G.O.C. STAFF RULE ABSTRACT

AGENCY:	Department of State
DIVISION:	Charitable Solicitations, Fantasy Sports, and Gaming
SUBJECT:	Procedures for Operating Charitable Gaming Events / Fee Scale/Accounting Procedures
STATUTORY AUTHORITY:	Public Chapter 584 of the 110th General Assembly signed into law on March 20, 2018.
EFFECTIVE DATES:	March 29, 2018 through September 25, 2018
FISCAL IMPACT:	None
STAFF RULE ABSTRACT:	These emergency rules permit a charitable organization that is authorized by the General Assembly to conduct an annual event to submit the required application fee in two stages. An organization must submit an initial application fee of fifty dollars ($50). Within ninety (90) calendar days following the actual event, the organization must pay the remainder of the filing fee. The remainder of the filing fee is set up as a sliding scale and is based on the gross revenue received at the organization's annual event.

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 emergency rules will not impact local government.

Additional Information Required by Joint Government Operations Committee

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

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

The emergency rules permit a charitable organization that is authorized by the General Assembly to conduct an annual event to submit the required application fee in two stages. An organization must submit an initial application fee of fifty dollars ($50). Within ninety (90) calendar days following the actual event, the organization must pay the remainder of the filing fee. The remainder of the filing fee is set up as a sliding scale and is based on the gross revenue received at the organization's annual event.

(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 584 of the 110th General Assembly signed into law on March 20, 2018.

(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;

Charitable organizations properly registered with the Secretary of State's Division of Charitable Solicitations, Fantasy Sports, and Gaming that are authorized by the General Assembly to conduct an annual event are most directly affected by this rule. Due to the convenience of paying a low initial application fee of fifty dollars ($50) and the ability to accurately calculate the remainder fee due, these organizations should urge adoption of this rule.

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

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;

The emergency rules will neither increase nor decrease local or state government revenues and expenditures.

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

Mona Hart, Director of Charitable Solicitations, Fantasy Sports, and Gaming and Tabatha Blackwell, Assistant Director of Charitable Solicitations, Fantasy Sports, and Gaming

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

Mona Hart, Director of Charitable Solicitations, Fantasy Sports, and Gaming and Tabatha Blackwell, Assistant Director of Charitable Solicitations, Fantasy Sports, and Gaming

(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

Mona Hart, Director of Charitable Solicitations, Fantasy Sports, and Gaming and Tabatha Blackwell, Assistant Director of Charitable Solicitations, Fantasy Sports, and Gaming located at 312 Rosa L. Parks Ave., 8th Floor, Tennessee Tower, Nashville, Tennessee, 37243-1102; 615-741-2555, mona.hart@tn.gov; tabatha.blackwell@tn.gov

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

N/A

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Sequence Number: 03-25-18
Rule ID(s): 6734
File Date: 3/29/18
Last Effective Day: 9/25/18

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:	Department of State
Division:	Charitable Solicitations, Fantasy Sports, and Gaming
Contact Person:	Mona Hart
Address:	312 Rosa L. Parks Ave., 8th Floor, Nashville, Tennessee
Zip:	37243-1102
Phone:	615-741-2555
Email:	mona.hart@tn.gov

Revision Type (check all that apply):

X Amendment
____ New
____ Repeal

Statement of Necessity:

Public Chapter 584 was enacted by the 110th General Assembly, signed into law on March 20,2018 and contains provisions which require amending current rules. Thus, these rules are promulgated as emergency rules in accordance with T.C.A. § 4-5-208(a)(5).

