c) of Rule 0020-05-.03.

(8) CPE credit may be allowed for the successful completion of exams for Certified Management Accountant (CMA), Certified Information Systems Auditor (CISA), as well as other similar exams approved by the Board. Credit will be awarded at a rate of five (5) times the length of each exam taken and limited to fifty percent (50%) of the total CPE required under Rule 0020-05-.03.

~~(9) In order to insure credit, any program of continuing education not specifically covered by this rule must be submitted to the Board for evaluation before attendance and/or completion.~~

(9) To receive credit, any program of continuing education not specifically covered by this rule must be approved by the Board before completion of the course. A licensee, once per reporting period, may submit for approval up to sixteen (16) hours of CPE from courses that are sponsored by organizations that are not registered with NASBA, and are either offered on a limited basis or industry specific. A licensee will not receive credit for completing a program that was not timely approved by the Board in accordance with Rule 0020-05-.04(9).

(10) The Board specifically reserves the right to approve or disapprove credit for all continuing education claimed under this rule.

~~(11) A licensee, once per reporting period, may submit for approval up to sixteen (16) hours of CPE from courses that are sponsored by organizations that are not registered with NASBA, and are either offered on a limited basis or industry specific.~~

Authority: T.C.A. §§ 62-1-105 and 62-1-107.

* 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)
C. Don Royston, CPA	X				
Casey M. Stuart, CPA	X				
Stephen M. Eldridge, CPA	X				
Janet Booker-Davis, CPA	X				
Larry Elmore, CPA	X				
Kevin N. Monroe, CPA	X				
Gay Moon, CPA	X				
John G. "Gabe" Roberts, Esq.				X	
Pamela Church, CPA	X				
William "Trey" H. Watkins, III, CPA	X				
Judy Wetherbee	X				

I certify that this is an accurate and complete copy of proposed rules, lawfully promulgated and adopted by the Tennessee State Board of Accountancy on 05/05/2017 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.

CAROL L. McGLYNN
STATE OF TENNESSEE
NOTARY PUBLIC
DAVIDSON COUNTY
My Commission Expires NOV. 5, 2019

Date: 2/8/2018

Signature:

Name of Officer: Anthony Glandorf

Title of Officer: Chief Counsel

Subscribed and sworn to before me on: February 8, 2018

Notary Public Signature: Carol McGlynn

My commission expires on: Nov. 5, 2019

Rules of the Tennessee State Board of Accountancy

Rule 0020-01-.01 Definitions
Rule 0020-05-.04 Qualifying Programs

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

Herbert H. Slatery III
Attorney General and Reporter

2/21/2018
Date

Department of State Use Only

Filed with the Department of State on: 2/23/18

Effective on: 5/24/18

Tre Hargett
Secretary of State

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2018 FEB 23 PM 1:24
SECRETARY OF STATE
PUBLICATIONS

G.O.C. STAFF RULE ABSTRACT

DEPARTMENT:	State Board of Education
DIVISION:	
SUBJECT:	Non-Public School Approval Process
STATUTORY AUTHORITY:	Tennessee Code Annotated, Section 49-1-302(l)(2)(A)
EFFECTIVE DATES:	May 8, 2018 through June 30, 2019
FISCAL IMPACT:	This rule will not impact state and local government revenues or expenditures.
STAFF RULE ABSTRACT:	State Board of Education rule 0520-07-02 currently establishes the requirements for six categories of non-public schools in Tennessee. In an effort to provide greater clarity and remove outdated language within the non-public school approval process rules, Category IV: International Schools Affiliated with a Tennessee Public University is being removed as a category because it has never been used.

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

Not Applicable

Impact on Local Governments

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

These rules will have no impact on local governments.

Additional Information Required by Joint Government Operations Committee

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

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

State Board of Education rule 0520-07-02 currently establishes the requirements for six categories of non-public schools in Tennessee. In an effort to provide greater clarity and remove outdated language within the non-public school approval process rules, Category IV: International Schools Affiliated with a Tennessee Public University is being removed as a category because it has never been used.

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

T.C.A. § 49-1-302(l)(2)(A) mandates that the State Board shall promulgate regulations pursuant to the Uniform Administrative Procedures Act, compiled in title 4, chapter 5, part 2, to establish standards for programs operated by private schools.

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

International schools affiliated with a Tennessee public university are most directly affected by this rule. All proposed rule changes have been reviewed and approved by the Tennessee Non-Public Advisory Council, which does not have opposition to the repeal. The State Board of Education and the Department of Education urge the repeal of this rule.

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

N/A

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

This rule will not impact state and local government revenues or expenditures.

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

Elizabeth Taylor
Elizabeth.Taylor@tn.gov

Nathan James
Nathan.James@tn.gov

Elizabeth Fiveash
Elizabeth.Fiveash@tn.gov

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

Elizabeth Taylor
Elizabeth.Taylor@tn.gov

Nathan James
Nathan.James@tn.gov

Elizabeth Fiveash
Elizabeth.Fiveash@tn.gov

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

Elizabeth Taylor
1st Floor, Andrew Johnson Tower
710 James Robertson Parkway
Nashville, TN 37243
(615) 253-5707
Elizabeth.Taylor@tn.gov

Nathan James
1st Floor, Andrew Johnson Tower
710 James Robertson Parkway
Nashville, TN 37243
(615) 532-3528
Nathan.James@tn.gov

Elizabeth Fiveash
9th Floor, Andrew Johnson Tower
710 James Robertson Parkway
Nashville, TN 37243
(615) 253-1960
Elizabeth.Fiveash@tn.gov

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

N/A

Department of State
Division of Publications
312 Rosa L. Parks Avenue, 8th Floor Snodgrass/TN Tower
Nashville, TN 37243
Phone: 615-741-2650
Fax: 615-741-5133
Email: register.information@tn.gov

For Department of State Use Only

Sequence Number: 02-12-18
Rule ID(s): 6695
File Date: 2/7/18
Effective Date: 5/8/18

Proposed Rule(s) Filing Form

Proposed rules are submitted pursuant to T.C.A. §§ 4-5-202, 4-5-207 in lieu of a rulemaking hearing. It is the intent of the Agency to promulgate these rules without a rulemaking hearing unless a petition requesting such hearing is filed within sixty (60) days of the first day of the month subsequent to the filing of the proposed rule with the Secretary of State. To be effective, the petition must be filed with the Agency and be signed by twenty-five (25) persons who will be affected by the amendments, or submitted by a municipality which will be affected by the amendments, or an association of twenty-five (25) or more members, or any standing committee of the General Assembly. The agency shall forward such petition to the Secretary of State.

Agency/Board/Commission:	Tennessee State Board of Education
Division:	
Contact Person:	Elizabeth Taylor
Address:	710 James Robertson Pkwy 1st floor
Zip:	37243
Phone:	615-253-5707
Email:	Elizabeth.Taylor@tn.gov

Revision Type (check all that apply):

___ Amendment
___ New
_X_ Repeal

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

Chapter Number	**Chapter Title**
0520-07-02	Non-Public School Approval Process
Rule Number	**Rule Title**
0520-07-02-.07	Category IV: International Schools Affiliated with a Tennessee Public University

RULES
OF
THE STATE BOARD OF EDUCATION

CHAPTER 0520-07-02
NON-PUBLIC SCHOOL APPROVAL PROCESS

TABLE OF CONTENTS

0520-07-02-.01	Categories	0520-07-02-.05	Category IV: Exempted Schools
0520-07-02-.02	Category I: Department of Education Approval	0520-07-02-.06	Category V: Acknowledged for Operation
		0520-07-02-.07	~~Category VI International Schools Affiliated~~Repealed
0520-07-02-.03	Category II: Agency Accreditation		~~with a Tennessee Public University~~
0520-07-02-.04	Category III: Regional Accreditation	0520-07-02-.08	Repealed

0520-07-02-.07 ~~CATEGORY VI: INTERNATIONAL SCHOOLS AFFILIATED WITH A TENNESSEE PUBLIC UNIVERSITY~~REPEALED.

~~(1) The State Board of Education may approve a Tennessee public university to act as a school approval agency for non-public international secondary schools. Such schools must be affiliated with the university and may serve grades 9-12 or any combination thereof. Such universities must have teacher preparation programs approved by the State Board of Education.~~

~~(2) The State Department of Education shall consider schools approved by a university acting as a school approval agency as having approved status.~~

~~(3) International home schools which may affiliate with a Tennessee public university are not approvable under this category.~~

~~(4) Procedures for Application of a Tennessee Public University as an Approved Non-Public School Accrediting Agency.~~

~~(a) The Tennessee public university seeking approval as an agency shall apply to the State Department of Education and shall supply relevant information needed by the department.~~

~~(b) The State Department of Education shall review the application of the university with respect to the criteria for approval and recommend to the State Board of Education that the application be approved or denied. The applicant university may address the State Board of Education at the time its application is being considered.~~

~~(5) Period of Approval.~~

~~(a) The period of approval for a recognized Tennessee public university acting as an agency shall be five years.~~

~~(b) A university which fails to meet the minimum standards for approval will have its approved status revoked.~~

~~(6) Criteria for Approval of a University Acting as an Agency for the Approval of Non-Public International Schools.~~

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

~~(a) Scope of Operation of University Acting as an Agency. The agency shall:~~

~~1. Have a clearly written statement of its objectives;~~

~~2. Delineate the process by which it approves schools; and~~

~~3. Accredit only schools with at least 200 full-time students.~~

~~(b) Organization of University Acting as an Agency. The agency shall:~~

~~1. Specify qualifications for professional personnel for the agency; and~~

~~2. Employ at least one full time director or headmaster.~~

~~(c) Responsibility of the University Acting as an Agency. The agency shall:~~

~~1. Maintain written descriptions of the requirements for school approval;~~

~~2. Re-evaluate approved schools annually;~~

~~3. Give advance publication of proposed changes in approval standards to schools. These changes must be approved in advance by the State Department of Education;~~

~~4. Advise schools or directly provide them with technical assistance to address deficiencies;~~

~~5. Publish approval policies and lists of approved schools;~~

~~6. Require schools to report on deficiencies that could affect approval status;~~

~~7. Have procedures for revocation of approval;~~

~~8. Provide a list of all courses taught and the grade levels at which they are taught at each school;~~

~~9. Publish and follow minimum standards using the following criteria (or the university acting as an agency may use the standards set forth in the Rules, Regulations and Minimum Standards for the Governance of Public Schools in the State of Tennessee):~~

~~(i) Curriculum and Graduation.~~

~~(I) The program shall include (but not be limited to) the areas of English, mathematics, social studies, science, the arts, foreign language (which may be the language of the host country), and wellness, consistent with Tennessee curriculum standards.~~

~~(II) Each school shall use print and non-print materials, including textbooks, which are adequate to meet the needs of the instructional program. See Chapter 0520-01-03.~~

~~(III) Each student shall meet the same minimum requirements for graduation as students in Tennessee public schools, with exceptions to be approved by the Department of Education. The specific requirements are listed in Chapter 0520-01-03.~~

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

~~(ii) Inservice. Each school shall have a minimum of five days for inservice education per school year.~~

~~(iii) Teacher Licensure and Evaluation.~~

~~(I) Each university shall submit its procedures for licensing teachers. If the teachers are licensed by the State of Tennessee, they must meet the requirements of the state. If the teachers are licensed by the host country, they shall meet the requirements of the appropriate jurisdiction of the host country; if such teachers are employed to teach in a Tennessee school as exchange teachers, they shall be recommended for this purpose by the university acting as an agency.~~

~~(II) Each teacher shall hold a valid license as defined by the State of Tennessee or shall meet the requirements of the appropriate jurisdiction of the host country.~~

~~(III) Each university acting as an agency shall develop procedures for evaluation of all teaching personnel from the State of Tennessee.~~

~~(iv) Facilities.~~

~~(I) Each school shall comply with rules, regulations, and codes of the appropriate jurisdiction regarding planning of new buildings, alterations, and safety.~~

~~(II) Each school shall observe all fire safety regulations and procedures promulgated by the appropriate agency having such jurisdiction.~~

~~(III) Each school shall have classrooms, laboratories, and libraries which are sufficient in number, adequate in space, and so constructed and arranged as to be conducive to carrying on the assigned activities. Physical education facilities shall be well maintained, free from hazards, and large enough to permit an adequate wellness program.~~

~~(v) Administrative Rules.~~

~~(I) Each school shall maintain an operating schedule that includes the minimum number of instructional days and hours required of Tennessee public schools. See Chapter 0520-01-03.~~

~~(II) Each school which provides services to students eligible for special education shall meet all standards of the State Board of Education rule 0520-01-09.~~

~~(III) Each school shall develop and implement a written policy regarding maintenance of students in good academic standing. The written policy shall be communicated to students and parents.~~

~~(IV) The maximum enrollments for an individual class shall be specified and shall not exceed requirements for Tennessee public schools.~~

~~(V) Each school shall maintain complete and accurate permanent records. A cumulative record for each student for all work in secondary school is required.~~

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

~~(VI) Each school shall evaluate records and report the needs and progress of its students.~~

~~(VII) Each school shall provide a sufficient number of appropriately qualified administrators, librarians and guidance counselors for the student body served.~~

~~(IX) Each principal or headmaster shall comply with the requirement of the local jurisdiction that each student enrolled in school be vaccinated against disease.~~

~~(vi) Testing Program. Each school shall administer the high school examinations required by the State of Tennessee; the results must be communicated to teachers and parents and kept on file at the school for one calendar year. If passing scores are required by the State of Tennessee, then students must meet the minimum scores required in order to receive a Tennessee high school diploma. In order to receive a diploma, graduates must have achieved English language proficiency according to standards specified by the university.~~

Authority: *T.C.A. §§ 49-1-302 and 49-6-3001.* ***Administrative History:*** *Original rule filed December 19, 2002; to be effective April 30, 2003; however, on April 29, 2003, the State Board of Education stayed rule 0520-07-02-.07 until June 28, 2003. Original rule to become effective June 28, 2003.*

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

Board Member	Aye	No	Abstain	Absent	Signature (if required)
Chancey	X				
Cook	X				
Edwards	X				
Ferguson	X				
Hartgrove	X				
Johnson	X				
Kim	X				
Rolston	X				
Tucker	X				
Troutt	X				

I certify that this is an accurate and complete copy of proposed rules, lawfully promulgated and adopted by the Tennessee State Board of Education on 01/27/2017, 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 sixty (60) days of the first day of the month subsequent to the filing of the proposed rule with the Secretary of State.

Date: 1/9/18

Signature:

Name of Officer: Elizabeth Taylor

Title of Officer: General Counsel

Subscribed and sworn to before me on: 1-9-18

Notary Public Signature:

My commission expires on: 3-8-21

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

State Board of Education Rules
Chapter 0520-07-02 – Non-Public School Approval Process
Rules 0520-07-02-.07

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

Herbert H. Slatery III

Herbert Slatery, III
Attorney General and Reporter

1/26/2018

Date

Department of State Use Only

Filed with the Department of State on: 2/7/18

Effective on: 5/8/18

Tre Hargett

Tre Hargett
Secretary of State

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PUBLICATIONS

G.O.C. STAFF RULE ABSTRACT

DEPARTMENT:	Labor and Workforce Development
DIVISION:	Bureau of Workers Compensation
SUBJECT:	Medical Impairment Rating Registry Program
STATUTORY AUTHORITY:	N/A
EFFECTIVE DATES:	May 9, 2018 through June 30, 2019
FISCAL IMPACT:	None
STAFF RULE ABSTRACT:	The change to the rule prevents a conflict if the Medical Director is the MIR physician. It also eliminates a provision that has never been utilized.

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

1. The type or types of small business and an identification and estimate of the number of small businesses subject to the proposed rule that would bear the cost of, or directly benefit from the proposed rule: The rule will affect small employers that fall under the Tennessee Workers' Compensation Laws, which would be employers with at least five employees, or for those in the construction industry at least one employee. There should be no additional costs associated with these rule changes.

2. The projected reporting, recordkeeping and other administrative costs required for compliance with the proposed rule, including the type of professional skills necessary for preparation of the report or record: There is no additional record keeping requirement or administrative cost associated with these rule changes.

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

4. A description of any less burdensome, less intrusive or less costly alternative methods of achieving the purpose and objectives of the proposed rule that may exist, and to what extent the alternative means might be less burdensome to small business: There are no less burdensome methods to achieve the purposes and objectives of these rules.

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

6. Analysis of the effect of the possible exemption of small businesses from all or any part of the requirements contained in the proposed rule: None.

Impact on Local Governments

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

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

Additional Information Required by Joint Government Operations Committee

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

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

The change to the rule prevents a conflict if the Medical Director is the MIR physician. It also eliminates a provision that has never been utilized.

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

This change is made for the purpose of correcting an issue with in the original rule. There is no law or regulation mandating the promulgation of this rule.

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

No entity has urged adoption or rejection of these rules.

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

None

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

The effect of the rule change will be negligible.

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

Troy Haley, Director of Administrative Legal Services and Legislative Liaison

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

Troy Haley, Director of Administrative Legal Services and Legislative Liaison

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

Tennessee Bureau of Workers' Compensation
220 French Landing Drive, Floor 1-B
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

Department of State
Division of Publications
312 Rosa L. Parks Avenue, 8th Floor Snodgrass/TN Tower
Nashville, TN 37243
Phone: 615-741-2650
Fax: 615-741-5133
Email: register.information@tn.gov

For Department of State Use Only

Sequence Number: 02-13-18
Rule ID(s): 6696
File Date: 2/8/18
Effective Date: 5/9/18

Proposed Rule(s) Filing Form

Proposed rules are submitted pursuant to T.C.A. §§ 4-5-202, 4-5-207 in lieu of a rulemaking hearing. It is the intent of the Agency to promulgate these rules without a rulemaking hearing unless a petition requesting such hearing is filed within sixty (60) days of the first day of the month subsequent to the filing of the proposed rule with the Secretary of State. To be effective, the petition must be filed with the Agency and be signed by twenty-five (25) persons who will be affected by the amendments, or submitted by a municipality which will be affected by the amendments, or an association of twenty-five (25) or more members, or any standing committee of the General Assembly. The agency shall forward such petition to the Secretary of State.

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

Revision Type (check all that apply):

x Amendment
___ New
___ Repeal

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

Chapter Number	**Chapter Title**
0800-02-20	Medical Impairment Rating Registry Program
Rule Number	**Rule Title**
0800-02-20	Peer Review

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JAN 18 2018
CRIMINAL APPEALS
DIVISION

Amendments

Chapter 0800-02-20
Medical Impairment Rating Registry Program

Rule 0800-02-20-.12 Peer Review is amended by deleting the prior subsections (1) and (2) and replacing subsections (1) and (2) as follows:

(1) All MIR Reports are subject to peer review for appropriateness and accuracy by a physician designated by the Administrator ~~either the Medical Director or a physician selected randomly by the Program Coordinator who shall have been on the MIR Registry for at least five (5) years without any disciplinary actions, shall be certified in the applicable edition of the AMA Guides by the American Academy of Disability Evaluating Physicians or the American Board of Independent Medical Examiners, and shall comply with Rule 0800-02-20-.05(2); provided, however, that the peer review shall not include a physical examination of the claimant. If the peer review is performed by a MIR Registry physician, then such physician shall be entitled to a fee of $250.00 to be paid by the employer in advance of the peer review~~.

(2) The peer review shall be completed within ten (10) business days of referral from the Program Coordinator. The ~~Medical Director or~~ peer review physician may recommend an MIR Report for reconsideration by the examining MIR physician if the ~~Medical Director or~~ peer review physician deems the report to be incomplete, inaccurate, or unclear pursuant to the requirements of Rule 0800-02-20-.11. Reconsideration and any revision shall be completed by the examining MIR physician within ten (10) business days of referral from the Program Coordinator.

Authority: T.C.A. §§ 4-5-202 and 50-6-204 (2005). Administrative History: Public necessity rule filed June 15, 2005; effective through November 27, 2005. Public necessity rule filed November 16, 2005; effective through April 30, 2006. Original rule filed January 30, 2006; effective April 15, 2006. Repeal and new rule filed March 25, 2013; effective June 23, 2013.

* 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 12/05/17 (*date as mm/dd/yyyy*), and is in compliance with the provisions of T.C.A. § 4-5-222. The Secretary of State is hereby instructed that, in the absence of a petition for proposed rules being filed under the conditions set out herein and in the locations described, he is to treat the proposed rules as being placed on file in his office as rules at the expiration of sixty (60) days of the first day of the month subsequent to the filing of the proposed rule with the Secretary of State.

Date: 12/5/17

Signature: Abbie Hudgens

Name of Officer: Abbie Hudgens

Title of Officer: Administrator, Bureau of Workers' Compensation

SHARA HAMLETT
STATE OF TENNESSEE NOTARY PUBLIC
WILLIAMSON COUNTY

Subscribed and sworn to before me on: December 5, 2017

Notary Public Signature: Shara Hamlett

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

1/26/2018
Date

Department of State Use Only

Filed with the Department of State on: 2/8/18

Effective on: 5/9/18

Tre Hargett

Tre Hargett
Secretary of State

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G.O.C. STAFF RULE ABSTRACT

DEPARTMENT:	Labor and Workforce Development
DIVISION:	Bureau of Workers' Compensation
SUBJECT:	Mediation and Hearing Procedures
STATUTORY AUTHORITY:	Tennessee Code Annotated, Section 50-6-244(a)
EFFECTIVE DATES:	May 6, 2018 through June 30, 2019
FISCAL IMPACT:	None
STAFF RULE ABSTRACT:	This form (SD-2), as promulgated, is a simplified version of the pre-reform SD-1 form that has been in both pre-reform and post-reform settlements. The SD-2 form will be used in workers' compensation settlements that are approved by the Court of Workers' Compensation Claims in post-reform cases (injuries occurring on/after 7/1/14).

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

1. The type or types of small business and an identification and estimate of the number of small businesses subject to the proposed rule that would bear the cost of, or directly benefit from the proposed rule: The rule will affect small employers that fall under the Tennessee Workers' Compensation Laws, which would be employers with at least five employees, or for those in the construction industry at least one employee. There should be no additional costs associated with these rule changes.

2. The projected reporting, recordkeeping and other administrative costs required for compliance with the proposed rule, including the type of professional skills necessary for preparation of the report or record: There is no additional record keeping requirement or administrative cost associated with these rule changes.

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

4. A description of any less burdensome, less intrusive or less costly alternative methods of achieving the purpose and objectives of the proposed rule that may exist, and to what extent the alternative means might be less burdensome to small business: There are no less burdensome methods to achieve the purposes and objectives of these rules.

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

6. Analysis of the effect of the possible exemption of small businesses from all or any part of the requirements contained in the proposed rule: None.

Impact on Local Governments

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

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

Additional Information Required by Joint Government Operations Committee

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

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

This form (SD-2), as promulgated, is a simplified version of the pre-reform SD-1 form that has been in both pre-reform and post-reform settlements. The SD-2 form will be used in workers' compensation settlements that are approved by the Court of WC Claims in post-reform cases (injuries occurring on/after 7/1/14).

(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 § 50-6-244(a) requires the development or alternation of the bureau's statistical data form to be promulgated by rule, pursuant to the Uniform Administrative Procedures Act, compiled in Tennessee Code Annotated, title 4, chapter 5.

(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;

Employees and employers may be affected by the promulgation of this form, which is a simplified version of an existing form. No entity has urged adoption or rejection of these rules.

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

None

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

The effect of the rule change will be negligible.

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

Troy Haley, Director of Administrative Legal Services and Legislative Liaison

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

Troy Haley, Director of Administrative Legal Services and Legislative Liaison

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

Tennessee Bureau of Workers' Compensation
220 French Landing Drive, Floor 1-B, 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

Department of State
Division of Publications
312 Rosa L. Parks Avenue, 8th Floor Snodgrass/TN Tower
Nashville, TN 37243
Phone: 615-741-2650
Fax: 615-741-5133
Email: register.information@tn.gov

For Department of State Use Only

Sequence Number: 02-06-18
Rule ID(s): 6693
File Date: 2/5/18
Effective Date: 5/6/18

Proposed Rule(s) Filing Form

Proposed rules are submitted pursuant to T.C.A. §§ 4-5-202, 4-5-207 in lieu of a rulemaking hearing. It is the intent of the Agency to promulgate these rules without a rulemaking hearing unless a petition requesting such hearing is filed within sixty (60) days of the first day of the month subsequent to the filing of the proposed rule with the Secretary of State. To be effective, the petition must be filed with the Agency and be signed by twenty-five (25) persons who will be affected by the amendments, or submitted by a municipality which will be affected by the amendments, or an association of twenty-five (25) or more members, or any standing committee of the General Assembly. The agency shall forward such petition to the Secretary of State.

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

Revision Type (check all that apply):

x Amendment
___ New
___ Repeal

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

Chapter Number	**Chapter Title**
0800-02-21	Mediation and Hearing Procedures
Rule Number	**Rule Title**
0800-02-21-.08	Forms

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

Amendments

Chapter 0800-02-21
Mediation and Hearing Procedures

Rule 0800-02-21-.08 is amended by adding the following:

(1) Pursuant to T.C.A. § 50-6-244, the following statistical data form is to be used for settlements approved by the court of workers' compensation claims involving injuries occurring on or after July 1, 2014:

Tennessee Bureau of Workers' Compensation
220 French Landing Drive, I-B
Nashville, TN 37243-1002
800-332-2667

STATISTICAL DATA FORM FOR INJURIES ON/AFTER JULY 1, 2014—Form SD-2

EMPLOYEE INFORMATION

Docket # _____ State File # _____ *Date of Injury _____

Employee Last Name _____ First Name _____ MI ____ SSN _____

Date of Birth _____ Year of Hire ____ Education Level ☐ *Less Than High School* ☐ *High School* ☐ *More than High School*

CLAIM/INJURY INFORMATION

Employer _____ Is Employer Self-Insured? ☐ Yes ☐ No

Is Employer a member of the Bureau's Tennessee Drug Free Workplace Program? (select one) ☐ Yes ☐ No

Insurer _____ TPA _____

Injury occurred in TN ☐ Yes ☐ No County of Injury _____

First date out of work _____ Date of return to work _____ Total # of days lost _____

Date of MMI _____ ATP Impairment Rating % _____

Average Weekly Wage _____ Compensation Rate _____

Was claim denied? ☐ Yes ☐ No If yes, basis of denial? ☐ *Statute of Limitations* ☐ *Notice* ☐ *Not Work-Related*

Vocational Assessment performed? ☐ Yes ☐ No ☐ *Intoxication/+ Drug Test* ☐ *Other (Specify)* _____

Nature of Primary Injury/Body Part _____ Occupational Illness ☐ Yes ☐ No

Chiropractic Treatment? ☐ Yes ☐ No Physical Therapy? ☐ Yes ☐ No Case Manager? ☐ Yes ☐ No

Was there an Employee IME? ☐ Yes ☐ No If yes, Impairment Rating % _____

Was there an Employer IME? ☐ Yes ☐ No If yes, Impairment Rating % _____

SETTLEMENT / HEARING INFORMATION

Type of Conclusion: ☐ **Compensation Hearing** ☐ **Settlement Approval**

Was Bureau Mediation conducted? ☐ Yes ☐ No If yes, was dispute resolved in mediation? ☐ Yes ☐ No

If concluded by a Compensation Hearing: Style of Case

_____

Date of Hearing _____ Name of Approving/Hearing Judge

_____

Date of Settlement Approval _____ Impairment Rating % used to settle the claim _____

Has Initial Compensation Period expired? ☐ Yes ☐ No If no, insert date this Period will expire _____

PPD increased benefits awarded? ☐ Yes ☐ No Vocational Impairment for Increased Benefits

_____

If yes, check all that apply: ☐ **Did not return to work** ☐ **40+ years old** ☐ **County Unemployment Rate** ☐ **Education level**

Was there a trial for increased benefits ☐ Yes ☐ No Was there a judgment for increased benefits? ☐ Yes ☐ No

Was there a judgment for the Employer? ☐ Yes ☐ No If yes, what was the basis: ☐ **Statute of limitations** ☐ **Notice**

☐ **Not work related** ☐ **No permanency** ☐ **Intoxication** ☐ **Willful Misconduct** **Other**

_____

Did Employee return to work for any Employer? ☐ Yes ☐ No If yes, was return to work pay ☐ Less ☐ Same ☐ Higher

Was claim settled pursuant to T.C.A. §50-6-240(e)? ☐ Yes ☐ No

SECOND INJURY FUND INFORMATION

Was there a judgment entered against the Subsequent Injury and Vocational Recovery Fund? ☐ Yes ☐ No

If there was a judgment against the Subsequent Injury and Vocational Recovery Fund, how was the settlement apportioned?

Employer % _____ # of Weeks _____

Subsequent Injury and Vocational Recovery Fund % _____ # of Weeks _____

MONETARY AMOUNTS PAID

Temporary Total Disability		# of weeks, or # of days	$
Temporary Partial Disability		# of weeks, or # of days	$
Permanent Partial Disability	PPD %	# of weeks, or # of days	$
Permanent Total Disability (including those to be paid)	PTD %	# of weeks, or # of days	$
Increased PPD Benefits			$
Death Benefits (including those to be paid)			$
Burial Benefits			$
Medical Benefits			$

Future Medical Expenses Closure	Date closed	After prior settlement? ☐ Yes ☐ No	$
Lump Sum per §50-6-240(e)			$
		Total Paid for all above columns	$
Amount of Settlement Paid in Lump Sum: $ (SSA requirement) (do not include this amount in total)		Date Settlement Lump Sum Paid:	

Employee's Attorney Fee $_____ % of Settlement _____ Was fee approved by Court? ☐ Yes ☐ No

Employer's Attorney Fee Range ☐ **Under $1,500** ☐ **$1,501-$3,000** ☐ **$3,001-$10,000** ☐ **Over $10,000**

Certification and Signatures:

By providing my BPR Number and my signature, I hereby certify that I have read the contents of the form and the information provided is true and correct to the best of my knowledge.

Printed name of Employee	Signature	Date
Printed name of Employee's Attorney BPR#	Signature	Date
Printed name of Adjuster	Signature	Date
Printed name of Employer's Attorney BPR#	Signature	Date

Authority: T.C.A. §§ 4-3-1409, 50-6-101, 50-6-244.

* 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 11/16/17 (*date as mm/dd/yyyy*), and is in compliance with the provisions of T.C.A. § 4-5-222. The Secretary of State is hereby instructed that, in the absence of a petition for proposed rules being filed under the conditions set out herein and in the locations described, he is to treat the proposed rules as being placed on file in his office as rules at the expiration of sixty (60) days of the first day of the month subsequent to the filing of the proposed rule with the Secretary of State.

Date: 11/16/17

Signature: Abbie Hudgens

Name of Officer: Abbie Hudgens

Title of Officer: Administrator, Bureau of Workers' Compensation

SHEILA HAMLETT
STATE OF TENNESSEE NOTARY PUBLIC
WILLIAMSON COUNTY

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

Notary Public Signature: Sheila Hamlett

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

1/26/2018
Date

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2018 FEB -5 PM 3:39
SECRETARY OF STATE
PUBLICATIONS

Filed with the Department of State on: 2/5/18

Effective on: 5/6/18

Tre Hargett

Tre Hargett
Secretary of State

G.O.C. STAFF RULE ABSTRACT

DEPARTMENT:	Health
DIVISION:	Board for Licensing Health Care Facilities
SUBJECT:	Standards for Nursing Homes
STATUTORY AUTHORITY:	Public Chapter No. 355 (2017)
EFFECTIVE DATES:	February 28, 2018 through August 27, 2018
FISCAL IMPACT:	These rule amendments should not result in any increase or decrease in state or local government revenues and expenditures.
STAFF RULE ABSTRACT:	These rule amendments contain new requirements for the disposal of medications in nursing homes and are required by 2017 Public Chapter 355, which was signed by the Governor on May 11, 2017, and allows nursing homes to participate in drug donation repository programs. The rules set out this requirement as well as the procedures for drug disposal for nursing homes that decline to participate in the drug donation repository program.

REGULATORY FLEXIBILITY ANALYSIS

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

These rule amendments do not overlap, duplicate, or conflict with other federal, state, and local government rules.

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

These rule amendments establish clarity, conciseness, and lack of ambiguity.

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

These rule amendments do not create any new compliance or reporting requirements.

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

These rule amendments do not create any new compliance or reporting requirements.

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

These rule amendments do not create any new compliance or reporting requirements.

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

These rule amendments do not establish performance standards for small businesses as opposed to design or operational standards required for the proposed rule.

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

These rule amendments do not create unnecessary barriers or other effects that stifle entrepreneurial activity, curb innovation, or increase costs.

STATEMENT OF ECONOMIC IMPACT TO SMALL BUSINESSES

Name of Board, Committee or Council: Board for Licensing Health Care Facilities

Rulemaking hearing date: TBD

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

   These rule amendments will affect nursing homes and those employees designated to dispose of unused medications.

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

   These rule amendments will require nursing homes to develop policies and procedures to ensure that medications are disposed of pursuant to this rule, and that such policies and procedures are in compliance with DEA regulations. This requirement may result in increased costs; however, nursing homes are currently required to maintain records regarding medication disposal, and the rule is required by 2017 Public Chapter 355, which was signed by the Governor on May 11, 2017.

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

   These rule amendments will require additional oversight in the destruction of medication in nursing homes, which may lead to increased costs for the facilities. Consumers should not be impacted by this rule amendment.

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

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

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

   Federal: None.

   State: None.

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

   These rule amendments do not contain any exemptions for small businesses.

Impact on Local Governments

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

The proposed rule amendments should not have a financial impact on local governments.

Additional Information Required by Joint Government Operations Committee

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

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

These rule amendments contain new requirements for the disposal of medications in nursing homes and are required by 2017 Public Chapter 355, which was signed by the Governor on May 11, 2017, and allows nursing homes to participate in drug donation repository programs. The rules set out this requirement as well as the procedures for drug disposal for nursing homes that decline to participate in the drug donation repository program.

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

These rule amendments contain new requirements for the disposal of medications in nursing homes and are required by 2017 Public Chapter 355, which was signed by the Governor on May 11, 2017.

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

These rule amendments will affect nursing homes and those employees designated to dispose of unused medications.

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

None.

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

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

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

Caroline Tippens, Assistant General Counsel, Department of Health.

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

Caroline Tippens, Assistant General Counsel, Department of Health.

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

Office of General Counsel, Department of Health, 665 Mainstream Drive, Nashville, Tennessee 37243, (615) 741-1611, Caroline.Tippens@tn.gov.

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

None.

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

For Department of State Use Only

Sequence Number: 02-30-18
Rule ID(s): 4709
File Date: 2/28/18
Last Effective Day: 8/27/18

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:	Board for Licensing Health Care Facilities
Division:	Department of Health
Contact Person:	Caroline Tippens
Address:	665 Mainstream Drive, Nashville, Tennessee
Zip:	37243
Phone:	(615) 741-1611
Email:	Caroline.Tippens@tn.gov

Revision Type (check all that apply):
X Amendment
___ New
___ Repeal

Statement of Necessity:
This rule amendment contains new requirements for the disposal of medications in nursing homes and is required by 2017 Public Chapter 355, which was signed by the Governor on May 11, 2017. The public chapter also requires these rules to be promulgated as emergency rules.

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**
1200-08-06	Standards for Nursing Homes
Rule Number	**Rule Title**
1200-08-06-.06	Basic Services

(Rule 1200-08-06-.05, continued)

(10) No resident shall be transferred without a written order from the attending physician or through other legal processes and timely notification of next of kin and/or sponsor or authorized representative, if any.

(11) When a resident is transferred, a summary of treatment given at the nursing home, condition of the resident at time of transfer and date and place to which he is transferred shall be entered in the record. If the transfer is due to an emergency, this information will be recorded within forty-eight (48) hours, otherwise, it will precede the transfer of the resident.

(12) When a resident is transferred, a copy of the clinical summary shall, with consent of the resident, be sent to the nursing home that will continue the care of the resident.

(13) Where an involuntary transfer is proposed, in addition to any other relevant factors, the following factors shall be taken into account:

(a) The traumatic effect on the resident.

(b) The proximity of the proposed nursing home to the present nursing home and to the family and friends of the resident.

(c) The availability of necessary medical and social services at the proposed nursing home.

(d) Compliance by the proposed nursing home with all applicable Federal and State regulations.

(14) When the attending physician has ordered a resident transferred or discharged, but the resident or a representative of the resident opposes the action, the nursing home shall counsel with the resident, the next of kin, sponsor and representative, if any, in an attempt to resolve the dispute and shall not transfer the resident until such counseling has been provided. No involuntary transfer or discharge shall be made until the nursing home has first informed the department and the area long-term care ombudsman. Unless a disaster occurs on the premises or the attending physician orders the transfer as a medical emergency (due to the resident's immediate need for a higher level of care) no involuntary transfer or discharge shall be made until five (5) business days after these agencies have been notified, unless they each earlier declare that they have no intention of intervening.

(15) Except when the Board has revoked or suspended the license, a nursing home which intends to close, cease doing business, or reduce its licensed bed capacity by ten percent (10%) or more shall notify both the department and the area long-term care ombudsman at the earliest moment of the decision, but not later than thirty (30) days before the action is to be implemented. The facility shall establish a protocol, subject to the department's approval, for the transfer or discharge of the residents. Should the nursing home violate the provisions of this paragraph, the department shall request the Attorney General of the State of Tennessee to intervene to protect the residents, as is provided by T.C.A. § 68-11-213(a).

Authority: *T.C.A. §§ 4-5-202, 4-5-204, 68-11-201, 68-11-202, 68-11-204, 68-11-206, 68-11-209, 68-11-257, and 71-6-121.* ***Administrative History:*** *Original rule filed March 27; effective April 25, 1975. Repeal and new rule filed July 14, 1983; effective August 15, 1983. Repeal and new rule filed January 31, 2000; effective April 15, 2000. Amendment filed April 10, 2000; effective June 24, 2000. Amendment filed February 23, 2007; effective May 9, 2007. Amendment filed April 17, 2007; effective July 1, 2007.*

1200-08-06-.06 BASIC SERVICES.

(1) Performance Improvement.

(Rule 1200-08-06-.06, continued)

(a) The nursing home must ensure that there is an effective, facility-wide performance improvement program to evaluate resident care and performance of the organization.

(b) The performance improvement program must be ongoing and have a written plan of implementation which assures that:

1. All organized services related to resident care, including services furnished by a contractor, are evaluated;

2. Nosocomial infections and medication therapy are evaluated;

3. All services performed in the facility are evaluated as to the appropriateness of diagnosis and treatment; and

4. The facility shall develop and implement a system for measuring improvements in adherence to the hand hygiene program and influenza vaccination program.

(c) The nursing home must have an ongoing plan, consistent with available community and facility resources, to provide or make available services that meet the medically-related needs of its residents.

(d) The facility must develop and implement plans for improvement to address deficiencies identified by the performance improvement program and must document the outcome of the remedial action.

(e) Performance improvement program records are not disclosable, except when such disclosure is required to demonstrate compliance with this section.

(f) Good faith attempts by the performance improvement program committee to identify and correct deficiencies will not be used as a basis for sanctions.

(2) Physician Services.

(a) Policies and procedures concerning services provided by the nursing home shall be available for the admitting physicians.

(b) Residents shall be aided in receiving dental care as deemed necessary.

(c) Each nursing home shall retain by written agreement a physician to serve as a Medical Director.

(d) The Medical Director shall be responsible for the medical care in the nursing home. The Medical Director shall:

1. Delineate the responsibilities of and communicate with attending physicians to ensure that each resident receives medical care;

2. Ensure the delivery of emergency and medical care when the resident's attending physician or his/her designated alternate is unavailable;

3. Review reports of all accidents or unusual incidents occurring on the premises, identifying hazards to health and safety and recommending corrective action to the administrator;

4. Make periodic visits to the nursing home to evaluate the existing conditions and make recommendations for improvements;

5. Review and take appropriate action on reports from the Director of Nursing regarding significant clinical developments;

6. Monitor the health status of nursing home personnel to ensure that no health conditions exist which would adversely affect residents; and,

7. Advise and provide consultation on matters regarding medical care, standards of care, surveillance and infection control.

(3) Infection Control.

(a) The nursing home must provide a sanitary environment to avoid sources and transmission of infections and communicable diseases. There must be an active program for the prevention, control, and investigation of infections and communicable diseases.

(b) The physical environment shall be maintained in such a manner to assure the safety and well being of the residents.

1. Any condition on the nursing home site conducive to the harboring or breeding of insects, rodents or other vermin shall be prohibited. Chemical substances of a poisonous nature used to control or eliminate vermin shall be properly identified. Such substances shall not be stored with or near food or medications.

2. Cats, dogs or other animals shall not be allowed in any part of the facility except for specially trained animals for the handicapped and except as addressed by facility policy for pet therapy programs. The facility shall designate in its policies and procedures those areas where animals will be excluded. The areas designated shall be determined based upon an assessment of the facility performed by medically trained personnel.

3. Telephones shall be readily accessible and at least one (1) shall be equipped with sound amplification and shall be accessible to wheelchair residents.

4. Equipment and supplies for physical examination and emergency treatment of residents shall be available.

5. A bed complete with mattress and pillow shall be provided. In addition, resident units shall be provided with at least one chair, a bedside table, an over bed tray and adequate storage space for toilet articles, clothing and personal belongings.

6. Individual wash cloths, towels and bed linens must be provided for each resident. Linen shall not be interchanged from resident to resident until it has been properly laundered.

7. Bath basin water service, emesis basin, bedpan and urinal shall be individually provided.

8. Water pitchers, glasses, thermometers, emesis basins, douche apparatus, enema apparatus, urinals, mouthwash cups, bedpans and similar items of equipment coming into intimate contact with residents shall be disinfected or sterilized after each use unless individual equipment for each is provided and then sterilized or disinfected between residents and as often as necessary to maintain them in a clean and sanitary condition. Single use, resident disposable items are acceptable but shall not be reused.

9. The facility shall have written policies and procedures governing care of residents during the failure of the air conditioning, heating or ventilation system, including plans for hypothermia and hyperthermia. When the temperature of any resident area falls below 65° F. or exceeds 85° F., or is reasonably expected to do so, the facility shall be alerted to the potential danger, and the department shall be notified.

(c) The administrator shall assure that an infection control program including members of the medical staff, nursing staff and administrative staff develop guidelines and techniques for the prevention, surveillance, control and reporting of facility infections. Duties of the program shall include the establishment of:

1. Written infection control policies;

2. Techniques and systems for identifying, reporting, investigating and controlling infections in the facility;

3. Written procedures governing the use of aseptic techniques and procedures in the facility;

4. Written procedures concerning food handling, laundry practices, disposal of environmental and resident wastes, traffic control and visiting rules, sources of air pollution, and routine culturing of autoclaves and sterilizers;

5. A log of incidents related to infectious and communicable diseases;

6. Formal provisions to educate and orient all appropriate personnel in the practice of aseptic techniques such as handwashing, proper grooming, masking, dressing care techniques, disinfecting and sterilizing techniques, and the handling and storage of resident care equipment and supplies; and,

7. Continuing education for all facility personnel on the cause, effect, transmission, prevention, and elimination of infections.

(d) The administrator, the medical staff and director of nursing services must ensure that the facility-wide performance improvement program and training programs address problems identified by the infection control program and must be responsible for the implementation of successful corrective action plans in affected problem areas.

(e) The facility shall develop policies and procedures for testing a resident's blood for the presence of the hepatitis B virus and the HIV virus in the event that an employee of the facility, a student studying at the facility, or other health care provider rendering services at the facility is exposed to a resident's blood or other body fluid. The testing shall be performed at no charge to the resident, and the test results shall be confidential.

(f) The facility and its employees shall adopt and utilize standard precautions (per CDC) for preventing transmission of infections, HIV, and communicable diseases, including adherence to a hand hygiene program which shall include:

1. Use of alcohol-based hand rubs or use of non-antimicrobial or antimicrobial soap and water before and after each patient contact if hands are not visibly soiled;

(Rule 1200-08-06-.06, continued)

2. Use of gloves during each patient contact with blood or where other potentially infectious materials, mucous membranes, and non-intact skin could occur and gloves changed before and after each patient contact;

3. Use of either a non-antimicrobial soap and water or an antimicrobial soap and water for visibly soiled hands; and

4. Health care worker education programs which may include:

   (i) Types of patient care activities that can result in hand contamination;

   (ii) Advantages and disadvantages of various methods used to clean hands;

   (iii) Potential risks of health care workers' colonization or infection caused by organisms acquired from patients; and

   (iv) Morbidity, mortality, and costs associated with health care associated infections.

(g) All nursing homes shall adopt appropriate policies regarding the testing of residents and staff for HIV and any other identified causative agent of acquired immune deficiency syndrome.

(h) The facility shall document evidence of annual vaccination against influenza for each resident, in accordance with the recommendations of the Advisory Committee on Immunization Practices of the Centers for Disease Control most recent to the time of the vaccine. Influenza vaccination is medically contraindicated or the resident has refused the vaccine. Influenza vaccination for all residents accepting the vaccine shall be completed by November 30 of each year or within ten (10) days of the vaccine becoming available. Residents admitted after this date during the flu season and up to February 1, shall as medically appropriate, receive influenza vaccination prior to or on admission unless refused by the resident.

The facility shall document evidence of vaccination against pneumococcal disease for all residents who are 65 years of age or older, in accordance with the recommendation of the Advisory Committee on Immunization Practices of the Centers for Disease Control at the time of vaccination, unless such vaccination is medically contraindicated or the resident has refused offer of the vaccine. The facility shall provide or arrange the pneumococcal vaccination of residents who have not received this immunization prior to or on admission unless the resident refuses offer of the vaccine.

(i) A Nursing Home shall have an annual influenza vaccination program which shall include at least:

1. The offer of influenza vaccination to all staff and independent practitioners at no cost to the person or acceptance of documented evidence of vaccination from another vaccine source or facility. The Nursing Home will encourage all staff and independent practitioners to obtain an influenza vaccination;

2. A signed declination statement on record from all who refuse the influenza vaccination for reasons other than medical contraindications (a sample form is available at http://tennessee.gov/health/topic/hcf-provider);

3. Education of all employees about the following:

   (i) Flu vaccination,

(ii) Non-vaccine control measures, and

(iii) The diagnosis, transmission, and potential impact of influenza;

4. An annual evaluation of the influenza vaccination program and reasons for non-participation; and

5. A statement that the requirements to complete vaccinations or declination statements shall be suspended by the administrator in the event of a vaccine shortage as declared by the Commissioner or the Commissioner's designee.

(j) Precautions shall be taken to prevent the contamination of sterile supplies by soiled supplies. Sterile supplies shall be packaged and stored in a manner that protects the sterility of the contents. Decontamination and preparation areas shall be separated.

(k) Space and facilities for housekeeping equipment and supply storage shall be provided in each service area. Storage for bulk supplies and equipment shall be located away from patient care areas. The building shall be kept in good repair, clean, sanitary and safe at all times.

(l) The facility shall appoint a housekeeping supervisor who shall be responsible for:

1. Organizing and coordinating the facility's housekeeping service;

2. Acquiring and storing sufficient housekeeping supplies and equipment for facility maintenance; and,

3. Assuring the clean and sanitary condition of the facility to provide a safe and hygienic environment for residents and staff. Cleaning shall be accomplished in accordance with the infection control rules herein and facility policy.

(m) Laundry facilities located in the nursing home shall:

1. Be equipped with an area for receiving, processing, storing and distributing clean linen;

2. Be located in an area that does not require transportation for storage of soiled or contaminated linen through food preparation, storage or dining areas;

3. Provide space for storage of clean linen within nursing units and for bulk storage within clean areas of the facility; and,

4. Provide carts, bags or other acceptable containers appropriately marked to identify those used for soiled linen and those used for clean linen to prevent dual utilization of the equipment and cross contamination.

(n) The facility shall name an individual who is responsible for laundry service. This individual shall be responsible for:

1. Establishing a laundry service, either within the nursing home or by contract, that provides the facility with sufficient clean, sanitary linen at all times;

2. Knowing and enforcing infection control rules and regulations for the laundry service;

(Rule 1200-08-06-.06, continued)

3. Assuring the collection, packaging, transportation and storage of soiled, contaminated, and clean linen is in accordance with all applicable infection control rules and procedures; and,

4. Assuring that a contract laundry service complies with all applicable infection control rules and procedures.

(4) Nursing Services.

(a) Each nursing home must have an organized nursing service that provides twenty-four (24) hour nursing services furnished or supervised by a registered nurse. Each home shall have a licensed practical nurse or registered nurse on duty at all times and at least two (2) nursing personnel on duty each shift.

(b) The facility must have a well-organized nursing service with a plan of administrative authority and delineation of responsibilities for resident care. The Director of Nursing (DON) must be a licensed registered nurse who has no current disciplinary actions against his/her license. The DON is responsible for the operation of the service, including determining the types and numbers of nursing personnel and staff necessary to provide nursing care for all areas of the facility.

(c) The Director of Nursing shall have the following responsibilities:

1. Develop, maintain and periodically update:

(i) Nursing service objectives and standards of practice;

(ii) Nursing service policy and procedure manuals;

(iii) Written job descriptions for each level of nursing personnel;

(iv) Methods for coordination of nursing service with other resident services; and,

(v) Mechanisms for monitoring quality of nursing care, including the periodic review of medical records.

2. Participate in selecting prospective residents in terms of the nursing services they need and nursing competencies available.

3. Make daily rounds to see residents.

4. Notify the resident's physician when medically indicated.

5. Review each resident's medications periodically and notify the physician where changes are indicated.

6. Supervise the administration of medications.

7. Supervise assignments of the nursing staff for the direct care of all residents.

8. Plan, develop and conduct monthly in-service education programs for nursing personnel and other employees of the nursing home where indicated. An organized orientation program shall be developed and implemented for all nursing personnel.

(Rule 1200-08-06-.06, continued)

9. Supervise and coordinate the feeding of all residents who need assistance.

10. Coordinate the dietary requirements of residents with the staff responsible for the dietary service.

11. Coordinate housekeeping personnel.

12. Assure that discharge planning is initiated in a timely manner.

13. Assure that residents, along with their necessary medical information, are transferred or referred to appropriate facilities, agencies or outpatient services, as needed, for follow-up or ancillary care.

(d) The nursing service must have adequate numbers of licensed registered nurses, licensed practical nurses, and certified nurse aides to provide nursing care to all residents as needed. Nursing homes shall provide a minimum of two (2) hours of direct care to each resident every day including 0.4 hours of licensed nursing personnel time. There must be supervisory and staff personnel for each department or nursing unit to ensure, when needed, the availability of a licensed nurse for bedside care of any resident.

(e) A registered nurse must supervise and evaluate the nursing care for each resident.

(f) The facility must ensure that an appropriate individualized plan of care is prepared for each resident with input from appropriate disciplines, the resident and/or the resident's family or the resident's representative.

(g) A registered nurse must assign the nursing care of each resident to other nursing personnel in accordance with the resident's needs and the specialized qualifications and competence of the nursing staff available.

(h) Non-employee licensed nurses who are working in the nursing home must adhere to the policies and procedures of the facility. The director of the nursing service must provide for the adequate supervision and evaluation of the clinical activities of non-employee nursing personnel which occur within the responsibility of the nursing service.

(i) All drugs, devices and related materials must be administered by, or under the supervision of, nursing or other personnel in accordance with federal and state laws and regulations, including applicable licensing requirements, and in accordance with the approved medical staff policies and procedures.

(j) There must be a facility procedure for reporting adverse drug reactions and errors in administration of drugs.

(k) When non-employees are utilized as sitters or attendants, they shall be under the authority of the nursing service and their duties shall be set forth clearly in written nursing service policies.

(l) Each resident shall be given proper personal attention and care of skin, feet, nails and oral hygiene in addition to the specific professional nursing care as ordered by the resident's physician.

(m) Medications, treatments, and diet shall be carried out as prescribed to safeguard the resident, to minimize discomfort and to attain the physician's objective.

(Rule 1200-08-06-.06, continued)

(n) Residents shall have baths or showers at least two (2) times each week, or more often if requested by the resident.

(o) Body position of residents in bed or chair bound shall be changed at least every two (2) hours, day and night, while maintaining good body alignment. Proper skin care shall be provided for bony prominences and weight bearing parts to prevent discomfort and the development of pressure areas, unless contraindicated by physician's orders.

(p) Residents who are incontinent shall have partial baths each time the bed or bed clothing has been wet or soiled. The soiled or wet bed linen and the bed clothing shall be replaced with clean, dry linen and clothing immediately after being soiled.

(q) Residents shall have shampoos, haircuts and shaves as needed, or desired.

(r) Rehabilitation measures such as assisting patients with range of motion, prescribed exercises and bowel and bladder retraining programs shall be carried out according to the individual needs and abilities of the resident.

(s) Residents shall be active and out of bed except when contraindicated by written physician's orders.

(t) Residents shall be encouraged to achieve independence in activities of daily living, self-care, and ambulation as a part of daily care.

(u) Residents shall have clean clothing as needed and shall be kept free from odor.

(v) Residents' weights shall be taken and recorded at least monthly unless contraindicated by a physician's order.

(w) Physical restraints shall be checked every thirty (30) minutes and released every two (2) hours so the resident may be exercised and offered toilet access.

(x) Restraints may be applied or administered to residents only on the signed order of a physician. The signed physician's order must be for a specified and limited period of time and must document the necessity of the restraint. There shall be no standing orders for restraints.

(y) When a resident's safety or safety of others is in jeopardy, the nurse in charge shall use his/her judgment to use physical restraints if a physician's order cannot be immediately obtained. A written order must be obtained as soon as possible.

(z) Locked restraints are prohibited.

(aa) Assistance with eating shall be given to the resident as needed in order for the resident to receive the diet for good health care.

(bb) Abnormal food intake will be evaluated and recorded.

(cc) A registered nurse may make the actual determination and pronouncement of death under the following circumstances:

1. The deceased was a resident of a nursing home;

2. The death was anticipated, and the attending physician or nursing home medical director has agreed in writing to sign the death certificate. Such agreement by

(Rule 1200-08-06-.06, continued)

the attending physician or nursing home medical director must be present with the deceased at the place of death;

3. The nurse is licensed by the state; and,

4. The nurse is employed by the nursing home in which the deceased resided.

(5) Medical Records.

(a) The nursing home shall comply with the Tennessee Medical Records Act, T.C.A. §§ 68-11-301, et seq.

(b) The nursing home must maintain a medical record for each resident. Medical records must be accurate, promptly completed, properly filed and retained, and accessible. The facility must use a system of author identification and record maintenance that ensures the integrity of the authentication and protects the security of all record entries.

(c) All medical records, in either written, electronic, graphic or otherwise acceptable form, must be retained in their original or legally reproduced form for a minimum period of at least ten (10) years after which such records may be destroyed. However, in cases of residents under mental disability or minority, their complete facility records shall be retained for the period of minority or known mental disability, plus one (1) year, or ten (10) years following the discharge of the resident, whichever is longer. Records destruction shall be accomplished by burning, shredding or other effective method in keeping with the confidential nature of the contents. The destruction of records must be made in the ordinary course of business, must be documented and in accordance with the facility's policies and procedures, and no record may be destroyed on an individual basis.

(d) When a nursing home closes with no plans of reopening, an authorized representative of the facility may request final storage or disposition of the facility's medical records by the department. Upon transfer to the department, the facility relinquishes all control over final storage of the records and the files shall become property of the State of Tennessee.

(e) The nursing home must have a system of coding and indexing medical records. The system must allow for timely retrieval by diagnosis and procedure.

(f) The nursing home must have a procedure for ensuring the confidentiality of resident records. Information from or copies of records may be released only to authorized individuals, and the facility must ensure that unauthorized individuals cannot gain access to or alter resident records. Original medical records must be released by the facility only in accordance with federal and state laws, court orders or subpoenas.

(g) The medical record must contain information to justify admission, support the diagnosis, and describe the resident's progress and response to medications and services.

(h) All entries must be legible, complete, dated and authenticated according to facility policy.

(i) All records must document the following:

1. Evidence of a physical examination, including a health history, performed no more than thirty (30) days prior to admission or within forty-eight (48) hours following admission;

(Rule 1200-08-06-.06, continued)

2. Admitting diagnosis;

3. A dietary history as part of each resident's admission record;

4. Results of all consultative evaluations of the resident and appropriate findings by clinical and other staff involved in the care of the resident;

5. Documentation of complications, facility acquired infections, and unfavorable reactions to drugs;

6. Properly executed informed consent forms for procedures and treatments specified by facility policy, or by federal or state law if applicable, as requiring written resident consent;

7. All practitioners' orders, nursing notes, reports of treatment, medication records, radiology and laboratory reports, and vital signs and other information necessary to monitor the resident's condition;

8. Discharge summary with disposition of case and plan for follow-up care; and,

9. Final diagnosis with completion of medical records within thirty (30) days following discharge.

(j) Electronic and computer-generated records and signature entries are acceptable.

(6) Pharmaceutical Services.

(a) The nursing home shall have pharmaceutical services that meet the needs of the residents and are in accordance with the Tennessee Board of Pharmacy statutes and rules. The medical staff is responsible for developing policies and procedures that minimize drug errors.

(b) All internal and external medications and preparations intended for human use shall be stored separately. They shall be properly stored in medicine compartments, including cabinets on wheels, or drug rooms. Such cabinets or drug rooms shall be kept securely locked when not in use, and the key must be in the possession of the supervising nurse or other authorized persons. Poisons or external medications shall not be stored in the same compartment and shall be labeled as such.

(c) Schedule II drugs must be stored behind two (2) separately locked doors at all times and accessible only to persons in charge of administering medication.

(d) Every nursing home shall comply with all state and federal regulations governing Schedule II drugs.

(e) A notation shall be made in a Schedule II drug book and in the resident's nursing notes each time a Schedule II drug is given. The notation shall include the name of the resident receiving the drug, name of the drug, the dosage given, the method of administration, the date and time given and the name of the physician prescribing the drug.

(f) All oral orders shall be immediately recorded, designated as such and signed by the person receiving them and countersigned by the physician within ten (10) days.

(Rule 1200-08-06-.06, continued)

(g) All orders for drugs, devices and related materials must be in writing and signed by the practitioner or practitioners responsible for the care of the resident. Electronic and computer-generated records and signature entries are acceptable. When telephone or oral orders must be used, they shall be:

1. Accepted only by personnel that are authorized to do so by the medical staff policies and procedures, consistent with federal and state law; and,

2. Signed or initialed by the prescribing practitioner according to nursing home policy.

(h) Medications not specifically limited as to time or number of doses when ordered are controlled by automatic stop orders or other methods in accordance with written policies. No Schedule II drug shall be given or continued beyond seventy-two (72) hours without a written order by the physician.

(i) Medication administration records (MAR) shall be checked against the physician's orders. Each dose shall be properly recorded in the clinical record after it has been administered.

(j) Preparation of doses for more than one scheduled administration time shall not be permitted.

(k) Medication shall be administered only by licensed medical or licensed nursing personnel or other licensed health professionals acting within the scope of their licenses.

(l) Unless the unit dose package system is used, individual prescriptions of drugs shall be kept in the original container with the original label intact showing the name of the resident, the drug, the physician, the prescription number and the date dispensed.

(m) Legend drugs shall be dispensed by a licensed pharmacist.

~~(n) Any unused portions of prescriptions shall be turned over to the resident only on a written order by the physician. A notation of drugs released to the resident shall be entered into the medical record. All unused prescriptions left in a nursing home must be destroyed on the premises and recorded be a pharmacist. Such record shall be kept in the nursing home.~~

(n) Nursing homes may participate in drug donation repository programs as defined in Title 63, Chapter 10 and may use such programs for drug disposal services. The facility's participation in a drug donation repository program shall be outlined in the facility's policies and procedures.

(o) Alternatively, if a nursing home declines to participate in the drug donation repository program, any unused portions of prescriptions shall be turned over to the resident only on a written order by the physician. All unused prescriptions left in a nursing home must be destroyed on the premises by a licensed nurse and a witness. Policy and procedures should outline person(s) who may serve as a witness and methodology. Policies and procedures must be in compliance with DEA regulations.

(7) Radiology Services. The nursing home must maintain or have available diagnostic radiologic services according to the needs of the residents. If therapeutic services are also provided, they, as well as the diagnostic services, must meet professionally approved standards for safety and personnel qualifications.

(Rule 1200-08-06-.06, continued)

(8) Laboratory Services. The nursing home must maintain or have available, either directly or through a contractual agreement, adequate laboratory services to meet the needs of the residents. The nursing home must ensure that all laboratory services provided to its residents are performed in a facility licensed in accordance with the Tennessee Medical Laboratory Act (TMLA). All technical laboratory staff shall be licensed in accordance with the TMLA and shall be qualified by education, training and experience for the type of services rendered.

(9) Food and Dietetic Services.

(a) The nursing home must have organized dietary services that are directed and staffed by adequate qualified personnel. A facility may contract with an outside food management company if the company has a dietitian who serves the facility on a full-time, part-time, or consultant basis, and if the company maintains at least the minimum standards specified in this paragraph and provides for constant liaison with the facility medical staff for recommendations on dietetic policies affecting resident treatment. If an outside contract is utilized for management of its dietary services, the facility shall designate a full-time employee to be responsible for the overall management of the services.

(b) The nursing home must designate a person, either directly or by contractual agreement, to serve as the food and dietetic services director with responsibility for the daily management of the dietary services. The food and dietetic services director shall be:

1. A qualified dietitian; or,

2. A graduate of a dietetic technician or dietetic assistant training program, correspondence or classroom, approved by the American Dietetic Association; or,

3. An individual who has successfully completed in-person or online coursework that provided ninety (90) or more hours of classroom instruction in food service supervision. If the course has not been completed, this person shall be enrolled in a course and making satisfactory progress for completion within the time limit specified by the course requirement; or,

4. An individual who is a certified dietary manager (CDM), or certified food protection professional (CFPP); or,

5. A current or former member of the U.S. military who has graduated from an approved military dietary manager training program.

(c) There must be a qualified dietitian, full time, part-time, or on a consultant basis, who is responsible for the development and implementation of a nutrition care process to meet the needs of residents for health maintenance, disease prevention and, when necessary, medical nutrition therapy to treat an illness, injury or condition. Medical nutrition therapy includes assessment of the nutritional status of the resident and treatment through diet therapy, counseling and/or use of specialized nutrition supplements.

(d) Menus must meet the needs of the residents.

1. Therapeutic diets must be prescribed by the practitioner or practitioners responsible for the care of the residents and must be prepared and served as prescribed.

(Rule 1200-08-06-.06, continued)

2. Special diets shall be prepared and served as ordered.

3. Nutritional needs must be met in accordance with recognized dietary practices and in accordance with orders of the practitioner or practitioners responsible for the care of the residents.

4. A current therapeutic diet manual approved by the dietitian and medical staff must be readily available to all medical, nursing, and food service personnel.

(e) Education programs, including orientation, on-the-job training, inservice education, and continuing education shall be offered to dietetic services personnel on a regular basis. Programs shall include instruction in the use of equipment, personal hygiene, proper inspection, and the handling, preparing and serving of food.

(f) A minimum of three (3) meals in each twenty-four (24) hour period shall be served. A supplemental night meal shall be served if more than fourteen (14) hours lapse between supper and breakfast. Additional nourishments shall be provided to patients with special dietary needs. A minimum of three (3) days supply of food shall be on hand.

(g) Menus shall be prepared at least one week in advance. A dietitian shall be consulted to help write and plan the menus. If any change in the actual food served is necessary, the change shall be made on the menu to designate the foods actually served to the residents. Menus of food served shall be kept on file for a thirty (30) day period.

(h) The dietitian or designee shall have a conference, dated on the medical chart, with each resident and/or family within two (2) weeks of admission to discuss the diet plan indicated by the physician. The resident's dietary preferences shall be recorded and utilized in planning his/her daily menu.

(i) Food shall be protected from dust, flies, rodents, unnecessary handling, droplet infection, overhead leakage and other sources of contamination whether in storage or while being prepared and served and/or transported through hallways.

(j) Perishable food shall not be allowed to stand at room temperature except during necessary periods of preparation or serving. Prepared foods shall be kept hot (140 °F or above) or cold (45 °F or less). Appropriate equipment for temperature maintenance, such as hot and cold serving units or insulated containers, shall be used.

(k) All nursing homes shall have commercial automatic dishwashers approved by the National Sanitation Foundation. Dishwashing machines shall be used according to manufacturer specifications.

(l) All dishes, glassware and utensils used in the preparation and serving of food and drink shall be cleaned and sanitized after each use.

(m) The cleaning and sanitizing of handwashed dishes shall be accomplished by using a three-compartment sink according to the current "U.S. Public Health Service Sanitation Manual".

(n) The kitchen shall contain sufficient refrigeration equipment and space for the storage of perishable foods.

(o) All refrigerators and freezers shall have thermometers. Refrigerators shall be kept at a temperature not to exceed 45 °F. Freezers shall be kept at a temperature not to exceed 0 °F.

(Rule 1200-08-06-.06, continued)

(p) Written policies and procedures shall be followed concerning the scope of food services in accordance with the current edition of the "U.S. Public Health Service Recommended Ordinance and Code Regulating Eating and Drinking Establishments" and the current "U.S. Public Health Service Sanitation Manual" should be used as a guide to food sanitation.

(10) Social Work Services.

(a) Social services must be available to the resident, the resident's family and other persons significant to the resident, in order to facilitate adjustment of these individuals to the impact of illness and to promote maximum benefits from the health care services provided.

(b) Social work services shall include psychosocial assessment, counseling, coordination of discharge planning, community liaison services, financial assistance and consultation.

(c) A resident's social history shall be obtained within two (2) weeks of admission and shall be appropriately maintained.

(d) Social work services shall be provided by a qualified social worker.

(e) Facilities for social work services shall be readily accessible and shall permit privacy for interviews and counseling.

(11) Physical, Occupational and Speech Therapy Services.

(a) Physical therapy, occupational therapy and speech therapy shall be provided directly or through contractual agreement by individuals who meet the qualifications specified by nursing home policy, consistent with state law.

(b) Speech therapy services shall be provided only by or under supervision of a qualified speech language pathologist in good standing, or by a person qualified as a Clinical Fellow subject to Tennessee Board of Communications Disorders and Sciences Rule 1370-01-.10.

(c) A licensed physical therapist shall be in charge of the physical therapy service and a licensed occupational therapist shall be in charge of the occupational therapy service.

(d) Direct contact shall exist between the resident and the therapist for those residents that require treatment ordered by a physician.

(e) The physical therapist and occupational therapist, pursuant to a physician order, shall provide treatment and training designed to preserve and improve abilities for independent functions, such as: range of motion, strength, tolerance, coordination and activities of daily living.

(f) Therapy services shall be coordinated with the nursing service and made a part of the resident care plan.

(g) Sufficient staff shall be made available to provide the service offered.

(12) Ventilator Services. A nursing home that provides ventilator services shall meet or exceed the following minimum standards by:

(Rule 1200-08-06-.06, continued)

(a) Ensuring a licensed respiratory care practitioner as defined by Tennessee Code Annotated Section 63-27-102(7), shall be physically present at the facility twenty four (24) hours per day, seven (7) days per week to provide:

1. ventilator care;

2. administration of medical gases;

3. administration of aerosol medications; and

4. diagnostic testing and monitoring of life support systems;

(b) Ensuring that an appropriate, individualized plan of care is prepared for each patient requiring ventilator services. The plan of care shall be developed with input and participation from a pulmonologist or a physician with experience in ventilator care;

(c) Ensuring that admissions criteria is established to ensure the medical stability of ventilator-dependent patients prior to transfer from an acute care setting;

(d) Ensuring that Arterial Blood Gas (ABG) is readily available in order to document the patient's acid base status and/or End Tidal Carbon Dioxide (etCOs) and whether continuous pulse oximetry measurements should be performed in lieu of ABG studies;

(e) Ensuring that an audible, redundant external alarm system is located outside of each ventilator-dependent patient's room for the purpose of alerting caregivers of patient disconnection, ventilator disconnection or ventilator failure;

(f) Ensuring that the nursing home is equipped with emergency suction equipment and an adequate number of Ambu bags for manual ventilation;

(g) Ensuring that ventilator equipment is connected to electrical outlets connected to back-up generator power;

(h) Ensuring that ventilators are equipped with battery back-up systems;

(i) Ensuring that the nursing home is equipped to employ the use of current ventilator technology consistent with meeting patients' needs for mobility and comfort; and

(j) Ensuring that a back-up ventilator is available at all times.

Authority: *T.C.A. §§ 4-5-202, 4-5-204, 68-3-511, 68-11-201, 68-11-202, 68-11-204, 68-11-206, 68-11-209, and 68-11-216.* ***Administrative History:*** *Original rule filed March 27, 1975; effective April 25, 1975. Repeal and new rule filed July 14, 1983; effective August 15, 1983. Amendment filed March 13, 1986; effective April 12, 1986. Amendment filed January 29, 1991; effective March 15, 1991. Amendment filed December 29, 1992; effective February 15, 1993. Amendment filed June 15, 1993; effective July 30, 1993. Amendment filed April 17, 1996; effective July 1, 1996. Repeal and new rule filed January 31, 2000; effective April 15, 2000. Amendment filed January 31, 2000; effective April 15, 2000. Amendment filed March 29, 2000; effective June 12, 2000. Amendment filed September 13, 2002; effective November 27, 2002. Amendment filed September 4, 2003; effective November 18, 2003. Amendment filed September 21, 2005; effective December 5, 2005. Amendment filed July 18, 2007; effective October 1, 2007. Amendment filed January 3, 2012; effective April 2, 2012. Amendment filed December 16, 2013; effective March 16, 2014. Amendment filed September 15, 2015; effective December 14, 2015. Amendments filed July 18, 2016; effective October 16, 2016.*

1200-08-06-.07 SPECIAL SERVICES: ALZHEIMER'S UNITS. Structurally distinct parts of a nursing home may be designated as special care units for ambulatory residents with dementia or Alzheimer's

* 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)
Paul Boyd	X				
Robert Breeden	X				
Evelyn Brock				X	
Joshua Crisp	X				
Thomas Gee	X				
Jennifer Gordon-Maloney				X	
Chuck Griffin	X				
Patricia Ketterman	X				
Carissa Lynch	X				
Annette Marlar				X	
Roger Mynatt	X				
Lisa Piercey	X				
Sherry Robbins	X				
Kenneth Robertson	X				
Rene Saunders			X		
Jim Shulman	X				
Gina Thorneberry	X				
Janet Williford	X				
Bobby Wood	X				

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

Date: 2/20/2018

Signature: Caroline R. Tippens

Name of Officer: Caroline Tippens

Title of Officer: Assistant General Counsel
Department of Health

Subscribed and sworn to before me on: 2-20-18

Notary Public Signature: Luanne Mechkowski

My commission expires on: My Commission Expires January 26, 2021

LUANNE MECHKOWSKI
STATE OF TENNESSEE
NOTARY PUBLIC
SUMNER COUNTY

Agency/Board/Commission: Board for Licensing Health Care Facilities

Rule Chapter Number(s): 1200-08-06

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

2/22/2018
Date

Department of State Use Only

Filed with the Department of State on: 2/28/18

Effective for: 180 *days

Effective through: 8/27/18

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

Tre Hargett
Secretary of State

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SECRETARY OF STATE
PUBLICATIONS

G.O.C. STAFF RULE ABSTRACT

DEPARTMENT:	Wildlife Resources Agency
DIVISION:	Biodiversity
SUBJECT:	Threatened and Endangered Species
STATUTORY AUTHORITY:	Tennessee Code Annotated, Section 70-8-104
EFFECTIVE DATES:	May 2, 2018, through June 30, 2019
FISCAL IMPACT:	The impact to state government revenues and expenditures is minimal as cost to contract surveys and to mitigate impacts is typically less than $5,000 as related to state listed species. There will be no increase in revenue from this rule.
STAFF RULE ABSTRACT:	This rulemaking hearing rule lists threatened, endangered, and in need of management species or subspecies indigenous to Tennessee. The only changes to previous regulations which were set out in Tennessee Wildlife Resources Agency proclamations 00-14 and 00-15 were changes in the species or subspecies listed.

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: No written or verbal comments were received by the Commission.
Response: N/A

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, and/or directly benefit from the proposed rule;

This rule would have minimal impact on small business. The impact to small business would in most instances occur during construction projects when any of the following permits are required Aquatic Resources Alteration Permit, General Construction Permit, National Pollution Discharge Elimination System Permit, or Injection Well Permit; a 404 Dredge and Fill Permit from the U.S. Army Corps of Engineers; or they are required to develop an Environmental Impact Statement or Environmental Assessment where impacts could occur to listed species. Any entity obtaining federal funds is also required to consult with state and federal wildlife agencies per the National Environmental Policy Act on species that could be impacted within the project area. Small business that would potentially be impacted would include construction, real estate, manufacturing, utilities, and mining. We estimate that less than 50 small businesses a year potentially could be impacted by this rule.

Small businesses that would directly benefit from this rule are consulting firms which are contracted by other business, local governments, or the state to complete surveys for In Need of Management, Threatened, or Endangered species that may occur within the boundaries of a project that could be impacted by that projects activities. We estimated that at least 15 small businesses annually could benefit from this 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;

This rule requires a skill set found in most wildlife consulting firms and carried out by a wildlife biologist. The skills include knowledge of species and subspecies habitats, surveying techniques for listed species, proper handling techniques of species in order to minimize stress, and the use of geographic information systems to map habitat. Also skills are needed to write necessary reports.

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

There will be minimal impact to small businesses and consumers. The cost of surveys and mitigations will typically be less than $5,000 and will likely only impact business during construction or other activities that could impact threatened, endangered, and in need of management species habitat or directly impact individuals; and when any of the following permits are required Aquatic Resources Alteration Permit, General Construction Permit, National Pollution Discharge Elimination System Permit, or Injection Well Permit; a 404 Dredge and Fill Permit from the U.S. Army Corps of Engineers; or they are required to develop an Environmental Impact Statement or Environmental Assessment where impacts could occur to listed species. Any entity obtaining federal funds is also required to consult with state and federal wildlife agencies per the National Environmental Policy Act on species that could be impacted with in the project area

We expect minimal impact to consumers.

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

Due to the minimal cost associated with this rule we do not see any alternative methods that would reduce the burden on small businesses while still reducing impacts to those species listed in the rule.

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

The Federal Endangered Species Act of 1973 makes it unlawful for a person to take a listed animal without a permit. Take defined in the federal endangered species act is defined as to harass, harm, pursue, hunt, shoot wound, kill trap, capture, or collect or attempt to engage in any such activity. The act makes it unlawful to significantly modify habitat or degrade habitat where it actually kills or injures listed wildlife by significantly impairing essential behavioral patterns, including breeding, feeding or sheltering. The federal law allows

landowners, citizens, corporations, and states take through section 10 permits. Current Tennessee T.C.A. makes it unlawful for take of state listed species. This rule like the federal section 10 permits will allow small business, corporations, local government to continue projects while working to minimize impacts to species listed in the 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.

Due to the number of different small businesses that may have impact on state listed in need of management, threatened, and endangered species it would be very difficult to exempt small business from all or part of the rule. Exempting small businesses would still mean that they would be required to meet federal endangered species act requirements in many parts of Tennessee. It would also be difficult to exempt some business due to both state and federal law requirements for taking into consideration listed species during the permitting process.

Impact on Local Governments

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

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

The Commission is aware that the passage of this rule could have a small financial impact on local government.

Please describe the increase in expenditures or decrease in revenues:

The increase in expenditures is in relations to preforming surveys and mitigation of listed species in relation to those that may occur within a proposed construction projects footprint. It is not expected that there will be a decrease in revenues as this rule mainly effects projects during construction. Once a project is completed and efforts are made to reduce or mitigate impacts on listed species it is not expected that the entity will be further impacted by this rule.

Additional Information Required by Joint Government Operations Committee

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

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

The rule lists threatened, endangered, and in need of management species or subspecies indigenous to Tennessee. The only changes to previous regulations which were set out in Tennessee Wildlife Resources Agency proclamations 00-14 and 00-15 were changes in the species or subspecies listed.

(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. §70-8-104 Nongame species Promulgation of regulations prohibited acts (a) states that the executive director shall conduct investigation on nongame wildlife in order to determine management measures necessary for their continued ability to sustain themselves successfully. On the basis of this information the fish and wildlife commission shall issue regulations and development management programs to ensure the continued ability of nongame, endangered, or threatened wildlife. Such regulations shall set forth species or subspecies of nongame wildlife that the executive director deems in need of management. T.C.A. 70-8-105 Endangered or threatened species list on the basis of investigation on nongame wildlife in 70-8-104, and other scientific data and after consultation with other agencies and organizations the fish and wildlife commission shall by regulation propose a list of species or subspecies indigenous to the state that are determined to be endangered or threatened. The commission shall conduct a review of the state list no more than two years form effective date and every two years after. In the event the United States' List of Endangered Native fish and Wildlife is modified subsequent to 1974 the commission may accept such modification for the state. T.C.A. 70-8-107 Rule making authority, The fish and wildlife commission shall issue regulations as necessary to carry out the purposed of 70-8.

(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 will have a direct impact on any entity required to obtain Aquatic Resources Alteration Permit, General Construction Permit, National Pollution Discharge Elimination System Permit, or Injection Well Permit from TDEC, obtain a 404 Dredge and Fill Permit from the U.S. Army Corps of Engineers, or required to develop an Environmental Impact Statement or Environmental Assessment where impacts could occur to listed species. Any entity obtaining federal funds is also required to consult with state and federal wildlife agencies per the National Environmental Policy Act on species that could be impacted with in the project area. Due to both State and Federal law requiring consultation on listed species this rule would be supported by those entities affected as it clarifies protected species and dealing with impacts to those species and allows permitting to meet state and federal law. Tennessee Wildlife Resources Agency will be directly impacted by this rule as it is required by law to working with entities to mitigate impacts to listed species. TWRA urges the adoption of the rule as it defines listed species and allows for mitigation.

(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;

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

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

The impact to state government revenues and expenditures is minimal as cost to contract surveys and to mitigate impacts is typically <$5,000 as related to state listed species. There will be no increase in revenue from this rule.

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

Andrea English, Assistant Chief of Biodiversity (Pandy.English@tn.gov); Brian Flock, Wildlife Diversity Coordinator, (brian.flock@tn.gov)

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

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

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

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

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

n/a

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Nashville, TN 37243
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Email: publications.information@tn.gov

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Sequence Number: 02-02-18
Rule ID(s): 6689
File Date: 2/1/18
Effective Date: 5/2/18

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

Revision Type (check all that apply):
___ Amendment
X New
___ Repeal

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

Chapter Number	**Chapter Title**
1660-01-32	Rules and Regulation for In Need of Management, Threatened, and Endangered Species
Rule Number	**Rule Title**
1660-01-32-.01	Adoption of Federal Endangered Species Act
1660-01-32-.02	Threatened and Endangered Species Lists and Rules
1660-01-32-.03	Wildlife In Need of Management List and Rules

New Rules

1660-01-32-.01, Adoption of Federal Endangered Species Act, is added as a new rule to read as follows:

(1) The Tennessee Wildlife Resources Agency hereby adopts by reference the species and subspecies protected by the Federal Endangered Species Act of 1973, as amended, 16 USCA, Ch. 35. A list of Tennessee's Federally threatened and endangered species under the Endangered Species Act may be found at 50 C.F.R. §17.11.

Authority: *T.C.A. §§70-1-206, 70-8-104, 70-8-106 and 70-8-107.* ***Administrative History:*** *Original rule filed _____; effective _____.*

1660-01-32-.02, Threatened and Endangered Species Lists and Rules, is added as a new rule to read as follows:

(1) The following species or subspecies are listed as state endangered.

(a) Crayfish

Common Name	**Scientific Name**
Big South Fork Crayfish	*Cambarus bouchardi*
Mountain Crayfish	*Cambarus conasaugaensis*
Conasauga Blue Burrower	*Cambarus cymatilis*
Valley Flame Crayfish	*Cambarus deweesae*
Chickamauga Crayfish	*Cambarus extraneus*
Obey Crayfish	*Cambarus obeyensis*
Pristine Crayfish	*Cambarus pristinus*
Speckled Crayfish	*Cambarus lentiginosus*
Hatchie Burrowing Crayfish	*Creaserinus hortoni*
Blood River Crayfish	*Faxonius burri*
Flint River Crayfish	*Faxonius cooperi*
Tennessee Cave Crayfish	*Orconectes incomptus*
Hardin Crayfish	*Faxonius wrighti*

(b) Fish

Common Name	**Scientific Name**
Lake Sturgeon	*Acipenser fulvescens*
Ashy Darter	*Etheostoma cinereum*
Crown Darter	*Etheostoma corona*
Barrens Darter	*Etheostoma forbesi*
Tuckasegee Darter	*Etheostoma gutselli*
Egg-mimic Darter	*Etheostoma pseudovulatum*
Barrens Topminnow	*Fundulus julisia*
Coosa Chub	*Macrhybopsis sp. 1*
Silverjaw minnow	*Notropis buccatus*

(c) Amphibians

Common Name	**Scientific Name**
Streamside Salamander	*Ambystoma barbouri*
Hellbender	*Cryptobranchus alleganiensis*

(d) Birds

Common Name	Scientific Name
Bachman's Sparrow	*Peucaea aestivalis*

(2) The following species or subspecies are listed as state threatened.