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**
1360-03-03	Procedures for Operating Charitable Gaming Events
Rule Number	**Rule Title**
1360-03-03-.02	Application Sliding Fee Scale
1360-03-03-.11	Accounting Procedures

UB 1360008 75

Amendment to Chapter 1360-03-03
Procedures for Operating Charitable Gaming Events

Rule 1360-03-03-.02 Application Sliding Fee Scale is deleted in its entirety and amended so that as rewritten it shall read:

~~**1360-03-03-.02 APPLICATION SLIDING FEE SCALE.**~~

~~An application to hold an annual gaming event shall be submitted with the appropriate filing fee according to the organization's gross revenue for the annual event based on the following scale:~~

~~Event Gross Revenue~~	~~Filing Fee~~
~~$0.00 to $5,000.00~~	~~$150.00~~
~~$5001.00 to $10,000.00~~	~~$300.00~~
~~$10,001.00 to $20,000.00~~	~~$450.00~~
~~over $20,001.00~~	~~$600.00~~

1360-03-03-.02 APPLICATION INITIAL FEE AND REMAINDER FEE SLIDING SCALE.

An application to hold an annual gaming event shall be submitted with an initial application fee of fifty dollars ($50). An organization authorized by the General Assembly to operate an annual event shall file within ninety (90) calendar days following the actual event date, a financial accounting pursuant to Tenn. Code Ann. § 3-17-106(a)(1) along with the remaining application fee due according to the organization's gross revenue for the annual event based of the following scale:

Event Gross Revenue	**Filing Fee**
$0.00 to $5,000	$100
$5,000.01 to $10,000	$250
$10,000.01 to $20,000	$400
Over $20,000.01	$550

Authority: T.C.A. §§ 3-17-104, 3-17-106, and 3-17-115.

Paragraph (2) of Rule 1360-03-03-.11 Accounting Procedures is amended by deleting the paragraph in its entirety and by substituting instead the following so that, as amended paragraph (2) shall read as follows:

~~(2) Reporting. All organizations must file a financial report with the Division on forms approved by the Division. If the organization grosses more than fifty thousand dollars ($50,000) in revenue, the organization must also complete an audit of the annual event in accordance with T.C.A. § 3-17-106(c).~~

(2) Reporting. All organizations must file a financial accounting with the Division on forms approved by the Division along with the remainder fee due pursuant to Tenn. Code Ann. § 3-17-106(a)(1) and Rule 1360-03-03-.02. If the organization generates over fifty thousand dollars ($50,000) in gross revenue, the organization must also complete an audit of the annual event in accordance with Tenn. Code Ann. § 3-17-106(c).

Authority: T.C.A. §§ 3-17-106, and 3-17-115.

* 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 an emergency rule(s), lawfully promulgated and adopted.

Date: 3/20/18

Signature: Mona Hart

Name of Officer: MONA HART

Title of Officer: DIRECTOR OF CHARITABLE SOLICITATIONS, FANTASY SPORTS, AND GAMING

L. L. PERRIN STATE OF TENNESSEE NOTARY PUBLIC DAVIDSON COUNTY

Subscribed and sworn to before me on: March 20, 2018

Notary Public Signature: LPerrin

My commission expires on: Nov. 8, 2021

Agency/Board/Commission:

Rule Chapter Number(s):

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

Herbert H. Slatery III

Herbert H. Slatery III
Attorney General and Reporter

3/28/2018
Date

Department of State Use Only

Filed with the Department of State on: 3/29/18

Effective for: 180 *days

Effective through: 9/25/18

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

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Tre Hargett
Secretary of State

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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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. Williams

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

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SECRETARY OF STATE
PUBLIC ACTS

G.O.C. STAFF RULE ABSTRACT

AGENCY:	Underground Storage Tanks and Solid Waste Disposal Control Board
SUBJECT:	Hazardous Waste Management
STATUTORY AUTHORITY:	These rules are being promulgated under the authority of Tennessee Code Annotated, Title 68, Chapter 212, and§ 4-5-201 et seq. The federal requirements adopted are compiled in 40 CFR Parts 260 and 261.
EFFECTIVE DATES:	June 19, 2018 through June 30, 2019
FISCAL IMPACT:	None
STAFF RULE ABSTRACT:	On July 7, 2017, the United States Court of Appeals, District of Columbia Circuit, ruled that 40 CFR § 260.43(a)(4) (commonly referred to as Factor 4 of the "legitimacy test") is unreasonable insofar as it applies to all hazardous secondary materials via § 261.2(9) (sham recycling definition) and rejected parts of the Verified Recycler Exclusion. The Underground Storage Tanks and Solid Waste Disposal Control Board (Board) adopted equivalent rules on December 2, 2015. These rules were filed with the Secretary of State on May 9, 2017, with an original effective date of August 7, 2017. In light of the Court's opinion and order the Joint Government Operations Committee stayed these rules for 75 days. The Board voted to stay these rules for an additional 75 days resulting in a new effective date of January 4, 2018. Prior to January 4, 2018, pursuant to Tennessee Code Annotated, § 4-5-208(a)(2), the Board adopted and filed with the Secretary of State an emergency rule that delayed the effective date of the rules believed to be most impacted by the Court's July 7, 2017, opinion and order. The Board is amending the rules with the delayed effective date through this rulemaking, so these amended rules will conform to the Court's July 7, 2017, opinion and order by

deleting unnecessary definitions and processes and conforming exclusion criteria to the court's opinion and order.

Public Hearing Comments

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

Comment: Two commenters were very complimentary of the Department's efforts to work with the Board and all involved to find a solution to these rules complicated by the federal court's ruling.

Response: The Board appreciates the recognition of the efforts by all involved to move these important amendments forward.

Comment: A commenter suggested that the term "EPA" as used in the last sentence of section (1)(d)1(xxiv)(V)II B be changed to "the appropriate authorities" to be consistent with its usage in other sentences in the section and to avoid confusion.

Response: The Board agrees and has made the substitution in the cited section.

Regulatory Flexibility Addendum

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

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

The Board estimates that 546 businesses generating hazardous waste have the greatest potential to recycle hazardous waste or hazardous secondary material in compliance with the variances, exclusions, or exemptions provided by the rules. The Board estimates that about 173 of those businesses will attempt to benefit from the available variances, exclusions, and exemptions. Approximately 60 of those 173 businesses are believed to be small businesses. The variances, exclusions, and exemptions are not mandatory and do not impose additional costs on 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.

These amendments do not mandate any additional reporting, recordkeeping or administrative costs.

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

These amendments make available an additional exemption that could result in significant savings for qualified generators and recyclers and conserve valuable resources.

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

These amendments do not mandate any additional requirements.

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

These amendments will make Tennessee's program comparable to the federal program. Relative to states that do not adopt these recycling exemptions, those states will be more stringent than necessary to protect public health and the environment.

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

These amendments do not mandate any additional requirements on small businesses.

Impact on Local Governments

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

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

Additional Information Required by Joint Government Operations Committee

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

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

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

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

These rules are being promulgated under the authority of Tenn. Code Ann. Title 68, Chapter 212, and § 4-5-201 et seq. The federal requirements adopted are compiled in 40 CFR Parts 260 and 261.

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

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

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

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

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

There will be no fiscal impact resulting from this rulemaking.

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

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

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

Emily Urban Assistant General Counsel Office of General Counsel

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

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

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

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

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

For Department of State Use Only

Sequence Number: 03-18-18
Rule ID(s): 6723
File Date: 3/21/18
Effective Date: 6/19/18

Rulemaking Hearing Rule(s) Filing Form

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

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

Agency/Board/Commission:	Underground Storage Tanks and Solid Waste Disposal Control Board
Division:	Solid Waste Management
Contact Person:	Jackie Okoreeh-Baah
Address:	William R. Snodgrass TN Tower 312 Rosa L. Parks Avenue, 14th Floor Nashville, Tennessee
Zip:	37243
Phone:	(615) 532-0825
Email:	Jackie.Okoreeh-Baah@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**
0400-12-01	Hazardous Waste Management
Rule Number	**Rule Title**
0400-12-01-.01	Hazardous Waste Management System: General
0400-12-01-.02	Identification and Listing of Hazardous Waste

Place substance of rules and other info here. Please be sure to include a detailed explanation of the changes being made to the listed rule(s). Statutory authority must be given for each rule change. For information on formatting rules go to http://sos-tn-gov-files.s3.amazonaws.com/forms/Rulemaking%20Guidelines_September2016.pdf.