(a) Crayfish

Common Name	Scientific Name
Tennessee Bottlebrush Crayfish	*Barbicambarus simmonsi*
Hiwassee Crayfish	*Cambarus hiwasseensis*
Greensaddle Crayfish	*Cambarus manningi*
Cocoa Crayfish	*Cambarus stockeri*
Brawleys Fork Crayfish	*Cambarus williami*
Crescent Crayfish	*Faxonius taylori*

(b) Fish

Common Name	Scientific Name
Western Sand Darter	*Ammocrypta clara*
Blue sucker	*Cycleptus elongatus*
Coppercheek Darter	*Etheostoma aquali*
Holiday Darter	*Etheostoma brevirostrum*
Coldwater Darter	*Etheostoma ditrema*
Redlips Darter	*Etheostoma maydeni*
Striated Darter	*Etheostoma striatulum*
Trispot Darter	*Etheostoma trisella*
Saddled Madtom	*Noturus fasciatus*
Frecklebelly Madtom	*Noturus munitus*
Longhead Darter	*Percina macrocephala*
Sickle Darter	*Percina williamsi*

(c) Amphibians

Common Name	Scientific Name
Berry Cave Salamander	*Gyrinophilus gulolineatus*
Tennessee Cave Salamander	*Gyrinophilus palleucus*
Pale Salamander	*Gyrinophilus palleucus palleucus*
Big Mouth Cave Salamander	*Gyrinophilus palleucus necturoides*

(d) Reptiles

Common Name	Scientific Name
Alligator Snapping Turtle	*Macroclemys temminckii*
Northern Pine Snake	*Pituophis melanoleucus*
Western Pigmy Rattlesnake	*Sistrurus miliarius streckeri*

(e) Birds

Common Name	Scientific Name
Henslow's Sparrow	*Ammodramus henslowii*
Golden-winged Warbler	*Vermivora chrysoptera*

(f) Mammals

Common Name	Scientific Name
Little Brown Bat	*Myotis lucifugus*
Tri-colored Bat	*Perimyotis subflavus*

Authority: *T.C.A. §§70-1-206, 70-8-104, 70-8-106 and 70-8-107.* ***Administrative History:*** *Original rule filed _____; effective _____.*

New Rule

1660-01-32-.03, Wildlife In Need of Management List and Rules, is added as a new rule to read as follows:

(1) The following species or subspecies are listed as state wildlife in need of management

(a) Crayfish

Common Name	Scientific Name
Bottlebrush Crayfish	*Barbicambarus cornutus*
Short Mountain Crayfish	*Cambarus clivosus*
Prickly Cave Crayfish	*Cambarus hamulatus*
Spiny Scale Crayfish	*Cambarus jezerinaci*
Florence Crayfish	*Cambarus andersoni*
Alabama Crayfish	*Faxonius alabamensis*
Barren River Crayfish	*Faxonius barrenensis*
Cumberland Plateau Cave	*Orconectes barri*
Mammoth Cave Crayfish	*Orconectes pellucidus*

(b) Fish

Common Name	Scientific Name
Naked Sand Darter	*Ammocrypta beanii*
Scaly Sand Darter	*Ammocrypta vivax*
American Eel	*Anguilla rostrata*
Alligator Gar	*Atractosteus spatula*
Highfin Carpsucker	*Carpiodes velifer*
Tennessee Dace	*Chrosomus tennesseensis*
Rugby Dace	*Chrosomus sp 1*
Smoky Dace	*Clinostomus funduloides ssp. 1*
Emerald Darter	*Etheostoma baileyi*
Teardrop Darter	*Etheostoma barbouri*
Splendid Darter	*Etheostoma barrenense*
Orangefin Darter	*Etheostoma bellum*
Chickasaw Darter	*Etheostoma cervus*
Golden Darter	*Etheostoma denoncourti*
Redband Darter	*Etheostoma luteovinctum*
Smallscale Darter	*Etheostoma microlepidum*
Lollypop Darter	*Etheostoma neopterum*
Sooty Darter	*Etheostoma olivaceum*
Firebelly Darter	*Etheostoma pyrrhogaster*
Arrow Darter	*Etheostoma sagitta*
Tippecanoe Darter	*Etheostoma tippecanoe*
Tuscumbia Darter	*Etheostoma tuscumbia*
Wounded Darter	*Etheostoma vulneratum*
Golden Topminnow	*Fundulus chrysotus*
Flame Chub	*Hemitremia flammea*
Plains Minnow	*Hybognathus placitus*
Lined Chub	*Hybopsis lineapunctata*
Southern Brook Lamprey	*Ichthyomyzon gagei*
Silver Lamprey	*Ichthyomyzon unicuspis*
Sturgeon Chub	*Macrhybopsis gelida*
Sicklefin Chub	*Macrhybopsis meeki*
Rainbow Shiner	*Notropis chrosomus*
Bigmouth Shiner	*Notropis dorsalis*
Bedrock Shiner	*Notropis rupestris*
Piebald Madtom	*Noturus gladiator*
Tangerine Darter	*Percina aurantiaca*
Blotchside Logperch	*Percina burtoni*
Slenderhead Darter	*Percina phoxocephala*
Olive Darter	*Percina squamata*
Frecklebelly Darter	*Percina stictogaster*
Riffle Minnow	*Phenacobius catostomus*
Blackfin Sucker	*Thoburnia atripinnis*
Southern Cavefish	*Typhlichthys subterraneus*

(c) Amphibians

Common Name	Scientific Name
Cumberland Dusky Salamander	*Desmognathus abditus*
Seepage Salamander	*Desmognathus aeneus*
Black Mountain Salamander	*Desmognathus welteri*
Pygmy Salamander	*Desmognathus wrighti*
Junaluska Salamander	*Eurycea junaluska*
Four-toed Salamander	*Hemidactylium scutatum*
Wehrle's Salamander	*Plethodon wehrlei*
Weller's Salamander	*Plethodon welleri*

(d) Reptiles

Common Name	Scientific Name
Mississippi Green Water Snake	*Nerodia cyclopion*
Eastern Slender Glass Lizard	*Ophisaurus attenuatus longicaudus*
Coal Skink	*Plestiodon anthracinus*

(e) Birds

Common Name	Scientific Name
Golden Eagle	*Aquila chrysaetos*
Little Blue Heron	*Egretta caerulea*
Wood Thrush	Hylocichla mustelina
Least Bittern	*Ixobrychus exilis*
Loggerhead Shrike	*Lanius ludovicianus*
Swainson's Warbler	*Limnothlypis swainsonii*
Black-crowned Night-heron	*Nycticorax nycticorax*
King Rail	*Rallus elegans*
Cerulean Warbler	*Setophaga cerulea*
Bewick's Wren	*Thryomanes bewickii*

(f) Mammals

Common Name	Scientific Name
Star-nosed Mole	*Condylura cristata*
Rafinesque's Big-eared Bat	*Corynorhinus rafinesquii*
Southern Rock Vole	*Microtus chrotorrhinus carolinensis*
Eastern Small-footed Bat	*Myotis leibii*
Southern Appalachian Woodrat	*Neotoma floridana haematoreia*
Eastern Woodrat	*Neotoma floridana illinoensis*
Allegheny Woodrat	*Neotoma magister*
Hairy-tailed Mole	*Parascalops breweri*
Long-tailed Shrew	*Sorex dispar*
American Water Shrew	*Sorex palustris*
Southern Bog Lemming	*Synaptomys cooperi*

Authority: *T.C.A. §§70-1-206, 70-8-104, 70-8-106 and 70-8-107.* ***Administrative History****: Original rule filed _____; effective _____.*

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

Board Member	Aye	No	Abstain	Absent	Signature (if required)
Chad Baker		✓			
Angie Box	✓				
Jeff Cook	✓				
Bill Cox		✓			
Dennis Gardner	✓				
Kurt Holbert	✓				
Connie King	✓				
Brian McLerrin	✓				
Tony Sanders	✓				
James Stroud	✓				
Bill Swan		✓			
Kent Woods	✓				
Jamie Woodson	✓				

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the Tennessee Fish & Wildlife Commission on 12/08/2017 (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: *10/06/2017*

Rulemaking Hearing(s) Conducted on: (add more dates). *12/08/2017*

Date: 1-17-18

Signature: Ed Carter

Name of Officer: Ed Carter

Title of Officer: Executive Director

Subscribed and sworn to before me on: January 17, 2018

Notary Public Signature: Sheryl R. Holtam

My commission expires on: ~~03-10-2019~~ 3-8-21

STATE OF TENNESSEE NOTARY PUBLIC DAVIDSON COUNTY SHERYL D. HOLTAM

All rulemaking hearing rules provided for herein (Rule 1660-01-32, Rules and Regulation for In Need of Management, Threatened, and Endangered Species) 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

1/26/2018
Date

Department of State Use Only

Filed with the Department of State on: 2/1/18

Effective on: 5/2/18

Tre Hargett
Secretary of State

RECEIVED
2018 FEB -1 AM 11:18
SECRETARY OF STATE
PUBLICATIONS

G.O.C. STAFF RULE ABSTRACT

DEPARTMENT:	Labor and Workforce Development
DIVISION:	Bureau of Workers' Compensation
SUBJECT:	Drug Free Workplace Programs
STATUTORY AUTHORITY:	Tennessee Code Annotated, Section 50-9-101
EFFECTIVE DATES:	May 6, 2018 through June 30, 2019
FISCAL IMPACT:	Minimal
STAFF RULE ABSTRACT:	These rules provide language simplification and updating to conform to both legislative changes (training required) and U.S. Department of Health and Human Services guideline changes.

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 (Tyson): There is concern about -.09, specifically that the rule may be construed as limiting employers to attach a zero tolerance policy to certain positions relative to a positive test.
Response: The bureau agrees, and clarifying language has been added to the rule.

Comment (TN Drug Testing): Georgia allows a rapid panel immunoassay initial test included in the definition of "initial test" and this should be included in the Tennessee rules. Also, Georgia extends a 7.5% discount to qualifying employers, but they also charge a $35 application fee.
Response: The bureau declines to make the recommended change to mirror the Georgia rules.

Comment (Farrar and Bates): In -.02 (7), the phrase "workers' compensation medical and indemnity benefits" would be better stated as "any and all workers' compensation benefits."
Response: The bureau agrees and has made the change.

Comment (Farrar and Bates): In -.02, the numbering sequence is incorrect.
Response: The recommended changes have been made.

Comment (Farrar and Bates): In -.12 (1) and (2), the employer's legal counsel should be permitted to use the information relative to the defense of a workers' compensation claim.
Response: The bureau has made the recommended change.

Comment (National Toxicology Specialists): In 0800-02-12-.05, regarding point of collection tests, these tests vary greatly in their range of testing and that is not defined in the statute. They generally do not test for validity and therefore are remarkably easy to beat with fake urine or dilute samples. Also, the ability for the collector to read these varies greatly as well. There are many more false negatives than positives and in the epidemic of drug use killing our people. We don't think this is responsible. We recommend you define that the POCT tests have to meet the same standards as lab based testing, or that ALL the tests have to be sent to the lab after reading onsite. That is easy to do but does give the employer the first pass information they can act on.
Response: The bureau agrees in part and has made a change in the definition of "Point of Collection Testing".

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 who voluntarily participate in the Tennessee Drug Free Workplace Program 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 language simplification and updating to conform to both legislative changes (training required) and US Dept. of Health and Human Services guideline changes.

(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. § 50-9-101 provides for the voluntary implementation of drug free workplace programs.

(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;

Employees and employers who voluntarily participate in the Tennessee drug free workplace program 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

Department of State
Division of Publications
312 Rosa L. Parks, 8th Floor Snodgrass/TN Tower
Nashville, TN 37243
Phone: 615.741.2650
Email: publications.information@tn.gov

For Department of State Use Only
Sequence Number: 02-07-18
Rule ID(s): 6694
File Date: 2/5/18
Effective Date: 5/6/18

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):
X 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**
0800-02-12	Drug Free Workplace Programs
Rule Number	**Rule Title**
0800-02-12-.01	Purpose and Scope
0800-02-12-.02	Policies
0800-02-12-.03	Definitions
0800-02-12-.04	Notice to Job Applicants and Employees
0800-02-12-.05	Types of Testing
0800-02-12-.06	Refusal to Submit to Testing
0800-02-12-.07	Drug Testing
0800-02-12-.08	Alcohol Testing

0800-02-12-.09	Employee Protection
0800-02-12-.10	Employer Protection
0800-02-12-.11	Training Required for Certification
0800-02-12-.12	Confidentiality
0800-02-12-.13	Application Form
0800-02-12-.14	Appeal of a Positive Drug or Alcohol Test

Chapter 0800-02-12 Drug Free Workplace Programs is amended by deleting the prior rule and replacing it with the following:

0800-02-.12-.01 Purpose and Scope

(1) Purpose: The purpose of these rules is to support the Tennessee Drug-Free Workplace Program designed to deter the use of drugs and alcohol in the workplace and to decrease the risks of injuries to co-workers and damage to property which may result from the use of drugs or alcohol in the workplace. These rules shall apply to those employers who voluntarily choose to participate in this program.

(2) Scope: The provisions of these rules apply to all employers in the State of Tennessee subject to provisions of the Workers' Compensation Act who are certified members of the drug-free workplace program. The provisions of these rules are subject to any applicable collective bargaining agreement.

Authority: T.C.A. §§ 50-6-110(c), 50-9-101 and 50-6-418. Administrative History: Original rule filed January 26, 1998; effective April 11, 1998.

0800-02-12-.02 Policies

(1) A covered employer may establish reasonable work rules related to employee possession, use, sale, or solicitation of drugs or alcohol, including convictions for drug or alcohol-related offenses, and may take action based upon the covered employer's policies and rules.

(2) The covered employer shall pay the cost of all testing which it requires of employees and job applicants.

(3) Employers who implement a drug-free workplace program pursuant to these rules are entitled to the following benefits:

(a) Premium Discounts under T.C.A. Section 50-6-418 - An Employer will begin to accrue a premium discount on a pro rata basis as of the date of certification (the date of receipt by the Tennessee Bureau of Workers' Compensation). The covered employer's workers' compensation insurance company must apply to such policy the premium credit granted under this program or make payment for such credit effective after the annual final premium audit has been completed. In order to continue to receive the premium discount, an employer must renew annually the application for the Tennessee Drug-Free Workplace and be certified by the Tennessee Bureau of Workers' Compensation.

(b) A shift in the burden of proof pursuant to T.C.A. Section 50-6-110(c).

(c) A covered employer who discharges or disciplines an employee or refuses to hire a job applicant in compliance with these rules and T.C.A. Section 50-9-108 is considered to have discharged, disciplined, or refused to hire for cause.

(4) The procedures for laboratory reporting, and MRO review, and reporting of specimen test results shall be in accordance with those described in 49 C.F.R., Part 40. The MRO shall follow the SAMHSA MRO Manual.

(5) All drug and alcohol tests under these rules shall be limited to the specific substances expressly

(Rule 0800-02-12-.07, continued)

CHAPTER 0800-02-12
DRUG FREE WORKPLACE

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0800-02-12-.04	Notice to Job Applicants and Employees	0800-02-12-.14	Appeal of Drug or Alcohol Test
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0800-02-12-.08	Alcohol Testing		
0800-02-12-.09	Employee Protection		
0800-02-12-.10	Employer Protection		

0800-02-.12-.01 PURPOSE AND SCOPE.

~~(1) Purpose: The purpose of these rules is to deter the use of drugs and alcohol in the workplace.~~

~~(a) Employees who abuse drugs shall face the risk of unemployment and the forfeiture of workers' compensation benefits.~~

~~(b) These rules shall apply to those employers who voluntarily choose to avail themselves of the remedies provided for in the Workers' Compensation Law regarding drug/alcohol testing in the workplace.~~

~~(c) Employers who adopt a drug-free workplace program as prescribed herein shall qualify for reduced workers' compensation insurance premiums.~~

~~(d) If an employer does implement a drug-free workplace program as prescribed herein and a worker injured in the course and scope of employment who is tested pursuant to these rules has a positive confirmation of a drug at a level prescribed herein, a rebuttable presumption is created that the injury was occasioned primarily by the presence of the drug. Such employee may be disciplined, up to and including termination, and forfeits his or her eligibility for workers' compensation medical and indemnity benefits.~~

(1) Purpose: The purpose of these rules is to support the Tennessee Drug-Free Workplace Program designed to deter the use of drugs and alcohol in the workplace and to decrease the risks of injuries to co-workers and damage to property which may result from the use of drugs or alcohol in the workplace. These rules shall apply to those employers who voluntarily choose to participate in this program.

(2) Scope: The provisions of these rules ~~this chapter~~ apply to all employers in the State of Tennessee subject to provisions of the Workers' Compensation Act who are certified members of ~~qualify for~~ the drug-free workplace program. ~~The application of the provisions of~~ The provisions of these rules are subject to the provisions of any applicable collective bargaining agreement.

Authority: *T.C.A. §§ 50-6-110(c), 50-9-101 and 50-6-418.* ***Administrative History:*** *Original rule filed January 26, 1998; effective April 11, 1998.*

0800-02-12-.02 POLICIES.

~~(1) Nothing in these rules shall be construed to prohibit an employer from conducting medical~~

(Rule 0800-02-12-.07, continued)

~~screening or other tests required, permitted or not disallowed by any statute, rule or regulation for the purpose of monitoring exposure of employees to toxic or other unhealthy substances in the workplace or in the performance of job responsibilities. Such screening or~~

~~tests shall be limited to the specific substances expressly identified in the applicable statute, rule or regulation, unless prior written consent of the employee is obtained for other tests.~~

~~(2) Nothing in these rules shall be construed to require an employer to test or create a legal obligation upon an employer to request an employee or job applicant to undergo drug or alcohol testing.~~

~~(3) Nothing in these rules shall be construed to prohibit an employer from affording an employee greater protection than provided herein. A covered employer is not barred from conducting more extensive testing provided the employee/job applicant's constitutional rights are not infringed.~~

~~(4) Nothing in these rules shall be construed as authorizing any employer to test any employee or applicant for alcohol or drugs in any manner inconsistent with federal constitutional or statutory requirements, including those imposed by the Americans with Disabilities Act and the National Labor Relations Act.~~

~~(5) Employers who implement a drug-free workplace program pursuant to these rules will begin to accrue the premium discount on a pro rata basis as of the date of certification (the date of approval by the Tennessee Department of Labor, Division of Workers' Compensation). The covered employer's workers' compensation insurance company or self-insured pool program administrator will be notified by the Tennessee Department of Labor when an employer's drug-free workplace program has been certified. The covered employer's workers' compensation insurance company or self-insured pool program administrator must apply to such policy the premium credit granted under this program directly upon receipt of notification from the Tennessee Department of Labor or make payment for such credit effective after the annual final premium audit has been completed. In order to continue to receive the premium discount, an employer must renew annually the application for the Tennessee Drug-Free Workplace Premium Credit Program.~~

~~(6) Future Revisions. In order to ensure the full reliability and accuracy of drug assays, the accurate reporting of test results, and the integrity and efficacy of the drug-free workplace testing programs, the Commissioner of the Department of Labor may make changes to these rules and guidelines to reflect improvements in the available science and technology. These changes will be published in final as a notice in the Tennessee Administrative Register.~~

(1) A covered employer may establish reasonable work rules related to employee possession, use, sale, or solicitation of drugs or alcohol, including convictions for drug or alcohol-related offenses, and may take action based upon the covered employer's policies and rules.

(2) The covered employer shall pay the cost of all testing which it requires of employees and job applicants.

(3) Employers who implement a drug-free workplace program pursuant to these rules are entitled to the following benefits:

(a) Premium Discounts under T.C.A. Section 50-6-418 - An Employer will begin to accrue a premium discount on a pro rata basis as of the date of certification (the date of receipt by the Tennessee Bureau of Workers' Compensation). The covered employer's workers' compensation insurance company must apply to such policy the premium credit granted under this program or make payment for such credit effective after the annual final premium audit has been completed. In order to continue to receive the premium discount, an employer must renew annually the application for the Tennessee

(Rule 0800-02-12-.07, continued)

Drug-Free Workplace and be certified by the Tennessee Bureau of Workers' Compensation.

(b) A shift in the burden of proof pursuant to T.C.A. Section 50-6-110(c).

(c) A covered employer who discharges or disciplines an employee or refuses to hire a job applicant in compliance with these rules and T.C.A. Section 50-9-108 is considered to have discharged, disciplined, or refused to hire for cause.

(4) The procedures for laboratory reporting, and MRO review, and reporting of specimen test results shall be in accordance with those described in 49 C.F.R., Part 40. The MRO shall follow the SAMHSA MRO Manual.

(5) All drug and alcohol tests under these rules shall be limited to the specific substances expressly identified on the bureau's website, unless prior written consent of the employee is obtained for other tests.

(6) Testing conducted pursuant to the requirements of any federal statute or regulation shall be deemed to be in conformity with these rules.

(7) If an employee or job applicant has a positive confirmed post-accident drug test for a drug listed on the bureau's website, an employee/job applicant may lose his/her entitlement to workers' compensation benefits; provided, that the drug test was conducted according to these rules and guidelines. A rebuttable presumption is created that the drug or alcohol was the proximate cause of the injury. Such employee may be disciplined for violation of these rules, up to and including termination, and may forfeit his or her eligibility for any and all workers' compensation benefits.

(8) A covered employer may not discharge, discipline, refuse to hire, discriminate against or request or require rehabilitation of an employee or job applicant on the sole basis of a positive test result that has not been verified by a confirmation test and by a Medical Review Officer.

(9) Nothing in these rules shall prohibit an employer from conducting medical surveillance testing for exposure of employees to potential toxic substances in the workplace.

(10) Nothing in these rules shall authorize any employer to test any employee or applicant for alcohol or drugs in any manner inconsistent with any constitutional or statutory requirements, including those imposed by the Americans with Disabilities Act and the National Labor Relations Act.

(11) Nothing in these rules shall prohibit law-enforcement personnel from conducting drug or alcohol testing performed in accordance with applicable statutory or case law. If drug or alcohol testing should have been performed under these rules, but was not performed, the employer may consider testing results obtained by law enforcement personnel in lieu of testing under these rules.

(12) A Medical Review Officer interpreting drug or alcohol testing pursuant to these rules does not have a physician-patient relationship with the tested employee or job applicant.

(13) Any covered employer who has employees who are healthcare practitioners shall report a healthcare practitioner who tests positive for any drug on any government or private sector pre-employment or employer-ordered confirmed drug test, or who refuses to submit to a drug test, to the department of health and the practitioner's licensing or certifying board as required by T.C.A. Title 63, Chapter 1, Part 1. Regardless of the MRO report, or an Employer's subsequent action, the Employer shall report to the appropriate licensing board the confirmed positive drug test as required by T.C.A. Section 50-9-115. Employers are encouraged to share the MRO conclusion with the department of health and the practitioner's licensing or certifying board.

(Rule 0800-02-12-.07, continued)
Authority: *T.C.A. §§ 4-5-202, 50-9-101, 50-9-104 and 50-9-111.* ***Administrative History:*** *Original rule filed January 26, 1998; effective April 11, 1998. Amendment filed September 15, 2008; effective January 28, 2009.*

0800-02-12-.03 DEFINITIONS.

~~(1) "Alcohol" as used in these rules shall have the same meaning as in the federal regulations describing procedures for the testing of alcohol by programs operating pursuant to the authority of the United States Department of Transportation as currently compiled at 49 Code of Federal Regulations (C.F.R.), Part 40. This definition shall be changed to conform to any future revision of the Department of Transportation's regulations.~~

~~(2) "Alcohol test" means an analysis of breath or blood, or any other analysis which determines the presence, absence or level of alcohol as authorized by the relevant regulations of the United States Department of Transportation.~~

~~(3) "Certified laboratory" means any facility equipped to perform the procedures prescribed in this chapter, in accordance with the standards of the United States Department of Health and Human Services (HHS), Substance Abuse and Mental Health Services Administration~~

~~(SAMHSA), or the College of American Pathologists-Forensic Urine Drug Testing (CAP-FUDT).~~

~~(4) "Chain of Custody" refers to the methodology of tracking specified materials or substances for the purpose of maintaining control and accountability from initial collection to final disposition for all such materials or substances and providing accountability at each stage in handling, testing, and storing specimens and reporting test results.~~

~~(5) "Confirmation test", "confirmed test", or "confirmed drug test" means a second analytical procedure used to identify the presence of a specific drug, or alcohol, or metabolite in a specimen, which test must be different in scientific principle from that of the initial test procedure and must be capable of providing requisite specificity, sensitivity, and quantitative accuracy.~~

~~(6) "Covered employer" means a person or entity that employs a person, is covered by the Workers' Compensation Law, maintains a drug-free workplace pursuant to these rules, and also includes on the posting required by TCA §50-9-105 a specific statement that the policy is being implemented pursuant to the provisions of these rules. These rules shall have no effect on employers who do not meet this definition.~~

~~(7) "Drug" means any drug subject to testing pursuant to drug testing regulations adopted by the United States Department of Transportation. A covered employer may test an individual for any or all of such drugs.~~

~~(8) "Drug Rehabilitation Program" means a service provider that provides confidential, timely, and expert identification, assessment and resolution of employee drug or alcohol abuse.~~

~~(9) "Drug test" or "test" means any chemical, biological, or physical instrumental analysis administered by a certified laboratory for the purpose of determining the presence or absence of a drug or its metabolites or alcohol pursuant to regulations governing drug or alcohol testing adopted by the United States Department of Transportation or such other recognized authority approved by rule by the Commissioner of Labor.~~

~~(10) "Employee" means any person who works for a salary, wages, or other remuneration for a covered employer.~~

~~(11) "Employee Assistance Program" means an established program capable of providing expert~~

(Rule 0800-02-12-.07, continued)

assessment of employee personal concerns; confidential and timely identification services with regard to employee drug or alcohol abuse; referrals of employees for appropriate diagnosis, treatment and assistance; and follow-up services for employees who participate in the program or require monitoring after returning to work. If, in addition to the above activities, an employee assistance program provides diagnostic and treatment services, these services shall in all cases be provided by the program.

(12) "Employer" means a person or entity that employs a person and is covered by the Workers' Compensation Law.

(13) "Injury" means a harm or damage to an employee, occurring in the workplace or in the scope of employment which must be recorded, in accordance with Occupational Safety and Health Administration (OSHA) reporting guidelines, in the covered employer's OSHA 200 Log.

(14) "Initial drug test" means a procedure that qualifies as a "screening test" or "initial test" pursuant to regulations governing drug or alcohol testing adopted by the United States Department of Transportation or such other recognized authority approved by rule by the Commissioner of Labor.

(15) "Job Applicant" means a person who has applied for a position with a covered employer and has been offered employment conditioned upon successfully passing a drug or alcohol test, and may have begun work pending the results of the drug or alcohol test.

(16) "Medical Review Officer" or "MRO" means a licensed physician, employed with or contracted with a covered employer, who has knowledge of substance abuse disorders, laboratory testing procedures and chain of custody collection procedures; who verifies positive, confirmed test results; and who has the necessary medical training to interpret and evaluate an employee's positive test result in relation to the employee's medical history or any other relevant biomedical information.

(17) (a) "Prohibited Levels" for a drug or a drug's metabolites means cut-off levels on screened specimens which are equal to or exceed the following and shall be considered to be presumptively positive;

1. Cut-off levels on initially screened specimens:

Amphetamines	500 ng/mL
Marijuana (cannabinoids)	50 ng/mL
Cocaine (benzolylecgonine)	150 ng/mL
Opiates (codeine, morphine, heroin)	2,000 ng/mL
PCP (phencyclidine)	25 ng/mL
6-Acetylmorphine (heroin)	10 ng/mL
MDMA (ecstasy)	500 ng/mL

2. Cut-off levels on confirmation specimens:

Amphetamines	250 ng/mL
Marijuana (cannabinoids)	15 ng/mL
Cocaine (benzolylecgonine)	100 ng/mL
Opiates (codeine, morphine, heroin)	2,000 ng/mL
PCP (phencyclidine)	25 ng/mL
6-Acetylmorphine (heroin)	10 ng/mL
MDMA (ecstasy)	250 ng/mL

(b) "Prohibited Levels" for alcohol means cut-off levels on screened specimens which are equal to or exceed the following shall be considered to be presumptively positive:

Alcohol...(.08%) by weight blood alcohol concentration for non-safety sensitive positions.

(Rule 0800-02-12-.07, continued)

~~Alcohol...(.04%) by weight blood alcohol concentration for safety sensitive positions.~~

~~(18) "Reasonable Suspicion Drug Testing" means drug testing based on a belief that an employee is using or has used drugs or alcohol in violation of the covered employer's policy drawn from specific objective and articulable facts and reasonable inferences drawn from those facts in light of experience. Among other things, such facts and inferences may be based upon:~~

~~(a) Observable phenomena while at work, such as direct observation of drug or alcohol use or of the physical symptoms or manifestations of being under the influence of a drug or alcohol;~~

~~(b) Abnormal conduct or erratic behavior while at work or a significant deterioration in work performance;~~

~~(c) A report of drug or alcohol use, provided by a reliable and credible source;~~

~~(d) Evidence that an individual has tampered with a drug or alcohol test during his employment with his/her current covered employer;~~

~~(e) Information that an employee has caused, contributed to, or been involved in an accident at work; or~~

~~(f) Evidence that an employee has used, possessed, sold, solicited, or transferred drugs or alcohol while working or while on the covered employer's premises or while operating the covered employer's vehicle, machinery, or equipment.~~

~~(19) "Safety-Sensitive Position" means a position involving a safety-sensitive function pursuant to regulations governing drug testing adopted by the United States Department of Transportation. For drug-free workplaces, the Commissioner is authorized, with the approval of the Advisory Council on Workers' Compensation, to promulgate rules expanding the scope of safety-sensitive position to cases where impairment may present a clear and present risk to co-workers or other persons. "Safety-sensitive position" means, with respect to a public employer, a position in which a drug impairment constitutes an immediate and direct threat to public health or safety, such as a position that requires the employee to carry a firearm, perform life-threatening procedures, work with confidential information or documents pertaining to criminal investigations or work with controlled substances, or a position in which momentary lapse in attention could result in injury or death to another person.~~

~~(20) "Specimen" means tissue, fluid, or a product of the human body capable of revealing the presence of alcohol, drugs or their metabolites.~~

~~(21) "Split Specimen" means the procedure by which each urine specimen is divided in two and put into a primary specimen container and a secondary, or "split", specimen container. Only the primary specimen is opened and used for the initial screening and confirmation test. The split specimen container remains sealed and is stored at the testing laboratory.~~

~~(22) "Threshold Detection Level" means the level at which the presence of a drug or alcohol can be reasonably expected to be detected by an initial and a confirmatory test performed by a certified laboratory. The threshold detection level indicates the level at which a valid conclusion can be drawn that the drug or alcohol is present in the employee or job applicant's sample.~~

(1) "49 C.F.R., Part 40" as used in these rules shall refer to the federal regulations pertaining to the testing of drugs or alcohol as promulgated pursuant to the authority of the United States Department of Transportation, compiled at 49 Code of Federal Regulations (C.F.R.), Part 40 in effect on the day of any drug or alcohol testing performed pursuant to these Rules.

(Rule 0800-02-12-.07, continued)

(2) "Alcohol" as used in these rules shall mean the intoxicating agent in beverage alcohol, ethyl alcohol, or other low molecular weight alcohols, including methyl or isopropyl alcohol.

(3) "Alcohol test" means an analysis of breath or blood, or any other analysis which determines the presence, absence, or level of alcohol as authorized by the relevant regulations of the United States Department of Transportation (49 C.F.R., Part 40).

(4) "Certified laboratory" means any facility equipped to perform the procedures prescribed in this chapter, in accordance with the standards of the United States Department of Health and Human Services (HHS), Substance Abuse and Mental Health Services Administration (SAMHSA), or the College of American Pathologists-Forensic Urine Drug Testing (CAP-FUDT).

(5) "Chain of Custody" means the methodology of tracking specified materials or substances for the purpose of maintaining control and accountability from initial collection to final disposition for all such materials or substances and providing accountability at each stage in handling, testing, and storing specimens and reporting test results.

(6) "Confirmed alcohol test" means a second test used to identify the presence and level of alcohol in an individual. The required testing device must be on the National Highway Traffic Safety Administration (NHTSA) conforming products list.

(7) "Confirmed drug test" means a second analytical procedure used to identify the presence of a specific drug or metabolite in a specimen, which test must be different in scientific principle from that of the initial test procedure and must be performed by a certified laboratory.

(8) "Covered employer" means a person or entity that employs one (1) or more persons, is covered by the Workers' Compensation Law, and maintains a certified drug-free workplace pursuant to these rules.

(9) "Drug" means such a substance as recognized or defined by the U.S. Food and Drug Administration; a chemical substance, such as a narcotic or hallucinogen, that affects the central nervous system, causing changes in behavior and has a risk of addiction or dependency.

(10) "Drug Rehabilitation Program" means a service provider that provides confidential, timely, and expert identification, assessment, and resolution of employee drug or alcohol use.

(11) "Employee" shall have the same definition as "Employee" as stated in T.C.A. Section 50-9-103.

(12) "Employee Assistance Program" means an established program capable of providing expert assessment of employee personal concerns; confidential and timely identification services with regard to employee drug or alcohol abuse; referrals of employees for appropriate diagnosis, treatment, and assistance; and follow-up services for employees who participate in the program or require monitoring after returning to work. If, in addition to the above activities, an employee assistance program provides diagnostic and treatment services, these services shall in all cases be provided by the program.

(13) "Employer" shall have the same definition as "Employer" as stated in T.C.A. Section 50-9-103.

(14) "Healthcare practitioner" or "practitioner" means any person required to be licensed, permitted, certified, or authorized:

(a) Under title 63 by a board or committee under the division of health-related boards specified in T.C.A. Section 68-1-101(a)(8), who has humans for patients; or

(b) Under title 68, chapter 24, part 6; or

(c) Under title 68, chapter 140.

(15) "Injury" shall have the same definition of "injury" as found in T.C.A. Section 50-6-102.

(16) "Initial drug or alcohol test" means a "screening test" or "initial test" pursuant to regulations governing drug or alcohol testing adopted by the United States Department of Transportation (49 C.F.R., Part 40).

(17) "Job Applicant" means a person who has applied for a position with a covered employer and has been offered employment conditioned upon successfully passing a drug test or alcohol screening, and may have begun work pending the results of the drug test or alcohol screening.

(18) "Medical Review Officer" or "MRO" means an MRO-certified and licensed physician who has knowledge of substance abuse disorders, laboratory testing procedures, and chain of custody collection procedures; who verifies as positive a confirmed test result; and who has the necessary medical training to interpret and evaluate an employee's positive test result in relation to the employee's medical history or any other relevant biomedical information.

(19) "Point of Collection Test" or "Point of Collection Testing" means the use of one of the approved devices listed on the Bureau of Workers' Compensation website which are performed by the collector at the place and at the time the specimen is provided.

(20) (a) "Prohibited Levels" for a drug or a drug's metabolites means cut-off levels on a confirmed drug test which are equal to or exceed the levels as listed on the Bureau's website and shall be considered to be presumptively positive;

(b) "Prohibited Levels" for alcohol means cut-off levels on a confirmed alcohol test which are equal to or exceed the levels listed on the Bureau's website and shall be considered to be presumptively positive.

(21) "Reasonable-Suspicion" means testing based on a belief that an employee is using or has used drugs or alcohol in violation of the covered employer's policy drawn from specific objective and articulable facts and reasonable inferences drawn from those facts in light of experience. Among other things, such facts and inferences may be based upon:

(a) Observable phenomena while at work, such as direct observation of drug or alcohol use or of the physical symptoms or manifestations of being under the influence of a drug or alcohol;

(b) Abnormal conduct or erratic behavior while at work or a significant deterioration in work performance;

(c) A report of drug or alcohol use in the workplace, provided by a reliable and credible source;

(d) Evidence that an individual has tampered with a drug or alcohol test during his employment with his/her current covered employer;

(e) Information that an employee has caused, contributed to, or been involved in an accident or injury involving anyone at work; or

(f) Evidence that an employee has used, possessed, sold, solicited, or transferred drugs or alcohol while working or while on the covered employer's premises or while operating the covered employer's vehicle, machinery, or equipment.

(Rule 0800-02-12-.07, continued)

(g) An accident which results in an injury to another individual or in property damage exceeding Five Thousand Dollars ($5,000.00), or such minimum amount as set by U.S.DOT Guidelines, if less, shall be presumed to constitute reasonable suspicion for purposes of these rules.

(22) "Safety-Sensitive Position" shall have the same definition as "Safety-Sensitive Position" as stated in T.C.A. Section 50-9-103.

(23) "Specimen" shall have the same definition as "Specimen" as stated in T.C.A. Section 50-9-103.

(24) "Split Specimen" has the same definition of "split specimen" as adopted by the United States Department of Transportation (49 C.F.R. Part 40) on the date of alcohol or drug testing.

Authority: *T.C.A. §§ 50-9-103, 50-9-106, 50-9-109, and 50-9-111.* ***Administrative History:*** *Original rule filed January 26, 1998; effective April 11, 1998. Amendments filed September 15, 2008; effective January 28. 2009. Emergency rule filed October 4, 2010: effective through April 2, 2011. Amendment filed October 28, 2010; effective March 31, 2011. On January 18, 2011, the Department of Labor and Workforce Development withdrew the amendment. Emergency rule filed October 4, 2010 and effective through April 2, 2011 expired; on April 3, 2011 the rule reverted to its previous status. Amendment filed March 12, 2012; to have been effective June 10, 2012. The amendment was stayed by the Government Operations Committee on May 7, 2012; new effective date August 9, 2012.*

0800-02-12-.04 NOTICE TO JOB APPLICANTS AND EMPLOYEES.

~~(1) It is a requirement of the drug-free workplace program that, prior to testing, the employer give a one-time written policy statement to employees and job applicants which contains:~~

~~(a) A general statement of the covered employer's policy on employee drug and alcohol abuse, which must identify:~~

~~(Rule 0800-02-12-.04, continued)~~

~~1. The types of drug or alcohol testing an employee or job applicant may be required to submit to, including reasonable-suspicion drug or alcohol testing or drug or alcohol testing conducted on any other basis; and~~

~~2. The actions the covered employer may take against an employee or job applicant on the basis of a positive confirmed drug or alcohol test result.~~

~~(b) A statement advising the employee or job applicant of the existence of this rule;~~

~~(c) A general statement concerning confidentiality;~~

~~(d) Procedures for employees and job applicants to confidentially report to a medical review officer the use of prescription or nonprescription medications being tested, but only after the testing process has revealed a positive confirmed result for alcohol or drug use;~~

~~(e) The consequences of refusing to submit to a drug or alcohol test;~~

~~(f) A representative sampling of names, addresses, and telephone numbers of employee assistance programs and local drug and alcohol rehabilitation programs;~~

~~(g) A statement that an employee or job applicant who receives a positive confirmed test result may contest or explain the result to the medical review officer within five (5) working days after receiving written notification of the test result; that if an employee's or job applicant's explanation or challenge is unsatisfactory to the medical review officer, the medical review officer shall then report the positive test result to the covered~~

(Rule 0800-02-12-.07, continued)

~~employer; and that an employee or job applicant may then contest the drug test result pursuant to Rule 0800-02-12-.10;~~

~~(h) A statement informing the employee or job applicant of his responsibility to notify the laboratory of any administrative or civil action brought pursuant to this section;~~

~~(i) A list of all classes of drugs, including alcohol, for which the covered employer will test, described by brand name or common names, as applicable, as well as by chemical name;~~

~~(j) A statement regarding any applicable collective bargaining agreement or contract and the right to appeal to the applicable court; and~~

~~(k) A statement notifying employees and job applicants of their right to consult with a medical review officer for technical information regarding prescription and nonprescription medicine.~~

~~(2) A statement complying with the requirements of notification under TCA §50-9-101(b) that it is a condition of employment in a drug-free workplace for an employee to refrain from reporting to work or working with the presence of drugs or alcohol in his or her body and if an injured employee refuses to submit to a test for drugs or alcohol, the employee forfeits eligibility for workers' compensation medical and indemnity benefits.~~

~~(3) A covered employer shall ensure that at least sixty (60) days elapse between a general one-time notice to all employees that a drug-free workplace program is being implemented and the effective date of the program. Such notice shall also indicate that on the effective date of the program that TCA §50-6-110(c) will apply to that employer.~~

~~(4) A covered employer shall include notice of drug or alcohol testing on vacancy announcements for positions for which drug or alcohol testing is required. A notice of the covered employer's drug or alcohol testing policy must also be posted in an appropriate and conspicuous location on the covered employer's premises, and copies of the policy must be made available for inspection by the employees or job applicants of the covered employer during regular business hours in the covered employer's personnel office or other suitable locations.~~

~~(5) Subject to any applicable provisions of a collective bargaining agreement or any applicable labor law, a covered employer may rescind its coverage under these rules by posting a written and dated notice in an appropriate and conspicuous location on its premises. The notice shall state that the policy will no longer be conducted pursuant to these rules. The employer shall also provide sixty days written notice to the employer's workers' compensation insurer of the rescission. As to the employees and job applicants, the rescission shall become effective no earlier than sixty days after the date of the posted notice.~~

(1) A covered employer shall provide at least sixty (60) days' prior notice to all employees that a drug-free workplace program is being implemented and the effective date of the program.

(2) A notice of the covered employer's drug or alcohol testing policy must also be posted in an appropriate and conspicuous location on the covered employer's premises, and copies of the policy must be made available for inspection by the employees or job applicants of the covered employer during regular business hours in the covered employer's human resources office or other suitable locations.

(3) A covered employer shall include notice of any required drug and alcohol testing on vacancy announcements for positions for which drug or alcohol testing is required.

(Rule 0800-02-12-.07, continued)
Authority: *T.C.A. § 50-9-105.* ***Administrative History:*** *Original rule filed January 26, 1998; effective April 11, 1998.*

0800-02-12-.05 TYPES OF TESTING.

~~It is a requirement that a covered employer who establishes a drug-free workplace program conduct the following types of drug tests to the extent permitted by law:~~

~~(1) Job applicant drug or alcohol testing. A covered employer must, after a conditional offer of employment, require job applicants to submit to a drug test and may use a refusal to submit to a drug test or a positive confirmed drug test as a basis for refusing to hire a job applicant. An employer may, but is not required to, test job applicants for alcohol after a conditional offer of employment. Limited testing of applicants, only if it is based on a reasonable classification basis, is permissible in accordance with the following:~~

~~(a) A temporary, leased, seasonal or former worker who has tested negative for substance abuse within the preceding twelve (12) months from the date employment is to begin will not be required to undergo job applicant testing by the covered employer. Any such worker who has not been tested or has not tested negative must submit to job applicant testing according to Rules 0800-02-12-.07, .08 and .10.~~

~~(2) Reasonable suspicion. A covered employer must require an employee to submit to reasonable suspicion drug or alcohol testing.~~

~~(a) Employers shall, within seven days after testing based on reasonable suspicion, detail in writing the circumstances which formed the basis of the determination that reasonable suspicion existed to warrant the testing. If drug-testing is conducted based on reasonable suspicion, the covered employer shall promptly detail in writing the circumstances which formed the basis of the determination that reasonable suspicion existed to warrant the testing. A copy of this documentation shall be given to the employee upon request and the original documentation shall be kept confidential by the covered employer pursuant to TCA §50-9-109 and shall be retained by the covered employer for at least one (a) year.~~

~~(3) Routine fitness-for-duty drug or alcohol testing.~~

~~(a) A covered employer must require an employee to submit to a drug or alcohol test if the test is conducted as part of a routinely scheduled employee fitness-for-duty medical examination where the examinations are required by law or regulation, are part of the covered employer's established policy, or one that is scheduled routinely for all members of an employment classification group.~~

~~(b) This Rule does not require a drug or alcohol test if a covered employer's current personnel policy does not include drug or alcohol testing as part of a routine fitness-for-duty medical exam. If such testing is included, it must be done on a nondiscriminatory basis for all employees. Routine fitness-for-duty drug or alcohol testing of employees would not apply to programs mandated by governmental agencies, volunteer employee health screenings, employee wellness programs, or medical surveillance procedures.~~

~~(4) Follow-up drug or alcohol testing. If the employee in the course of employment enters an employee assistance program for drug or alcohol-related problems, or a drug or alcohol rehabilitation program, the covered employer must require the employee to submit to a drug or alcohol test, as appropriate, as a follow-up to such program, unless the employee voluntarily entered the program. In those cases, the covered employer has the option to not require follow-up testing. If follow-up testing is required, it must be conducted at least once a year for a two year period after successful completion of the program. Advance notice of a follow-up testing date must not be given to the employee.~~

(Rule 0800-02-12-.07, continued)

~~(5) Post-accident testing. After an accident which results in an injury, the covered employer shall require the employee to submit to a drug or alcohol test in accordance with these rules:~~

~~(a) An employee injured at the workplace and required to be tested shall be taken to a medical facility for immediate treatment of injury. Specimens shall be obtained at the treating facility or a designated collection site under the procedures set forth under these rules and transported to an approved testing laboratory.~~

~~(b) No specimens shall be taken prior to the administration of emergency medical care. Once this condition has been satisfied, an injured employee must submit to testing.~~

~~(c) In the case of non-emergency injuries reported to the covered employer after the fact, the injured employee must submit to testing at the time the injury is entered into the covered employer's OSHA 200 Log or any authorized or required replacement for the OSHA 200 Log.~~

A covered employer that establishes a drug-free workplace program shall conduct the following types of drug tests, alcohol tests, or both, to the extent permitted by law and maintain documentation thereof for at least twelve (12) months:

(1) Pre-employment drug tests after a conditional offer of employment:

(a) An employer may perform or refer the job applicant for point of collection testing with a Bureau=approved device (as shown on the Bureau's website) as a screening test. Any positive test result obtained in this manner shall be confirmed by a certified laboratory.

(b) A refusal to submit to a drug test or a MRO-confirmed positive drug test may be used as a basis for refusing to hire a job applicant.

(c) An employer may, but is not required to, test job applicants for alcohol.

(d) An employer may, but is not required to, test any job applicant who has tested negative within the preceding twelve (12) months.

(2) Reasonable suspicion as defined within these Rules:

(a) Employers shall, within twenty-four (24) hours after the observed behavior, document in writing the circumstances which formed the basis of the determination that reasonable suspicion existed to warrant the drug testing and/or alcohol testing.

(b) A copy of this documentation shall be given to the employee and the original documentation shall be kept confidential by the covered employer pursuant to T.C.A. Section 50-9-109 and shall be retained by the covered employer for at least twelve (12) months.

(3) Routine fitness-for-duty as required by employer policy or applicable law.

(4) Follow-up to a positive test:

(a) At least once per year for a two (2) year period following a positive drug or alcohol test, the covered employer shall conduct a follow-up drug test, alcohol test, or both, as appropriate.

(b) In those cases in which the employee voluntarily entered treatment not based on an employer-administered drug or alcohol test, the covered employer is not required to conduct follow-up testing.

(c) Advance notice of a follow-up testing date shall not be given to the employee.

(Rule 0800-02-12-.07, continued)

(5) Post-accident:

(a) After an accident which results in an injury to any employee, the covered employer shall conduct a drug test, an alcohol test, or both, in accordance with these rules.

(b) Emergency medical care shall not be withheld or delayed for collection of drug and/or alcohol test specimens.

(c) The injured employee shall submit to testing when the injury is reported to the employer.

Authority: *T.C.A. §§ 50-6-101, 50-6-419, 50-9-106, and 50-9-111.* ***Administrative History:*** *Original rule filed January 26, 1998; effective April 11, 1998. Amendment filed August 23, 1999; effective December 29, 1999. Amendments filed September 15, 2008; effective January 29, 2009.*

0800-02-12-.06 ~~REFUSAL TO TEST.~~

~~If an employee or job applicant refuses to submit to a drug or alcohol test, the covered employer is not barred from discharging or disciplining the employee or from refusing to hire the job applicant. If the injured worker refuses to submit to a drug or alcohol test, it shall be presumed in the absence of a preponderance of the evidence to the contrary that the proximate cause of the injury was the influence of drugs or alcohol as defined in these rules.~~

REFUSAL TO SUBMIT TO TESTING.

(1) If an employee or job applicant refuses to submit to a drug or alcohol test, the covered employer may discharge or discipline the employee or may refuse to hire the job applicant.

(2) If an injured worker refuses to submit to a post-accident drug or alcohol test, it shall be presumed in the absence of clear and convincing evidence to the contrary that the presence of drugs or alcohol as defined in these rules was the proximate cause of the injury.

(3) If an employee with a presumed positive test for failure to submit a test specimen wishes to contest the finding, the Federal Department of Transportation policies on "Shy Bladder" and "Shy Lung" shall be followed, at the employer's expense.

(4) If the employee is unable to provide a urine specimen when requested, the United States Department of Health and Human Services mandatory guidelines on fluid administration and for alternative oral specimen collection shall be followed.

Authority: *T.C.A. §§ 50-6-110(c)(2) and 50-9-108(f).* ***Administrative History:*** *Original rule filed January 26, 1998; effective April 11, 1998.*

0800-02-12-.07 DRUG TESTING.

~~(1) A covered employer shall be required to test employees and job applicants for the following drugs:~~

~~(a) Alcohol-Not required for job applicant testing.~~
~~(b) Amphetamines~~
~~(c) Cannabinoids, (THC)~~
~~(d) Cocaine~~
~~(e) Opiates~~
~~(f) Phencyclidine~~
~~(g) 6-Acetylmorphine (heroin)~~
~~(h) MDMA (ecstasy)~~

~~(2) The initial screen for all drugs, except alcohol, shall use an immunoassay in a certified~~

(Rule 0800-02-12-.07, continued)

~~laboratory.~~

~~(3) All specimens identified as positive on the initial test, excluding tests for alcohol, shall be confirmed using gas chromatography/mass spectrometry (GC/MS).~~

~~(4) Threshold detection levels of these drugs shall be in accordance with Substance Abuse & Mental Health Services Administration (SAMHSA) or (CAP-FUDT) guidelines unless modified according to TCA §50-9-111.~~

~~(5) All specimens must be tested by a certified laboratory.~~

~~(6) All testing for drugs and alcohol shall be in accordance with the procedures compiled at 49 C.F.R., Part 40. However, if a certified laboratory under TCA §50-9-110 is used for testing, no further quality assurance monitoring or proficiency testing is required by the employer under these rules.~~

~~(7) As technology develops faster, more convenient, and more cost effective testing methods, covered employers shall be allowed to use those technologies and devices which have been approved by the Commissioner of Labor and the Substance Abuse & Mental Health Services Administration (SAMHSA) or the College of American Pathologists-Forensic Urine Drug Testing (CAP-FUDT) guidelines, provided that none of the established rules regarding security of the collection site, chain of custody procedures, privacy of the individual, collection control, integrity and identity of the specimen, and transportation of the specimen to the laboratory are compromised. Any modification or change to this rule shall be promulgated in accordance with the Uniform Administrative Procedures Act, compiled in Title 4, Chapter 5.~~

~~(8) These rules and guidelines do not prohibit an employer from conducting any drug or alcohol testing of employees which is otherwise permitted by law.~~

~~(9) Should an employee/job applicant receive a positive confirmed test result for an otherwise legal medication for which he/she does not hold a valid prescription, a covered employer is not barred from discharging the employee or refusing to hire the job applicant. Such an employee/job applicant will also forfeit his/her workers' compensation benefits; provided, that the drug or alcohol test was conducted according to these rules and guidelines. Drug or alcohol tests which are not conducted according to these rules and guidelines shall not be used as a basis to terminate benefits.~~

~~(10) A covered employer may test a job applicant for alcohol or for any drug described in T.C.A. § 50-9-103; provided, that for public employees such testing shall be limited to the extent permitted by the Tennessee and Federal Constitutions. [A covered employer may test an employee for any drug defined in T.C.A. §50-9-103(6) and at any time set out in T.C.A. § 50-9-106.]~~

~~(11) It is intended that any employer required to test it's employees pursuant to the requirements of any federal statute or regulation, shall be deemed to be in conformity with these rules and guidelines as to the employees it is required to test by those standards and procedures designated in that federal statute or regulation. All other employees of such employer shall be subject to testing as provided in this chapter in order for such employer to qualify as having a drug-free workplace program.~~

(Rule 0800-02-12-.07, continued)

~~(12) An employee who is not in a safety-sensitive position, as defined in TCA §50-9-103(I5), may be tested for alcohol only when the test is based upon reasonable suspicion as defined in TCA §50-9-103(14). An employee in a safety-sensitive position may be tested for alcohol use at any occasion described in TCA §50-9-106(a)(2)-(5), inclusive.~~

(1) The list of drugs for which a covered employer shall be required to test employees and job applicants is the list on the bureau's website as posted on the date of the test and which shall be identical to the list of drugs found at 49 C.F.R., Part 40.

(2) Tests for all drugs shall use the United States Department of Health and Human Services (HHS) approved methodology for screening tests and for subsequent confirmation tests and shall be performed in a HHS-certified laboratory, except as stated in Rule 0800-02-12-.05(1)(a) above.

(3) The Cut Off levels for positive tests of these drugs shall be in accordance with Substance Abuse & Mental Health Services Administration (SAMHSA) guidelines.

(4) As technology develops new testing methods, covered employers may rely on the results of those methods which have been approved by the Substance Abuse & Mental Health Services Administration (SAMHSA).

(5) These rules do not prohibit an employer from conducting any drug testing which is otherwise permitted by law or by company policy. If drug testing is performed by an employer for drugs in addition to the testing required in Rule 0800-02-12-.07(1), the benefits listed in Rule 0800-02-12-.02(3) shall not apply with respect to testing the additional drugs not listed on the Bureau's website.

(6) If an employee/job applicant receives a positive confirmed test result for an otherwise legal medication for which he/she does not hold a valid prescription, a covered employer is not prohibited from discharging the employee or refusing to hire the job applicant.

Authority: *T.C.A. §§ 50-9-101(a) and (b), 50-9-104, 50-9-106(a)(1), 50-9-107(a) and (c), 50-9-110, and 50-9-111.* ***Administrative History:*** *Original rule filed January 26, 1998; effective April 11, 1998. Amendment filed September 15, 2008; effective January 28, 2009. Emergency rule filed October 4, 2010; effective through April 2, 2011. Amendment filed October 28, 2010; effective March 31, 2011. On January 18, 2011, the Department of Labor and Workforce Development withdrew the amendment. Emergency rule filed October 4, 2010 and to have been effective through April 2, 2011 expired; on April 3, 2011 the rule reverted to its previous status. Amendment filed March 12, 2012; to have been effective June 10, 2012. The Government Operations Committee filed a stay on May 7, 2012; new effective date August 9, 2012.*

0800-02-12-.08 ~~COLLECTION PROCEDURES.~~

~~(1) The employer shall provide the employee or job applicant with a form to provide any information that he/she considers relevant to the test, including the identification of currently or recently used prescription or nonprescription medication or other information. The information provided shall be treated as confidential and reviewed by a medical review officer in interpreting any positive confirmed results.~~

~~(2) Collection procedures shall be in accordance with procedures compiled at 49 C.F.R., Part 40, and must be collected according to those prescribed procedures using the split sample method. No inference or presumption of intoxication or impairment may be made in a case where a physician prevents a specimen collection based on his or her medical expertise. Where additional drugs are to be included in a drug test other than those listed in Rule 0800-02-12-.07, a separate specimen collection is not required provided that all other collections~~

(Rule 0800-02-12-.07, continued)

~~procedures/protocols are consistent with those compiled at 49 C.F.R., Part 40.~~

~~(3) It is a requirement that covered employers must use the chain of custody form approved by the Department of Labor specifically for the Tennessee Drug-Free Workplace Program.~~

~~(4) Security of the collection site, chain of custody procedures, privacy of the individual, collection control, integrity, identity, and retention of the specimen, and transportation of the specimen to the laboratory shall be in accordance with the Substance Abuse & Mental Health Services Administration (SAMHSA) guidelines or United States Department of Transportation regulations (49 C.F.R., Part 40).~~

0800-02-12-.08 ALCOHOL TESTING

(1) Alcohol testing shall be conducted using either a breathalyzer or a law enforcement obtained blood test.

(2) All specimens identified as positive shall be confirmed according to the provisions of 49 C.F.R. Part 40 applicable on the date of testing.

(3) The level for a positive test for alcohol for safety-sensitive employees found in 49 CFR, Part 40 shall apply to all employees.

(4) As technology develops new testing methods, covered employers may rely on the results of those methods which have been approved by the Substance Abuse & Mental Health Services Administration (SAMHSA).

(5) An employee in a safety-sensitive position may be tested for alcohol based on reasonable suspicion, routine fitness-for-duty, follow-up, or post-accident.

Authority: *T.C.A. § 50-9-107(a) and (c) and 50-9-111.* ***Administrative History:*** *Original rule filed January 26, 1998; effective April 11, 1998. Amendment filed September 15, 2008; effective January 28, 2009. Emergency rule filed October 4, 2010; effective through April 2, 2011. Amendment filed October 28, 2010; effective March 31, 2011. On January 18, 2011 the Department of Labor and Workforce Development withdrew the amendment. Emergency rule filed October 4, 2010 and to have been effective through April 2, 2011 expired; on April 3, 2011 the rule reverted to its previous status.*

0800-02-12-.09 ~~COST OF TESTING.~~

~~(1) The covered employer shall pay the cost of initial and confirmation testing which it requires of employees and job applicants. The employee or job applicant shall pay the costs of any additional drug or alcohol tests not required by the employer.~~

~~(2) Where re-testing of a split-specimen is requested, the party requesting the re-test (i.e., covered employer or employee/job applicant) shall pay the cost.~~

EMPLOYEE PROTECTION.

(1) A covered employer shall not take disciplinary action against an employee solely upon the employee's first voluntary request to receive treatment for a drug or alcohol use disorder, if the employee has not previously tested positive for drug or alcohol use, or where employee is not being sent for drug or alcohol testing under reasonable suspicion or post-accident.

(Rule 0800-02-12-.12, continued)

Authority: *T.C.A. § 50-9-107(d) and 50-9-111.* ***Administrative History:*** *Original rule filed January 26, 1998; effective April 11, 1998.*

~~**0800-02-12-.10 REPORTING AND REVIEW OF RESULTS.**~~

~~(1) Except for Rules 0800-02-12-.10(2) and 0800-02-12-.10(3), the procedures for laboratory reporting and MRO review and reporting of specimen test results shall be in accordance with those described in 49 C.F.R., Parts 40.29 and 40.33.~~

~~(2) Any specimens with evidence of dilution, contamination, tampering, or any question normally requiring an MRO opinion shall be reported to the MRO for disposition. The MRO may determine the need to re-test, re-collect, or otherwise modify the collection procedure to ensure adequate and appropriate testing.~~

~~(3) An employee or job applicant who receives a positive confirmed test result upon notification by the MRO may contest or explain the result to the medical review officer within five (5) working days after receiving written notification of the test result from the MRO. If an employee's or job applicant's explanation or challenge is unsatisfactory to the medical review officer, the medical review officer shall report a positive test result back to the covered employer.~~

Authority: *T.C.A. §§ 50-9-105(a), 50-9-107(a), and 50-9-111(a)(3).* ***Administrative History:*** *Original rule filed January 26, 1998; effective April 11, 1998.*

0800-02-12-.10 EMPLOYER PROTECTION.

(1) A covered employer who discharges or disciplines an employee or refuses to hire a job applicant in accordance with these rules is considered to have discharged, disciplined, or refused to hire for cause.

Authority: *T.C.A. § 50-9-108.* ***Administrative History:*** *Original rule filed January 26, 1998; effective* ***April 11, 1998.***

0800-02-12-.11 ~~EMPLOYEE PROTECTION.~~

~~(1) A covered employer may not discharge, discipline, refuse to hire, discriminate against, or request or require rehabilitation of an employee or job applicant on the sole basis of a positive test result that has not been verified by a confirmation test and by a medical review officer.~~

~~(2) A covered employer shall not discharge, discipline, or discriminate against an employee solely upon the employee's voluntarily seeking treatment, while under the employ of the covered employer, for a drug or alcohol-related problem if the employee has not previously tested positive for drug or alcohol use, entered an employee assistance program for drug or alcohol related problems, or entered a drug or alcohol rehabilitation program. Unless otherwise provided by a collective bargaining agreement, a covered employer may (but need not) select the employee assistance program or drug or alcohol rehabilitation program if the covered employer pays the cost of the employee's participation in the program.~~

~~***Authority:*** *T.C.A. § 50-9-107(b) and (e).* ***Administrative History:*** *Original rule filed January 26, 1998; effective April 11, 1998.*~~

TRAINING REQUIRED FOR CERTIFICATION

(1) A drug-free workplace program must notify all employees that it is a condition of employment for an employee to refrain from reporting to work or working with the presence of drugs or alcohol in

(Rule 0800-02-12-.12, continued)
the employee's body;

(2) Prior to testing, the employer shall give a written policy statement to employees and job applicants which contains a copy of the covered employer's drug and alcohol policy which complies with T.C.A. Section 50-9-101 et seq. and is based upon the model language provided on the bureau's website. Covered employers shall provide at least one (1) hour of training to all employees at least one time. All employees must be trained within sixty (60) calendar days of an employer's implementation of a Tennessee Drug-Free Workplace Program or within sixty (60) calendar days of the employee's date of hire.

(a) This training shall include information on the following topics:

1. The covered employer's Drug-Free Workplace Program policies;
2. The covered employer's testing procedures;
3. The consequences for violating the covered employer's policies;
4. The specific drugs for which testing will be performed; and
5. Any employee assistance program (EAP) and/or substance abuse treatment options available for their employees.

(b) The training may also include information on the following topics:

1. The disease of addiction;
2. Defining use versus abuse;
3. The recovering employee in the workplace;
4. Why people abuse substances;
5. Avoiding relapse in the workplace;
6. The role of the family in addressing substance abuse and addiction;
7. The role of co-workers in addressing substance abuse and addiction;
8. The role of co-workers in maintaining a drug-free workplace;
9. The effects and dangers of commonly abused substances in the workplace;
10. 12-step programs;
11. Stress and the workplace;
12. Safety and the workplace;
13. Warning signs;
14. The most commonly abused drugs in the workplace (e.g., marijuana, cocaine/crack, inhalants, alcohol, opiates, hallucinogens, prescription drugs, etc.);
15. The physical and psychological effects related to the abuse of the above drugs, and others;
16. The health and medical risks of substance abuse; and
17. Avoiding substance abuse through wellness, exercise, diet, etc.

(3) In addition to the employee training listed above, covered employers shall provide all supervisory personnel with an additional two (2) hours of supervisory training at least one time. Supervisory training shall include:

(a) Recognizing the signs of substance abuse in the workplace;
(b) Documenting and reporting to the proper employer representative signs of employee substance abuse;
(c) Referral of an employee to Human Resources (HR) for counseling and possible treatment options;
(d) Being able to understand and explain the employer's Drug-Free Workplace Program policies; and
(e) Being able to understand and explain the Tennessee Drug-Free Workplace Program rules.

(4) The Supervisory Training Program may include additional topics as listed in Section (2)(b) above.

(5) The employee training and supervisory training component of the drug-free workplace program

(Rule 0800-02-12-.12, continued)

is meant to be flexible so that employers may be creative in conducting these trainings. Employers may utilize any available resource.

(6) Covered employers shall keep appropriate records including a copy of the signed consent form in order to document the completion of the employee and supervisory training requirements for each current employee and supervisor.

Authority: *T.C.A. § 50-9-101 and 50-9-111.* ***Administrative History:*** *Original rule filed January 26, 1998; effective April 11, 1998. Amendment filed September 15, 2008; effective January 28, 2009.*

0800-02-12-.12 ~~EMPLOYER PROTECTION.~~

CONFIDENTIALITY.

(1) Information concerning drug or alcohol test results may be shared between representatives of the covered employer, laboratories, medical review officers, employee assistance programs, drug or alcohol rehabilitation programs, and their agents, and utilized by legal counsel relative to a workers' compensation claim, but shall otherwise be kept confidential.

(2) A covered employer, agent of such employer, or laboratory conducting a drug or alcohol test may share employee drug or alcohol test information or use such information when consulting with legal counsel, who may utilize the information relative to a workers' compensation claim. Management may share information as is reasonably necessary for making disciplinary decisions relating to violations of drug or alcohol standards of conduct adopted by an employer.

Authority: *T.C.A. § 50-9-109.* ***Administrative History:*** *Original rule filed January 26, 1998; effective April 11, 1998.*

~~(1) An employee or job applicant whose drug or alcohol test result is confirmed as positive in accordance with these rules shall not, by virtue of the result alone, be deemed to have a "handicap" or "disability" as defined under federal, state, or local handicap and disability discrimination laws.~~

~~(2) A covered employer who discharges or disciplines an employee or refuses to hire a job applicant in compliance with these rules is considered to have discharged, disciplined, or refused to hire for cause.~~

~~(3) No physician-patient relationship is created between an employee or job applicant and a covered employer or any person performing or evaluating a drug or alcohol test, solely by the establishment, implementation, or administration of a drug or alcohol-testing program. This rule in no way relieves the person performing the test from responsibility for his or her acts of negligence in performing the tests.~~

~~(4) Nothing in these rules shall be construed to prevent a covered employer from establishing reasonable work rules related to employee possession, use, sale, or solicitation of drugs or alcohol, including convictions for drug or alcohol-related offenses, and taking action based upon a violation of any of those rules.~~

~~***Authority:*** *T.C.A. § 50-9-108.* ***Administrative History:*** *Original rule filed January 26, 1998; effective April 11, 1998.*~~

0800-02-12-.13 ~~SUBSTANCE ABUSE EDUCATION/AWARENESS.~~

~~(1) Employee Education/Awareness Required for Certification.~~

~~Each year, covered employers must provide at least one-hour of an education/awareness~~

(Rule 0800-02-12-.12, continued)

program for all employees about substance abuse in the workplace.

The Employee Education/Awareness Program may include, but is not limited to, the following information (Employers may choose any of the following suggested topics and/or combine them in order to fulfill this requirement):

(a) General explanation about the addictive disease of substance abuse; sample topics:

1. The disease of addiction.
2. Defining use versus abuse.
3. The recovering employee in the workplace.
4. Why people abuse substances.
5. Avoiding relapse in the workplace.
6. The role of the family in addressing substance abuse and addiction.
7. The role of co-workers in addressing substance abuse and addiction.
8. The role of co-workers in maintaining a drug-free workplace.
9. Alcoholics Anonymous: History of the AAProgram.

(b) The effects and dangers of the commonly abused substances in the workplace; sample topics:

1. Stress and the workplace.
2. Safety and the workplace.
3. Warning signs.
4. The most commonly abused drugs in the workplace (e.g.; marijuana, cocaine/crack, inhalants, alcohol, opiates, hallucinogens, or prescription drugs, etc.).
5. The physical and psychological effects related to the abuse of the above drugs, and others.
6. The health & medical risks of substance abuse.
7. Avoiding substance abuse through wellness, exercise, diet, etc.

(c) This program is also a good opportunity to reinforce the employer's policies and procedures regarding workplace substance abuse. Also, the employer should remind employees of their EAP and/or substance abuse treatment options.

(2) Supervisor Training Required for Certification.

(Rule 0800-02-12-.14, continued)

(a) In addition to the employee substance abuse education/awareness program (one-hour each year), employers must provide all supervisory personnel with a minimum of two-hours per year of workplace substance abuse recognition training. Training should include: recognizing the signs of substance abuse in the workplace, how to document and collaborate signs of employee substance abuse, and how to refer substance abusing employees to proper providers for treatment. The minimum two-hours of training may be completed on one specific date, or two one-hour training sessions may be held on different dates during the year. (Supervisors should receive a minimum total of three-hours of substance abuse education/awareness & recognition training per year.)

It is recommended that supervisors complete workplace substance abuse recognition training before an employer implements a drug and alcohol testing program that includes testing based on "reasonable suspicion", and/or attempting to refer an employee to an EAP or other provider for substance abuse treatment.

(b) The Supervisor Training Program should include, but is not limited to, the following information. Employers may choose from these suggested topics and/or combine them in order to fulfill the supervisor training requirement:

1. Legal aspects of "reasonable suspicion" employee testing for drug and alcohol: Building and establishing through observation and measurement.
2. Legal aspects regarding EAP and/or substance abuse treatment referrals: Supervisor referral, voluntary/self referral, last chance agreement.
3. How to recognize signs of employee substance abuse.
4. How to refer substance abusing employees to proper treatment providers.
5. How family problems can affect an employee's performance.
6. How to interview and detect potential workplace substance abusers.
7. When and if to test. When and how to intervene and confront potential workplace substance abusers.
8. Conducting the performance review.
9. Using positive peer pressure and management to gain support for mutual goals.

(c) Because resources available to employers across the state will vary from community to community, the employee education/awareness and supervisory training component of the drug-free workplace program is meant to be flexible so that employers may be creative in conducting these programs. For example, employers may utilize speakers, workshops, videos, written material, in-house supervisors that have been educated on how to train employees and/or supervisors regarding aspects of workplace substance abuse, any combination of the above, and/or other means of educating employees about the benefits of a drug-free workplace.

1. Important: Covered employers should keep appropriate records in order to document the completion of the employee education/awareness program and supervisor training requirements.

Authority: *T.C.A. § 50-9-101 and 50-9-111.* ***Administrative History:*** *Original rule filed January 26, 1998; effective April 11, 1998. Amendment filed September 15, 2008; effective January 28, 2009.*

0800-02-12-.13 APPLICATION FORM.

(1) Any employer wishing to participate in the Tennessee Drug-Free Workplace Program shall file with the Tennessee Bureau of Workers' Compensation a completed Drug-Free Workplace Program application available on the Bureau's website and shall renew the application each year. Such employer shall be rebuttably presumed to be entitled to all applicable benefits under the Drug-Free Workplace Program for the twelve consecutive months immediately following the date of receipt by the Bureau of a fully-completed application form.

(Rule 0800-02-12-.14, continued)

Authority: *T.C.A. §§ 50-6-418 and 50-9-111.* ***Administrative History:*** *Original rule filed January 26, 1998; effective April 11, 1998.*

0800-02-12-.14 ~~CONFIDENTIALITY.~~

~~(1) All information, interviews, reports, statements, memoranda, and drug or alcohol test results, written or otherwise, received by the covered employer through a drug or alcohol testing program are confidential communications and may not be used or received in evidence, obtained in discovery, or disclosed in any public or private proceedings, except in accordance with these rules or in determining compensability under these rules.~~

~~(2) Covered employers, laboratories, medical review officers, employee assistance programs, drug or alcohol rehabilitation programs, and their agents who receive or have access to information concerning drug or alcohol test results shall keep all information confidential. Release of such information under any other circumstances is authorized solely pursuant to a written consent form signed voluntarily by the person tested, unless such release is compelled by a hearing officer or a court of competent jurisdiction pursuant to an appeal taken under this rule, relevant to a legal claim asserted by the employee or is deemed appropriate by a professional or occupational licensing board in a related disciplinary proceeding. The consent form must contain, at a minimum:~~

~~(a) The name of the person who is authorized to obtain the information;~~
~~(b) The purpose of the disclosure;~~
~~(c) The precise information to be disclosed;~~
~~(d) The duration of the consent; and~~
~~(e) The signature of the person authorizing the release of the information.~~

~~(3) Information on drug or alcohol test results for tests administered pursuant to these rules shall not be released or used in any criminal proceeding against the employee or job applicant. Information released contrary to this section is inadmissible as evidence in any such criminal proceeding.~~

~~(4) These rules do not prohibit a covered employer, agent of such employer, or laboratory conducting a drug or alcohol test from having access to employee drug or alcohol test information or using such information when consulting with legal counsel in connection with actions brought under or related to these rules or when the information is relevant to its defense in a civil or administrative matter. Neither are these rules intended to prohibit disclosure among management as is reasonably necessary for making disciplinary decisions relating to violation of drug or alcohol standards of conduct adopted by an employer.~~

~~***Authority:*** *T.C.A. § 50-9-109.* ***Administrative History:*** *Original rule filed January 26, 1998; effective April 11, 1998.~~

APPEAL OF POSITIVE DRUG OR ALCOHOL TEST

(1) An employee, having timely though unsatisfactorily challenged a positive confirmed test result to the MRO, may contest the result by timely filing a Petition for Benefit Determination (PBD) in accordance with the Rules pertaining to Mediation and Hearing Procedures pursuant to Tenn. Comp. R. and Regs. 0800-02-21.

Authority: *T.C.A. §50-9-105.* ***Administrative History:*** *Original rule filed _____; effective _____.*

~~0800-02-12-.15 APPLICATION FORM.~~

(Rule 0800-02-12-.14, continued)

~~(1) Any employer seeking any benefits conferred by the Drug-Free Workplace Program shall file with the Workers' Compensation Division of the Department of Labor the form promulgated by the Commissioner for that purpose. From the date of receipt, such employer shall be rebuttably presumed to be entitled to all applicable benefits under the Drug-Free Workplace Program.~~

~~(2) Before granting any premium credit to an employer, an insurance carrier or self-insured pool shall obtain a true copy of the form described in subsection (a) from the employer. Upon granting such credit to the employer, the insurer shall notify the Workers' Compensation Division of the Department of Labor of such action by filing the form promulgated by the Commissioner for that purpose.~~

~~***Authority:*** *T.C.A. §§ 50-6-418 and 50-9-111.* ***Administrative History:*** *Original rule filed January 26, 1998; effective April 11, 1998.*~~

* 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 12/5/2017 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 August 2, 2017.

Rulemaking Hearing Conducted on September 28, 2017.

Date: 12/5/17

Signature: Abbie Hudgens

Name of Officer: Abbie Hudgens

Title of Officer: Administrator, Bureau of Workers' Compensation

SHARA HAMLETT NOTARY PUBLIC STATE OF TENNESSEE WILLIAMSON COUNTY

Subscribed and sworn to before me on: December 5, 2017

Notary Public Signature: Shara Hamlett

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.

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SECRETARY OF STATE
PUBLICATIONS

Herbert H. Slatery III

Herbert H. Slatery III
Attorney General and Reporter

1/26/2018
Date

Department of State Use Only

Filed with the Department of State on: 2/5/18

Effective on: 5/6/18

Tre Hargett
Secretary of State

G.O.C. STAFF RULE ABSTRACT

DEPARTMENT:	State Board of Equalization
DIVISION:	
SUBJECT:	Contested Case Procedures
STATUTORY AUTHORITY:	Tennessee Code Annotated, Section 67-5-1506
EFFECTIVE DATES:	May 22, 2018 through June 30, 2019
FISCAL IMPACT:	No fiscal impact anticipated.
STAFF RULE ABSTRACT:	These proposed amendments modernize the filing practices of the Assessment Appeals Commission as well as clarify appeal requirements in compliance with Chapter 133, Public Acts of 2017.

Regulatory Flexibility Addendum

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

These rule amendments do not affect small businesses.

Impact on Local Governments

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

These rule amendments 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;

These proposed amendments modernize the filing practices of the Assessment Appeals Commission as well as clarify appeal requirements in compliance with Chapter 133, Public Acts of 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;

Chapter 133, Public Acts of 2017 amended T.C.A. Sections 67-5-1506 to require the Assessment Appeals Commission to review property tax appeals on the record instead of de novo.

(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;

State Board of Equalization, Secretary of State-Administrative Procedures Division, Comptroller of the Treasury; county property assessors, and registered agents and attorneys who represent taxpayers in property tax appeals.

(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;

No fiscal impact anticipated.

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

Betsy Knotts, State Board of Equalization

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

Betsy Knotts, Executive Secretary, State Board of Equalization

(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

Betsy Knotts, Executive Secretary, State Board of Equalization, Comptroller of the Treasury I 9th Floor, W.R. Snodgrass TN Tower, 312 Rosa L. Parks Avenue I Nashville, TN 37243 - 1102
betsy.knotts@cottn.gov (615) 401-7954

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

Available upon request.

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

For Department of State Use Only

Sequence Number: 02-18-18
Rule ID(s): 6700
File Date: 2/21/18
Effective Date: 5/22/18

Proposed Rule(s) Filing Form

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

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

Agency/Board/Commission: State Board of Equalization
Division:
Contact Person: Betsy Knotts, Executive Secretary
Address: 312 Rosa L. Parks Avenue, Ste. 900
Nashville, TN
Zip: 37243-1402
Phone: 615-401-7883
Email: betsy.knotts@cot.tn.gov

Revision Type (check all that apply):
X Amendment
___ New
___ Repeal

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

Chapter Number	**Chapter Title**
0600-01	Contested Case Procedures
Rule Number	**Rule Title**
0600-01-.03	Initiating a Contested Case
0600-01-.04	Filing
0600-01-.10	Counterclaims
0600-01-.11	Hearings Before Administrative Judges
0600-01-.12	Review of Initial Order
0600-01-.13	Hearings Before Commission

Redline Version for 0600-01

RULES
OF
STATE BOARD OF EQUALIZATION
CHAPTER 0600-01
CONTESTED CASE PROCEDURES

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0600-01-.03 INITIATING A CONTESTED CASE.

(1) A contested case before the Board may be initiated by:

(a) completing and filing a Property Tax Appeal Form approved by the Board ~~Form No. SBOE-4~~ if the case relates to action taken or reviewable by a county board;

(b) completing and filing an Exemption Appeal Form approved by the Board ~~Form No. SBOE-7~~ if the case relates to an initial determination of the Board designee on an application for property tax exemption;

(c) filing a specific written petition or complaint, if neither (1) nor (2) above is applicable; or

(d) filing data in such computer-readable format as the Board may authorize, subject to technical requirements approved by the Board. Unless excused on the basis of demonstrated hardship, an electronic filing must be used by any taxpayer filing appeals on more than three parcels in a given year, or by any agent or practitioner filing appeals on more than three parcels in a given year.

(2) Any appeal form or written complaint under paragraph (a) of this rule shall be:

(a) signed and sworn to by the party in whose behalf it is prosecuted, or an authorized representative of such party; and

(b) accompanied by a copy of any pertinent notice or decision received by the appellant from the assessing authority or county board.

(3) The submission of a written request for an appeal form may be considered an appeal to the Board for purposes of an appeal deadline if it reasonably identifies the property and taxpayer, provided any form required by these rules is completed and filed within 30 days or other deadline specified by the administrative judge.

(4) Contested cases commenced by action of the Board will be initiated by notice to affected parties. In the case of a declaratory proceeding notice shall be supplemented by publication of notice in

the Tennessee Administrative Register, including a citation and summary of any rule or statute at issue and a statement of any proposed ruling.

(5) The filing of a complaint for revocation of exemption under Tenn. Code Ann. §67-5-212 does not commence a contested case until there has been a finding of probable cause for revocation and referral of the matter to an administrative judge.

Authority: T.C.A. §67-1-305, 67-5-1412 and 67-5-1501(d). Administrative History: Original rule certified June 7, 1974. Repeal filed and effective July 1, 1984. New rule filed June 30, 2000; effective September 12, 2000. Amendment filed May 30, 2013; effective August 28, 2013. Amendment filed August 24, 2015; effective November 22, 2015.

0600-01-.04 FILING.

(1) An appeal form, complaint, or other document constituting part of the record in a contested case before the Board is deemed to be filed:

(a) on the date it is received by the Board; or

(b) if transmitted through the United States mail, on the postmark date.

(2) Filing of a document by electronic mail or facsimile ("fax") transmission is permitted. ~~, provided that by the end of the next business day after the date of transmission the original document is delivered or mailed to the Board and a copy is served upon all parties.~~

Authority: T.C.A. §67-1-305. Administrative History: Original rule certified June 7, 1974. Repeal filed and effective July 1, 1984. New rule filed June 30, 2000; effective September 12, 2000.

0600-01-.10 COUNTERCLAIMS.

(1) Counterclaims in a contested case must be filed no later than thirty (30) days prior to the date of scheduled hearing. This rule does not preclude any party, at the hearing of the appeal, from propounding a higher or lower value for the property in question than that determined by the county board.

(2) An original real property appeal timely filed at the Board may be amended ~~as of right~~ to include an assessment year or years subsequent to the year for which the original appeal was filed, until the next reappraisal. There is a presumption of reasonable cause when an original real property appeal has not been heard by the time the appellant is due to file an appeal for any subsequent assessment year. The administrative judge, the Commission, or the Board may carry forward the original tax year adjudication of value into subsequent tax years within the same reappraisal cycle, but only if there has been no material change to the property, market conditions, or other circumstances or factors substantially impacting value.

(a) An original real property appeal filed late may be amended to include an assessment year or years subsequent to the year for which the appeal was filed, until the next reappraisal, if

1) the late appeal was nonetheless eligible for a reasonable cause determination under section T.C.A. §67-5-1412; and

2) the written order disposing of the original appeal was entered later than ten (10) days before the deadline for appealing the subsequent year assessment to the county or state boards of equalization.

(b) All other requests to amend shall lie within the discretion of the administrative judge.

(c) The appellant permitted to amend shall file a separate appeal form for the subsequent year or years if directed by the executive secretary or administrative judge, and the appellant shall be responsible for additional hearing or processing costs related to the subsequent year assessments.

Authority: T.C.A. §67-1-305, 67-5-1412 and 67-5-1501(d). Administrative History: Original rule certified June 7, 1974. Repeal filed and effective July 1, 1984. New rule filed June 30, 2000; effective September 12, 2000. Amendment filed May 30, 2013; effective August 28, 2013.

0600-01-.11 HEARINGS BEFORE ADMINISTRATIVE JUDGE.

(1) In the hearing of an appeal before an administrative judge concerning the classification and/or assessment of a property, the party seeking to change the current classification and/or assessment shall have the burden of proof.

(2) In the hearing of an appeal from an initial determination on an application for property tax exemption, the party seeking to change the initial determination shall have the burden of proof. In a show cause hearing for revocation of an exemption, the person claiming exemption shall bear the burden of showing by a preponderance of evidence why the exemption should not be revoked. Upon request of a party or order of the administrative judge, the Board designee who made the initial determination under appeal will attend the hearing. The designee may testify and, at the discretion of the administrative judge, examine witnesses or otherwise participate in the hearing. The designee may be permitted to participate by telephone or other electronic means when hearings are conducted at locations other than Nashville.

(3) A record of the hearing of any appeal before an administrative judge will be made by digital recording. Any party may, at its own expense, procure a court reporter to record the oral proceedings or a written transcript of the digital recording.

Authority: T.C.A. §67-1-305 and 67-5-1501(d). Administrative History: Original rule certified June 7, 1974. Repeal filed and effective July 1, 1984. New rule filed June 30, 2000; effective September 12, 2000. Amendment filed February 1, 2011; to have been effective May 2, 2011. On April 29, 2011, the Government Operations Committee stayed the rule for 15 days; new effective date May 17, 2011.

0600-01-.12 REVIEW OF INITIAL ORDER.

(1) The Commission may review initial decisions and orders of the administrative judges on its own motion or on appeal of any party. Unless a party has timely appealed or the Commission has acted to review the initial decision and order on its own motion within the time provided for appeal, the initial decision and order will become a final order of the Commission. Final orders of the Commission will serve as the basis of a final certificate of assessments unless further reviewed by the Board.

(2) An appeal of an initial order entered by an administrative judge to the Commission shall be filed with the Executive Secretary. The appeal need not be in any particular form, but must:

(a) be filed within the period of time allowed under Tenn. Code Ann. section 67-5-1501(3); and

(b) identify the allegedly erroneous finding(s) of fact and/or conclusion(s) of law in the initial order;

(c) identify how the rights of the petitioner have allegedly been prejudiced because the administrative findings, inferences, conclusions, or decisions are:

(1) In violation of constitutional or statutory provisions;

(2) Made upon unlawful procedure

(3) Arbitrary and capricious or characterized by abuse of discretion; or

(4) Unsupported by evidence that is both substantial and material in light of the entire record.

(d) In determining the substantiality of evidence, the Commission shall take into account whatever in the record fairly detracts from its weight, but shall not substitute its judgment for that of the hearing examiner as to the weight of the evidence on questions of fact.

(3) The Executive Secretary or his/her designee shall acknowledge receipt in writing of any appeal under this rule.

Authority: T.C.A. §67-1-305. Administrative History: Original rule certified June 7, 1974. Repeal filed and effective July 1, 1984. New rule filed June 30, 2000; effective September 12, 2000.

0600-01-.13 HEARINGS BEFORE COMMISSION.

(1) An administrative judge assigned by the Executive Secretary and licensed to practice law in the state of Tennessee shall conduct and preside at the hearing of any contested case before the Commission. The administrative judge shall have all of the powers and duties in that capacity which are enumerated in the Uniform Administrative Procedures Act (Tenn. Code Ann. section 4-5-101 et seq) and the Uniform Rules of Procedure for Hearing Contested Cases Before State Administrative Agencies.

(2) Insofar as a party takes exception to an initial order in an appeal, that party shall have the burden of proof in the hearing of the matter before the Commission. The hearing shall be based on the existing record except that additional proof may be taken in cases involving alleged irregularities in procedure that are not shown in the record ~~and any additional or supplemental which a party wishes to introduce that is relevant to an issue raised in the appeal~~.

(3) Not less than twenty-one (21) ~~ten (10)~~ days prior to the scheduled hearing date, the parties shall exchange by Mail, electronic mail or personal delivery copies of all briefs and documents or exhibits they intend to present at the hearing; provided, however, that this requirement does not include:

(a) photographs;

(b) maps; or

(c) records concerning the property under appeal (e.g., property record cards) which are available for public inspection in the assessor's office.

Any document or exhibit which is not timely furnished in accordance with paragraph (1) of this rule may be excluded from the record. This subsection shall not apply to whatever extent it may conflict with the terms of a discovery order, pre-hearing conference order, or notice of hearing entered by the administrative judge in the case.

(4) A record of the hearing of any appeal before the Commission will be made by digital recording ~~a court reporter selected and compensated by the Board. The cost of obtaining a transcript of the proceedings shall be borne by the party or parties requesting it~~ Any party may, at its own expense, procure a court reporter to record the oral proceedings or a written transcript of the digital recording.

Authority: T.C.A. §67-1-305. Administrative History: Original rule certified June 7, 1974. Repeal filed and effective July 1, 1984. New rule filed June 30, 2000; effective September 12, 2000.

* 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)
Bennett	X				
Burchett	X				
Hargett				X	
Lillard	X				
Gerregano	X				
Tarwater				X	
Wilson	X				

I certify that this is an accurate and complete copy of proposed rules, lawfully promulgated and adopted by the State Board of Equalization on 09/05/2017, 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: 1/31/2018

Signature:

Name of Officer: Betsy Knotts

Title of Officer: Executive Secretary, SBOE

SHIRLEY MARRIOTT STATE OF TENNESSEE NOTARY PUBLIC DAVIDSON COUNTY

Subscribed and sworn to before me on: 31st January 2018

Notary Public Signature:

My commission expires on: 08 MAY 2018

Agency/Board/Commission: State Board of Equalization

Chapter Number	Chapter Title
0600-01	Contested Cast Procedures
Rule Number	**Rule Title**
0600-01-.03	Initiating a Contested Case
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0600-01-.13	Hearings Before Commission

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

Herbert H. Slatery III
Attorney General and Reporter

2/15/2018
Date

Department of State Use Only

Filed with the Department of State on: 2/21/18

Effective on: 5/22/18

Tre Hargett
Secretary of State

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SECRETARY OF STATE
ADMINISTRATIVE PROCEDURES

G.O.C. STAFF RULE ABSTRACT

DEPARTMENT:	Human Services
DIVISION:	Community and Social Services
SUBJECT:	Adult Day Services Standards
STATUTORY AUTHORITY:	Tennessee Code Annotated, Section 71-2-401
EFFECTIVE DATES:	May 24, 2018 through June 30, 2019
FISCAL IMPACT:	No anticipated local or state fiscal impact.
STAFF RULE ABSTRACT:	These amendments modify the Adult Day Services licensure rules to add definitions relevant to adult day services rules, update the procedures for obtaining a license, add limitations on the use of restraints, add background check requirements for facilities with 5-10 residents (already utilized in adult day services facilities with 10 plus residents), updating records requirements, and adding in director requirements/definitions. The rules and regulations were developed jointly with the adult daycare advisory committee, pursuant to T.C.A. § 71-2-413.

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:

A request for the rules to be reviewed to ensure there were no conflicts with TennCare rules and regulations.

Response:

The Department of Human Services did not draft the Adult Day Services Rules to align with the TennCare rules and regulations as the TennCare rules and regulations involve requirement for TennCare funding, not just licensure requirements. No change was made in response to this comment.

Comment 2:

One commenter was concerned with the requirement to pay the licensure fee with a money order or a cashier check which would cause unnecessary extra steps and perhaps involve –comingling with personal funds.

Response:

The agency will permit agencies to pay for the licensure fee utilizing a business check.

Comment 3:

A request to clarify the section regarding restraints and why the section is necessary.

Response:

The restraint requirements are reflective of best practices for utilizing restraints and those utilized by other state agencies. No change was made pursuant to this comment.

Comment 4:

One agency was concerned with clarifying the purpose of requiring criminal background checks on temporary agency employees because it is difficult to determine whether the employee will be needed for more than 36 hours per year.

Response:

No change was made in response to this comment. Pursuant to Tenn. Code Ann. § 71-2-404, background checks must be conducted on all staff or volunteers who are counted in the staff:participant ratios. A temporary employee would constitute a new employee subject to background check requirements.

Comment 5:

One agency wanted clarification as to whether incidents need to be reported on the child-adult complaint hotline or to the assigned PE.

Response:

Pursuant to the rules, all incidents should be reported to the child-adult complaint hotline. No change was made pursuant to this comment as the rule references reporting to the hotline specifically.

Regulatory Flexibility Addendum

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

For purposes of Acts 2007, Chapter 464, the Regulatory Flexibility Act, the Department of Human Services certifies that these rulemaking hearing rules will have a negligible impact on those adult day services facilities with ten or more residents, as those facilities were already required to be licensed and to background check employees. The only new requirement with an associated cost for existing facilities with 10 or more residents is a provision requiring general liability insurance, which most of the facilities already have in place. For adult day services facilities with 5-10 residents, there will be costs associated with paying the licensing fee ($125 annual licensure fee); possible costs in any necessary modifications to obtain fire and health certification inspections (the Department covers the costs of inspections); and costs associated with background checking employees (approximately $35 per employee).

Impact on Local Governments

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

These rules will have no projected financial impact on local governments.

Additional Information Required by Joint Government Operations Committee

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

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

These amendments modify the Adult Day Services licensure rules to add definitions relevant to adult day services rules, update the procedures for obtaining a license, add limitations on the use of restraints, add background check requirements for facilities with 5-10 residents (already utilized in adult day services facilities with 10 plus residents), updating records requirements, and adding in director requirements/definitions. The rules and regulations were developed jointly with the adult daycare advisory committee, pursuant to T.C.A. § 71-2-413.

(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 276, effective July 1, 2017, amended T.C.A. § 71-2-401. Prior to the amendment, facilities with ten or more residents had to be licensed—the amendment requires facilities with five or more residents to obtain an adult day services license.

(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;

Adult day services facilities with between 5-10 residents.

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

N/A

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

No anticipated local or state fiscal impact.

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

Rebekah A. Baker
Deputy General Counsel
(615) 350-4153
Citizen's Plaza Building
400 Deaderick Street
Nashville, TN 37243
Rebekah.A.Baker@tn.gov

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

Rebekah A. Baker
Deputy General Counsel
(615) 350-4153
Citizen's Plaza Building
400 Deaderick Street
Nashville, TN 37243

Rebekah.A.Baker@tn.gov

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

Rebekah A. Baker
Deputy General Counsel
(615) 350-4153
Citizen's Plaza Building
400 Deaderick Street
Nashville, TN 37243
Rebekah.A.Baker@tn.gov

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

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Phone: 615-741-2650
Email: publications.information@tn.gov

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Sequence Number: 02-23-18
Rule ID(s): 6704
File Date: 2/23/18
Effective Date: 5/24/18

Rulemaking Hearing Rule(s) Filing Form

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

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

Agency/Board/Commission:	Department of Human Services
Division:	Community and Social Services
Contact Person:	Tasha Owens-Green, Childcare Services Director
Address:	One Citizen's Plaza Building., Eighth Floor, 400 Deaderick Street, Nashville, TN
Zip:	37243
Phone:	(615)313-5485
Email:	Tasha.Owens-Green@tn.gov

Revision Type (check all that apply):

X Amendment
___ New
___ Repeal

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

Chapter Number	**Chapter Title**
1240-07-10	Adult Day Services Standards
Rule Number	**Rule Title**
1240-07-10-.01	Purpose of Licensure
1240-07-10-.02	Legal Basis for Licensure
1240-07-10-.03	Definitions
1240-07-10-.04	Requirements for Licensure as an Adult Day Services Center
1240-07-10-.05	Procedures for Obtaining a License
1240-07-10-.06	Ownership, Organization and Administration
1240-07-10-.07	Program
1240-07-10-.08	Participants Records
1240-07-10-.09	Criminal Background and State Registry Review Procedures
1240-07-10-.10	Physical Facility
1240-07-10-.11	Food Service
1240-07-10-.12	Staffing and Supervision
1240-07-10-.13	Medication
1240-07-10-.14	Transportation
1240-07-10-.15	Health and Safety

1240-07-10-.16	Licensing Violations/Due Process

ARULES
OF
THE TENNESSEE DEPARTMENT OF HUMAN SERVICES
DIVISION OF COMMUNITY AND FIELD SERVICES

CHAPTER 1240-7-10
ADULT DAY ~~CARE~~ SERVICES STANDARDS

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1240-7-10-.04	~~Licensing Procedure~~ [Requirements for Licensure as an Adult Day Services Center]	1240-7-10-.12	~~Medication Administration~~ [Staffing and Supervision]
1240-7-10-.05	~~Administration~~ [Procedures for Obtaining a License]	1240-7-10-.13	~~Transportation~~ [Medication]
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1240-7-10-.08	~~Physical Plant~~ [Participants Records]	[1240-7-10-.16	Licensing Violations/Due Process]

1240-[0]7-10-.01 PURPOSE OF LICENSURE.

[(1) Tennessee law requires an adult day services center to be licensed by the Department unless the center is licensed by another agency of state government and, after consultation with the other state agency, the Commissioner determines that the provisions of the other licensing body adequately regulate the center's program and that, therefore, being licensed by the Department is unnecessary.

(~~1~~[2]) The primary purposes of licensure are the protection of adults who are participants in adult day ~~care~~ [services] centers and the provision of day services designed to maintain or restore each adult's optimal capacity for self-care through medical or social services.

(~~2~~[3]) The following standards seek to maintain adequate health, safety and supervision of adults while in adult day ~~care~~ services to the end that they may achieve these goals.

Authority: *T.C.A. §§4-5-201 et seq.; 71-2-401 et seq.* ***Administrative History:*** *Original rule filed December 14, 1999; effective February 27, 2000.*

1240-[0]7-10-.02 LEGAL BASIS FOR LICENSURE.

Tennessee law requires that adult day ~~care~~ [services] centers as defined in T.C.A. §§ 71-2-401 et seq. be licensed. If any center subject to these requirements currently is licensed by another agency of state government, after consultation with that agency, the Commissioner may determine that the provisions of the other licensing body adequately regulate the center's program and the Commissioner may determine that licensing of the entity is unnecessary.

Authority: *T.C.A. §§4-5-201 et seq.; 71-2-401 et seq.* ***Administrative History:*** *Original rule filed December 14, 1999; effective February 27, 2000.*

1240-[0]7-10-.03 DEFINITIONS. ~~For purposes of this Chapter, the following definitions are applicable:~~

~~(1) "Adult" shall mean an individual who is eighteen (18) years of age or older.~~

~~(2) "Adult day care center" shall mean a facility which provides adult day care services.~~

(Rule 1240-7-10-.03, continued)

(3) "Adult day care services" shall mean services provided to ten (10) or more adult recipients, for more than three (3) hours per day but less than twenty-four (24) hours per day, by a provider of such services who is not related to such adult, pursuant to an individualized plan of care designed to maintain or restore each adult's optimal capacity for self-care through medical or social services.

(4) "Affidavit" shall mean the notarized statement filed by the facility certifying that such facility is in existence and in operation as of January 1, 1997.

(5) "Annual license" shall mean an annual certificate issued by the Department to an adult day care center, authorizing the licensee to provide adult day care services in accordance with the provision of the license, the law, and the requirements of the Department.

(6) "Assisted-care living facility" shall mean a building, establishment, complex or distinct part thereof which is defined as provided by *TCA §68-11-201* and licensed by the board for licensing health care facilities pursuant to *TCA §68-11-209* or as further defined by Chapter 1200-8-25.

(7) "Biennial license" shall mean, with the Commissioner's approval, a certificate issued by the Department to an adult day care center at the end of the annual license period, authorizing the licensee to provide adult day care services for a twenty-four (24) month period. If a biennial license is granted, it may be limited to an annual license at the next renewal period.

(8) "Commissioner" shall mean the Commissioner of the Tennessee Department of Human Services.

(9) "Denial" shall mean the decision of the Department not to issue a provisional or regular annual or biennial license.

(10) "Department" shall mean the Tennessee Department of Human Services and its representatives.

(11) "Fee" shall mean a processing fee for license applications assessed by the Department and submitted by the agency with the application in accordance with the following schedule:

(a) Adult Day Care Center--Less than 50 ..... $15.00

(b) Adult Day Care Center--50-100 ..... $20.00

(c) Adult Day Care Center--More than 100 ..... $25.00

(d) If a biennial license is issued, the fees established by subparagraphs (a)-(c) shall be doubled.

(e) Any adult day care center which is operated by a public, nonprofit or local municipality operating under a grant from the Department and which pays an administrative fee as part of the monitoring requirements of such grant shall be exempt from the licensure fee.

(12) "Full-time equivalency ("FTE") methodology" shall mean the use of one or more available staff on a part-time basis to meet required staff:participant ratios at the adult day care center so that the total number of hours devoted to providing care and supervision of the participants by the various staff equals the staff time necessary to meet the staff:participant ratios which

would be provided if one, or more, staff were utilized on a full-time basis to provide appropriate care and supervision to the participants.

(13) "Governing board" shall mean the group of persons having final authority and responsibility for conduct of the adult day care center serving ten (10) or more persons in those centers which are operated by a municipality, county or non-profit corporation. It shall have at least four (4) members. It may include members who may be recipients of the service of the adult day care center, relatives of such recipients, or representatives of community organizations with particular interest in programs for the elderly. No member of the governing board, nor any member of the immediate family of the governing board, shall have any direct or indirect interest in any contract for supplying services to the adult day care center.

(14) "Home for the aged" means a home as defined in *TCA §68-11-201* and as licensed by the board for licensing health care facilities pursuant to *TCA §68-11-209* and Chapter 1200-8-11.

(15) "Hospital" shall mean any institution, place, building or agency as defined *in TCA §68-11-201* and as licensed by the board for licensing health care facilities pursuant to *TCA §68-11-209* and Chapter 1200-8-1.

(16) "Hospice" shall mean any institution, place or agency as defined in *TCA §68-11-201* and as licensed by the board for licensing health care facilities pursuant to *TCA §68-11-209* and Chapter 1200-8-8.

(17) "License" shall mean a certificate issued by the Commissioner authorizing the operator to provide adult day care services for a specified period of time. The term "new license" shall include any renewal of a license.

(18) "Licensee" shall mean the organization, partnership, corporation, person(s) or other entities which operate an adult day care center pursuant to a license issued by the Department.

(19) "Nursing home" shall mean an institution, place, building or agency as defined in *TCA §68-11-201* and as licensed by the board for licensing health care facilities pursuant to *TCA §68-11-209* and Chapter 1200-8-6.

(20) "Participant" shall mean the adult receiving services in the adult day care center.

(21) "Probation" shall mean the legal status of an adult day care center in which the Department has determined that there exist violations of statutory or regulatory standards concerning the operation of the center that require notice to the public of the existence of such violations and corrective action by the licensee, but which do not currently warrant suspension, denial or revocation of the center license. Failure to correct violations which caused the imposition of probation by the Department may lead to suspension, denial or revocation of the center's license.

(22) "Provisional license" shall mean a certificate issued by the Department to an adult day care center, authorizing the licensee to provide adult day care services for a maximum of one (1) year while the center demonstrates that it substantially meets the requirements for licensing, that there are no health or safety violations under the licensing requirements, and that any violations are addressed by the center in a corrective action plan which is acceptable to the Department.

(23) "Related" shall mean a person who is related to the adult day care services recipient as a legal or biological parent, a step-parent, spouse, child, grandchild of any degree, sibling, aunt, uncle, nephew or niece of any degree, or cousin to the third degree, or grandparent of any degree, or a step-grandparent of any degree.

(Rule 1240-7-10-.03, continued)

~~(24) "Respite care" shall mean to offer temporary, substitute living arrangements for dependent adults in order to provide a brief period of relief or rest (usually more than twenty-four (24) hours) for family members, conservators, guardians, or other people who are their regular caretakers.~~

~~(25) "Responsible party" shall mean the relative, legal representative or other person who makes the placement of the participant with the adult day care center, to whom center staff will look for decisions regarding the participant's care and to whom information regarding the participant's care and status is reported by the center's staff. A participant who appears to the center's staff to be mentally capable of making his or her own decisions may act on his or her own behalf without having another person as responsible party.~~

~~(26) "Revocation" shall refer to action taken by the Department to terminate an adult day care center's license when the center fails to comply with licensing regulations during the term of the existing license.~~

~~(27) "Senior citizens center" shall mean a not-for-profit or municipal agency, which serves persons fifty-five (55) years of age and older. The range of activities varies from center to center, however, most senior center agencies provide recreational and social activities, hot lunch meals, a protected environment where elderly persons can congregate, community services, employment opportunities, opportunities for volunteer services, and information, referral and consultation services. If properly licensed as an adult day care center, the senior citizens center may operate an adult day care program.~~

~~(28) "Sheltered workshop" shall mean a program that provides a controlled and protected working environment and remunerative employment activities with individualized goals to help people who have disabilities progress toward normal living and productive vocational status. The objective of the program is to help participants achieve employment if the potential exists, or long-term employment within a sheltered workshop if competitive employment is not feasible.~~

~~(29) "Sitter Service" shall mean the provision of basic care and supervision of adults for some period of time during a twenty-four (24) hour period, but less than twenty-four (24) hours per day, and the offering to those adults of any support or assistance if needed, but without a specific program for maintenance or restoration of the adult's capacity for self-care.~~

~~(30) "Summary suspension order" shall mean an order issued by the Department to immediately suspend the license until action is taken by the licensee to correct the problem which imminently affects the health, safety, or welfare of the day care participants.~~

[For purposes of this Chapter, the following definitions are applicable:

(1) Abuse or Neglect.

(a) "Abuse or neglect" means the infliction of physical pain, injury, or mental anguish, or the deprivation of services by a caretaker that are necessary to maintain the health and welfare of an adult or a situation in which an adult is unable to provide or obtain the services that are necessary to maintain that person's health or welfare.

(b) "Abuse or neglect" means transporting an adult and knowingly abandoning, leaving or failing to provide additional planned transportation for the adult if the adult's caretaker knows, or should know, that:

1. The adult is unable to protect or care for himself or herself without assistance or supervision; and

2. The caretaker's conduct causes any of the results listed in subdivision (1)(A) or creates a substantial risk of such results;

(2) Activities of Daily Living (ADL). Those activities which indicate an individual's independence in eating, dressing, personal hygiene, bathing, toileting, and ambulating.

(3) Administrative Hearing. A hearing that is held under the Uniform Administrative Procedures Act, Title 4, Chapter 5, Part 3 of the Tennessee Code Annotated, rather than a court of law that is conducted by an administrative law judge from the Secretary of State's Office or by an administrative hearing officer of the Department of Human Services. The purpose of the hearing is to allow an adult day services center the opportunity to challenge legal enforcement actions taken by the Department.

(4) Adult. An individual who is eighteen (18) years of age or older.

(5) Adult Day Care Center or Adult Day Services Center. A facility which provides adult day care services.

(6) Adult Day Care Services or Adult Day Services. Services provided to five (5) or more participants, for more than three (3) hours per day but less than twenty-four (24) hours per day, by a provider of such services who is not related to such participant, pursuant to an individualized plan of care designed to maintain or restore each participant's optimal capacity for self-care through medical or social services.

(7) Annual License. An annual permit issued by the Department to an adult day services center, authorizing the licensee to provide adult day services in accordance with provisions of the license, the law, and the rules of the Department.

(8) Appeal. A legal process that allows an adult day services center to challenge a licensing action against the center or a person to challenge an exclusion of a person from access to the center.

(9) Applicant. The owner or owner's authorized representative who is required, pursuant to the provisions of these rules, to sign the application for a license.

(10) Assisted-Care Living Facility. A building, establishment, complex or distinct part thereof as defined by T.C.A. § 68-11-201 and licensed by the board for licensing health care facilities pursuant to T.C.A. § 68-11-209 or as further defined by Chapter 1200-08-25.

(11) Commissioner. The Commissioner of the Department of Human Services.

(12) Denial of License. The decision of the Department not to issue or renew a license.

(13) Department (DHS). The Tennessee Department of Human Services and its authorized representatives.

(14) Direct care staff. Those individuals, employees, substitutes, or volunteers, whose primary job responsibilities are the direct care of the participants.

(15) Director. The on-site manager for the center who has overall responsibility for the daily oversight of all staff and the provision of adult day services.

(16) Exploitation. The improper use by a caretaker of funds that have been paid by a governmental agency to an adult or to the caretaker for the use or care of the adult.

(Rule 1240-7-10-.03, continued)

(17) Facility or Place. The physical location or locations that singly, or together, provide adult day services that constitute the operation of an adult day services center that must be licensed to operate legally.

(18) Falsification of Information. Includes, but is not limited to, falsified or forged records or documents relating to the care of participants by the adult day services center, including concealment of services or participants from monitoring by the Department.

(19) Fee. A processing fee for license applications assessed by the Department and submitted by the center with the application.

(20) Field Trip. Any off-site activity which occurs away from the general premises of the adult day services center's licensed facility and beyond reasonable walking distance.

(21) Governing Board. The group of persons having final authority and responsibility for conduct of the adult day services center which are operated by a municipality, county or non-profit corporation.

(22) High School Diploma. As used in the context of caregivers' qualifications, refers to a document recognizing graduation from an accredited institution, public or private, based on the issuing state's required number of academic credits and includes passing a GED test or equivalent as defined by Tennessee law or its equivalent.

As used in this Chapter, a certificate or statement of attendance or similar document or correspondence or video courses do not qualify as being the equivalent of a high school diploma.

(23) Home for the aged. A home as defined in T.C.A. § 68-11-201 and as licensed by the board for licensing health care facilities pursuant to T.C.A. § 68-11-209 and Chapter 1200-08-11.

(24) Hospital. Any institution, place, building or agency as defined in T.C.A. § 68-11-201 and as licensed by the board for licensing health care facilities pursuant to T.C.A. § 68-11-209 and Chapter 1200-08-01.

(25) Hospice. Any institution, place or agency as defined in T.C.A. § 68-11-201 and as licensed by the board for licensing health care facilities pursuant to T.C.A. § 68-11-209 and Chapter 1200-08-08.

(26) Individualized Plan. The plan of care for the participant which is also referred to as a service, support, or care plan.

(27) Law. Statutory or regulatory provisions affecting the operation of an adult day services center including, but not limited to, the licensing law as contained in Title 71, Chapter 2, Part 4 of the Tennessee Code Annotated and these rules.

(28) License. A permit issued by the Department to an adult day services center authorizing the center to provide adult day services for a specified period of time in accordance with the provisions of the license, the law, and the regulations of the Department of Human Services. The term "new license" shall include any renewal of a license.

(29) Licensed Capacity. The designated maximum number of participants permitted in the care and supervision of a licensed adult day services center as determined by the Department based upon available indoor space and staff:participant ratios. Licensed capacity shall be designated on the license.

(Rule 1240-7-10-.03, continued)

(30) Licensee. The owner, as defined by these rules, to whom a license to operate an adult day services center is issued.

(31) Nursing home. An institution, place, building or agency as defined in T.C.A. § 68-11-201 and as licensed by the board for licensing health care facilities pursuant to T.C.A. § 68-11-209 and Chapter 1200-08-06.

(32) Participant. The adult receiving services in the adult day services center.

(33) Operator/owner. The individual(s), corporation, partnership, cooperative, or other private or public entity of any kind, or any combination thereof, who or which, either as entity, as an individual or through their authorized representatives, assumes, or is legally required to assume, ultimate legal and administrative responsibility for the management and control of an adult day services center. The operator/owner shall be the licensee for the adult day services center.

(34) Premises. A house or a building, along with its grounds, including outdoor areas, parking lots and driveways.

(35) Probation. A legal enforcement action, imposed for thirty (30) to sixty (60) days, taken after a center has been cited for a violation and failed to correct the violation after notice of an opportunity to correct.

(36) Responsible party. The guardian, conservator, other legal representative, or other person who makes the placement of the participant with the adult day services center, to whom center staff will look for decisions regarding the participant's care and to whom information regarding the participant's care and status is reported by the center's staff.

(37) Restricted License. A license which, either at the time of issuance, or during the license's existence, is reduced in its operational authority by the Department so that the adult day services center's ability to provide certain adult day services related services is limited because the Department has determined that one or more areas of the center's operations are not in compliance with adult day services laws or regulations or the center's operations are, or have posed, a risk to the health, safety or welfare of participants in the center's care or the center's operations pose the potential of such risk.

(38) Revocation. The permanent removal of an existing license.

(39) Senior Citizens Center. A not-for-profit or municipal agency, which serves persons fifty-five (55) years of age and older. The range of activities varies from center to center, however, most senior center agencies provide recreational and social activities, hot lunch meals, a protected environment where elderly persons can congregate, community services, employment opportunities, opportunities for volunteer services, and information, referral and consultation services. If properly licensed as an adult day services center, the senior citizens center may operate an adult day services program.

(40) Significant Contact. Means, in the context of these rules, that owners or operators are likely to have access to participants without other staff present.

(41) Staff. Full and part-time caregivers, employees, or unpaid volunteers of the center.

(42) Substitute. Paid or unpaid persons who are replacements for regular staff.

(Rule 1240-7-10-.03, continued)

(43) Suspension/Summary Suspension. The temporary removal of a license for violation of licensing laws or regulations immediately affecting the health, safety, or welfare of participants in an adult day services center.

(44) Temporary License. A permit issued by the Department to a new adult day services center allowing and authorizing the temporary licensee to begin adult day services operations while the center demonstrates full compliance with all other applicable regulations.

(a) The temporary license is valid, unless suspended, for six (6) months or until the application for an annual license is finally determined, and is issued upon application or reapplication by the applicant only if the staff and facility do not present any apparent hazards to the participants that may be in care and only if the facility has received fire safety, environmental, and any necessary food establishment approval and if the applicant and the personnel who will care for the participants are capable in all substantial respects to care for the participants and that the applicant has the ability and intent to comply with the licensing laws and regulations.

(b) If, at the end of the six (6) months period, evidence is provided by the applicant that such adult day services center is suitable and properly managed and that the center is in compliance with the rules governing the applicable adult day services center, the Department will issue an annual license to the adult day services center unless the Department determines that a restricted license should be issued.

(c) The Department may extend the period of the temporary license for an additional six (6) months if the Department determines that the applicant has made substantial progress in meeting the requirements of the law and regulations for an initial annual licensee.

Authority: *T.C.A. §§4-5-201 et seq.; 71-2-401 et seq.* ***Administrative History:*** *Original rule filed December 14, 1999; effective February 27, 2000.*

1240-[0]7-10-.04 ~~LICENSING PROCEDURE~~ **[REQUIREMENTS FOR LICENSURE AS AN ADULT DAY SERVICES CENTER.**

~~(1) All facilities which meet the definition of an adult day care center as defined in these rules shall be licensed by the Department of Human Services except as otherwise provided in 1240-7-10-.02. An adult day care center as defined in these rules which is operating without the requisite license and which is not otherwise exempted from licensing by the Commissioner as provided by this paragraph or by 1240-7-10-.02, shall be subject to closure by injunctive relief pursuant to *TCA §29-3-112*.~~

~~(2) All applicants for a license to operate an adult day care center shall file an application for a license on a form approved by the Department and shall submit with the application the required fee as set forth in 1240-7-10-.03(11). Any adult day care center which is operated by a public, non-profit agency or local municipality operating under a grant from the Department and which pays an administrative fee as part of the monitoring requirements of such grant shall be exempt from the licensing fee.~~

~~(3) The application for the provisional, or for an annual or biennial license, shall include the following information:~~

~~(a) Evidence satisfactory to the Department that the applicant, the person designated to manage the day to day operations of the proposed adult day care center, and its directors and officers if the applicant is a non-profit corporation, are of reputable and responsible character, and that the legal and administrative responsibility for the day to day operation of the center is clearly defined;~~

(b) Evidence satisfactory to the Department of the ability of the applicant to comply with the adult day care center law and these regulations;

(c) A list of the governing board, its officers and directors, if the facility is to be operated by a municipality, county or a non-profit corporation;

(d) Evidence satisfactory to the Department that no member of the governing board nor any member of the immediate family of the board members have a direct or indirect interest in any contract for supplying services to the adult day care center;

(e) Evidence that no part of the net earnings of a facility operated by a municipality, county or a non-profit corporation will benefit a private shareholder or individual;

(f) Evidence of the capability, training and experience of the director or person in charge of the proposed adult day care center as required by 1240-7-10-.10(4);

(g) Evidence of a criminal background check as required by 1240-7-10-.10(2)(a)2. of all staff or designated volunteers who are included in the staff to participant ratio. Prior to issuing a new license, the Department shall determine that each adult day care center has written documentation of a criminal background check on all employees and any volunteers who are included in the staff to participant ratio. A past conviction of crimes committed by the employees or volunteers of the adult day center involving: misuse of funds, fraud, physical abuse or assault of any degree, or any degree of homicide against any person, the illegal use or illegal possession or distribution of drugs or alcohol shall, in the discretion of the Department, be grounds for denial of a license; and

(h) Evidence of a planned program which protects the safety of the participants;

(4) When an application for any license, and when the necessary fire, safety, environmental and food service establishment approvals, have been received, the Department shall conduct an initial inspection, and any further inspections necessary to make a determination regarding the issuance of the license.

(5) Provisional License.

(a) If the application is for a facility which is not currently licensed by the Department, the Department shall only issue a provisional license. The provisional license shall be issued to the proposed adult day care center only if the Department determines that:

1. The proposed center substantially complies with the adult day care law and these regulations, including specifically those in paragraph (3);

2. No violation of the adult day care law or these regulations exists which jeopardizes the health or safety of the adults being served in the facility; and

3. The applicant has adopted a plan satisfactory to the Department for the correction of any existing violations of any regulations.

(b) The provisional license shall be valid for a maximum period of one (1) year, but may be for a shorter period as determined by the Department.

(c) The holder of a provisional license must submit an application for a regular annual license at least thirty (30) days prior to expiration of the provisional license which must be accompanied by the appropriate fee. If the provisional license was granted for a

period of less than one (1) year, the Department will give the applicant credit for the annual license fee up to the amount of fee remaining from the provisional license application.

(d) Within thirty (30) days prior to termination of the provisional license, the Department shall conduct a full and complete inspection of the adult day care center, and;

1. If the adult day care center meets all applicable requirements for licensure, a regular annual license shall be issued; or

2. If the inspection demonstrates that substantial progress is being made in meeting the regulations applicable to the operation of an adult day care center prior to the expiration of the provisional license, the Department may extend the provisional license for a period not to exceed six (6) months. No additional fee shall be charged for the extension of a provisional license.

(e) If there has not been substantial progress in meeting the regulations for the operation of the adult day care center at the time of the inspection, or, if the Department determines upon an inspection made within thirty (30) days prior to the expirations of the six (6) month extension of a provisional license that full compliance with the standards for operation of an adult day care center have not been demonstrated by the applicant, no extension of the provisional license, and no regular annual license, shall be issued.

(6) No applicant which is licensed as a health facility, community care facility or clinic may be issued a license for an adult day care center while there exists a substantial uncorrected violation of the statutes or regulations relating to such license. The applicant will be held responsible for notifying the Department of Human Services of any such existing violations of regulations governing its licensure for those other facilities. Failure to provide such notification shall be grounds for revocation of the adult day care center's license.

(7) Any license issued or renewed pursuant to these rules shall not be transferable to any other person or entity, and the sale or transfer of the adult day care facility by any means from the person or entity named as the licensee to any other person or entity shall require an application by the transferee for a provisional license and shall require the payment of the appropriate fee as set forth in 1240-7-10-.03(11). The adult day care center, the ownership or control of which has been transferred by the existing licensee, shall not continue operation until a provisional license has been granted to the transferee.

(8) Annual and biennial licenses.

(a) The regular annual license shall expire twelve (12) months from the date of issuance; however, the Commissioner may approve applications for re-licensing of a regular annual licensee as a biennial licensee. If a biennial license is granted, the Commissioner may limit the biennial license to an annual license at the next renewal period.

(b) An application for an annual or biennial license shall be accompanied by the appropriate fee as set forth in 1240-7-10-.03(11) together with evidence of the appropriate inspections required by paragraph (4), and these must be received by the Department at least thirty (30) days prior to the expiration of the existing license if the licensee is a current licensee. Except as provided in 1240-7-10-.15(6) or (7), failure to submit the renewal application with the appropriate fee in a timely manner for either an annual license or a biennial license, or for a regular annual license after a provisional license has been issued, shall result in expiration of the license. A new application for an initial license must then be made in accordance with these rules.

(Rule 1240-7-10-.04, continued)

~~(9) The license shall be posted in a conspicuous place where it can be readily seen by persons entering the center.~~

~~(10) The Department shall have the right of inspection at all times, and upon proper identification may enter and inspect any licensed or suspected adult day care center at any time, with or without advance notice for the purpose of conducting its licensing responsibilities. Access shall be provided to law enforcement or adult protective services staff of the Department for interviews of staff, volunteers or participants involving the investigation of any allegations of abuse, neglect or exploitation of any adult. If refused entrance for inspection of licensed or suspected adult day care center, the Department may seek an immediate ex parte order from the chancery or circuit court of the county where the licensed or suspected adult day care center may be located upon a showing of probable cause that the facility is a licensed or suspected adult day care center and that the Department has been refused entrance to conduct an inspection. The court may direct any law enforcement officer to aid the Department in executing such order and inspection. Refusal to obey such order may be punished as contempt.~~

[(1) Annual License.

(a) All adult day services centers are required by Tennessee law to be licensed by the Department.

(b) Issuance of a license is not an endorsement of a specific method of providing care or of a center's operational philosophy.

(2) Issuance of a license or any determination as to the status of an existing license is based upon the following criteria, in addition to other licensing regulations of the Department and licensing laws:

(a) The safety, welfare, and best interests of the participants in the care of the center;

(b) The capability, training, and character of the persons providing or supervising the care of the participant;

(c) Evidence that the expected performance of the caregivers, supervisors or management of the adult day services center seeking initial licensure or renewal of licensure will be such as to protect the participant in care from injury, harm or the threat of injury or harm; or, during licensure, that the actual performance of any of the duties of caregivers, supervisors or management of a licensed adult day services center demonstrates or has demonstrated a level of judgment that a reasonable person would exercise or would have exercised, under existing or under reasonably foreseeable circumstances, that would prevent or would have prevented injury, harm or the threat of injury or harm, to any participant in care;

(d) The quality of the methods of care and instruction provided for the participant;

(e) The suitability of the facilities provided for the care of the participant; and

(f) The adequacy of the methods of administration and the management of the adult day services center, the center's personnel policies, and the financing of the center.

(3) The licensee must maintain compliance with the licensing criteria listed in paragraph (2) above, the adult day services licensing laws and these regulations throughout the licensing period.

(4) Upon receipt of an application for a license, and throughout the temporary licensing period and during the licensing period, immediate access during operating hours to all areas of the adult day services facility shall be granted to all Department representatives and other inspection authorities (i.e., fire safety, sanitation, health, Adult Protective Services, etc.).

(5) Posting of license.

The license shall be posted in a conspicuous place where it can be readily seen by persons entering the Center.

(6) Scope of Licensed Operation.

(a) Licensed capacity shall be designated on the license.

(b) All programs shall operate within any restrictions stated on the license.

(7) Multiple Adult Day Services Centers Operated by a Licensee at the Same Location.

(a) An operator/owner who wishes to operate two (2) or more adult day services centers on the same property must meet the following requirements:

1. The owner/operator must submit a separate application for each adult day services center.

2. Each center must independently meet the requirements for a license, including:

(i) Fire and environmental inspections; and

(ii) Staffing ratios and group sizes.

3. Each center must function as a stand-alone adult day services center, with separate staff.

4. The director of an adult day services center must be present at least one half (½) of the time that the center is open for operation. If the director serves multiple sites, he/she must be present at each adult day services center at least (½) of the time each center is open for operation.

5. A center shall receive approval from the Department before sharing any facilities with any adult not enrolled in the center.

(b) A participant may only receive adult day services at the center at which he/she is enrolled, and may not be transferred, moved or shuffled to another adult day services center operated at the same location.

(c) An adult day services center shall not operate, at the same or contiguous physical location, as an unlicensed/exempt adult day services center unless approved by the Department.

(d) An adult day services center shall not provide care to participants enrolled in the adult day services center at any location that has not been approved by the Department as adult day services space under the adult day services center's license, with the exception of field trips.

(Rule 1240-7-10-.04, continued)

(e) The provision of unlicensed/exempt adult day services at the center or on a contiguous or non-contiguous physical location by the center or the center's employees or agents, shall be deemed to be the provision of adult day services under the center's control.

(f) Actions to transfer participants to physical locations that are not approved by the Department as adult day services space under the adult day services center's license in an attempt to avoid any requirements for a license shall be deemed a violation of the adult day services licensing laws and regulations, and will subject the licensee to immediate legal action.

(8) If, during any temporary or annual licensing period, the Department determines that one or more areas of operations of the adult day services center should be modified or discontinued, it may issue a restricted license limiting the adult day services center's authority to operate.

(9) Denials, Revocations, and Suspensions of Licenses.

(a) All or any part of the license may be revoked at any time upon sixty (60) days' notice to the licensee; or if the health, safety, or welfare of the participant in care imperatively requires, the license, and any operating authority granted by the license, may be suspended immediately.

(b) The Department may accept the licensee's written agreement to voluntarily suspend or surrender the center's license. The written agreement of the licensee to voluntarily surrender or suspend the license shall become effective immediately upon signature of the licensee or other center staff person with apparent authority, and shall act as a waiver of any revocation or suspension hearings regarding the license.

(c) The Department shall consider whether to take action to revoke, restrict, or deny the center's license within (30) days of the date of the voluntary suspension or surrender.

(d) Appeals of a denial, revocation, suspension, or restriction of a license are governed by Chapters 1240-04-05 and 1240-05-13, T.C.A. § 71-2-408, and the Uniform Administrative Procedures Act, T.C.A. §§ 4-5-301 et. seq.

(10) Falsification of Information.

Falsification of any information as defined in 1240-07-10-.02(18) that is related to the operation of the adult day services center shall be grounds for suspension, denial, or revocation of a license.]

Authority: *T.C.A. §§4-5-201 et seq.; 29-3-112; 71-2-401 et seq.* ***Administrative History:*** *Original rule filed December 14, 1999; effective February 27, 2000.*

[1240-07-10-.05 PROCEDURES FOR OBTAINING A LICENSE.

(1) When an individual or group is giving consideration to opening an adult day services center, the individual or group shall contact the local licensing office of the Department of Human Services.

(2) Pre-Application Training.

(a) Prospective applicants for a new license shall attend at least one informational intake meeting provided by the Department that covers an overview of adult day services operation issues for consideration in determining whether to apply for a license. This

training shall include components on interviewing and evaluating caregivers for service in the center.

(b) In the case of a program that is governed by a board of directors or trustees, this meeting shall be attended by the center's director. If the prospective applicant is not responsible for the day-to-day management of the program, this meeting shall be attended by both the prospective applicant and the director responsible for the day to day management of the adult day services center.

(c) At the discretion of the Department, pre-application training may be waived for applicants/licensees that have already completed the training through an earlier licensing process. Any waiver of this requirement must be documented and confirmed in writing.

(3) In addition to the meeting required in subparagraph (2)(a) above, all new directors shall attend, within six (6) months prior to issuance of the license, an orientation session provided by the Department which is at least four (4) hours in length and which covers, at a minimum, the laws and rules governing adult day services. In the case of a program that is governed by a board of directors or trustees, this training shall be attended by a licensee or onsite director who is responsible for the day-to-day management of the program.

(4) Issuance of a temporary license to new adult day services centers shall require:

(a) An Application.

1. A completed application form signed by the owner or the owner's authorized representative and all application documentation as required by the Department.

2. In order to be considered complete, an application must be accompanied by the annual application fee.

(b) Payment of Applicable Licensing Fees.

1. Licensing fees must be submitted by certified check, business check, government agency check, or money order.

2. Current license application fees are maintained on the Department's website.

(c) Any adult day services center operated under a grant from the Department by a public, nonprofit or local municipality and which pays an administrative fee as part of the monitoring requirements of such grant shall be exempt from the licensure fee.

(d) Business Organization Documentation.

1. The business organization of every adult day services center shall be such that legal and administrative responsibility for the center is clearly defined.

2. Documentation of the center's business organization shall be made in the form and manner directed by the Department. The application shall include copies of the business organization filings with the Tennessee Secretary of State Division of Business Services, as applicable.

(e) Verifications.

Approval of a temporary license shall include verification that:

1. The administrative structure of the center, as required by 1240-07-10-.05, appropriately identifies and provides structures and procedures for the full-time management of the center;

2. The qualifications for management positions fully comply with the requirements in 1240-07-10-.12;

3. Three (3) satisfactory non-relative references for the applicant have been checked for validity and that the reference responses are favorable and have been documented (if applicable one of the references shall be from the previous employment);

4. The physical facilities have received, within the previous sixty (60) days, fire safety, environmental, and any necessary food establishment approval as required by the state, municipal, and or county government reflecting the capacity of the center;

5. The on-site director, all persons working with the participant enrolled in the adult day services center as required by T.C.A. § 71-2-403, owner/operators, and employees who make regular onsite visits to a center, have completed:

   (i) A criminal, juvenile and perpetrator disclosure form;

   (ii) A fingerprint-based criminal and available juvenile records review;

   (iii) A review of the state sex offender registry;

   (iv) A review of the vulnerable persons' registry; and

   (v) A review of abuse and neglect perpetrator records for the Departments of Children's Services and Human Services.

   Such reviews demonstrate that the director and all other staff required by T.C.A. § 71-2-403 have no criminal, juvenile, registry or administrative records that would cause the person to be excluded from providing care to participants as prohibited by T.C.A. § 71-2-403 and these rules;

6. The applicant and the personnel who will care for the participant are capable in all substantial respects of caring for the participant;

7. The applicant has the ability and intent to comply with the licensing law and regulations;

8. After appropriate on-site inspection by the Department, the site is suitable for adult day services activities and does not endanger the welfare or safety of the participant;

9. The applicant, owner, director, or an employee of the center has not previously been associated in an ownership or management capacity with any adult day services center that has been cited by the Department for violations of this part or the Department's regulations, including the center for which the application is pending, unless the Department determines that a reasonable basis exists to conclude that such individual is otherwise qualified to provide adult day services; and

10. The criteria in 1240-07-10-.03 support the issuance of a restricted or unrestricted license.

11. General liability insurance coverage shall be maintained on the operations of the facilities in a minimum amount of five hundred thousand dollars ($500,000) per occurrence and five hundred thousand dollars ($500,000) general aggregate coverage.

(5) Denial or Restriction of the Temporary License.

(a) If the Department determines that any of the requirements set forth in this Chapter have not been, or cannot be met, it may deny the application for a temporary license.

(b) If the Department determines that the conditions of the applicant's facility, its methods of care or other circumstances warrant, it may issue a restricted license that permits operation of an adult day services center, but limits the center's authority in one (1) or more areas of operation.

(c) Appeals of the denial or restriction of a license are governed by 1240-07-10-.16, Licensing Violations/Due Process.

(6) Terms of the Temporary Licensure Period.

(a) The temporary license shall remain in effect, unless suspended, for a period of six (6) months, or until such time as the Department grants or denies the application for an initial annual license, whichever is later. The Department may extend the period of the temporary license for an additional six (6) months if the Department determines that the applicant has made substantial progress in meeting the requirements of the law and regulations for an initial annual license.

(b) During the six (6) month temporary licensure period the licensee must attain and maintain compliance with all applicable licensing regulations. Failure to attain and maintain such compliance during this period may result in the denial of the application for an Annual License or restriction of the Annual License.

(7) Evaluation Process for an Annual License during the Temporary Licensing Period.

(a) The temporary license is issued to authorize the temporary licensee to begin adult day services operations while the adult day services center demonstrates full compliance with all applicable licensing laws and regulations before the issuance of an annual license.

(b) Department receipt of a complete application, including all necessary documentation, and the required fee for an adult day services center license begins the evaluation process which is completed with the issuance or denial of a license. This process includes:

1. A minimum of two (2) visits to the adult day services center during the temporary licensing period, at least one (1) of which shall be unannounced;

2. At least one (1) observation of the caregiver's interaction with participants during the temporary licensing period;

3. Satisfactory review of center, staff, and participant records; and

4. Satisfactory completion of an evaluation checklist, itemizing requirements and noting compliance or noncompliance, a copy of which is left with the applicant.

(c) During the temporary licensing period, the applicant shall provide verification, including any required supporting documentation as directed by the Department, of compliance with all applicable licensing regulations and the applicant shall otherwise meet, and continue to meet, all the requirements set forth in parts (b)(1)-(4) above.

(8) The Annual License Determination.

(a) The Department shall determine whether a license or restricted license shall be issued to the applicant or be denied. The temporary license shall remain in effect, unless suspended or revoked, pending the Department's determination.

(b) The Department shall issue a license if the Department determines that the applicant has fully complied with all laws and regulations governing the adult day services center for which the application was made.

(c) If the Department determines that any of the requirements set forth in this Chapter has not been, or cannot be, satisfactorily met, it may deny the license.

(d) If the Department determines that the conditions of the applicant's facility, its methods of care or other circumstances warrant, it may issue a restricted annual license that permits operation of an adult day services center, but limits the center's authority in one (1) or more areas of operation.

(e) Upon issuance of an annual license, the licensee must maintain compliance with all applicable licensing regulations throughout the licensing period.

(9) Renewal Evaluation Process.

(a) Centers currently licensed by the Department must submit an application for renewal not less than thirty (30) calendar days prior to the expiration of the existing license. Failure to submit a completed application, including the required annual licensing fee prior to the expiration of the current license shall result in the expiration of the license upon the expiration date, and the adult day services center shall cease operations immediately. Centers may initiate a new application process if the center fails to meet the thirty (30) calendar day deadline.

(b) The Department shall issue a new license upon demonstrations of compliance with all laws and regulations governing adult day services centers, and, if the applicant has demonstrated a reasonable probability, based on an evaluation of any violations cited or legal enforcement action taken against the center during the entire licensing period, that the applicant will maintain compliance with all licensing regulations during the annual license period.

(c) If the Department determines that any of the requirements set forth in this Chapter has not been, or cannot be, satisfactorily met, it may deny the annual license.

(d) If the Department determines that the conditions of the applicant's facility, its methods of care or other circumstances warrant, it may issue a restricted license that permits operation of an adult day services center, but limits the center's authority in one (1) or more areas of operation.

(10) In order to be considered complete, an application must be accompanied by the license application fee.

(11) Transfer of License.

(a) A license is not transferable from one location to another or from one licensee/operator to another.

(b) Any sale, lease or transfer of control of the adult day services center by any other arrangement to another person, entity, licensee or operator voids the existing license immediately and any pending appeal involving the denial or revocation of the license, and the center shall be required to close immediately unless the buyer, lessee or transferee has made application for, and has been granted a temporary license. In that case, the center may continue in operation under the direction of the new licensee. The new licensee in such circumstances may not be the seller, lessor or transferor or any person or entity acting on behalf of the transferor.

(c) If the Department determines that any person or entity has transferred nominal control of a center to any persons or entities who are determined by the Department to be acting on behalf of the purported seller, lessor or transferor in order to circumvent a history of violations of the licensing law or regulations or to otherwise attempt to circumvent the licensing law or regulations or any prior licensing actions instituted by the Department, the Department may deny the issuance of any license to the applicant. The denial of the license may be appealed as provided in T.C.A. § 71-2-408--409 and 1240-07-10-.04, 1240-07-10-.16.

(d) The license of any center shall not be voided nor shall any pending appeal be voided pursuant to this subparagraph (c) solely for the reason that the center is subject to judicial orders directing the transfer of control or management of an adult day services center or its license to any receiver, trustee, administrator or executor of an estate, or any similarly situated person or entity.

(e) If the current licensee dies, or becomes incapacitated, and provided that no licensing violations require the suspension, denial or revocation of the center's license, the Department may grant family members of the licensee, or administrators or executors of the licensee, a new temporary license to continue operation for a period of six (6) months. At the end of such period, the Department shall determine whether an annual or extended license should be granted to a new licensee as otherwise provided in this chapter.

(f) Nothing in this paragraph (12) shall be construed to prevent the Department from taking any regulatory or judicial action as may be required pursuant to the licensing laws and regulations that may be necessary to protect the participant in the care of such center.

Authority: T.C.A. §§ 4-5-201 et seq.; 71-2-401 et seq.]

1240-[0]7-10-.05[6] [OWNERSHIP, ORGANIZATION AND]ADMINISTRATION.

~~(1) Governing Board: If an adult day care center is operated by a municipality, county, or non-profit corporation, the governing board shall have final authority and responsibility for the conduct of the adult day care center and shall conform to the requirements of 1240-7-10-.03(13).~~

~~(2) Oversight: The governing board and administration or the entity or individual applying for a license in the case of a for-profit operation are responsible for oversight of each center's operation. This oversight includes:~~

~~(a) Providing services described in the standards established by the Department.~~

~~(b) Establishing relationships with local health and social service providers for the purposes of consultation and/or referral.~~

~~(c) Ensuring adequate financing for the center's operation is maintained. Governing board minutes must show evidence of financial review and be available to the licensing staff upon request.~~

~~(d) Establishing an evaluation system which considers the needs of participants, their caregivers, and effectively identifies and resolves problems.~~

~~(3) Operating Procedures: The governing board and administration or the entity or individuals applying for a license in the case of a for-profit operation must establish written policies concerning: admissions; discharges; fees; hours of operation; personnel policies; plans for emergencies and disasters; and other policies as necessary. These policies shall be reviewed and revised in writing as necessary.~~

~~(4) Philosophy and Goals: Each center must develop in writing its philosophy and goals. A center may focus on a target population delineated by age group, type of impairment, medical handicap or other criteria, but may not discriminate against any adult persons because of age or disability.~~

~~(5) Multiple-Use Facilities: A multiple-use facility such as, but not limited to, a hospital, nursing home, home for the aged, assisted-care living facility, senior citizens center, church, or school in which an adult day care center is operated shall have a written agreement regarding the center's operation. The written agreement shall include such items as time allotted for use of the space for the adult day care center's operations, maintenance of such space, use of equipment, security, fiscal, and personnel services, and other shared services, and the multiple use facility shall comply with these regulations.~~

[(1) Oversight.

(a) Centers owned by a municipality, county, or non-profit corporation with ten (10) or more participants shall be operated by a governing board.

1. The governing board shall have at least four (4) members and shall meet at least annually with documented minutes of the meetings.

2. The members of the governing board may include individuals who are recipients of the services of the adult day services center, relatives of such recipients, or representatives of community organizations with particular interest in programs for the elderly; and

3. The members of the governing board may not include individuals who have any direct or indirect interest in any contract for supplying services to the adult day services center or have an immediate family member with any such interest.

(b) For-profit centers shall be operated by the entity or individual applying for a license.

(c) Oversight of an adult day services center shall include:

1. Providing services described in the standards established by the Department.

2. Establishing relationships with local service providers for the purposes of consultation and/or referral.

3. Ensuring that adequate financing for the center's operation is maintained. Governing board minutes shall show evidence of financial review and be available to the licensing staff upon request.

4. Establishing an evaluation system which considers the needs of participants, their caregivers, and effectively identifies and resolves problems.

5. Maintaining compliance with Section 504 of the Federal Rehabilitation Act of 1973 and with the Americans with Disabilities Act (ADA) as well as any other applicable federal law.

(2) Operating Procedures and Policies.

(a) Each center shall establish written policies concerning admissions; discharges; fees; hours of operation; transportation, if applicable; personnel policies; plans for emergencies and disasters; and other policies as necessary.

(b) Each center shall provide a copy of the personnel policies to all employees.

(3) Philosophy and Goals.

(a) A center shall develop, in writing, a philosophy and set of goals.

(b) A center's philosophy and goals may focus on a target population delineated by age group, type of impairment, medical handicap or other criteria, but may not discriminate against any participants because of age or disability.

(c) A center shall develop a system for referring applicants that are deemed not appropriate for the program to other appropriate service providers such as the Area Agency on Aging and Disability, local 211 services, etc.

(4) Multiple-Use Facilities

(a) A multiple-use facility such as, but not limited to, a hospital, nursing home, home for the aged, assisted-care living facility, senior-citizen center, church, or school in which an adult day services center is operated shall be governed by a written agreement regarding the center's operation.

(b) The written agreement shall include such items as time allotted for use of the space by the adult day services center; maintenance of such space; use of equipment, security, fiscal, personnel, and other shared services.]

Authority: *T.C.A. §§4-5-201 et seq.; 71-2-401 et seq.* ***Administrative History:*** *Original rule filed December 14, 1999; effective February 27, 2000.*

1240-[0]7-10-.06[7] PROGRAM.

~~(1) Individuals who present a significant threat to themselves or others, or whose intellectual, emotional or behavioral level prevent them from benefiting from the center's plans of care are not appropriate for adult day care services.~~

~~(2) Individuals who need only leisure time activities, respite care or sitter services and who do not require a structured program of organized activities which provides personal care, self enhancement, and personal growth and development are not appropriate for adult day care services.~~

~~(3) Each facility shall provide supervision and personal care of the participants as needed.~~

~~(4) Adult day care programs located in or affiliated with a licensed nursing home, a licensed hospital, a licensed assisted care living facility, licensed home for the aged, a licensed residential hospice, a senior citizens center, church, school or a sheltered workshop may utilize the resources of the facility/agency to act as support to the adult day care program. However, adult day care services are not intended to serve as a substitute for the services of skilled nursing care, a senior citizens center or a sheltered workshop. The adult day care program, regardless of its location or affiliation, must comply with the program content requirements as described in paragraph (5).~~

~~(5) Adult Day Services Program Content.~~

~~(a) The adult day care services program shall consist of activities and therapies offered through individualized plans of care for each participating adult which set forth measurable goals or behaviorally-stated objectives.~~

~~(b) Activities and therapies shall be designed to activate, motivate, and/or retrain participants to maximize their functional capacity.~~

~~(c) Each day's activities shall include some physical exercise, rest, social interaction, learning opportunities, mental stimulation, and, if needed, personal care. These social, educational and life enrichment activities may include, but are not limited to, the following: arts, crafts, music, pet therapy, field trips, current events, history, games, puzzles, cards, physical activity, reminiscence sessions, movies, discussions about feelings, and appropriate recreational activities.~~

~~(d) Although leisure activities comprise an integral part of the adult day care program, activities which are limited to only the viewing of television or other media sources, or only to listening to the radio, records, or compact discs, or only to reading the newspaper, magazines, books, and other reading materials, do not constitute services sufficient for an adult day care program.~~

~~(e) Group and individual activities shall be provided. Participants shall be able to choose between group and individual activities during at least some part of the day. The participants shall have the choice of refusing to participate in any activity. Group size should be appropriate to the type of activity and functional capability of the participants.~~

~~(f) The program must include assistance from community referrals and resources when appropriate.~~

~~(g) An activity schedule shall be posted at all times.~~

~~(6) An adult day care center may elect to provide occasional overnight, or week-end lodging for its participants, but the provision of this type of respite service shall not be subject to regulation pursuant to this Chapter.~~

~~(7) If a center markets itself as a specific Alzheimer's program, then it is subject to *TCA Title 68, Chapter 11, Part 14* relative to the disclosure of treatment for Alzheimer's disease.~~

[(1) Individuals who present a significant threat to themselves or others, or whose intellectual, emotional, or behavioral needs prevent them from benefiting from the center's program, shall not be enrolled. The center shall refer these individuals to appropriate service providers and resources.

(2) Each center shall provide supervision and personal care of the participants as needed.

(3) The program shall be designed to maintain the dignity of, and demonstrate respect for, each participant, allow for individual choices, and allow for each participant to experience successes each day.

(4) Participants shall take part in program development and activity planning to the extent possible.

(5) A participant who appears to the center's staff to be mentally capable of making his or her own decisions may act on his or her own behalf without having another person as responsible party.

(6) Adult day services programs located in, or affiliated with, a licensed nursing home, a licensed hospital, a licensed assisted care living facility, a licensed home for the aged, a licensed residential hospice, a senior citizens center, church, or a school may utilize the resources of the facility / agency to act as support to the adult day services program. However, adult day services are not intended to serve as a substitute for the services of skilled nursing care or a senior citizens center. The adult day services program, regardless of its location or affiliation, shall comply with the program content requirements as described in paragraph (7).

(7) Contents of the Adult Day Services Program.

(a) Participants shall be offered a variety of activities throughout the day.

(b) The adult day services program shall consist of individual and group activities and therapies offered through individualized plans for each participant which set forth measurable goals or behaviorally-stated objectives.

(c) Activities and therapies shall be designed to activate, motivate, and/or retrain participants to maximize their functional capacity.

(d) The following activities shall be offered daily: physical exercise, rest, social interaction, learning opportunities, mental stimulation, and, if needed, personal care. These social, educational and life-enrichment activities may include, but are not limited to, the following: arts, crafts, music, pet therapy, outings, current events, memory-enhancing activities, history, games, puzzles, cards, physical activity, reminiscence sessions, movies, guest speakers, and presentations, discussions about feelings, and appropriate recreational activities.

(e) Although leisure activities comprise an integral part of the adult day services program, activities which are limited to passive participation, including watching television, reading, etc. shall comprise no more than 20% of the center's planned activity schedule.

(f) Participants shall always be given free choice about whether or not to take part in a particular activity.

(g) Group size should be appropriate to the type of activity, functional capability, and individual needs of the participants.

(h) The program shall include assistance from community referrals and resources when appropriate and available.

(i) A planned activity schedule shall be posted at all times.

(j) Routines shall encourage consistency and structure.

(Rule 1240-7-10-.06, continued)

(8) Staff interaction with participants.

(a) Staff shall always address participants by the name preferred by the participant.

(b) Staff shall interact with participants in a manner that maintains the dignity and sense of autonomy of the participant; and

(c) Staff shall interact with each participant in a manner that displays knowledge of his/her individual needs, likes, dislikes and individualized plan.

(9) Restraints.

(a) Restraints may be applied or administered to participants only on a signed order of a physician. The signed physician's order must be for a specified and limited period of time and must document the necessity of the restraint. There shall be no standing orders for restraints.

(b) Physical restraints shall be checked every thirty (30) minutes and released every two (2) hours so the participants may be exercised and offered toilet access.

(c) When a participant's safety or safety of others is in imminent jeopardy, the medial professional or onsite director shall use his/her judgment to use physical restraints if a physician's order cannot be immediately obtained. A written physician's order must be obtained as soon as possible, but no later than within seven (7) calendar days.

1. In the event that this subsection is used the onsite director shall notify the Department.

(d) Locked restraints and chemical restraints are prohibited.

(10) Any center offering a program for participants with Alzheimer's disease is subject to the requirements of T.C.A. 68-11-1401, et. seq.]

Authority: *T.C.A. §§4-5-201 et seq.; 71-2-401 et seq.* ***Administrative History:*** *Original rule filed December 14, 1999; effective February 27, 2000.*

1240-[0]7-10-.0~~7~~[8] [PARTICIPANTS']RECORDS.

~~(1) Records of the staff, any volunteers, the participants and any other records required by these regulations shall be maintained by the center for at least three (3) years, and shall be made available to the Department's staff for review for any licensing or adult protective service duties.~~

~~(2) A file shall be maintained for each participant. Each file shall contain, at a minimum, the following information regarding the participant:~~

~~(a) Name, address, age, and other identifying information;~~

~~(b) Primary caregiver;~~

~~(c) Emergency contact information for a responsible party and personal physician for the participant;~~

~~(d) Behaviors of the participant impacting on his/her care and treatment;~~

(e) Limitations in activities of daily living;

(f) Physical disabilities or conditions requiring specific modes of care, including allergies and diet;

(g) Additional information provided by the caregiver, family, responsible party or staff necessary for the provision of comprehensive individualized care;

(h) A listing of individuals or entities authorized to transport the participant;

(i) A copy of the durable power of attorney, if available;

(j) A copy of any existing and currently effective conservatorship documents involving the participant;

(k) A listing of prescription and non-prescription medication taken by the participant. This list must be updated at least every six (6) months or as medications are changed by the participant's physician;

(3) Ongoing records, reflecting the participant's plan of care, shall be updated as indicated by the participant's change in status, but shall be updated not less than every three (3) months. These records shall contain the following information regarding the adult participant:

(a) Goals and Activities. An over-all goal, and activities supporting this goal, must be included in each participant's plan of care. The goal and activities must be clearly stated and specifically address the participant's needs. The needs in this plan of care shall include the personal, social, physical, mental, and where appropriate, educational needs of the participant. The goal, and accompanying activities, of this individualized plan of care must show how the participant's lifestyle will be either adequately maintained or improved during the participant's stay at the adult day care center.

(b) Progress. The plan of care must demonstrate how the specific activities are going to be implemented to meet the stated goal established for the participant. At the end of every three (3) month period (quarterly), a specific progress report must show how these activities have been specifically implemented and show what the specific outcome has been. If it is determined that the objectives have not been adequately met, then the plan of care, or the appropriate activities in the plan, shall be revised.

(c) Mental and Physical Conditions. The participant's mental and physical conditions must be thoroughly described upon intake into the adult day care center. The plan must include how these conditions will either be accommodated and/or enhanced by the daily activities carried out by the adult day care center. Persons with Alzheimer's disease or other dementia or disabling diseases must be provided some type of therapy/intervention or special service which is specific to treating or assisting the affected person to better cope with the disability. Persons must be provided the necessary assistance as may be required by the Americans with Disabilities Act.

(d) Other changes or observations noted by program staff. All other changes and observations must be noted by program staff. These changes may include, for example, a change in the participant's mood, behavior, diet, medications, or other personal circumstances. Any changes in the participant's original personal plan of care and statements explaining why the plan was altered shall be noted. Any new or additional services provided to the participant by the center shall be described, and an

(Rule 1240-7-10-.07, continued)

~~explanation in the record shall be noted describing how and why these new or additional services are providing improved care to the participant served by the center.~~

~~(4) A record of incidents, accidents, injuries, illnesses and emergencies involving the participant shall be maintained in the participant's file and on a separate log and shall be reported to the participant's responsible party.~~

~~(5) An adult day care center located on the premises of and operated by a licensed nursing home, a licensed hospital, a licensed assisted-care living facility, a licensed home for the aged, or a licensed residential hospice may satisfy the requirements for recordkeeping in these rules by use of existing recordkeeping processes which capture the same information and which maintain the records of the participants in the adult day care program as separate, identifiable records related to the adult day care participant's activities in the adult day care center as previously described in this section.~~

~~(6) An adult day care center using the full time equivalency (FTE) methodology for meeting the staff:participant ratios required by 1240-7-10-.10 shall maintain adequate records to document the time provided by staff used to fulfill the FTE requirement.~~

[(1) A record of each participant shall be maintained by the center for at least three (3) years.

(2) Each record shall contain, at a minimum, the following information regarding the participant:

(a) Acknowledgment of receipt of participant bill of rights;

1. The following list of rights shall be given to any prospective participant in the adult day service:

(i) The right to self-determination within the adult day services setting, including the opportunity to:

(I) Participate in developing or changing one's plan for services;

(II) Decide whether or not to participate in any given activity;

(III) Be involved to the extent possible in program planning and operation;

(IV) Refuse treatment and be informed of the consequences of such refusal; and

(V) End participation in the adult day services center at any time.

(ii) The right to be treated as an adult, with consideration, respect and dignity, including privacy in treatment and in care for personal needs;

(iii) The right to a thorough initial assessment, development of an individualized plan of care, and a determination of the required level of care;

(iv) The right to confidentiality and the guarantee that no personal or medial information will be released to persons not authorized under law to receive it without the participant or their legal representative's written consent;

(v) The right to voice grievances about care or treatment without discrimination or reprisal;

(vi) The right to be free from harm, including isolation, excessive medication, abuse, neglect and/or financial exploitation;

(vii) The right to be fully informed, at the time of acceptance into the program, of services and activities available and related charges; and

(viii) The right to communicate with others and be understood by them to the extent of the participant's capability.

(b) Name, address, age, and other identifying information;

(c) Primary caregiver and/or responsible party;

(d) Emergency contact information for primary caregiver or a responsible party and medical provider for the participant;

(e) A copy of any power of attorney, any health care proxy, any advanced care directive, and any physician's orders for scope of treatment (POST) involving the participant;

(f) A copy of any existing and currently effective conservatorship and/or guardianship documents involving the participant;

(g) A pre-enrollment assessment, which shall include:

1. Brief psycho-social history to include: likes/dislikes, diet, living situation, family and social contacts, daily routines/schedule, habits, interests, hobbies, and spiritual preferences;

2. Basic health history to include: current medical diagnosis, current prescription and non-prescription medications (see 1240-07-10-.13), standing orders, physical disabilities or medical conditions requiring specific modes of care and/or adaptive devices (including allergies and special dietary requirements), and evidence of a TB screening if required based on current Department of Health guidelines;

3. Current behavioral history to include: strengths, limitations in activities of daily living, behaviors impacting care and treatment;

4. Physician order for non-emergency restraint, if applicable; and

5. Additional information provided by the caregiver, family, responsible party or staff necessary for the provision of comprehensive individualized care and support.

(h) A transportation plan, which shall provide:

1. A list of individuals or entities authorized to transport the participant; and

2. Necessary and appropriate documentation to transport individual participants.

(3) The record for each participant shall also include the participant's individualized plan.

(a) The participant and his/her family/responsible parties shall be encouraged and invited to be involved in the development of the individualized plan and all subsequent revisions.

(Rule 1240-7-10-.07, continued)

(b) Participant records shall show evidence of regular communication with the participant and/or responsible party about the individualized plan including changes to the plan and other pertinent information.

(c) Plans shall be reviewed and updated as indicated by the participant's change in status, but at least every three (3) months.

(d) All plans, including all revisions, updates, changes, etc. shall be signed and dated by all involved parties. If any party refuses to participate in the planning process and/or sign the plan, the plan must include a statement of this along with a brief explanation of reason for refusal.

(e) The plan shall contain the following information regarding the participant:

1. Mental and Physical Conditions.

(i) The participant's cognitive, emotional, and physical conditions shall be recorded upon intake into the adult day services center.

(ii) This plan shall include how these conditions will be accommodated, maintained and/or enhanced by the services provided.

2. Alzheimer's Specific Programs.

(i) Participants with Alzheimer's disease or other dementia shall be provided therapy/intervention or special service specific to treatment or assistance with this disease.

3. Goals and services.

(i) The goal and services shall be clearly stated and shall specifically address the participant's individual needs and desired outcomes of the participant.

(ii) The needs in this individualized plan shall address the personal, social, emotional, physical, cognitive strengths and, where appropriate, the educational needs of the participant.

(iii) The goal and services shall demonstrate how the participant will benefit from participation in the program.

(iv) The plan shall demonstrate how the specific services are going to be implemented in order to meet the stated goal established for the participant.

4. Progress.

(i) At the end of every three (3) month period (quarterly), a specific written progress report shall identify how the plan has been implemented and identify the specific outcomes.

(ii) If, upon review, it is determined that adequate progress towards the goal has not been achieved, the individualized plan shall be revised.

5. Any accommodation provided to meet the individual needs of the participants.

(Rule 1240-7-10-.07, continued)

6. Changes in the participant's mood, behavior, diet, medications, or other personal circumstances that are observed by the staff shall be documented with signatures and dates in the participant's record.

(4) Daily attendance records shall be maintained.

(5) A written record of incidents, accidents, injuries, illnesses and emergencies involving the participant shall be maintained and shall be reported to the participant's responsible party no later than the end of the day on which it occurred.

(6) An adult day services center located on the premises of, and operated by, a licensed nursing home, a licensed hospital, a licensed assisted-care living facility a licensed home for the aged, or a licensed residential hospice may satisfy the requirements for recordkeeping in these rules by use of existing recordkeeping processes which capture the same information and which maintain the records of the participants in the adult day services center as separate, identifiable records related to the adult day services participant's activities in the adult day services center as previously described in this section.

(7) An adult day services center using the full time equivalency (FTE) methodology for meeting the staff:participant ratios shall maintain adequate records to document the time provided by staff used to fulfill the FTE requirement.

(8) Records concerning participants shall be made available to emergency medical personnel whether treatment is rendered on site or participant is transported to a health care facility.

(9) Release of Information.

(a) Except as provided in subparagraph (b) below, no information from the record of a participant shall be released or disclosed except as required by law or regulation, or with the permission of the participant or participant's responsible party.

(b) Information from any records of the center, including the records of individual participants, shall be provided upon request to the Department's Adult Day Services licensing staff or to law enforcement officials or Adult Protective Services staff of the Department in order to investigate allegations of abuse, neglect or exploitation of any participant.]

Authority: *T.C.A. §§4-5-201 et seq.; 71-2-401 et seq.* ***Administrative History:*** *Original rule filed December 14, 1999; effective February 27, 2000.*

[1240-07-10-.09 CRIMINAL BACKGROUND CHECK AND STATE REGISTRY REVIEW PROCEDURES.

(1) Criminal Background and Abuse Registry Disclosures and Reviews; Fingerprinting Requirements.

(a) The following persons are required to undergo a criminal background check and registry reviews before having access to any adult day services center:

1. Any person who owns or operates an adult day services center and has significant contact with participants;

2. Any person who applies to work in an adult day services center as an employee, director or manager; and

3. Any person who will volunteer in an adult day services center for more than thirty-six (36) hours in a calendar year and who is counted in the staff:participant ratio.

(b) Requirements for Disclosure of Criminal/Juvenile and Administrative History and Fingerprinting.

1. The individuals identified in subparagraph (1)(a) above shall be required to:

(i) Complete a criminal/juvenile/administrative findings history disclosure form;

(ii) Submit fingerprint samples for a criminal and juvenile records background check; and

(iii) Complete a criminal background check/state registry review consisting of:

(I) An investigation of a person's criminal background history by the Tennessee Bureau of Investigation and through the Federal Bureau of Investigation's national database;

(II) An Investigation of a person's juvenile records history that is available to the Tennessee Bureau of Investigation;

(III) A review of any available juvenile court records, if determined necessary by the Department;

(IV) A search of the vulnerable persons' registry, maintained by the Tennessee Department of Health;

(V) A search of the sexual offender registry, maintained by the Tennessee Bureau of Investigation; and

(VI) A search of the Department of Children's Services registry of substantiated perpetrators of abuse or neglect of children.

(2) Responsibility for Providing Fingerprint Sample; Prohibition of Contact with Participants Prior to Completion of Criminal History Review.

(a) An adult day services center shall be responsible for obtaining, and submitting the fingerprint sample of any person required by this rule in the form and manner directed by the Department. The person subject to the requirements of subparagraph (1)(b), and the entities with whom they will be, or are, associated, shall be required to provide any information necessary to process the criminal history review required by this paragraph prior to such person's assumption of any role described in subparagraph (1)(a).

(b) An adult day services center may not permit any person who is required to undergo a criminal background check and state registry review to assume any role described in subparagraph (1)(a) above for which the criminal background check/state registry review is required or to have access to participants before each of the required histories/records/registries have been checked to verify that the person does not have a criminal history or is not listed on a registry that would disqualify or otherwise exclude the person.

(c) Failure to Complete or Disclose Information on Criminal Disclosure Form.

1. The failure to properly complete all sections of the Criminal/Administrative History Disclosure Form shall result in the individual being prohibited from assuming any position or status for which a background review is required by T.C.A. § 71-3-507 and subparagraph (1)(a) of this rule.

2. The failure to disclose all criminal and administrative history information may result in the person being:

(i) Excluded by the Department from working, directing, managing, operating, volunteering, or acting as a licensee in any adult day services center licensed by the Department; and

(ii) Referred to the appropriate district attorney for criminal prosecution.

(d) Unless otherwise notified by the Department, the adult services center shall be responsible for all costs associated with obtaining the fingerprint sample, and for the costs of the criminal background check by the Tennessee Bureau of Investigation. The adult day services center may be may require that the costs of the background check be a part of the application process by a prospective employee or volunteer, or it may pay the costs and recover the costs of the fingerprint-based background checks from the prospective employee following employment.

(3) Prohibited Criminal, Juvenile, Vulnerable Persons or Sex Offender Registry, Abuse or Neglect or Driving History; Exclusion from Contact with Participants.

(a) No person shall be employed with, be a licensee or operator of, or have any access whatsoever to participants in an adult day services center if the criminal background check identifies an excludable criminal offense for which the person has:

1. Been convicted of, pled guilty or no contest to, or to a lesser included offense;

2. Been, or currently is, the subject of a juvenile petition or finding that would constitute a criminal offense or lesser included offense if the child were an adult; or

3. Been named in a pending warrant, indictment, presentment, petition, pretrial or judicial diversion.

(b) An excludable criminal offense involves, generally:

1. The physical, sexual or emotional abuse or neglect of an adult or child;

2. A crime of violence against any human being;

3. Any offense (including a lesser included offense) involving the manufacture, sale, distribution or possession of any drug; or

4. Any offense that presents a threat to the health, safety or welfare of adults or children.

(c) No person may be employed as a driver or serve as a driver for an adult day services center if the person:

1. Is currently charged with; or

2. Has been convicted of, or pled guilty to, within the last five (5) years to one of the following criminal offenses:

(i) Vehicular homicide (T.C.A. § 39-13-213);

(ii) Accidents involving death or personal injury (T.C.A. § 55-10-101);

(iii) Accidents involving damage to a vehicle (T.C.A. § 55-10-102);

(iv) Driving under the influence of intoxicant, drug or drug producing stimulant (T.C.A. § 55-10-401); or

(v) Any felony involving the use of a motor vehicle while under the use of any intoxicant.

(4) Criminal offenses for which exclusion from access to adult care is required includes, but is not limited to, the following (including any as amended):

(a) Aggravated arson (T.C.A. § 39-14-302);

(b) Aggravated assault (T.C.A. § 39-13-102);

(c) Aggravated child abuse (T.C.A. § 39-15-402);

(d) Aggravated child neglect (T.C.A. § 39-15-402);

(e) Aggravated cruelty to animals (T.C.A. § 39-14-212);

(f) Aggravated kidnapping (T.C.A. § 39-13-304);

(g) Aggravated rape (T.C.A. § 39-13-502);

(h) Aggravated rape of a child (T.C.A. § 39-13-531);

(i) Aggravated robbery (T.C.A. § 39-13-402);

(j) Aggravated sexual battery (T.C.A. § 39-13-504);

(k) Aggravated sexual exploitation of a minor (T.C.A. § 39-17-1004);

(l) Aggravated vehicular homicide (T.C.A. § 39-13-218);

(m) Arson (T.C.A. § 39-14-301);

(n) Assault (T.C.A. § 39-13-101);

(o) Carjacking (T.C.A. § 39-13-404);

(p) Child abuse, child neglect or endangerment (T.C.A. § 39-15-401);

(q) Criminal attempt, under § 39-12-101, to commit any criminal offense that requires exclusion from child care;

(r) Criminal exposure to HIV (T.C.A. § 39-13-109);

(Rule 1240-7-10-.09, continued)

(s) Criminal homicide (T.C.A. § 39-13-201);

(t) Criminally negligent homicide (T.C.A. § 39-13-212);

(u) Cruelty to animals (T.C.A. § 39-14-202);

(v) Custodial interference (T.C.A. § 39-13-306);

(w) Domestic abuse in violation of an order of protection or in violation of a restraining order (T.C.A. § 39-13-113);

(x) Domestic assault (T.C.A. § 39-13-111);

(y) Drug offenses (felony or misdemeanor, possession, manufacturing, sale, distribution, etc.);

(z) Especially aggravated burglary (T.C.A. § 39-14-404);

(aa) Especially aggravated kidnapping (T.C.A. § 39-13-305);

(bb) Especially aggravated robbery (T.C.A. § 39-13-403);

(cc) Especially aggravated sexual exploitation (T.C.A. § 39-17-1005);

(dd) Exploitation of a minor by electronic means (T.C.A. § 39-13-529);

(ee) False imprisonment (T.C.A. § 39-13-302);

(ff) First degree murder (T.C.A. § 39-13-202);

(gg) Incest (T.C.A. § 39-13-302);

(hh) Indecent exposure (T.C.A. § 39-13-511);

(ii) Involuntary labor servitude (T.C.A. § 39-13-307);

(jj) Kidnapping (T.C.A. § 39-13-105);

(kk) Rape (T.C.A. § 39-13-503);

(ll) Rape of a child (T.C.A. § 39-13-522);

(mm) Reckless endangerment (T.C.A. § 39-13-103);

(nn) Reckless homicide (T.C.A. § 39-13-215);

(oo) Robbery (T.C.A. § 39-13-401);

(pp) Second degree murder (T.C.A. § 39-13-210);

(qq) Sexual battery (T.C.A. § 39-13-505);

(rr) Sexual battery by an authority figure (T.C.A. § 39-13-527);

(ss) Sexual exploitation of a minor (T.C.A. § 39-17-1003);

(tt) Solicitation of a minor (T.C.A. § 39-13-528);

(uu) Stalking (T.C.A. § 39-17-315);

(vv) Statutory rape (T.C.A. § 39-13-506);

(ww) Statutory rape by an authority figure (T.C.A. § 39-13-532);

(xx) Trafficking a person for sexual servitude (T.C.A. § 39-13-309);

(yy) Vehicular assault (T.C.A. § 39-13-106);

(zz) Vehicular assault while intoxicated (T.C.A. § 39-13-106);

(aaa) Vehicular homicide (T.C.A. § 39-13-213);

(bbb) Voluntary manslaughter (T.C.A. § 39-13-211);

(ccc) Weapons offenses (unlawful possession, carrying, use, etc.);

(ddd) Aggravated burglary (T.C.A. § 39-14-403);

(eee) Burglary (T.C.A. § 39-14-402);

(fff) Criminal simulation (T.C.A. § 39-14-115);

(ggg) Extortion (T.C.A. § 39-14-112);

(hhh) Forgery (T.C.A. § 39-14-114);

(iii) Fraudulent use of a credit card (T.C.A. §§ 39-14-118, 39-14-105);

(jjj) Identity theft (T.C.A. § 39-14-150);

(kkk) Shoplifting (T.C.A. § 39-14-146);

(lll) Theft of property (T.C.A. § 39-14-103);

(mmm) Theft of services (T.C.A. § 39-14-104); or

(nnn) Worthless checks (T.C.A. § 39-14-121).

(5) Exclusion from access to an adult day services center based on a listing on a state registry.

(a) No person shall be employed with, be a licensee or operator of, or have any access whatsoever to participants in an adult day services center if the results of the state registry review or in the equivalent administrative registries or court records in any jurisdiction in which the person has resided in the past five (5) years identify the person as being:

1. Listed on the vulnerable persons registry, maintained by the Tennessee Department of Health;

2. Listed on the sexual offender registry, maintained by the Tennessee Bureau of Investigation; or

3. Substantiated in the records of the Department of Children's Services for abuse or neglect of a child.

(6) Supplemental Background Checks Subsequent to Licensing, Employment or Residence in an Adult Day Services Center.

(a) Pursuant to T.C.A. § 71-3-507(g)-(k), the Department may, at any time, require the review of the criminal, available juvenile records or administrative records of any individual with access, as determined by the Department, to participants in an adult day services center using the processes described in this chapter or in T.C.A. § 71-3-507, or by any other available means. All other provisions of this chapter and T.C.A. § 71-2-403 applicable to any pre-employment or post-employment, residential or access status of any individual shall apply to any background reviews conducted pursuant to this paragraph and the results of such review.

(b) For an individual who was not subject to the background or records screening requirements required by this chapter prior to assuming a role described in subparagraph (1)(a), or prior to having access to participants in any other capacity, such individual's existing status in such role shall be conditional upon the satisfactory outcome of any requested criminal/juvenile/administrative history disclosure, fingerprint record background check, and any vulnerable persons registry or the sex offender registry check, or any review of substantiated abuse or neglect perpetrator status with the Departments of Children's or Human Services that may be conducted pursuant to this subparagraph

(7) Appeal of exclusion from access to an adult day services center.

(a) A person that has been excluded from access to an adult day services center due to a criminal offense or state registry listing or in the equivalent administrative registries or court records in any jurisdiction in which the person has resided in the past five (5) years has the right to appeal the exclusion. The appeal is limited to the consideration of:

1. Whether the person being excluded is in fact the person identified in the criminal history records or registry listing that was used to determine that the person must be excluded; or

2. Whether the crime or listing which is the basis for the exclusion has been dismissed, resulted in an acquittal, nolled, or expunged, so that the person should not be excluded.

(b) The person must make a written request for an appeal within ten (10) days of the mailing date of the letter notifying him/her of the exclusion to the DHS Division of Appeals and Hearings. If timely appealed, the Department shall provide an administrative hearing pursuant to the Uniform Administrative Procedures Act, compiled in title 4, chapter 5, part 3.

(8) Requests for a waivers from exclusion from access to an adult day services center.

(a) A person that has been excluded from an adult day services center access due to a criminal offense or registry listing has the option of requesting a waiver from the exclusion. The request for a waiver is sent to the Director of Adult and Child Care

Licensing. A waiver will be granted only if the person can show that extenuating circumstances exist that clearly justify granting a waiver.

(b) The request for a waiver shall state the basis for the request, including any extenuating or mitigating circumstances that would, in the individual's opinion, clearly warrant an exemption from the exclusion. Any documentary evidence may also be submitted with the request. Waivers shall be based upon extenuating circumstances that clearly warrant consideration of an exemption.

(c) Requests for waivers shall be reviewed by an advisory committee in accordance with the provisions of T.C.A. §71-3-507. The committee shall make a recommendation to the Director of whether to grant or deny the waiver request. The Director shall make the final decision.

(d) Any person who is the subject of an exclusion who is dissatisfied with the decision of the Director of Licensing regarding a waiver must make a written request for an appeal within ten (10) days of the mailing date of the letter notifying him/her of the exclusion to the DHS Division of Appeals and Hearings. If timely appealed, the Department shall provide an administrative hearing pursuant to the Uniform Administrative Procedures Act, compiled in title 4, chapter 5, part 3.

(9) Any person who is excluded from providing care or services or having access to participants under any provisions of this chapter shall remain excluded pending the outcome of any appeals or exemption review or any determination that the basis for exclusion no longer exists.

(10) Nothing in this chapter shall be construed to prevent the exclusion of any individual from providing care for, or from being licensed for the care of, participants pursuant to this chapter or from having access to a participant in an adult day services center if a criminal or juvenile proceeding, registry or administrative background requiring exclusion under T.C.A. 71-2-403 or any provision of law is discovered and verified in any other manner other than through a procedure established pursuant to this chapter. All procedures, rules, and appeal processes established pursuant to this chapter for the protection of participants and the due process rights of excluded individuals shall also be applicable to such individuals.

(11) Exclusion of persons who currently have access to adult care.

(a) A center shall immediately notify the Department if it receives information, either through first-hand knowledge or via a third party, that a person who is operating, working in, volunteering at, or has any access whatsoever to the adult day services center:

1. Is currently charged with a criminal offense;

2. Has a criminal conviction; or

3. Is listed on the state vulnerable persons registry, sexual offender registry, or Department of Children's Services substantiated perpetrator registry.

(b) Such notification shall be made by telephoning the Department within twenty-four (24) hours of receiving such information. This shall include all information received by the center that was not included in the criminal background check/state registry review that was required to be conducted prior to the person assuming any role at the center.

(Rule 1240-7-10-.09, continued)

(c) The exclusion of such persons from access to an adult day services center shall be pursuant to T.C.A. §71-2-403 and this rule.

(12) The failure of an adult day services center to immediately exclude individuals with a criminal background history or state registry review status that requires exclusion pursuant to T.C.A. §71-2-403 and this rule, as directed by the Department, shall be the basis for the immediate suspension, denial or revocation of the adult day services center's license.

Authority: T.C.A. §§4-5-201 et seq.; 71-2-401 et seq.; 71-3-507.]

1240-[0]7-10-.~~08~~[10] PHYSICAL ~~PLANT~~ [FACILITY].