Chapter 0400-12-01
Hazardous Waste Management

Amendments

Subparagraph (a) of paragraph (2) of Rule 0400-12-01-.01 Hazardous Waste Management System: General is amended by deleting the definitions "hazardous secondary material acceptance plan," "verified intermediate facility," and "verified reclamation facility." The remaining definitions shall remain in alphabetical order.

~~"Hazardous secondary material acceptance plan" means the plan used by the verified reclaimer or the verified intermediate facility that identifies the physical and chemical data necessary to determine if a hazardous secondary material is being legitimately reclaimed.~~

~~"Verified intermediate facility" means an intermediate facility located in the United States that:~~

~~1. If located in the state of Tennessee, has been issued a Certificate to Operate by the Commissioner in accordance with part (4)(b)2 of this rule; and~~

~~2. If not located in the state of Tennessee, has been verified by EPA, in accordance with 40 CFR 260.30, 260.31(d) and 260.33, or verified by an EPA authorized state.~~

~~"Verified reclamation facility" means a reclamation facility located in the United States that:~~

~~1. If located in the state of Tennessee, has been issued a Certificate to Operate by the Commissioner in accordance with part (4)(b)2 of this rule; and~~

~~2. If not located in the state of Tennessee, has been verified by EPA, in accordance with 40 CFR 260.30, 260.31(d) and 260.33, or verified by an EPA authorized state.~~

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

Paragraph (4) of Rule 0400-12-01-.01 Hazardous Waste Management System: General is amended by deleting it in its entirety and substituting instead the following:

(4) Variances~~, Certificates to Operate,~~ and Procedures

(a) Requirements for General Variances

1. Any person may petition the Commissioner for a variance from any provision in these rules. This subparagraph sets forth general requirements which apply to all such petitions.

2. Each petition must be submitted to the Commissioner by certified mail and must include:

(i) The petitioner's name and address;

(ii) A statement of the petitioner's interest in the proposed action;

(iii) A description of the proposed action, including (where appropriate) suggested language; and

(iv) A written description of the need and justification for the proposed action, including any supporting tests, studies, or other information.

(Note: See paragraph (9) of Rule 0400-12-01-.08 for the appropriate fee to be submitted along with the petition for a general variance.)

3. The Commissioner will make a tentative decision to grant or deny a petition and will notify the petitioner of this tentative decision. If the Commissioner makes a tentative decision to grant the petition, the Commissioner will give public notice of such tentative decision for written public comment. The public notice shall be published by the petitioner as required by the Commissioner.

4. Upon the written request of any interested person, the Commissioner may, at his discretion, hold an informal public hearing to consider oral comments on the tentative decision. A person requesting a hearing must state the issues to be raised and explain why written comments would not suffice to communicate the person's views. The Commissioner may in any case decide on his own motion to hold an informal public hearing. Notice of the public hearing shall be published by the petitioner as required by the Commissioner.

5. After evaluating all public comments the Commissioner will make a final decision to either grant or deny the petition, and will give a public notice of such decision. The petitioner shall publish this public notice as required by the Commissioner.

6. Any variance granted pursuant to this subparagraph may be rescinded if it is discovered and determined by the Commissioner that:

   (i) The variance has resulted or may result in a significant hazard to public health or the environment;

   (ii) The factual basis for which the variance was granted has significantly changed;

   (iii) The regulations, as amended, no longer support the variance;

   (iv) The conditions issued by the Commissioner for the variance's approval have been violated; or

   (v) The variance threatens program authorization with EPA.

7. Any variance granted pursuant to this subparagraph shall remain valid as specified by the Commissioner, not to exceed five (5) years, or until rescinded in accordance with part 6 of this subparagraph.