~~(1) Plans. New construction, major renovations and/or additions to existing facilities must be constructed and maintained according to the standards of the Fire Prevention Division of the Tennessee Department of Commerce and Insurance and of the Division of General and Environmental Health of the Tennessee Department of Health.~~

~~(2) The center shall have space on the ground level floor or be accessible by elevator or wheelchair ramps or other assistance devices to accommodate a full range of program activities and services, which shall include, but are not limited to:~~

~~(a) Space for individual and group activities; .~~

~~(b) Private office space to permit staff to work effectively;~~

~~(c) Storage space for program and operating supplies; and~~

~~(d) Space for special therapies, a rest area, and a designated area to isolate the ill which includes comfortable resting furniture that would allow participants to recline or lie down. This may be in one room or in more than one room.~~

~~(3) At least forty (40) square feet of indoor activity space per participant shall be provided. Floor space for bathrooms, storage areas, and rooms designated only for staff use shall be excluded when computing the minimum activity space. Adult day care centers located on the premises of, on the grounds of, or adjacent to, other operations such as licensed nursing homes, licensed hospitals, licensed assisted-care living facilities, licensed residential homes for the aged, or licensed residential hospices may utilize, on a staggered or shared basis, the same facilities such as dining rooms, recreation rooms, or physical therapy rooms as are used by the clients of those other operations, provided that overcrowding does not occur; and, provided further that the space in these other facilities shall not count toward the space requirements necessary for the conduct of the adult day care center.~~

~~(4) Sufficient and appropriate seating space for all participants shall be provided.~~

~~(5) Sufficient table or tray space for dining and activities shall be provided.~~

~~(6) The center shall be kept clean, safe and free from hazards and offensive odors.~~

~~(7) The following equipment must be kept on site:~~

~~(a) A first aid kit that contains at least the following: sterile bandages and adhesive band-aids, antiseptics, sterile compresses, scissors, an oral or topical thermometer and adhesive tape;~~

~~(b) Scale;~~

~~(c) Blood pressure cuff;~~

~~(d) Blanket;~~

~~(e) Wheelchair; and~~

~~(f) Locked storage space for drugs.~~

~~1. If medicine requiring refrigeration is kept in a refrigerator used for food storage, the medicine must be put in a leak proof locked container and be properly labeled.~~

~~2. Keys for these storage compartments must be inaccessible to participants.~~

~~(8) Toilet Facilities.~~

~~(a) For the first fifteen (15) participants in the adult day care center, there shall be a minimum of two (2) toilets in the adult day care center, one (1) of which shall be wheelchair accessible. For each group of ten (10) participants, or portion thereof, after fifteen (15) participants, there shall be an additional toilet. Fifty percent (50%) of the toilets in the adult day care center shall be wheelchair accessible.~~

~~(b) On the effective date of these rules, existing facilities meeting the definition of an adult day care center which have less than twenty-five (25) participants shall only be required to have one (1) wheelchair accessible toilet available to participants in the adult day care center; provided, however, the other requirements of subparagraph (a) shall apply, and provided, further, that if such adult day care center enrolls twenty-five (25) or more participants at any time after the effective date of the rules, or if the adult day care center adds additional space or if the center moves to another location, the center shall comply with all of the requirements of subparagraph (a).~~

~~(9) The heating/cooling system shall operate adequately to assure the comfort and safety of the participants.~~

~~(10) The center must have a working telephone.~~

[(1) Any new construction, major renovations, and/or additions to existing facilities that are located on the premises of a licensed nursing home, a licensed hospital, a licensed assisted-care living facility, a licensed home for the aged or a licensed residential hospice must have been inspected and approved for fire and environmental safety standards using the Life Safety Code by the Tennessee Department of Health's Division of Health Care Facilities prior to use as an adult day services center.

(2) New construction, major renovations and/or additions to existing facilities that are located on the premises of a licensed nursing home, a licensed hospital, a licensed assisted-care living facility, a licensed home for the aged or a licensed residential hospice and provide evidence that the "adult day services center" area of the facility has been inspected and approved for fire and environmental safety standards using the Life Safety Code by the Tennessee Department of Health's Division of Health Care Facilities prior to use as an adult day services center.

(3) Fire Safety Requirements.

(Rule 1240-7-10-.09, continued)

(a) Prior to issuance of a temporary license and each annual license thereafter, an adult day services center shall receive an approved fire safety inspection by an appropriate fire inspection official as directed by the State Fire Marshal's office of Tennessee Department of Commerce and Insurance.

(b) A separate fire safety inspection as specified in subparagraph (a) above is not required for centers that:

1. Receive approval in compliance with the law as a licensed nursing home, a licensed hospital, a licensed assisted-living facility, a licensed home for the aged or a licensed residential hospice by the Tennessee Department of Health's Division of Health Care Facilities.

2. Are located on the premises of a licensed nursing home, a licensed hospital, a licensed assisted-care living facility, a licensed home for the aged or a licensed residential hospice and provide evidence that the "adult day services center" area of the facility has been inspected and approved for fire safety standards using the Life Safety Code by the Tennessee Department of Health's Division of Health Care Facilities.

(4) Environmental Safety Requirements.

(a) Prior to issuance of a temporary license and each annual license thereafter, an adult day services center shall receive an approved environmental inspection by an appropriate health inspection official as directed by the Tennessee Department of Health.

(b) A separate environmental inspection as specified in subparagraph (a) above is not required for centers that:

1. Receive approval in compliance with the law as a licensed nursing home, a licensed hospital, a licensed assisted-care living facility, a licensed home for the aged or licensed residential hospice by the Tennessee Department of Health's Division of Health Care Facilities.

2. Are located on the premises of a licensed nursing home, a licensed hospital, a licensed assisted living facility, a licensed home for the aged or a licensed residential hospice and provides evidence that the "adult day services center" area of the facility has been inspected and approved for environmental standards using the Life Safety Code by the Tennessee Department of Health's Division of Health Care Facilities.

(c) The director of the adult day services center shall immediately alert the Department of any deficiency identified by the Tennessee Department of Health during the course of an inspection.

(d) No license for an adult day services center located on the premises of, and operated by, a licensed nursing home, a licensed hospital, a licensed assisted-care living facility, a licensed home for the aged, or a licensed residential hospice may be issued without the written approval of the Tennessee Department of Health and the Tennessee Department of Human Services that an adult day services program may be operated at the same time.

(Rule 1240-7-10-.09, continued)

(5) The director of the adult day services center is responsible for supplying documentation of compliance with the fire and environmental inspections required in paragraphs (3) and (4) above to the Department upon request.

(6) The center shall have space on the ground level floor, or that is accessible by elevator or wheelchair ramps or other assistive devices, to accommodate a full range of program activities and services, which shall include, but are not limited to:

(a) Space for individual and group activities;

(b) Private office space to permit staff to work effectively;

(c) Storage space for program and operating supplies; and

(d) Space for special therapies, a rest area, and a designated area to isolate the ill, which includes comfortable resting furniture that would allow participants to recline or lie down. This may be in one room or in more than one room.

(7) At least forty (40) square feet of indoor activity space per participant shall be provided, excluding floor space for bathrooms, storage areas, and rooms designated for staff use only.

(8) Adult day services centers located on the premises of, on the grounds of, or adjacent to other operations such as licensed nursing homes, licensed hospitals, licensed assisted-care living facilities, licensed residential homes for the aged, or licensed residential hospices may utilize, on a staggered or shared basis, the same facilities such as dining rooms, recreation rooms, or physical therapy rooms, provided that:

(a) Overcrowding does not occur;

(b) The staff participant ratio set forth in 1240-07-10-.12 is maintained; and

(c) The space in these other facilities shall not count toward the space requirements necessary for the conduct of the adult day services center as specified in paragraph (6) above.

(9) Programs that are located on the premises of a licensed nursing home, a licensed hospital, an assisted-care living facility, a licensed home for the aged or a licensed residential hospice or other programs in a multi-use facility shall have dedicated space that provides at least forty (40) square feet of indoor activity space per participant separate from other programs and activities in the building.

(10) Involvement of adult day services center participants in other activities in the building with participants from other programs shall be on a planned basis, as a part of the adult day services program, and supervised by adult day services staff.

(11) The center and any designated outdoor space shall be kept clean, safe and free from hazards and offensive odors.

(12) Program Equipment.

(a) Sufficient and appropriate seating space for all participants shall be provided.

(b) Sufficient table or tray space for dining and activities shall be provided.

(c) All equipment shall be safe and well maintained.

(d) Space and equipment shall be arranged for ease of use, accessibility, and to minimize noise and distractions.

(13) Safety Equipment.

The following safety equipment shall be kept on site:

(a) A first aid kit that contains at least the following: sterile and adhesive bandages, antiseptics, sterile compresses, scissors, an oral or topical thermometer and adhesive tape;

(b) Blankets;

(c) Wheelchair;

(d) Blood pressure cuff or scale; and

(e) Locked storage space for drugs.

1. If medicine requiring refrigeration is kept in a refrigerator used for food storage, the medicine shall be put in a leak proof locked container and be properly labeled.

2. Keys for these storage containers shall be inaccessible to participants.

(14) Toilet Facilities.

(a) For the first fifteen (15) participants in the adult day services center, there shall be a minimum of two (2) toilets in the adult day services center, one (1) of which shall be wheelchair accessible. An additional toilet shall be available for each additional ten (10) participants.

(b) Fifty percent (50%) of the toilets in the adult day services center shall be wheelchair accessible.

(15) The heating/cooling system shall operate adequately to assure the comfort and safety of the participants.

(16) The center shall have a working land line telephone.]

Authority: *T.C.A. §§4-5-201 et seq.; 71-2-401 et seq.* ***Administrative History:*** *Original rule filed December 14, 1999; effective February 27, 2000.*

1240-[0]7-10-~~.09~~[11] FOOD SERVICE.

~~(1) Each facility will comply with the Tennessee Department of Health's Food Service Establishment laws at *TCA §§68-14-301 et seq.* and implementing regulations; provided, however, an adult day care center located on the premises of or operated by a licensed nursing home, a licensed hospital, a licensed assisted-care living facility, a licensed home for the aged, or a licensed residential hospice, shall be deemed to be in compliance with this section if food service is operated in compliance with the regulations governing those designated facilities. However, if food preparation at the adult day care center is not included in the facility's annual inspection by the Tennessee Department of Health's Division of Health Care Facilities survey team, then arrangements must be made for a separate initial and~~

~~annual inspection by the local health department, and a permit under the Food Service Establishment Laws and Regulation must be obtained. The adult day care center director is responsible for supplying documentation of compliance.~~

~~(2) The program shall offer one (1) or more meals if the participants do not provide their own meal.~~

~~(3) Food preparation must be conducted in a safe and sanitary manner. Effective equipment shall be provided and procedures established to maintain food at proper temperature during preparation and service. Foods shall be prepared by appropriate methods to conserve their nutritive value and enhance their flavor and appearance.~~

~~(4) Nutritional needs shall be met in accordance with the Adult Meal Pattern Requirements as recommended by the United States Department of Agriculture (USDA)'s Food and Nutrition Service Program and in accordance with each caregiver's instructions and physician's orders, if applicable.~~

~~(5) Food shall be cut, chopped or ground to meet individual participant's needs. Participants requiring help in eating shall be assisted. Adaptive self-help devices shall be provided where required in such a manner as to contribute to the participant's independence in eating.~~

~~(6) The center must post its weekly meals menu in a prominent place so that it may be seen by the participants and their responsible parties.~~

[(1) All adult day services centers shall comply with the applicable food service standards of the Tennessee Department of Health, including obtaining the necessary permit and submitting to all required inspections. The director of the adult day services center is responsible for maintaining and supplying documentation of compliance.

(2) One (1) snack shall be provided for participants who are in care for at least four (4) hours in any given day. If the four (4) hour period covers a normal meal hour, a meal shall be served in lieu of a snack, or two (2) snacks if the center is advised that the participant has been, or will be, fed this meal at his/her home.

(3) Participants shall be encouraged, but never forced, to eat.

(4) Food preparation shall be conducted in a safe and sanitary manner as required by the state health inspector.

(5) Nutritional needs shall be met in accordance with the Dietary Guidelines for Americans published by the U.S. Department of Health and Human Services and the Department of Agriculture and in accordance with each caregiver's instructions and physician's orders, if applicable.

(6) Food shall be cut, chopped or ground to meet individual participant's needs/desires.

(7) Participants requiring help in eating shall be assisted in such a manner that maintains their dignity.

(8) Adaptive self-help devices shall be provided where required in such a manner as to contribute to the participant's independence in eating.

(9) The center shall post a current menu in a prominent place so that it may be seen by the participants and their responsible parties in order to allow for participant choice.]

Authority: *T.C.A. §§4-5-201 et seq.; 71-2-401 et seq.* ***Administrative History:*** *Original rule filed December 14, 1999; effective February 27, 2000.*

1240-[0]7-10-.10[2] STAFFING [AND SUPERVISION].

~~(1) Staffing Patterns.~~

~~(a) Staff of the center shall be adequate in number and skill to ensure the safety and proper supervision of the participants and to carry out the objectives of the center.~~

~~(b) Direct care staff. The direct staff ratio shall consist of at least (1) direct care staff person for every eight (8) participants. "Direct care staff" are those individuals whose regular job responsibilities place them in face-to-face contact with participants.~~

~~(c) Volunteers may be considered in determining direct care staff/participant ratios; provided that the volunteers' education and training meet the minimum requirements of staff positions being filled. Volunteers who do not meet these minimal requirements may not be counted in the required ratio, but may assist staff and other qualified volunteers. One (1) responsible paid direct care staff member must, however, be present at all times if volunteers are used. Volunteers who do not meet the minimum qualifications must always be supervised by a direct care staff member.~~

~~(d) Use of full time equivalency positions.~~

~~1. An adult day care center located on the premises of and operated by a licensed nursing home, a licensed hospital, a licensed assisted-care living facility, a licensed home for the aged, or a licensed residential hospice may use full time equivalency (FTE) ratios; provided, the total time of all staff used in the FTE methodology meets the staff:participant ratio required in subparagraph (b). Further, any adult day care center affiliated with a licensed nursing home, a licensed hospital, a licensed assisted-care living facility, a licensed home for the aged, or a licensed residential hospice using full time equivalency ratios, must provide a written plan which is available to the Department demonstrating that the safety and emergency needs of the participants will be assured at all times if the FTE method is used.~~

~~2. FTE policy: For activities, conducted inside the facility, which involve the participation of all participants, such as the viewing of movies, watching special presentations, or observing performances, it may not be necessary to have a 1:8 staff:participant ratio, and a lesser number of staff may be used. There can, however, never be less than two (2) direct care staff present when there are nine (9) or more participants. For activities outside the facility such as field trips, staff numbers exceeding the 1:8 staff ratio may need to be utilized as necessary to provide adequate supervision for the participants due to the physical or mental status of the participants.~~

~~(e) At least one (1) direct staff member trained in cardiopulmonary resuscitation (CPR), first aid, fire safety, and the Heimlich maneuver shall be present at all times.~~

~~(2) Personnel Procedures~~

~~(a) Individual staff records shall be maintained for all employees and any volunteers included in the staff of the adult day care center. These records will include the following:~~

(Rule 1240-7-10-.10, continued)

1. Name, telephone number, addresses, including all residence and work or volunteer service addresses of staff within the twelve (12) month period prior to hiring as an employee or acceptance as a volunteer or within twelve (12) months of the application for the center license for existing license applicants, and the age, race, and sex of staff or volunteers, which are necessary to aid in accurately performing the criminal record background check;

2. Evidence of criminal background check.

(i) The criminal records background check shall be conducted for all previously undocumented employees or volunteers included in the staff:participant ratio prior to the issuance of the new license.

(ii) The background check shall be accomplished by contacting and requesting any information regarding the criminal background of such employees or volunteers from any county sheriff's office or other local law enforcement authority of the county in the state where such employee or volunteer has resided and, in addition, if different from the county of residence, the county in which such person also worked or volunteered, for the twelve (12) month period immediately prior to the start of employment or volunteer service in the adult day care center.

(iii) The abuse registry operated by the Tennessee Department of Health pursuant to *TCA §§68-11-1001 et seq.* shall also be contacted by the center to obtain any available information relative to the employee/volunteer's background.

(iv) The information required by this part may be obtained through use of a public or private entity which will secure the criminal background records check from the appropriate law enforcement authorities and which will check the Tennessee Department of Health registry, in the manner described above.

(v) Evidence of the background check contained in the records shall include, at a minimum, the recording of a signed statement by the director or other staff person of the center, or the provision by an entity described in subpart (iv) of a letter to the adult day care center, verifying the names of law enforcement officials or agencies contacted and the dates such agencies and the abuse registry were contacted by the center or by the entity utilized by the center, and the results of the inquiry;

3. Documentation in the employee's or volunteer's record of efforts to obtain the criminal background check and to contact the abuse registry;

4. Educational background;

5. Employment history and references;

6. Annual performance evaluation;

7. Evidence of the absence of tuberculosis if the staff person or volunteer:

(i) is an immigrant to this country within the last twelve (12) months;

(ii) is known to be human immunodeficiency virus (HIV) positive;

(iii) has been recently exposed to tuberculosis; or

(iv) has had a cough for three (3) weeks or longer, in which case the person should be evaluated by a physician for tuberculosis prior to employment or use as a volunteer.

8. A person to be notified in case of an emergency involving the employee or volunteer.

(b) A copy of the center's personnel policies shall be available to be read by employees.

(3) Training: Staff shall be provided with orientation and on-going training/education to perform their duties. Staff development training shall be provided to all employees on a regular basis for at least eight (8) hours a year. This training may include consultation, workshops, or conferences as well as in-service education provided by the agency. Training must include education to enable staff to recognize the signs and symptoms of abuse, neglect or exploitation of an adult within the meaning *of TCA §71-6-101 et seq.*, as well as the duty to report abuse, neglect or exploitation of an adult to the Department pursuant to *TCA § 71-6-103.*

(4) Qualifications.

(a) The adult day care center director shall meet one (1) of the following requirements:

1. A minimum of a bachelor's degree in social services, health, and/or related fields and one (1) year of experience working in social services, health, and/or related fields; or a minimum of a bachelor's or master's degree (not related to social services, health, or related fields), but two (2) years work experience in social services, health and/or related fields;

2. Sixty (60) semester hours (formal college training) in social services, health, and/or related fields and two (2) years of work experience;

3. A minimum of a master's degree in health, social services, and/or related fields; or

4. A high school diploma or its equivalent, and five (5) years of full time work experience (in a managerial capacity) in social services, health and/or related fields.

5. Persons serving in the capacity of director of a facility which meets the requirements for licensing as an adult day care center on the effective date of these rules shall be deemed to meet the qualifications of this paragraph.

6. In an adult day care center located on the premises of, and operated by a sponsoring facility consisting of either a licensed nursing home, a licensed hospital, a licensed assisted-care living facility, a licensed home for the aged, or licensed residential hospice, the licensed facility's administrator may designate a professional staff member to directly and routinely supervise the adult day care center's operations if this person meets the qualifications of parts 1.-5. of this subparagraph and paragraph (4). The person appointed by the facility administrator will be considered to be the full-time director of the adult day care center by the Department, and this person will be held responsible for the center's functions and activities. For purposes of this part, it shall be deemed

~~that the sponsoring facility administrator is the director of the licensed sponsoring facility, and that the director of the adult day care center is under the supervision of the sponsoring facility's administrator.~~

~~(b) All persons included in the staff:participant ratio shall be able to read and write English.~~

~~(c) A minimum of seventy-five percent (75%) of persons included in the staff:participant ratio shall have a high school diploma or GED.~~

~~(d) Age requirements; exceptions.~~

~~1. All employees and volunteers shall be at least eighteen (18) years of age.~~

~~2. An exception to the minimum age requirement shall be made if the person is a student under eighteen (18) years of age, and enrollment in a Vocational Education Program, Job Training or other health career development program which is included in the curriculum of an accredited high school is verified, and these students may be employed, or serve as volunteers, but only on a part time or temporary basis. These students may be counted in the participant/staff ratio if they otherwise meet the minimum qualifications for regular staff persons who perform the functions or activity being provided. However, they must be under the supervision of a full-time staff member at all times.~~

~~3. Further, other students enrolled in high school who are ages fourteen (14) through seventeen (17) years of age may provide companionship services for the participants or may provide office or administrative services to the center, but they shall not be counted in the participant/staff ratio. No students under eighteen (18) years of age shall be in positions of supervision of staff or other volunteers, and under no circumstances will they be left alone in an adult day care center without at least one staff member, eighteen (18) years of age or older, being present.~~

~~(5) Persons Charged with or Convicted of Certain Criminal Activity. No employee or volunteer or any other person who is currently charged with or who has been convicted of a crime involving the misuse of funds, fraud, physical abuse or assault of any degree, or any degree of homicide against any person, or the illegal use or possession or distribution of drugs or alcohol, shall work with or have access to the participants at the adult day care center.~~

~~(6) Persons Determined to Have Abused, Neglected or Exploited an Adult. No employee or volunteer or any other person shall work with, or have access to, the participants at the adult day care center who is the subject of a restraining order or other injunctive relief entered by any court of competent jurisdiction following an investigation by either the Department of Human Services, or by a state or local agency with similar responsibilities in any other jurisdiction, and a finding by such agency that the employee, volunteer or other person had abused, neglected or exploited an adult within the meaning of *TCA §§71-6-101 et seq.*, or a similar statute of such other jurisdiction.~~

[(1) General Staff Requirements.

(a) At least one staff member who can read, write, and speak English shall always be available on site.

(b) A minimum of seventy-five percent (75%) of persons included in the staff:participant ratio shall have a high school diploma or GED.

(Rule 1240-7-10-.10, continued)

(c) Age requirements.

1. Except as provided in part 2 below, all employees and volunteers shall be at least eighteen (18) years of age.

2. Students enrolled in high school who are at least fourteen (14) years of age:

(i) May provide office or administrative services to the center;

(ii) May provide companionship services for the participants but may not be left alone without the presence of at least one qualified staff member, eighteen (18) years of age or older;

(iii) May not supervise staff or volunteers; and

(iv) Shall not be counted in the staff:participant ratio.

(d) A volunteer shall not be used to meet the staff:participant ratio unless his/her education and training meets the minimum qualifications required of direct care staff and he/she meets the background check requirements contained in these rules. A name, address, telephone number(s), and dates of service shall be recorded for each volunteer in the personnel records of the center.

(e) There shall be present at all times at least one (1) direct care staff person who is trained and certified in cardiopulmonary resuscitation (CPR) and trained in first aid, the Heimlich maneuver, and the center's fire, safety, and emergency plans.

(f) In the absence of the director, an assistant director or other staff member shall act in the place of the director, and all staff shall be notified of this designation.

(g) Each center shall maintain an organizational chart for the facility and any updates will be provided to the Department.

(2) Director Qualifications.

(a) The director of the adult day services center shall have one or more of the following qualifications:

1. A minimum of a bachelor's degree in social services, health, and/or related fields and one (1) year of experience working in social services, health, and/or related fields; or

2. A minimum of a bachelor's or master's degree (not related to social services, health, or related fields) with two (2) years work experience in social services, health and/or related fields; or

3. Sixty (60) semester hours (formal college training) in social services, health, and/or related fields and two (2) years of work experience in social services, health and/or related fields; or

4. A minimum of a master's degree in health, social services, and/or related fields; or

5. A high school diploma or its equivalent, and five (5) years of full time work experience (in a managerial capacity) in social services, health and/or related fields.

(b) An adult day services center located on the premises of, and operated by, a sponsoring facility consisting of either a licensed nursing home, a licensed hospital, a licensed assisted-care living facility, a licensed home for the aged, or licensed residential hospice, shall comply with all adult day services licensing requirements.

(3) Training.

(a) Staff shall complete orientation and eight (8) hours of annual training relevant to the performance of their duties recognized by the Department.

1. At least 50% of all training hours completed must be a "live" presentation in a classroom, one-on-one or group Technical Assistance (TA) session, or similar "in person" setting.

2. The additional 50% of total training hours to meet licensing rules can come from online, CD-ROM, video, self-study, including correspondence, in-house or director/staff led training (maximum of 4 hours annually), or any combination thereof.

(b) Within thirty (30) days of beginning his/her duties, each paid or unpaid staff person shall complete department-recognized training on universal precautions, fire safety and emergency plans.

(c) Within thirty (30) days of beginning his/her duties, each staff person shall complete department-recognized training on the signs and symptoms of abuse, neglect or exploitation of an adult as specified by T.C.A. § 71-6-102 et seq., as well as the duty to report to the Department any abuse, neglect or exploitation of an adult as required by T.C.A. § 71-6-103.

(4) Staff Records.

(a) An employment record shall be maintained on site for each current employee and volunteer included in the staff of the adult day services center.

(b) Hard copy or electronic files are acceptable to meet the record requirements of this paragraph.

(c) An employment record shall be maintained by the center for at least three years after cessation of employment or volunteer service.

(d) An employment record for each employee and volunteer used to meet ratios shall include the following:

1. Name, telephone number, and all addresses associated with the individual, both residential and employment-related, within the twelve (12) month period prior to the hiring as an employee or acceptance as a volunteer;

2. Signed and completed criminal history disclosure form;

3. Verification of criminal and juvenile background check;

4. Verification of the vulnerable persons and sex offender registries results and review of the protective service records of the Departments of Children's and Human Services;

5. Evidence of educational background;

6. Employment history and documented verification of three (3) references;

7. Job description;

8. Annual performance evaluation;

9. Verification of required training hours;

10. Evidence of the absence of tuberculosis if a staff person or volunteer was required to be screened for tuberculosis based on the current Department of Health Guidelines; and

11. A person to be notified in case of an emergency involving the employee or volunteer.

(5) Staffing Patterns.

(a) Staff of the center shall be adequate in number and skill to ensure the safety and proper supervision of the participants, meet the individual support needs of the participants, and to carry out the objectives of the center.

(b) The direct care staff to participant ratio shall consist of at least one (1) direct care staff person for every eight (8) participants. The required number of direct care staff shall be maintained onsite.

1. Staff may assist participants with tasks as needed apart from the group, and participants may engage in activities beyond the sight of staff.

2. Staff shall know the whereabouts of participants and provide a level of supervision consistent with the needs of the participant.

(c) Volunteers may be considered in determining direct care staff:participant ratios; provided that the volunteer's education and training meet the minimum qualifications required of direct care staff. Volunteers who do not meet these minimal requirements may not be counted in the required ratio and shall always be directly supervised by at least one (1) responsible paid direct care staff member, but may assist staff and other qualified volunteers subject to the criminal background requirements set forth in this rule and T.C.A. § 71-2-403.

(d) Use of Full-Time Equivalency Positions.

1. An adult day services center located on the premises of, and operated by, a licensed nursing home, a licensed hospital, a licensed assisted-care living facility, a licensed home for the aged, or a licensed residential hospice may use full-time equivalency (FTE) ratios; provided, the total time of all staff used in the FTE methodology meets the staff:participant ratio required in subparagraph (b). Further, any adult day services center affiliated with a licensed nursing home, a licensed hospital, a licensed assisted-care living facility, a licensed home for the aged, or a licensed residential hospice using full-time equivalency ratios shall

provide a written plan which is available to the Department demonstrating that the safety and emergency needs of the participants will be assured at all times if the FTE method is used.

2. A "full-time equivalency ("FTE") methodology" involves the use of one or more available staff on a part-time basis to meet required staff:participant ratios at the adult day services center so that the total number of hours devoted to providing care and supervision of the participants by the various staff equals the staff time necessary to meet the staff:participant ratios which would be provided if one, or more, staff were utilized on a full-time basis to provide appropriate care and supervision to the participants.

(6) Responsibility of Center for Supervision of Participants.

(a) The director of the center shall maintain a system of supervision that ensures the participant's autonomy and freedom of choice:

1. Is appropriate to each participant's individual needs;

2. Ensures each participant's health and safety; and

3. Allows center personnel to know the whereabouts of each participant and to allow for immediate physical access.

(b) The system shall include a mandatory visual inspection of all areas of the building and grounds immediately prior to closing the center for the day in order to ensure that no participant has remained in any part of the center's facilities.

(c) Devices such as mirrors, video equipment used for live stream viewing, electronic sound monitors, etc. may be used as appropriate to meet the supervision requirements.

(d) Staff shall be aware of each participant's personal care needs while respecting the privacy of the participant.

(e) Required Staff:Participant Ratios.

1. The center shall have a plan that enables staff, in an emergency situation, to access additional staff who can respond quickly in order to maintain the required staff:participant ratio.

2. The minimum required staff:participant ratio must be met during special activities such as outings in order to provide adequate supervision for the participants during these activities.]

Authority: *T.C.A. §§4-5-201 et seq.; 71-2-401 et seq.* ***Administrative History:*** *Original rule filed December 14, 1999; effective February 27, 2000.*

~~**1240-7-10-.11 RELEASE OF INFORMATION.**~~

~~The licensee and center staff must not disclose or knowingly permit the use of any information concerning a participant or the participant's family except as required by law or regulation, or with the permission of the participant's responsible party; provided, however, the director and any staff shall provide any information to law enforcement or adult protective service staff of the Department investigating any allegations of abuse, neglect or exploitation of any participant and shall allow access to all records of the~~

(Rule 1240-7-10-.12, continued)

~~center or the participant for the purpose of the investigations of such allegations or for purposes of conducting any licensing functions.~~

Authority: *T.C.A. §§4-5-201 et seq.; 71-2-401 et seq.* ***Administrative History:*** *Original rule filed December 14, 1999; effective February 27, 2000.*

1240-[0]7-10-.1~~2~~[3] MEDICATION ~~ADMINISTRATION~~.

~~(1) The center must have a written policy which allows a participant to self-medicate or which allows staff to provide assistance to the participant for this purpose.~~

~~(2) Administration of Medication.~~

~~(a) Self-administration of medication permits staff assistance to participants for reading labels, opening bottles, reminding participants of their medication, checking the self-administered dose against the dosage shown on the prescription, observing the participant while taking medication, reassuring participants that they are taking the correct dosage and reporting any noticeable changes in the condition of a participant to a physician and to the responsible party.~~

~~(b) Under no circumstances shall an employee or volunteer administer prescribed and non-prescribed, internal and external medication to a participant unless the employee is licensed to do so.~~

~~(3) List of current prescriptions and non-prescription medicines being taken by a participant must be maintained by the center staff and medications or drugs which are to taken by the participant must be labeled with the participant's name, the name of the medication, dosage strength and frequency.~~

~~(4) The center shall maintain records of medications taken by the participant, including the date, dosage taken and time the medication was taken by the participant.~~

~~(5) All medication errors, drug reactions, or suspected over-medication must be reported to the physician who prescribed the drug and to the participant's responsible party.~~

~~(6) Discontinued and outdated drugs and containers with worn, illegible or missing labels must be returned to the responsible party or disposed of properly.~~

~~(7) An adult day care center located on the premises of and operated by a licensed nursing home, a licensed hospital, a licensed assisted-care living facility, a licensed home for the aged, or a licensed residential hospice shall be deemed to meet the requirements of this rule if, for its adult day care participants, it utilizes the same system for medication recordkeeping as is used for its other patients/clients/residents; provided, however, the records kept for the adult day care center participants must be placed in individual files separate from the files of the other patients/clients/residents of the facility and shall include the information in 1240-7-10-.12(4).~~

[(1) The center shall have a written policy which allows a participant to self-medicate or which allows staff to supervise or provide assistance to the participant for this purpose in accordance with any requirements set by the participant's health care practitioner.

(2) Appropriate assistance or supervision by staff includes reading labels, opening bottles, reminding participants to take medication, checking the self-administered dose against the dosage shown on the prescription, observing the participant while taking medication,

reassuring participants that he/she is taking the correct dosage, and reporting any noticeable changes in the condition of a participant to a physician and/or to the responsible party.

(3) Under no circumstances shall an employee or volunteer provide any oral or topical medication, whether prescription or non-prescription, to a participant unless under the direction of the participant's physician or by written authorization of the responsible party.

(4) A list of current prescription and non-prescription medicines including herbals, vitamins and other supplements being taken by each participant shall be maintained by the center and updated as changes occur.

(5) All medications shall be stored in a container, labeled with the participant's name, the name of the medication, dosage strength, frequency, method of administration, prescribing physician, and special instructions.

(6) For participants requiring assistance, the center shall maintain daily records of medications taken by the participant, including the date, the dosage, the time the mediation was taken and the signature of any staff assisting.

(7) The center shall document and report immediately to appropriate parties all medication errors.

(8) Discontinued and outdated drugs and containers with worn, illegible or missing labels shall immediately be returned to the responsible party or disposed of properly.

(9) An adult day services center located on the premises of and operated by a licensed nursing home, a licensed hospital, a licensed assisted-care living facility, a licensed home for the aged, or a licensed residential hospice shall be deemed to meet the requirements of this rule if, for its adult day services participants, it utilizes the same system for medication recordkeeping as it used for its other patients/clients/residents; provided, however, the records kept for the participants of the adult day services center shall be placed in individual files separate from the files of the other patients/clients/ residents of the facility and shall include the information required by this section.

(10) Medication records shall be made available to emergency medical personnel whether treatment is rendered on site or participant is transported to a health care facility.]

Authority: *T.C.A. §§4-5-201 et seq.; 71-2-401 et seq.* ***Administrative History:*** *Original rule filed December 14, 1999; effective February 27, 2000.*

1240-[0]7-10-.13[4] TRANSPORTATION.

~~(1) The vehicle used either by the adult day care center, or the vehicle used under the sponsorship or control of the center, which is used for transportation of the participants, must be covered by vehicle liability insurance.~~

~~(2) Drivers of the vehicles used to transport participants must have a proper license and endorsement required for the transportation of the number of passengers transported and the vehicle size and weight as required in *Title 55, Chapter 50 of the Tennessee Code Annotated.* The adult day care center shall have this information available for purposes of review and documentation by the Department's staff.~~

~~(3) Vehicles used to transport participants shall be maintained in safe working condition.~~

~~(4) Management Responsibility, Required Verification of Adult's Transportation Status and Transportation Training Requirements.~~

(Rule 1240-7-10-.13, continued)

(a) Management Responsibility.

1. If an adult day care center provides transportation, or if transportation is provided under its direction or control either by sponsorship or by contract with other transportation providers, the center's management shall be fully responsible for the transportation of adults between the adult's home (or place of dwelling) and the center; to and from other locations; and on field trips.

2. The adult day care center is responsible for developing a transportation plan which ensures the safety of participants. However, the procedures in subparagraph (b) will be required as minimal requirements to be included in this plan.

(b) Verification Procedures.

1. Immediately upon unloading the last participant from the vehicle and at the time the vehicle is parked and will be left unattended at the center, or on a field trip or some other location away from the center, the driver, or other staff person, shall ensure that all the participants being transported have been unloaded.

2. The driver, or other staff person shall physically walk through the vehicle to check all seats and all interior spaces of the vehicle. The time of the physical inspection shall be recorded and turned in to a staff member at the center each day.

(c) Vehicle Occupancy.

1. Participants may be left in the vehicle, for a brief period of time, while the driver assists a disabled or impaired participant to enter his home, enter a doctor's office, or other similar circumstance. However, the driver will only be away from the vehicle long enough to assist the participant to his destination and the driver will promptly return to the vehicle. Participants will not be left unattended in the vehicle over five (5) minutes. Also, during these times when the driver is outside the vehicle, for purposes of assisting another participant, or for official transportation related reasons, the driver will not be more than a distance of five hundred (500) feet away from the vehicle.

2. The driver will only leave the vehicle to assist participants, for emergency reasons, or for purposes related to the transportation and safety of the vehicle's occupants. The driver will not be permitted to leave the vehicle for personal reasons, such as carrying out personal errands, buying personal items, taking coffee breaks, or other matters which are not related to the transportation of participants.

(d) Staff training.

1. All staff responsible for transporting adults shall receive adequate training regarding the transportation rules contained in this Chapter, as well as any other agency procedures which are not in conflict with these rules, prior to first performing those duties.

2. All staff responsible for transportation shall receive such training no less than every six (6) months thereafter.

3. Completion of such training shall be documented in the staff 's records.

(Rule 1240-7-10-.13, continued)

~~(5) The participant shall not be on a vehicle operated by the center or under the center's direction or control or through contract provided transportation for more than one and one-half hours without the opportunity for a rest stop.~~

~~(6) All facility owned vehicles used to transport participants must have an operational fire extinguisher and first aid kit on the vehicle.~~

[(1) Center Responsibility.

(a) The adult day services center shall be fully responsible for the care and supervision of any participant for whom it provides transportation whether by center staff or by contract with a third party provider or otherwise.

(b) The adult day services center shall develop a written transportation plan to include routine and emergency procedures to provide for the safety of participants. Accidents, medical emergencies, and escort issues shall be addressed.

(2) Requirements for Tracking Participants during Transportation.

(a) The driver of the vehicle, or another designated staff person riding on the vehicle, shall use a log to record the following information for each trip made by each vehicle:

1. First and last names of each participant;

2. Run time;

3. Pick-up place and time; and

4. Delivery place and time.

(b) The log shall be updated as each participant enters or exits the vehicle.

(c) When the last participant exits the vehicle, the driver, or other designated staff person, shall physically inspect all seats and interior spaces by walking through the vehicle to ensure that all the participants being transported have exited the vehicle. The time and place of the physical inspection shall be recorded on the log and turned into the center at the end of each day.

(d) The driver/center shall maintain a plan for contacting the responsible parties or emergency contacts for participants who are absent at scheduled pick-up locations.

(3) Vehicle Occupancy.

(a) The driver will only be away from the vehicle long enough to assist each participant to his/her destination after which the driver will promptly return to the vehicle.

(b) The driver shall not leave the vehicle for personal reasons, or any reason not directly related to the transport or safety of the participants.

(4) Any vehicle used either by the adult day services center, or under the sponsorship or control of the center, which is used for transportation of participants shall be covered by vehicle liability insurance.

(5) Vehicles used to transport participants shall be maintained in safe working condition and shall comply with all applicable state laws.

(6) Participants shall not be on a vehicle for more than one and one-half hours without the opportunity for a rest stop.

(7) All vehicles used to transport participants shall have an operational fire extinguisher and first aid kit and a bloodborne pathogens kit on the vehicle.

(8) Transportation Staff Qualifications.

Drivers of any vehicle used to transport participants shall have a proper license and endorsement required for the transportation of the number of passengers transported and the vehicle size and weight as required in Tennessee Code Annotated, Title 55, Chapter 50.

(a) All staff (volunteer and employees) responsible for transporting participants shall receive adequate training regarding these laws, as well as any center-specific procedures, which are not in conflict with these laws, prior to first performing transportation duties.

(b) All staff responsible for transportation shall receive such training no less than every six (6) months thereafter.

(c) Completion of such training shall be documented in the staffs'/volunteers' records.

Authority: *T.C.A. §§4-5-201 et seq.; 71-2-401 et seq.* ***Administrative History:*** *Original rule filed December 14, 1999; effective February 27, 2000.*

1240-[0]7-10-.14[5] [HEALTH AND]SAFETY ~~REQUIREMENTS~~.

~~(1) The adult day care center must have a written emergency plan and have a posted plan for evacuation of participants, staff, and visitors in case of fire or other emergencies such as storms, flooding, and chemical emergencies.~~

~~(2) Telephone numbers for the following must be posted:~~

~~(a) Ambulance service;~~

~~(b) Police department;~~

~~(c) Fire department;~~

~~(d) Poison control center; and~~

~~(e) The Tennessee Department of Human Services, Adult Protective Services.~~

~~(3) Fire Safety Requirements.~~

~~(a) Initial Approval. Unless otherwise governed by currently adopted regulations of the Tennessee Department of Health's regulations for health care facilities, all reviews for and approvals of state building and fire codes and for new and existing adult day care facilities will be conducted initially, prior to licensing, under the jurisdiction of the State Fire Marshal or a representative of the State Fire Prevention Division, and these reviews and approvals shall be completed pursuant to the requirements of *TCA §68-120-101*. The reviews and approvals for adult day care centers shall use the same standards as are utilized by the State Fire Marshal for providers of child care in child care centers licensed by the Department of Human Services. Each licensee shall~~

~~comply at all times with the applicable fire safety and building codes as directed by local and state fire inspection officials.~~

~~(b) If a licensed nursing home, a licensed hospital, a licensed assisted-care living facility, a licensed home for the aged or a licensed residential hospice which operates or has an adult day care center on its premises provides evidence that the "adult day care center" area of the facility has been inspected and approved for fire safety standards by the Tennessee Department of Health's Division of Health Care Facilities, this evidence will satisfy the requirements of this paragraph. If such evidence is not provided, proof of an approved inspection by an appropriate fire inspection official must be received by the Department of Human Services. The director of the adult day care program will be responsible for providing proof of this inspection.~~

~~(c) All adult day care centers licensed by the Department must receive an approved fire safety inspection by an appropriate fire inspection official prior to re-licensing, or must receive annual approval as a licensed nursing home, a licensed hospital, a licensed assisted-care living facility, a licensed home for the aged or a licensed residential hospice by the Tennessee Department of Health's Division of Health Care Facilities. If evidence of approval by the Department of Health is not provided, proof of an approved fire safety inspection by an appropriate fire inspection official must be received by the Department of Human Services. The adult day care center director is responsible for supplying documentation of compliance.~~

~~(4) Environmental Safety Requirements.~~

~~(a) Initial Approval. Facilities that have been unlicensed, relocated, and/or renovated, as well as new construction, must be inspected and approved initially by an environmentalist from the Tennessee Department of Health. The major categories included in this inspection are: water supply; sewage disposal; plumbing; solid waste; toilets and bathing fixtures; floors, walls and ceilings; doors and windows; furniture and bedding; lighting, heating, and ventilation; insect and rodent control; (animal control where appropriate) and over-all building safety. Although portions of this inspection overlap with food service inspection and fire inspection, this is a separate inspection and shall not be considered as a substitute for those other inspections.~~

~~(b) If a licensed nursing home, a licensed hospital, a licensed assisted living facility, a licensed home for the aged or a licensed residential hospice which operates or has an adult day care center on its premises provides evidence that the "adult day care center" area of the facility has been inspected and approved for environmental standards by the Tennessee Department of Health's Division of Health Care Facilities, this evidence will satisfy the requirements of this paragraph. If such evidence is not provided, proof of an approved inspection by an environmentalist of the local health department must be received by the Department of Human Services. The director of the adult day care program will be responsible for providing proof of this inspection.~~

~~(c) Annual Inspection. All facilities must be inspected and approved annually by an environmentalist of the Tennessee Department of Health or must receive annual approval as a licensed nursing home, a licensed hospital, a licensed assisted-care living facility, a licensed home for the aged or licensed residential hospice by the Tennessee Department of Health's Division of Health Care Facilities. If such evidence is not provided, proof of an approved inspection by an environmentalist of the local health department must be received by the Department of Human Services. The adult day care center director is responsible for supplying documentation of compliance.~~

(Rule 1240-7-10-.14, continued)

~~(5) If, during the course of an inspection of a licensed nursing home, a licensed hospital, a licensed assisted-care living facility, a licensed home for the aged or a licensed residential hospice by staff of the Tennessee Department of Health, any deficiencies are identified which relate to the facility's adult day care program, the adult day care center director representing the facility will be responsible for ensuring that the Tennessee Department of Human Services is promptly notified of the deficiency.~~

~~(6) Staff are required to report cases of suspected abuse, neglect, and exploitation of an adult participant to the Tennessee Department of Human Services' local office according to *Tennessee Code Annotated §71-6-103*. Failure to do so shall, by itself, constitute a basis for denial or revocation of the license.~~

[(1) Each employee and volunteer at a center who has any knowledge of or suspects abuse, neglect, or exploitation of a participant shall immediately report such information directly to Adult Protective Services. The failure to report may be a basis for the summary suspension, revocation or denial of the center's license to operate, or any other appropriate legal enforcement action. The failure to report may also constitute a crime.

(2) The adult day services center shall have written emergency procedures and have a posted plan for evacuation of participants, staff, volunteers, and visitors in case of fire or other emergencies such as storms, flooding, and chemical emergencies.

(a) The center shall practice these emergency procedures as required by law and shall maintain documentation of these drills for three (3) years.

(b) Fire drills shall be practiced and documented at least quarterly; however, evacuations of the participants are not required during each drill.

(c) The center shall develop a written protocol for when a participant fails to exit timely or respond appropriately to the drill. The protocol shall include notification to family/responsible party.

(3) Telephone numbers for the following shall be posted:

(a) Ambulance service;

(b) Police department;

(c) Fire department;

(d) Poison control center; and

(e) The Department of Human Services, Adult Protective Services Central Intake Hotline.

(4) Smoking.

(a) Pursuant to state law, smoking shall not be permitted anywhere inside the center.

(b) As required by state law, No-Smoking signs shall be posted conspicuously within the facility and at each entrance to the facility.

(c) A designated outside smoking area may be provided for participants or employees who smoke provided smoke does not infiltrate protected areas.

(5) Access to the Center.

(Rule 1240-7-10-.14, continued)

(a) Upon proper identification, the Department shall have the right to enter and inspect any licensed center, or any facility that is suspected of requiring a license, with or without advance notice for the purpose of conducting its licensing responsibilities.

(b) If access to the facility is denied, the Department may seek an immediate ex parte order from the chancery or circuit court of the county where the facility is located upon a showing of probable cause that the facility is a licensed center, or is suspected of requiring a license, and that the Department has been refused entrance to conduct an inspection. The court may direct any law enforcement officer to aid the Department in executing such order and inspection. Refusal to obey such order may be punishable as civil or criminal contempt of court.

(6) The center shall notify the Department of all serious incidents the same day of the incident by contacting the Child and Adult Care Complaint Hotline at 1-800-462-8261. The failure to report may be a basis for the summary suspension, revocation or denial of the center's license to operate.

(a) Serious incidents, include, but are not limited, to the following:

1. Any injury that requires medical treatment beyond on-site first aid;

2. Reports made to Adult Protective Services or law enforcement or anytime it is necessary to call 911;

3. Any incident that may result in staff exclusion from adult care per 1240-07-10-.09;

4. Transportation accidents and traffic citations (such as a driver cited for speeding) that occur when a participant is on the vehicle; and

5. Any participant fatality at the center.]

Authority: *T.C.A. §§4-5-201 et seq.; 71-2-401 et seq.* ***Administrative History:*** *Original rule filed December 14, 1999; effective February 27, 2000.*

1240-7-10-.15[6] LICENSING VIOLATIONS/DUE PROCESS.

~~(1) Notice of Violation of Standards and Corrective Action.~~

~~(a) If the Department finds violations of these rules or the law governing its operation which may lead to denial of a renewal of a license or suspension or revocation of an existing adult day care center license, the Department shall give written notice of the violations by certified mail, return receipt requested to the licensee or other person(s) who may reasonably appear to be in charge of the operation of the adult day care center and may, in addition to mail notice, give other written and/or oral notice of such violations personally to the licensee or other person(s) who may reasonably appear to be in charge of the operation of the adult day care center.~~

~~(b) The notice shall give the factual basis for the rules violations and shall cite to the specific rules which are being violated.~~

~~(c) If, in the judgment of the Department, no emergency conditions exist, the Department shall describe what must be done by the center to effect compliance with the rules in this Chapter and any law governing the center's operations and shall give the licensee a~~

reasonable opportunity to demonstrate compliance with all licensing rules and laws affecting the center's operations before initiating any adverse action.

(2) Probation and Procedures for Appeal of Probationary Status.

(a) Notice.

1. If the Department determines that an adult day care center is not in compliance with the regulations established by this Chapter or the law governing its operation, and after reasonable written notice and an opportunity to effect compliance as provided by paragraph (1), the Department may place the center on probation.

2. Prior to placing the center on probation, the Department shall provide written notice by personal delivery by a duly authorized representative of the Department, or by certified mail, return receipt requested, regarding the legal and factual basis for its proposed action and shall offer the center the opportunity to appeal the proposed action.

(b) The center may appeal the intended probation action in writing to the Commissioner within ten (10) days of receipt of the notice. If timely appealed, the Department will schedule an informal hearing concerning the proposed action. The hearing shall be held by the Commissioner or a designated hearing officer within thirty (30) days of the date the appeal request is received unless continued for good cause shown or unless an extension is agreed to by the licensee in writing. The Commissioner or designated hearing officer shall make a decision within ten (10) days of the hearing. The decision of the Commissioner or designated hearing officer shall be final for this initial probationary status.

(c) If a center is placed on probation by the Department, the center shall post a copy of this notice in a conspicuous place, as directed by the Department. The center shall notify the responsible parties for each of the adults in its care in writing regarding the center's status and the basis for the probation.

(d) If the center corrects the violation after being placed on probation, the Department shall immediately remove the probationary status and the center will not be further required to post any notice of the probation and may notify relatives and other responsible parties of the adults in its care of the termination of the probation status.

(e) If the Department determines that a violation remains uncorrected after the center has been placed on probationary status and the center has had the opportunity to appeal the initial placement on probation, the Department shall notify the center of its determination as provided in paragraph (1)(a) above. The center may appeal this determination to the Commissioner within the time periods provided in paragraph (2)(b), above. The hearing shall be held by the Commissioner or designated hearing officer within thirty (30) days of the date the appeal request is received unless continued for good cause shown or unless an extension is agreed to by the licensee in writing. The Commissioner or designated hearing officer shall make a decision within ten (10) days of the hearing. If the decision upon appeal is that the center should remain on probation, the center may then file a petition for judicial review of the decision of the Commissioner or designated hearing officer, as provided pursuant to *TCA §4-5-322*, in the chancery court of the county where the center is located.

(Rule 1240-7-10-.15, continued)

(f) The Department shall maintain records of the hearings under subparagraphs (b) and (e) above, which shall become the record for the judicial review of the administrative decision regarding probation.

(g) The decision to place a center on probation shall be discretionary with the Department and shall not be a prerequisite to any licensing action to summarily suspend, to revoke or to deny any license.

(3) Denial of an Application for a License and Appeal.

(a) Appeal Procedure.

1. The applicant for a provisional license, or for renewal of a license, which has been denied for failure to meet the regulations in this Chapter and the law governing its operation, shall be immediately notified by the Department in writing by certified mail, return receipt requested. The notice of denial shall include the factual and legal basis for the denial.

2. The applicant seeking to appeal the Department's action must submit a written request for a hearing to the Commissioner within ten (10) days of the mailing date of the notice.

3. Upon timely receipt of the request by the Commissioner, a hearing shall be set by the Department within sixty (60) days of receipt of the request. The hearing on the appeal shall be conducted pursuant to the provisions of the Uniform Administrative Procedures Act, *TCA §§4-5-301 et seq*. If a timely request for a hearing is made, the existing license, if any, shall continue in effect, unless suspended or revoked, until the resolution of the administrative appeal.

(4) Revocation of a License and Appeal.

(a) If, during the term of any license, the Department determines that the license should be revoked because of a failure to correct any noted violation of the regulations established by this Chapter or the law governing the center's operation, the Department shall immediately notify the licensee in writing, by certified mail, return receipt requested, of the legal and factual basis for these violations and of the Department's intent to revoke the license within sixty (60) days.

(b) Appeal Procedure.

1. The licensee must submit a written request for a hearing to the Commissioner within ten (10) days of the mailing date of the notice.

2. Upon timely receipt by the Commissioner of the request, a hearing shall be set by the Department within sixty (60) days of receipt of the request. The hearing on the appeal shall be conducted pursuant to the provisions of the Uniform Administrative Procedures Act, *TCA §§4-5-301 et seq*. If a timely request for an appeal is made, the existing license shall continue in effect, unless suspended, until the resolution of the administrative appeal.

(5) Summary Suspension of a License and Appeal.

(a) A license may be summarily suspended by the Department pursuant to the provisions of *TCA § 4-5-320* if the Commissioner, or the Commissioner's designee, finds that the public health, safety or welfare imperatively requires emergency action, and

incorporates such finding in the summary suspension order. The order shall be effective upon receipt by the licensee or the person having responsibility or reasonably believed to have responsibility over the operations of the adult day care center, and the center shall cease operations immediately, or as otherwise directed by the order. The summary suspension order may be personally delivered immediately by a duly authorized representative of the Department and shall also be sent by certified mail, return receipt requested.

(b) The order shall notify the licensee of the legal and factual basis for the summary suspension and what action is necessary to immediately effect compliance with the regulations and shall notify the licensee of the time, date and place of the hearing in subparagraph (c) to contest the summary suspension order and of the right to be represented by legal counsel at the licensee's expense.

(c) The order shall be reviewed within five (5) business days of the suspension order, excluding Saturdays, Sundays and legal holidays, by a hearing officer appointed by the Commissioner. The hearing and entering of the order shall proceed as follows:

1. The hearing shall be informal and shall not be conducted pursuant to the contested case proceedings under *Title 4, Chapter 5, Part 3 of the Tennessee Code Annotated*. It shall be conducted by a hearing officer from the Department's Administrative Procedures Division who shall not have had any involvement in the decision to suspend the license. The sole issue before the hearing officer shall be whether the public safety, health or welfare imperatively require emergency action by the Department due to the failure of the center to comply with any law or regulation relating to the center's operations.

2. The Department shall be required to present evidence to the hearing officer which supports the basis for the summary suspension order and its continuance. The licensee shall then have an opportunity for response.

3. The hearing officer shall make a written determination of whether probable cause exists for continuance of the suspension order based upon the standard set forth in Part 1.

4. The order containing the hearing officer's findings and ruling shall be entered within five (5) business days of the date of the hearing and shall be served upon the licensee and upon legal counsel for the licensee by certified mail, return receipt requested or by personal delivery, and by mail or personal delivery upon the Department's adult day care licensing staff and legal counsel for the Department. If the summary suspension order is upheld on review, the licensee shall no longer be eligible for any payments from the Child and Adult Care Food Program (CACFP) unless the suspension or any resulting revocation or denial of the license is subsequently overruled by the Department upon administrative review or by other order of the Commissioner, or by a reviewing court.

(d) No period for compliance following a suspension order shall exceed thirty (30) days without lifting the suspension or without written notice by the Department of intent to revoke or deny the license, except with the written consent of the licensee.

(e) Notice of Denial and Revocation Following Suspension.

1. If compliance is not effected within the thirty (30) day period from the entry of the suspension order, or unless the suspension is lifted, or unless the licensee has agreed to an extension of the suspension order in writing, the Department shall,

(Rule 1240-7-10-.15, continued)

for purposes of subparagraph (d) give written notice, as required by paragraph (3)(a), of its intent to deny the licensee's pending application for renewal of the license, or shall give notice to the licensee, as required in paragraph (4)(a), of its intent to revoke the license. Notice shall be sent by certified mail, return receipt requested and, for purposes of this subparagraph and subparagraph (d), is effective upon the mailing date of the notice.

2. The licensee may appeal such revocation or denial as stated in paragraphs (3) and (4), and the summary suspension order shall remain in effect unless lifted or modified by the procedures under subparagraph (c). If less than sixty (60) days remain before the expiration of the license at the time of the suspension, and compliance is not effected as required by the Department, the Department may revoke the license as provided above upon sixty (60) days written notice to the licensee, and all provisions of the rules relating to revocation of licenses shall apply.

(6) Unless the license has been or is suspended as provided in paragraph (5), the existing license shall remain in effect during the proceedings to revoke or deny the license until the last day to seek appeal of the Department's decision or, if appealed, until the final order of the Department, or until a later date fixed by a reviewing court. Provided, however, the Department shall continue to have the right of inspection of the adult day care center during the pendency of the administrative hearing or the reviewing Court's proceedings, and may bring new or additional violations for consideration by the hearing official by amendment of its original notice which shall be filed with the hearing official and sent to the licensee by certified mail, return receipt requested.

(7) The hearing regarding a denial or revocation of the license may, by order of the hearing official, be continued up to a period of six (6) months, and permit the licensee to continue operations under whatever conditions are appropriate, if the hearing official determines, and makes such finding in the order, that such continuance is necessary to further determine the licensee's ability or willingness to adhere to these regulations. No continuances shall be permitted, for this purpose, for more than six (6) months. The hearing official may receive further evidence concerning the licensee's compliance with the regulations. The hearing official shall then only determine whether the denial or revocation should be sustained on the previously charged violations or any new violations found by the Department of which the licensee has received written notice since the previous notice of denial or revocation.

(8) When, except for the provisions for its continuation pursuant to paragraphs (6) or (7), a license would have expired during the proceeding before the hearing official or the reviewing court, and when the Department's final order or the reviewing court does not ultimately sustain the Department's denial or revocation of the license, the licensee must apply for a new license within ten (10) calendar days of the date of the Department' final order or the reviewing court's order. If a new, timely application is made, the previously issued license shall remain in effect, unless suspended, until a determination of the application by the Department and until any timely appeal of such determination is taken as described above.

(9) No license shall remain in effect following a final order of the Department upholding the Department's action regarding the suspension, denial or revocation of a license unless a stay is entered by the Department or by the reviewing court.

(10) A licensee may not reapply for a license for a period of sixty (60) days following a denial, suspension, or revocation of a license which has not been appealed, or for the same period following entry of a final order of the Department or a final order of a reviewing court if the action of the Department has been sustained.

(Rule 1240-7-10-.15, continued)

[(1) Licensing Procedures: Administrative and Judicial Actions Involving the License.

The procedures for licensing, administrative and judicial actions, probation, civil penalties, suspension, denial and revocation and procedures for appeal are contained in this Chapter, T.C.A. §§ 71-2-401 et seq., and the Uniform Administrative Procedures Act, T.C.A. §§ 4-5-301 et seq.

(2) Notice of Violation of Standards and Corrective Action.

(a) If the Department finds the adult day services center to be in violation of a state law or regulation, the Department shall give notice to the adult day services center of the law or regulation which has allegedly been violated as well as the factual basis underlying the alleged violation.

(b) Upon receipt of such a notice, the adult day services center shall submit a Plan of Corrective Action within ten (10) business days in the form and manner directed by the Department, detailing the methods and timeframes for obtaining and maintaining compliance with all laws and regulations.

(c) If the Department determines, as a result of its inspections or investigations or those of other local, state or federal agencies or officials, or through any other means, that a plan is necessary to insure the safety of the participants in the care of the facility the Department may require the facility to implement a safety plan.

(3) Probation and Appeal.

(a) If the Department finds that an adult day services center has violated a state law or regulation, the Department may, in its discretion, place the center on probation for thirty (30) to sixty (60) days.

(b) Prior to placing the center on probation, the Department shall provide written notice of the probation which includes the information required by subsection (2)(a) above, and which additionally details the steps for appealing the probation as set forth in subparagraph (c) below.

(c) The center may request an informal review of the probation action either verbally or in writing to the Department's licensing staff that imposed the probation within two (2) business days of receipt of the notice. The center may submit any written or oral statements as argument to the departmental staff person within five (5) business days of the imposition of the probation. The Departmental staff person shall render a decision in writing upholding, modifying, or uplifting the probationary status within ten (10) business days of the imposition of the probation.

If the Departmental staff person does not lift the probation, the center may also appeal such action in writing to the Commissioner within five (5) business days of the receipt of the Departmental staff person's decision. If timely appealed, the Department shall conduct an administrative hearing in accordance with the Uniform Administrative Procedures Act within fifteen (15) business days of receipt of the appeal and will render a decision within seven (7) business days following the conclusion of the hearing.

(d) If a center is placed on probation by the Department, the center shall post a copy of this notice in a conspicuous place, in the form and manner directed by the Department. The center shall notify in writing each participant or his/her responsible party regarding the center's status and the basis for the probation.

(Rule 1240-7-10-.15, continued)

(e) The decision to place a center on probation shall be discretionary with the Department and shall not be a prerequisite to any other licensing action to summarily suspend, to revoke, or to deny a license.

(f) Failure to correct a violation which caused the imposition of probation by the Department may lead to suspension, denial or revocation of the center's license.

(4) License Denial/Revocation and Appeal.

(a) The Department may deny an application for a temporary license, initial annual license or for renewal of an existing license for failure to comply with governing laws or regulations. The Department shall provide written notice of the denial which shall include the factual and legal basis for the denial.

(b) The Department may revoke a license during its term based upon a determination that the center has failed to correct a noted violation of a governing law or regulation pursuant to paragraph (1) above. The Department shall immediately notify the licensee in writing of the Department's intent to revoke the license within sixty (60) days and of the legal and factual basis for the revocation.

(c) Appeal Procedure.

1. A denial of a license application can be appealed by submitting a written request for a hearing to the Commissioner of the Department within ten (10) days of the mailing date of the notice. If the appeal is requested timely, a hearing shall be scheduled by the Department within sixty (60) days of receipt of the request. The hearing on the appeal shall be conducted pursuant to the provisions of the Uniform Administrative Procedures Act, T.C.A. §§ 4-5-301 et seq. During the pendency of the appeal, any existing license shall continue in effect, unless suspended/revoked, until the resolution of the administrative appeal.

2. Revocation of a license can be appealed by submitting a written request for a hearing to the Commissioner of the Department within ten (10) days of the mailing date of the notice. If the appeal is requested timely, a hearing shall be scheduled by the Department within sixty (60) days of receipt of the request. The hearing on the appeal shall be conducted pursuant to the provisions of the Uniform Administrative Procedures Act, T.C.A. §§ 4-5-301 et seq. During the pendency of the appeal, any existing license shall continue in effect, until the resolution of the administrative appeal.

(d) The Department shall continue to have the right of inspection of the adult day services center during the pendency of the revocation proceedings and may add additional violations to be considered by the hearing official by amendment of its original notice which shall be filed with the hearing official and sent to the licensee by certified mail, return receipt requested.

(5) Summary Suspension and Appeal.

(a) A license may be summarily suspended by the Department pursuant to the provisions of T.C.A. § 4-5-320 if the Commissioner, or the Commissioner's designee, by issuing an order which finds that the public health, safety or welfare imperatively requires emergency action. The order shall be effective upon receipt by the licensee or the person having responsibility or reasonably believed to have responsibility over the operations of the adult day services center, and the center shall cease operations immediately or as otherwise directed by the order. The summary suspension order

(Rule 1240-7-10-.15, continued)

may be personally delivered immediately by a duly authorized representative of the Department.

(b) The order shall notify the licensee of the legal and factual basis for the summary suspension; shall state what action(s) must be taken by the licensee to immediately effect compliance with the licensing standards; the time, date and place of the hearing provided for in subparagraph (c) to contest the summary suspension order; and of the right to be represented by legal counsel at the licensee's expense.

(c) The order shall be reviewed within five (5) business days of the date of the suspension order, excluding Saturdays, Sundays and legal holidays, by a hearing officer appointed by the Commissioner. The hearing shall be conducted and the order entered as follows:

1. The hearing shall be informal and shall not be conducted pursuant to the Uniform Administrative Procedures Act, T.C.A. §§ 4-5-301 et seq. The hearing shall be conducted by a hearing officer from the Department's Appeals and Hearings Division, and the sole issue before the hearing officer shall be whether the public safety, health or welfare imperatively require emergency action by the Department due to the failure of the center to comply with any law or regulation governing the center's operations.

2. The Department shall be required to present evidence to the hearing officer in support of the summary suspension order. The licensee shall then have an opportunity for response.

3. The hearing officer shall make a written determination of whether probable cause exists for continuance of the suspension order based upon the standard set forth in subparagraph (5)(a).

4. The order containing the hearing officer's findings and ruling shall be issued within five (5) business days of the date of the hearing and shall be served upon the licensee and upon legal counsel for the licensee by certified mail, return receipt requested or by personal delivery.

(d) A suspension order shall be lifted by the Department or written notice by the Department of intent to revoke or deny the license, shall be served upon the licensee, within thirty (30) days of entry of the suspension order.

Authority: *T.C.A. §§4-5-201 et seq.; 4-5-301 et seq.; 4-5-320; and 71-2-401 et seq.* ***Administrative History:*** *Original rule filed December 14, 1999; effective February 27, 2000.*

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

Board Member	Aye	No	Abstain	Absent	Signature (if required)

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the Department of Human Services (board/commission/ other authority) on 10/03/2017 (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: 07/18/2017

Rulemaking Hearing(s) Conducted on: (add more dates). 09/12/2017

Date: 10/03/2017

Signature: Cherrell Campbell-Street

Name of Officer: Cherrell Campbell-Street

Title of Officer: Deputy Commissioner, Programs and Services

LAUREN VADEN NOTARY PUBLIC STATE OF TENNESSEE DAVIDSON COUNTY My Commission Expires AUG. 20, 2019

Subscribed and sworn to before me on: October 3, 2017

Notary Public Signature: Lauren Vaden

My commission expires on: August 20, 2019

Agency/Board/Commission: Department of Human Services

Rule Chapter Number(s): Chapter 1240-07-10

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

1/19/2018

Date

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Department of State Use Only

Filed with the Department of State on: 2/23/18

Effective on: 5/24/18

Tre Hargett

Tre Hargett
Secretary of State

G.O.C. STAFF RULE ABSTRACT

DEPARTMENT:	Board of Respiratory Care
DIVISION:	
SUBJECT:	Fee Reduction
STATUTORY AUTHORITY:	Tennessee Code Annotated, Section 63-27-104, which provides that the Board has the duty to set fees relating to the practice of respiratory care in an amount sufficient to pay all of the expenses of the Board.
EFFECTIVE DATES:	May 15, 2018, through June 30, 2019
FISCAL IMPACT:	None
STAFF RULE ABSTRACT:	This rulemaking hearing rule amendment will decrease the renewal fee for Respiratory Therapists from $100.00 to $75.00.

Public Hearing Comments

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

There were no comments received for the proposed rule amendment, either written or oral.

Regulatory Flexibility Addendum

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

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

   The rule amendment does not overlap, duplicate, or conflict with other state or local governmental rules.

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

   The rule amendment exhibits clarity, conciseness, and lack of ambiguity.

3. **The establishment of flexible compliance and/or reporting requirements for small business.**

   The rule amendment does not establish any new compliance and/or reporting requirements for small businesses.

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

   The rule amendment does not establish any new compliance and/or reporting requirements for small businesses.

5. **The consolidation or simplification of compliance or reporting requirements for large or small businesses.**

   The rule amendment does not establish any new compliance or reporting requirements for large or small businesses.

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

   The rule amendment does not establish performance, design, or operational standards.

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

   The rule amendment does not create unnecessary barriers or stifle entrepreneurial activity or innovation.

STATEMENT OF ECONOMIC IMPACT TO SMALL BUSINESSES

Name of Board, Committee or Council: Tennessee Board of Respiratory Care

Rulemaking hearing date: 11/30/2017

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

   The decrease in the biennial license renewal fee for respiratory therapists will directly benefit all Tennessee licensed respiratory therapists and thereby any that are sole proprietors of their own business as well as any programs or hospitals that may pay any portion of renewal fees. Currently there are Four Thousand, Nine Hundred and Twenty-Seven (4,927) such licensees.

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

   The rule amendment does not establish any new reporting or compliance requirements.

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

   Self-employed Respiratory Therapists and businesses that employ them will be benefitted. Consumers likely will not be affected.

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

   The rule amendment is not burdensome, intrusive, or costly. On the contrary, these rule amendments will have a positive impact on business.

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

   Federal: The Board is not aware of any federal counterparts.

   State: The Board is not aware of any 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.**

   The rule amendment does not provide for any exemptions.

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 amendment is not expected to 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 amendment will decrease the renewal fee for Respiratory Therapists from $100.00 to $75.00.

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

T.C.A. § 63-27-104, which provides that the Board has the duty to set fees relating to the practice of respiratory care in an amount sufficient to pay all of the expenses of the Board.

(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 decrease in the biennial license renewal fee for respiratory therapists will directly benefit all Tennessee licensed respiratory therapists and thereby any that are sole proprietors of their own business as well as any programs or hospitals that may pay any portion of renewal fees.

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

None.

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

This rule amendment should not result in any increase or decrease in state or local government revenues or expenditures.

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

Tracy Alcock, Assistant General Counsel, Department of Health.

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

Tracy Alcock, Assistant General Counsel, Department of Health.

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

Office of General Counsel, Department of Health, 665 Mainstream Drive, Nashville, Tennessee 37243, (615) 741-1611, Tracy.Alcock@tn.gov.

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

None.

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Nashville, TN 37243
Phone: 615-741-2650
Email: publications.information@tn.gov

For Department of State Use Only

Sequence Number: 02-16-18
Rule ID(s): 6699
File Date: 2/14/18
Effective Date: 5/15/18

Rulemaking Hearing Rule(s) Filing Form

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

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

Agency/Board/Commission:	Board of Respiratory Care
Division:	
Contact Person:	Tracy Alcock, Assistant General Counsel
Address:	665 Mainstream Drive, Nashville, Tennessee
Zip:	37243
Phone:	(615) 741-1611
Email:	Tracy.Alcock@tn.gov

Revision Type (check all that apply):

X Amendment
___ New
___ Repeal

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

Chapter Number	**Chapter Title**
1330-01	General Rules and Regulations Governing Respiratory Care Practitioners
Rule Number	**Rule Title**
1330-01-.06	Fees

(Rule 1330-01-.05, continued)

Or

Michigan English Language Assessment Battery
English Language Institute
Testing and Certification Division
3020 North University Building
The University of Michigan
Ann Arbor, MI 48109-1057

Authority: *T.C.A. §§4-5-202, 4-5-204, 63-1-145, 63-1-146, 63-27-102, 63-27-104, 63-27-105, 63-27-106, 63-27-107, 63-27-108, 63-27-112, 63-27-113, 63-27-115, and 63-27-116.* ***Administrative History:*** *Original rule filed January 31, 2000; effective April 15, 2000. Amendment filed March 20, 2001; effective June 3, 2001. Amendment filed March 27, 2003; effective June 10, 2003. Amendment filed April 17, 2003; effective July 1, 2003. Amendment filed December 5, 2003; effective February 18, 2004. Amendment filed March 14, 2006; effective May 28, 2006. Amendment filed August 28, 2015; effective November 26, 2015.*

1330-01-.06 FEES.

(1) The fees are as follows:

(a) Total Application fee - A fee to be paid by all applicants seeking initial licensure, including those seeking licensure by reciprocity. This fee consists of the Application Fee and License Fee. In cases where an applicant is denied licensure or the application file is closed due to abandonment, only the portion representing the License Fee will be refundable.

(b) Endorsement/Verification fee - A non-refundable fee to be paid for each certification, endorsement or verification of an individual's record for any purpose.

(c) Late Renewal fee - A Division established non-refundable fee to be paid when an individual fails to timely renew a license.

(d) License Renewal fee - A non-refundable fee to be paid by all licensees. This fee also applies to individuals who reinstate a retired or lapsed license.

(e) Replacement license fee - A non-refundable fee to be paid when an individual requests a replacement for a lost or destroyed "initial" license.

(f) State Regulatory fee - A non-refundable fee to be paid by all individuals with all applications.

(g) Upgrade fee - A non-refundable fee to be paid by a respiratory assistant or a certified respiratory therapist when seeking to upgrade his/her authorization to practice respiratory care as provided in rule 1330-01-.21.

(2) All fees may be paid in person, by mail or electronically by cash, check, money order, or by credit and/or debit cards accepted by the Division. If the fees are paid by certified, personal or corporate check they must be drawn against an account in a United States Bank, and made payable to the Board of Respiratory Care.

(3) Fee Schedule: Amount

(a) Total Application Fee

(Rule 1330-01-.06, continued)

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	1. Application Fee	70.00
	2. License Fee	80.00
	Total Application Fee	150.00
(b)	Endorsement/Verification	15.00
(c)	Late Renewal Fee	50.00
~~(d)~~	~~Renewal (biennial) Fee~~	~~100.00~~
(d)	Renewal (biennial) Fee	75.00
(e)	Replacement License	25.00
(f)	State Regulatory (biennial)	10.00
(g)	Upgrade Fee	20.00
(h)	License Fee	80.00

(4) The total application fee must be paid at the time of application.

Authority: *T.C.A. §§ 4-3-1011, 4-5-202, 4-5-204, 9-4-5117, 63-27-104, and 63-27-105.* ***Administrative History:*** *Original rule filed January 31, 2000; effective April 15, 2000. Amendment filed March 20, 2001; effective June 3, 2001. Amendment filed March 27, 2003; effective June 10, 2003. Amendment filed December 5, 2003; effective February 18, 2004. Amendment filed July 18, 2007; effective October 1, 2007. Amendment filed July 13, 2012; effective October 11, 2012. Amendment filed November 18, 2015; effective February 16, 2016.*

1330-01-.07 APPLICATION REVIEW, APPROVAL, AND DENIAL.

(1) Application files are not considered completed until all information, including fees, have been received by the Division. Preliminary review of all applications to determine whether or not the application file is complete may be delegated to the Board's Unit Director.

(2) Completed applications may be approved by a Board member, by the Board consultant, or by the Board designee for a temporary authorization pursuant to T.C.A. §§ 63-1-142 and 63-27-116.

(3) If an application is incomplete when received in the Board office, and all other reasonable efforts to correct any deficiency have failed, a deficiency letter will be sent by certified mail to the applicant notifying him of the deficiency. This letter shall request specified additional material necessary to complete the application. The requested information must be received in the Board office on or before the sixtieth (60th) day after receipt of the notification.

(a) Such notification shall be sent certified mail return receipt requested from the Board office.

(b) If the requested information is not timely received, the application file shall be deemed abandoned and closed and the applicant notified. No further action will take place until a new application is received pursuant to the rules governing the application process, including another payment of all fees.

* 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)
Troy Hamm	X				
Anna M. Ambrose	X				
Lisa Caldwell				X	
Jeffrey McCartney, M.D.				X	
Winston A. Granville	X				
Curtis D. Powell	X				
Kimberly D. Christmon	X				
Linda Braddock	X				

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the Board of Respiratory Care (board/commission/ other authority) on 11/30/2017 (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: *09/27/17 (mm/dd/yy)*

Rulemaking Hearing(s) Conducted on: (add more dates). *11/30/17 (mm/dd/yy)*

Date: 1/22/18

Signature:

Name of Officer: Tracy Alcock

Title of Officer: Assistant General Counsel, Department of Health

Subscribed and sworn to before me on: 1/22/18

Notary Public Signature:

My commission expires on: My Commission Expires January 26, 2021

SUZANNE MECHKOWSKI NOTARY PUBLIC STATE OF TENNESSEE SUMNER COUNTY

Agency/Board/Commission: Board of Respiratory Care

Rule Chapter Number(s): Chapter 1330-01

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
Attorney General and Reporter

2/8/2018
Date

Department of State Use Only

Filed with the Department of State on: 2/14/18

Effective on: 5/15/18

Tre Hargett
Secretary of State

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RULEMAKING

G.O.C. STAFF RULE ABSTRACT

DEPARTMENT:	Tennessee Consolidated Retirement System
DIVISION:	Program Services
SUBJECT:	Correction of Participation Errors Made by Employers
STATUTORY AUTHORITY:	This rule is promulgated pursuant to the Board's general rulemaking authority contained in Tennessee Code Annotated, § 8-34-313 and the Board's ability to correct any rules in the retirement system's records pursuant to § 8-36-115.
EFFECTIVE DATES:	May 2, 2018, through June 30, 2019
FISCAL IMPACT:	Neutral
STAFF RULE ABSTRACT:	This proposed rule establishes the process that will be utilized by the retirement system to identify and correct any errors in the Tennessee Consolidated Retirement System ("TCRS") records about participation in the retirement system or a specific plan within the retirement system. In determining whether an error has occurred in the retirement system's records, the retirement system shall utilize a list of factors that includes, but is not limited to, the authenticity of the documents used to demonstrate the employee's desire to participate or not participate in the retirement system; the length of time in which the employee has not participated in the retirement system or has participated in the incorrect retirement system plan; the reason for the alleged error relative to participation in the retirement system; and the effect of the alleged error on the employee, the employer and the retirement system. Once the Director for the TCRS has determined that an error has occurred, the retirement system shall correct the error which has resulted in an underpayment of retirement contributions. The retirement system may recoup an underpayment

from the employee, the employer, a third party that is a governmental entity, or a combination thereof. Generally, the retirement system shall recoup interest; however, in extraordinary circumstances, the retirement system may waive interest on the underpayments. In determining whether the retirement system will waive interest, it shall consider the length of time in which the underpayment has occurred; the reason for the underpayment; the amount of the underpayment and the effect that recouping the applicable interest would have on the employee, the employer or the third party. The retirement system will document its analysis of these factors in an individualized plan or correction for each employee that has been misreported to the retirement system. Should the retirement system recoup interest, the interest shall be repaid at the assumed actuarial interest rate of return established by the TCRS Board of Trustees pursuant to T.C.A. §8-34-505 at the time the payment is made.

Regulatory Flexibility Addendum

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

Not applicable.

Impact on Local Governments

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

The rule will not impact local governments. It is assumed that the political subdivisions, to which the rule is applicable, should have been making employer contributions had its employees been properly reported. As such, the rule should have no fiscal impact.

Additional Information Required by Joint Government Operations Committee

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

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

The proposed rule establishes the process that will be utilized by the retirement system to identify and correct any errors in the Tennessee Consolidated Retirement System ("TCRS") records about participation in the retirement system or a specific plan within the retirement system. In determining whether an error has occurred in the retirement system's records, the retirement system shall utilize a list of factors that includes, but is not limited to, the authenticity of the documents used to demonstrate the employee's desire to participate or not participate in the retirement system; the length of time in which the employee has not participated in the retirement system or has participated in the incorrect retirement system plan; the reason for the alleged error relative to participation in the retirement system; and the effect of the alleged error on the employee, the employer and the retirement system.

Once the Director for the TCRS has determined that an error has occurred, the retirement system shall correct the error which has resulted in an underpayment of retirement contributions. The retirement system may recoup an underpayment from the employee, the employer, a third party that is a governmental entity, or a combination thereof. Generally, the retirement system shall recoup interest; however, in extraordinary circumstances, the retirement system may waive interest on the underpayments. In determining whether the retirement system will waive interest, it shall consider the length of time in which the underpayment has occurred; the reason for the underpayment; the amount of the underpayment and the effect that recouping the applicable interest would have on the employee, the employer or the third party. The retirement system will document its analysis of these factors in an individualized plan or correction for each employee that has been misreported to the retirement system. Should the retirement system recoup interest, the interest shall be repaid at the assumed actuarial interest rate of return established by the TCRS Board of Trustees pursuant to T.C.A. §8-34-505 at the time the payment is made.

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

This rule is promulgated pursuant to the Board's general rulemaking authority contained in T.C.A. §8-34-313 and the Board's ability to correct any rules in the retirement system's records pursuant to T.C.A. §8-36-115.

(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;

Governmental entities participating in the Tennessee Consolidated Retirement System with employees who have not been accurately reported to the retirement system will be affected by this rule.

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

The Department is unaware of any Attorney General opinions or any judicial rulings that directly relates to this rule.

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

The rule enables the retirement system to correct any reporting errors relative to participation in the retirement system. Any corrections that result in the payment of underpaid contributions or interest, or both, would put the employee and the employer in the place that they would have been had the employee be reported to the

retirement system correctly, resulting in a neutral fiscal impact.

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

Jamie Wayman, Director of the Tennessee Consolidated Retirement System; 502 Deaderick Street, Andrew Jackson Building, 15th Floor; Nashville, Tennessee 37243; (615) 253-3847; Jamie.Wayman@tn.gov and Alison Cleaves, Legal Services Director; 502 Deaderick Street, Andrew Jackson Building, 15th Floor; Nashville, Tennessee 37243; (615) 253-6150; Alison.Cleaves@tn.gov.

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

Jamie Wayman, Director of the Tennessee Consolidated Retirement System; 502 Deaderick Street, Andrew Jackson Building, 15th Floor; Nashville, Tennessee 37243; (615) 253-3847; Jamie.Wayman@tn.gov and Alison Cleaves, Legal Services Director; 502 Deaderick Street, Andrew Jackson Building, 15th Floor; Nashville, Tennessee 37243; (615) 253-6150; Alison.Cleaves@tn.gov.

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

Jamie Wayman, Director of the Tennessee Consolidated Retirement System; 502 Deaderick Street, Andrew Jackson Building, 15th Floor; Nashville, Tennessee 37243; (615) 253-3847; Jamie.Wayman@tn.gov and Alison Cleaves, Legal Services Director; 502 Deaderick Street, Andrew Jackson Building, 15th Floor; Nashville, Tennessee 37243; (615) 253-6150; Alison.Cleaves@tn.gov.

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

Any additional information requested by the committee relevant to the proposed rules will be provided promptly upon request.

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Sequence Number: 02-05-18
Rule ID(s): 6692
File Date: 2/1/18
Effective Date: 5/2/18

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 Consolidated Retirement System
Division:	Program Services
Contact Person:	Jamie Wayman, Director for the Tennessee Consolidated Retirement System
Address:	502 Deaderick Street; Andrew Jackson Building, 15th Floor; Nashville, Tennessee
Zip:	37243
Phone:	(615) 253-3847
Email:	Jamie.Wayman@tn.gov

Revision Type (check all that apply):
x Amendment
___ New
___ Repeal

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

Chapter Number	**Chapter Title**
1700-03-01	Tennessee Consolidated Retirement System
Rule Number	**Rule Title**
1700-03-01-.01	Correction of Participation Errors Made by Employers

RULES OF
TENNESSEE TREASURY DEPARTMENT
RETIREMENT DIVISION

CHAPTER 1700-3-1
TENNESSEE CONSOLIDATED RETIREMENT SYSTEM

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		1700-3-1-.29	Purchase of Prior Service through Monthly Installments
		1700-3-1-.30	Direct Deposit of Benefits
		1700-3-1-.31	Examination of Employer Records

Rule 1700-03-01-.01 is amended by deleting the title and the text of the rule in its entirety and replacing it with the following, so that, as amended the rule shall read:

Correction of Participation Errors Made by Employers.

(1) Error Corrections. The retirement system shall correct errors in its records that relate to participation in the retirement system and shall make any necessary corrections so that employer and employee contributions are the correct amount in the retirement system records. The retirement system shall also correct the amount of an employee's service credit in its records so that the retirement system's records accurately reflect the employee's required participation in the retirement system or the correct plan within the retirement system.

(2) Determination of Errors. The retirement system shall determine whether an error has occurred in the retirement system records on a case-by-case basis based on consideration of the following factors, including, but not limited to:

(a) the authenticity of the documents provided to demonstrate the alleged error;

(b) the length of time the employee has not participated in the retirement system or has participated in the incorrect retirement system plan;

(c) the reason for the alleged error relative to participation in the retirement system; and

(d) the effect of the alleged error on the employee, the employer and the retirement system.

(3) Recoupment of Underpayments. The retirement system shall correct any errors resulting in underpayments of contributions to the retirement system in accordance with the procedures for qualified plans as established by the Internal Revenue Service in Revenue Procedure 2016-51, and subsequent amendments thereto, as follows:

(a) An underpayment to the retirement system resulting from an error in failing to accurately report the employee to the retirement system or the correct plan within the retirement system, shall be recouped by the retirement system by obtaining the underpaid employee and employer contributions. The retirement system may recoup the underpaid employee and employer contributions, including applicable interest, from any one or a combination of the following:

1. the employee;

2. the employee's employer; or

3. a third party that is a governmental entity.

(b) The retirement system shall recoup interest relative to an underpayment; however, under extraordinary circumstances, the retirement system may waive interest, in whole or in part, based on consideration of the following factors, including, but not limited to:

1. the length of time the underpayment has occurred;

2. the reason for the underpayment;

3. the amount of the underpayment;

4. the financial effect that recouping the applicable interest would have on the employee, the employee's employer or a third party;

5. the impact on the retirement system's ability to provide retirement benefits;

6. whether the payment of interest would cause a financial hardship;

7. whether there would be recoupment by the retirement system from more than one source; and

8. whether the recoupment complies with Internal Revenue Service regulations, procedures and guidelines.

(c) The interest rate shall be the assumed actuarial interest rate of return established by the Board under T.C.A. §8-34-505 at the time the payment is made. The retirement system may recoup the interest from a source or combination of sources listed in subparagraph (3)(a) of this rule that is different from the source or sources for the underpaid contributions.

(d) The retirement system shall document its consideration of the factors contained in paragraph (2) and subparagraph (3)(b) in this rule in an individualized plan of correction for each employee affected by an underpayment of contributions. The plan of correction shall demonstrate how the employee has been restored to the position that the employee would have been in if the employee had participated in the retirement system in accordance with the retirement system plan document.