8. Any person with a valid variance granted in accordance with this subparagraph shall submit to the Commissioner:

   (i) No later than March 1 of each year, a certification that the factual basis for which the variance was granted remains unchanged, the regulations, as amended, continue to support it and the conditions for its approval have not been violated; or

   (ii) Within thirty (30) days of its discovery, a detailed description of any change in the factual basis for which the variance was granted, the impact any amended regulation has on the variance, or any noncompliance with a condition for its approval.

(b) Non-waste determinations~~,~~ and variances from classification as a solid waste ~~and Certificates to Operate for a hazardous secondary material reclamation facility or intermediate facility~~ [40 CFR 260.30]

~~1.~~In accordance with the standards and criteria in subparagraphs (c) and (e) of this paragraph and the procedures in subparagraph (g) of this paragraph, the Commissioner may determine on a case-by-case basis that the following recycled materials are not solid wastes:

~~(i)~~1. Materials that are accumulated speculatively without sufficient amounts being recycled (as defined in Rule 0400-12-01-.02(1)(a)3(viii));

~~(ii)~~2. Materials that are reclaimed and then reused within the original production process in which they were generated;

~~(iii)~~3. Materials that have been reclaimed but must be reclaimed further before the materials are completely recovered;

~~(iv)~~4. Hazardous secondary materials that are reclaimed in a continuous industrial process; and

~~(v)~~5. Hazardous secondary materials that are indistinguishable in all relevant aspects from a product or intermediate.

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

(c) Standards and Criteria for Variances from Classification as a Solid Waste [40 CFR 260.31]

1. The Commissioner may grant requests for a variance from classifying as a solid waste those materials that are accumulated speculatively without sufficient amounts being recycled if the applicant demonstrates that sufficient amounts of the material will be recycled or transferred for recycling in the following year. If a variance is granted, it is valid only for the following year, but can be renewed, on an annual basis, by filing a new application. The Commissioner's decision will be based on the following criteria:

   (i) The manner in which the material is expected to be recycled, when the material is expected to be recycled, and whether this expected disposition is likely to occur (for example, because of past practice, market factors, the nature of the material, or contractual arrangements for recycling);

   (ii) The reason that the applicant has accumulated the material for one or more years without recycling 75 percent of the volume accumulated at the beginning of the year;

   (iii) The quantity of material already accumulated and the quantity expected to be generated and accumulated before the material is recycled;

   (iv) The extent to which the material is handled to minimize loss; and

   (v) Other relevant factors.

2. The Commissioner may grant requests for a variance from classifying as a solid waste those materials that are reclaimed and then reused as feedstock within the original production process in which the materials were generated if the reclamation operation is an essential part of the production process. This determination will be based on a description of the reclamation operation and the following criteria:

   (i) How economically viable the production process would be if it were to use virgin materials, rather than reclaimed materials;

   (ii) The extent to which the material is handled before reclamation to minimize loss;

(iii) The time periods between generating the material and its reclamation, and between reclamation and return to the original primary production process;

(iv) The location of the reclamation operation in relation to the production process;

(v) Whether the reclaimed material is used for the purpose for which it was originally produced when it is returned to the original process, and whether it is returned to the process in substantially its original form;

(vi) Whether the person who generates the material also reclaims it; and

(vii) Other relevant factors.

3. The Commissioner may grant requests for a variance from classifying as a solid waste those hazardous secondary materials that have been partially reclaimed, but must be reclaimed further before recovery is completed, if the partial reclamation has produced a commodity-like material. A determination that a partially-reclaimed material for which the variance is sought is commodity-like will be based on whether the hazardous secondary material is legitimately recycled as specified in subparagraph (5)(d) of this rule and on whether all of the following decision criteria are satisfied:

(i) Whether the degree of partial reclamation the material has undergone is substantial as demonstrated by using a partial reclamation process other than the process that generated the hazardous waste;

(ii) Whether the partially-reclaimed material has sufficient economic value that it will be purchased for further reclamation;

(iii) Whether the partially-reclaimed material is a viable substitute for a product or intermediate produced from virgin or raw materials which is used in subsequent production steps;

(iv) Whether there is a market for the partially-reclaimed material as demonstrated by known customer(s) who are further reclaiming the material (e.g., records of sales and/or contracts and evidence of subsequent use, such as bills of lading); and

(v) Whether the partially-reclaimed material is handled to minimize loss.