(4) Failure of Employer to Pay Underpaid Employer Contributions. Should an employer fail to pay its underpaid contributions or fail to pay any underpaid contributions based on the determination of the director of the retirement system, the retirement system may collect the underpaid contributions for which the employer is responsible through any means provided under applicable law.

(5) Right to Appeal. Any individual or entity affected by an action or decision made by the retirement system relative to the payment of underpaid contribution amounts, may appeal the action or decision to the director in accordance with Tenn. Comp. R & Reg. Chapter 1700-3-2.

(6) Purchase of Prior Service Credit. If an employee was required to be a member of the retirement system as a condition of employment, but was not accurately reported to the retirement system, the employee shall establish prior service credit in the retirement system for the period of time that he or she should

have been participating in the retirement system or within the correct retirement system plan. The payment of both employee and employer contributions must be paid to establish the prior service credit back to the date the employee should have participated in the retirement system. The payments of employee and employer contributions or interest, or both for the prior service credit, may come from any one or a combination of the sources listed in subparagraph (3)(a) of this rule; however, this will in no way require the employee to pay for the employer contributions. The purchase of prior service credit will consist of the following payments: the underpaid employee and employer contributions and interest paid on the underpaid contributions at the assumed actuarial interest rate of return established by the Board under T.C.A. §8-34-505 at the time the payment is made, unless payment of interest is waived. Under extraordinary circumstances, the retirement system may waive the recoupment of interest relative to the purchase of prior service credit, in whole or in part, based on consideration of the factors contained in subparagraph (3)(b) of this rule.

Authority: T.C.A. §§8-34-313 and 8-36-115.

~~**1700-3-1-.01 DELINQUENT CONTRIBUTION PAYMENTS WHERE MEMBERSHIP IS A CONDITION OF EMPLOYMENT AND EMPLOYEE WAS NOT PROPERLY REPORTED.**~~

~~(1) Any employee who was required to be a member of the Tennessee Consolidated Retirement System as a condition of employment may elect to establish retirement credit for the periods of service in which the employee was not reported as a member under the following conditions:~~

~~(a) The failure to report the employee was due to an administrative error and the employee was without fault or knowledge of the same;~~

~~(b) The employing department or agency certifies to the Retirement Division the periods of service and the employee's salary during such periods; and~~

~~(c) The employee pays to the Retirement Division the contributions the employee would have made had the employee been reported during the period claimed, plus interest at the rate of seven and one-half percent (7½%) per annum from the date the contributions would have been made through the date of payment.~~

~~***Authority:*** *T.C.A. §§8-34-313, 8-35-101, 8-35-203(a)(1), and 8-37-214.* ***Administrative History:*** *Original rule filed June 30, 1981; effective August 19, 1981. Amendment filed August 16, 1996; effective December 27, 1996.*~~

1700-3-1-.02 OMISSION FROM ACTUARIAL STUDY.

(1) Whenever a political subdivision extends coverage to its employees and discovers there were some employees who were erroneously omitted from the actuarial study, the employees will be allowed to be covered and receive whatever prior service the governing body authorized under the following conditions:

(Rule 1700-3-1-.02, continued)

(a) The responsible official is requested to furnish this office with a letter explaining that the affected employees were omitted from the actuarial study through error; and

(b) The political subdivision will assume the increase in the employer liability by adding the omitted employees.

Authority: *T.C.A. §8-34-313.* ***Administrative History:*** *Original rule filed June 30, 1981; effective August 19, 1981.*

1700-3-1-.03 PENALTY ASSESSMENT.

(1) The amount set forth in T.C.A. § 8-37-504 will be assessed by the Retirement Division against any employer who fails twice during any twenty-four month period to forward payroll data, or to pay the requisite amount of contributions to the Retirement Division. An employer will be deemed to have failed to forward the above whenever a contribution report is postmarked after the tenth day of the month following the month in which contributions are deducted or ten (10) calendar days after the contribution report form is mailed to the employer by the Retirement Division, if later.

(2) A warning letter will be sent to the employer by the Retirement Division the first time a contribution report or payment is late during any twenty-four month period. The letter will inform the employer that an amount will be assessed if another report or payment is late during the twenty-four month period.

(3) Any amount assessed hereunder may be waived by the Director of the Retirement Division upon presentation of adequate documentation from the employer indicating the report and/or payment was late because of a unique problem or situation.

Authority: *T.C.A. §§8-34-313, 8-37-502, 8-37-503, and 8-37-504.* ***Administrative History:*** *Original rule filed June 30, 1981; effective August 19, 1981. Amendment filed August 16, 1996; effective December 27, 1996.*

1700-3-1-.04 REPEALED.

Authority: *T.C.A. §8-34-313.* ***Administrative History:*** *Original rule filed June 30, 1981; effective August 19, 1981. Repeal by Public Chapter 575; effective July 1, 1986.*

1700-3-1-.05 ISSUANCE OF CHECK FOR MONTH OF DEATH. All retirement allowances shall be payable in equal monthly installments and shall cease in the month in which the payee dies, unless otherwise specifically provided for in T.C.A., Title 8, Chapters 34-37. A retirement allowance shall be issued for the month in which the payee dies and shall be paid in accordance with T.C.A. §8-36-120.

Authority: *T.C.A. §§8-34-313 and 8-34-101(34).* ***Administrative History:*** *Original rule filed June 30, 1981; effective August 19, 1981. Amendment filed August 16, 1996; effective December 27, 1996.*

1700-3-1-.06 REPEALED.

Authority: *T.C.A. §8-34-313.* ***Administrative History:*** *Original rule filed June 30, 1981; effective August 19, 1981. Repeal by Public Chapter 575; effective July 1, 1986.*

1700-3-1-.07 COMPUTATION OF BENEFITS. When retirement benefits are computed in accordance with T.C.A. § 8-36-110, and such computation results in a total benefit which is less than the benefit determined on total years of service under Group 1, the retirement allowance payable to such member shall be the benefit determined under Group 1 using the total years of service from all classes or systems. This shall apply to Group 2, Group 3 and all superseded systems except for Prior Class B limited where the member chooses to only contribute on the first $4,200 of annual salary.

(Rule 1700-3-1-.07, continued)

Authority: *T.C.A. §8-34-313.* ***Administrative History:*** *Original rule filed June 30, 1981; effective August 19, 1981.*

1700-3-1-.08 APPEAL OF DISABILITY DENIALS. If a disability applicant is denied, an appeal must be filed within ninety (90) days after notification of the denial has been made. If an appeal is not filed within this period, the right to appeal the original application is waived. This does not prohibit the member from filing a new disability application at a later date.

Authority: *T.C.A. §8-34-313.* ***Administrative History:*** *Original rule filed June 30, 1981; effective August 19, 1981.*

1700-3-1-.09 DISABILITY RETIREES REQUIRED TO SUBMIT REPORT OF ANNUAL EARNINGS. Any disability retiree who fails to submit a report of annual earnings within ninety (90) days after the initial request shall have his retirement benefits suspended until the report of annual earnings is received. If the report is subsequently submitted and the earnings do not exceed the applicable limit, benefits will be paid retroactive to the date benefits were suspended.

Authority: *T.C.A. §8-34-313.* ***Administrative History:*** *Original rule filed June 30, 1981; effective August 19, 1981.*

1700-3-1-.10 SUSPENSION OF DISABILITY BENEFITS. If a disability retiree is re-evaluated and it is determined that the retiree's condition has improved to the extent that he no longer qualifies for disability benefits, the benefits shall be suspended at the end of the month next following the completion of the re-evaluation.

Authority: *T.C.A. §8-34-313.* ***Administrative History:*** *Original rule filed June 30, 1981; effective August 19, 1981.*

1700-3-1-.11 COST OF LIVING ADJUSTMENTS FOR RETIREE WHO RETURNS TO SERVICE. Any retiree who returns to service and subsequently retires again will not be eligible for a cost of living adjustment unless such person has been in receipt of a retirement allowance at any time during the twelve (12) months immediately preceding the date on which the cost of living adjustment is granted.

Authority: *T.C.A. §§8-34-313, 8-36-701, 8-36-801, 8-36-802, and 8-36-803.* ***Administrative History:*** *Original rule filed June 30, 1981; effective August 19, 1981. Amendment filed August 16, 1996; effective December 27, 1996.*

1700-3-1-.12 CHANGE FROM REGULAR PLAN OR SOCIAL SECURITY LEVELING TO AN OPTIONAL RETIREMENT PLAN. T.C.A. § 8-36-603 allows a retired member who did not elect an option to do so after retirement in favor of a beneficiary. If the retiree originally selected the regular plan or social security leveling, he may change from such plan to an optional form of retirement (Options I-IV) by making a payment equal to the difference in benefits received and the optional plan. However, a retiree cannot change from the regular or maximum plan to social security leveling.

Authority: *T.C.A. §8-34-313.* ***Administrative History:*** *Original rule filed June 30, 1981; effective August 19, 1981.*

1700-3-1-.13 CHANGE OF RETIREMENT PLAN WITHIN SIXTY (60) DAYS AFTER EFFECTIVE DATE OF RETIREMENT OR THE DATE OF THE RETIREMENT NOTICE LETTER. Any recently retired member who has been put on retirement benefits having selected either the regular or maximum plan, social security leveling, or an optional form of retirement and who wishes to change to a different plan of retirement may do so provided the member notifies the Retirement Division within sixty (60) days after the member's effective date of retirement or the date of the retirement notice letter, provided the member repays to the Retirement Division any benefit overpayment resulting from the change. In computing the period of time prescribed in this rule, the first day (effective date of retirement or date on the notice letter) shall be excluded and the last day of the period is to be included unless it is a Saturday, a Sunday, or a legal holiday, in which event the period runs until the end of the next day which is not a Saturday, a Sunday, or a legal holiday.

(Rule 1700-3-1-.13, continued)

Authority: *T.C.A. §§8-34-313 and 8-36-605.* ***Administrative History:*** *Original rule filed June 30, 1981; effective August 19, 1981. Amendment filed August 16, 1996; effective December 27, 1996. Amendment filed July 31, 2001; effective November 28, 2001.*

1700-3-1-.14 SOCIAL SECURITY LEVELING. In order to select the social security leveling plan of retirement, a member must have accumulated, at the time of retirement, sufficient quarters of coverage under Title II of the Federal Social Security Act to qualify for social security benefits.

Authority: *T.C.A. §§8-34-313 and 8-36-101.* ***Administrative History:*** *Original rule filed June 30, 1981; effective August 19, 1981. Repeal by Public Chapter 575; effective July 1, 1986. New rule filed August 16, 1996; effective December 27, 1996.*

1700-3-1-.15 LUMP SUM PAYMENTS FOR LEAVE OR COMPENSATORY TIME. If a member, upon termination of employment, is compensated for the member's unused accumulated leave or compensatory time in a lump sum, no retirement contributions are to be submitted and no retirement credit will be granted for that payment. The purpose of this rule is to prevent an artificial inflation of an employee's average final compensation upon which the employee's retirement benefit calculation will be based.

Authority: *T.C.A. §§8-34-313 and 8-34-101(14).* ***Administrative History:*** *Original rule filed June 30, 1981; effective August 19, 1981. Repeal by Public Chapter 575; effective July 1, 1986. New rule filed August 16, 1996; effective December 27, 1996.*

1700-3-1-.16 PAYMENT OF ACCUMULATED UNUSED SICK LEAVE UPON DEATH OF AN EMPLOYEE. Whenever a deceased member's unused accumulated sick leave is paid by the member's employer to the member's estate or to a beneficiary designated by the member for such payment, the payment shall not be considered earnable compensation for retirement purposes. The payment is considered a form of a death benefit, and not payment of service earned by the member as in the case of annual leave. Although the payment is not considered earnable compensation for retirement purposes, the unused accumulated sick leave will be credited as service pursuant to T.C.A. § 8-34-604 and used in the benefit calculation of any monthly retirement annuity which may be due upon the member's death. If a monthly annuity is available, the date of retirement will become effective following the payment of any annual leave. This rule shall not apply to any member who is covered under the provisions of T.C.A. § 8-35-118, or under T.C.A., Part 3, Chapter 35, Title 8.

Authority: *T.C.A. §§8-34-313 and 8-34-101(14).* ***Administrative History:*** *Original rule filed June 30, 1981; effective August 19, 1981. Amendment filed August 16, 1996; effective December 27, 1996.*

1700-3-1-.17 REPEALED.

Authority: *T.C.A. §8-34-313.* ***Administrative History:*** *Original rule filed June 30, 1981; effective August 19, 1981. Repeal by Public Chapter 575; effective July 1, 1986.*

1700-3-1-.18 REPEALED.

Authority: *T.C.A. §8-34-313.* ***Administrative History:*** *Original rule filed June 30, 1981; effective August 19, 1981. Repeal by Public Chapter 575; effective July 1, 1986.*

1700-3-1-.19 POLITICAL SUBDIVISIONS' BENEFIT COVERAGE FOR EMPLOYEES. Whenever a political subdivision is participating in the retirement system but has not provided retirement coverage for all its departments and upon the decision of the governing body to provide retirement coverage to all the remaining departments, then the employees of the remaining departments shall be under the same terms, conditions, and eligibility requirements of those employees already participating in the retirement system.

Authority: *T.C.A. §8-34-313.* ***Administrative History:*** *Original rule filed June 30, 1981; effective August 19, 1981.*

1700-3-1-.20 COLLECTION OF OVERPAYMENTS. If a retired member or beneficiary is overpaid, an automatic payroll deduction may be initiated if arrangements for repayment are not made after contacting the member three (3) times. The deduction cannot be less than 5% of the member's benefit or $10.00, whichever is greater.

Authority: *T.C.A. §8-34-313.* ***Administrative History:*** *Original rule filed June 30, 1981; effective August 19, 1981.*

1700-3-1-.21 DISABILITY BENEFITS FOR HANDICAPPED EMPLOYEES. Employees that have a handicap at the time of their employment will not be eligible for disability benefits based on that condition unless the medical evidence documents that the pre-existing condition has deteriorated thereby rendering the person unemployable.

Authority: *T.C.A. § 8-34-313.* ***Administrative History:*** *Original rule filed June 30, 1981; effective August 19, 1981.*

1700-3-1-.22 EFFECTIVE DATE OF MEMBERSHIP. The membership of an employee in the retirement system shall be effective as of the first date for which employee or employer contributions are made for service rendered by the employee, provided such contributions are not later withdrawn.

Authority: *T.C.A. §§8-34-313, Title 8, Chapter 35, Part 1, and Title 8, Chapter 37, Part 2.* ***Administrative History:*** *Original rule filed September 30, 1982; effective November 1, 1982.*

1700-3-1-.23 WAIVER OF WAITING PERIOD FOR MEMBERSHIP. Any political subdivision which has a temporary period of employment pursuant to T.C.A. § 8-35-107 may, at its option, waive such waiting period for all employees who are already members of the retirement system by virtue of other employment. Such waiver shall be in the form prescribed by the Board of Trustees.

Authority: *T.C.A. §§8-34-313 and 8-35-107.* ***Administrative History:*** *Original rule filed September 30, 1982; effective November 1, 1982.*

1700-3-1-.24 ESTABLISHING CREDITABLE SERVICE. A retired member may establish additional creditable service if such service was creditable on the member's date of retirement and is creditable at the time it is claimed. Benefits for such additional service shall not commence until the Retirement Division receives an application for the additional service with proof that the retired member meets the statutory requirements to qualify for the service. Service credit authorized by legislation enacted after a member's retirement shall not be creditable, unless the legislation specifically provides that it applies to the retired member. A member may establish additional creditable service if such service is creditable at the time it is claimed. A member shall not be deemed to have claimed the service until the Retirement Division receives an application for the additional service with proof that the member meets the statutory requirements to qualify for the service.

Authority: *T.C.A. §§8-34-313 and 8-37-214.* ***Administrative History:*** *Original rule filed September 30, 1982; effective November 1, 1982. Amendment filed August 16, 1996; effective December 27, 1996.*

1700-3-1-.25 ESTABLISHING DATE OF RETIREMENT. For purposes of determining rights of beneficiaries pursuant to T.C.A. § § 8-36-107 and 8-36-109, a member shall be considered retired when he (1) terminates employment, (2) files an application for retirement, and (3) first receives benefits via direct deposit or three days have elapsed since the first benefit check was mailed. For the purposes of this rule, it shall be presumed that the check is mailed on the date indicated on the face of the check, unless shown to the contrary by competent evidence.

Authority: *T.C.A. §§8-34-313, 8-36-107, and 8-36-109.* ***Administrative History:*** *Original rule filed September 30, 1982; effective November 1, 1982.*

1700-3-1-.26 BENEFITS FOR AGED STATE EMPLOYEES AND TEACHERS. Former state employees and teachers claiming service under T.C.A. § § 8-39-101 or 8-39-102 shall be entitled to benefits from the date the application and certification is received or upon attainment of age 65, whichever is later.

Authority: *T.C.A. §§8-34-313, 8-39-101, and 8-39-102.* ***Administrative History:*** *Original rule filed September 30, 1982; effective November 1, 1982.*

1700-3-1-.27 CHANGE OF BENEFICIARY AFTER RETIREMENT. Any employee retired on the maximum plan may change his or her beneficiary by filing the appropriate form prescribed by the Board of Trustees. Any employee retired on an optional plan may change his or her beneficiary upon the death of the beneficiary. Such newly elected beneficiary shall only be entitled to any remaining accumulated contributions upon the death of the member.

Authority: *T.C.A. §§8-34-313, 8-35-104, and 8-37-212(c).* ***Administrative History:*** *Original rule filed September 30, 1982; effective November 1, 1982.*

1700-3-1-.28 REPEALED.

Authority: *T.C.A. §§8-34-313, 8-36-107, and 8-36-109.* ***Administrative History:*** *Original rule filed September 30, 1982; effective November 1, 1982. Repeal by Public Chapter 575; effective July 1, 1986.*

1700-3-1-.29 PURCHASE OF PRIOR SERVICE THROUGH MONTHLY INSTALLMENTS. A member or retired member of the Tennessee Consolidated Retirement System may establish retirement credit through monthly installments pursuant to T.C.A. § 8-37-220. The Retirement Division may begin accepting monthly installment payments pursuant to said Section effective January 1, 1997. The minimum amount of the monthly payments shall be determined by the Retirement Division, provided such amount is not less than fifty dollars and no cents ($50.00) per month.

Authority: *T.C.A. §§8-34-313, 8-37-214, 8-37-220, and Chapter 660 of the Tennessee Public Acts of 1996.* ***Administrative History:*** *Original rule filed August 16, 1996; effective December 27, 1996. Amendment filed August 31, 2001; effective December 28, 2001.*

1700-3-1-.30 DIRECT DEPOSIT OF BENEFITS.

(1) Except as provided in Paragraphs (2) and (4) of this rule below, all monthly benefits payable under the provisions of T.C.A., Title 8, Chapters 34 – 37 shall be paid to recipients by electronic funds transfer. Each recipient of such payments shall complete an electronic funds transfer form as prescribed by the Retirement System whereon the recipient shall:

(a) designate one financial institution to which such payments shall be made; and

(b) provide to the Retirement Division the payment information necessary for the recipient to receive electronic funds transfer payments through the institution so designated.

(2) The Retirement Division shall waive the application of Paragraph (1) of this rule if the recipient objects to receiving the benefits by electronic funds transfer and agrees to pay the Retirement Division a reasonable fee to cover the Division's cost of processing and issuing a check. The written certification must also contain an acknowledgement by the recipient that the Division will subtract the amount of the fee from the funds due the recipient. The Retirement Division shall set the amount of the fee and may revise the same from time to time to reflect increases in postage, mailing and handling. The fee set by the Retirement Division shall not be less than fifty cents nor more than three times the first class mail postage rate.

(3) Should a recipient fail or refuse to return to the Retirement Division a properly completed electronic funds transfer form described in Paragraph (1) or fail to provide a written certification as prescribed in

(Rule 1700-3-1-.30, continued)

Paragraph (2), then the Retirement Division may apply the fee deduction pursuant to Paragraph (2) above.

(4) The requirements of Paragraph (1) of this rule shall not apply during any time period during which the benefits are required to be paid to: (i) the Internal Revenue Service on account of a tax levy, (ii) a court official under an Order of Assignment for Child Support, (iii) a Chapter Thirteen Trustee on account of a bankruptcy order, or (iv) under any other order for which the benefits can be legally assigned, attached or garnished.

(5) For purposes of this rule, the term "electronic funds transfer" means any transfer of funds, other than a transaction originated by cash, check, or similar paper instrument, that is initiated through an electronic terminal, telephone, computer, or magnetic tape, for the purpose of ordering, instructing, or authorizing a financial institution to debit or credit an account. The term also includes, but is not limited to, Automated Clearing House transfers and Fed Wire transfers.

(6) The application of this rule may be phased in by the Retirement Division as administratively practical.

Authority: *T.C.A. §§8-34-313 and 8-36-117(b).* ***Administrative History:*** *Original rule filed August 31, 2001; effective December 28, 2001.*

1700-3-1-.31 EXAMINATION OF EMPLOYER RECORDS. All books, records and documents relative to the employment and/or compensation of employees of any employer participating in the Retirement System or of any instrumentality created by any one (1) or more such employers shall be subject to examination by the Retirement System during normal business hours through on-site review. In the alternative, and in the Retirement System's sole discretion, such records may be provided through the mail or other methods of data transmission. The examination may be conducted by personnel of the Retirement System, the Office of the Comptroller of the Treasury or a licensed independent certified public accountant selected by the Retirement System. Such examinations shall take place as often as necessary, and to the extent necessary, in the discretion of the Retirement System, to determine compliance with the laws governing the Retirement System.

Authority: *T.C.A. §§8-34-313, 8-34-301, 8-34-314, 8-34-318, and 8-35-205.* ***Administrative History:*** *Original rule filed July 31, 2001; effective November 28, 2001.*

* 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)
Michael Barker	x				
Vicki Burton	x				
Kevin Fielden	x				
Tre Hargett				x	
Rebecca Hunter	x				
Larry Martin				x	
Patsy Moore	x				
Harold Morrison	x				
Bill Kemp	x				
Alfred W. Laney	x				
David H. Lillard, Jr.	x				
Deborah Taylor Tate	x				
Edward Taylor	x				
Paul Varble	x				
Jamie Wayman	x				
Ken Wilber	x				
Justin Wilson	x				
Bob Wormsley	x				
Charles Sargent				x	
Bo Watson				x	

I certify that this is an accurate and complete copy of proposed rules, lawfully promulgated and adopted by the Tennessee Consolidated Retirement System on 06/23/2017, 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: 1/29/18

Signature: Alison Cleaves

Name of Officer: Alison Cleaves

Title of Officer: Legal Services Director

Subscribed and sworn to before me on: 29 January 2018

Notary Public Signature: Paula Lee Merrifield

My commission expires on: 05 May 2020

PAULA LEE MERRIFIELD STATE OF TENNESSEE NOTARY PUBLIC COUNTY OF DAVIDSON

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

1/30/18

Date

Department of State Use Only

Filed with the Department of State on: 2/1/18

Effective on: 5/2/18

Tre Hargett
Secretary of State

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PUBLICATIONS

G.O.C. STAFF RULE ABSTRACT

DEPARTMENT:	Tennessee Motor Vehicle Commission
DIVISION:	Regulatory Boards
SUBJECT:	Licensing and Registration Requirements
STATUTORY AUTHORITY:	There is no known federal law or regulation or any state law or regulation mandating promulgation of such rule.
EFFECTIVE DATES:	May 24, 2018, through June 30, 2019
FISCAL IMPACT:	Minimal
STAFF RULE ABSTRACT:	This proposed rule amends the current requirement for motor vehicle dealers to disclose the status of a rebuilt or salvaged vehicle sold to a purchaser. This rule is related to consumer protection and disclosures of information to consumers in order to make an informed decision. This rule creates a more streamlined and efficient manner for the disclosure of such when sold through an electronic automobile auction or through an online transaction. This rule allows such disclosure to be made by a dealer electronically sending the purchaser the notice as opposed to the current rule that requires an actual signature prior to the consummation of the sale.

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.

Of the 29 current licensed motor vehicle auctions, most are defined as a small business under T.C.A. § 4-5-12(13) consisting of 50 employees or less. An estimate of 10 of those 29 would be considered outside the scope of a small business.

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

This rule reduces the reporting, recordkeeping, and other administrative costs that are currently associated with compliance with the existing rule. Given that this rule is an exception to the current rule, the cost of such administration would be decreased. It is not expected that the recordkeeping or administration of this rule would require the hiring of an additional employee.

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

Small businesses would be impacted with less reporting and recordkeeping requirements under this exception to the rule and consumers would continue to obtain the same amount of protection as under the existing rule.

(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.

This rule was drafted in order to create a less burdensome and intrusive rule that currently exists in obtaining a written authorization from a purchaser for the sale of a salvaged, rebuilt, or non-repairable vehicle and as such should actually decrease the existing burden. Given that, there is not a recommended or probable less burdensome method available.

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

There are no known federal or state 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.

The effect of a possible exemption of this rule for small businesses would create a disparity between disclosure requirements for consumer protection designed to inform consumers when making the purchase of a previously salvaged, rebuilt, or non-repairable vehicle. As such, consumer protection for any exempted small businesses would be decreased and create a gap in consumer protection based solely upon the size of the business.

Impact on Local Governments

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

These rules are not projected to 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;

This rule amends the current requirement for motor vehicle dealers to disclose the status of a rebuilt or salvaged vehicle sold to a purchaser. This rule is related to consumer protection and disclosures of information to consumers in order to make an informed decision. This amendment creates a more streamlined and efficient manner for the disclosure of such when sold through an electronic automobile auction or through an online transaction. This rule allows such disclosure to be made by a dealer electronically sending the purchaser the notice as opposed to the current rule that requires an actual signature prior to the consummation of the sale.

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

There is no known federal law or regulation or any state law or regulation mandating promulgation of such rule.

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

This rule would directly affect corporations and persons licensed by the Commission as public automobile auctions and automobile auctions selling salvaged, rebuilt, or non-repairable vehicles. Currently there are 29 licensed motor vehicle auctions in the state to which this rule may apply. There are no further persons or governmental entities that would be directly affected by this rule.

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

There are no known opinions of the attorney general and reporter or any judicial ruling directly relating 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;

This rule is not expected to create a probable increase or decrease in state and local government revenues and expenditures and as such is considered minimal.

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

Elizabeth Goldstein – Assistant General Counsel
TN Department of Commerce and Insurance

Paula Shaw – Executive Director
TN Motor Vehicle Commission
TN Department of Commerce and Insurance

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

Elizabeth Goldstein – Assistant General Counsel
TN Department of Commerce and Insurance

Paula Shaw – Executive Director
TN Motor Vehicle Commission
TN Department of Commerce and Insurance

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

Elizabeth Goldstein
500 James Robertson Parkway
Nashville, TN 37243
615-532-6304
Elizabeth.Goldstein@tn.gov

Paula Shaw
500 James Robertson Parkway
Nashville, TN 37243
615-253-1312
Paula.j.shaw@tn.gov

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

None.

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Nashville, TN 37243
Phone: 615-741-2650
Email: publications.information@tn.gov

For Department of State Use Only

Sequence Number: 02-26-18
Rule ID(s): 6708
File Date: 2/23/18
Effective Date: 5/24/18

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 Motor Vehicle Commission
Division:	Regulatory Boards Division
Contact Person:	Elizabeth Goldstein
Address:	500 James Robertson Parkway, Nashville, TN
Zip:	37243
Phone:	(615) 532-6304
Email:	Elizabeth.Goldstein@tn.gov

Revision Type (check all that apply):

x Amendment
___ New
___ Repeal

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

Chapter Number	**Chapter Title**
0960-01	General Rules
Rule Number	**Rule Title**
0960-01-.29	Disclosure of Rebuilt or Salvage Motor Vehicles

Rule 0960-01-.29 Disclosure of Rebuilt or Salvage Motor Vehicles is amended by inserting new language as paragraph (4) and appropriately renumbering existing paragraph (4) so that as amended the rule shall read:

(1) The motor vehicle dealer or salesperson who knows that a motor vehicle has a salvage history, or that a motor vehicle's title was previously branded as rebuilt or salvage, shall disclose, acknowledged in writing by the purchaser prior to the consummation of the sale, that the motor vehicle has a rebuilt title, salvage title, or salvage history.

(2) The disclosure in writing as required by subsection (a) shall be completed on a form prescribed by the Commission which states the following:

NOTICE

DISCLOSURE OF REBUILT OR SALVAGE VEHICLE

Pursuant to Tenn. Comp. R. & Regs. 0960-01-.29, the following disclosure is required prior to the sale of any vehicle with a rebuilt title, salvage title, or salvage history along with the signature of the purchaser acknowledging such disclosure.

The motor vehicle you are purchasing has a rebuilt title, salvage title, or salvage history. The value of this vehicle may be significantly less than a similar vehicle that is not branded with a rebuilt title, salvage title, or does not have a salvage history.

(Purchaser's Printed Name) _____

(Purchaser's Signature)_____ (Date) _____

(Dealer or Authorized Representative's Printed Name) _____

(Dealer or Authorized Representative's Signature) _____

(Dealer's Business Name and License Number) _____

Year_____Make_____Model_____VIN_____

_____

"Rebuilt title" means the passenger motor vehicle ownership document issued by any state to the owner of a rebuilt vehicle. Ownership of the passenger motor vehicle may be transferred on a rebuilt title, and a passenger motor vehicle for which a rebuilt title has been issued may be registered for use on the roads and highways. A rebuilt title shall be conspicuously labeled with the words "Rebuilt Vehicle--Anti-Theft Inspections Passed" across the front (T.C.A. § 55-3-211(6)).

"Salvage title" means a passenger motor vehicle ownership document issued by any state to the owner of a salvage vehicle. Ownership of the passenger motor vehicle may be transferred on a salvage title; however, a passenger motor vehicle for which a salvage title has been issued shall not be registered for use on the roads or highways unless it has been issued a rebuilt title. A salvage title shall be conspicuously labeled with the word "Salvage" across the front (T.C.A. § 55-3-211(8)).

"Salvage history" means:

(a) Any passenger motor vehicle which has been wrecked, destroyed, or damaged to the extent that the total estimated or actual cost of parts and labor to rebuild or reconstruct the passenger motor vehicle to its pre-accident condition and for legal operation on the roads or highways exceeds seventy-five percent (75%) of the retail value of the passenger motor vehicle, as set forth in a current edition of any nationally recognized compilation (to include automated databases) of retail values, or

(b) Without regard to whether such passenger motor vehicle meets the seventy-five percent (75%) threshold specified in subparagraph (a), any passenger motor vehicle which the owner may wish to designate as a salvage vehicle by obtaining a salvage title, without regard to the extent of the passenger motor vehicle's damage and repairs. This designation by the owner shall not impose on the insurer of the passenger motor vehicle or on an insurer processing a claim made by or on behalf of the owner of the passenger motor vehicle any obligations or liabilities (Pursuant to Tenn. Comp. R. & Regs. 0960-01-.29(3)).

(3) For purposes of this rule, "salvage history" means:

(a) Any passenger motor vehicle which has been wrecked, destroyed, or damaged to the extent that the total estimated or actual cost of parts and labor to rebuild or reconstruct the passenger motor vehicle to its pre-accident condition and for legal operation on the roads or highways exceeds seventy-five percent (75%) of the retail value of the passenger motor vehicle, as set forth in a current edition of any nationally recognized compilation (to include automated databases) of retail values, or

(b) Without regard to whether such passenger motor vehicle meets the seventy-five percent (75%) threshold specified in subparagraph (a), any passenger motor vehicle which the owner may wish to designate as a salvage vehicle by obtaining a salvage title, without regard to the extent of the passenger motor vehicle's damage and repairs. This designation by the owner shall not impose on the insurer of the passenger motor vehicle or on an insurer processing a claim made by or on behalf of the owner of the passenger motor vehicle any obligations or liabilities.

(4) If a motor vehicle is sold through an electronic automobile auction or through an online transaction, then the motor vehicle dealer shall electronically send the purchaser the following notice prior to the consummation of the sale:

NOTICE

DISCLOSURE OF REBUILT OR SALVAGE VEHICLE

Pursuant to Tenn. Comp. R. & Regs. 0960-01-.29, the following disclosure is required with respect to the sale of any vehicle with a rebuilt title, salvage title, or salvage history:

The motor vehicle you are purchasing has a rebuilt title, salvage title, or salvage history. The value of this vehicle may be significantly less than a similar vehicle that is not branded with a rebuilt title, salvage title, or does not have a salvage history.

(4)(5) Compliance with subparagraphs (1)-~~(3)~~ (4) may not be waived by the purchaser.

Authority: T.C.A. §§ 55-17-101, 55-17-107, and 55-17-114. Administrative History: New rule filed July 7, 2016; effective October 5, 2016.

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

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

I certify that this is an accurate and complete copy of proposed rules, lawfully promulgated and adopted by the Commission on 10/23/2017, 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: January 5, 2018

Signature:

Name of Officer: Elizabeth Goldstein

Title of Officer: Assistant General Counsel

CAROL L. McGLYNN
STATE OF TENNESSEE
NOTARY PUBLIC
DAVIDSON COUNTY
My Commission Expires NOV. 5, 2019

Subscribed and sworn to before me on: January 5, 2018

Notary Public Signature: Carol McGlynn

My commission expires on: Nov. 5, 2019

Agency/Board/Commission: Tennessee Motor Vehicle Commission

Rule Chapter Number(s): 0960-01-.29 Disclosure of Rebuilt or Salvage Motor Vehicles

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

2/8/2018

Date

Department of State Use Only

Filed with the Department of State on: 2/23/18

Effective on: 5/24/18

Tre Hargett
Secretary of State

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G.O.C. STAFF RULE ABSTRACT

DEPARTMENT:	Transportation
DIVISION:	Central Services Division
SUBJECT:	Overweight and Overdimensional Movements on Tennessee Highways
STATUTORY AUTHORITY:	Tennessee Code Annotated, Section 55-7-205(e)
EFFECTIVE DATES:	May 15, 2018 through June 30, 2019
FISCAL IMPACT:	Any increase in state revenues and expenditures has resulted from recent legislation that is incorporated into these rules, not from the revised rules themselves. The revised rules should not have any impact on local government revenues and expenditures.
STAFF RULE ABSTRACT:	The primary purpose for amending these rules is to bring them into compliance with statutory revisions enacted in 2016 Public Chapter 923, 2016 Public Chapter 1012, 2017 Public Chapter 156, and 2017 Public Chapter 477. The rules have also been revised with the intent to make them better organized and easier to understand. A "redline" version of Chapter 1680-07-01 as amended by these final rules is attached to this summary. See attached "Summary of Final Rulemaking Hearing Rules" regarding Chapter 1680-07-01.

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.

Please see the Tennessee Department of Transportation's "Responses to Comments" (copy attached) regarding proposed revisions to Chapter 1680-07-01.

Rulemaking Hearing Rules
of the Tennessee Department of Transportation

Chapter 1680-07-01
Overweight and Overdimensional
Movements on Tennessee Highways

Responses to Comments

I. INTRODUCTION

On June 21, 2017, the Tennessee Department of Transportation (TDOT) filed a notice of rulemaking hearing with the Secretary of State inviting public comment on the proposed revisions to Chapter 1680-07-01, Overweight and Overdimensional Movements on Tennessee Highways (the "Rules"). These Rules are promulgated in accordance with the Commissioner of Transportation's authority under T.C.A. § 55-7-205(e), as follows:

> The commissioner of transportation shall prescribe by orders of general application, rules and regulations for the issuance and/or renewal of these special permits for stated periods not exceeding one (1) year, for the transportation of such oversize, overweight, or overlength articles or commodities as cannot be reasonably dismantled or conveniently transported otherwise, and for the operation of such superheavy or overweight vehicles, motor trucks, semitrailers and trailers, whose gross weight, including load, height, width, or length, may exceed the limits prescribed herein or which in other respects fail to comply with the requirements of this code, as may be reasonably necessary for the transportation of these oversize, overweight, or overlength articles or commodities as cannot be reasonably dismantled or conveniently transported otherwise.

In accordance with T.C.A. § 4-5-203(a)(1), TDOT transmitted a copy of the notice of rulemaking directly to interested parties, including the Tennessee Trucking Association, the Specialized Carriers & Riggers Association, the Tennessee Farm Bureau, the Tennessee Road Builders Association, and the Tennessee Heavy Duty Towing Alliance, as well as to the Tennessee Department of Safety and Homeland Security and the Federal Highway Administration, Tennessee Division.

TDOT held a public rulemaking hearing on August 22, 2017, to receive public comment on proposed revisions to Chapter 1680-07-01. In addition, TDOT received two written comments on August 22, 2017. At the public hearing, TDOT extended the public comment period to September 5, 2017, but no additional written comments were received.

A copy of the transcript of the public hearing on August 22, 2017, and copies of the written comments pertaining to Chapter 1680-07-01 are available for inspection at TDOT

by contacting the TDOT Office of General Counsel, Suite 300, James K. Polk Building, 505 Deaderick Street, Nashville, TN 37243; telephone number (615) 741-2941; or by email at TDOT.RecordsRequest@tn.gov.

II. SUMMARY OF COMMENTS AND RESPONSES

In accordance with T.C.A. § 4-5-222 and Tennessee Department of State Rule 1360-01-02-.05(1), TDOT summarizes the public comments received at the public rulemaking hearing or in writing before or after the hearing and makes the following responses to these comments.

Rule 1680-07-01-.01 - Purpose and Application of This Chapter

There were no public comments addressed specifically to the proposed amendments to this rule, and there are no changes in the final rule.

Rule 1680-07-01-.02 - Application Process for Special Permits

There were no public comments addressed specifically to the proposed amendments to this rule, and there are no changes in the final rule.

Rule 1680-07-01-.03 - General Conditions for Issuing Special Permits

1. Dave Manning, president of TCW, a trucking firm engaged in hauling sealed containerized cargo units in international trade, questioned whether it is necessary to require the original permit to be carried in the cab of the truck since permits will be issued for each specific vehicle. He requested a revision of the rule to allow haulers to keep a copy of the permit in the vehicle.

   Response: TDOT concurs in the request. Paragraph (13) of the final rule has been revised to give haulers the alternative to keep the original permit or an authentic copy of the permit with a scannable bar code in the cab of the vehicle. The final rule also retains the new provision allowing haulers to use an electronic permit instead so long as the bar code is scannable.

2. In addition, the final rule has been revised to modify the provision in Paragraph (6) stating that a single trip permit or annual permit shall be issued to a specific motor vehicle. As modified, Paragraph (6) provides that when more than one motor vehicle is required to move a single load, a single trip permit may be issued to cover the entire load, including both the primary motor vehicle and any auxiliary motor vehicle(s), as identified in the permit application. This will not apply to annual permits as T.C.A. § 55-7-205(h)(5) requires that annual permits shall be issued "for each specific motor vehicle to be used for transporting overdimensional or overweight loads, or both."

Rule 1680-07-01-.04 – Time and Date Restrictions

There were no public comments addressed specifically to the proposed amendments to this rule, and there are no changes in the final rule.

Rule 1680-07-01-.05 - Duration of Special Permits

There were no public comments addressed specifically to the proposed amendments to this rule, and there are no changes in the final rule.

Rule 1680-07-01-.06 - Conditions for Permitting Overwidth Movements

There were no public comments addressed specifically to the proposed amendments to this rule, and there are no changes in the final rule.

Rule 1680-07-01-.07 - Additional Requirements for Equipment with Blades

There were no public comments addressed specifically to the proposed amendments to this rule, and there are no changes in the final rule.

Rule 1680-07-01-.08 - Vehicles Used Exclusively to Transport Seed Cotton Modules

1. Stefan Maupin, representing the Tennessee Farm Bureau, requested clarification as to whether vehicles used to transport seed cotton modules may operate on the state highway system up to eight feet six inches (8'6") wide without a special permit.

   Response: Yes. T.C.A. § 55-7-115(a) provides that vehicles used exclusively to transport seed cotton modules may operate up to a width of nine feet (9') on highways designated by TDOT and up to eight feet six inches (8'6") on any other highway. Federal law provides that no State shall impose a width limit "of more or less than" eight feet six inches (8'6") on the National Network of highways (which includes all highways on the Interstate System as well as other highways identified in 23 CFR Part 658, Appendix A), but it authorizes States to grant special permits allowing vehicles exceeding eight feet six inches (8'6") to operate on the National Network. 23 CFR 658.15. Accordingly, Rule 1680-07-01-.08(2), as amended, provides that vehicles used to transport seed cotton modules that are more than eight feet six inches (8'6") wide must obtain a special permit in order to operate on the National Network. The permitted width is limited to nine feet (9').

2. In addition, Mr. Maupin requested an explanation as to why the proposed rule would only allow movements of seed cotton modules up to nine feet (9') wide only on highways having four or more lanes or on two-lane highways having a minimum pavement width of twenty-four feet (24').

Response: The final rule has been revised to delete this restriction. As modified, the final rule allows vehicles used to transport seed cotton modules to operate up to nine feet (9') wide on all state highways without a special permit except on highways included on the National Network, where a special permit to operate up to nine feet (9') wide will be required in accordance with Federal law.

Rule 1680-07-01-.09 - Conditions for Permitting Overweight Movements

There were no public comments addressed specifically to the proposed amendments to this rule, and there are no changes in the final rule.

Rule 1680-07-01-.10 - Conditions for Permitting Overheight Movements

There were no public comments addressed specifically to the proposed amendments to this rule, and there are no changes in the final rule.

Rule 1680-07-01-.11 - Conditions for Permitting Overlength Movements

There were no public comments addressed specifically to the proposed amendments to this rule, and there are no changes in the final rule.

Rule 1680-07-01-.12 - Additional Requirements for Superheavy and/or Extra-Overdimensional Movements

There were no public comments addressed specifically to the proposed amendments to this rule, and there are no changes in the final rule.

Rule 1680-07-01-.13 - Conditions for Movement of Fixed Load Vehicles

There were no public comments addressed specifically to the proposed amendments to this rule, and there are no changes in the final rule.

Rule 1680-07-01-.14 - Conditions for Permitting Movement of Site-Built Houses

There were no public comments addressed specifically to the proposed amendments to this rule, and there are no changes in the final rule.

Rule 1680-07-01-.15 - Conditions for Permitting Movement of Mobile Homes, Manufactured Homes, Portable Modular Units or House Trailers

There were no public comments addressed specifically to the proposed amendment to this rule, and there are no changes in the final rule.

However, the Department requests the Secretary of State, Publications Division, to edit the rule to put all citations to a specific rule into the correct rule numbering format and to substitute "T.C.A." for all references to the Tennessee Code Annotated. Further, the Department requests the Publications Division to delete the citation to T.C.A. §55-11-205 in the Authority section because this code section has been repealed and transferred to Title 55, Chapter 7, Part 2.

Rule 1680-07-01-.16 - Conditions for Permitting Movement of Houseboats

There were no public comments addressed specifically to the proposed amendments to this rule, and there are no changes in the final rule.

Rule 1680-07-01-.17 - Conditions for Permitting Movement of Sealed Containerized (Ocean Going) Cargo Units

There were no public comments addressed specifically to the proposed amendments to this rule, and there are no changes in the final rule.

Rule 1680-07-01-.18 - Conditions for Permitting Movement of Roof Trusses

There were no public comments addressed specifically to the proposed amendments to this rule, and there are no changes in the final rule.

Rule 1680-07-01-.19 - Conditions for Permitting Movement of Heavy Duty Towing Vehicles

1. Mike Agee of Agee Consulting Services, representing the Tennessee Heavy Duty Towing Alliance, commented that some wrecked or disabled vehicles are so damaged that they cannot be towed but must be loaded onto a trailer and hauled away; that some of these movements will be overweight or overdimensional or both; and that most heavy duty towing companies own and operate truck tractors with a lowboy or flatbed trailer as a regular part of their towing business. Accordingly, the Association requests that the final rule be modified to allow heavy duty tow truck companies to obtain annual towing permits for truck tractor and trailer or semi-trailer combination vehicles so these vehicles can be legally used to haul wrecked or disabled vehicles as needed in conducting emergency towing movements.

   Response: TDOT acknowledges that circumstances will at times require wrecked vehicles to be hauled away from highway incident locations and agrees that a limited accommodation of the Association's request is appropriate.

   Accordingly, Paragraphs (7) and (8) of the final rule are revised by adding a subsection (f) that will allow the holder of an annual permit for a towing vehicle to obtain an annual or single trip towing permit, respectively, for a truck tractor

and trailer or semi-trailer combination. This annual or single trip towing permit will authorize the permittee to haul wrecked, disabled, or abandoned vehicles, including emergency towing movements not subject to date and time restrictions under Rule 1680-07-01-.04. However, these towing permits will not entitle a truck tractor and trailer or semi-trailer combination to operate with the higher axle weight limits allowed for towing vehicles when towing a wrecked, disabled, or abandoned vehicle. Truck tractor and trailer or semi-trailer combinations will remain subject to the general size and weight limits established in T.C.A. §§ 55-7-201, 55-7-202, and 55-7-203(b) or to whatever size and weight limits that vehicle may have under a separate special permit issued in accordance with T.C.A. § 55-7-205 and these rules.

The final rule is also revised by adding a subsection (b) to Paragraph (10) that will allow a truck tractor and trailer or semi-trailer combination with a towing permit under Paragraphs (7) or (8) to be called out by TDOT or law enforcement to haul wrecked or disabled vehicles away from the highway in emergency situations. With a towing permit, the tow truck operator may be authorized to use a truck tractor and trailer or semi-trailer combination to haul away a wrecked or disabled vehicle as an oversize or overweight load. However, if the height, width, length, gross weight, or axle weights of the load exceed the general size and weight limits established in T.C.A. §§ 55-7-201, 55-7-202, and 55-7-203(b) or to whatever size and weight limits that vehicle may have under a separate special permit issued in accordance with T.C.A. § 55-7-205 and these rules, the movement of the load will need to be accompanied by a law enforcement escort.

2. Mr. Agee also commented that the heavy duty tow truck firms that own and use truck tractor and trailer or semi-trailer combinations in their towing operations will also use these vehicles to haul other freight, including overweight and overdimensional loads such as construction equipment. Accordingly, the Tennessee Heavy Duty Towing Alliance requests that if a tow truck firm has purchased an annual permit for a truck tractor and trailer or semi-trailer combination allowing it to haul other types of overweight or overdimensional loads that it also be allowed to obtain an annual towing permit for that same vehicle, at no extra charge, with the same allowances for size and weight authorized for a towing vehicle.

Response: TDOT declines to make the requested revision to the final rule. With respect to the cost of the annual permit, T.C.A. § 55-7-205(n)(5)(E)(ii) directs that the cost for an annual towing permit shall be five hundred dollars ($500). With respect to the size and weight allowances, the oversize load dimensions available to a truck tractor and trailer or semi-trailer combination under an annual permit to haul freight are comparable to the oversize dimensions available to a towing vehicle and towed vehicle combination under an annual towing permit. The maximum gross vehicle weight available under each type of annual permit is one hundred and sixty-five thousand pounds (165,000 lbs.). The difference between

the annual permit to haul overweight loads and the annual permit for towing vehicles to tow wrecked or disabled vehicles is in the axle weight allowances. Towing vehicles are allowed higher axle limits because of the way a fixed frame vehicle distributes its weight onto the back of a towing vehicle when it is attached. On a truck tractor and trailer or semi-trailer combination, by contrast, the weight of the load is more evenly distributed across all axles. Allowing a tow truck firm to operate a truck tractor and trailer or semi-trailer combination to haul ordinary overweight loads under the more generous axle weights available to a towing vehicle under a towing permit could give tow truck firms an unfair competitive advantage over other freight haulers.

3. Mr. Agee also expressed concern about proper communication and enforcement of the new rules. Specifically, he requested that towing companies must show proof of having the required towing permits before being called out by law enforcement agencies to clear wrecked or disabled vehicles from the highway involving overweight or overdimensional movements.

   Response: TDOT agrees that proper communication and enforcement of the towing permit rules is important but believes this is a matter that will need to be addressed separately from the content of these rules.

4. Finally, to support enforcement of the new towing permit rules, Mr. Agree requested that a decal be developed and issued with each towing permit in order to make it easier for law enforcement agencies to identify properly permitted towing vehicles.

   Response: TDOT concurs with the request. The final rule is revised by adding a new Subparagraph (7)(g) that will require the TDOT Permit Office to issue a decal with each annual towing permit that will identify the month and year in which the permit the annual permit will expire. The permittee shall be required to display the decal on the driver's side of the front windshield of the towing vehicle.

Rule 1680-07-01-.21 - Escort Vehicle Signs, Markings and Equipment Requirements

There were no public comments addressed specifically to the proposed amendments to this rule, and there are no changes in the final rule.

Rule 1680-07-01-.22 - Financial Responsibility

There were no public comments addressed specifically to the proposed amendments to this rule, and there are no changes in the final rule.

Rule 1680-07-01-.23 - Bond or Proof of Solvency Requirements

There were no public comments addressed specifically to the proposed amendments to this rule, and there are no changes in the final rule.

Rule 1680-07-01-.24 - Fees

There were no public comments addressed specifically to the proposed amendments to this rule.

However, Subparagraph (5)(b) of the final rule has been revised to acknowledge that a single trip permit for any load exceeding the size or weight limits available under an annual permit may be subject to fees for the evaluation of bridges and similar structures as set forth in paragraph (4) of the rule. This revision simply makes the rule consistent with T.C.A. § 55-7-205(h)(5)(H).

Rule 1680-07-01-.25 Revocation, Suspension and Withholding of Permits

There were no public comments addressed specifically to the proposed amendments to this rule, and there are no changes in the final rule.

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.

Analysis of Impact on Small Business (T.C.A. § 4-5-202)

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

Chapter 1680-07-01 regulates the issuance of special permits for moving overweight or overdimensional (OW/OD) loads on Tennessee's state highway system. The proposed revisions to these rules are designed to be consistent with 23 CFR Part 658, which establishes certain restrictions on the authority of States to regulate truck sizes and weights and sets requirements for special permits to move OW/OD loads on the interstate highway system and the additional state highways included in the National Network of highways, as set forth in Appendix A of 23 CFR Part 658. In addition, several of the proposed revisions are specifically intended to make Tennessee's OW/OD rules more consistent with the OW/OD rules of neighboring states so as to make compliance easier.

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

The proposed rules include revisions intended to make the rules better organized and more clear.

(3) The establishment of flexible compliance and reporting requirements for small business:

The proposed rules implement vehicle size and weight standards and general requirements for permitting the movement of OW/OD loads that are established in Tennessee law, including especially T.C.A. §§ 55-7-201 – 55-7-205. These statutes do not authorize any alternative compliance requirements based on the size of the business moving the OW/OD load. There are not any specific reporting requirements in the proposed rules.

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

Vehicle operators are required to comply with vehicle size and weight standards established by law, or with the conditions for moving OW/OD loads under a special permit, whenever they operate a vehicle on the state highway system. The law does not authorize any "friendly" deadline for compliance. Proposed Rule 1680-07-01-.02(3) does set deadlines to apply for special permits to move OW/OD loads but allows some flexibility for good cause. Proposed new Rule 1680-07-01-.25 addresses the possible revocation, suspension or withholding of OW/OD permits for noncompliance with permit conditions; it requires notice and an opportunity to be heard and allows suspended permits to be reinstated upon coming back into compliance with permit conditions. There are not any specific reporting requirements in the proposed rules.

(5) The consolidation or simplification of compliance or reporting requirements for small business:

There are no specific reporting requirements in the proposed rules.

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

The proposed rules implement size and weight standards and requirements for permitting the movement of OW/OD vehicles that are established in T.C.A. §§ 55-7-201 – 55-7-205 and other related statutes. The proposed rules do contain some operational requirements, e.g., signs and markings on oversize loads, escort vehicles, route surveys, and the like, that are intended to warn other motorists and promote public safety. It is unclear what kind of performance standards could be substituted for these operational safety requirements.

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

The proposed rules do not create any occupational licenses or other barriers to enter into any particular business or profession.

Economic Impact Statement (T.C.A. § 4-5-203)

(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 current and proposed rules in Chapter 1680-07-01 implement the general requirements for issuing special permits allowing the movement of non-divisible loads that exceed the general vehicle size and weight standards established in T.C.A. §§ 55-7-201 – 55-7-203. These rules apply to any business that seeks to move such overweight or overdimensional (OW/OD) loads on Tennessee's state highway system. This includes trucking firms, heavy construction equipment operators, specialized carriers that move super heavy and extra-overdimensional loads, and others. The proposed revisions also include a new rule implementing special conditions for heavy duty tow truck operators enacted in 2017 Public Chapter 477 and a new provision implementing 2017 Public Chapter 156, which allows overweight vehicles carrying fluid milk products to be treated as a non-divisible load for permitting purposes.

The Tennessee Department of Transportation (TDOT) issues about 136,306 special permits per year, including about 3,276 annual permits and 133,030 single trip permits, to businesses seeking to move OW/OD loads. These permits are issued to approximately 112 businesses. It is not known how many of these businesses could be characterized as small businesses.

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

The proposed rules do not impose any reporting requirements on persons who receive OW/OD permits and the only required recordkeeping involves keeping the permit in the permitted vehicle. Specifically, the current rule requires the original permit to be kept in the possession of the driver of the permitted vehicle at all times during the OW/OD move. Proposed rule 1680-07-01-.03(13) relaxes this requirement by instead allowing the driver to keep a copy of the original permit, or an electronic permit, in the vehicle so long as the bar code of the permit can be scanned. In addition, proposed new rule 1680-07-01-.19(7)(g) will require TDOT, when issuing an annual towing permit for OW/OD towing movements, to provide the permittee with a decal identifying the month and year in which the annual permit will expire. The permittee will be required to display this decal on the front windshield of the permitted towing vehicle. This is being done at the request of the heavy duty tow truck industry to make enforcement easier. The administrative cost of keeping a copy of the permit in the permitted vehicle and placing a decal on the windshield of a permitted towing vehicle is negligible.

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

In large part, the proposed rules implement vehicle size and weight standards and general requirements for issuing special permits to move OW/OD loads, including permit fees, that are established by state law, including but not limited to T.C.A. §§ 55-7-201 – 55-7-205. The proposed rules, like the current rules, also establish a variety of operational requirements for moving OW/OD loads, including signs and markings on oversize loads, escort vehicles for larger oversize loads, and route surveys for super heavy and extra-overdimensional loads, as well as financial responsibility requirements, all of which are intended to warn other motorists, promote public safety, and protect the structural integrity of roadways, bridges, and other structures along state highways.

The costs for placing signs and markings on oversize loads are not significant. Requiring escort vehicles for larger oversize loads and route surveys for super heavy or extra-overdimensional loads, and in some cases surety bonds, will result in some significant costs to businesses engaged in moving these types of loads on state highways. However, these costs must be balanced against the potential risks to public safety and potential damages to the public highway system from moving these types of loads.

(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 on small business:

The proposed rules do not regulate the activities of businesses except to the extent their activities involve the movement of OW/OD loads on the state highway system. The vehicle size and weight standards and general

requirements for issuing special permits to move OW/OD loads are established by state law, which does not authorize any alternatives or exceptions for small business. The operational and financial responsibility requirements for moving OW/OD loads that are established in the current and proposed rules are based on the size and weight of the load, not the size of the business moving the load, and they are designed to protect public safety and the integrity of the public highway system.

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

The proposed revisions to Chapter 1680-07-01 are designed to be consistent with 23 CFR Part 658, which establishes certain restrictions on the authority of States to regulate truck size and weight and sets requirements for special permits to move OW/OD loads on the interstate highway system and the additional state highways included in the National Network of highways. In addition, some of the proposed revisions in operational requirements are specifically intended to make Tennessee's OW/OD rules more consistent with the OW/OD rules of neighboring states so as to make compliance easier.

(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 state statutes that establish vehicle size and weight standards and the general requirements for issuing permits to move OW/OD loads do not authorize any exemptions for small business. The operational and financial responsibility requirements for moving OW/OD loads that are established in the current and proposed rules are based on the size and weight of the load, not the size of the business moving the load, and they are designed to protect public safety and the integrity of the public highway system.

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)

Statement:

Generally, the revised rules will not have any direct impact on local governments because the rules apply to the Tennessee Department of Transportation's issuance of special permits for the movement of overweight and overdimensional loads on the state highway system. However, the new Rule 1680-07-01-.19, Conditions for Permitting Movement of Towing Vehicles, may require a change in how local law enforcement obtains towing services when working a vehicle incident on an interstate highway or other state highway. Heavy duty towing vehicles that are overweight or overdimensional, either by themselves or in combination with a towed vehicle, are required to obtain a special permit (annual or single trip) to operate on the state highway system. When responding to an incident on an interstate highway or other state highway that will require a heavy duty tow truck to remove a wrecked or disabled vehicle, local law enforcement will need to contact and use a towing business that has the proper TDOT towing permits. See Paragraph (10) of Rule1680-07-01-.19.

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;

See attached "Summary of Final Rulemaking Hearing Rules" regarding Chapter 1680-07-01.

(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. § 55-7-205(e) directs the Commissioner of Transportation to prescribe rules and regulations regarding the issuance of special permits for the movement of overweight and overdimensional vehicles and loads on Tennessee's state highways. 23 U.S.C. § 127 and 23 CFR Part 658, Truck Size and Weight, Route Designations – Length, Width and Weight Limitations, establish truck weight and size rules that apply to the interstate highway system and the National Network of highways.

(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;

TDOT transmitted copies of the rulemaking hearing notice to the Tennessee Trucking Association, the Specialized Carriers & Riggers Association, the Tennessee Farm Bureau, the Tennessee Road Builders Association, and the Tennessee Heavy Duty Towing Alliance, as well as to the Tennessee Department of Safety and Homeland Security and the Federal Highway Administration. TDOT worked with most of these entities in developing the legislation upon which much of the current rulemaking is based, and TDOT has continued to work with or receive input from many of these entities during the rulemaking process. TDOT is not aware of any opposition to the proposed rule revisions.

(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;

Any increase in state revenues and expenditures has resulted from recent legislation that is incorporated into these rules, not from the revised rules themselves. The revised rules should not have any impact on local government revenues and expenditures.

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

John H. Reinbold, TDOT General Counsel; and Justin Underwood, Assistant Director of TDOT's Central Services Division.

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

See response to paragraph (F) above.

(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
Legal Division
James K. Polk Bldg., 3rd Floor
505 Deaderick St., Nashville, TN 37243
p. 615-741-2941
John.Reinbold@tn.gov

Justin Underwood, Assistant Director
Central Services Division
James K. Polk Building, 8th Floor
505 Deaderick Street, Nashville, TN 37243
p. (615) 253-8813
justin.underwood@tn.gov

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

None at this time.

Tennessee Department of Transportation
Central Services Division

Chapter 1680-07-01
Overweight and Overdimensional Movements on Tennessee Highways

Summary of Final Rulemaking Hearing Rules

Introduction

The primary purpose for amending these rules is to bring them into compliance with statutory revisions enacted in 2016 Public Chapter 923, 2016 Public Chapter 1012, 2017 Public Chapter 156, and 2017 Public Chapter 477. The rules have also been revised with the intent to make them better organized and easier to understand. A "redline" version of Chapter 1680-07-01 as amended by these final rules is attached to this summary.

Rule 1680-07-01-.01: Purpose and Application of This Chapter.

This rule identifies the maximum vehicle size and weight limits that are generally authorized under T.C.A. §§ 55-7-201 --- 55-7-203 to operate on state highways without a special permit issued under this Chapter. The substance of the rule remains unchanged except that two subparagraphs have been added to acknowledge that State and Federal provide various exceptions to these general size and weight limits. The format of the rule has been revised to conform to the standard rule numbering system.

Rule 1680-07-01-.02: Application Process for Special Permits [formerly 1680-07-01-.03].

The revised rule:

- Requires the applicant for a special permit to provide the motor vehicle registration information for the vehicle to be permitted.
- Establishes deadlines for submitting permit applications based on the type or weight of the movement.

Rule 1680-07-01-.03: General Conditions for Issuing Special Permits [formerly 1680-07-01-.02].

The revised rule:

- Defines the term "non-divisible load or vehicle" consistently with 23 CFR § 658.5.
- Provides that a vehicle carrying fluid milk products shall be considered a non-divisible load as provided in State and Federal law (per 2017 Public Chapter 156 and 23 U.S.C. §127).
- Clarifies the circumstances under which special permits may be issued to vehicles carrying emergency supplies during Federal or State-declared emergencies.

- States generally that a permit will be issued for a specific motor vehicle, but provides that a single trip permit may cover multiple vehicles in cases where more than one drive vehicle is required to move a single load.
- Allows the transfer of a permit from one vehicle to another for good cause.
- Allows a permit to be amended without charge one time prior to the beginning date.
- Provides that a copy of a permit or an electronic permit may be kept in the permitted vehicle, in lieu of keeping the original permit in the vehicle, so long as the bar code of the permit can be scanned.

Rule 1680-07-01-.04: Time and Date Restrictions [formerly 1680-07-01-.12].

The revised rule incorporates recent statutory changes (2016 Public Chapter 923; 2017 Public Chapter 477) that generally allow permitted overweight or overdimensional movements twenty-four (24) hours per day and seven (7) days per week. The law makes certain exceptions, however, which are reflected in the revised rule, as follows:

- Oversize movements that require an escort vehicle (12'6" wide, 15' high, or 90' long) are prohibited on interstate highways during morning and afternoon rush hours in counties having a population of 250,000 or more.
- In addition, TDOT may set time restrictions on movements:
    - During periods of heavy traffic associated with holiday travel; or
    - Based on road conditions or during inclement weather.
- TDOT may restrict movement of super heavy or extra-overdimensional loads based on road conditions, traffic volumes, or any other conditions affecting public safety and convenience.

The rule acknowledges that emergency towing movements are not subject to these date and time restrictions and that separate rules govern time restrictions on the movement of mobile homes, site-built houses, and houseboats.

Rule 1680-07-01-.05: Duration of Special Permits.

The revised rule provides that single trip permits shall be valid for ten (10) days, instead of six (6) days (per 2016 Public Chapter 923).

Rule 1680-07-01-.06: Conditions for Permitting Overwidth Movements.

The revised rule:

- Provides that both front and rear escorts will be required for any load more than 13'6" wide, which is consistent with the maximum width allowed under an annual permit.
- Clarifies the conditions under which loads exceeding 16' wide may be permitted (previously addressed separately in former Rule 1680-07-01-.08).

Rule 1680-07-01-.07: Additional Requirement for Equipment with Blades.

The revision clarifies that movements of equipment with blades are subject to all other regulations applicable to overwidth movements.

Rule 1680-07-01-.08: Vehicles Used Exclusively to Transport Seed Cotton Modules.

This is a new rule that implements existing statutory provisions in T.C.A. §55-7-115.

- The rule restates existing statutory limits on the size and weight of vehicles used exclusively to transport seed cotton modules; and
- Provides generally that such vehicles may operate up to 9' wide on the state highway system but that, in accordance with federal law, a special permit is required for movements on the National Network of highways if the vehicle is more than 8'6" wide.

Rule 1680-07-01-.09: Conditions for Permitting Overweight Movements.

The revised rule:

- Incorporates the conditions for permitting higher axle weight limits (per 2016 Public Chapter 1012), as follows:
    - Allows a maximum axle weight of 23,000 lbs. per single axle, 46,000 lbs. per tandem axle, and 60,000 lbs. per tridem axle; and
    - Specifies that the vehicle shall not be more than 10' wide, but allows the load to exceed 10' in width if properly permitted.
- Clarifies the conditions for permitting the movement of loads exceeding 165,000 lbs.

Rule 1680-07-01-.10: Conditions for Permitting Overheight Movements.

The revised rule:

- Requires a route survey for proposed movements that equal or exceed 15' in height.
- Incorporates existing escort vehicle requirements for loads over 15' high (previously in former Rule 1680-07-01-.02).
- Clarifies the conditions for permitting loads over 15'6" high.

Rule 1680-07-01-.11: Conditions for Permitting Overlength Movements.

The revised rule increases the maximum vehicle length not requiring an escort vehicle from 85' to 90'. This makes the Tennessee rule consistent with other Southeastern states.

Rule 1680-07-01-.12: Additional Requirements for Super Heavy and Extra-Overdimensional Movements [formerly 1680-07-01-.04].

The revised rule:

- Defines "super heavy" as over 165,000 lbs. and "extra-overdimensional" as over 16' wide or 15'6" high.

- Establishes that TDOT may require such movements to be accompanied by a police escort at the permittee's expense.

Rule 1680-07-01-.13: Conditions for Movement of Fixed Load Vehicles.

The revised rule:

- Standardizes the conditions for permitting the movement of fixed load vehicles on all state highways, including the interstate highway system, as follows:
    - Sets a maximum axle limit of 24,000 lbs., or up to 30,000 lbs. if approved by the TDOT Structures Division after a bridge analysis;
    - Sets a maximum gross weight of 150,000 lbs.; and
    - Prohibits movement over bridges if the vehicle's gross weight or axle weights exceed any posted limits on the bridge.
- Incorporates provisions from the former Rule 1680-07-01-.19, Conditions for Permitting Movements of Off-the-Road Vehicles or Equipment Over State Highways.

Rule 1680-07-01-.14: Conditions for Permitting Movement of Site-Built Houses.

The revised rule:

- Establishes an application deadline and additional information requirements, including a route survey.
- Identifies typical route restrictions.
- Establishes operational requirements for moving utility lines, tree trimming, detours, etc.

Rule 1680-07-01-.15: Conditions for Permitting Movement of Mobile Homes, Manufactured Homes, Portable Modular Units or House Trailers.

The revision updates the TDOT web site address in subparagraph (7)(f).

Rule 1680-07-01-.16: Conditions for Permitting Movement of Houseboats.

The revised rule:

- Requires a special permit for the movement of any houseboat over 8' wide (instead of 8'6"), as required under T.C.A. §55-7-205(a)(4).
- Provides that additional requirements for escort vehicles and the prohibition on annual permits will apply to loads exceeding 13'6", which is consistent with the maximum width generally allowed under an annual permit.

Rule 1680-07-01-.17: Conditions for Permitting Movement of Sealed Containerized (Ocean Going) Cargo Units.

The revised rule:

- Increases the total gross vehicle weight allowed from 90,000 lbs. to 100,000 lbs.
- Deletes the route restriction requirement under annual permits.

Rule 1680-07-01-.18: Conditions for Permitting Movement of Roof Trusses.

There are only minor, non-substantive revisions to this rule.

Rule 1680-07-01-.19: Conditions for Permitting Movement of Heavy Duty Towing Vehicles.

This is a new rule (replacing the former rule dealing with off-the-road vehicles) to implement 2017 Public Chapter 477. The new rule:

- Identifies the normal statutory size and weight limits applicable to towing trucks or tow trucks and towed vehicles in combination that may not be exceeded without a special permit.
- Distinguishes "emergency towing movements" (removing a wrecked or disabled vehicle from the highway to a repair facility or terminal within 100 miles) from "secondary towing movements" (non-emergency towing).
- Stipulates that a towing vehicle transporting a wrecked, disabled, or abandoned vehicle shall be considered a "non-divisible" load for permitting purposes.
- Authorizes annual and single trip permits for oversize or overweight tow trucks up to:
    - 45' long;
    - 13'6" high;
    - 9' wide;
    - 85,000 lbs. total vehicle weight;
    - 23,000 lbs. per single axle;
    - 46,000 lbs. per tandem axle group; and
    - 60,000 lbs. per tridem axle group.
- Authorizes annual permits for tow trucks and towed vehicles in combination up to:
    - 90' long for secondary towing movements (no length restrictions on emergency towing movements);
    - 13'10" high;
    - 12'6" wide;
    - 165,000 lbs. total combined vehicle weight;
    - 25,000 lbs. per single axle;
    - 50,000 lbs. per tandem axle group; and
    - 75,000 lbs. per tridem axle group.
- Authorizes single trip permits for tow trucks and towed vehicles in combination up to:
    - 15' high;
    - 16' wide (escort required for movements exceeding12'6" wide);
    - 25,000 lbs. per single axle;
    - 50,000 lbs. per tandem axle group;
    - 75,000 lbs. per tridem axle group;
    - Unlimited length, but escort required for movements more than 90' long; and
    - No maximum weight, but combined weights exceeding 165,000 lbs. will require a bridge analysis.
- Allows a firm that has obtained an annual permit for a towing vehicle also to obtain an annual or single trip towing permit for a truck tractor and trailer or semi-trailer

combination that is used to haul wrecked or disabled vehicles, including emergency towing movements not subject to date and time restrictions, but restricts size and weight to the limits otherwise allowed to that freight motor vehicle by law or a special permit.

- Provides that a towing vehicle with a current towing permit under these rules may make emergency towing movements exceeding the normal permit limits when called out by TDOT, the Tennessee Highway Patrol, or local law enforcement to remove wrecked or disabled vehicles from the highway and take them to the nearest safe location; also allows a truck tractor and trailer or semi-trailer combination with a towing permit to exceed normal permit limits in these circumstances, provided that a law enforcement escort will be required if the movement exceeds the size and weight limits otherwise allowed to that vehicle by law or a freight motor vehicle permit.
- Identifies the cost of annual and single trip towing permit fees as established by statute:
    - $500 for an annual permit;
    - $20 for a single trip permit for each oversize category (except $30 for widths over 14'); and
    - $20 and $.06 per ton mile for excess weight, plus $.12 per ton mile for any excess weight over 165,000 lbs.

Rule 1680-07-01-.20: Signs and Markings on Movements.

The revised rule:

- Allows fluorescent orange or red flags on overwidth loads and reduces the letter stroke size on "oversize load" signs to 1½" so as to harmonize with the rules of other Southeastern states.
- Incorporates requirements for markings on loads exceeding the width or length of the vehicle that were formerly located in a different rule.
- Inserts additional requirements for markings on loads moving at night (per 2016 Public Chapter 923).

Rule 1680-07-01-.21: Escort Vehicle Signs, Markings and Equipment Requirements.

The revision increases the gross vehicle weight rating on escort vehicles from 10,000 lbs. to 18,000 lbs. so as to harmonize with other Southeastern states.

Rule 1680-07-01-.22: Financial Responsibility.

There are only minor, non-substantive revisions.

Rule 1680-07-01-.23: Bond or Proof of Solvency Requirements.

There are only minor, non-substantive revisions.

Rule 1680-07-01-.24: Fees.

The revised rule:

- Reflects new permit fees for single trip movements as established by statute, as follows:
  - A standard $20 for excessive height, length, and width up to 14' (width over 14' stays at $30) (per 2016 Public Chapter 923);
  - An increased fee for excess weight from $15 plus $.05 per ton mile to $20 plus $.06 per ton mile (per 2015 Public Chapter 393); and
  - New fees for towing movements set at $20 plus $.06 per ton mile for excess weight up to 165,000 lbs. and $.12 per ton mile for weight in excess of 165,000 lbs. (per 2017 Public Chapter 477).
- Reflects adjustments in the fees for evaluation of bridges and other structures (per 2016 Public Chapter 1012);
- Reflects new fees for annual permits (per 2016 Public Chapter 1012):
  - For each category of oversize loads (available only for movements not exceeding 13'10" high, 13'6" wide, or 90' long) -- $100; and
  - For overweight loads (available only for loads not exceeding 165,000 lbs.):
    - Up to 100,000 lbs. -- $750;
    - 100,000 to 120,000 lbs. -- $1,500;
    - 120,000 to 140,000 lbs. -- $2,250;
    - 140,000 to 155,000 lbs. -- $3,000; and
    - 155,000 to 165,000 lbs. -- $3,500.
- Identifies annual permit fee for vehicles use exclusively to transport seed cotton modules at $100, as established in T.C.A. § 55-7-205(b)(3).
- Identifies annual fee for overweight/overdimensional towing movements at $500 (per 2017 Public Chapter 477).
- Provides that the holder of an annual permit for excess weight may supplement the permit by obtaining a single trip permit for any excess width, height, or length not otherwise covered by an annual overdimensional permit (per 2017 Public Chapter 477).
- Provides that vehicles with annual permits must comply with any posted weight limits.
- Establishes procedures for the payment and, in limited circumstances, the refunding of fees.

Rule 1680-07-01-.25: Revocation, Suspension and Withholding of Permits.

This is a new rule. T.C.A. §55-7-205(i) authorizes TDOT to revoke permits at any time if the holder of a permit abuses the privileges granted or otherwise makes wrongful use of the permit. Former TDOT Rule 1680-07-01-.02(10) provided that any person who undertakes the movement of overweight or overdimensional loads in violation of T.C.A. §55-7-205 or TDOT's regulations may be denied additional permits for up to one year. The new rule focuses on compliance rather than punishment.

The new rule details the conditions and procedures for revoking, suspending or withholding permits, as follows:

- A permit may be revoked if the permittee has submitted a fraudulent application or made fraudulent use of a permit to move a vehicle and load not covered by the permit, or if the permittee has repeatedly violated permit conditions.
- The permittee must be given written notice and an opportunity to be heard before a permit may be revoked.
- The use of a permit may be suspended, or new permits may be withheld from a permittee, if the permittee has failed to comply with permit terms and conditions or has failed to pay permit fees or penalties.
- The permittee must be given written notice and a prompt opportunity to be heard on a decision to suspend or withhold permits.
- The suspension or withholding of permits will be lifted if the permittee remedies the violation.
- The person or entity affected by a decision to revoke or suspend a permit, or to withhold new permits, may appeal the decision under the Uniform Administrative Procedures Act.

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Sequence Number: 02-15-18
Rule ID(s): 6698
File Date: 2/14/18
Effective Date: 5/15/18

Rulemaking Hearing Rule(s) Filing Form

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

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

Agency/Board/Commission:	Tennessee Department of Transportation
Division:	Central Services Division
Contact Person:	John H. Reinbold, General Counsel
Address:	505 Deaderick Street, Suite 300, Nashville, TN
Zip:	37242
Phone:	615-741-2941
Email:	John.Reinbold@tn.gov

Revision Type (check all that apply):

X Amendment
X New
X Repeal

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

Chapter Number	**Chapter Title**
1680-07-01	Overweight and Overdimensional Movements on Tennessee Highways
Rule Number	**Rule Title**
1680-07-01-.01	Purpose and Application of Chapter
1680-07-01-.02	Application Process for Special Permits
1680-07-01-.03	General Conditions for Issuing Special Permits
1680-07-01-.04	Time and Date Restrictions
1680-07-01-.05	Duration of Special Permits
1680-07-01-.06	Conditions for Permitting Overwidth Movements
1680-07-01-.07	Additional Requirements for Equipment with Blades
1680-07-01-.08	Vehicles Used Exclusively to Transport Seed Cotton Modules
1680-07-01-.09	Conditions for Permitting Overweight Movements
1680-07-01-.10	Conditions for Permitting Overheight Movements
1680-07-01-.11	Conditions for Permitting Overlength Movements
1680-07-01-.12	Additional Requirements for Super Heavy and/or Extra-Overdimensional Movements
1680-07-01-.13	Conditions for Movement of Fixed Load Vehicles
1680-07-01-.14	Conditions for Permitting Movement of Site-Built Houses

Chapter Number	Chapter Title
1680-07-01	Overweight and Overdimensional Movements on Tennessee Highways
Rule Number	**Rule Title**
1680-07-01-.15	Conditions for Permitting Movement of Mobile Homes, Manufactured Homes, Portable Modular Units or House Trailers
1680-07-01-.16	Conditions for Permitting Movement of Houseboats
1680-07-01-.17	Conditions for Permitting Movement of Sealed Containerized (Ocean Going) Cargo Units
1680-07-01-.18	Conditions for Permitting Movement of Roof Trusses
1680-07-01-.19	Conditions for Permitting Movement of Heavy Duty Towing Vehicles
1680-07-01-.20	Signs and Markings on Movements
1680-07-01-.21	Escort Vehicle Signs, Markings, and Equipment Requirements
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RULES
OF
TENNESSEE DEPARTMENT OF TRANSPORTATION
CENTRAL SERVICES DIVISION

CHAPTER 1680-07-01
OVERWEIGHT AND OVERDIMENSIONAL
MOVEMENTS ON TENNESSEE HIGHWAYS

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1680-07-01-.01 ~~FORWARD~~ PURPOSE AND APPLICATION OF THIS CHAPTER.

(1) Purpose.

The purpose of this chapter is to prescribe rules in the interest of public safety and preservation of highways, for the issuance ~~and or renewal~~ of special permits for the transportation of such ~~oversize,~~ overweight or ~~overlength~~overdimensional articles or commodities as cannot be reasonably dismantled or conveniently transported otherwise, and for the operation of such ~~superheavy or~~ overweight or overdimensional vehicles, motor trucks, semi-trailers and trailers, whose gross weight, including load, ~~weight,~~ or whose height, width, or length, may exceed statutory limits, or which in other respects fail to comply with requirements of ~~the Tennessee Code Annotated~~T.C.A. §§55-7-201–203, as may be reasonably necessary for the transportation of such ~~oversize,~~ overweight or ~~overlength~~overdimensional articles or commodities as cannot be reasonably dismantled or conveniently transported otherwise.

(2) Application.

These rules apply to, and a special permit issued by the Tennessee Department of Transportation (hereinafter also referred to as "TDOT" or "Department") shall be required for, the operation of any

motor vehicle on the state highway system, including the interstate highway system, whenever the motor vehicle, including the load, exceeds any of the following size and weight limits ~~are exceeded~~ established by law:

~~(a) GENERAL SIZE AND WEIGHT LIMITATIONS~~

~~Gross Weight 80,000 lbs. provided however, that freight motor vehicles shall not be operated on the interstate system where the gross weight exceeds 73,280 lbs. or where the weight exceeds 18,000 lbs. on any single axle or where the weight exceeds 32,000 lbs. on any tandem axle group unless the weight is distributed on a group of 2 or more consecutive axles by application of the formula set forth in T.C.A. §55-7-203.~~

~~Single Axle 20,000 lbs. except as provided above.~~

~~Tandem Axle 34,000 lbs. except as provided above.~~

~~Width 8 ft. 6 in. on the Federal and State Highway System.~~

~~Height 13 ft. 6 in.~~

~~Length:~~
~~Straight Truck 40 ft.~~
~~Straight Truck with trailer attached 65 ft.~~
~~Truck tractor and semi-trailer or trailer combination The towed vehicle shall not exceed 50 ft. in length from the point of attachment to the tractor. If the towed vehicle exceeds 48 ft. in length from the point of attachment to the tractor, the distance between the kingpin and the rearmost axle or a point midway between the two rear axles, if the two rear axles are a tandem axle, shall not exceed 41 ft.~~

~~Except, if~~
~~Transporting livestock or automobiles and/or 52 ft. in length from motor vehicles the point of attachment to the tractor~~
~~Or, if~~
~~Transporting poles, logs or timber in single length pieces 75 ft. total length~~
~~Truck tractor and Twin Trailer combination 28 ft. 6 in. either towed vehicle~~

(a) General Size and Weight Limitations Established in T.C.A. §§55-7-201 – 203:

1. Gross weight: 80,000 pounds, except that freight motor vehicles operating on the interstate highway system shall not exceed the lesser of 80,000 pounds or the weight produced by application of the formula set forth in T.C.A. §55-7-203(b)(3).

2. Single axle: 20,000 pounds, except as provided above.

3. Tandem axle: 34,000 pounds, except as provided above.

4. Width: 8 feet 6 inches.

5. Height: 13 feet 6 inches.

6. Length:

(i) Straight truck: 45 feet.

(ii) Straight truck with trailer attached: 65 feet.

(iii) Truck tractor and semi-trailer or trailer combination: The towed vehicle shall not exceed 50 feet in length from the point of attachment to the tractor; provided, however, if the towed vehicle exceeds 48 feet in length from the point of attachment to the tractor, the distance between the kingpin and the rearmost axle or a point midway between the two rear axles, if the two rear axles are a tandem axle, shall not exceed 41 feet; and

(I) Except, if transporting livestock or automobiles and/or motor vehicles: 52 feet in length from the point of attachment to the tractor; or

(II) If transporting poles, logs, or timber in single length pieces: 75 feet total length.

(iv) Truck tractor and twin trailer combination: 28 feet 6 inches either towed vehicle.

(b) Exceptions under State Law: Exceptions to the general size and weight limitations described in subparagraph (a) are authorized in T.C.A. §55-7-115 and T.C.A. §§55-7-201 – 205, including without limitation exceptions for vehicles used exclusively to transport cotton seed modules (see Rule 1680-07-01-.08) and an exception to length limitations for any vehicle disabled on a highway and being towed to a repair or terminal facility within one hundred (100) miles (see Rule 1680-07-01-.19). Movements made in compliance with these exceptions are not subject to the special permit requirements established in this chapter.

(c) Exceptions under Federal Law: Additional exceptions to the general size and weight limitations described in subparagraph (a) above are required under federal law, including 23 U.S.C. §127 and 49 U.S.C. §31111, and including without limitation exceptions from weight limits on the interstate highway system for heavy duty tow and recovery vehicles and emergency fire suppression vehicles, as incorporated into T.C.A. §55-7-203. Movements made in compliance with these exceptions are not subject to the special permit requirements established in this chapter.

Authority: *T.C.A. §55-7-115, §§55-7-201 – 203, and §55-7-205; 23 U.S.C. §127 and 49 U.S.C. §31111.* ***Administrative History:*** *Original rule certified June 10, 1974. Repeal and new rule filed July 1, 1982; effective August 2, 1982. Amendment filed December 7, 1983; effective January 6, 1984. Repeal and new rule filed October 31, 1985; effective November 30, 1985. Repeal and new rule filed June 19, 1991; effective August 3, 1991. Rule has been assigned a new control number from 1680-2-2-.01 filed and effective February 1, 2003.*

1680-07-01-~~.03~~.02 APPLICATION PROCESS FOR SPECIAL PERMITS.

(Rule 1680-7-1-.022, continued)

(1) Applications for special permits may be made in person, or by letter, email, or ~~by~~ telephone, to the ~~Supervisor of~~ Tennessee Department of Transportation, Overweight and Overdimensional Permits Office (hereinafter "TDOT Permit Office"), Suite ~~300~~800, James K. Polk State Office Building, 505 Deaderick ~~St.~~Street, Nashville, TN 37243-~~0331~~; email address: tdot.permitoffice@tn.gov; telephone number: (615) 741-3821; or, subject to the terms and conditions of a contract between TDOT and the applicant or an authorized vendor, through TDOT's online overweight/overdimensional permitting system.

(2) The applicant must provide the following information:

(a) Name of ~~A~~applicant;

(b) Address of ~~A~~applicant;

(c) Description of article and/or commodity to be moved;

(d) Method of moving –(~~T~~truck ~~&~~and ~~T~~trailer, ~~T~~towing by ~~T~~truck, ~~U~~under own ~~P~~power, etc.);

(e) Motor vehicle registration number of vehicle to be permitted;

(e~~f~~) Overall dimensions and/or gross weight of load;

(~~f~~g) Number and spacing of ~~A~~axles, including steering (if overweight);

(gh) Address of the place of ~~O~~origin and/or place of ~~D~~destination of movement within Tennessee;

(~~h~~i) Proposed highway routes over which movement will be made;

(i~~j~~) Proposed effective date of permit; and

(j~~k~~) Address to which permit is to be transmitted and method of transmittal.

(3) The application for a special permit shall be submitted in advance of the requested starting date of the permit in accordance with the following schedule:

(a) Applications for overdimensional permits shall be submitted at least three (3) business days before the starting date of the permit; provided, however, that applications for loads defined as extra-overdimensional under Rule 1680-07-01-.12 shall be submitted at least ten (10) business days before the starting date of the permit.

(b) Applications for overweight permits shall be submitted at least the following minimum number of days before the starting date of the permit:

1. For gross vehicle weights of less than 165,000 pounds, at least three (3) business days;

2. For gross vehicle weights equal to or greater than 165,000 pounds but less than 250,000 pounds, at least five (5) business days;

3. For gross vehicle weights equal to or greater than 250,000 pounds but less than 500,000 pounds, at least fifteen (15) business days; and

(Rule 1680-7-1-.02~~2~~, continued)

4. For gross vehicle weights equal to or greater than 500,000 pounds, at least thirty (30) business days.

(c) The TDOT Permits Office may waive these application deadlines for good cause; and provided further, the TDOT Permits Office reserves the right, upon giving notice to the applicant, to take additional time as needed to review an application for a special permit.

(4) Failure to provide the required information may result in denial of the special permit request or a delay in issuance of the special permit.

Authority: *T.C.A. §55-7-205.* ***Administrative History:*** *Original rule certified June 10, 1974. Amendment filed September 23, 1976; effective October 24, 1976. Repeal and new rule filed July 1, 1982; effective August 2, 1982. Repeal and new rule filed October 31, 1985; effective November 30, 1985. Repeal and new rule filed June 19, 1991; effective August 3, 1991. Rule has been assigned a new control number from 1680-2-2-.03 filed and effective February 1, 2003.*

1680-0~~7~~-0~~1~~-~~.02~~.03 GENERAL ~~INFORMATION~~ CONDITIONS FOR ISSUING SPECIAL PERMITS.

(1) Subject to the rules established in this chapter, the TDOT Permit Office may issue special permits authorizing the movement of motor vehicles and loads that exceed the size or weight limits generally allowed by law, as set forth in Rule 1680-07-01-.01(2) above. In general, special permits may be issued only for non-divisible loads or vehicles.

(2) As used in this chapter, a "non-divisible load or vehicle" means any load or vehicle which, if separated into smaller loads or vehicles, would:

(a) Compromise the intended use of the vehicle, i.e., make it unable to perform the function for which it was intended;

(b) Destroy the value of the load or vehicle, i.e., make it unusable for its intended purpose; or

(c) Require more than eight (8) workhours to dismantle using appropriate equipment, which the applicant for the special permit has the burden of proving; and

(d) Apart from the criteria set forth in subparagraphs (a) through (c), the term "non-divisible load or vehicle" includes military vehicles transporting marked military equipment or materiel, and emergency response vehicles, including those loaded with salt, sand, chemicals or a combination thereof, with or without a plow or blade attached in front, and being used for the purpose of spreading the material on the highways that are or may become slick or icy.

(e) In accordance with 23 U.S.C. §127 and T.C.A. §55-7-205(e)(2), a vehicle carrying fluid milk products shall be considered a non-divisible load.[1]

Comment [JHR1]: This is added per 2017 Public Chapter 156.

(3) In accordance with 23 U.S.C. §127, special permits may be issued to overweight vehicles with loads that can be easily dismantled or divided if the vehicles are delivering relief supplies during an emergency or major disaster declared by the President of the United States under the Robert T. Stafford Disaster Relief and Emergency Assistance Act ("Stafford Act") (42 U.S.C. §5121, et seq.) and the movement is authorized by the Governor of Tennessee as provided in paragraph (4) below.

(4) In accordance with T.C.A. §58-2-107, but subject to any limitations established in Federal law, special permits may be issued in accordance with an Executive Order or Proclamation issued by the Governor of Tennessee during a state of emergency declared by the Governor under the authority granted in T.C.A. § 58-2-101, et seq.

(Rule 1680-7-1-.02~~2~~, continued)

(5) Special permits for a single trip are issued to allow one movement between two specific points. Annual permits do not limit the number or route of movements; provided, however, that no vehicle or load authorized to move under an annual permit shall violate any size or clearance restrictions, or any gross vehicle weight or axle weight limits, posted on any highway, bridge, overpass, or underpass.

(6) A single trip permit or annual permit shall be issued to a specific motor vehicle; provided, however, that if the movement of a single load requires, or may require, more than one motor vehicle to move the load, a single trip permit may be issued for the entire load, including the primary motor vehicle and any additional motor vehicle(s), as identified in the permit application, that may be used to move the load.

(7) For good cause shown, the TDOT Permit Office may approve the transfer of a single trip permit or annual permit to a different motor vehicle. The permittee requesting a transfer shall submit an application to the TDOT Permit Office, including documentation of the reason for the request. Good cause for a transfer may include the mechanical failure or sale of the permitted motor vehicle or any similar cause. Ordinarily, a permit transfer will not be allowed more than one time within the duration of the permit.

(8) Each category of size (height, width, or length) or weight in which the vehicle and load exceeds the size and weight limits established by law and set forth in Rule 1680-07-01-.01 shall be included in the permit and shall be subject to the applicable fee for each category.

(9) The permit shall be issued in the name of the motor carrier used to transport the load.

(10) The permittee is responsible for the accuracy of all information contained within the permit.

(11) The permit may be rendered invalid, and the permit holder may be subject to citation for violation of the law, if the permit is found to contain false information.

(12) After issuance, a permit may be amended one time only within one (1) business day after it has been issued, but not after the starting date of the permit, to correct information regarding load dimensions, weight, axle spacing or axle weight, trip origin or destination, or routing of movement. There will be no additional permit fee for an amendment; provided, however, that if any change in the permit requires an additional analysis of bridges or other structures, the applicable bridge/structure evaluation fee shall be charged in accordance with Rule 1680-07-01-.24(4).

(~~1~~13) An original permit, or an authentic copy of the permit with a scannable bar code, shall be in the possession of the driver of the permitted vehicle at all times during the authorized move. An electronic permit is acceptable so long as the bar code is scannable. The permit shall be presented to TDOT, the Tennessee Department of Safety and Homeland Security, or other law enforcement whenever requested.

~~(2) No permit shall be issued when the issuing authority deems a movement to be unsafe or detrimental to the traveling public, or if the highway cannot accommodate the move.~~

~~(3) When the permitted vehicle exceeds fifteen (15') feet in height the permittee shall determine all vertical clearances by use of a front escort vehicle having protrusions equal to the height of the permitted vehicle. The escort vehicle shall be capable of immediately advising the permitted vehicle, and shall do so whenever any actual vertical clearance is less than such height. The permitted vehicle shall follow the escort vehicle at such a distance and at such a speed as will permit stopping on receipt of advice that any vertical clearance is less than the height of the permitted vehicle.~~

Comment [JHR2]: This paragraph has been moved to Rule 1680-07-01-.09, Overheight Movements.

(Rule 1680-7-1-.022, continued)

(414) Permits may be subject to route restrictions based on conditions of the roadway or bridges and the weight or dimensions of the load. Restricted Rroutes of travel shall be strictly followed.

~~(5) Permits will normally be issued for movements during daylight hours only from sunrise to sunset on Monday through Saturday. (Daylight is defined as one-half hour before sunrise to one-half hour after sunset local time as established by the National Weather Service). Time of movement may be further restricted by the issuing authority based upon factors such as type of load, traffic volume, roadway condition and route of move. However, permits issued exclusively for overweight movements may be obtained subject to the restrictions imposed by Rule 1680-7-1-.09 for continuous movement twenty-four (24) hours per day, Monday through Sunday.~~

~~(6) Permits will not be issued for movement on Sundays, holidays or nighttime except when the necessity for the movement is created by an emergency or in the interest of national defense. Permits for emergency movement of any nature will be considered only upon submission of a justification statement by the applicant, provided a permit will be issued based on the severity of the emergency and need for action to protect life or property.~~

~~(7) The American Association of State Highways and Transportation Officials (AASHTO) policy pertaining to emergency movement of Housing and Urban Development (HUD) mobile homes shall govern the movement of such units to a declared disaster area.~~

~~(8) No permits will be issued for movement on the day the following holidays are observed:~~

~~(a) New Year's Day - January 1~~

~~(b) Good Friday - Friday before Easter~~

~~(c) Memorial Day - Last Monday in May~~

~~(d) Independence Day - July 4~~

~~(e) Labor Day - First Monday in September~~

~~(f) Thanksgiving Day - Fourth Thursday in November~~

~~(g) Christmas Day - December 25~~

Comment [JHR3]: This former paragraph (8) has been moved in modified form to Rule 1680-07-01-.04, Time and Date Restrictions.

(915) ~~Movement under special permit will not be allowed during inclement weather when conditions prevail which would make the movement unsafe.~~Permits may be subject to restrictions on time of movement during inclement weather or weather-related emergencies when conditions prevail that could make movement unsafe.

~~(10) Any person, firm, company or corporation that undertakes the movement of any overweight and/or overdimensional piece(s) of equipment and/or commodity contrary to the provisions of T.C.A. §55-7-205 and to the provisions of these regulations shall, at the discretion of the Commissioner of Transportation, be denied further permit(s) for such overweight and/or overdimensional movement for such period of time, not to exceed one (1) year, as the Commissioner of Transportation, in exercising such discretion, shall deem appropriate.~~

Comment [JHR4]: The subject matter of this paragraph is addressed in the new Rule 1680-07-01-.25, Revocation, Suspension and Withholding of Permits.

(~~11~~16)No permit fees will be refunded after issuance of the permit, and no refunds or credits will be granted for unused or expired permits.

(Rule 1680-7-1-.02~~2~~, continued)

(~~12~~17)Every special permit will be issued on the condition that the permittee accepts and uses it at ~~his or her~~the permittee's own risk, even though all instructions, directions, and requirements of the Department have been followed.

~~(13) Any motor vehicle having a load or vehicle component which extends more than four inches (4") beyond the sides of the vehicle or more than four feet (4') beyond the rear of the vehicle shall have the extremities of the load marked with a red flag, not less than twelve inches (12") square, at each point where a lamp is required by Federal Motor Carrier Safety Regulations under 49 C.F.R. §393.11, Table 1.~~

Comment [JHR5]: This paragraph has been moved to Rule 1680-07-01-.20, Signs and Markings on Movements.

(~~14~~18)All permit holders requiring travel off of the state highway system are responsible for coordination with the local government having jurisdiction of such other roads.

Authority: *T.C.A. §55-7-205, 23 U.S.C. §127, and 23 C.F.R. Part 658.* ***Administrative History:*** *Original rule certified June 10 1974. Amendment filed September 23, 1976; effective October 24, 1976. Amendment filed August 4. 1977; effective September 2, 1977. Amendment filed September 3, 1980; effective October 20, 1980. Repeal and new rule filed July 1. 1982; effective August 2, 1982. Repeal and new rule filed October 31, 1985; effective November 30, 1985. Repeal and new rule filed June 19, 1991; effective August 3, 1991. Amendments filed January 25, 2001; effective May 31, 2001. Rule has been assigned a new control number from 1680-2-2-.02 filed and effective February 1, 2003.*

1680-07-01-~~.12~~.04 TIME AND DATE RESTRICTIONS.

~~(1) Overlength, overwidth or overheight movements are normally allowed during daylight hours only from sunrise to sunset on Monday through Saturday. However, because of traffic, movements eight-five feet (85') or greater in length and/or movements in excess of twelve feet six inches (12'6") in width will not be allowed within any city limits or any heavily traveled adjoining commercial or residential area between the hours of 7:00 a.m. to 9:00 a.m. and 4:00 p.m. to 6:00 p.m. (local time) from Monday through Friday.~~

~~(2) Time of movement may be further restricted upon, among other things, type of load, traffic volume, roadway conditions, and route of move.~~

Unless otherwise specifically provided in these rules, a special permit issued for the movement of an overweight or overdimensional motor vehicle and load shall allow for continuous movement twenty-four (24) hours per day, and seven (7) days per week, except as follows:

Comment [JHR6]: The general rule allowing 24/7 movement of OW/OD loads, and the following time and date restrictions, are based on 2016 Public Chapter 923.

(1) The permit shall not allow movement of vehicles exceeding twelve feet six inches (12'6") in width, fifteen feet (15') in height, or ninety feet (90') in length on the interstate highway system between the hours of 7:00 a.m. to 9:00 a.m. and between the hours of 4:00 p.m. and 6:00 p.m. from Monday through Friday in counties having a population exceeding 250,000 according to the 2010 federal census or any subsequent federal census.

Comment [JHR7]: This more narrowly defined interstate rush hour restriction is based on 2017 Public Chapter477.

(2) The permit may be subject to restrictions on movements during periods of heavy traffic volume associated with certain holidays, as follows:

(a) Easter: After 6:00 p.m. on the Thursday preceding Good Friday through and including Easter Sunday;

(b) Memorial Day: After 12:00 p.m. (noon) on the preceding Friday through Memorial Day;

(c) Independence Day: July 3 and July 4; provided, that if July 4 is a Friday, Saturday, Monday, or Tuesday, the weekend day or days immediately following or preceding July 4, as applicable, may also be restricted;

(Rule 1680-7-1-.04, continued)

(d) Labor Day: After 12:00 p.m. (noon) on the preceding Friday through Labor Day;

(e) Thanksgiving: After 12:00 p.m. (noon) on the Wednesday before Thanksgiving through Sunday following Thanksgiving; and

(f) Christmas/New Year's Day: December 24 through January 1; provided, that if December 24 is a Sunday or Monday, the weekend day or days immediately preceding December 24 may also be restricted; provided further, that if January 1 is a Friday or Saturday, the weekend day or days immediately following January 1 may also be restricted.

(3) The permit may be subject to route restrictions based on conditions of the roadway or bridges and the weight or dimensions of the load.

(4) The permit may be subject to restrictions on time of movement during inclement weather or weather-related emergencies when conditions prevail that could make movement unsafe.

(5) For super heavy or extra-overdimensional loads exceeding one hundred sixty-five thousand pounds (165,000 lbs.), sixteen feet (16') in width, or fifteen feet six inches (15'6") in height, the time of movement may be restricted based on conditions of the road, traffic volumes, or other conditions affecting public safety and convenience as the Department may determine.

(6) The time and date restrictions described in this Rule above do not apply to towing vehicles engaged in emergency towing movements in accordance with Rule 1680-07-01-.19. Separate time and date restrictions apply when special permits are issued for the following categories of overweight or overdimensional movements:

(a) Mobile homes as defined in T.C.A. §55-4-402 (see Rule 1680-07-01-.15);

(b) Site-built houses (see Rule 1680-07-01-.14); and

(c) Houseboats (see Rule 1680-07-01-.16).

Authority: *T.C.A. §55-7-205.* ***Administrative History:*** *Original rule filed July 1, 1982; effective August 2, 1982. Repeal and new rule filed October 31, 1985; effective November 30, 1985. Repeal and new rule filed June 19, 1991; effective August 3, 1991. Amendment filed January 25, 2001; effective May 31, 2001. Rule has been assigned a new control number from 1680-2-2-.12 filed and effective February 1, 2003.*

1680-07-01-.05 DURATION OF SPECIAL PERMITS.

(1) ~~Six~~Special permits for single trip movements of overweight or overdimensional loads shall be valid for a period of~~seven~~ ten (~~6~~7 ~~10~~10) ~~week~~ calendar days, except as otherwise specifically provided in these rules. There shall be no time extensions for a single trip permit.

(2) Annual special permits may be ~~available~~obtained as set forth in T.C.A. §§55-7-205(b) and (gh)~~(5) and 55-7-205(g)(6)~~, and as further provided in Rule 1680-07-01-.24.

Authority: *T.C.A. §55-7-205.* ***Administrative History:*** *Original rule certified June 10, 1974. Repeal and new rule filed July 1, 1982; effective August 2, 1982. Repeal and new rule filed October3l, 1985; effective November 30, 1985. Repeal and new rule filed June 19, 1991; effective August 3, 1991. Rule has been assigned a new control number from 1680-2-2-.05 filed and effective February 1, 2003.*

1680-07-01-.06 CONDITIONS FOR PERMITTING OVERWIDTH MOVEMENTS.

(Rule 1680-7-1-.06, continued)

(1) Movements over eight feet six inches (8'6") wide but not exceeding ten feet (10') wide: No escorts, special signs, lights and/or markings will be required.

(2) Movements over ten feet (10') wide but not exceeding twelve feet six inches (12'6") wide:

(a) No escort will be required to accompany the movement on the interstate highway system, on ~~four-lane~~ highways with four or more lanes, or on two-lane highways with a minimum pavement width (excluding paved shoulders) of twenty-four feet (24').

(b) One (1) escort vehicle is required to precede the movement where the minimum pavement width (excluding paved shoulders) is less than twenty-four feet (24').

(c) A flagperson will be required at all bridge structures where the roadway width is less than twenty feet (20').

(d) The front and rear of the movement shall be signed and marked as hereinafter set out in ~~r~~Rule 1680-07-01-.20.

(e) Escort vehicles shall be signed and marked as hereinafter set out in ~~r~~Rule 1680-07-01-.21.

(f) ~~At the discretion of the issuing authority,~~The time of movement may be ~~further~~ restricted in accordance with Rule 1680-07-01-.04.~~due to:~~

~~1. Route to be traveled~~
~~2. Weather conditions~~
~~3. Traffic density~~
~~4. Length of daylight hours~~

(3) Movements over twelve feet six inches (12'6") wide but not exceeding ~~fourteen~~ thirteen feet six inches (~~14'~~13'6") wide:

Comment [JHR8]: Revised to make this consistent with the maximum width for which annual permits are available.

(a) One (1) escort vehicle is required to follow the movement on the interstate highway system or ~~four-lane~~ highways with four or more lanes.

(b) One (1) escort vehicle is required to precede the movement on two-lane highways.

(c) A flagperson will be required at all bridge structures where the roadway width is less than twenty feet (20').

(d) The front and rear of the movement shall be signed and marked as hereinafter set out in ~~r~~Rule 1680-07-01-.20.

(e) Escort vehicles shall be signed and marked as hereinafter set out in ~~r~~Rule 1680-07-01-.21.

(f) ~~At the discretion of the issuing authority,~~The time of movement may be ~~further~~ restricted in accordance with Rule 1680-07-01-.04. ~~due to:~~

~~1. Route to be traveled~~
~~2. Weather conditions~~
~~3. Traffic density~~
~~4. Length of daylight hours~~

(Rule 1680-7-1-.06, continued)

(4) Movements over ~~fourteen~~thirteen feet six inches (~~14'~~13'6") wide but not exceeding sixteen feet (16') wide:

(a) Front and rear escort vehicles are required on all highways.

(b) The towing vehicle and escort vehicles shall be so equipped as to be in radio communication at all times during the movement.

(c) A flagperson will be required at all bridge structures where the roadway width is less than twenty feet (20').

(d) The front and rear of the movement shall be signed and marked as hereinafter set out in ~~r~~Rule 1680-07-01-.20.

(e) Escort vehicles shall be marked as hereinafter set out in ~~r~~Rule 1680-07-01-.21.

(f) ~~At the discretion of the issuing authority,~~The time of movement may be ~~further~~ restricted in accordance with Rule 1680-07-01-.04.~~due to:~~

~~1. Route to be traveled~~
~~2. Weather conditions~~
~~3. Traffic density~~
~~4. Length of daylight hours~~

(5) Movements over sixteen feet (16') wide:

(a) Movements in excess of sixteen feet (16') may be permitted, as provided in Rule 1680-07-01-.12, if the movement is not detrimental or unsafe to the traveling public and the highway can accommodate the movement. A route survey shall be required prior to the issuance of a permit.

Comment [JHR9]: This paragraph is derived from the former Rule 1680-07-01-.08.

(b) If movements over sixteen feet (16') wide are permitted, the following conditions shall apply:

1. Front and rear escort vehicles are required on all highways.

2. The towing vehicle and escort vehicles shall be so equipped as to be in radio communication at all times during the movement.

3. A flagperson will be required at all bridge structures where the roadway width is less than twenty feet (20').

4. The front and rear of the movement shall be signed and marked as hereinafter set out in Rule 1680-07-01-.20.

5. Escort vehicles shall be marked as hereinafter set out in Rule 1680-07-01-.21.

6. The time of movement may be restricted in accordance with Rule 1680-07-01-.04.

Authority: *T.C.A. §55-7-205.* ***Administrative History:*** *Original rule certified June 10, 1974. Repeal and new rule filed July 1, 1982; effective August 2.1982. Repeal and new rule filed October 31, 1985; effective November 30, 1985. Repeal and new rule filed June 19, 1991; effective August 3, 1991. Amendment filed January 25, 2001; effective May 31, 2001. Rule has been assigned a new control number from 1680-2-2-.06 filed and effective February 1, 2003.*

(Rule 1680-7-1-.06, continued)

1680-07-01-.07 ADDITIONAL REQUIREMENT FOR EQUIPMENT WITH BLADES.

(1) In the interest of safety, equipment such as, but not limited to, bulldozers with blades or other protruding sharp objects of any kind which create an ~~over~~width exceeding ten feet six inches (10'6") but not exceeding thirteen feet six inches (13'6"), will be loaded in such a manner to place the blade or protruding sharp object to the rear of the hauling equipment. All other regulations for overwidth movements established in Rule 1680-07-01-.06 shall apply.

(2) No permit will be issued for blades or protruding sharp objects creating a width in excess of thirteen feet six inches (13'6").

Authority: *T.C.A. §55-7-205.* ***Administrative History:*** *Original rule certified June 10, 1974. Repeal and new rule filed July 1, 1982; effective August 2, 1982. Repeal and new rule filed October 31, 1985; effective November 30, 1985. Repeal and new rule filed June 19, 1991; effective August 3, 1991. Amendment filed February 25, 2000; effective June 28, 2000. Amendment filed January 25, 2001; effective May 31, 2001. Rule has been assigned a new control number from 1680-2-2-.07 filed and effective February 1, 2003.*

1680-07-01-.08 ~~WIDTH IN EXCESS OF SIXTEEN FEET (16')~~VEHICLES USED EXCLUSIVELY TO TRANSPORT SEED COTTON MODULES.

~~Generally, movements in excess of sixteen feet (16') will not be permitted. A movement needed in the interest of the public welfare, safety, health or defense may be permitted as provided in Rule 1680-7-1-.04 upon submission of proof of necessity, provided the movement is not considered to be detrimental or unsafe to the traveling public and the highway can accommodate the movement.~~

(1) In accordance with T.C.A. §55-7-115, a single motor vehicle used exclusively to transport seed cotton modules is authorized to operate on the state highway system without obtaining a special permit under this chapter, except as provided in subparagraph (e) below, subject to the following limitations:

(a) The width of the vehicle shall not exceed nine feet (9');

(b) The length of the vehicle shall not exceed a length of fifty-three feet (53');

(c) The overall gross weight of the vehicle shall not exceed 59,400 pounds, and the axle weights shall be limited as follows:

1. The load on any one (1) axle shall not exceed 20,000 pounds; and

2. The tandem axle load shall not exceed 38,000 pounds without van-type cover, or 39,400 pounds with van-type cover;

(d) No such vehicle is authorized to operate on the interstate highway system if it exceeds the weight limitations established in 23 U.S.C. §127, including the axle weight limitations of 20,000 pounds per single axle and 34,000 pounds per tandem axle; and

(e) Except by special permit as authorized in Paragraph (2) below, no such vehicle is authorized to operate on the National Network of highways, including all interstate highways and the additional Federal-aid highways set forth in 23 C.F.R. Part 658, Appendix A, if the maximum width of the vehicle exceeds eight feet six inches (8'6").

(2) The Department may grant a special permit to allow a single motor vehicle used exclusively to transport seed cotton modules to travel on the National Network, subject to the following:

(Rule 1680-7-1-.09, continued)

(a) The special permit may authorize the width of the vehicle to exceed eight feet six inches (8'6"), if:

1. The width of the vehicle does not exceed nine feet (9');

2. The length of the vehicle does not exceed fifty-three feet (53'); and

3. The weight of the vehicle does not exceed the weight limitations set forth in §55-7-203(b)(3), including 20,000 pounds per single axle and 34,000 pounds per tandem axle, if operated on the interstate highway system.

(b) The duration of the special permit shall be for one (1) year at a cost of one hundred dollars ($100).

(c) Solely during the harvest season for cotton, the movement of any vehicle operating under a special annual permit shall be unrestricted with respect to day of the week, time or holiday observation, but at other times, the movement of the vehicle may be subject to the time and date restrictions in accordance with Rule 1680-07-01-.04.

Authority: *T.C.A. §§ 55-7-115 and 55-7-205; 23 U.S.C. §127; and 23 C.F.R. Part 658.* ***Administrative History:*** *Original rule certified June 10, 1974. Repeal and new rule filed July 1, 1982; effective August 2, 1982. Repeal and new rule filed October 31, 1985; effective November 30, 1985. Repeal and new rule filed June 19, 1991; effective August 3, 1991. Amendments filed January 25, 2001; effective May 31, 2001. Rule has been assigned a new control number from 1680-2-2-.08 filed and effective February 1, 2003.*

1680-07-01-.09 CONDITIONS FOR PERMITTING OVERWEIGHT MOVEMENTS.

(1) In general, the ~~M~~maximum allowable axle weights by special permit~~.~~ are as follows:

(a) ~~Tandem~~Single Axle: ~~40,000~~20,000 pounds;

(b) ~~Single~~Tandem Axle: ~~20,000~~40,000 pounds; and

(c) In no case shall a single axle in a tandem group exceed 20,000 pounds.

(2) However, a special permit for the movement of a non-divisible load may be issued for axle weights exceeding the maximum axle weights established in Paragraph (1), subject to the following conditions:

(a) The maximum width of the vehicle, including the truck and semi-trailer or trailer combination, shall not exceed ten feet (10'); provided, however, the load may exceed ten feet (10') if properly permitted;

(b) No single axle shall carry a load in excess of 23,000 pounds;

(c) No tandem axle group shall carry a load in excess of 46,000 pounds; and

(e) No axle group of three (3) axles (tridem) shall carry a load in excess of 60,000 pounds.

(~~2~~3) Any ~~M~~movements with a gross weight exceeding ~~150,000~~165,000 pounds may only be permitted, as provided in Rule 1680-07-01-.12 or Rule 1680-07-01-.19, if the movement is not detrimental or unsafe to the traveling public and the highway can accommodate the movement. In addition, such must be

Comment [JHR10]: This incorporates the allowance for permitting higher axle weight limits as enacted in 2016 Public Chapter 1012 (effective January 1, 2017).

(Rule 1680-7-1-.09, continued)

approved by the TDOT Structures Division before a special permit ~~can~~may be issued. Some movements with a gross weight of less than 165,000 pounds may also be subject to the prior approval of the TDOT Structures Division based on the axle spacing of the vehicle carrying the load.

Authority: *T.C.A. §§ 55-7-203 and 55-7-205.* ***Administrative History:*** *Original rule certified June 10, 1974. Repeal and new rule filed July 1, 1982; effective August 2,~~1982~~, 1982. Repeal and new rule filed October 31, 1985; effective November 30, 1985. Repeal and new rule filed June 19, 1991; effective August 3, 1991. Rule has been assigned a new control number from 1680-2-2-.09 filed and effective February 1, 2003.*

1680-07-01-.10 CONDITIONS FOR PERMITTING OVERHEIGHT MOVEMENTS.

(1) Height in excess of thirteen feet six inches (13'6") but not exceeding fifteen feet six inches (15'6"):

(a) A special permit shall be required for all movements where the height of the motor vehicle and load exceeds thirteen feet six inches (13'6").

(ab) Special routing may be required as a condition of the special permit.

(c) If the height of the movement is fifteen feet (15') or more the applicant shall provide a survey of the proposed route identifying the vertical clearance at each overpass located along the route. The application for the special permit will not be processed without this route survey.

(d) When the permitted vehicle and load exceeds fifteen feet (15') in height, the permittee shall determine all vertical clearances by use of a front escort vehicle having protrusions equal to, at a minimum, the height of the permitted vehicle and load. The escort vehicle shall be capable of immediately communicating with the permitted vehicle at all times and shall do so whenever any actual vertical clearance is less than the height of the permitted vehicle and load. The permitted vehicle shall follow the escort vehicle at such a distance and at such a speed as will permit stopping on receipt of advice that any vertical clearance is less than the height of the permitted vehicle and load.

Comment [JHR11]: This paragraph is moved from former paragraph (3) in Rule 1680-07-01-.02.

(2) ~~A special permit shall be required for all movements whose height exceeds thirteen feet six inches (13'6"), provided that where the h~~Height in ~~exceeds~~excess of fifteen feet six inches (15'6"). ~~the following provisions shall govern:~~

(a) ~~Generally permits for m~~Movements in excess of fifteen feet six inches (15'6") ~~feet will not be issued. A permit~~ may be ~~issued~~permitted, as provided in Rule 1680-07-01-.12, ~~upon submission of proof of necessity that the movement is needed in the interest of the public welfare, safety, health or defense and provided~~if the move is not ~~considered to be~~ detrimental or unsafe to the traveling public and the highway can accommodate the move.

(b) When such movements are authorized, the following conditions will apply:

1. Special routing ~~maybe~~shall be required. The applicant shall provide a survey of the proposed route identifying the vertical clearance at each overpass located along the route. The application for the special permit will not be processed without this route survey.

2. Front and rear of movement shall be signed and marked as ~~hereinafter~~ set forth in ~~r~~Rule 1680-07-01-.20.

3. ~~Escort as required in rule 1680-7-1-.02(3) shall have radio communications with the towed vehicle at all times.~~ The escort shall be marked as ~~hereinafter~~ set forth in ~~r~~Rule 1680-07-01-.21.

(Rule 1680-7-1-.09, continued)

4. The permittee shall determine all vertical clearances by use of a front escort vehicle having protrusions equal to, at a minimum, the height of the permitted vehicle and load. The escort vehicle shall be capable of immediately communicating with the permitted vehicle at all times and shall do so whenever any actual vertical clearance is less than the height of the permitted vehicle and load. The permitted vehicle shall follow the escort vehicle at such a distance and at such a speed as will permit stopping on receipt of advice that any vertical clearance is less than the height of the permitted vehicle and load.

Authority: *T.C.A. §55-7-205.* ***Administrative History:*** *Original rule certified June 10, 1974. Repeal and new rule filed July 1, 1982; effective August 2, 1982. Repeal and new rule filed October 31, 1985; effective November 30, 1985. Repeal and new rule filed June 19, 1991; effective August 3, 1991. Rule has been assigned a new control number from 1680-2-2-.10 filed and effective February 1, 2003.*

1680-07-01-.11 CONDITIONS FOR PERMITTING OVERLENGTH MOVEMENTS.

(1) Length ~~over seventy-five (75') feet~~exceeding the limits established by law and set forth in Rule 1680-07-01-.01, but not exceeding ~~eighty-five~~ninety feet (~~85~~90') ~~feet.~~:

Comment [JHR12]: Per 2016 Public Chapter 1012 (effective 1/1/2017), an annual permit will be available for movements up to 90 feet long.

(a) No escort vehicle will be required.

(b) For lengths over seventy-five feet (75') ~~feet~~, the front and rear movement shall be signed and marked as hereinafter set out in ~~r~~Rule 1680-07-01-.20. The rear sign shall be fitted with either a rotating amber light or a strobe type amber light which is visible from at least 500 feet and has a horizontal placement which shall be visible from all directions, three hundred sixty degrees (360°) ~~degrees~~.

(2) Length over ~~eighty-five~~ninety feet (~~85~~90') ~~feet~~, but not exceeding one hundred twenty feet (120') ~~feet.~~:

(a) One (1) escort vehicle shall immediately follow the movement.

(b) Front and rear of movement shall be signed and marked as hereinafter set out in ~~r~~Rule 1680-07-01-.20.

(c) The escort vehicle shall be marked as hereinafter set out in ~~r~~Rule 1680-07-01-.21.

(3) Length in excess of one hundred twenty feet (120') ~~feet.~~:

(a) One (1) escort vehicle shall immediately precede and one (1) escort shall immediately follow the movement.

(b) Front and rear of movement shall be signed and marked as hereinafter set out in ~~r~~Rule 1680-07-01-.20.

(c) Each escort vehicle shall be marked as hereinafter set out in ~~r~~Rule 1680-07-01-.21.

Authority: *T.C.A. §55-7-205.* ***Administrative History:*** *Original rule filed July 1, 1982; effective August 2, 1982. Amendment filed December 7, 1983; effective January 6, 1984. Repeal and new rule filed October 31, 1985; effective November 30, 1985. Repeal and new rule filed June 19, 1991; effective August 3, 1991. Amendment filed August 29, 1996; effective December 27, 1996. Rule has been assigned a new control number from 1680-2-2-.11 filed and effective February 1, 2003.*

(Rule 1680-7-1-.13, continued)

~~**1680-7-1-.12 TIME RESTRICTIONS.**~~

Comment [JHR13]: Time restrictions have been moved to Rule 1680-07-01-.04.

~~(1) Overlength, overwidth or overheight movements are normally allowed during daylight hours only from sunrise to sunset on Monday through Saturday. However, because of traffic, movements eight five feet (85') or greater in length and/or movements in excess of twelve feet six inches (12'6") in width will not be allowed within any city limits or any heavily traveled adjoining commercial or residential area between the hours of 7:00 a.m. to 9:00 a.m. and 4:00 p.m. to 6:00 p.m. (local time) from Monday through Friday.~~

~~(2) Time of movement may be further restricted upon, among other things, type of load, traffic volume, roadway conditions, and route of move.~~

~~*Authority: T.C.A. §55-7-205. Administrative History: Original rule filed July 1, 1982; effective August 2, 1982. Repeal and new rule filed October 31, 1985; effective November 30, 1985. Repeal and new rule filed June 19, 1991; effective August 3, 1991. Amendment filed January 25, 2001; effective May 31, 2001. Rule has been assigned a new control number from 1680-2-2-.12 filed and effective February 1, 2003.*~~

1680-07-01-.0412 ADDITIONAL REQUIREMENTS FOR ~~OBTAINING SPECIAL PERMITS TO MOVE~~ SUPER HEAVY AND/OR EXTRA-OVERDIMENSIONAL MOVEMENTS.

(1) Movement of super heavy and/or extra-overdimensional loads ~~essential to health, welfare, safety or defense~~ may be permitted provided the highway can accommodate the move, and the move is not considered to be detrimental or unsafe for the other traveling public. For the purposes of this rule, "super heavy" means that the total gross weight of the vehicle and load exceeds 165,000 pounds, and "extra-overdimensional" means that the width of the vehicle and load exceeds sixteen feet (16') or the height of the vehicle and load exceeds fifteen feet six inches (15'6").

(a) Application must be ~~made~~submitted to ~~in writing to the Supervisor of~~ the~~Overweight and Overdimensional~~ TDOT Permits Office and must contain, in addition to the information stated above in Rule 1680-07-01-.02, the following:

1. Complete and detailed proposal of movement, including a route survey;
2. Detailed sketch of vehicle and load;
3. Tire sizes and contact pressures;
4. Distance between axles;
5. Load distribution to axles;
6. Overall length, width and height of movement;
7. Detailed traffic control proposal; and
8. Any other information required.

(2) Application should be submitted with sufficient advance notice, in accordance with Rule 1680-07-01-.02, paragraph (3), ~~since the Department~~so that the TDOT Structures Division may conduct required engineering examinations. ~~In the event extensive engineering examinations are required the applicant~~

~~shall, in advance, pay the Department for estimated costs of such examinations. Following completion of such examinations, actual cost will be established, and the applicant shall be responsible for such cost.~~

(3) Special permits for super heavy and/or extra-overdimensional movements shall be issued or withheld at the sole discretion of the Department based on engineering judgment of the necessity for, importance of, and safety of movement~~,~~; alternative methods of transportation~~,~~; and possible damage to roadway and appurtenances.

(4) The TDOT Permit Office may require, as a condition for issuing a special permit, that the movement of a super heavy and/or extra-overdimensional load shall be accompanied by a law enforcement escort, as follows:

(a) In general, the TDOT Permit Office will evaluate the need for a law enforcement escort based on the width and height of the load, the complexity of the load, the speed of the movement, and the conditions of the route to be traveled.

(b) This law enforcement escort shall be in addition to any other escort vehicles required under this chapter.

(c) The permit shall require the permittee to reimburse TDOT for the actual cost of providing the law enforcement escort.

Authority: *T.C.A. §55- 7-205.* ***Administrative History:*** *Original rule certified June 10, 1974. Amendment filed May 1, 1975; effective May 31, 1975. Amendment filed January 6, 1976; effective February 5, 1976. Amendment filed September 23, 1976; effective October 24, 1976. Repeal and new rule filed July 1, 1982; effective August 2, 1982. Repeal and new rule filed October 31, 1985; effective November 30, 1985. Repeal and new rule filed June 19, 1991; effective August 3, 1991. Rule has been assigned a new control number from 1680-2-2-.04 filed and effective February 1, 2003.*

1680-07-01-.13 CONDITIONS FOR MOVEMENT OF FIXED LOAD VEHICLES.

(1) For the purposes of this rule, "fixed load vehicle" means any vehicle not designed or used to carry, convey or move any freight, property, article or thing over the highways, except the weight of any equipment, appliance or apparatus constructed as a part of, or permanently attached to, the body of the vehicle itself. "Fixed load vehicle" includes, e.g., well-drilling apparatus, cranes, and portable feed mills, as well as other vehicles meeting the general definition in this subparagraph, but it does not include vehicles designed to deliver ready mixed concrete or tow trucks (see Rule 1680-07-01-.19).

(~~1~~2) ~~Notwithstanding anything to the contrary contained herein, s~~Special permits may be issued for the operation of fixed load vehicles~~as defined in T.C.A. §55-1-117,~~ on the state highway system, including that portion designated as the interstate system, provided that in addition to all other applicable provisions of these rules, the following conditions are met:

(a) The weight of the fixed load vehicle must travel on pneumatic or solid tires, as defined in T.C.A. §55-1-110. No tracked vehicle shall be allowed to operate on the highway.

(a~~b~~) Generally, ~~N~~no single load bearing axle, or single axle in a tandem group, shall exceeds 24,000 ~~lbs.~~pounds; provided, however, that an axle weight in excess of 24,000 pounds may be permitted if approved by the TDOT Structures Division after conducting a bridge analysis. Any applicant requesting to load more than 24,000 pounds on any single axle, or single axle in a tandem group, shall submit the design schematics of the vehicle to the TDOT Structures Division for review.

(Rule 1680-7-1-.13, continued)

(~~b~~c) ~~No single axle in a tandem group exceeds 24,000 lbs.~~In any event, no single axle, or single axle in a tandem group, shall exceed 30,000 pounds.

(~~c~~d) The ~~M~~maximum gross weight of the vehicle ~~does~~shall not exceed ~~120,000 lbs~~ 150,000 pounds.

(~~d~~e) Routing ~~does~~shall not include any ~~posted~~ bridge with a posted gross vehicle weight restriction, or axle weight restriction, that is less than the gross vehicle weight, or axle weights, of the permitted vehicle.

~~(2) Special permits may be issued for fixed load vehicles for operation over the state highway system, other than that portion designated as the interstate system, provided that, in addition to all other applicable provisions of these rules, the following conditions are met:~~

~~(a) No front or steering axle exceeds 24,000 lbs.~~

~~(b) No drive axle exceeds 40,000 lbs.~~

~~(c) Maximum gross weight does not exceed 150,000 lbs.~~

~~(d) Routing does not include any posted bridge.~~

(e~~f~~) The permit may require that the ~~V~~vehicle ~~does~~shall not exceed crawl speed when crossing any bridge.

(~~f~~g) The permit may require that ~~N~~no other traffic ~~is~~shall be permitted on the bridge while it is being crossed by the fixed load vehicle.

(gh) The permit may require that the ~~P~~permittee shall provide necessary flagging.

(i) Each category of size (height, width, or length) or weight in which the vehicle exceeds the size and weight limits established by law and set forth in Rule 1680-07-01-.01 shall be included in the permit and shall be subject to the applicable fee for each category.

(j) The permit may require the front and rear of the movement to be signed and marked as set forth in Rule 1680-07-01-.20.

Authority: *T.C.A. § 55-1-117 and §55-7-205.* ***Administrative History:*** *Original rule filed July 1, 1982; effective August 2, 1982. Repeal and new rule filed October 31, 1985; effective November 30, 1985. Repeal and new rule filed June 19, 1991; effective August 3, 1991. Rule has been assigned a new control number from 1680-2-2-.13 filed and effective February 1, 2003.*

1680-07-01-.14 CONDITIONS FOR PERMITTING MOVEMENT OF SITE-BUILT HOUSES.

Notwithstanding any other provision in this chapter to the contrary, special permits may be issued for the movement of site-built houses or buildings subject to the following specific considerations and restrictions:

(1) The application for the special permit shall be submitted to the TDOT Permit Office at least fourteen (14) business days before the starting date of the permit; provided, however, the TDOT Permit Office may waive this deadline for good cause; and provided further, the TDOT Permit Office reserves the right, upon giving notice to the applicant, to take such additional time as may be needed to review an application for a special permit.

(Rule 1680-7-1-.14, continued)

(2) The application shall identify the dimensions (width, length, and height) of the building as it is proposed to be moved. In addition, if any bridges are to be crossed during the movement, the application shall identify the weight and schematics of the building to be submitted to the TDOT Structures Office for the completion of a bridge analysis. The TDOT Permit Office may require verification of the weight prior to issuance of the permit.

(3) Each category of size (height, width, or length) or weight in which the vehicle and load exceeds the size and weight limits established by law and set forth in Rule 1680-07-01-.01 shall be included in the permit and shall be subject to the applicable fee for each category. The movement shall comply with all other rules applicable to the movement of overweight, over-width, over-length, and over-height movements.

(4) The following considerations apply to the routes upon which a site-built house or building may be permitted to move:

(a) Generally, the movement of site-built houses or buildings along or across state highways will be restricted to low traffic volume routes that have sufficient vertical and horizontal clearances.

(b) Movements along or across high traffic volume routes may be considered on a case-by-case basis. These include major arterial routes.

(c) Movements on or across interstate highways or other multi-lane fully access-controlled highways shall not be approved.

(5) The size of a building that may be permitted to move is contingent upon the physical limitations of the highway upon which the building is to be moved and the effect of the move upon the flow of traffic. Generally, porches or protruding sections must be removed to reduce the dimensions of the building to acceptable proportions. Loose boards, bricks, or the like, must be removed for safety reasons.

(6) The applicant shall provide the TDOT Permit Office with a route survey of the proposed route of travel. The route survey shall identify any needed tree trimming and any proposed temporary removal and replacement of signs, signals, or guardrails based on the dimensions of the building. The performance of any such work shall require the prior written permission of the TDOT District Office where the movement is to occur.

(7) The permittee shall be responsible for the removal or adjustment of overhead wires and cables, and the permittee shall make all necessary arrangements with the owner of the overhead facilities.

(8) If it is anticipated that the movement of the building will be delayed by any utility line adjustments or tree trimming, the permit shall require this work to be performed prior to beginning the move. The permittee must verify with the applicable TDOT District Office that all required work has been completed prior to the movement.

(9) Any traffic signals or signs that are authorized to be removed for vertical or lateral clearance shall be removed immediately prior to and replaced immediately after the building passes the sign or signal installation.

(10) When a detour for other traffic is necessary, the permittee shall ascertain that an approved detour has been established, that detour signs and barricades are erected and removed, when required, and that all signs and barricades conform to standards contained in the current Tennessee Manual on Uniform Traffic Control Devices for Streets and Highways. In planning a detour route, consideration shall be given to the handling of emergency service vehicles.

(Rule 1680-7-1-.14, continued)

(11) The permittee shall present a barricade plan for all affected streets. This plan must be approved before the movement starts. The permittee is also responsible for ensuring that movement of emergency vehicles can be accommodated at all times.

(12) Movement shall be authorized only when the shoulders are dry and firm, frozen, or have sufficient bearing capacity to support loads imposed by the weight of the site-built house or building passing traffic.

(13) All proposed site-built house movements over state highways shall be inspected by a representative of the Department within that region. The permit may be issued only after the representative of the Department is satisfied that such a move can be safely made over the proposed route.

~~(2) No permits will be issued for movement of site-built houses on the interstate highway system within Tennessee.~~

(314) Movements shall be signed and marked as hereinafter set out in ~~r~~Rule 1680-07-01-.20.

(415) Two (2) escort vehicles (one in front and one in rear) shall be required. Such vehicles shall be signed and marked as hereinafter set out in ~~r~~Rule 1680-07-01-.21.

(516) Special Permits shall be valid for ~~six~~ten (610) days.

(617) All site-built houses shall be loaded and moved on trailers with steel beams on rubber (or other resilient material) dollies.

~~(7) Prior to the issuance of any permit, the proposed route to be traveled shall be inspected by the proposed mover, and the applicant shall provide proof that all utility companies having above-ground facilities along the proposed route have been notified of the proposed move in writing.~~

~~(8) At the discretion of the issuing authority, time of movement may be further restricted due to:~~

~~(a) Route to be traveled~~
~~(b) Weather conditions~~
~~(c) Traffic density~~
~~(d) Length of daylight hours~~

(918) At the discretion of the ~~issuing authority~~TDOT Permit Office, a police escort may be required to accompany the movement.

~~(10) Inspection of proposed site-built house movements may be obtained by contacting the following Department of Transportation regional offices.~~

~~(a) Region 1, Maintenance Office~~
~~TN Dept. of Transportation~~
~~7345 Region Lane~~
~~Knoxville, TN 37914~~
~~Telephone No. (865) 594-9165~~

~~(b) Region 2, Maintenance Office~~
~~TN Dept. of Transportation~~
~~P. O. Box 22368~~
~~Chattanooga, TN 37422-2368~~
~~Telephone No. (423) 510-1132~~

~~(c) Region 3, Traffic Office~~
~~TN Dept. of Transportation~~
~~6601 Centennial Boulevard~~
~~Nashville, TN 37243-0360~~
~~Telephone No. (615) 350-4336~~

~~(d) Region 4, Maintenance Office~~
~~TN Dept. of Transportation~~
~~300 Benchmark Place~~
~~Jackson, TN 38301~~
~~Telephone No. (731) 935-0174~~

(Rule 1680-7-1-.14, continued)

Authority: T.C.A. §55-7-205. ***Administrative History:*** *Original rule filed July 1, 1982; effective August 2, 1982. Repeal and new rule filed October 31, 1985; effective November 30, 1985. Repeal and new rule filed June 19, 1991; effective August 3, 1991. Amendment filed August 29, 1996; effective December 27, 1996. Amendments filed January 25, 2001; effective May 31, 2001. Amendement filed January 11, 2002; effective May 31, 2002. Rule has been assigned a new control number from 1680-2-2-.14 filed and effective February 1, 2003.*

1680-07-01-.15 CONDITIONS FOR PERMITTING MOVEMENT OF MOBILE HOMES, MANUFACTURED HOMES, PORTABLE MODULAR UNITS OR HOUSE TRAILERS.

(1) Application and Scope of Rule.

(a) Notwithstanding any other provision of this Chapter to the contrary, no mobile home, manufactured home, portable modular unit or house trailer as herein defined shall be moved into or through the State of Tennessee or upon the public roads or highways of this State unless and until the owner, operator or transporter thereof has obtained a permit as required under Tennessee Code Annotated, Title 55, Chapter 4, Part 4, and in accordance with the provisions of this Rule.

(b) A mobile home, manufactured home, portable modular unit or house trailer (hereinafter referred to collectively as a "mobile home") within the scope of this Rule shall include:

1. Any self-propelled or non-self-propelled vehicle, with a length exceeding thirty-five feet (35'), so designed, constructed, reconstructed or added to by means of accessories in such manner as will permit the use thereof for human habitation, and so constructed to permit its being used as a conveyance upon public streets or highways; or

2. Manufactured houses or portable modular units in excess of eight feet six inches (8'6") in width or when towing vehicle and manufactured home are in excess of sixty feet (60') in length.

(c) The other provisions of this Chapter shall apply to the movement of a mobile home; provided, however, that in the event of any conflict between the specific provisions of this Rule and any other provisions of this Chapter, the specific provisions of this Rule shall govern.

(2) General Permit Requirements.

(a) Any permit required under this Rule shall be issued only in the name of the owner of the mobile home or in the name of the owner of the motor carrier used to transport the mobile home.

(b) The permit shall be displayed in the vehicle used to transport the mobile home so as to be visible from outside the vehicle, and it shall be produced for inspection upon request by a representative of any law enforcement agency.

(c) A permit shall be required for each category of size (height, width, length and/or weight) in which the mobile home exceeds the normal size limits as provided in Paragraphs (5) through (8) of this Rule.

(3) Duration and Renewal of Permits.

(a) Short-term permits shall be valid for a period of six (6) days from the date of issuance, unless suspended in accordance with this Rule. The date of issuance and the expiration date shall be indicated on the permit.

(b) Annual permits, where allowed, shall be valid for a period of three hundred and sixty-five (365) days from the date of issuance, unless suspended in accordance with this Rule. The date of issuance and the expiration date shall be indicated on the permit.

(c) Upon a sufficient showing that an otherwise valid permit has been lost or destroyed prior to its expiration date, the Department of Transportation shall issue a renewal permit in place of the original permit. The renewal permit shall be valid from the date of its issuance up to the expiration date of the original permit, unless suspended in accordance with this Rule. If a lost permit is subsequently found, it shall be deemed void and ineffective when a renewal permit has been issued in accordance with this subparagraph.

(d) It shall be unlawful, and a violation of the terms of a permit issued under this Rule, to display an expired, invalid or suspended permit or to display more than one permit bearing the same permit number.

(4) Display of Placard.

(a) The Department of Transportation shall issue to all annual permit holders a placard bearing the same annual permit number and a telephone number to be used to report unsafe or erratic driving to the Department. There shall be only one placard issued for each annual permit.

(b) The transporter of any mobile home being moved under an annual permit shall prominently display the applicable placard on the rear of the mobile home. The annual permit number displayed on the placard must match the permit number on the annual permit displayed in the transporting vehicle as provided in Subparagraph (2)(b) of this Rule; provided, however, that if an annual permit has been replaced by a renewal permit, as provided in Subparagraph (3)(c) of this Rule, the placard may continue to bear the original annual permit number.

(c) Upon a sufficient showing that an otherwise valid placard has been lost or destroyed, and upon the receipt of a fifty dollar ($50.00) replacement fee, the Department of Transportation shall issue a replacement placard bearing the same annual permit number as the original placard it replaces. If a lost placard is subsequently found, it shall be deemed void and ineffective when a replacement placard has been issued in accordance with this subparagraph. There shall be no reimbursement of the replacement fee.

(d) Upon the expiration of an annual permit, the placard bearing that annual permit number shall also expire.

(e) It shall be unlawful, and a violation of the terms of a permit issued under this Rule, to display an expired, invalid or suspended placard or to display more than one placard bearing the same annual permit number.

(f) Failure to properly display a placard as required in T~~ennessee C~~ode A~~nnotated~~ § 54-4-411, and in accordance with the provisions of this Paragraph, is a Class C misdemeanor punishable by a fine of fifty dollars ($50.00).

(5) Special Permit Requirements for Overlength Movements.

(a) A special permit shall be required for the movement of any mobile home exceeding sixty feet (60') in length, including the towing vehicle; provided, however, that if the mobile home is being transported under a valid annual overwidth permit, as provided in Paragraph (6) of this

(Rule 1680-7-1-.15, continued)

Rule, an additional special overlength permit shall only be required if the mobile home exceeds ninety feet (90') in length, including the towing vehicle.

(b) A special overlength permit authorized under this Paragraph shall be issued only on a single trip basis under a short-term permit valid for a period not to exceed six (6) days.

(c) The fee for each special overlength permit issued under this Paragraph shall be twenty-five dollars ($25.00).

(d) A special overlength permit issued under this Paragraph shall be subject to such additional conditions as are prescribed in applicable provisions of Rule 1680-07-01-.11 governing overlength movements in general.

(6) Special Permit Requirements for Overwidth Movements.

(a) A special permit shall be required for the movement of any mobile home exceeding eight feet six inches (8'6") in width.

(b) The movement of mobile homes exceeding 16 feet (16') in width shall not be permitted.

(c) Special overwidth permits authorized under this Paragraph may be issued on either a short-term basis for a period not to exceed six (6) days from the date of issuance or on an annual basis for a period not to exceed three hundred and sixty-five (365) days from the date of issuance.

(d) The fee schedule for each overwidth permit issued under this Paragraph shall be as follows:

1. For mobile home widths from eight feet six inches (8'6") wide up to fourteen feet (14') wide:

(i) Short-term (6-day) permits: $50.00

(ii) Annual (365-day) permits: $1,000.00

2. For mobile home widths from eight feet six inches (8'6") wide up to sixteen feet (16') feet wide:

(i) Short-term (6-day) permits: $100.00

(ii) Annual (365-day) permits: $2,000.00

(e) A special overwidth permit issued under this Paragraph shall be subject to such additional conditions as are prescribed in applicable provisions of Rule 1680-07-01-.06 governing overwidth movements in general.

(7) Special Permit Requirements for Overheight Movements.

(a) A special permit shall be required for the movement of any mobile home exceeding fourteen feet two inches (14'2") in height.

(b) The movement of mobile homes exceeding 15 feet six inches (15'-6") in height shall not be permitted.

(Rule 1680-7-1-.15, continued)

(c) A special overheight permit authorized under this Paragraph shall be issued only on a short-term basis for a period not to exceed six (6) days, and it shall be subject to special routing instructions approved by the Department of Transportation.

(d) Each permit authorized under this Paragraph shall also be subject to such additional conditions as are prescribed in applicable provisions of Rule 1680-07-01-.10 governing overheight movements in general.

(e) The fee for each overheight permit issued under this Paragraph shall be fifty dollars ($50.00).

(f) The Department of Transportation shall make available, both in printed form and on the Department's official web site at ~~www.tdot.state.tn.us~~ www.tn.gov/tdot, a list of overpasses on public roads within the State of Tennessee that have been identified as having a minimum vertical clearance above the roadway of less than fourteen feet six inches (14'6").

1. This list shall be updated at least monthly on the Department's web site and at least annually in printed form. The Department shall charge a fee for the printed list sufficient to offset the administrative cost of compiling, updating, printing and shipping the list.

2. The Department of Transportation makes no representations, and expressly disclaims any warranty, that the information it provides in any list of overpasses on public roads is current or accurate. The information provided in these lists is generated from bridge inspections conducted on a biennial basis. Actual vertical clearances may be subject to change beyond the control or knowledge of the Department, and the posted vertical clearances may vary from the information provided in the Department's list.

3. At all times, the affirmative duty to determine that the route traveled will allow the safe passage of the mobile home shall remain with the transporter and/or seller of the mobile home, as provided in Paragraph (11) below, and nothing in this Paragraph or this Rule shall be construed as shifting this duty to the Department of Transportation.

(8) Special Permit Requirements for Overweight Movements.

The movement of mobile homes shall be subject to other provisions of this Chapter pertaining to excess weight, including without limitation Rule 1680-07-01-.09.

(9) Timing of Movements.

(a) The movement of mobile homes subject to this Rule shall be permitted only from sunrise to sunset, Monday through Saturday; provided, however, that movements of mobile homes shall not be permitted on legal holidays as enumerated in T~~ennessee C~~ode A~~nnotated~~ § 15-1-101, including New Year's Day, Martin Luther King, Jr. Day, Washington Day, Good Friday, Memorial Day, Independence Day, Labor Day, Columbus Day, Veterans' Day, Thanksgiving Day and Christmas Day.

(b) Notwithstanding the provisions of Subparagraph (9)(a) of this Rule, the movement of mobile homes eighty-five feet (85') or greater in length, or fourteen feet (14') or greater in width, or fourteen feet two inches (14'2") or greater in height, is prohibited in heavily traveled urban areas between the hours of seven o'clock a.m. (7:00 a.m.) to nine o'clock a.m. (9:00 a.m.) and between the hours of four o'clock p.m. (4:00 p.m.) to six o'clock p.m. (6:00 p.m.).

(10) Safety Precautions and Equipment.

(Rule 1680-7-1-.15, continued)

(a) The transporter of any mobile home subject to this Rule shall at all times comply with applicable statutes, rules and ordinances governing the operation of motor vehicles on public roads and/or the maintenance of appropriate safety equipment on motor vehicles.

(b) The transporter of a mobile home, and the seller of the mobile home if the seller is someone other than the transporter, shall have the affirmative duty to assure that the undercarriage for the mobile home is equipped with adequate brakes that are operated from the towing vehicle. This affirmative duty shall be primarily the transporter's duty; the seller shall be secondarily liable.

(c) Any violation of the provisions of this Paragraph shall be deemed a violation of the terms of a permit, if any, issued under this Rule.

(11) Duty to Determine Safe Route for Movement.

(a) Notwithstanding any other provision of this Rule, the transporter of a mobile home, and the seller of the mobile home if the seller is someone other than the transporter, shall have the affirmative duty to determine that the route over which the mobile home is to be transported allows for the safe passage of the mobile home, taking into account the size, including especially the height and width, of the mobile home. This affirmative duty shall be primarily the transporter's duty; the seller shall be secondarily liable.

(b) The affirmative duty to determine that the route will allow safe passage of the mobile home, based on its height and width, may be met by the use of a front escort vehicle having protrusions equal to the height and width of the mobile home. It shall not be sufficient to meet this duty by relying on highway signs or other information regarding highway clearances that may be provided by the Department of Transportation or any local government.

(c) At all times, the affirmative duty to determine that the route traveled will allow the safe passage of the mobile home shall remain with the transporter and/or seller of the mobile home, and nothing in this Rule shall be construed as shifting this duty to the Department of Transportation.

(12) Enforcement.

(a) Section 55-4-412 of the Tennessee Code provides that any person who transports a mobile home, manufactured home, portable modular unit or house trailer, as defined in T~~ennessee C~~ode A~~nnotated~~ § 55-4-402, over any public street, road or highway within the State of Tennessee in violation of the provisions of Title 55, Chapter 4, Part 4, of the Tennessee Code commits a Class B misdemeanor punishable as follows:

1. By a fine of two hundred fifty dollars ($250.00) for the first offense within a twelve (12) month period;

2. By a fine of five hundred dollars ($500.00) for the second offense within a twelve (12) month period; and

3. By a fine of one thousand dollars ($1,000.00) and a ninety (90) day revocation of any driver's license for the third or any subsequent offense within a twelve (12) month period.

(b) Within thirty (30) days of conviction for a violation of the provisions of Title 55, Chapter 4, Part 4, as provided in T~~ennessee C~~ode A~~nnotated~~ § 55-4-412, the clerk of the court of conviction shall give notice of such conviction to the Department of Transportation.

(Rule 1680-7-1-.15, continued)

(c) Upon receipt of notice of that a person has been convicted of a third violation within a twelve (12) month period, the Department of Transportation shall:

1. Suspend the subject permit involved in the third violation; and

2. Suspend the permit holder's privilege to obtain other permits under this Rule.

3. These suspensions shall be effective for a period of ninety (90) days from the date on which the Department receives notice of the third violation; provided, however, that nothing in this subparagraph shall be construed as:

(i) Prohibiting multiple permit holders from using other valid permits not subject to suspension;

(ii) Prohibiting multiple permit holders from obtaining a short-term overheight or overlength permit, as provided in Paragraphs (5) and (7) of this Rule, to supplement an otherwise valid annual overwidth permit not subject to suspension; or

(iii) Prohibiting multiple permit holders from renewing an otherwise valid permit not subject to suspension, as provided in Subparagraph (3)(c) of this Rule.

(13) Liability.

(a) The transporter of any mobile home subject to the provisions of this Rule shall be liable for any and all damages resulting from the mobile home striking a guardrail, bridge, concrete barrier, overhead structure or other obstruction while traveling on the public roads or highways of this State.

(b) If during transport a mobile home subject to the provisions of this Rule blocks traffic on a controlled-access facility, as defined in T~~ennessee C~~ode A~~nnotated~~ § 54-16-101, because such mobile home cannot proceed due to height, width or length, the transporter thereof shall be subject to the following:

1. The transporter shall pay to the Department of Transportation a road user fee in the amount of one thousand dollars ($1,000.00); and

2. The Department of Transportation shall suspend the subject permit involved in the incident and the permit holder's privilege to obtain other permits under this Rule for a period of ninety (90) days from the date the Department receives notice that the roadway was blocked; provided, however, that nothing in this part shall be construed as:

(i) Prohibiting multiple permit holders from using other valid permits not subject to suspension;

(ii) Prohibiting multiple permit holders from obtaining a short-term overheight or overlength permit, as provided in Paragraphs (5) and (7) of this Rule, to supplement an otherwise valid annual overwidth permit not subject to suspension; or

(iii) Prohibiting multiple permit holders from renewing an otherwise valid permit not subject to suspension, as provided in Subparagraph (3)(c) of this Rule.

(Rule 1680-7-1-.15, continued)

(c) If the same permit holder blocks traffic on a controlled-access facility a second time within eighteen (18) months after the date of the first such occurrence, the transporter shall be subject to the following:

1. The transporter shall pay to the Department of Transportation a road user fee in an amount calculated by the Department using the same formula it uses to calculate incentive payments on road construction projects; and

2. The Department of Transportation shall suspend the subject permit involved in the incident and the permit holder's privilege to obtain other permits under this Rule for a period of ninety (90) days, as provided in Part (b)2 of this Paragraph.

(d) If the transporter fails to pay any road user fee required under this Paragraph within thirty (30) days of the date the road is blocked, the transporter's privilege to obtain permits under this Rule shall be suspended in all respects whatsoever until full payment is made. The Department is authorized to take legal action to collect the fee.

(e) Any person or entity transporting a mobile home subject to the provisions of this Rule shall secure and maintain public liability insurance in an amount not less than one million dollars ($1,000,000) per occurrence. Such insurance shall cover the tractor, mobile home and any other attachments thereto. Proof of such insurance shall be carried in the vehicle used to transport the mobile home, and satisfactory proof of such insurance shall be provided to the Department of Transportation prior to the issuance of any permit under this Rule.

(f) Notwithstanding any other provision of law to the contrary, the State of Tennessee and any political subdivision thereof shall be absolutely immune from liability for all damages resulting from a mobile home striking a guardrail, bridge, concrete barrier, overhead structure or other obstruction while traveling on the public roads or highways of the State.

Authority: *T.C.A. §§55-4-401 through 55-4-413, and §55-7-205~~, and 55-11-205~~.* ***Administrative History:*** *Original rule filed July 1, 1982; effective August 2, 1982. Amendment filed December 7, 1983; effective January 6, 1984. Repeal and new rule filed October 31, 1985; effective November 30, 1985. Amendment filed December 8, 1987; effective January 23, 1988. Repeal and new rule filed June 19, 1991; effective August 3, 1991. Amendment filed July 8, 1991; effective August 22, 1991. Amendment filed August 29, 1996; effective December 27, 1996. Amendment filed September 30, 2002; effective January 28, 2003. Rule has been assigned a new control number from 1680-2-2-.15 filed and effective February 1, 2003.*

Comment [JHR14]: This statute was repealed and moved to Title 55, Chapter 7.

1680-07-01-.16 CONDITIONS FOR PERMITTING MOVEMENT OF HOUSEBOATS.

Houseboats not exceeding eighteen feet (18') in width may be transported on the highways, but any such boat in excess of eight feet ~~six inches~~ (8'~~6"~~) shall be subject to the fees provided in T.C.A. §55-7-205, and to the following requirements:

Comment [JHR15]: Per T.C.A. §55-7-202(a)(4) any houseboat over 8 feet is subject to the fees set in T.C.A. §55-7-205.

(1) Movements over eight feet ~~six inches~~ (8'~~6"~~) wide but not exceeding ten feet (10') wide: No escorts, special signs, lights and/or markings will be required.

(2) Movements over ten feet (10') wide but not exceeding twelve feet six inches (12'6") wide:

(a) No escort will be required to accompany the movement on the interstate highway system, four-lane highways or two-lane highways with a minimum pavement width (excluding paved shoulders) of twenty four feet (24').

(Rule 1680-7-1-.16, continued)

(b) One (1) escort vehicle is required to precede the movement where the minimum pavement width (excluding paved shoulders) is less than twenty-four feet (24').

(c) A flagperson will be required at all bridge structures where the roadway width is less than twenty feet (20').

(d) The front and rear of the movement shall be signed and marked as hereinafter set out in ~~r~~Rule 1680-07-01-.20.

(e) Escort vehicles shall be signed and marked as hereinafter set out in ~~r~~Rule 1680-07-01-.21.

(f) At the discretion of the issuing authority, time of movement may be restricted due to:

1. Route to be traveled,
2. Weather conditions,
3. Traffic density, or
4. Length of daylight hours.

(3) Movements over twelve feet six inches (12'6") wide but not exceeding ~~fourteen~~thirteen feet six inches (~~14'~~13'6") wide:

(a) One (1) escort vehicle is required to follow the movement on the interstate highway system or four-lane highways.

(b) One (1) escort vehicle is required to precede the movement on two-lane highways.

(c) A flagperson will be required at all bridge structures where the roadway width is less than twenty feet (20').

(d) The front and rear of the movement shall be signed and marked as hereinafter set out in ~~r~~Rule 1680-07-01-.20.

(e) Escort vehicles shall be marked as hereinafter set out in ~~r~~Rule 1680-07-01-.21.

~~(f) The towing vehicle for fourteen feet (14') wide movements must be at least fourteen feet six inches (14'6") in length.~~

(gf) The towing vehicle and escort vehicles shall be so equipped as to be in radio communication at all times during movement.

(~~h~~g) At the discretion of the issuing authority, time of movement may be restricted due to:

1. Route to be traveled,
2. Weather conditions,
3. Traffic density, or
4. Length of daylight hours.

(Rule 1680-7-1-.16, continued)

(4) Movements over ~~fourteen~~thirteen feet six inches (~~14'~~13'6") wide but not exceeding sixteen feet (16') wide:

Comment [JHR16]: Revised to make this consistent with the maximum width for which annual permits are available.

(a) Front and rear escort vehicles are required on all highways.

(b) A flagperson will be required at all bridge structures where the roadway width is less than twenty feet (20').

(c) The front and rear of the movement shall be signed and marked as hereinafter set forth in ~~r~~Rule 1680-07-01-.20.

(d) Escort vehicles shall be marked as hereinafter set forth in ~~r~~Rule 1680-07-01-.21.

(e) The towing vehicle must be at least fourteen feet six inches (14'6") in length.

(f) The towing vehicles and escort vehicles shall be so equipped as to be in radio communication at all times during movement.

(g) Movements shall only be made Monday through Friday between the hours of 9:00 a.m. to 4:00 p.m. (local time), or on Saturday or Sunday from sunrise to sunset. No annual permits shall be issued.

(h) At the discretion of the issuing authority, time of movement may be further restricted due to:

1. Route to be traveled,
2. Weather conditions,
3. Traffic density, or
4. Length of daylight hours.

(5) Movements over sixteen feet (16') wide but not exceeding seventeen feet (17') wide:

(a) The applicant for the permit shall provide the TDOT Permit Office with a route survey of the proposed route of travel.

(ab) Front and rear escort vehicles are required on all highways.

(~~b~~c) A flagperson will be required at all bridge structures where the roadway width is less than twenty feet (20').

(ed) The front and rear of the movement shall be signed and marked as hereinafter set out in ~~r~~Rule 1680-07-01-.20.

(de) Escort vehicles shall be marked as hereinafter set out in ~~r~~Rule 1680-07-01-.21.

(ef) The towing vehicle must be at least fourteen feet six inches (14'6") in length.

(~~f~~g) The towing vehicle and escort vehicles shall be so equipped as to be in radio communication at all times during movement.

(Rule 1680-7-1-.16, continued)

(gh) Special permits may be issued for movements Tuesday, Wednesday, and Thursday between the hours of 9:00 a.m. to 4:00 p.m. (local time), and shall only be valid for three (3) of any said week days. No annual permits shall be issued.

(hi) At the discretion of the issuing authority, time of movement may be further restricted due to:

1. Route to be traveled,
2. Weather conditions,
3. Traffic density, or
4. Length of daylight hours.

(6) Movements over seventeen feet (17') wide but not exceeding eighteen feet (18') wide:

(a) The applicant for the permit shall provide the TDOT Permit Office with a route survey of the proposed route of travel.

(ab) Three (3) escort vehicles are required on all highways. Two (2) escort vehicles are required to precede the movement. One (1) escort vehicle is required to follow the movement.

(bc) A flagperson will be required at all bridge structures where the roadway width is less than twenty feet (20').

(cd) The front and rear of the movement shall be signed and marked as hereinafter set out in rRule 1680-07-01-.20.

(de) Escort vehicles shall be marked as hereinafter set out in rRule 1680-07-01-.21.

(ef) The towing vehicle must be at least fourteen feet six inches (14'6") in length.

(fg) The towing vehicle and escort vehicles shall be so equipped as to be in radio communication at all times during movement.

(gh) Special permits may be issued for movements Tuesday, Wednesday, and Thursday between the hours of 9:00 a.m. to 4:00 p.m. (local time), and shall only be valid for three (3) of the said week days. No annual permits shall be issued.

(hi) At the discretion of the issuing authority, time of movement may be further restricted due to:

1. Route to be traveled,
2. Weather conditions,
3. Traffic density, or
4. Length of daylight hours.

Authority: *T.C.A. §§55-7-202 and 55-7-205.* ***Administrative History:*** *Original rule filed June 19, 1991; effective August 3, 1991. Amendment filed August 29, 1996; effective December 27, 1996. Amendment filed February 25, 2000; effective June 28, 2000. Amendment filed January 25, 2001; effective May 31, 2001. Rule has been assigned a new control number from 1680-2-2-.16 filed and effective February 1, 2003.*

(Rule 1680-7-1-.16, continued)

1680-07-01-.17 CONDITIONS FOR PERMITTING MOVEMENT OF SEALED CONTAINERIZED (OCEAN GOING) CARGO UNITS.

(1) Sealed containerized cargo units will be considered as nondivisible loads and overweight trip permits will be issued to operate vehicles hauling such units on the ~~State, or Federal~~state highway systems, including the interstate highway system, subject to the following restrictions:

(a) Such containerized cargo units must be part of international trade and be moved on the highways due to importation from, or exportation to, another country.

(b) A copy of the international bill of lading signed by a custom's official, or an international bill of lading with an equipment interchange and inspection report must be submitted to the TDOT Permit ~~Section~~Office before a permit will be issued.

(c) The operators of such units shall at all times have in their possession a copy of the documents as described in (b) above.

(d) All vehicles operating under a sealed containerized cargo unit permit shall have a minimum of five (5) full-time load bearing axles and shall not exceed twenty thousand (20,000) lbs. per axle, or total gross vehicle weight of ~~ninety~~one hundred thousand (~~90,000~~100,000) lbs.

(e) All vehicles operating under a sealed containerized cargo unit permit must be legal width, length, and height.

(f) All vehicles permitted for movement of overweight sealed containerized units are authorized twenty-four (24) hours continuous movement Monday through Sunday with normal travel conditions.

(g) All permits for a single trip will be issued for a duration of ~~six~~ten (610) days, and will only be valid for one (1) move.

(2) Annual Permits will be available for the movement of sealed containerized cargo units from the Department ~~of Transportation~~ subject to the ~~following~~same restrictions and conditions as provided in Paragraphs (1)(a) – (c) upon payment of the annual permit fee required under Rule 1680-07-01-.24(5). Annual permits will not be restricted to a specified route.

~~(a) Such containerized cargo units must be part of international trade and be moved on the highways due to importation from, or exportation to, another country.~~

~~(b) All vehicles operating under a sealed containerized cargo unit permit must be legal width, length, and height.~~

~~(c) Application for a permit must be made in writing to the Tennessee Department of Transportation, before a permit will be issued.~~

~~(d) A specified route to be traveled from port to city, or city to port must be determined, and the specified route must be strictly adhered to, or the permit will be considered void. These routes must be established by the Department of Transportation, and the permittee. The annual permit is for multiple trips utilizing the same route.~~

(Rule 1680-7-1-.17, continued)

~~(e) All vehicles operating under a sealed containerized cargo unit permit must have a permit in possession at all times, and the permit must be accompanied by a copy of a bill of lading, or shipping ticket showing the origin, and destination of the container being moved.~~

~~(f) All vehicles operating under a sealed containerized cargo unit permit shall have a minimum of five (5) fulltime load bearing axles and shall not exceed twenty thousand (20,000) lbs. per axle, or total gross vehicle weight of ninety thousand (90,000) lbs.~~

~~(g) All vehicles permitted for movement of overweight sealed containerized cargo units are authorized 24 hours continuous movement, Monday through Sunday with normal travel conditions.~~

Authority: *T.C.A. §55-7-205.* ***Administrative History:*** *Original rule filed December 29, 1995; effective April 29, 1996. Amendment filed May 22, 1997; effective September 28, 1997. Rule has been assigned a new control number from 1680-2-2-.17 filed and effective February 1, 2003.*

1680-07-01-.18 CONDITIONS FOR PERMITTING MOVEMENT OF ROOF TRUSSES.

(1) For movements not exceeding ten feet (10') ~~feet~~ wide, ~~,~~ no escort vehicle, special signs, lights, ~~and~~ or markings shall be required.

(2) Movements over ten feet (10') ~~feet~~ wide, but not exceeding twelve feet (12') ~~feet~~ wide:

(a) No escort vehicle shall be required to accompany the movement on the Interstate highway system, four (4) lane highways, or two (2) lane highways with a minimum pavement (roadway surface) width of twenty-four feet (24') ~~feet~~.

(b) One (1) escort vehicle shall be required to precede the movement where the minimum pavement (roadway surface) width is less than twenty-four feet (24') ~~feet~~.

(c) A flagperson shall be required at all bridge structures where the roadway width is less than twenty feet (20') ~~feet~~.

(d) ~~The front and rear of the movement shall be appropriately signed and marked.~~ The front and rear of the movement shall be signed and marked as hereinafter set out in Rule 1680-07-01-.20.

(e) ~~Escort vehicles shall be appropriately marked.~~ Escort vehicles shall be marked as hereinafter set out in Rule 1680-07-01-.21.

(3) Movements over twelve feet (12') ~~feet~~ wide, but not exceeding fourteen feet (14') ~~feet~~ wide:

(a) Front and rear escort vehicles shall be required on all two (2) lane highways. Front escort vehicles shall not be required on Interstate highways or four (4) lane highways. Front and rear escort vehicles shall be required on Interstate highways where two (2) lanes are traveled.

(b) Towing vehicles and escort vehicles shall be so equipped as to be in radio communication at all times during movement.

(c) The front and rear of the movement shall be appropriately signed and marked. The front and rear of the movement shall be signed and marked as hereinafter set out in Rule 1680-07-01-.20.

(d) ~~Escort vehicles shall be appropriately marked.~~Escort vehicles shall be marked as hereinafter set out in Rule 1680-07-01-.21.

(e) Towing vehicles for fourteen ~~foot~~feet (14') wide movements shall be at least fourteen feet six inches (14'6") in length.

Authority: *T.C.A. §§55-7-205 and 55-7-209.* ***Administrative History:*** *Original rule filed December 29, 1995; effective April 29, 1996. Rule has been assigned a new control number from 1680-2-2-.18 filed and effective February 1, 2003.*

1680-07-01-.19 CONDITIONS FOR PERMITTING MOVEMENT OF HEAVY DUTY TOWING VEHICLES~~OFF-THE-ROAD VEHICLES OR EQUIPMENT OVER STATE HIGHWAYS~~.

Comment [JHR17]: This new rule is based on the tow truck provisions in 2017 Public Chapter 477.

~~(1) Any rubber-tired mobile construction vehicle or equipment carrying no load other than its own weight, which has been reduced in size and/or weight until further reduction is impractical and is mounted on pneumatic tires, may be permitted to move over designated Tennessee State Highways.~~

~~(2) If any axle exceeds the weight allowed by law for that particular axle, a special permit is required.~~

~~(3) In no case may any axle weight exceed 24,000 pounds.~~

~~(4) If width or length exceeds those allowed by law, a special permit is required.~~

~~(5) Front and rear of movement shall be signed and marked as hereinafter set out in rule 1680-7-1-.20.~~

Comment [JHR18]: The previous rule for "off-the-road vehicles" has been incorporated into Rule 1680-07-01-.13, Conditions for Movement of Fixed Load Vehicles.

(1) Subject to the requirements of T.C.A. §55-7-205 and this rule, the TDOT Permit Office is authorized to issue a special permit allowing a towing vehicle to transport wrecked, disabled, or abandoned vehicles on the state highway system, including the interstate highway system, when the towing vehicle, or the towing vehicle and towed vehicle in combination, exceeds the maximum vehicle or axle weights allowed under T.C.A. §55-7-203(b), the maximum vehicle height or width allowed under T.C.A. §55-7-202, or the maximum vehicle lengths allowed under T.C.A. §55-7-201. Each special permit shall be issued to a specific towing vehicle.

(2) When transporting a wrecked, disabled, or abandoned vehicle, a towing vehicle and the towed vehicle in combination shall be considered a "non-divisible load or vehicle" that cannot be reasonably dismantled or conveniently transported otherwise.

(3) For the purposes of this rule:

(a) "Emergency towing movement" means the towing of a wrecked, disabled, or abandoned vehicle from a location within or adjacent to the traffic lanes or shoulders of a highway to the nearest exit or repair or terminal facility within one hundred (100) miles from the location of the wreck, disablement, or abandonment along the highway.

(b) "Secondary towing movement" means any towing movement other than an emergency towing movement.

(c) "Towing vehicle" means a vehicle used to tow wrecked, disabled, or abandoned vehicles. A truck tractor and trailer or semi-trailer vehicle combination used to haul loads shall not be considered a towing vehicle eligible to obtain a towing permit under this rule except on a limited basis as provided in Paragraphs (7), (8), and (10) of this rule below.

(4) A towing vehicle shall require a special permit to operate on the state highway system, including the interstate highway system, if the towing vehicle by itself exceeds any of the following size and weight limitations:

(a) A total gross vehicle weight that exceeds 80,000 pounds; or, if operating on the interstate highway system, the lesser of 80,000 pounds or the weight produced by application of the formula set forth in T.C.A. §55-7-203;

(b) Any single axle weight that exceeds 20,000 pounds, or any tandem axle weight that exceeds 34,000 pounds;

(c) A width that exceeds eight feet six inches (8'6");

(d) A height that exceeds thirteen feet six inches (13'6"); or

(e) A length that exceeds forty-five feet (45').

(5) Except as provided in Federal law, including 23 U.S.C. §127, a towing vehicle shall require a special permit to operate on the state highway system, including the interstate highway system, when towing a wrecked, disabled, or abandoned vehicle, if the towing vehicle and towed vehicle together exceed any of the following size and weight limitations:

(a) A total gross vehicle weight that exceeds 80,000 pounds; or, if operating on the interstate highway system, the lesser of 80,000 pounds or the weight produced by application of the formula set forth in T.C.A. §55-7-203;

(b) Any single axle weight that exceeds 20,000 pounds, or any tandem axle weight that exceeds 34,000 pounds;

(c) A width that exceeds eight feet six inches (8'6");

(d) A height that exceeds thirteen feet six inches (13'6"); or

(e) A length of the towed vehicle that exceeds fifty-two feet (52') from the point of attachment to the towing vehicle; provided, however, that this length limitation shall not apply if the towing vehicle is towing a wrecked, disabled, or abandoned vehicle from a location within or adjacent to the traffic lanes or shoulders of a highway to an exit or a repair or terminal facility within one hundred (100) miles of the point where the towed vehicle became wrecked, disabled, or abandoned, and the movement is authorized by the owner, terminal manager, owner's agent, or law enforcement official.

(6) The TDOT Permit Office may issue a single trip permit or an annual permit for the movement of a towing vehicle that by itself exceeds one or more of the limits described in Paragraph (4) of this rule, subject to the following conditions:

(a) The height of the towing vehicle shall not exceed thirteen feet six inches (13'6");

(b) The width of the towing vehicle shall not exceed nine feet (9');

(c) The length of the towing vehicle shall not exceed forty-five feet (45');

(d) The maximum gross vehicle weight of the towing vehicle shall not exceed 85,000 pounds; and

(e) The total axle weight shall not exceed:

1. 23,000 pounds on any single axle;

2. 46,000 pounds on any tandem axle group; or

3. 60,000 pounds on any tridem axle group.

(7) The TDOT Permit Office may issue an annual permit for the movement of a towing vehicle and towed vehicle that in combination exceeds one or more of the limits described in Paragraph (5) of this rule, subject to the following conditions:

(a) The height of the towing vehicle and towed vehicle in combination shall not exceed thirteen feet ten inches (13'10");

(b) The width of the towing vehicle and towed vehicle in combination shall not exceed twelve feet six inches (12'6");

(c) The length of the towing vehicle and towed vehicle in combination shall not exceed ninety feet (90') if the towing movement is a secondary towing movement;

(d) The maximum gross vehicle weight of the towing vehicle and towed vehicle in combination shall not exceed 165,000 pounds; and

(e) The total axle weight shall not exceed:

1. 25,000 pounds on any single axle;

2. 50,000 pounds on any tandem axle group; or

3. 75,000 pounds on any tridem axle group.

(f) A person or entity holding a valid annual towing permit for a towing vehicle issued in accordance with this rule may also obtain an annual towing permit for a truck tractor and trailer or semi-trailer combination authorizing the permittee to haul wrecked, disabled, or abandoned vehicles, including emergency towing movements not subject to date and time restrictions under Rule 1680-07-01-.04; provided, however, that the towing permit for a truck tractor and trailer or semi-trailer combination shall remain subject to the general size and weight limits established in T.C.A. §§55-7-201, 55-7-202, and 55-7-203(b), or to whatever size and weight limits are available to that motor vehicle under a separate special permit issued in accordance with some other provision of these rules.

(g) The TDOT Permit Office shall issue a decal with each annual towing permit identifying the month and year in which the permit will expire. The permittee shall display this decal on the driver's side of the front windshield of the permitted vehicle.

(8) The TDOT Permit Office may issue a single trip permit for the movement of a towing vehicle and towed vehicle that in combination exceeds one or more of the limits described in Paragraph (5) of this rule, subject to the following conditions:

(a) The height of the towing vehicle and towed vehicle in combination shall not exceed fifteen feet (15');

(b) The width of the towing vehicle and towed vehicle in combination shall not exceed sixteen feet (16');

(c) The total axle weight shall not exceed:

1. 25,000 pounds on any single axle;

2. 50,000 pounds on any tandem axle group; or

3. 75,000 pounds on any tridem axle group;

(d) Any movement of a towing vehicle and towed vehicle that in combination exceeds a total gross vehicle weight of 165,000 pounds must be approved by the TDOT Structures Division, subject to the fees for evaluation of bridges and other structures as provided in Rule 1680-07-01-.24, and special routing may be required before a special permit may be issued; and

(e) Any towing movement exceeding the dimensions allowed under an annual permit, as described in Paragraph (7) of this rule, shall be accompanied by an escort vehicle or vehicles in accordance with Rule 1680-07-01-.06 for overwidth movements, Rule 1680-07-01-.10 for overheight movements, and Rule 1680-07-01-.11 for overlength movements. For the purpose of complying with this escort vehicle requirement, the towing vehicle itself may substitute for a front escort vehicle so long as the towing vehicle is operating with flashing amber lights displayed to the front of the vehicle.

(f) A person or entity holding a valid annual towing permit for a towing vehicle issued in accordance with this rule may also obtain an annual towing permit for a truck tractor and trailer or semi-trailer combination authorizing the permittee to haul wrecked, disabled, or abandoned vehicles, including emergency towing movements not subject to date and time restrictions under Rule 1680-07-01-.04; provided, however, that the towing permit for a truck tractor and trailer or semi-trailer combination shall remain subject to the general size and weight limits established in T.C.A. §§ 55-7-201, 55-7-202, and 55-7-203(b), or to whatever size and weight limits are available to that motor vehicle under a separate special permit issued in accordance with some other provision of these rules.