(d) Variance to be classified as a boiler [40 CFR 260.32]

In accordance with the standards and criteria in subparagraph (2)(a) of this rule (definition of "boiler") and the procedures in subparagraph (g) of this paragraph, the Commissioner may determine on a case-by-case basis that certain enclosed devices using controlled flame combustion are boilers, even though they do not otherwise meet the definition of boiler contained in subparagraph (2)(a) of this rule, after considering the following criteria:

1. The extent to which the unit has provisions for recovering and exporting thermal energy in the form of steam, heated fluids, or heated gases; and

2. The extent to which the combustion chamber and energy recovery equipment are of integral design; and

3. The efficiency of energy recovery, calculated in terms of the recovered energy compared with the thermal value of the fuel; and

4. The extent to which exported energy is utilized; and

5. The extent to which the device is in common and customary use as a "boiler" functioning primarily to produce steam, heated fluids, or heated gases; and

6. Other factors, as appropriate.

(e) Standards and criteria for non-waste determinations [40 CFR 260.34]

1. An applicant may apply to the Commissioner for a formal determination that a hazardous secondary material is not discarded and therefore not a solid waste. The determinations will be based on the criteria contained in parts 2 and 3 of this subparagraph, as applicable. If an application is denied, the hazardous secondary material might still be eligible for a solid waste variance or exclusion (for example, one of the solid waste variances under subparagraph (c) of this paragraph).

2. The Commissioner may grant a non-waste determination for hazardous secondary material which is reclaimed in a continuous industrial process if the applicant demonstrates that the hazardous secondary material is a part of the production process and is not discarded. The determination will be based on whether the hazardous secondary material is legitimately recycled as specified in subparagraph (5)(d) of this rule and on the following criteria:

   (i) The extent that the management of the hazardous secondary material is part of the continuous primary production process and is not waste treatment;

   (ii) Whether the capacity of the production process would use the hazardous secondary material in a reasonable time frame and ensure that the hazardous secondary material will not be abandoned (for example, based on past practices, market factors, the nature of the hazardous secondary material, or any contractual arrangements);

   (iii) Whether the hazardous constituents in the hazardous secondary material are reclaimed rather than released to the air, water or land at significantly higher levels from either a statistical or from a health and environmental risk perspective than would otherwise be released by the production process; and

   (iv) Other relevant factors that demonstrate the hazardous secondary material is not discarded, including why the hazardous secondary material cannot meet, or should not have to meet, the conditions of an exclusion under subparagraph (1)(b) or (d) of Rule 0400-12-01-.02.

3. The Commissioner may grant a non-waste determination for hazardous secondary material which is indistinguishable in all relevant aspects from a product or intermediate if the applicant demonstrates that the hazardous secondary material is comparable to a product or intermediate and is not discarded. The determination will be based on whether the hazardous secondary material is legitimately recycled as specified in subparagraph (5)(d) of this rule and on the following criteria:

   (i) Whether market participants treat the hazardous secondary material as a product or intermediate rather than a waste (for example, based on the current positive value of the hazardous secondary material, stability of demand, or any contractual arrangements);

   (ii) Whether the chemical and physical identity of the hazardous secondary material is comparable to commercial products or intermediates;

   (iii) Whether the capacity of the market would use the hazardous secondary material in a reasonable time frame and ensure that the hazardous secondary material will not be abandoned (for example, based on past practices, market factors, the nature of the hazardous secondary material, or any contractual arrangements);

   (iv) Whether the hazardous constituents in the hazardous secondary material are reclaimed rather than released to the air, water or land at significantly higher

levels from either a statistical or from a health and environmental risk perspective than would otherwise be released by the production process; and

(v) Other relevant factors that demonstrate the hazardous secondary material is not discarded, including why the hazardous secondary material cannot meet, or should not have to meet, the conditions of an exclusion under subparagraph (1)(b) or (d) of Rule 0400-12-01-.02.