(9) No towing vehicle or combination of towing vehicle and towed vehicle shall be authorized to exceed any total gross vehicle weight limits or axle weight limits posted on any bridge or highway by the public official having jurisdiction over the bridge or highway.

(10) (a) A towing vehicle with a current, valid single trip permit or annual permit issued under this rule may be authorized to undertake an emergency towing movement where the combination of the towing vehicle and towed vehicle exceeds the height, width, or weight limits under Paragraphs (7) or (8) of this rule if TDOT, the Department of Safety and Homeland Security, or a local traffic law enforcement agency requests the assistance of the towing vehicle to remove a wrecked, disabled, or abandoned vehicle from the highway. In such case, the wrecked, disabled, or abandoned vehicle shall be towed only to the nearest rest area, weigh station, truck parking area, or other safe location away from the highway traffic lanes and shoulders as designated by the agency requesting the assistance. TDOT may require a bridge evaluation pursuant to T.C.A. §55-7-205(h)(4) and Rule 1680-07-01-.24, and TDOT may impose route restrictions based on the condition of the roadway and bridges.

(b) A truck tractor and trailer or semi-trailer combination having a valid towing permit issued under Paragraph (7) or (8) of this rule may also be authorized to haul a wrecked, disabled, or abandoned vehicle where the combined load exceeds the size and weight limits established in T.C.A. §§ 55-7-201, 55-7-202, and 55-7-203(b) or the size and weight limits available to that motor vehicle under a separate special permit if TDOT, the Department of Safety and Homeland Security, or local law enforcement requests the assistance of that permitted vehicle to remove a wrecked, disabled, or abandoned vehicle from the highway; provided, however, that the movement of the load to the identified safe location must be accompanied by a law enforcement escort. TDOT may require a bridge evaluation pursuant to T.C.A. §55-7-205(h)(4) and Rule 1680-07-01-.24, and TDOT may impose route restrictions based on the condition of the roadway and bridges.

(11) The cost of a single trip permit for the movement of a towing vehicle, or for the movement of a towing vehicle and towed vehicle in combination, that exceeds any of the size or weight limits described in Paragraphs (4) and (5) of this rule shall be in accordance with Rule 1680-07-01-.24, Paragraphs (1) through (3) for each category of excess size or weight, except that the cost of the permit shall include an additional fee of twelve cents ($.12) per ton mile for all weight in excess of 165,000 pounds.

(12) The cost of an annual permit for the movement of a towing vehicle, or for the movement of a towing vehicle and towed vehicle in combination, that exceeds any of the size or weight limits described in Paragraphs (4) and (5) of this rule shall be $500.00. No annual permit shall be available for any towing movement exceeding any of the size or weight limits described in Paragraph (7) of this rule; provided, however, that a towing vehicle holding an annual permit may supplement that annual permit by obtaining a single trip permit allowing for the movement of additional excessive weight at the cost of $20.00 plus twelve cents ($.12) per ton mile for all weight in excess of 165,000 pounds together with the applicable charge for evaluating bridges and other structures as provided in Rule 1680-07-01-.24(4).

Authority: *T.C.A. §55-7-201 and §55-7-205.* ***Administrative History:*** *Original rule filed July 1, 1982; effective August 2, 1982. Repeal and new rule filed October 31, 1985; effective November 30, 1985. Repeal and new rule filed June 19, 1991; effective August 3, 1991. Amendment filed August 29, 1996; effective December 27, 1996. Rule has been assigned a new control number from 1680-2-2-.19 filed and effective February 1, 2003.*

1680-07-01-.20 SIGNS AND MARKINGS ON MOVEMENTS.

(1) All movement exceeding ten feet (10') ~~feet~~ in width and/or seventy-five feet (75') ~~feet~~ in length shall bear information signs reading "OVERSIZE LOAD" as further provided below.

(2) Adequate markings shall be provided to outline the extremities of the load.

(a) Overwidth and/or overlength movements shall bear a sign reading "OVERSIZE LOAD" mounted on the front and rear of the movement.

1. Signs shall be at least seven feet (7') ~~feet~~ long and eighteen inches (18") ~~inches~~ high. The background shall be yellow and the lettering black. Letters shall be at least ten inches (10") ~~inches~~ high with a one and one-half inch (1-5/8½") ~~inch~~ stroke. Each letter shall be solid. Gaps within the stroke of a letter are not permitted.

2. Signs shall be durable wood or metal construction. Heavy canvas or cloth signs, otherwise meeting same requirements, will be permitted if they can be securely fastened to the movement against a flat surface backing up the entire area of the sign.

3. Signs shall be in a good state of repair, clean and readable.

(b) Any motor vehicle having a load or vehicle component which extends more than four inches (4") beyond the sides of the vehicle or more than four feet (4') beyond the rear of the vehicle shall have the extremities of the load marked with a red or fluorescent orange flag, not less than eighteen inches (18") square, at each point where a lamp is required by Federal Motor Carrier Safety Regulations under 49 C.F.R. §393.11, Table 1.

Comment [JHR19]: This paragraph has been moved from former Rule 1680-07-01-.02(13).

(~~b~~c) Additional Requirements for Overwidth Movements.

1. Red or fluorescent orange flags shall be fastened to the load (front and rear) at the top and bottom of each side which is widest. Flags shall extend from the load in such a manner in which ~~they will~~as to be visible to traffic approaching from both the front and rear. If the widest part of the load is between the top and the bottom, flags shall be placed at this point both front and rear.

2. All warning flags shall be of solid red color or fluorescent orange and at least eighteen inches (18") ~~inches~~ square.

(ed) Additional Requirements for Overlength Movements.

~~1.~~ In addition to required signs described in (2)(a) of this rule, red or fluorescent orange flags shall be conspicuously displayed at the extreme rear end of overlength loads.

(e) Additional Requirements for Nighttime Movements.

For any motor vehicle issued a special permit that has a truck-tractor and semitrailer combination carrying a load in excess of width or length limitations set forth in Rule 1680-07-01-.01(2), the load shall be marked as follows for movements between one-half (1/2) hour after sunset to one-half (1/2) hour before sunrise:

1. On each side of the projecting load, one (1) red side marker lamp, visible from the side, located so as to indicate maximum overhang; and

2. On the rear of the projecting load:

(i) Two (2) red lamps, visible from the rear, one (1) at each side; and

(ii) Two (2) red reflectors, visible from the rear, one (1) at each side, located so as to indicate maximum width.

Comment [JHR20]: Added per T.C.A. §55-7-205(m) as enacted under 2016 Public Chapter 923.

Authority: *T.C.A. §55-7-205.* ***Administrative History:*** *Original rule filed July 1, 1982; effective August 2, 1982. Repeal and new rule filed October 31, 1985; effective November 30, 1985. Repeal and new rules filed June 19, 1991; effective August 3, 1991. (Formerly numbered 1680-2-2-.18). Rule has been assigned a new control number from 1680-2-2-.20 filed and effective February 1, 2003.*

1680-07-01-.21 ESCORT VEHICLE SIGNS, MARKINGS AND EQUIPMENT REQUIREMENTS.

(1) Escort vehicles shall comply with the following requirements.

(a) The escort vehicle must be a vehicle weighing more than 2,000 pounds with a manufacturer's gross vehicle weight rating less than ~~10,000~~18,000 pounds and must be properly licensed, ~~which~~ It is to be used to escort one or more other permitted vehicles, when required, due to the ~~vehicle(s)~~ size or character of the permitted vehicle(s) or load, in accordance with the conditions set forth in a permit issued by the ~~appropriate state agency~~TDOT Permit Office.

(b) ~~Identification s~~Signs or placards ~~showing~~identifying the name and telephone number of the ~~company or the owner or driver of~~business operating the escort vehicle must be attached in a conspicuous place on both the right and left sides of the vehicle. The signs or placards shall be at least 8" x 12" in size~~and shall also contain the telephone number of the owner or driver plainly legible and visible to the motoring public~~.

(c) All escort vehicles must be equipped with either a rotating amber light or a strobe type amber light which is visible from at least 500 feet and has a horizontal placement which shall be visible from all directions, three hundred sixty degrees (360°) ~~degrees~~.

(d) Escort vehicles shall display bumper mounted or roof mounted yellow sign(s) reading "OVERSIZE LOAD" with black letters a minimum of ten inches (10') ~~inches~~ high, and one and

one-half inch ~~(1-1/2) inch~~(1 ½") wide brush stroke, which must be visible from the front and rear.

(e) Signs shall be of durable wood or metal construction. Heavy canvas or cloth signs, otherwise meeting the same requirements, will be permitted if they can be securely fastened to the escort vehicle against a flat surface backing up the entire area of the sign.

(f) Signs shall be in a good state of repair, clean and readable at all times.

(g) Two flags, either red or fluorescent orange in color~~, which must be~~ and at least eighteen inches (18") square in size, shall be mounted at approximately a ~~40~~forty degree (40°) to ~~70~~ seventy degree (70°) angle on the escort vehicle's roof rack.

(h) During escort operations, all escort vehicles shall have ~~on board~~ the following equipment on board, and such equipment shall be in working order:

1. Operable two-way electronic communications devices,
2. Two 5-pound fire extinguishers,
3. Stop and go paddle that is round or octagonal in shape and at least eighteen inches (18") in diameter, or eighteen inches (18") square, with six inch (6") letters~~)~~.
4. Safety orange vest, shirt, or jacket~~.~~,
5. Red hand-held flag (18" square in size)~~.~~,
6. Two oversized load banners (yellow ~~w/~~with black lettering)~~.~~,
7. Hard hat (no color specified), and
8. Reflecting triangles or eighteen inch (18") high traffic cones.
9. Additional equipment recommended, but not mandated, unless otherwise specifically required in these rules:
   (i) Hand-held two-way electronic communications~~.~~,
   (ii) Flares,
   (iii) Map(s), and
   (iv) Height indicator.

Authority: *T.C.A. §55-7-205.* ***Administrative History:*** *Original rule filed July 1, 1982; effective August 2, 1982. Repeal and new rule filed October 31, 1985; effective November 30, 1985. Repeal and new rule filed June 19, 1991; effective August 3, 1991. Amendment filed December 28, 1995; effective April 29, 1996. Rule has been assigned a new control number from 1680-2-2-.21 filed and effective February 1, 2003.*

1680-07-01-.22 FINANCIAL RESPONSIBILITY.

(1) Any person, firm, company, corporation or other who undertakes the movement of any overweight and/or overdimensional article and/or commodity on the highways of the State of Tennessee shall hold

(Rule 1680-7-1-.23, continued)

the State of Tennessee, its officers and employees, harmless from any claims for damages resulting from the exercise of any of the privileges granted under the ~~S~~special ~~P~~permit so issued for such overweight and/or overdimensional movement, and to this end, shall carry liability insurance with an ~~I~~insuro~~e~~r, acceptable to the ~~Commissioner of Transportation~~TDOT Permit Office, and shall furnish a certificate of insurance to the ~~Commissioner of Transportation~~TDOT Permit Office, in the amount of not less than three hundred thousand dollars ($300,000) for each claimant injured and one million dollars ($1,000,000) per occurrence.

(2) The certificate of insurance shall provide that the ~~I~~insuror shall give, to the ~~Department of Transportation of the State of Tennessee~~TDOT Permit Office, written notice of intention to terminate said required insurance by certified mail, said termination to become effective thirty (30) days after receipt of said notice from the ~~I~~insuror by the ~~Department of Transportation~~TDOT Permit Office.

Authority: *T.C.A. §55-7-205.* ***Administrative History:*** *Original rule filed July 1, 1982; effective August 2, 1982. Repeal and rule filed October 31, 1985; effective November 30, 1985. Repeal and new rule filed June 19, 1991; effective August 3, 1991. Amendment filed February 25, 2000; effective June 28, 2000. Rule has been assigned a new control number from 1680-2-2-.22 filed and effective February 1, 2003.*

1680-07-01-.23 BOND OR PROOF OF SOLVENCY REQUIREMENTS.

(1) The ~~Commissioner~~TDOT Permit Office may require, as a condition of the issuance of a permit under these rules, that an applicant shall agree to and give bond with surety (unless an applicant shall by sworn statement furnish satisfactory proof of the applicant's own solvency to the ~~authority issuing the permit~~TDOT Permit Office) to indemnify the state and/or counties thereof, against damages to roads, or bridges, resulting from the use thereof by the applicant. ~~Each such permit and~~The bond, if the ~~Commissioner~~TDOT Permit Office so authorizes, may cover more than one permitted vehicle operated by the same applicant.

(2) The bond required shall be in a form acceptable to the ~~Department~~TDOT Permit Office and in an amount, as determined by the ~~Department~~TDOT Permit Office, sufficient to indemnify the state and/or counties for the potential damages to roads and bridges resulting from the applicant's use.

(3) A sworn statement furnishing satisfactory proof of the applicant's solvency shall mean an audited financial statement, certified by a certified public accountant, showing net assets of the applicant in an amount, as determined by the ~~Department~~TDOT Permit Office, sufficient to indemnify the state and/or counties for the potential damages to roads and bridges resulting from the applicant's use.

Authority: *T.C.A. §55-7-205.* ***Administrative History:*** *Original rule filed July 1, 1982; effective August 2, 1982. Repeal and new rule filed October 31, 1985; effective November 30, 1985. Repeal and new rule filed June 19, 1991; effective August 3, 1991. Amendment filed January11, 2002; effective May 31, 2002. Rule has been assigned a new control number from 1680-2-2-.23 filed and effective February 1, 2003.*

1680-07-01-.24 FEES.

The ~~Commissioner of Transportation~~TDOT Permit Office shall charge fees for granting special permits in accordance with the following schedules; provided, however, that the fees for permits to move mobile homes, manufactured homes, portable modular units or house trailers are separately identified in Rule 1680-07-01-.15.

(1) Excessive Width:

(a) Not more than ~~ten~~fourteen feet (~~10'~~14'):
$~~1~~20.00;

(Rule 1680-7-1-.24, continued)

~~(b) Over ten feet (10') but not more than twelve feet (12'): $15.00~~
~~(c) Over twelve feet (12') but not more than fourteen feet (14'): $25.00~~
(~~d~~b) Over fourteen feet (14') but not more than sixteen feet (16'): $30.00;

(e~~c~~) Over sixteen feet (16'): $30.00 plus $5.00 for each additional foot or fraction thereof greater than ~~seventeen~~sixteen feet (~~17'~~16'), except as otherwise provided in subparagraph (~~f~~d);

(~~f~~d) For houseboats over seventeen feet (17'): $2,500.~~00~~ plus $100.~~00~~ for each additional inch or fraction ~~fraction~~ thereof greater than ~~eighteen~~seventeen feet (~~18'~~17').

(2) Excessive Height or Length:

~~$15.00~~20.00.

(3) Excessive Weight:

(a) General: ~~$15.00~~20.00 plus ~~5~~six cents ($.06) per ton mile.

(b) Towing vehicles (in accordance with Rule 1680-07-01-.19):

1. Excess weight up to 165,000 pounds: $20.00 plus six cents ($.06) per ton mile.

2. Excess weight over 165,000 pounds: Twelve cents ($.12) per ton mile.

(4) Evaluation of Bridges and Similar Structures:

The TDOT Structures Division shall, as it deems necessary, evaluate the capacity of bridges or similar structures to carry the proposed movement of an overweight or overdimensional load along a particular route. The Department shall charge the requestor for this evaluation each time a different route is proposed, as follows:

(a) Movements weighing over ~~two hundred thousand~~165,000 pounds ~~but not more than three hundred thousand pounds~~250,000 pounds~~;~~: $100.~~00~~.

(b) Movements weighing over ~~three hundred thousand~~ 250,000 pounds ~~b~~but not more than ~~five hundred thousand~~500,000 pounds~~;~~: $300.~~00~~.

~~Movements weighing over five hundred thousand but nor more than one million pounds, $500.00~~

(c) Movements weighing over ~~one million~~500,000 pounds~~;~~: a~~A~~ctual cost.

(5) Annual Permits:

(a) Except as otherwise provided in these rules, a permit shall be available on an ~~A~~annual basis ~~Permits may be obtained~~ for each specific vehicle to be used for transporting overdimensional ~~and~~/or overweight ~~vehicles~~ loads, or both, as follows: ~~at a cost of five hundred dollars ($500.00)~~

Comment [JHR21]: These fees are revised per 2016 Public Chapter 923 (effective July 1, 2016).

Comment [JHR22]: These fees are revised per 2015 Public Chapter 393 (effective July 1, 2015).

Comment [JHR23]: These fees are established in 2017 Public Chapter 477.

Comment [JHR24]: These fees are revised per 2016 Public Chapter 1012 (effective January 1, 2017).

(Rule 1680-7-1-.24, continued)

~~per year for weights up to 120,000 lbs., and for one thousand dollars ($1,000.00) per year for weights in excess of 120,000 lbs.~~

1. For vehicles transporting loads up to but not exceeding thirteen feet ten inches (13'10") in height, ninety feet (90') in length, or twelve feet six inches (12'6") in width: $100.

   Provided, however, that vehicles transporting loads up to but not exceeding thirteen feet six inches (13'6") in width may obtain an annual permit upon the condition that such overwidth movements shall be accompanied by an escort vehicle as required in Rule 1680-07-01-.06.

2. For vehicles transporting loads with excess weights up to but not exceeding 100,000 pounds: $750.

3. For vehicles transporting loads with excess weights over 100,000 pounds but not exceeding 120,000 pounds: $1,500.

4. For vehicles transporting loads with excess weights over 120,000 pounds but not exceeding 140,000 pounds: $2,250.

5. For vehicles transporting loads with excess weights over 140,000 pounds but not exceeding 155,000 pounds: $3,000.

6. For vehicles transporting loads with excess weights over 155,000 pounds but not exceeding 165,000 pounds: $3,500.

Comment [JHR25]: These fees are revised per 2016 Public Chapter 1012 (effective January 1, 2017).

7. Vehicles transporting loads that are both overdimensional and overweight shall be charged a separate annual fee for both the overdimensional loads, as provided in Part 1 of this subparagraph, and the overweight loads as provided in Parts 2–6 of this subparagraph.

8. Individual owners of overdimensional boats used strictly for non-commercial pleasure may obtain annual permits for double the amount of the regular fee for a single trip permit for the particular movement, as described in Paragraphs (1) and (2) of this rule.

9. Annual permits are available for manufactured roof trusses exceeding twelve feet six inches (12'6"), but not to exceed fourteen feet (14') ~~feet~~ wide, for a fee of ~~five hundred ($500.00) dollars~~.

10. Annual ~~P~~permits are available for sealed containerized cargo units (not to exceed 100,000 pounds) for a fee of ~~five hundred ($500.00) dollars~~$750.

11. Subject to the conditions set forth in Rule 1680-07-01-.08, annual permits are available for the movement of a single motor vehicle that is used exclusively to transport seed cotton modules for a fee of $100.

12. Subject to the conditions set forth in Rule 1680-07-01-.19, annual permits are available for the movement of a towing vehicle, and the movement of a towing vehicle and towed vehicle in combination, that exceeds any of the size and weight limits described in Paragraphs (4) and (5) of Rule 1680-07-01-.19 for a fee of $500.

Comment [JHR26]: This annual fee is established in 2017 Public Chapter 477.

(b) Except as otherwise authorized in these rules, no annual permit shall be available for any vehicle

transporting loads with weights exceeding one hundred sixty-five thousand pounds (165,000 lbs.) or dimensions exceeding thirteen feet ten inches (13'10") in height, ninety feet (90') in length, or thirteen feet six inches (13'6") in width, and any such vehicle shall be required to obtain a single trip special permit subject to the fee or fees for excessive width, height, length, or weight as set forth in Paragraphs (1) through (3) of this Rule and the fees for evaluation of bridges and similar structures as set forth in Paragraph (4) of this Rule; provided, however, that a vehicle holding an annual permit for excessive weight under Parts 2 – 6 of Subparagraph (5)(a) may supplement that annual permit by obtaining a single trip permit allowing for the movement of a load with excessive width, height, or length not previously covered by an annual permit under Part 1 of Subparagraph (5)(a).

(c) Notwithstanding any vehicle movement authorized under an annual permit as provided in this Paragraph (5), no such vehicle shall be authorized to exceed any vehicle weight limit or limits posted on any bridge or highway by the public official having jurisdiction over such bridge or highway.

(6) Multi-State Permitting

A permit for movement through more than one state may be obtained by application submitted by phone or facsimile through a qualified Multi-State Permit Agent. All requests must be ordered with a ~~24~~twenty-four hour (24-hr.) lead time to coordinate all states' effective dates and times, and conform to the guidelines as represented in the Southeastern Association of State Highway and Transportation Officials (SASHTO) Agreement in the Multi State Permitting Manual.

(7) Authorized Vendor Stations

~~(a)~~ Permits ~~(except annual permits)~~ may be received and paid for through the various authorized vendor stations listed on the TDOT Permit Office's web site at http://www.tn.gov/tdot/article/central-services-oversize-overweight-permit-agencies. ~~At the present time these vendors are:~~

~~1. Best Permit Agency~~
~~2. Comdata Network, Inc.~~
~~3. Interstate Permit Service, Inc.~~
~~4. Jet Permit~~
~~5. Maryland Permit Service~~
~~6. Nova Permits & Pilot Cars~~
~~7. Permits, Inc.~~
~~8. State Permits~~
~~9. The Permit Company~~
~~10. Trans Mid-America, Inc.~~
~~11. Transport Permits~~
~~12. Xero Fax, Inc.~~

~~(b) Special permits pertaining to overweight and/or overdimensional movements may be obtained only from the Department of Transportation (telephone #: (615) 741-3821).~~

(8) Payment and Refunding of Permit Fees

An applicant for a special permit, including single-trip permits and annual permits, may make payment to the TDOT Permits Office by any of the following means, if acceptable to the TDOT Permits Office:

(a) Personal, business, or cashier's check;

(b) Credit card (subject to a transaction surcharge); or

(Rule 1680-7-1-.24, continued)

(c) From an escrow account established with TDOT as follows:

1. The holder of the escrow account shall enter into a contract with TDOT in a form acceptable to TDOT;

2. The escrow account may be funded by means of a personal, business, or cashier's check;

3. In accordance with the contract, a minimum balance shall be maintained in the escrow account in an amount sufficient to support ongoing operations for one month; and

4. Any funds needed to cover the cost of a special permit shall be submitted to the TDOT Finance Division at least five (5) business days prior to the issuance of the permit.

(d) No single trip or annual permit fee will be refunded after issuance of the permit; provided, however, if a single trip permit for excessive weight is cancelled by the permittee prior to the beginning date of the permit and before the permitted movement actually occurs, the ton mile portion of the fee shall be refunded or credited to the permittee if another permit is issued in place of the cancelled permit for the same movement.

(9) Notwithstanding any other provision of this rule, no fee shall be charged for the issuance or renewal of a special permit to any retail electric service owned by a municipality or electric cooperative corporation, or to any telephone company or any of its contractors when they are moving utility poles doing work for such utilities. Upon compliance with the appropriate rules and regulations, such electric services, telephone companies, and their contractors, when they are moving utility poles, may be issued special permits for stated periods not exceeding one (1) year.

Comment [JHR27]: Per T.C.A. §55-7-205(a)(5) and (6).

(10) Notwithstanding any other provision of this rule, no fee shall be charged for the issuance of a special permit for movements conducted by a branch of the United States armed services or by any Federal agency exempt from the payment of fees under Federal law.

Authority: *T.C.A. §§55-7-115, 55-7-205 and 55-7-209.* ***Administrative History:*** *Original rule filed July 1, 1982; effective August 2, 1982. Repeal and new rule filed October 31, 1985; effective November 30, 1985. Repeal and new rule filed June 19, 1991; effective August 3, 1991. Amendment filed December 28, 1995; effective April 29, 1996. Amendment filed May 22, 1997; effective September 28, 1997. Amendment filed February 25, 2000; effective June 28, 2000. Amendment filed January 25, 2001; effective May 31, 2001. Amendment filed January 11, 2002; effective May 31, 2002. Rule has been assigned a new control number from 1680-2-2-.24 filed and effective February 1, 2003.*

1680-07-01-.25 REVOCATION, SUSPENSION AND WITHHOLDING OF PERMITS.

(1) Except as otherwise specifically provided elsewhere in this chapter, if a permittee undertakes the movement of an overweight or overdimensional vehicle or load in violation of the law, these regulations, or the terms and conditions of any permit issued under these regulations, the TDOT Permit Office may revoke the permit or permits, suspend the use of the permit or permits, or withhold the issuance of any new permits in accordance with this rule.

(2) Revocation of Permits.

(a) The TDOT Permit Office may revoke a permittee's single trip or annual permit or permits upon finding that the permittee has:

1. Submitted a false, deceptive, or fraudulent permit application;

2. Used a fraudulent, invalid, or expired permit to transport a vehicle and load other than the specific vehicle and load actually covered by the permit; or

3. Repeatedly violated the terms and conditions of a permit as described in paragraph (3) below.

(b) Before taking any action to revoke a permit under subparagraph (a), the TDOT Permit Office shall give written notice to the permittee and provide an opportunity for the permittee to respond, as follows:

1. The written notice shall describe the grounds for the proposed revocation action. Before sending the written notice, the TDOT Permit Office shall attempt to contact the permittee by telephone to provide notice of the proposed revocation.

2. The permittee shall be provided not less than two (2) business days from receipt of the written notice within which to submit a written response to the proposed revocation. At the discretion of the TDOT Permit Office, the permittee may be granted the opportunity to present additional information during a pre-decision meeting in person or by telephone.

3. After considering the response, if any, the TDOT Permit Office shall send the permittee a written notice of its decision, including a statement of the reasons for the decision, within ten (10) business days after the deadline for submitting a written response. If the decision is to revoke the permit, the notice shall advise the permittee of the right to appeal the decision in accordance with paragraph (5) below.

(3) Suspension and Withholding of Permits.

(a) The TDOT Permit Office may immediately suspend the use of a permittee's single trip or annual permit or permits, withhold the issuance of new permits to the permittee, and/or withhold the automatic issuance of new permits to the permittee through TDOT's online permitting system upon finding that the permittee has violated any of the terms and conditions of a permit, including without limitation as follows:

1. The permittee has transported or is transporting overweight or overdimensional loads on routes other than those authorized under a permit;

2. The permittee has transported or is transporting loads that exceed the weights or dimensions authorized under a permit;

3. The permittee has failed to comply with any other terms or conditions of a permit; or

4. The permittee has failed to pay any permit fees or penalties for overweight or overdimensional movements that are owed to TDOT or to the Tennessee Department of Safety and Homeland Security.

(b) In taking any action to suspend or withhold the issuance of permits under subparagraph (a), the TDOT Permit Office shall give written notice to the permittee and provide an opportunity for the permittee to respond, as follows:

1. The written notice shall describe the grounds for suspending or withholding a permit or permits, and it shall identify the action the permittee must take to remedy the violation of the permit. Before sending the written notice, the TDOT Permit Office shall attempt to

(Rule 1680-7-1-.24, continued)

contact the permittee by telephone to provide notice of the action and required remedy.

2. The permittee shall be provided not less than two (2) business days from receipt of the written notice within which to submit a written response to the action. At the discretion of the TDOT Permit Office, the permittee may be granted the opportunity to present additional information during a meeting in person or by telephone.

3. After considering the response, if any, the TDOT Permit Office shall send the permittee a written notice of its decision, including a statement of the reasons for the decision, within three (3) business days after receiving the permittee's written response, or after the deadline for submitting a written response, whichever is earlier. If the decision is to suspend a permit or permits or to withhold the issuance of new permits, the notice shall advise the permittee of the right to appeal the decision in accordance with paragraph (5) below. A decision merely to withhold the automatic issuance of permits through TDOT's online permitting system shall not be appealable under paragraph (5).

(c) The TDOT Permit Office may continue the suspension of the permit or permits and/or the withholding of new permits, until such time as the permittee remedies the violation by coming into compliance with the permit or by obtaining a new permit to authorize the movement. A decision to withhold the automatic issuance of permits through TDOT's online permitting system may continue for such time period as the TDOT Permit Office determines is appropriate.

(4) Any written notice or response required or authorized under paragraphs (2) or (3) may be delivered by electronic mail or facsimile transmission, and if so delivered, it shall be deemed to have been received on the date of delivery.

(5) The person or entity affected by a decision to revoke, suspend, or withhold the issuance of any permit shall be provided the opportunity to appeal the decision of the TDOT Permit Office, as follows:

(a) The appeal shall be submitted in writing to the Commissioner of TDOT, with a copy to the TDOT Permit Office, within ten (10) business days after receipt of the notice of decision.

(b) Upon receiving the appeal, TDOT shall initiate a contested case hearing, and the proceeding shall be conducted, in accordance with the Uniform Administrative Procedures Act, as provided in T.C.A. § 4-5-301, et seq.

Authority: *T.C.A. §55-7-205.*

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

Board Member	Aye	No	Abstain	Absent	Signature (if required)

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the Commissioner (board/commission/ other authority) on 12/8/17 (mm/dd/yyyy), and is in compliance with the provisions of T.C.A. § 4-5-222.

I further certify the following:

Notice of Rulemaking Hearing filed with the Department of State on: 06/21/17

Rulemaking Hearing(s) Conducted on: (add more dates). 08/22/17

Date: 12/8/17

Signature:

Name of Officer: John Schroer

Title of Officer: Commissioner

ANGELA P. MARTIN NOTARY PUBLIC AT LARGE

Subscribed and sworn to before me on: 12/8/17

Notary Public Signature: Angela P. Martin

My commission expires on: 1-6-2020

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

2/8/2018
Date

Department of State Use Only

Filed with the Department of State on: 2/14/18

Effective on: 5/15/18

Tre Hargett
Secretary of State

SECRETARY OF STATE
PUBLICATIONS
2018 FEB 14 AM 9:26
RECEIVED

G.O.C. STAFF RULE ABSTRACT

DEPARTMENT:	Finance and Administration
DIVISION:	TennCare
SUBJECT:	Technical and Financial Eligibility
STATUTORY AUTHORITY:	Tennessee Code Annotated, Sections 4-5-202, 71-5-105, and 71-5-109
EFFECTIVE DATES:	May 13, 2018 through June 30, 2019
FISCAL IMPACT:	Minimal
STAFF RULE ABSTRACT:	This rule is being amended to clarify TennCare's existing policy that renewal packets for redetermination of eligibility returned after ninety (90) days will not be considered and the individual must file a new application.

Public Hearing Comments

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

The state received two comments on this rule. Both comments were substantively the same. The commenters objected to the proposed change to TennCare's rules, clarifying that renewal packets returned 90 days after the due date will not be processed, on the grounds that this change would increase the burden on individuals attempting to renew their TennCare coverage.

In its response to both commenters, TennCare noted that no change to TennCare's policies or processes is occurring as a result of this rule. This change is intended to clarify TennCare's rules so that they more clearly reflect TennCare's eligibility renewal process. TennCare also noted specific steps it is taking to help ensure that eligible individuals are able to maintain coverage.

Regulatory Flexibility Addendum

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

The rule is not anticipated to have an effect on small businesses.

Impact on Local Governments

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

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

Additional Information Required by Joint Government Operations Committee

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

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

This rule is being amended to clarify TennCare's existing policy that renewal packets for redetermination of eligibility returned after ninety (90) days will not be considered and individual must file a new application.

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

The Rule is lawfully adopted by the Bureau of TennCare in accordance with T.C.A. §§ 4-5-202, 71-5-105 and 71-5-109.

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

The persons and entities most directly affected by this rule amendment are TennCare enrollees, providers, and managed care contractors. The governmental entity most directly affected by this rule amendment is the Division of TennCare, Tennessee Department of Finance & Administration.

(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 rule amendment was approved by the Tennessee Attorney General. No additional opinion was given or requested.

(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 adoption of this rule amendment is not anticipated to have a fiscal impact on state and local government revenues and expenditures.

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

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

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.

GW10117319ab

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: 02-14-18
Rule ID(s): 6697
File Date: 2/12/18
Effective Date: 5/13/18

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 Finance and Administration
Division:	Division of TennCare
Contact Person:	George Woods
Address:	Division of TennCare 310 Great Circle Road Nashville, TN 37243
Phone:	(615) 507-6446
Email:	george.woods@tn.gov

Revision Type (check all that apply):

X Amendment
___ New
___ Repeal

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

Chapter Number	**Chapter Title**
1200-13-20	TennCare Technical and Financial Eligibility
Rule Number	**Rule Title**
1200-13-20-.09	Redetermination and Termination

Rules
of
Tennessee Department of Finance and Administration

Bureau of TennCare

Chapter 1200-13-20
TennCare Technical and Financial Eligibility

1200-13-20-.09 Redetermination and Termination.

(1) Redetermination of eligibility for CoverKids, TennCare Medicaid's Core Medicaid Population, and TennCare Standard.

(c) An enrollee's TennCare Medicaid, TennCare Standard or CoverKids eligibility shall be redetermined as required by the appropriate category of medical assistance as described in this Rule, unless otherwise agreed to by the Single State Agency and CMS. Prior to the termination of TennCare Medicaid, TennCare Standard or CoverKids eligibility, eligibility will be redetermined according to the following process:

12 ~~Renewal packets returned after ninety (90) days will be considered new applications and processed in compliance with Rule .05.~~

Renewal packets returned after ninety (90) days will not be considered and the individual must file a new application in accordance with Rule .05.

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the Division of TennCare (board/commission/ other authority) on 01/11/2018 (mm/dd/yyyy), and is in compliance with the provisions of T.C.A. § 4-5-222.

I further certify the following:

Notice of Rulemaking Hearing filed with the Department of State on: 10/13/17

Rulemaking Hearing(s) Conducted on: (add more dates). 12/07/17

Date: 1/11/18

Signature: Wendy Long MD

Name of Officer: Wendy Long, M.D., M.P.H.

Title of Officer: Division of TennCare
Tennessee Department of Finance and Administration

STATE OF TENNESSEE NOTARY PUBLIC COUNTY OF DAVIDSON ROBIN A PAGE

Subscribed and sworn to before me on: 1/11/18

Notary Public Signature: Robin a Page

My commission expires on: 11/3/2020

Agency/Board/Commission: Division of TennCare

Rule Chapter Number(s): 1200-13-20

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

Herbert H. Slatery III

Herbert H. Slatery III
Attorney General and Reporter

2/8/2018
Date

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Filed with the Department of State on: 2/12/18

Effective on: 5/13/18

Tre Hargett
Secretary of State

G.O.C. STAFF RULE ABSTRACT

DEPARTMENT:	Commerce and Insurance
DIVISION:	Securities
SUBJECT:	Renewals
STATUTORY AUTHORITY:	Tennessee Code Annotated, Sections 48-1-101 through 48-1-201
EFFECTIVE DATES:	May 2, 2018 through June 30, 2019
FISCAL IMPACT:	Minimal
STAFF RULE ABSTRACT:	This rule specifies the requirements for renewing registered securities in Tennessee. The rule has been reformatted to increase readability, thereby making the requirements easier to follow, and to correct certain language that could easily be read out of context (e.g., the rule currently states that it applies to registrations by qualification, when renewals have always been accepted for registration by coordination, as well). Although the amendment requires issuers to submit a copy of their most recent sales report(s) and financial statement(s), this information is routinely requested by Division staff when reviewing renewal applications. The inclusion of this requirement in the rule amendment will decrease costs and time spent by both Division staff and issuers in renewing securities registrations. Finally, this rule authorizes electronic filing wherever applicable, reducing costs and time associated with filing for both issuers and the Division.

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 of Commerce and Insurance does not anticipate this proposed rule amendment to have a significant impact on small businesses, or those with fifty (50) or fewer full-time employees. The analysis set forth by Tenn. Code § 4-5-403 is as follows:

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

This proposed rule amendment affects only those entities which plan to issue securities subject to the registration requirements of the Tennessee Securities Act of 1980, Tenn. Code Ann. §§ 48-1-101 *et seq.*, ("Act") on a continual basis in Tennessee. While some of these issuers may be considered small businesses, as defined by Tenn. Code Ann. § 4-5-101, it is estimated that this number is minimal. Furthermore, offerings conducted by small businesses are often eligible for an exemption from registration found under Tenn. Code Ann. § 48-1-103 (e.g., under Tenn. Code Ann. § 48-1-103(b)(6), an offering of securities by an issuer organized under the laws of Tennessee, the aggregate amount of which does not exceed two hundred fifty thousand dollars ($250,000) during any twelve (12) month period is exempt from registration under the Act as long as no remuneration is given for the solicitation of Tennessee investors).

(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.

This proposed rule amendment is not expected to cause an increase in reporting, recordkeeping, or other administrative costs required for compliance. Although this amendment will require issuers to submit some documents which are not currently found in the rule (e.g., a Form U-2 consent to service of process; sales report(s); financial statements), these items are routinely requested by the Securities Division when reviewing an application for renewal. These records are common to all businesses and their production should not impose any undue hardship on issuers seeking renewal. Furthermore, this rule amendment authorizes electronic filing, where applicable, which could decrease the amount of time, money, and other resources needed for filing.

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

This proposed amendment's effect on small businesses is anticipated to be minimal and will aid the Securities Division in its goal of protecting Tennessee consumers.

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

There are no known alternatives that would achieve the goals of effective securities regulation and investor protection while simultaneously minimizing any burdens that may be imposed on issuers seeking renewal of securities offerings by this proposed rule amendment.

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

States' securities laws generally provide for an effective registration period of one (1) year. Federal law, on the other hand, does not limit the effective period for a securities registration. Thus, most, if not all, of the states provide for renewal of registered securities, with rules that generally mirror this proposed amendment.

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

As noted above under Item (1), many small businesses are already exempt from the renewal requirements contained in this rule by nature of their exemption from initial registration due to the size and locality

of the offering. To exempt additional businesses solely due to the size of their staff would reduce the effectiveness of securities regulation in Tennessee.

Impact on Local Governments

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

This rule amendment will not have an impact on local governments.

Additional Information Required by Joint Government Operations Committee

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

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

This rule specifies the requirements for renewing registered securities in Tennessee. The rule has been re-formatted to increase readability, thereby making the requirements easier to follow, and to correct certain language that could easily be read out of context (e.g., the rule currently states that it applies to registrations by qualification, when renewals have always been accepted for registration by coordination, as well). Although the amendment requires issuers to submit a copy of their most recent sales report(s) and financial statement(s), this information is routinely requested by Division staff when reviewing renewal applications. The inclusion of this requirement in the rule amendment will decrease costs and time spent by both Division staff and issuers in renewing securities registrations. Finally, this rule authorizes electronic filing wherever applicable, reducing costs and time associated with filing for both issuers and the Division.

(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 amendment is authorized by various provisions of the Tennessee Securities Act of 1980 (Tenn. Code Ann. §§ 48-1-101 through 48-1-201), particularly Tenn. Code Ann. § 48-1-116, which provides that the Commissioner "may from time to time make, promulgate, amend, and rescind such rules, forms, and orders as are necessary to carry out this part" and Tenn. Code Ann. § 48-1-107, which provides for renewal of initial registration statements.

(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 amendment will only affect issuers who plan to renew their current securities registration statement(s) and/or issuers who intend to offer securities in Tennessee on a continual basis. To date, there has been no response, positive or negative, to this proposed rule amendment.

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

There are no known opinions of the attorney general or any judicial rulings that directly relate to this rule.

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

This rule will not affect state or local government revenues and expenditures.

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

Frank Borger-Gilligan, Assistant Commissioner;
Elizabeth Bowling, Director of Registration; and,
Kaycee Wolf, Chief Counsel for Insurance, Securities, and TennCare Oversight.

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

Kelsey J. Bridges, Assistant General Counsel for Securities.

(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

500 James Robertson Parkway, Legal Division, 8th Floor, Nashville, TN 37243; (615) 350-7984; kelsey.j.bridges@tn.gov.

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

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Nashville, TN 37243
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Sequence Number: 02-03-18
Rule ID(s): 6690
File Date: 2/1/18
Effective Date: 5/2/18

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:	Commerce and Insurance
Division:	Securities
Contact Person:	Kelsey J. Bridges
Address:	500 James Robertson Parkway
Zip:	37243
Phone:	(615) 350-7984
Email:	Kelsey.j.bridges@tn.gov

Revision Type (check all that apply):
X Amendment
___ New
___ Repeal

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

Chapter Number	**Chapter Title**
0780-04-02	Securities Registration and Exemptions
Rule Number	**Rule Title**
0780-04-02-.05	Renewals

Chapter Number	**Chapter Title**
Rule Number	**Rule Title**

0780-04-02-.05 RENEWALS.

(1) Registration statements are effective for a period of one (1) year from the date of effectiveness and may be renewed, unless a more specific rule regulating a certain type of security states to the contrary, for additional periods of one (1) year by filing an application for renewal ~~[registration by qualification]~~ not later than twenty (20) days prior to the expiration of the present registration period. ~~[effectiveness, to include the following:]~~ The application for renewal must contain the following:

(a)~~[(1)]~~ A completed and properly executed Form U-1, Form U-2, and, if applicable, Form U-2A ~~[designating that the application is being made pursuant to T.C.A. §48-1-106, except that any exhibits filed with the Division within five (5) years preceding the filing of the application may be incorporated by reference to the extent that such exhibits are currently accurate, unless the Division specifically requests that such exhibits be filed]~~;

(b)~~[(2)]~~ One (1) copy of the latest form of ~~[most recent]~~ prospectus and each supplement to the latest form of prospectus, if any;

~~[(3)]~~ ~~[One (1) copy of each statement of additional information or supplement to the most recent prospectus, if any;]~~

~~[(4)]~~ ~~[If the issuer has changed its name since the most recent prior filing, a completed Form U-2, unless such form reflecting the amended name change has been previously filed with the Division; and]~~

(c) A sales report containing:

1. The number of Tennessee investors;

2. The number of shares of each class of securities sold to Tennessee investors during the present registration period; and

3. The aggregate offering amount of each class of securities sold to Tennessee investors during the present registration period.

(d) A copy of the issuer's financial statements for the most recent fiscal year end, prepared in accordance with generally accepted accounting principles;

(e) A statement specifying the section of the Act pursuant to which the registration statement is to be renewed;

(f)~~[(5)]~~ The appropriate filing fee computed in accordance with T.C.A. § 48-1-107(b)~~[.]~~; and

(g) Any other such information, forms or documents as the Division may request.

(2) If the issuer elects to increase the amount of securities registered in the state at the time of renewal by amending the Form U-1 to reflect the increased amount to be registered, the filing fee required under subparagraph (1)(f) must be computed based upon the increased amount of securities.

(3) If the name of the offering or the name of the issuer has been changed during the present registration period without prior notice to the Division, or if the name of the offering or the name of

the issuer will be changed as part of an upcoming renewal, the application for renewal must include the following items in addition to the items listed under paragraph (1):

(a) A completed and properly executed Form U-1, Form U-2, and, if applicable, Form U-2A, each amended to reflect the change in name(s); and

(b) If changing the name of the offering, the fee as set forth in T.C.A. § 48-1-107(n).

(4) All forms and documents required under this Rule and which have been filed and recorded on the Electronic Data Gathering Access and Retrieval (EDGAR) system, the Interactive Data Electronic Applications (IDEA) system, the Electronic Filing Depository (EFD), or any other electronic data gathering system either maintained by the SEC or approved by the Division, may be incorporated by reference in lieu of filing such documents in paper form. If an issuer applying for renewal of registration elects to file such forms by reference, the issuer must:

(a) Provide an accurate filing number or other designation used by the SEC;

(b) Ensure that a printed or electronically stored copy of all required documents and forms is immediately accessible to the Division; and

(c) Provide the Division with a paper copy of such forms upon request.

Authority: *T.C.A. §§ 48-1-106, 48-1-107, 48-1-115, and 48-1-116*~~[, and Public Acts of 2001, Chapter 61~~]*.*

* 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 9/8/17 (*date as mm/dd/yyyy*), and is in compliance with the provisions of T.C.A. § 4-5-222. The Secretary of State is hereby instructed that, in the absence of a petition for proposed rules being filed under the conditions set out herein and in the locations described, he is to treat the proposed rules as being placed on file in his office as rules at the expiration of ninety (90) days of the filing of the proposed rule with the Secretary of State.

Date: 9/8/17

Signature: Julie Mix McPeak

Name of Officer: Julie Mix McPeak

Title of Officer: Commissioner, Department of Commerce & Insurance

Subscribed and sworn to before me on: 9/8/17

Notary Public Signature: Denise M Lewis

My commission expires on: 1/15/20

Agency/Board/Commission: Commerce and Insurance

Rule Chapter Number(s): 0780-04-02

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

1/26/2018

Date

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Filed with the Department of State on: 2/1/18

Effective on: 5/2/18

Tre Hargett

Tre Hargett
Secretary of State

G.O.C. STAFF RULE ABSTRACT

DEPARTMENT:	Commerce and Insurance
DIVISION:	Securities
SUBJECT:	Notice Filings for Covered Securities
STATUTORY AUTHORITY:	Tennessee Code Annotated, Sections 48-1-116 and 48-1-125
EFFECTIVE DATES:	May 2, 2018 through June 30, 2019
FISCAL IMPACT:	Minimal
STAFF RULE ABSTRACT:	This proposed rule amendment clarifies the requirements for submitting initial and renewal notice filings in Tennessee. The rule specifies which forms are required with particularity to the type of securities which are or will be offered in this state, and establishes clear deadlines for when such forms are due. This amendment will also authorize electronic filing wherever applicable.

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 of Commerce and Insurance does not anticipate this proposed rule amendment to have a significant impact on small businesses. The analysis set forth by Tenn. Code § 4-5-403 is as follows:

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

This proposed rule amendment affects only those businesses which plan to issue securities exempt from registration in Tennessee. While some of these issuers may be considered small businesses, it is estimated that this number is minimal. All issuers, regardless of size, will benefit from this proposed amendment, as it provides detail and clarity as to the requirements for submitting notice filings to the Securities Division and allows for electronic submission wherever possible.

(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.

This proposed rule amendment is not expected to cause an increase in reporting, recordkeeping, or other administrative costs required for compliance. This amendment will likely reduce such costs, as it details the specific form(s) required for different types of filings and authorizes electronic filing wherever applicable.

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

The amendment will aid the Securities Division in its goal of protecting Tennessee investors and consumers with little to no effect 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.

There are no known alternatives that would achieve the goals of effective securities regulation and investor protection while simultaneously minimizing any burdens that may be imposed on issuers of covered securities in Tennessee.

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

The National Securities Markets Improvement Act of 1996 specifically authorizes the states to collect notice filings from issuers of federal covered securities. Every state collects notice filings for at least one category of federal covered securities (e.g., securities issued pursuant to Rule 506 of Regulation D, securities issued pursuant to Tier 2 of Regulation A, etc.). The North American Securities Administrators Association created a series of uniform forms for the collection of notice filings by the various states; most, if not all, states (including Tennessee, pursuant to the current rule and this proposed amendment) accept these forms.

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

Notice filings are collected pursuant to a federal exemption from registration. These filings are collected primarily for informational purposes, by both the Securities and Exchange Commission and the states, and do not impose undue burdens on issuers, small or large. To exempt small businesses from the notice filing requirements in Tennessee solely due to the size of their staff would reduce the effectiveness of securities regulation in this state.

Impact on Local Governments

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

This proposed rule amendment will not have an impact on local governments.

Additional Information Required by Joint Government Operations Committee

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

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

This proposed rule amendment clarifies the requirements for submitting initial and renewal notice filings in Tennessee. The rule specifies which forms are required with particularity to the type of securities which are or will be offered in this state, and establishes clear deadlines for when such forms are due. This amendment will also authorize electronic filing wherever applicable.

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

The National Securities Markets Improvement Act of 1996 expressly authorizes the states to collect notice filings for securities which are exempt from federal and state registration requirements. Additionally, Tenn. Code Ann. § 48-1-116 authorizes the Commissioner of the Department of Commerce and Insurance to make and amend rules that are in the public interest, necessary for the protection of investors, and consistent with the policies and provisions of the Tennessee Securities Act of 1980. Finally, this proposed rule amendment is authorized by Tenn. Code Ann. § 48-1-125, the corresponding statute on notice filings 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;

This amendment will affect issuers of covered securities that wish to offer such securities in, from, or into Tennessee.

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

There are no known opinions of the attorney general or judicial rulings that directly relate to this rule.

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

Neither state not local government revenues will be affected by this proposed rule amendment.

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

Frank Borger-Gilligan, Assistant Commissioner;
Elizabeth Bowling, Director of Registration;
Kaycee Wolf, Chief Counsel for Insurance, Securities, and TennCare Oversight.

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

Kelsey J. Bridges, Assistant General Counsel for Securities.

(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

500 James Robertson Parkway, 8th Floor, Nashville, TN 37243; (615) 350-7984; kelsey.j.bridges@tn.gov.

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

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Sequence Number: 02-04-18
Rule ID(s): 6691
File Date: 2/1/19
Effective Date: 5/2/19

Proposed Rule(s) Filing Form

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

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

Agency/Board/Commission:	Commerce and Insurance
Division:	Securities
Contact Person:	Kelsey J. Bridges
Address:	500 James Robertson Pkwy Legal Division, 8th Floor Nashville, TN
Zip:	37243
Phone:	(615) 350-7984
Email:	Kelsey.j.bridges@tn.gov

Revision Type (check all that apply):

_J_ 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**
0780-04-02	Securities Registration and Exemptions
Rule Number	**Rule Title**
0780-04-02-.12	Notice Filings for Covered Securities

0780-04-02-.12 NOTICE FILINGS FOR COVERED SECURITIES.

(1) Initial notice filings~~[for covered securities]~~.

(a) Covered securities under T.C.A. § 48-1-125(a)(1)(A)~~[An initial notice filing for a covered security of an issuer to be sold in this state shall contain:]~~

1. An initial notice filing for any covered security under T.C.A. § 48-1-125(a)(1)(A), intended for sale in this state, must contain:~~[A copy of the issuer's prospectus and statement of additional information; however, if the person making the notice filing provides an accurate filing number from the Electronic Data Gathering Access and Retrieval (EDGAR) system or other electronic data gathering access and retrieval system maintained by the SEC, or other identifying designation issued by the SEC, paper copies of the issuer's prospectus and additional information are not required to be filed with the Division;]~~

(i) A copy of the issuer's prospectus and statement of additional information;

(ii) Either (*a*) a completed and properly executed notice filing form, designated under 0780-04-01-.04(4), as applicable; or (*b*) a copy of the issuer's federal registration statement as filed with the SEC;

(iii) A completed and properly executed consent to service of process on Form U-2, or in such other format acceptable to the Division, as provided under T.C.A. § 48-1-124(e), which may be included in the notice filing form;

(iv) A completed and properly executed Form U-2A, if applicable; and

(v) The filing fee as provided under T.C.A. § 48-1-125(a)(1)(A)(ii).

2. An issuer of a covered security under this subparagraph (1)(a) must make an initial notice filing with the Division prior to the sale of such security in this state.~~[A completed and properly executed Form U-2, as provided under T.C.A. §48-1-124(e);]~~

3. Notice filings for any covered security under this subparagraph (1)(a) are effective for one (1) year commencing on the later of the date the filing with the Division is completed or the SEC effective date.~~[Either (i) a completed and properly executed Form NF, Form D, or Form U-1, as applicable, or (ii) a copy of the issuer's federal registration statement as filed with the SEC; and]~~

4. A notice filing under this subparagraph (1)(a) may be filed with the Division by complying with the requirements for electronic filing under paragraph (7) of this Rule~~[The appropriate filing fee as set forth in T.C.A. 48-1-125]~~.

(b) Covered securities under T.C.A. § 48-1-125(a)(1)(B)~~[An issuer of a security, which is subject to the notice filing requirements for covered securities, shall make an initial notice filing with the Division prior to the sale of such security in this state, unless the security being sold is a covered security as defined under T.C.A. §48-1-102(8)(F)(iv).]~~

1. An initial notice filing for a covered security which the issuer plans to offer pursuant to Tier 2 of Regulation A (17 C.F.R. § 230.251 *et seq.*) must contain:

(i) Either (*a*) a completed and properly executed Uniform Notice Filing of Regulation A – Tier 2 Offering form; or (*b*) copies of all documents filed with the SEC;

(ii) A completed and properly executed consent to service of process on Form U-2, or in such other format acceptable to the Division, as required under T.C.A. § 48-1-124(e), which may be included in the Uniform Notice Filing of Regulation A – Tier 2 Offering form;

(iii) A completed and properly executed Form U-2A, if applicable; and

(iv) The filing fee as provided under T.C.A. § 48-1-125(a)(1)(B)(iii).

2. An issuer planning to offer and sell securities under this subparagraph (1)(b) must make an initial notice filing with the Division no later than twenty-one (21) calendar days prior to the initial sale in this state.

3. Notice filings for any covered security under this subparagraph (1)(b) are effective for one (1) year commencing on the date the filing with the Division is completed.

4. A notice filing under this subparagraph (1)(b) may be filed with the Division by complying with the requirements for electronic filing under paragraph (7) of this Rule.

(c) Covered securities under T.C.A. § 48-1-125(a)(1)(C)~~[An issuer of a security that is defined as a covered security under T.C.A. §48-1-102(8)(F)(iv) shall make an initial notice filing with the Division no later than fifteen (15) days after the first sale of such covered security in this state.]~~

1. An initial notice filing for a covered security exempted from federal registration under § 18(b)(4)(C) of the 1933 Act must contain:

(i) Either (*a*) a completed and properly executed Form U-CF; or (*b*) copies of all documents filed with the SEC;

(ii) A completed and properly executed consent to service of process on Form U-2, or in such other format acceptable to the Division, as required under T.C.A. § 48-1-124(e), which may be included in the Form U-CF;

(iii) A completed and properly executed Form U-2A, if applicable; and

(iv) The filing fee as provided under T.C.A. § 48-1-125(a)(1)(C)(i)(*c*).

2. If the issuer of a covered security under this subparagraph (1)(c) has its principal place of business in this state, the issuer must make an initial filing with the Division concurrently when the issuer files its initial Form C with the SEC.

3. If the issuer of a covered security under this subparagraph (1)(c) has its principal place of business outside this state, but residents of this state have purchased fifty percent (50%) or greater of the aggregate amount of the offering, the issuer must make an initial notice filing with the Division upon learning that such purchases have met the fifty percent (50%) threshold, and, in any event, no later than thirty (30) days from the date of completion of the offering.

4. Notice filings for any covered security under this subparagraph (1)(c) are effective for one (1) year commencing on the date the filing with the Division is completed.

5. A notice filing under this subparagraph (1)(c) may be filed with the Division by complying with the requirements for electronic filing under paragraph (7) of this Rule.

(d) Covered securities under T.C.A. 48-1-125(a)(1)(D)

1. An initial notice filing for a covered security exempt from federal registration pursuant to Rule 506 of Regulation D (17 C.F.R. § 230.506) must contain:

(i) A copy of the completed and properly executed Form D as filed with the SEC;

(ii) A completed and properly executed Form U-2A, if applicable;

(iii) A statement specifying the date of first sale in this state; and

(iv) The filing fee as provided under T.C.A. § 48-1-125(a)(1)(D)(ii).

2. An issuer of a covered security under this subparagraph (1)(d) must make an initial notice filing with the Division no later than fifteen (15) days after the first sale of such security in this state.

3. Notice filings for covered securities under this subparagraph (1)(d) are effective for one (1) year, commencing on the date the filing with the Division is completed, unless the issuer conducts a continuous offering

as provided under T.C.A. § 48-1-125(b)(4) and subparagraph (3)(d) of this Rule.

4. A notice filing under this subparagraph (1)(d) may be filed with the Division by complying with the requirements for electronic filing under paragraph (7) of this Rule.

(2) Amendments to notice filings~~[Renewal of notice filing for covered securities]~~.

(a) After the initial offer of a covered security in this state, all documents that are part of any amendments to a federal registration statement or Form D filed with the SEC must be filed concurrently with the Division.~~[A renewal of a notice for a covered security that may be renewed as provided under T.C.A. §48-1-125(c) shall consist of:]~~

~~[1.] [A copy of the issuer's prospectus and statement of additional information;]~~

~~[2.] [Either (i) a completed and properly executed Form NF, Form D, or Form U-1, as applicable, or (ii) a copy of the issuer's federal registration statement as filed with the SEC; and]~~

~~[3.] [The appropriate filing fee as set forth in T.C.A. §48-1-125(a).]~~

(b) An issuer filing an amendment to a notice filing for a covered security which changes the name of the offering of securities must pay a processing fee as provided under T.C.A. § 48-1-125(d) upon filing the amendment with the Division~~[Any notice filing, subject to renewal which is not timely renewed, shall expire as provided under T.C.A. §48-1-125(c)]~~.

~~[(c)] [A renewal of a notice filing for a covered security shall not stay the expiration of the notice filing if:]~~

~~[1.] [Such renewal is deficient; and]~~

~~[2.] [Such deficiency is not addressed prior to the expiration of the notice filing.]~~

(3) Renewal of notice filings~~[Deficient notice filings]~~.

(a) Covered securities under T.C.A. § 48-1-125(a)(1)(A)~~[Documents. An issuer, who has filed an initial notice filing or a renewal of a notice filing for a covered security shall be subject to a stop order of the commissioner suspending the offer or sale of such covered security in this state as provided under T.C.A. §48-1-125(d), if:]~~

1. Pursuant to T.C.A. § 48-1-125(b)(1), a renewal of a notice filing for a covered security under this subparagraph (3)(a) must contain:~~[The filing is deficient by failing to satisfy the document filing requirements of T.C.A. §48-1-125 (a), (b), or (c) and parts (1)(a)1.-3. of this Rule; and]~~

(i) A copy of the issuer's prospectus and statement of additional information;

(ii) Either (*a*) a completed and properly executed notice filing form, designated under 0780-04-01-.04(4), as applicable; or (*b*) a copy of the issuer's federal registration statement as filed with the SEC;

(iii) A completed and properly executed consent to service of process on Form U-2, or in such other format acceptable to the Division, as provided under T.C.A. § 48-1-124(e), which may be included in the notice filing form;

(iv) A copy of the completed and properly executed Form U-2A submitted as part of the initial notice filing pursuant to subparagraph (1)(a) of this Rule, if applicable; and

(v) The filing fee as provided under T.C.A. § 48-1-125(a)(1)(A).

2. All forms, documents, and fees required for renewal of a notice filing for a covered security under this subparagraph (3)(a) must be filed with the Division no later than the close of business on the tenth (10) business day prior to the date of expiration of the current notice filing~~[The document deficiency is not addressed within ten (10) business days of the issuer's receipt of notification from the Division]~~.

3. A notice filing renewal under this subparagraph (3)(a) may be filed with the Division by complying with the requirements for electronic filing under paragraph (7) of this Rule.

(b) Covered securities under T.C.A. § 48-1-125(a)(1)(B)~~[Fees. An issuer, who has filed an initial notice filing or a renewal of a notice filing for a covered security shall be subject to a stop order of the commissioner suspending the offer or sale of such covered security in this state, as provided under T.C.A. §48-1-125(d), if:]~~

1. Pursuant to T.C.A. § 48-1-125(b)(2), a renewal of a notice filing for a covered security under this subparagraph (3)(b) must contain:~~[The filing is deficient by failing to satisfy the fee requirements of T.C.A. §48-1-125 and part (1)(4)(a)4. of this Rule; and]~~

(i) Either (*a*) a completed and properly executed Uniform Notice Filing of Regulation A – Tier 2 Offering form; or (*b*) copies of all documents filed with the SEC;

(ii) A completed and properly executed consent to service of process on Form U-2, or in such other format acceptable to the Division, as provided under T.C.A. § 48-1-124(e), which may be included in the Uniform Notice Filing of Regulation A – Tier 2 Offering form;

(iii) A copy of the completed and properly executed Form U-2A submitted as part of the initial notice filing pursuant to subparagraph (1)(b) of this Rule, if applicable; and

(iv) The filing fee as provided under T.C.A. § 48-1-125(b)(2).

2. All forms, documents, and fees required for renewal of a notice filing for a covered security under this subparagraph (3)(b) must be filed with the Division no later than the close of business on the day prior to the date of expiration of the current notice filing~~[The fee deficiency is not addressed within ten (10) business days of the issuer's receipt of notification from the Division]~~.

3. A notice filing renewal under this subparagraph (3)(b) may be filed with the Division by complying with the requirements for electronic filing under paragraph (7) of this Rule.

(c) Covered securities under T.C.A. § 48-1-125(a)(1)(C)~~[In any case where the commissioner may issue a stop order, the issuer may be subject to further orders of the commissioner pursuant to T.C.A. §48-1-116.]~~

1. Pursuant to T.C.A. § 48-1-125(b)(3), a renewal of a notice filing for a covered security under this subparagraph (3)(c) must contain:

(i) Either (*a*) a completed and properly executed Form U-CF; or (*b*) copies of all documents filed with the SEC;

(ii) A completed and properly executed consent to service of process on Form U-2, or in such other format acceptable to the Division, as provided under T.C.A. § 48-1-124(e), which may be included in the Form U-CF;

(iii) A copy of the completed and properly executed Form U-2A submitted as part of the initial notice filing pursuant to subparagraph (1)(c) of this Rule, if applicable; and

(iv) The filing fee as provided under T.C.A. § 48-1-125(b)(3).

2. All forms, documents, and fees required for renewal of a notice filing for a covered security under this subparagraph (3)(c) must be filed with the Division no later than the close of business on the day prior to the date of expiration of the current notice filing.

3. A notice filing renewal under this subparagraph (3)(c) may be filed with the Division by complying with the requirements for electronic filing under paragraph (7) of this Rule.

(d) Covered securities under T.C.A. § 48-1-125(a)(1)(D)

1. Pursuant to T.C.A. § 48-1-125(b)(4), notice filings for covered securities exempt from federal registration pursuant to Rule 506 of Regulation D (17 C.F.R. § 230.506) are effective for one (1) year unless the issuer is conducting a continuous offering, and:

(i) The issuer annually submits to the Division a completed and properly executed amended Form D;

(ii) The issuer annually submits to the Division a copy of the completed and properly executed Form U-2A submitted as part of the initial notice filing pursuant to subparagraph (1)(d) of this Rule, if applicable;

(iii) The issuer submits to the Division all additional amendments concurrent with its filings with the SEC; and

(iv) The issuer annually submits to the Division the filing fee as provided under T.C.A. § 48-1-125(b)(4).

2. If the issuer of a covered security under this subparagraph (3)(d) elects to conduct a continuous offering, all forms, documents, and fees must be filed with the Division no later than the close of business on the day prior to the date of expiration of the current notice filing.

3. A notice filing renewal under this subparagraph (3)(d) may be filed with the Division by complying with the requirements for electronic filing under paragraph (7) of this Rule.

(e) Any notice filing, subject to renewal which is not timely renewed, shall expire as provided under T.C.A. § 48-1-125(b)(1)-(4).

(f) A renewal of a notice filing for a covered security shall not stay the expiration of the notice filing if:

1. Such renewal is deficient as determined by the Division; and

2. Such deficiency is not corrected prior to the expiration of the notice filing.

(4) Deficient notice filings~~[Failure to make notice filings]~~.

(a) An issuer who has filed an initial or renewal notice filing for a covered security shall be subject to a stop order of the commissioner suspending the offer or sale of such covered security in this state, as provided under T.C.A. § 48-1-125(c), if: ~~[Any issuer who fails to make a notice filing for a covered security to be sold in this state, as set forth under T.C.A. §48-1-125 and subparagraph (1)(b) or (1)(c) of this Rule, shall be subject to a stop order of the commissioner, as provided under T.C.A. §48-1-125(d), suspending the offer or sale of such securities in this state.]~~

1. The filing is deficient as determined by the Division by failing to satisfy the document filing requirements of T.C.A. § 48-1-125(a)-(b) and paragraphs (1) through (3) of this Rule; or

2. The filing is deficient as determined by the Division by failing to satisfy the fee requirements of T.C.A. § 48-1-125(a)-(b) and paragraphs (1) through (3) of this Rule; and

3. The deficiency is not corrected within ten (10) business days of the issuer's receipt of notification from the Division, or prior to the expiration of the notice filing in the case of renewals.

(b) In any case where the commissioner may issue a stop order, the issuer may be subject to further orders of the commissioner pursuant to T.C.A. § 48-1-116.~~[For purposes of T.C.A. §48-1-125(d)(2) and paragraph (4) of this Rule, a failure to make a notice filing cannot be promptly remedied:]~~

~~[1.] [If the security is a covered security, other than a covered security as defined under T.C.A. §48-1-102(8)(F)(iv) and the delay in making the notice filing, required under T.C.A. §48-1-1259a), exceeds ten (10) business days from the date of the first sale of such security in this state; or]~~

~~[2.] [If the security is a covered security, as defined under T.C.A. §48-1-102(8)(F)(iv), and the delay in making the notice filing required under T.C.A. §48-1-125(b) exceeds twenty five (25) calendar days from the date of the first sale of such security in this state.]~~

(5) Failure to make notice filings~~[Refusal to pay notice filing fees]~~.

(a) Any issuer who fails to make a notice filing for a covered security to be sold in this state as set forth under T.C.A. § 48-1-125 and this Rule shall be subject to a stop order of the commissioner, as provided under T.C.A. § 48-1-125(c), suspending the offer or sale of such securities in this state.~~[For purposes of this paragraph (5), an issuer is deemed to pay the notice filing fee when:]~~

~~[1.] [The issuer is subject to a stop order under the provisions of subparagraph (3)(b) of this Rule; or]~~

~~[2.] [The issuer has failed to make a notice filing, as defined in subparagraph (4)(b) of this Rule, and includes a failure to pay the appropriate notice filing fee.]~~

(b) For purposes of T.C.A. § 48-1-125(c)(2) and this paragraph (5), a failure to make a notice filing cannot be remedied:

1. If the security is a covered security other than a covered security exempt from federal registration under § 18(b)(4)(C) of the 1933 Act or Rule 506 of Regulation D (17 C.F.R. § 230.506) and the delay in making the notice filing as required under T.C.A § 48-1-125(a)(1)(A)-(B) exceeds ten (10) business days from the date of the first sale of such security in this state; or

2. If the security is a covered security exempt from federal registration under § 18(b)(4)(C) of the 1933 Act and:

(i) The delay in making the notice filing as required under T.C.A. § 48-1-125(a)(1)(C)(ii) exceeds ten (10) business days from the date of filing with the SEC; or

(ii) The delay in making the notice filing as required under T.C.A. § 48-1-125(a)(1)(C)(iii) exceeds ten (10) business days from the date upon which the issuer became aware that the residents of

this state purchased fifty percent (50%) or greater of the aggregate amount of the offering, or, in any event, the notice filing exceeds forty (40) calendar days from the date of the completion of the offering; or

3. If the security is a covered security exempt from federal registration pursuant to Rule 506 of Regulation D (17 C.F.R. § 230.506) and the delay in making the notice filing as required under T.C.A. § 48-1-125(a)(1)(D) exceeds twenty-five (25) calendar days from the date of the first sale of such security in this state.

(6) Refusal to pay notice filing fees ~~Unit Investment Trusts~~.

~~[(a)]~~ For purposes of this Rule, an issuer is deemed to refuse to pay the notice filing fee when~~[Notwithstanding any of the requirements in paragraph (1) of this Rule to the contrary, notice filings of series (except the first in a series) of unit investment trusts registered with the SEC under the Investment Company Act and not engaged in the business of investing in securities issued by one (1) of more open end management investment companies may comply with the following alternative filing requirements]~~:

(a)~~[1.]~~ The issuer is subject to a stop order under the provisions of T.C.A. § 48-1-125(c) and part 2 of subparagraph (4)(a) of this Rule~~[One (1) completed and properly executed Form NF, including the name and the address of the trustee, except that any exhibits filed with the Division within five (5) years preceding the filing of the application may be incorporated by reference to the extent that such exhibits are currently accurate]~~; or

(b)~~[2.]~~ The issuer has failed to make a notice filing as defined in subparagraph (5)(b) of this Rule, and includes a failure to pay the appropriate notice filing fee.~~[A statement identifying one (1) or more previous series of the unit investment trust for which an application for registration was made effective by the Division within five (5) years preceding the filing of the current application;]~~

~~[3.] [The following representations as filed with the SEC pursuant to SEC Rule 487 (17 C.F.R. §230.487):]~~

~~[(i)] [That the portfolio securities deposited in the series with respect to which the registration statement or pre-effective amendment is being filed to not differ materially in type or quality from those deposited in the previous series identified by the applicant; and]~~

~~[(ii)] [That, except to the extent necessary to identify the specific portfolio securities deposited in, and to provide essential financial information for, the series with respect to which the registration statement or pre-effective amendment is being filed, the registration statement or pre-effective amendment does not contain disclosures that differ in any material respect from those~~

~~contained in the registration statement of the previous series identified by the applicant;]~~

~~[4.]~~ ~~[A copy of any adverse order, judgment, or decree entered in connection with the offering by the regulatory authorities of any state or by any court or the SEC;]~~

~~[5.]~~ ~~[The appropriate filing fee computed in accordance with T.C.A. §48-1-125; and]~~

~~[6.]~~ ~~[Forms U-2 and U-2A or a statement in the transmittal letter that such forms are already on file with respect to the issuer under its current name of each firm commitment underwriter.]~~

~~[(b)]~~ ~~[Upon SEC effectiveness, the following shall be filed with the Division;]~~

~~[1.]~~ ~~[Notice of SEC effectiveness, to include:]~~

~~[(i)]~~ ~~[The full name of each series of the unit investment trust registered with the SEC;]~~

~~[(ii)]~~ ~~[The time and date declared effective by the SEC;]~~

~~[(iii)]~~ ~~[The public offering price per unit;]~~

~~[(iv)]~~ ~~[The amount of sales commission per unit;]~~

~~[(v)]~~ ~~[The number of units registered with the SEC; and]~~

~~[(vi)]~~ ~~[The total aggregate dollar amount of the offering.]~~

~~[2.]~~ ~~[One (1) copy of the post effective amendment containing one (1) copy of the final prospectus.]~~

~~[(c)]~~ ~~[Each series underlying a unit investment trust constitutes a separate and distinct security under the Act and shall be separately notice filed under the Act. Unit investment trusts applying to notice file multiple series shall file separate notices for each series containing all of the information specified in subparagraph (6)(a) of this Rule, with each Form NF specifically identifying the series to be notice filed.]~~

~~[(d)]~~ ~~[The commissioner may deny, suspend, or revoke the availability of this paragraph (6) to a unit investment trust if it appears to the commissioner that a notice filing that is or is intended to become effective in this state in reliance upon this paragraph (6) is incomplete or inaccurate in any material respect or the filer has not complied with the requirements set forth in this paragraph (6).]~~

~~[(e)]~~ ~~[The notice filing of a unit investment trust expires one (1) year from the date of SEC effectiveness, subject to T.C.A. §48-1-125.]~~

(7) Electronic filing.

(a) All forms and documents required under T.C.A. § 48-1-125 and this Rule which have been filed and recorded on the Electronic Data Gathering Access and Retrieval (EDGAR) system, the Interactive Data Electronic Applications (IDEA) system, the Electronic Filing Depository (EFD), or any other electronic data gathering system either maintained by the SEC or approved by the Division, may be utilized in lieu of filing such documents in paper form.

(b) If an issuer making a notice filing in this state elects to file electronically, the issuer making the notice filing must:

1. Provide an accurate filing number or other designation used by the SEC; and

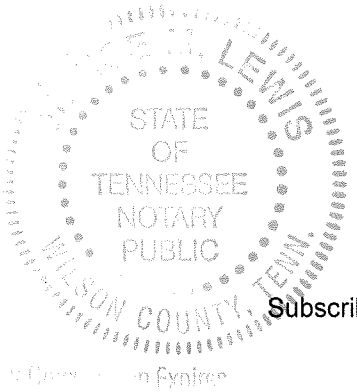
2. Ensure that a printed or electronically stored copy of all required documents and forms is immediately accessible to the Division.

Authority: *T.C.A. §§ 48-1-102~~[(8)(F)(iv)]~~, 48-1-108, 48-1-115, 48-1-116, 48-1-121, 48-1-124(e), 48-1-125, ~~[Public Acts of 1997, Chapter 164, §8,]~~ and § 18 of the Securities Act of 1933, as amended~~[by the National Securities Markets Improvement Act of 1996]~~.*

* 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 9/14/17 (*date as mm/dd/yyyy*), and is in compliance with the provisions of T.C.A. § 4-5-222. The Secretary of State is hereby instructed that, in the absence of a petition for proposed rules being filed under the conditions set out herein and in the locations described, he is to treat the proposed rules as being placed on file in his office as rules at the expiration of ninety (90) days of the filing of the proposed rule with the Secretary of State.



Date: 9/14/17

Signature: Julie Mix McPeak

Name of Officer: Julie Mix McPeak

Title of Officer: Commissioner - Department of Commerce & Insurance

Subscribed and sworn to before me on: 9/14/17

Notary Public Signature: Denise M Lewis

My commission expires on: 1/15/20

Agency/Board/Commission: Commerce and Insurance

Rule Chapter Number(s): 0780-04-02

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

Herbert H. Slatery III
Attorney General and Reporter

1/26/2018
Date

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PUBLICATIONS

Filed with the Department of State on: 2/1/18

Effective on: 5/2/18

Tre Hargett
Secretary of State

G.O.C. STAFF RULE ABSTRACT

DEPARTMENT:	University of Tennessee
DIVISION:	
SUBJECT:	Procedures for Conducting Hearings in Accordance with the Contested Case Provisions of the Uniform Administrative Procedures Act
STATUTORY AUTHORITY:	Tennessee Code Annotated, Section 4-5-101 et seq.
EFFECTIVE DATES:	May 24, 2018 through June 30, 2019
FISCAL IMPACT:	None
STAFF RULE ABSTRACT:	The University of Tennessee is required to comply with the Uniform Administrative Procedures Act (UAPA), Tennessee Code Annotated §§ 4-5-101 et seq., which is a state law "designed to clarify and bring uniformity to the procedure of state administrative agencies and judicial review of their determination." Tenn. Code Ann. § 4-5-103(a). The UAPA is divided into three sections: (1) general provisions; (2) rulemaking and publications; and (3) contested cases. The third section of the UAPA establishes procedural requirements the University must follow in a contested case. The UAPA defines a "contested case" as "a proceeding ... in which the legal rights, duties or privileges of a party are required by any statute or constitutional provision to be determined by an agency after an opportunity for a hearing." Tenn. Code Ann. § 4-5-102(3). The most common types of contested cases conducted by the University are student disciplinary proceedings conducted prior to imposing a suspension or expulsion and certain types of employee disciplinary proceedings (e.g., an employee's challenge to termination of employment for gross misconduct; a non-exempt staff member's challenge to a suspension without pay or termination).

The UAPA gives parties to a contested case the right to receive notice and a hearing; to be represented by counsel; to conduct discovery; to request the issuance of subpoenas; to present evidence through witnesses and documentary evidence; to cross-examine witnesses; and to conduct discovery. Parties also have the right to file pleadings, motions, and other papers. Contested cases generally are conducted in accordance with the Tennessee Rules of Civil Procedure and Tennessee Rules of Evidence. An administrative decision issued in a contested case may be appealed to the Chancery Court for Davidson County, and thereafter to the Tennessee Court of Appeals.

State law authorizes the University to have the University's "Agency Head" appoint administrative judges and hearing officers from among its employees to conduct UAPA contested cases. The final decision of an administrative judge/hearing officer, called an initial order, may be appealed to the Agency Head.

The University currently conducts contested cases in accordance with procedures that were approved by the Board of Trustees, Chapter 1720-01-05 of the Rules of The University of Tennessee. Those procedures are tailored to the University's context but are substantially similar to the uniform procedural rules promulgated by the Tennessee Secretary of State.

When applicable, the University's contested case procedures are offered to an aggrieved party as an alternative to other University hearing procedures. For example, when a student at The University of Tennessee, Knoxville is facing suspension from the University, the student has the option of having a hearing conducted either by an administrative judge/hearing officer under the UAPA contested case procedures or by the Student Conduct Board under the procedures established in the Student Code of Conduct.

The University proposes revisions to its contested case procedures based on a comprehensive review by the Office of the General Counsel. Many of the proposed revisions align the procedures more closely with the statutory language of the UAPA; some fill gaps where the UAPA is silent on an issue. The proposed revisions include:

- Adding definitions for "notice" and "Agency Head;"
- Adding language clarifying who may serve as an administrative judge;

- Adding examples of issues that may be discussed at a pre-hearing conference;
- Adding a requirement that the administrative judge issue an order following the pre-hearing conference addressing various issues;
- Adding language concerning the substitution of the Agency Head or administrative judge due to recusal, disqualification, or other reasons;
- Adding language concerning the filing and service of pleadings, motions, and other papers;
- Adding language clarifying that any party may file any motion allowed by the Tennessee Rules of Civil Procedure;
- Revising language relating to petitions for intervention;
- Adding language clarifying which party has the burden of proof;
- Revising language concerning the time for appealing initial orders and filing requests for reconsideration;
- Adding language explaining judicial review of a final order; and
- Adding language clarifying requirements relating to ex parte communications.

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 rules are not anticipated to have an effect on small businesses.

Impact on Local Governments

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

The rules are not anticipated 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;

The University of Tennessee is required to comply with the Uniform Administrative Procedures Act (UAPA), Tennessee Code Annotated §§ 4-5-101 *et seq.,* which is a state law "designed to clarify and bring uniformity to the procedure of state administrative agencies and judicial review of their determination." Tenn. Code Ann. § 4-5-103(a).

The UAPA is divided into three sections: (1) general provisions; (2) rulemaking and publications; and (3) contested cases. The third section of the UAPA establishes procedural requirements the University must follow in a contested case. The UAPA defines a "contested case" as "a proceeding . . . in which the legal rights, duties or privileges of a party are required by any statute or constitutional provision to be determined by an agency after an opportunity for a hearing." Tenn. Code Ann. § 4-5-102(3). The most common types of contested cases conducted by the University are student disciplinary proceedings conducted prior to imposing a suspension or expulsion and certain types of employee disciplinary proceedings (e.g., an employee's challenge to termination of employment for gross misconduct; a non-exempt staff member's challenge to a suspension without pay or termination).

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- Adding a requirement that the administrative judge issue an order following the pre-hearing conference addressing various issues;
- Adding language concerning the substitution of the Agency Head or administrative judge due to recusal, disqualification, or other reasons;
- Adding language concerning the filing and service of pleadings, motions, and other papers;
- Adding language clarifying that any party may file any motion allowed by the Tennessee Rules of Civil

Procedure;
- Revising language relating to petitions for intervention;
- Adding language clarifying which party has the burden of proof;
- Revising language concerning the time for appealing initial orders and filing requests for reconsideration;
- Adding language explaining judicial review of a final order; and
- Adding language clarifying requirements relating to ex parte communications.

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

Tennessee Code Annotated § 4-5-101 *et seq.*

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

Students of The University of Tennessee are most directly affected by this rule. The student member of the UT Board of Trustees voted to approve the rule. No person requested to address the Board of Trustees during the part of the meeting set aside for public comment.

(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;

Matthew Scoggins
General Counsel
The University of Tennessee

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

Matthew Scoggins
General Counsel
The University of Tennessee

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

Matthew Scoggins
General Counsel
The University of Tennessee
719 Andy Holt Tower
Knoxville, TN 37996-0170
scoggins@tennessee.edu
865-974-3245

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

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

For Department of State Use Only

Sequence Number: 02-22-18
Rule ID(s): 6703
File Date: 4/23/18
Effective Date: 5/24/18

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: University of Tennessee
Division:
Contact Person: Matthew Scoggins, General Counsel
Address: 719 Andy Holt Tower, 1331 Circle Park, Knoxville, TN
Zip: 37996-0170
Phone: 865-974-3245
Email: scoggins@tennessee.edu

Revision Type (check all that apply):

___ Amendment
x New
x Repeal

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

Chapter Number	**Chapter Title**
1720-01-05	Procedures for Conducting Hearings in Accordance with the Contested Case Provisions of the Uniform Administrative Procedures Act
Rule Number	**Rule Title**
1720-01-05-.01	Contested Case Procedures
1720-01-05-.02	Repealed

Chapter Number	Chapter Title
1720-01-05	Procedures for Conducting Hearings in Accordance with the Contested Case Provisions of the Uniform Administrative Procedures Act
Rule Number	**Rule Title**
1720-01-05-.01	Hearings in Contested Cases as Defined by the "Uniform Administrative Procedures Act" (APA)
1720-01-05-.02	Repealed

RULES
OF
THE UNIVERSITY OF TENNESSEE
(ALL CAMPUSES)

CHAPTER 1720-1-5
PROCEDURE FOR CONDUCTING HEARINGS IN ACCORDANCE WITH THE CONTESTED CASE PROVISIONS OF THE UNIFORM ADMINISTRATIVE PROCEDURES ACT

1720-1-5-.01 HEARINGS IN CONTESTED CASES AS DEFINED BY THE "UNIFORM ADMINISTRATIVE PROCEDURES ACT" (APA) are conducted in accordance with the following procedures:

(1) Contested cases refers to a proceeding in which the legal rights, duties or privileges of a University student or employee or other individual are required by any statute or constitutional provision to be determined by the University only after that individual has been provided an opportunity for a hearing. Contested cases may include, but are not limited to:

(a) Student disciplinary proceedings;

(b) Employee disciplinary proceedings;

(c) Traffic and parking violation proceedings;

(2) Notice - A hearing in a contested case shall be provided only after each party to the contested case is notified in writing of the following:

(a) The time, place, nature of the hearing, and the right to be represented by counsel;

(b) That the hearing is held under authority and jurisdiction granted to the "University of Tennessee by Acts of 1807" Chapter 64 and "Acts of 1839-40" Chapter 98;

(c) The particular University rule(s) involved;

(d) A short and plain statement of the matters asserted. (If it is not possible to state the matters in detail at the time the notice is served, the initial notice may be limited to statement of the issues involved. Thereafter, upon timely written application by a party to the contested case, a more definite and detailed statement shall be furnished by the University at least ten (10) days prior to the time set for the hearing.)

(3)

The conduct of all aspects of a hearing provided in a contested case shall be by a hearing examiner designated by the President or the appropriate Vice President/Provost or Chancellor (hereinafter referred to

as "Agency Head")

(a) Pre-hearing Proceedings - An opportunity shall be afforded to all parties to respond in person or by attorney, including appropriate responsive pleadings, and present evidence and argument on all issues involved.

(b) In any action set for hearing the hearing examiner assigned to hear the case may, upon his own motion or motion of a party, direct the parties and/or the attorneys for the parties to appear before him for a conference to consider:

1. The simplification of issues;

2. The necessity or desirability of amendments to the pleadings;

3. The possibility of obtaining admissions of fact and of documents which will avoid unnecessary proof;

4. The limitation of the number of expert witnesses;

Such other matters as may aid in the disposition of the action.

(4) Default.

(a) The failure of a party to attend or participate in a prehearing conference, hearing or other stage of contested case proceedings after due notice thereof is cause for holding such party in default. Failure to comply with any lawful order of the hearing examiner, necessary to maintain the orderly conduct of the hearing, may be deemed a failure to participate in a stage of a contested case and thereby be cause for a holding of default.

(b) After entering into the record evidence of service of notice to an absent party, a motion may be made to hold the absent party in default and to adjourn the proceedings or continue on an uncontested basis.

(c) The hearing examiner determines whether the service of notice is sufficient.

(d) If the notice is held to be adequate, the hearing examiner shall grant or deny the motion for default. Grounds for the granting of a default shall be stated and shall thereafter be set forth in a written order. If a default is granted, the proceedings may then be adjourned or conducted without the participation of the absent party.