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

~~1. The Commissioner's decision will be based on the following criteria:~~

~~(i) The reclamation facility or intermediate facility must demonstrate that the reclamation process for the hazardous secondary materials is legitimate pursuant to subparagraph (5)(d) of this rule and its hazardous secondary material acceptance plan;~~

~~(ii) The reclamation facility or intermediate facility must satisfy the financial assurance condition in subitem (1)(d)1(xxiv)(VI)VI of Rule 0400-12-01-.02;~~

~~(iii) The reclamation facility or intermediate facility must not be subject to a formal enforcement action in the previous three years and not be classified as a significant non-complier under Rule Chapter 0400-12-01 or RCRA Subtitle C, or must provide credible evidence that the facility will manage the hazardous secondary materials properly. Credible evidence may include a demonstration that the facility has taken remedial steps to address the violations and prevent future violations, or that the violations are not relevant to the proper management of the hazardous secondary materials;~~

~~(iv) The intermediate or reclamation facility must have the equipment and trained personnel needed to safely manage the hazardous secondary material and must meet emergency preparedness and response requirements under paragraph (13) of Rule 0400-12-01-.02;~~

~~(v) If residuals are generated from the reclamation of the excluded hazardous secondary materials, the reclamation facility must have the permits required (if any) to manage the residuals, have a contract with an appropriately permitted facility to dispose of the residuals or present credible evidence that the residuals will be managed in a manner that is protective of human health and the environment; and~~

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

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

~~(i) Prior to applying for a Certificate to Operate, the petitioner must hold at least one meeting with the public in order to solicit questions from the community and~~

~~inform the community of proposed hazardous secondary material management activities.~~

~~(I) At the meeting, the petitioner must:~~

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

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

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

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

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

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

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

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

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

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

~~(IV) The public notice required by item (III) of this subpart must contain language approved by the Commissioner and published in a manner specified by the Commissioner.~~

~~(ii) The petitioner must describe how the facility is designed, constructed, operated and maintained to ensure protection of human health and the environment. Protection of human health and the environment includes, but is not limited to:~~

~~(I) Prevention of any releases that may have adverse effects on human health or the environment due to migration of hazardous constituents in the ground water or subsurface environment, considering:~~

~~I. The volume and physical and chemical characteristics of the hazardous secondary material to be managed at the facility, including its potential for migration through soil, liners, or other containing structures;~~

~~II. The hydrologic and geologic characteristics of the management units at the facility and the surrounding area;~~

~~III. The existing quality of ground water, including other sources of contamination and their cumulative impact on the ground water;~~

~~IV. The quantity and direction of ground-water flow;~~

~~V. The proximity to and withdrawal rates of current and potential ground-water users;~~

~~VI. The patterns of land use in the region;~~

~~VII. The potential for deposition or migration of hazardous constituents into subsurface physical structures, and into the root zone of food-chain crops and other vegetation;~~

~~VIII. The potential for health risks caused by human exposure to hazardous constituents; and~~

~~IX. The potential for damage to domestic animals, wildlife, crops, vegetation, and physical structures caused by exposure to hazardous constituents.~~

~~(II) Prevention of any releases that may have adverse effects on human health or the environment due to migration of hazardous constituents in surface water, or wetlands, or on the soil surface considering:~~

~~I. The volume and physical and chemical characteristics of the hazardous secondary material to be managed at the facility;~~

~~II. The effectiveness and reliability of containing, confining, and collecting systems and structures in preventing migration;~~

~~III. The hydrologic characteristics of the facility and the surrounding area, including the topography of the land around the facility;~~

~~IV. The patterns of precipitation in the region;~~

~~V. The quantity, quality, and direction of ground-water flow;~~

~~VI. The proximity of the unit to surface waters;~~

~~VII. The current and potential uses of nearby surface waters and any water quality standards established for those surface waters;~~