(e) The hearing examiner shall serve upon all parties written notice of entry of default for failure to appear. The defaulting party, no later than ten (10) days after service of such notice of default, may file a motion for reconsideration, requesting that the

default be set aside for good cause shown and stating the grounds relied upon. The hearing examiner may make any order in regard to such motion as is deemed appropriate, pursuant to reconsideration.

(5) Record of Contested Case - The record in a contested case shall include:

(a) All applications, pleadings, motions, intermediate rulings and exhibits and appendices thereto;

(b) Evidence received or considered, stipulations and admissions;

(c) A statement of matters officially noticed;

(d) Questions and offers of proof, objections and rulings thereon;

(e) Any proposed findings or decisions and exceptions;

(f) Any decision, opinion, or report by the officer presiding at the hearing or other appropriate University official;

(g) All staff memoranda or data submitted to the hearing officer or the Agency Head in connection with their consideration of the case. A record (which may consist of a tape or similar electronic recording) shall be made of all oral proceedings. Such record or any part thereof shall be transcribed on request of any party, at his expense, or may be transcribed by the University at its expense. If the University elects to transcribe the proceedings, any party shall be provided copies of the transcript upon payment to the University of a reasonable compensatory fee. Findings of fact shall be based exclusively on the evidence and on matters officially noticed.

(6) Rules of Evidence - The following rules of evidence shall govern the conduct of a hearing:

(a) The hearing examiner shall admit and give probative effect to evidence admissible in a court and when necessary to ascertain facts not reasonably susceptible to proof under the rules of court, evidence not admissible thereunder may be admitted if it is of a type commonly relied upon by reasonably prudent men in the conduct of their affairs. The hearing examiner shall give effect to the rules of privilege recognized by law and shall exclude evidence which in its judgement is irrelevant, immaterial or unduly repetitious;

(b) Affidavits may be utilized as follows:

1. At any time not less than ten (10) days prior to a hearing or a continued hearing, any party shall deliver to the opposing party a copy of any affidavit which he proposes to introduce in evidence, together with a notice in form provided in subsection (c). Unless the opposing party, within seven (7) days after delivery, delivers to the proponent a request to cross-examine an affiant, his right to cross-examination of such affiant is waived and the affidavit, if introduced in evidence, shall be given the same effect as if the affiant had testified orally. If an opportunity to cross-examine an affiant is not afforded after proper request is made as herein provided, the affidavit shall not be admitted into evidence. Delivery for purposes of this section shall mean actual receipt;

2. The hearing examiner may admit affidavits not submitted in accordance with this section where necessary to prevent injustice;

3. The notice referred to in subsection (a) shall contain the following information and be substantially in the following form:

The accompanying affidavit of (here insert name of affiant) will be introduced as evidence at the hearing in (here insert title of proceeding). (Here insert name of affiant) will not be called to testify orally and you will not be entitled to question him unless you notify (here insert name of the proponent or his attorney) at (here insert address) that you wish to cross-examine him. To be effective your request must be mailed or delivered to (here insert name of proponent or his attorney) on or before (here insert a date seven days after the date of mailing or delivering the affidavit to the opposing party);

(c) Documentary evidence otherwise admissible may be received in the form of copies or excerpts, or by incorporation by reference to material already on file with the University. Upon request, parties shall be given an opportunity to compare the copy with the original, if reasonably available;

(d) Every party shall have the right to cross-examine witnesses;(e) The hearing examiner may take notice of judicially cognizable facts. In addition, notice may be taken of generally recognized technical or scientific facts within the hearing examiner's specialized knowledge. Parties shall be notified either before or during the hearing, or by reference in preliminary reports or otherwise, of the material noticed including any staff memoranda or data, and they shall be afforded an opportunity to contest the material so noticed. The hearing examiner's experience, technical competence, and specialized knowledge may be utilized in the evaluation of the evidence;

(f) Following commencement of a contested case by service of notice on a party

~~entitled to a hearing, the hearing examiner may, upon his own motion or upon timely motion of any party, decide any procedural question of law.~~

~~(7) Subpoenas~~

~~(a) The hearing examiner shall, upon request of any party to a contested case, issue discovery orders, issue subpoenas for witnesses, or subpoenas duces tecum to compel the production of books, records, papers, or other objects, which may be served by certified mail or in any manner prescribed by law for the service of discovery orders and subpoena in a civil action. Subpoenas shall extend to all parts of the state. The witness shall be entitled to the same fees as are now or may hereafter be provided for witnesses in civil actions in the circuit court. A party making an unreasonable request for a subpoena for witnesses or for a subpoena duces tecum under this subsection may be taxed with reasonable costs as set by the University;~~

~~(b) In case of disobedience to any subpoena issued and served under this section or to any lawful hearing examiner requirement for information, or of the refusal of any person to testify in any matter regarding which he may be interrogated lawfully in a proceeding before a University examiner, the University may apply to the circuit or chancery court of the county of such person's residence, or to any judge or chancellor thereof, for an order to compel compliance with the subpoena or the furnishing of information of the giving of testimony.~~

~~(c) A hearing examiner, or any party to a contested case before him, may take the depositions of parties or witnesses, or may serve interrogatories upon any party, within or without the state, in the same manner as is provided by law for the taking of depositions and interrogatories in civil actions. Depositions and interrogatories so taken shall be admissible in proceedings under these rules. All or any part of the deposition or interrogatory may be objected to at the time of the hearing and may be received in evidence or excluded from the evidence by the hearing examiner in accordance with the provisions of these rules regarding evidence;~~

~~(d) The right to subpoena witnesses and to compel the production of records, and the right to take depositions shall be subject to such limitations and restrictions as the hearing examiner may determine to be necessary to prevent abuse and oppression.~~

~~(8) Admission of Facts - Discovery - Inspection of University Files.~~

~~(a) After commencement of a contested case a party may serve upon any other party a written request for the admission by the latter of the genuineness of any relevant documents described in and exhibited with the request or of the truth of any relevant matters of fact set forth in the request. Copies of the document shall be~~

served with the request unless copies have already been furnished. Each of the matters of which an admission is requested shall be deemed admitted unless within a period designated in the request, not less than fifteen (15) days after service thereof or within such shorter or longer time as the hearing examiner may allow on motion and notice, the party to whom the request is directed serves upon the party requesting the admission either:

1. A sworn statement denying specifically the matters of which an admission is requested or setting forth in detail the reasons why he cannot truthfully admit or deny those matters, or

2. Written objections on the ground that some or all of the requested admissions are privileged or irrelevant or that the request is otherwise improper in whole or in part, together with notice of hearing the objections at the earliest practicable time. If written objections to a part of the request are made, the remainder of the request shall be answered within the period designated in the request. A denial shall fairly meet the substance of the requested admission, and when good faith requires that a party deny only a part or a qualification of a matter of which an admission is requested, he shall specify so much of it as is true and deny only the remainder.

(b) Any admission made by a party pursuant to a request for such is for the purpose of the pending action only and neither constitutes an admission by him for any other purpose nor may be used against him in any other proceedings;

(c) In a contested case, depositions for purposes of discovery may be taken as the same are taken in courts of record, and the hearing examiner shall have the same powers and discretion with respect thereto as are vested in courts by law;

(d) Parties are encouraged where practicable to attempt to achieve any necessary discovery informally, in order to avoid undue expense and delay in the resolution of the matter at hand. When such attempts have failed, or where the complexity of the case is such that informal discovery is not practicable, discovery shall be sought and effectuated in accordance with the Tennessee Rules of Civil Procedure.

(e) Upon motion of party or upon the hearing examiner's own motion, the hearing examiner may order that the discovery be completed by a certain date.

(f) Any party to a contested case shall have the right to inspect the files of the University with respect to the matter and to copy therefrom except that records may not be inspected the confidentiality of which is protected by law.

(9) Intervention

(a) All petitions for leave to intervene in a pending contested case shall state any and all facts and legal theories under which the petitioner claims to be qualified as an intervenor.

(b) In deciding whether to grant a petition to intervene, the following factors shall be considered:

Whether the petitioner claims an interest relating to the case and that he or she is so situated that the disposition of the case may as a practical matter impair or impede his ability to protect that interest;

2. Whether the petitioner's claim and the main case have a question of law or fact in common;

3. Whether prospective intervenor interests are adequately represented;

4. Whether admittance of a new party will render the hearing unmanageable or interfere with the interests of justice and the orderly and prompt conduct of the proceedings.

(c) In deciding a petition to intervene, the administrative judge may impose conditions upon the intervenor's participation in the proceedings as follows:

1. Limiting the intervenor's participation to designated issues in which the intervenor has a particular interest demonstrated by the petition;

2. Limiting the intervenor's use of discovery, cross-examination, and other procedures so as to promote the orderly and prompt conduct of the proceedings; and

3. Requiring two (2) or more intervenors to combine their presentations of evidence and argument, cross-examination, discovery, and other participation in the proceedings.

(d) The hearing examiner at least twenty-four (24) hours before the hearing shall render an order granting or denying each pending petition for intervention, specifying any conditions, and briefly stating the reasons for the order. The administrative judge, hearing officer or agency may modify the order at any time, stating the reasons for the modification. The hearing examiner shall promptly give notice of an order granting, denying, or modifying intervention to the petition for intervention and to all parties.

(10) Continuances

(a) Continuances may be granted upon good cause shown in any stage of the proceeding. The need for a continuance shall be brought to the attention of the hearing examiner as soon as practicable.

(b) Any case may be continued by mutual consent of the parties when approved by the hearing examiner.

(11) Hearing Procedures - The hearing examiner conducts the hearing in the following manner. These procedures may be altered, at the discretion of the hearing examiner, in order to serve the ends of justice.

(a) Meeting is called to order by the hearing officer;

(b) Hearing examiner introduces self and gives a very brief statement of the nature of the proceedings, including a statement of the hearing examiner's and the Agency Head's role in the hearing process;

(c) Hearing examiner then calls on the respondent asking if he is represented by counsel and if so, counsel is asked to introduce himself. The hearing officer then introduces the complainant's counsel and any other individual who may be present at the hearing;

(d) The hearing examiner reads the charges as set out in the notice with regard to the respondent with reference to appropriate statutes and rules;

(e) The respondent is asked how he pleads to the charges; if he pleads guilty, no further hearing may be necessary; if he pleads not guilty, the hearing proceeds;

(f) The hearing examiner then presents a brief explanation, primarily for the benefit of the respondent and his counsel, of how the hearing will proceed with respect to the presentation of proof including a statement that cross-examination and re-direct will be completely open and a statement of the admissibility standards for evidence in the hearing.

(g) The hearing examiner swears all witnesses;

(h) The respondent is asked if he wishes to exclude the complainant's witnesses from the hearing room so that no witness for the complainant hears the others' testimony. The complainant is given the same option with regard to the respondent's witnesses;

Any preliminary motions, stipulations, or agreed orders are entertained; .

~~(mj) Opening statements are allowed by both the complainant and the respondent;~~

~~(nk) Moving party (usually a University official) calls his witnesses and questioning proceeds as follows:~~

~~1. (Complainant) moving party questions;~~

~~2. (Respondent) other party cross-examines;~~

~~3. (Complainant) moving party re-directs;~~

~~1. (Respondent) other party re-cross-examines. (Questioning proceeds as long as is necessary to provide all pertinent testimony.)~~

~~(lo) Other party (usually the respondent) calls his witnesses and questioning proceeds as follows:~~

~~1. (Respondent) other party questions;~~

~~2. (Complainant) moving party cross-examines;~~

~~3. (Respondent) other party re-directs;~~

~~4. (Complainant) moving party re-cross-examines. (Questioning proceeds as long as is necessary to provide all pertinent testimony.)~~

~~(mp) Complainant and respondent allowed to call appropriate rebuttal and rejoinder witnesses with examination proceedings as outlined above;~~

~~(qn) rClosing arguments are allowed tto be presented by the complainant and by the respondent;~~

~~(so) The hearing examiner tells the parties that he will consider all the evidence in the case including supporting written materials to support any legal objections that were made, and that a decision will be written and served on the parties;~~

~~(tp) Hearing examiner closes hearing.~~

~~(12) Initial order and final order~~

~~(a) Upon completion of the hearing, the hearing examiner shall render an initial order, which shall become a final order unless review is sought by a party or the Agency Head in the manner hereinafter described.~~

(b) An initial order or final order shall be in writing and shall include conclusions of law, the policy reasons therefor, and findings of fact for all aspects of the order, including the remedy prescribed and, if applicable, the action taken on a petition for stay of the effective date of the order. Findings of fact shall be accompanied by a concise and explicit statement of the underlying facts of record which support the finding. The order must also include a statement of the available procedures and time limits for seeking reconsideration or other administrative relief and the time limits for seeking judicial review of the final order. An initial order shall include a statement of any circumstances under which the initial order may, without further notice, become a final order.

(c) Findings of fact shall be based exclusively upon the evidence of record in the adjudicative proceeding and on matters officially noticed in that proceeding. The hearing examiner's experience, technical competence, and specialized knowledge may be utilized in the evaluation of evidence.

(e) If a hearing examiner becomes unavailable, for any reason, before rendition of the initial or final order, a substitute shall be appointed by the Agency Head. The substitute shall use any existing record and may conduct any further proceedings as is appropriate in the interest of justice.

(f) The hearing examiner may allow the parties a designated amount of time after conclusion of the hearing for the submission of proposed findings.

(g) An initial order shall be rendered within ninety (90) days after conclusion of the hearing or after submission of proposed findings unless such period is waived or extended with the written consent of all parties or for good cause shown.

(h) The hearing examiner shall cause copies of the initial order to be delivered to each party.

(13) Review of Initial Order.

(a) The Agency Head upon his own motion may, and upon appeal by any party shall, review an initial order, except to the extent that such review is restricted or prohibited by law or rule of The University of Tennessee.

(b) A petition for appeal from an initial order shall be filed with the Agency Head within ten (10) days after entry of the initial order. If the Agency Head on his own motion decides to review an initial order, the Agency Head shall give written notice of his intention to review the initial order within ten (10) days after its entry. The ten (10) day period to file a petition for appeal or for the Agency Head to give notice of his intention to review an initial order on his own motion shall be tolled by submission of a timely petition for reconsideration of the initial order in the

~~manner hereinafter stated, and a new ten (10) day period shall start to run upon disposition of the petition for reconsideration and to a petition for appeal or to review by the Agency Head on his own motion, the petition for reconsideration shall be disposed of first, unless the Agency Head determines that action on the petition for reconsideration has been unreasonably delayed.~~

~~(c) The petition for appeal shall state its basis. If the Agency Head on his own motion gives notice of his intent to review an initial order, the Agency Head shall identify the issues that he intends to review.~~

~~(d) The Agency Head, in reviewing an initial order, shall exercise all the decision making power that he would have had had he presided over the hearing himself, except to the extent that the issues subject to review are limited by law or rule of the University or by the Agency Head upon notice to all parties.~~

~~(e) The Agency Head shall afford each party an opportunity to present briefs and may afford each party an opportunity to present oral argument.~~

~~(f) Before rendering a final order, the Agency Head may cause a transcript to be prepared, at the University's expense, of such portions of the proceeding under review as the Agency Head considers necessary.~~

~~(g) The Agency Head may render a final order disposing of the proceeding or may remand the matter for further proceedings with instructions to the hearing examiner who rendered the initial order. Upon remanding a matter, the Agency Head may order such temporary relief as is authorized and appropriate.~~

~~(h) A final order or an order remanding the matter for further proceedings pursuant to this section, shall be rendered and entered in writing within sixty (60) days after receipt of briefs and oral argument, unless that period is waived or extended with the written consent of all parties or for good cause shown.~~

~~(i) A final order or an order remanding the matter for further proceedings under this section shall identify any difference between such order and the initial order, and shall include, or incorporate by express reference to the initial order, all the matters required to be included in an initial order.~~

~~(j) The Agency Head shall cause copies of the final order or order remanding the matter for further proceedings to be delivered to each party and to the hearing examiner who conducted the contested case.~~

~~(14) Reconsideration.~~

(a) Any party, within ten (10) days after entry of an initial or final order, may file a petition for reconsideration, stating the specific grounds upon which relief is requested. However, the filing of the petition shall not be a prerequisite for seeking administrative or judicial review.

(b) The petition shall be disposed of by the same person rendering the initial or final order, if available.

(c) The person who rendered the initial or final order, which is the subject of the petition shall, within twenty (20) days of receiving the petition, enter a written order either denying the petition, granting the petition and setting the matter for further proceedings; or granting the petition and issuing a new initial or final order. If no action has been taken on the petition within twenty (20) days, the petition shall be deemed to have been denied.

(d) An order granting the petition and setting the matter for further proceedings shall state the extent and scope of the proceedings which shall be limited to argument upon the existing record and no new evidence shall be introduced, unless the party proposing such evidence shows good cause for his failure to introduce the evidence in the original proceeding.

(e) The sixty (60) day period for a party to file a petition for review of a final order shall be tolled by granting the petition and setting the matter for further proceedings, and a new sixty (60) day period shall start to run upon the disposition of the petition for reconsideration by issuance of a final order by the agency.

(f) A party may submit to the person entering the order a petition for stay of effectiveness of an initial or final order within seven (7) days after its entry unless otherwise provided by statute or stated in the initial or final order. Action may be taken on the petition for stay, either before or after the effective date of the initial or final order.

(15) Effective date of order.

(a) Unless a later date is stated in an initial or final order, or a stay is granted, an initial or final order shall become effective upon entry of the initial or final order. All initial and final orders shall state when the order is entered and effective.

(b) All initial orders shall be signed by the hearing examiner conducting the subject contested case, or a substitute duly appointed by the Agency Head, and all final orders shall be signed by the Agency Head or another University official duly authorized by the Agency Head to sign such final order in his absence.

(c) A party may not be required to comply with the final order unless the final order

has been mailed to the last known address of the party or unless the party has actual knowledge of the final order.

(d) Unless a later date is stated in an initial order or a stay is granted, the time when an initial order becomes a final order is ten (10) days after entry of the initial order if no appeal is taken from the initial order.

(16) Ex parte communication.

(a) Unless required for the disposition of ex parte matters specifically authorized by statute, a hearing examiner or an Agency Head serving in a contested case proceeding may not communicate, directly or indirectly, regarding any issue in the proceeding, while the proceeding is pending, with any person without notice and opportunity for all parties to participate in the communications.

(b) Notwithstanding subsection (a), a hearing examiner or Agency Head may communicate with staff assistants, members of the Attorney General's staff, or outside counsel if such persons do not receive ex parte communications of a type that the hearing examiner or Agency Head would be prohibited from receiving, and do not furnish, augment, diminish, or modify the evidence in the record.

(c) Unless required for the disposition of ex parte matters specifically authorized by statute, no party to a contested case, and no other person may communicate, directly or indirectly, in connection with any issue in that proceeding, while the proceeding is pending, with the Agency Head or any person serving as a hearing examiner, without notice and opportunity for all parties to participate in communication.

(d) If the Agency Head or hearing examiner, before serving in that capacity, receives an ex parte communication of the type which may not properly be received while serving, he shall promptly disclose such communication to all parties to the contested case.

(e) A hearing examiner or Agency Head who receives an ex parte communication in violation of this section shall place in the record of the pending matter all written communications received, all written responses to the communications received, all written responses to the communications, and a memorandum stating the substance of all oral communications received, all responses, made, and the identity of each person from whom the person received an ex parte communication, and shall advise all parties that these matters have been placed on the record. Any party desiring to rebut the ex parte communication shall be allowed to do so, upon requesting the opportunity for rebuttal within ten (10) days after notice of the communication.

~~***Authority:*** *T.C.A. §4-5-102(3), 49-9-209(e), and Public Acts of Tennessee, Chapter 168, "Public Acts of Tennessee, 1839-1840", Chapter 98, Section 5 and 1807, Chapter 64., and "Public Acts of Tennessee, 1978", Chapter 938, Section 1.* ***Administrative History:*** *Original rule filed October 16, 1979; effective November 30, 1979. Amendment filed July 29, 1983; effective October 14, 1983. Repealed and new rule filed May 27, 1986; effective August 12, 1986. Repealed and new rule filed October 31, 1990; effective January 29, 1991. Amendment filed July 30, 1991; effective October 29, 1991. Amendment filed January 13, 1999; effective May 31, 1999. Amendment filed November 17, 2000; effective March 30, 2001. Amended filed _____ 2018; effective _____ 2018.~~

~~***1720-1-5-.02 REPEALED.***~~

~~***Authority:*** *T.C.A. §§4-5-219; 4-5-301; 4-9-110 and Public Acts of Tennessee, 1839-1840, Chapter 98, Section 5 and Public Acts of Tennessee, 1807, chapter 64.* ***Administrative History:*** *Original rule filed October 31, 1990; effective January 29, 1991. Repeal filed January 13, 1999; effective May 31, 1999.~~

RULES OF
THE UNIVERSITY OF TENNESSEE

CHAPTER 1720-01-05
PROCEDURES FOR CONDUCTING HEARINGS IN ACCORDANCE WITH THE CONTESTED CASE PROVISIONS OF THE UNIFORM ADMINISTRATIVE PROCEDURES ACT

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1720-01-05-.01	Contested Case Procedures	1720-01-05-.02	Repealed

1720-01-05-.01 CONTESTED CASE PROCEDURES.

(1) This Chapter outlines the procedures The University of Tennessee (the University) shall use to conduct hearings in contested cases under the Uniform Administrative Procedures Act (the UAPA), Tennessee Code Annotated § 4-5-101 *et seq.* Contested cases are proceedings in which the legal rights, duties, or privileges of a University student, employee or other individual or entity are required by any statute or constitutional provision to be determined by the University only after that individual/entity has been provided an opportunity for a hearing. Contested cases may include, but are not limited to:

(a) Student disciplinary proceedings;

(b) Certain employee disciplinary proceedings;

(c) Traffic and parking violation proceedings;

(2) Notice - A hearing in a contested case shall be conducted only after each party to the contested case has been notified in writing of the following:

(a) The time, place, nature of the hearing, and the right to be represented at the party's own expense by an attorney or, unless prohibited by any provision of law, other representative;

(b) That the hearing is held under authority and jurisdiction granted by Tennessee Code Annotated §§ 49-9-110 and 49-9-209(e)(1);

(c) The particular University rule(s) involved;

(d) A short and plain statement of the matters asserted. (If it is not possible to state the matters in detail at the time the notice is served, the initial notice may be limited to statement of the issues involved. A more definite and detailed statement shall then be furnished by the University at least ten (10) days prior to the time set for the hearing.)

(e) For purposes of this Chapter, "notice" shall be defined as follows:

1. If a party (including the party's representative) has made an appearance in the contested case and/or following commencement of the contested case provided a physical address, facsimile number, and/or email address in connection with the contested case proceeding, by making a hand delivery or sending documents by U.S. Mail or other national courier service to such address; sending a facsimile transmission to the facsimile number; sending an email transmission to the email address; and/or by any other method authorized by the administrative judge;

2. In all other situations, by making a hand delivery or sending documents by U.S. Mail or other national courier service to the party's last known physical address, sending a facsimile transmission to the last known facsimile number, and/or sending an email to the party's last known email address. The contact information on file with the University is presumed to be correct for students and employees and for former students and former employees who ceased to have active student or employee status within the eighteen months (18) prior to commencement of the contested case.

(3) Agency Head – As used in these procedures, the term "Agency Head" means: (a) the Chancellor or other head of a campus or institute out of which a contested case arises; and

(b) the President or the President's designee when the contested case arises out of the system administration or when the Chancellor or other head of a campus or institute is not available to serve as Agency Head due to a conflict of interest, recusal, disqualification, or other reason.

(4) Contested cases may be conducted by an administrative judge from the Administrative Procedures Division of the Office of the Secretary of State, by an administrative judge appointed by the Agency Head or the Agency Head's designee from among the University faculty or staff, or any other person authorized under state law to conduct contested cases. The person who conducts a contested case is referred to in these procedures as the "administrative judge," and for purposes of these procedures, the term "administrative judge" shall include a "hearing officer" as defined by the UAPA.

(a) Pre-hearing Proceedings - An opportunity shall be afforded to all parties to respond in person or by attorney, including appropriate responsive pleadings, and present evidence and argument on all issues involved.

(b) The administrative judge assigned to hear the case may, upon his/her own motion or motion of a party, direct the parties and/or the attorneys for the parties to appear for a conference at which the following may be discussed:

1. The simplification of issues;

2. The necessity or desirability of amendments to the pleadings;

3. The possibility of obtaining admissions of fact and of documents which will avoid unnecessary proof;

4. The time within which discovery shall be completed;

5. The limitation of the number of expert witnesses;

6. The consolidation for hearing of actions involving common questions of law or fact;

7. The date for exchanging witness lists and exhibit lists, which shall be exchanged no later than five (5) business days in advance of the hearing; and

8. Such other matters as may aid in the disposition of the action.

Following such a conference, the administrative judge shall issue an order that includes, without limitation, a recitation of the action taken at the conference, the amendments allowed to the pleadings, the time within which discovery shall be

completed, and the agreements made by the parties as to any of the matters considered, and that limits the issues for hearing to those not disposed of by admissions or agreements of the parties, and such order when entered shall control the subsequent course of the action, unless modified at the hearing to prevent manifest injustice.

(c) Substitution of Agency Head or Administrative Judge Due to Recusal, Disqualification, or Other Reasons.

1. An Agency Head or administrative judge shall not serve in such capacity if he or she is biased and/or has a conflict of interest and may recuse himself or herself for any reason.

2. An Agency Head or administrative judge shall be subject to disqualification for bias, prejudice, interest, or any other cause provided in Tennessee Code Annotated § 4-5-101 *et seq*. or for any cause for which a judge may be disqualified.

3. Any party may request the disqualification of an Agency Head or administrative judge promptly after notice that the individual will serve or, if later, promptly upon discovering facts establishing grounds for disqualification.

4. The individual whose disqualification is requested shall determine whether to grant the request, stating facts and reasons for the determination.

5. If a substitute is required for an individual who becomes unavailable as a result of recusal, disqualification, or any other reason, the substitute shall be appointed, unless otherwise provided by law, by:

(i) The Agency Head or designee, if the unavailable individual is an administrative judge;

(ii) The President or designee, if the unavailable individual is a Chancellor or other chief executive officer of a campus or institute; or

(iii) The Vice Chair of The University of Tennessee's Board of Trustees or designee, if the unavailable individual is the President.

(d) In any situation not specifically addressed by this Chapter, reference may be made to the Tennessee Rules of Civil Procedure for guidance as to the proper procedure

to follow where appropriate and to whatever extent will best serve the interests of justice and the speedy and inexpensive determination of the matter at hand.

(5) Default.

(a) The failure of a party to attend or participate, either personally or through counsel, in a prehearing conference, hearing or other stage of contested case proceedings after notice thereof is cause for holding such party in default. Failure to comply with any lawful order of the administrative judge, necessary to maintain the orderly conduct of the hearing, may be deemed a failure to participate in a stage of a contested case and thereby be cause for a holding of default.

(b) After entering into the record evidence of notice to an absent party, a motion may be made to hold the absent party in default and to adjourn the proceedings or continue in the party's absence.

(c) The administrative judge shall not grant a default if notice is inadequate.

(d) If the administrative judge grants a motion for default, the grounds shall be stated and shall thereafter be set forth in a written order. If a default is granted, the proceedings may then be adjourned or conducted without the participation of the absent party.

(e) The administrative judge shall provide all parties notice of entry of default for failure to appear. The defaulting party, no later than fifteen (15) days after notice of default, may file a motion for reconsideration, requesting that the default be set aside for good cause shown and stating the grounds relied upon. The administrative judge may make any order in regard to such motion as is deemed appropriate, pursuant to reconsideration.

(6) Record of Contested Case - The record in a contested case shall include:

(a) All applications, pleadings, motions, intermediate rulings, and exhibits and appendices thereto;

(b) Evidence received or considered, stipulations, and admissions;

(c) A statement of matters officially noticed;

(d) Questions and offers of proof, objections, and rulings thereon;

(e) Any proposed findings or decisions and exceptions;

(f) Any decision, opinion, or report by the Agency Head or administrative judge; and

(g) All evidence submitted to the administrative judge or the Agency Head in connection with the case. A record (which may consist of a recording) shall be made of all oral proceedings. Such record or any part thereof shall be transcribed on request of any party, at his/her expense, or may be transcribed by the University at its expense. If the University elects to transcribe the proceedings, any party shall be provided copies of the transcript upon payment to the University of a reasonable compensatory fee. Findings of fact shall be based exclusively on the evidence and on matters judicially noticed.

(7) Filing and Service.

(a) Submission/Filing.

1. All pleadings, motions, and other papers submitted to the Agency Head or administrative judge may be filed by hand delivery, by U.S. Mail, by email transmission, by facsimile transmission, or by any other method authorized by the Agency Head or administrative judge. Any party who submits any paper to the Agency Head or administrative judge must serve the paper on all other parties in the same manner if possible, and if not, in a manner contemplated to provide notice to all other parties on the same date the paper is received by the Agency Head or administrative judge.

2. If any paper is submitted or filed by any form of electronic transmission, it must be sent to the administrative judge at or before 11:59 p.m. local time to be considered filed upon that date. If such electronic transmission is sent after 11:59 p.m. local time, it will be considered submitted or filed the next business day.

(b) Service.

1. Parties are required to serve on all other parties any pleading, motion, or other paper submitted to the Agency Head or administrative judge, as well as any other paper required to be served on a party by the Tennessee Rules of Civil Procedure. Such service may be completed by hand delivery to a party or its counsel, by U.S. Mail, by email transmission, by facsimile transmission, or by any other method authorized by the Agency Head or administrative judge.

2. Any paper submitted to or filed with the Agency Head or administrative judge must be served on all other parties, or their counsel/representative, and must bear a certificate of service as required by the Tennessee Rules of Civil Procedure.

3. If any paper is served by any form of electronic transmission, it must be sent at or before 11:59 p.m. local time to be considered served upon that date. If such electronic transmission is sent after 11:59 p.m. local time, it will be considered served the next business day.

4. Whenever a party has the right or is required to do some act or take some proceedings within a prescribed period after the service of a notice or other paper upon such party and the notice or paper is served upon such party by mail, three days shall be added to the prescribed period. No time is added to the prescribed period if the notice or paper is served via electronic transmission in compliance with the preceding paragraph. This Section .01(7)(b)(4) does not apply to an appeal from an initial order under Section .01(16) or a request for reconsideration under Section .01(17) or a petition for judicial review under Section .01(19).

(8) Motions.

(a) Unless contrary to any express provision of this Chapter any party may file any motion allowed by the Tennessee Rules of Civil Procedure. Unless this Chapter specifically governs the filing, procedure, or resolution of any motion, reference may be made to the Tennessee Rules of Civil Procedure for guidance as to the proper procedure to follow, where appropriate and to whatever extent will best serve the interests of justice and the speedy and inexpensive determination of the matter at hand.

(b) Briefing of any motion shall be as follows: the movant files the initial motion and/or brief, and the nonmovant may file a response. If the nonmovant files a response in opposition to all or part of the motion, the movant may file a reply that addresses only the issues raised in the nonmovant's response; no new issues may be raised by reply. No further briefing shall be allowed unless permitted by the administrative judge. If a dispute arises as to the scheduling of any briefing, the administrative judge may establish a briefing schedule.

(9) Rules of Evidence - The following rules of evidence shall govern the conduct of a hearing:

(a) The administrative judge shall admit and give probative effect to evidence admissible in a court and when necessary to ascertain facts not reasonably susceptible to proof under the rules of court; evidence not admissible thereunder may be admitted if it is of a type commonly relied upon by reasonably prudent people in the conduct of their affairs. The administrative judge shall give effect to the rules of privilege recognized by law and shall exclude evidence that is irrelevant, immaterial, or unduly repetitious;

(b) Affidavits may be utilized as follows:

1. At any time not less than ten (10) days prior to a hearing or a continued hearing, any party shall serve all parties with a copy of any affidavit that it proposes to introduce in evidence in accordance with subsection (b)(3). Unless another party, within seven (7) days after service of the affidavit, serves to the proponent a request to cross-examine an affiant, the right to cross-examination such affiant is waived and the affidavit, if introduced in evidence, shall be given the same effect as if the affiant had testified orally. If an opportunity to cross-examine an affiant is not afforded after proper request is made as herein provided, the affidavit shall not be admitted into evidence. Service for purposes of this section shall mean actual receipt;

2. The administrative judge may admit affidavits not submitted in accordance with this section where necessary to prevent injustice; or

3. Notice shall contain the following information and be substantially in the following form:

The accompanying affidavit of (here insert name of affiant) will be introduced as evidence at the hearing in (here insert title of proceeding). (Here insert name of affiant) will not be called to testify orally and you will not be entitled to question affiant unless you notify (here insert name of the proponent or his attorney) at (here insert address) that you wish to cross-examine affiant. To be effective your request must be mailed or delivered to (here insert name of proponent or his attorney) on or before (here insert the date seven days after the date of delivering the affidavit to the opposing party).

(c) Documentary evidence otherwise admissible may be received in the form of copies or excerpts, or by incorporation by reference to material already on file in the contested case. Upon request, parties shall be given an opportunity to compare the copy with the original, if reasonably available;

(d) Every party shall have the right to examine any witness who testifies at the hearing;

(f) The administrative judge may take judicial notice of judicially cognizable facts. In addition, judicial notice may be taken of generally recognized technical or scientific facts within the administrative judge's specialized knowledge. Parties shall be afforded an opportunity to contest the administrative judge's decision to take judicial notice prior to the administrative judge taking judicial notice. The administrative judge's experience, technical competence, and specialized knowledge may be utilized in the evaluation of the evidence even if the facts are

not judicially noticed; and

(g) Following commencement of a contested case by notice on a party entitled to a hearing, the administrative judge may, upon his/her own action or upon timely motion of any party, decide any procedural question.

(10) Subpoenas.

(a) The administrative judge, at the request of any party, shall issue subpoenas, effect discovery, and issue protective orders in accordance with the Tennessee Rules of Civil Procedure, except that service may be by certified mail in addition to means of service provided by the Tennessee Rules of Civil Procedure. The administrative judge shall decide any objection relating to discovery under this chapter or the Tennessee Rules of Civil Procedure. Subpoenas for taking depositions and for hearing attendance shall be consistent with Rule 45 of the Tennessee Rules of Civil Procedure. The witness shall be entitled to the same fees as are now or may hereafter be provided for witnesses in civil actions in the circuit court, and the party requesting the subpoena shall bear the cost of paying fees associated therewith.

(b) In case of disobedience to any subpoena issued and served under this section or to any lawful administrative judge requirement for information, or of the refusal of any person to testify in any matter regarding which he/she may be interrogated lawfully in a proceeding before an administrative judge, the University may apply to the circuit or chancery court of the county of such person's residence for an order to compel compliance with the subpoena or the furnishing of information or the giving of testimony.

(c) Any party to a contested case may take the depositions of parties or witnesses, or may serve interrogatories and requests for production of documents upon any party, within or without the state, in the same manner as is provided by the Tennessee Rules of Civil Procedure. Depositions and interrogatories so taken shall be admissible in contested cases. All or any part of the deposition or interrogatory may be objected to at the time of the hearing and may be received in evidence or excluded from the evidence by the administrative judge in accordance with the provisions of these rules regarding evidence.

(d) The right to subpoena witnesses and to compel the production of records, and the right to take depositions shall be subject to such limitations and restrictions as the administrative judge may determine to be necessary to prevent abuse and oppression.

(11) Admission of Facts - Discovery - Inspection of University Files.

(a) After commencement of a contested case, a party may serve upon any other party

a written request for the admission by the latter of the genuineness of any relevant documents described in and exhibited with the request or of the truth of any relevant matters of fact set forth in the request. Copies of the document shall be served with the request unless copies have already been furnished. Each of the matters of which an admission is requested shall be deemed admitted unless within a period designated in the request, not less than fifteen (15) days after service thereof or within such shorter or longer time as the administrative judge may allow, the party to whom the request is directed serves upon the party requesting the admission either:

1. A sworn statement denying specifically the matters of which an admission is requested or setting forth in detail the reasons why the party cannot truthfully admit or deny those matters; or

2. Written objections on the ground that some or all of the requested admissions are privileged or irrelevant or that the request is otherwise improper in whole or in part. If written objections to a part of the request are made, the remainder of the request shall be answered within the period designated in the request. A denial shall fairly meet the substance of the requested admission, and when good faith requires that a party deny only a part or a qualification of a matter of which an admission is requested, the party shall specify so much of it as is true and deny only the remainder.

(b) Any admission made by a party pursuant to a request for such is for the purpose of the pending action only and neither constitutes an admission by the party for any other purpose nor may be used against the party in any other proceedings;

(c) In a contested case, depositions may be taken as the same are taken in state courts of record, and the administrative judge shall have the same powers and discretion with respect thereto as are vested in state courts of record;

(d) Parties are encouraged where practicable to attempt to achieve any necessary discovery informally, in order to avoid undue expense and delay in the resolution of the matter at hand. When such attempts have failed, or where the complexity of the case is such that informal discovery is not practicable, discovery shall be sought and effectuated in accordance with the Tennessee Rules of Civil Procedure. Any information, documents, or things not timely disclosed or supplemented in response to a discovery request as required by the Tennessee Rules of Civil Procedure shall not be admitted into evidence at the hearing if offered by the non-disclosing party.

(e) Upon motion of a party or upon the administrative judge's own initiative, the administrative judge may order that the discovery be completed by a certain date.

(f) Any party to a contested case shall have the right to inspect the files of the University with respect to the matter and to copy therefrom, except that records may not be inspected the confidentiality of which is protected by law.

(g) No discovery shall be submitted to or filed with the administrative judge unless necessary for resolution of a motion or if offered into evidence at the hearing.

(12) Intervention.

(a) The administrative judge shall grant one (1) or more petitions for intervention if:

1. The petition is submitted in writing to the administrative judge with copies served on all parties named in the notice of the hearing, at least seven (7) days before the hearing;

2. The petition states facts demonstrating that the petitioner's legal rights, duties, privileges, immunities, or other legal interest may be determined in the proceeding or that the petitioner qualifies as an intervenor under any provision of law; and

3. The administrative judge determines that the interests of justice and the orderly and prompt conduct of the proceedings shall not be impaired by allowing the intervention.

(b) The administrative judge may grant one (1) or more petitions for intervention at any time, upon determination that the intervention sought is in the interest of justice and shall not impair the orderly and prompt conduct of the proceedings.

(c) If a petitioner qualifies for intervention, the administrative judge may impose conditions upon the intervenor's participation in the proceedings as follows:

1. Limiting the intervenor's participation to designated issues in which the intervenor has a particular interest demonstrated by the petition;

2. Limiting the intervenor's use of discovery, cross-examination, and other procedures so as to promote the orderly and prompt conduct of the proceedings; and

3. Requiring two (2) or more intervenors to combine their presentations of evidence and argument, cross-examination, discovery, and other participation in the proceedings.

(d) The administrative judge at least twenty-four (24) hours before the hearing shall

render an order granting or denying each pending petition for intervention, specifying any conditions, and briefly stating the reasons for the order. The administrative judge may modify the order at any time, stating the reasons for the modification. The administrative judge shall promptly give notice of an order granting, denying, or modifying intervention to the petition for intervention and to all parties.

(13) Continuances.

(a) Continuances may be granted upon good cause shown in any stage of the proceeding. The need for a continuance shall be brought to the attention of the administrative judge as soon as practicable.

(b) Any case may be continued by mutual consent of the parties when approved by the administrative judge.

(14) Hearing Procedures - The administrative judge conducts the hearing in the following manner. These procedures may be altered, at the discretion of the administrative judge, in accordance with any pre-hearing order and in order to serve the ends of justice. The administrative judge shall modify these procedures as necessary to comply with state or federal law, including, without limitation, Title IX of the Education Amendments of 1972, the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act (Clery Act), or the Family Educational Rights and Privacy Act of 1974.

(a) Meeting is called to order by the administrative judge;

(b) The administrative judge introduces self and gives a very brief statement of the nature of the proceedings, including a statement of the administrative judge's and the Agency Head's role in the hearing process;

(c) The administrative judge asks the parties and any present counsel or representatives to introduce themselves;

(d) The administrative judge reads the notice of hearing with reference to appropriate statutes and rules;

(e) In student disciplinary matters, the student facing discipline is asked for a response to the charges; if he/she acknowledges that he/she violated the University rule as alleged, no further hearing may be necessary beyond the establishment of a disciplinary penalty; if he/she denies that he/she violated the University rule as alleged, then the hearing proceeds;

(f) The administrative judge then presents a brief explanation of how the hearing will

proceed with respect to the presentation of proof including a statement that cross-examination and re-direct will be completely open and a statement of the admissibility standards for evidence in the hearing.

(g) The administrative judge swears all witnesses, which may be done immediately prior to their testimony;

(h) The parties are asked if they wish to exclude witnesses from the hearing room. All individual parties, including any intervenors, are permitted to remain in the hearing room. The University is permitted to designate one representative who may remain in the hearing room;

(i) Any preliminary motions, stipulations, or agreed orders are entertained;

(j) The Petitioner is the party bearing the overall burden of proof. Unless otherwise required by law, the Petitioner in a contested case bears the burden of proof by a preponderance of the evidence. The other party is the Respondent. Except as specified in this Rule, the administrative judge makes all decisions regarding which party has the overall burden of proof and the burden of proof on any issue.

(k) The University shall be the Petitioner in the following contested cases:

1. Student disciplinary proceedings;

2. Proceedings involving the termination of a faculty member's tenure, the termination of a tenure-track faculty member before the expiration of the annual term, the termination of a non-tenure-track faculty member before the end of a definite-term appointment, and as otherwise required by Board of Trustees policy;

3. Proceedings in which a staff employee is contesting the University's termination of a written employment agreement;

4. Proceedings offered in connection with the support staff grievance process contesting demotion, suspension without pay, or termination for cause; except in cases where the employee alleges unlawful discrimination, discriminatory harassment, or violation of a statute, in which case the employee will be the Petitioner;

5. Proceedings in which the employee contests a termination for gross misconduct; and

6. Traffic and parking citation proceedings.

(l) The employee shall be the Petitioner in employee proceedings not listed in Section 13(k).

(m) Opening statements are allowed;

(n) Unless otherwise directed by the administrative judge, Petitioner calls its witnesses and questioning proceeds as follows:

1. Petitioner questions;

2. Respondent cross-examines;

3. Petitioner re-directs;

4. The administrative judge has discretion to permit re-cross-examination; and

5. The administrative judge may question a witness at any time.

(o) Respondent calls witnesses and questioning proceeds as follows:

1. Respondent questions;

2. Petitioner cross-examines;

3. Respondent re-directs;

4. The administrative judge has discretion to permit re-cross-examination; and

5. The administrative judge may question a witness at any time.

(p) The parties are allowed to call appropriate rebuttal witnesses with examination proceedings as outlined above;

(q) If any party has more than one (1) attorney, examination (direct examination, cross-examination, and objections) of any one (1) witness may only be performed by one (1) of the party's attorneys;

(r) Closing arguments are allowed or may be reserved for the filing of post-hearing briefs. If arguments are allowed, the Petitioner argues first and, following the Respondent's argument, the Petitioner is entitled to a rebuttal argument;

(s) The administrative judge explains that he/she will consider all of the evidence in the case, as well as supporting written materials to support any legal objections that were made, and that a decision will be written and served on the parties;

(t) The administrative judge closes the hearing.

(15) Initial order and final order.

(a) Upon completion of the hearing, the administrative judge shall render an initial order, which shall become a final order unless review is sought by the University or other party in the manner hereinafter described.

(b) An initial order or final order shall be in writing and shall include conclusions of law, the policy reasons therefor, and findings of fact for all aspects of the order, including the remedy prescribed and, if applicable, the action taken on a petition for stay of the effective date of the order. Findings of fact shall be accompanied by a concise and explicit statement of the underlying facts of record which support the finding. The order must also include a statement of the available procedures and time limits for seeking reconsideration or other administrative relief and the time limits for seeking judicial review of a final order. An initial order shall include a statement of any circumstances under which the initial order may, without further notice, become a final order.

(c) Findings of fact shall be based exclusively upon the evidence of record in the adjudicative proceeding and on matters officially noticed in that proceeding. The administrative judge's experience, technical competence, and specialized knowledge may be utilized in the evaluation of evidence.

(d) If an administrative judge becomes unavailable, for any reason, before rendition of the initial or final order, a substitute shall be appointed by the Agency Head or designee. The substitute shall use any existing record and may conduct any further proceedings as is appropriate in the interest of justice.

(e) The administrative judge may allow the parties a designated amount of time after conclusion of the hearing for the submission of proposed findings and post-hearing briefs.

(f) An initial order shall be rendered within ninety (90) days after conclusion of the hearing or after submission of proposed findings unless such period is waived or extended with the written consent of all parties or for good cause shown.

(g) The administrative judge shall provide notice of the initial order to each party.

(16) Review of Initial Order.

(a) The University or other party may appeal an initial order to the Agency Head, except to the extent that such review is restricted or prohibited by law or rule of the University.

(b) An appeal of an initial order shall be filed with the Agency Head within fifteen (15) days after entry of the initial order. The fifteen (15) day period to file an appeal shall be tolled by submission of a timely request for reconsideration of the initial order in the manner hereinafter stated, and a new fifteen (15) day period shall start to run upon disposition of the request for reconsideration; a request for reconsideration shall be disposed of prior to disposition of an appeal, unless the Agency Head determines that action on the request for reconsideration has been unreasonably delayed.

(c) An appeal shall state the basis for appeal.

(d) The Agency Head, in reviewing an initial order, shall exercise all the decision making power that he/she would have had had he/she presided over the hearing, except to the extent that the issues subject to review are limited by law or rule of the University or by the Agency Head upon notice to all parties.

(e) The Agency Head shall afford each party an opportunity to present briefs and may, in the Agency Head's discretion, afford each party an opportunity to present oral argument.

(f) Before rendering a final order, the Agency Head may cause a transcript to be prepared, at the University's expense, of such portions of the proceeding under review as the Agency Head considers necessary.

(g) The Agency Head may render a final order disposing of the proceeding or may remand the matter for further proceedings with instructions to the administrative judge who rendered the initial order. Upon remanding a matter, the Agency Head may order such temporary relief as is authorized and appropriate.

(h) A final order or an order remanding the matter for further proceedings pursuant to this section, shall be rendered and entered in writing within sixty (60) days after receipt of briefs and oral argument, unless that period is waived or extended with the written consent of all parties or for good cause shown.

(i) A final order or an order remanding the matter for further proceedings shall identify any difference between such order and the initial order, and shall include, or incorporate by express reference to the initial order, all the matters required to

be included in an initial order.

(j) The Agency Head shall provide notice the final order or order remanding the matter for further proceedings to each party and to the administrative judge who conducted the contested case.

(17) Reconsideration.

(a) Any party, within fifteen (15) days after entry of an initial or final order, may file a request for reconsideration, stating the specific grounds upon which relief is requested. The filing of a request for reconsideration shall not be a prerequisite for seeking Agency Head or judicial review.

(b) The request for reconsideration shall be disposed of by the same person rendering the initial or final order, if available.

(c) The person who rendered the initial or final order that is the subject of the petition shall, within twenty (20) days of receiving a request for reconsideration, enter a written order either denying the request, granting the request and setting the matter for further proceedings; or granting the request and issuing a new initial or final order. If no action has been taken on the petition within twenty (20) days, the request shall be deemed to have been denied.

(d) An order granting a request for reconsideration and setting the matter for further proceedings shall state the extent and scope of the proceedings, which shall be limited to argument upon the existing record. No new evidence shall be introduced unless the party proposing such evidence shows good cause for the failure to introduce the evidence in the original proceeding.

(e) The sixty (60) day period for a party to file a request for review of a final order shall be tolled by granting the request for reconsideration and setting the matter for further proceedings, and a new sixty (60) day period shall start to run upon the disposition of the request for reconsideration by issuance of a final order by the agency.

(f) A party may submit to the person entering the order a request for stay of effectiveness of an initial or final order within seven (7) days after its entry unless otherwise provided by statute or stated in the initial or final order. Action may be taken on the request for stay, either before or after the effective date of the initial or final order.

(18) Effective date of new order.

(a) Unless a later date is stated in an initial or final order, or a stay is granted, an initial

or final order shall become effective upon entry of the initial or final order. All initial and final orders shall state when the order is entered and effective.

(b) All initial orders shall be signed by the administrative judge conducting the contested case, or a substitute appointed by the Agency Head, and all final orders shall be signed by the Agency Head or another University official authorized by the Agency Head to sign such final order in his/her absence.

(c) A party may not be required to comply with the final order unless the party has been provided notice of the final order.

(d) Unless a later date is stated in an initial order or a stay is granted, an initial order becomes a final order fifteen (15) days after entry of the initial order if no appeal is taken from the initial order.

(19) Judicial Review. Judicial review is permitted in accordance with Tennessee Code Annotated § 4-5-322 by filing a petition for review in the chancery court of Davidson County, unless another court is specified by statute, within sixty (60) days after the entry of a final order.

(20) Ex parte communication.

(a) Unless required for the disposition of ex parte matters specifically authorized by statute, an administrative judge or an Agency Head serving in a contested case proceeding may not communicate, directly or indirectly, regarding any issue in the proceeding, while the proceeding is pending, with any person without notice and opportunity for all parties to participate in the communications.

(b) Nothing in subsection (a) is intended to preclude an administrative judge or Agency Head from communicating with staff assistants, the University's General Counsel and members of the General Counsel's staff, or outside counsel about matters other than the contested case if such persons do not receive ex parte communications of a type that the administrative judge or Agency Head would be prohibited from receiving, and do not furnish, augment, diminish, or modify the evidence in the record.

(c) Unless required for the disposition of ex parte matters specifically authorized by statute, no party to a contested case, and no other person may communicate, directly or indirectly, in connection with any issue in that proceeding, while the proceeding is pending, with the Agency Head or any person serving as an administrative judge, without notice and opportunity for all parties to participate in communication.

(d) If the Agency Head or administrative judge, before serving in that capacity, receives an ex parte communication of the type which may not properly be received while serving, he/she shall promptly disclose such communication to all parties to the contested case. This provision does not apply to a communication between an Agency Head and the University's General Counsel, members of the General Counsel's staff, or outside counsel if the communication is protected by the attorney-client privilege; provided, the Agency Head shall be subject to disqualification for bias, prejudice, interest, or other cause, including for any cause for which a circuit judge may be disqualified.

(e) An administrative judge or Agency Head who receives an ex parte communication in violation of this section shall place in the record of the pending matter all written communications received, all written responses to the communications received, all written responses to the communications, and a memorandum stating the substance of all oral communications received, all responses, made, and the identity of each person from whom the person received an ex parte communication, and shall advise all parties that these matters have been placed on the record. Any party desiring to rebut the ex parte communication shall be allowed to do so, upon requesting the opportunity for rebuttal within ten (10) days after notice of the communication.

Authority: T.C.A. §4-5-102(3), 49-9-209(e), and Public Acts of Tennessee, Chapter 168, "Public Acts of Tennessee, 1839-1840", Chapter 98, Section 5 and 1807, Chapter 64., and "Public Acts of Tennessee, 1978", Chapter 938, Section 1. Administrative History: Original rule filed October 16, 1979; effective November 30, 1979. Amendment filed July 29, 1983; effective October 14, 1983. Repealed and new rule filed May 27, 1986; effective August 12, 1986. Repealed and new rule filed October 31, 1990; effective January 29, 1991. Amendment filed July 30, 1991; effective October 29, 1991. Amendment filed January 13, 1999; effective May 31, 1999. Amendment filed November 17, 2000; effective March 30, 2001.

1720-01-05-.02 REPEALED.

Authority: T.C.A. §§4-5-219; 4-5-301; 4-9-110 and Public Acts of Tennessee, 1839-1840, Chapter 98, Section 5 and Public Acts of Tennessee, 1807, chapter 64. Administrative History: Original rule filed October 31, 1990; effective January 29, 1991. Repeal filed January 13, 1999; effective May 31, 1999.

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

Board Member	Aye	No	Abstain	Absent	Signature (if required)
Governor Bill Haslam				X	
Commissioner Candace McQueen				X	
Commissioner Jai Templeton				X	
Dr. Joe DiPietro	X				
Charles C. Anderson, Jr.	X				
Shannon Brown				X	
George E. Cates				X	
Dr. Terrance G. Cooper (non-voting)					
Dr. Susan C. Davidson	X				
Spruell Driver, Jr.	X				
Dr. William E. Evans	X				
John N. Foy	X				
Crawford Gallimore				X	
Vicky B. Gregg	X				
Raja J. Jubran	X				
Mike Krause (non-voting)					
Brad A. Lampley	X				
Andrew P. McBride (non-voting)					
Sharon J. Pryse	X				
Rhedona Rose	X				
David A. Shepard	X				
Rachel M. Smith	X				
John D. Tickle	X				
Julia T. Wells	X				
Charles E. Wharton	X				
Tommy G. Whittaker	X				

I certify that this is an accurate and complete copy of proposed rules, lawfully promulgated and adopted by The University of Tennessee on 11/03/2017, 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: 1/9/18

Signature:

Name of Officer: Matthew Scoggins

Title of Officer: General Counsel

Subscribed and sworn to before me on: January 9, 2018

Notary Public Signature: Tammie Cole

My commission expires on: My Commission Expires March 3, 2019

TAMMIE COLE NOTARY PUBLIC STATE OF TENNESSEE

Agency/Board/Commission: University of Tennessee

Rule Chapter Number(s): Chapter 1720-01-05 Procedures for Conducting Hearings in Accordance with the Contested Case Provisions of the Uniform Administrative Procedures Act

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

1/29/2018
Date

Department of State Use Only

Filed with the Department of State on: 2/23/18

Effective on: 5/24/18

Tre Hargett
Secretary of State

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PUBLICATIONS

G.O.C. STAFF RULE ABSTRACT

DEPARTMENT: University of Tennessee

DIVISION:

SUBJECT: Parking Rules and Traffic and Parking Regulations

STATUTORY AUTHORITY: The promulgation of this rule, or the establishment of guidelines relevant thereto, is not mandated by any federal law or regulation or any state law or regulation.

EFFECTIVE DATES: May 24, 2018 through June 30, 2019

FISCAL IMPACT: None

STAFF RULE ABSTRACT: The University of Tennessee at Chattanooga completed a comprehensive review of its current parking system in 2016. At that conclusion of that review, the campus developed a three-year strategy to modernize the existing system. That comprehensive strategy includes a variety of enhancements, including the addition of new parking spaces, enhanced enforcement, and increased fluidity within the system in order for students, faculty, staff, and visitors to have the best parking experience possible.

In order to implement several of the proposed enhancements, UTC needs to revise its parking rule. Highlights of the revised rule include updated language to reflect current operational practices, a clear definition of a parking space, clarity for motorcycle parking, enforcement and appeal changes, and a new fine structure. Given the greater parking flexibility being created in the new system, the increased fine structure is not expected to increase fine revenue; however, it does put the fine structure more in line with market rates.

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 rules are not anticipated to have an effect on small businesses.

Impact on Local Governments

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

The rules are not anticipated 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;

The University of Tennessee at Chattanooga completed a comprehensive review of its current parking system in 2016. At that conclusion of that review, the campus developed a three-year strategy to modernize the existing system. That comprehensive strategy includes a variety of enhancements, including the addition of new parking spaces, enhanced enforcement, and increased fluidity within the system in order for students, faculty, staff, and visitors to have the best parking experience possible.

In order to implement several of the proposed enhancements, UTC needs to revise its parking rule. Highlights of the revised rule include updated language to reflect current operational practices, a clear definition of a parking space, clarity for motorcycle parking, enforcement and appeal changes, and a new fine structure. Given the greater parking flexibility being created in the new system, the increased fine structure is not expected to increase fine revenue; however, it does put the fine structure more in line with market rates.

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

None

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

Students of The University of Tennessee are most directly affected by this rule. The student member of the UT Board of Trustees voted to approve the rule. No person requested to address the Board of Trustees during the part of the meeting set aside for public comment. The Board of Trustees requests 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;

None

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

Matthew Scoggins
General Counsel
The University of Tennessee

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

Matthew Scoggins
General Counsel
The University of Tennessee

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

Matthew Scoggins General Counsel The University of Tennessee 719 Andy Holt Tower Knoxville, TN 37996-0170 scoggins@tennessee.edu 865-974-3245

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

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

For Department of State Use Only

Sequence Number: 02-21-18
Rule ID(s): 6702
File Date: 2/23/18
Effective Date: 5/24/18

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:	University of Tennessee
Division:	
Contact Person:	Matthew Scoggins, General Counsel
Address:	719 Andy Holt Tower, 1331 Circle Park, Knoxville, TN
Zip:	37996-0170
Phone:	865-974-3245
Email:	scoggins@tennessee.edu

Revision Type (check all that apply):

___ Amendment
x New
x Repeal

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

Chapter Number	**Chapter Title**
1720-02-03	Parking Rules
Rule Number	**Rule Title**
1720-02-03-.01	General
1720-02-03-.02	Vehicle Registration and Parking Permits
1720-02-03-.03	Parking Requirements and Limitations
1720-02-03-.04	Parking Citations and Enforcement
1720-02-03-.05	Penalties
1720-02-03-.06	Appeals

Chapter Number	**Chapter Title**
1720-02-03	Traffic and Parking Regulations
Rule Number	**Rule Title**
1720-02-03-.01	Introduction
1720-02-03-.02	Registration of Vehicles

1720-02-03-.03	Replacement of Decals
1720-02-03-.04	Vehicle Operation
1720-02-03-.05	Violations
1720-02-03-.06	Enforcement
1720-02-03-.07	Penalties
1720-02-03-.08	Appeals
1720-02-03-.09	Restrictions
1720-02-03-.10	Special Occasions and Emergencies
1720-02-03-.11	Pedestrian Regulations

~~RULES~~
~~OF~~
~~THE UNIVERSITY OF TENNESSEE~~
~~(CHATTANOOGA)~~

~~CHAPTER 1720-02-03~~
~~TRAFFIC AND PARKING REGULATIONS~~

~~1720-02-03-.01 INTRODUCTION.~~

~~(1) The purpose of these regulations is to facilitate the safe and orderly operation of University business and to provide parking facilities for this operation within the limits of available space.~~

~~(2) The Departments of Parking Services and Campus Law Enforcement are responsible for implementation and enforcement of these regulations.~~

~~(3) Any person operating a motor vehicle on the University campus is required to obey these regulations as a condition to parking or operating the vehicle on the campus.~~

~~(4) The responsibility for locating legal parking space rests with the operator of the motor vehicle. Lack of space will not be considered a valid excuse for violating any parking regulations.~~

~~(5) The University shall have no responsibility for loss or damage to any vehicle or its contents operated or parked on The University of Tennessee at Chattanooga Campus or on lots leased by The University of Tennessee at Chattanooga.~~

~~1720-02-03-.02 REGISTRATION OF VEHICLES.~~

~~(1) All motor vehicles, including motorcycles, parked on U.T.C. property between 7:00 a.m. and 5:00 p.m. or on lots leased by U.T.C. must have current U.T.C. decal/disks and be registered with the University.~~

~~(2) Decals/disks will be sold at registration, and after registration, at Parking Services.~~

~~(3) The decal/disk must be hung on the rear view mirror of the vehicle.~~

~~(4) Expired decals/disks should be removed (or covered) so that only the current decal/disk is displayed.~~

~~(5) Decals/disks must be renewed each Fall semester.~~

~~(a) General Parking: Decals/disks must be renewed at the beginning of each Fall semester and will be valid until the beginning of the following Fall semester so long as the registrant remains a student or a University employee. This vehicle may be parked in any General lot.~~

~~(b) Reserved Parking: Decals/disks must be renewed at the beginning of each Fall semester and will be valid until the beginning of the following Fall semester so long as the registrant remains a student or a University employee. This vehicle may be parked in any General lot.~~

~~(6) The person to whom a vehicle is registered is responsible for the vehicle and all violation citations issued thereto. If the person operating the vehicle is other than the registrant~~

when a violation is committed, both the operator and the registrant may be cited.

1720-02-03-.03 REPLACEMENT OF DECALS.

(1) A new decal/disk will be issued at no cost for a newly acquired vehicle which replaces a currently registered vehicle upon presentation of the original decal/disk to the cashier at Parking Services.

(2) If it is necessary for you to drive a car other than your registered vehicle, the transferable decal/disk must be placed on rearview mirror of replacement vehicle.

(3) Lost or stolen decal/disk will be replaced for $2.00 upon proof of loss. Only one replacement decal may be obtained at the $2.00 charge during the academic year. If additional replacement decals are required during the academic year the charge will be the current decal price.

1720-02-03-.04 VEHICLE OPERATION.

(1) All persons operating a vehicle on University property or in the campus area, which includes City streets running through University property, must be properly licensed operators.

(2) Pedestrians have the right-of-way at established pedestrian crossings, except where regulated by traffic control lights or police officers.

(3) Under normal conditions the maximum speed limit on campus streets in 15 MPH and 30 MPH on the City streets. However, vehicles may not be operated at any speed which is excessive for the conditions which may exist as a result of weather, traffic congestion, pedestrians, etc.

(4) Traffic control signs, devices, and directions of police officers must be obeyed.

(5) All persons operating vehicles are responsible for maintaining control of the vehicle, safe operation, and observance of traffic control signs, barriers and devices.

(6) Operating a motor vehicle in any area other than a street or roadway intended for motor vehicle is prohibited.

(7) All accidents must be reported to the University Police immediately (755-4357). All vehicle break-ins or incidents should be reported immediately.

1720-02-03-.05 VIOLATIONS. The following examples constitute violations of these regulations:

(1) Parking Permits

(a) No current decal/disk (parking permit).

(b) Current decal/disk not visible in vehicle (not affixed to vehicle).

(c) Unauthorized possession of decal/disk.

(d) Falsification of decal registration information.

(e) Illegal use, reproduction or alteration of decal/disk and/or parking permit.

(f) Tampering with wheel-lock.

(2) Other Parking Violations/Overtime Metered Space.

(a) In no-parking or loading zones or unmarked spaces.

(b) In unauthorized area.

(c) Overtime parking in metered space. (Even vehicles with UTC decals/disks when parking metered areas.)

(d) Tampering with wheel-lock.

(e) Disability parking violation, as defined by State law (e.g., an unauthorized use of a disabled parking space, ramp, plate, or placard; parking a vehicle so that a portion of the vehicle encroaches into a disabled parking space in a manner which restricts, or reasonably could restrict, a person confined to a wheelchair from exiting or entering a vehicle properly parked within the disabled parking space).

(3) Moving

(a) Exceeding posted speed limit.

(b) Excessive speed for existing conditions.

(c) Failure to obey traffic control signal or sign.

(d) Failure to obey police officer.

(e) Operating vehicle without valid operator's license.

(f) Driving off roadway or street.

(g) Reckless driving and/or street.

(h) Failure to yield right-of-way at pedestrian crossing.

(i) Leaving scene of accident by participant.

(j) Failure to signal turn or stop.

(k) Wrong way on one-way street.

(l) Following too closely.

(m) Operating mechanically unsafe vehicle.

(n) Driving while under the influence of alcohol or narcotics.

(o) Operating vehicle causing loud, or unnecessary noise, such as loud mufflers, horns, P.A. systems, etc.

(4) Motorcycle Parking

(a) All cycles must have parking decals/disks.

(b) No motorcycle may be driven within the confines of a housing perimeter. They must be walked.

(c) Motorcycles are to traverse hard surface areas only, not grassy areas.

(d) All motor cycles are to be parked on hard surfaces, not on the grass or soil.

(e) Motor cycles are not to block stairways, sidewalks, or pedestrian access.

(f) Motorcycles should not be the occasion for the clutter and debris on the property.

(5) Impounded Vehicle/Towed Vehicle.

(a) The University may tow without advance notice those vehicles parked in a fire lane, designated disabled parking space, spaces reserved for designated vehicles or in such a manner as to impede the flow of traffic or disrupt the orderly affairs of the University.

(b) If a vehicle has unpaid parking citations the University may impound/tow the vehicle, if advance notice and opportunity to contest have been given. Windshield notices and/or other methods of notification will be used to provide the operator of the vehicle with advance notice of out intent to tow and the operator's right to a hearing.

(6) Fire Lane and Obstruction

(a) Blocking or obstructing traffic, street, sidewalk, driveway, fire hydrant, building entrance or exit, another vehicle or fire lane.

1720-02-03-.06 ENFORCEMENT.

(1) University violation citations must be answered at Parking Services within 72 hours (excluding Saturday, Sunday and holidays) after issuance, except that staff citations may be answered within 72 hours by mail or in person to Parking Services.

(2) City citations must be answered as indicated on the citation.

(3) A vehicle parked in a manner which blocks a fire zone, emergency exit, flow of traffic, designated disabled parking space, spaces reserved for designated vehicles, or otherwise poses a danger or disrupts the orderly affairs of the University may be impounded, immobilized, or towed.

(a) The owner of the above vehicle will be afforded a hearing by a University official prior to the assessment of any tow charges, fines, or penalties.

(b) If penalties are assessed after such hearing, impounded, towed or immobilized vehicles will be released upon proper identification and receipt for payment of all appropriate fines and penalties (see below).

(4) A vehicle which has accumulated $50.00 or more in traffic citations may be impounded or immobilized or towed if the owner of such vehicle has received advance notice and the opportunity to contest has been given. Windshield notices and/or methods of notification will be used to provide the operator of the vehicle with advance notice of intent to tow and the operator's right to a hearing. In the event the owner does not request a hearing or prevail at the hearing, his vehicle will be towed, wheel-locked or impounded whenever it is next found upon the University property whether parked legally or illegally.

1720-02-03-.07 PENALTIES.

(1) Violation Fines - Staff, Students and Visitors. All violation fines will be paid at Parking Services or the Bursar's Office.

(a)	No parking permit	$25.00
(b)	Other parking violations	$25.00
(c)	Overtime on meter	$8.00
(d)	Moving violations	$25.00
(e)	Immobilized vehicles	$25.00 plus other fines owed
(f)	Impounded Vehicle/Towed Vehicles	Amount of fine plus costs
(g)	Disability Parking Violation	$200.00

The fine for a disability parking violation is set by State law, Tennessee Code Annotated section 55-21-108. As of July 1, 2008, the fine was set at $200. The fine imposed under these regulations will increase or decrease automatically when increased or decreased by State law. The fine shall not be suspended or waived.

(h)	Fire Lane/Obstruction	$40.00

(2) Other Penalties - Students.

(a) Students who fail to pay violation fines or penalties will not be permitted to register for course work, to continue as a student, to receive credit, to receive a degree, or to obtain a transcript until the fines or penalties are paid.

(b) A staff member who persists in violating these regulations or fails to answer a citation will be reported to his department head and/or penalties may be collected through payroll deduction as specified in University Personnel Policies.

(c) Repeated violation of parking regulations will be grounds for towing away, impoundment or immobilization in accordance with regulations under enforcement.

(d) Students who persist in violating these regulations or commit a single violation under extreme circumstances will be referred to the Dean of Students office for disciplinary action which may lead to suspension or dismissal from the University.

(e) Once automobile owner has accumulated $50.00 of unpaid fines, his car, if found parked upon University property or lots leased by the University, will be wheel-locked or towed in accordance with regulations under ENFORCEMENT.

(f) Any individual (student, faculty or staff) with outstanding traffic citations will not be allowed to register a vehicle, renew their parking permit or purchase a parking permit until indebtedness is cleared.

(g) In addition to the fine imposed for a disability parking violation, not more than five (5) hours of community service work may be imposed. Any community service

work requirements imposed shall be to assist the disabled community by monitoring disabled parking spaces, providing assistance to disability centers or to disabled veterans, or other such purposes.

1720-02-03-.08 APPEALS.

(1) The Student Conduct Board will handle all student appeals.

(2) Student may appeal a violation citation within 10 class days of issuance by making application for appeal when answering the citation through forms furnished by the Parking Services.

(3) Students may request that their appeals be heard by the Student Conduct Board without their being present at the Board's meeting. Failure to appear without advance notice will result in the case being considered in the student's absence and the decision of the board will be binding.

(4) Staff and visitors appeal a violation citation through appropriate administrative channels.

(5) No appeals may be made through Campus Law Enforcement.

(6) Anyone failing to appeal within ten class days of issuance of citation loses the right to appeal.

1720-02-03-.09 RESTRICTIONS. University streets or grounds may not be used by any firm, corporation or person for advertising or commercial purposes.

1720-02-03-.10 SPECIAL OCCASIONS AND EMERGENCIES. On special occasions, for example: athletic events, concerts, graduation exercises, etc., and in emergencies, parking and traffic limitation may be imposed by the Departments of Parking Services and Campus Law Enforcement as required by the conditions which prevail.

1720-02-03-.11 PEDESTRIAN REGULATIONS.

(1) Students and staff members must not endanger their safety or constitute an unreasonable impediment to lawful vehicular traffic by crossing streets at other than authorized lanes or by willfully walking or congregating in the streets.

(2) All personnel are expected to avoid walking across lawns or against traffic signs.

(3) Violations of these regulations will be cited through appropriate channels for disciplinary action.

RULES OF
THE UNIVERSITY OF TENNESSEE AT CHATTANOOGA

CHAPTER 1720-02-03
PARKING RULES

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1720-02-03-.03	Parking Requirements and Limitations	1720-02-03-.06	Appeals

1720-02-03-.01 GENERAL.

(1) These rules are intended to promote the safe and orderly parking of vehicles on the property; facilitate the safe and convenient operation of UTC business and services; and regulate parking on campus, with priority given to UTC business and services.

(2) The UTC Department of Parking Services and the UTC Department of Public Safety implement and enforce these rules.

(3) All persons parking vehicles and all persons owning vehicles parked on UTC property are subject to and required to comply with these rules.

(4) All vehicle accidents, incidents, thefts, or break-ins that occur on UTC property should be reported immediately to the UTC Police Department [(423) 425-4357].

(5) Wherever used in these rules:

(a) "Designated parking space" means an area, in either a paved or unpaved lot, delineated by UTC for parking for a single vehicle. In a paved parking lot, a designated parking space is delineated by straight white or yellow lines on both sides of the space. In an unpaved parking lot, a designated parking space is delineated by a wheel stop or parking block on one end of the space.

(b) "Registered vehicle" means a vehicle registered with the UTC Department of Parking Services by a registrant.

(c) "Registrant" means a UTC student or employee to whom a UTC parking permit is issued.

(d) "Unregistered vehicle" means a vehicle not registered with the UTC Department of Parking Services.

(e) "UTC" means The University of Tennessee at Chattanooga.

(f) "UTC parking permit" means either a hangtag or decal issued by UTC that has not expired and, when properly displayed on a vehicle, authorizes a vehicle to be parked in certain designated parking spaces on UTC property.

(g) "UTC property" means all land, grounds, structures, and any other physical property owned, controlled, or operated by UTC.

(h) "Vehicle" means any type of vehicle, including but not limited to a motorcycle.

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

1720-02-03-.02 VEHICLE REGISTRATION AND PARKING PERMITS.

(1) All vehicles parked on UTC property must have an unexpired UTC parking permit properly displayed, except as otherwise provided by law or UTC policy.

(2) UTC students and employees must register vehicles with the UTC Department of Parking Services in order to obtain a UTC parking permit for a vehicle.

(3) UTC parking permits may be obtained for a fee on the UTC Parking Services website (http://www.utc.edu/auxiliary-services/parking/), in person at the UTC Bursar's Office, or at a UTC parking garage or other location where a UTC pay-and-display parking permit station is located.

(4) Hangtag parking permits must be displayed on the rearview mirror of the vehicle. Other types of UTC parking permits must be clearly visible from the outside of the vehicle. Expired UTC parking permits must be removed or covered so that only an unexpired UTC parking permit is displayed.

(5) A specific expiration date is indicated on each UTC parking permit. A UTC parking permit is not valid after its expiration date.

(6) A registrant is responsible for his or her registered vehicle and all parking violation citations relating to the parking of the registered vehicle. If the person operating the registered vehicle is other than the registrant when a parking violation is committed, both the operator and the registrant may be cited for the parking violation. However, UTC will not collect multiple fines for a single violation.

(7) A registrant is responsible for his or her UTC parking permit and all violation citations relating to the use of the registrant's parking permit, and is prohibited from sharing or otherwise permitting the parking permit to be used by other persons. If the person using a UTC parking permit when a violation is committed is other than the registrant to whom the parking permit was issued, both the person who committed the violation and the registrant may be cited. However, UTC will not collect multiple fines for a single violation.

(8) The owner of an unregistered vehicle is responsible for the unregistered vehicle and all parking violation citations relating to the parking of the vehicle. If the person operating an unregistered vehicle is other than the owner of the vehicle when a parking violation is committed, both the operator and the owner may be cited for the parking violation. However, UTC will not collect multiple fines for a single violation.

(9) If a registrant is operating a vehicle other than his or her registered vehicle, then the registrant must display his or her UTC parking permit on the rearview mirror of the alternate vehicle and the parking permit must be clearly visible from the outside. Chapter 1720-02-03-.02(9) does not apply to a situation in which a registrant is operating another person's vehicle, with permission, and that person's valid UTC parking permit is displayed on the rearview mirror.

(10) A registrant whose UTC parking permit has been lost or stolen may obtain a replacement parking permit for a fee of three dollars ($3.00) upon providing proof of loss of the previously-issued parking permit.

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

1720-02-03-.03 PARKING REQUIREMENTS AND LIMITATIONS.

(1) Persons are authorized to park a vehicle only in a designated parking space located in those areas or lots for which a UTC parking permit authorizes the vehicle to be parked. Lack of an available authorized designated parking space will not excuse a person from violating any of these rules.

(2) A vehicle must not be parked in a manner that blocks or obstructs traffic, a street, sidewalk, fire hydrant, building entrance or exit, another vehicle, or fire lane, or in another manner that disrupts the orderly affairs of UTC.

(3) Certain parking spaces are designated for motorcycles only, and motorcycles must be parked in those designated parking spaces.

(4) Motorcycles must not be parked in any area not authorized for the parking of vehicles that are not motorcycles, including within the confines of the exterior perimeter of any building. Motorcycles must not be parked in a manner that blocks stairways, sidewalks, or pedestrian access.

(5) Traffic control signs and devices and the directions of police officers must be obeyed when parking vehicles.

(6) On special occasions (including but not limited to athletic events, concerts, and graduation exercises) or in emergency situations, the UTC Department of Parking Services or the UTC Department of Public Safety may impose parking limitations more restrictive or permissive than in these rules, as they determine to be appropriate under the circumstances.

(7) The UTC Department of Parking Services reserves the right to alter, block, reserve, or reallocate designated parking spaces on UTC property at any time.

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

1720-02-03-.04 PARKING CITATIONS AND ENFORCEMENT.

(1) The following examples constitute violations of these rules which may result in a citation with the corresponding fine:

(a)	No Valid Parking Permit Displayed	$30
(b)	Expired Parking Permit Displayed	$30
(c)	Displaying, Selling, or Purchasing a Stolen, Deactivated, Altered, Counterfeit, or Reproduced Parking Permit	$100
(d)	Vehicle Not Parked in a Designated Parking Space	$30
(e)	Vehicle Parked in Multiple Designated Parking Spaces	$30
(f)	Vehicle Parked in Unauthorized Lot or Space	$30
(g)	Vehicle Parked Over Posted Time Restriction	$30
(h)	Vehicle Parked in Fire Lane	$40
(i)	Vehicle Parked in Violation of Chapter 1720-02-03-.03(2)	$40
(j)	Unauthorized Vehicle in Disability Parking Space	$200
(k)	Unauthorized Vehicle in Disability Loading Area	$200
(l)	Unauthorized Use of Disability Parking Permit	$200

(2) Immobilization and Towing of Vehicles

(a) UTC may tow or immobilize a vehicle without advance notice to the registrant (if a registered vehicle) or the owner/operator (if an unregistered vehicle) if the vehicle is parked:

1. In a fire lane or in a manner which blocks a fire lane;

2. In a manner that blocks an emergency exit;

3. In a designated disability parking space or disability loading area;

4. In a parking space reserved for designated vehicles;

5. While displaying a stolen/deactivated/altered/counterfeit/reproduced UTC parking permit; or

6. In such other manner that violates Chapter 1720-02-03-.03(2).

(b) If a vehicle is towed or immobilized without advance notice, the registrant (if a registered vehicle) or the owner/operator (if an unregistered vehicle) shall have the right to a hearing upon request to the UTC Department of Parking Services to contest the parking violation(s) for which the vehicle was towed or immobilized. A registrant/owner/operator may pay any fines, penalties, immobilization fees and/or towing charges required for the mobilization or release of the vehicle prior to the hearing. If the underlying parking citation for which the vehicle was immobilized or towed is successfully appealed, then UTC shall refund any fines, penalties, immobilization fees or towing charges paid by the registrant/owner/operator.

(c) UTC may tow or immobilize a vehicle if sixty dollars ($60.00) or more in unpaid parking citations have been issued relating to the parking of the vehicle and the appeal periods for such citations have expired, provided the registrant (if a registered vehicle) or the owner/operator (if an unregistered vehicle) has been provided advance notice and the opportunity to contest the citations.

1. The registrant (if a registered vehicle) or the owner/operator (if an unregistered vehicle) shall first be notified in writing by a windshield notice (or other method of notice including without limitation e-mail) of UTC's intent to immobilize or tow the vehicle the next time it is found parked on UTC property, whether legally or illegally, and the right to a hearing within thirty (30) calendar days. If the registrant/owner/operator does not request a hearing or prevail at a hearing, the vehicle may be towed or immobilized the next time it is found parked on UTC property, whether legally or illegally.

2. Registrants/owners/operators of vehicles towed or immobilized shall have the right to contest UTC's action at a hearing. A registrant/owner/operator may pay any fines, penalties, immobilization fees and/or towing charges required for the mobilization or release of the vehicle prior to the hearing. If the underlying parking citation for which the vehicle was immobilized or towed is successfully appealed, then UTC shall refund any fines, penalties, immobilization fees or towing charges paid by the registrant/owner/operator.

(d) Registrants/owners/operators of vehicles that are immobilized pursuant to these rules will be required to pay an immobilization fee of fifty dollars ($50.00) as a condition of the vehicle being mobilized.

(e) A vehicle that is towed pursuant to these rules will be impounded in the UTC impound lot, subject to availability of space in the UTC impound lot. If there is no available space in the UTC impound lot, the vehicle will be towed to an impound lot not owned, controlled, or operated by UTC.

(f) Impounded or immobilized vehicles will be released upon the registrant/owner/operator of the vehicle providing identification and paying to UTC all unpaid parking fines, penalties, immobilization fees, and towing charges. The release of a vehicle impounded in an impound lot not owned or operated by UTC will be subject to payment of additional fees or charges levied by the owner of the impound lot.

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

1720-02-03-.05 PENALTIES.

(1) UTC parking citation fines that are not paid or appealed within fourteen (14) calendar days after issuance shall incur a late payment penalty of fifty percent (50%) of the fine amount.

(2) A UTC student who fails to pay parking citation fines or late payment penalties will not be permitted to register for course work, receive credit, receive a degree, or obtain a transcript until all parking fines and penalties are paid, provided the parking citations giving rise to the fines and penalties are not subject to a pending appeal or the appeal period for such citations has expired.

(3) A UTC employee who persists in violating these rules may be reported to his or her supervisor/department head, and outstanding parking citation fines and penalties may be collected through payroll deduction as provided under UTC policy.

(4) UTC students who persist in violating these rules or commit a single violation that is extreme in nature may be referred to the UTC Dean of Students for disciplinary action, which may include but not be limited to suspension or dismissal from UTC or loss of the privilege of parking a vehicle on UTC property.

(5) UTC students and employees with unpaid parking citation fines or late penalties will not be allowed to register a vehicle, renew their UTC parking permits, or purchase UTC parking permits, until all fines and penalties are paid.

(6) UTC may pursue collection efforts on unpaid parking citation fines and penalties.

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

1720-02-03-.06 APPEALS.

(1) Persons who want to appeal a parking citation must submit the appeal online at the UTC Department of Parking Services website (http://www.utc.edu/auxiliary-services/parking/) or in writing at the UTC Bursar's Office within fourteen (14) calendar days of the issuance of the citation. Persons who fail to appeal a parking citation within fourteen (14) calendar days of the citation's issuance forfeit their right to appeal the citation.

(2) An appeal of a parking citation issued to a vehicle may be made either by the registrant (if a registered vehicle) or the owner/operator (if an unregistered vehicle).

(3) The UTC Student Parking Appeals Board will review appeals of parking citations issued to UTC students. The members of the UTC Student Parking Appeals Board will be appointed in accordance with Chapter 1720-02-05-.14.

(4) The UTC Student Parking Appeals Board will set a hearing on each student appeal and will provide written notice to the student of the hearing date. Students may attend their appeal hearing and present evidence in support of their appeal. Students are not required to attend their appeal hearing, and a student may request that the Board consider the appeal based on the student's written appeal submissions. If a student fails to appear without advance notice to the Board, the Board will consider the appeal in the student's absence. All decisions of the Board are final and will be binding regardless of whether the student attended the hearing. The Board will provide written notice of its decision to the student.

(5) The UTC Nonstudent Parking Appeals Board will adjudicate the appeals of parking citations issued to persons who are not UTC students. The members of the UTC Nonstudent Parking Appeals Board will be appointed by the UTC Chief Business Officer or his or her designee.

(6) The UTC Nonstudent Parking Appeals Board will set a hearing on each nonstudent appeal and will provide written notice to the appellant of the hearing date. Appellants may attend their appeal hearing and present evidence in support of their appeal. Appellants are not required to attend their appeal hearing, and an appellant may request that the board consider the appeal based on the appellant's written appeal submissions. If an appellant fails to appear without advance notice to the board, the board will consider the appeal in the appellant's absence. All decisions of the board are final and will be binding regardless of whether the appellant attended the hearing. The board will provide written notice of its decision to the appellant.

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

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

Board Member	Aye	No	Abstain	Absent	Signature (if required)
Governor Bill Haslam				X	
Commissioner Candace McQueen				X	
Commissioner Jai Templeton				X	
Dr. Joe DiPietro	X				
Charles C. Anderson, Jr.	X				
Shannon Brown				X	
George E. Cates				X	
Dr. Terrance G. Cooper (non-voting)					
Dr. Susan C. Davidson	X				
Spruell Driver, Jr.	X				
Dr. William E. Evans	X				
John N. Foy	X				
Crawford Gallimore				X	
Vicky B. Gregg	X				
Raja J. Jubran	X				
Mike Krause (non-voting)					
Brad A. Lampley	X				

Andrew P. McBride (non-voting)					
Sharon J. Pryse	X				
Rhedona Rose	X				
David A. Shepard	X				
Rachel M. Smith	X				
John D. Tickle	X				
Julia T. Wells	X				
Charles E. Wharton	X				
Tommy G. Whittaker	X				

I certify that this is an accurate and complete copy of proposed rules, lawfully promulgated and adopted by The University of Tennessee on 11/03/2017, 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: 1/9/18

Signature:

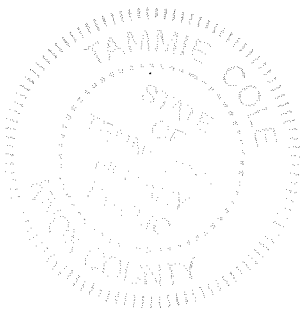
Name of Officer: Matthew Scoggins

Title of Officer: General Counsel

Subscribed and sworn to before me on: January 9, 2018

Notary Public Signature: Tammie Cole

My commission expires on: My Commission Expires March 3, 2019



Agency/Board/Commission: University of Tennessee

Rule Chapter Number(s): 1720-02-03 Parking Rules

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

2/8/2018
Date

Department of State Use Only

Filed with the Department of State on: 2/23/18

Effective on: 5/24/18

Tre Hargett
Secretary of State

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