~~VIII. The existing quality of surface waters and surface soils, including other sources of contamination and their cumulative impact on surface waters and surface soils;~~

~~IX. The patterns of land use in the region;~~

~~X. The potential for health risks caused by human exposure to hazardous constituents; and~~

~~XI. The potential for damage to domestic animals, wildlife, crops, vegetation, and physical structures caused by exposure to hazardous constituents.~~

~~(III) Prevention of any releases that may have adverse effects on human health or the environment due to migration of hazardous constituents in the air, considering:~~

~~I. The volume and physical and chemical characteristics of the hazardous secondary materials to be managed at the facility, including its potential for the emission and dispersal of gases, aerosols and particulates;~~

~~II. The effectiveness and reliability of systems and structures to reduce or prevent emissions of hazardous constituents to the air;~~

~~III. The operating characteristics of the units managing hazardous secondary materials;~~

~~IV. The atmospheric, meteorologic, and topographic characteristics of the units to be managing hazardous secondary materials at the facility and the surrounding area;~~

~~V. The existing quality of the air, including other sources of contamination and their cumulative impact on the air;~~

~~VI. The potential for health risks caused by human exposure to hazardous constituents; and~~

~~VII. The potential for damage to domestic animals, wildlife, crops, vegetation, and physical structures caused by exposure to hazardous constituents.~~

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

The Commissioner will use the following procedures in evaluating applications for variances from classification as a waste, ~~applications for obtaining a Certificate to Operate for a hazardous secondary material reclamation facility or intermediate facility,~~ applications to classify particular enclosed controlled flame combustion devices as boilers, and applications for non-waste determinations.

1. The applicant must apply to the Commissioner for the variance~~, the Certificate to Operate~~ or non-waste determination. The application must address the relevant criteria contained in subparagraph (c), (d), or (e) ~~or (f)~~ of this paragraph, as applicable.

2. The Commissioner will evaluate the application and make a tentative decision to grant or deny the application and shall notify the petitioner of this tentative decision. If the Commissioner makes a tentative decision to grant the petition, the Commissioner shall give public notice of such tentative decision for written public comment. The public notice shall be provided by the applicant as prepared and required by the Commissioner in a newspaper advertisement or radio broadcast in the locality where the recycler is located. The applicant shall provide proof of the completion of all notice requirements to the Commissioner within ten days following conclusion of the public notice procedures. The Commissioner will accept comment on the tentative decision for thirty (30) days, and may also hold a public hearing upon request or at his discretion. Notice of the public hearing shall be given by the applicant and prepared as required by the Commissioner. The Commissioner will issue a final decision after receipt of comments and after the hearing (if any).

3. ~~(i) Except for the change described in subpart (ii) of this part. in~~ In the event of a change in circumstances that affects how a hazardous secondary material meets the relevant criteria contained in subparagraph (c), (d), or (e) ~~or (f)~~ of this paragraph upon which a variance~~, Certificate to Operate~~ or non-waste determination has been based, the applicant must send a description of the change in circumstances to the Commissioner. The Commissioner may issue a determination that the hazardous secondary material continues to meet the relevant criteria of the variance~~, Certificate to Operate,~~ or non-waste determination or may require the facility to re-apply for the variance~~, Certificate to Operate~~ or non-waste determination.

~~(ii) Any change made to the hazardous secondary material acceptance plan required under item (4)(d)1(xxiv)(VI)VIII of Rule 0400-12-01-.02 must be approved and the Certificate to Operate modified by the Commissioner after considering the applicable criteria of subparagraph (f) of this paragraph and following the procedures of this subparagraph prior to the change being implemented.~~

4. Variances~~, Certificates to Operate~~ and non-waste determinations shall be effective for a fixed term not to exceed ten (10) years. No later than six (6) months prior to the end of this term, facilities must re-apply for a variance, ~~Certificate to Operate,~~ or non-waste determination. If a facility re-applies for a variance~~, Certificate to Operate,~~ or non-waste determination within six (6) months, the facility may continue to operate under an expired variance~~, Certificate to Operate~~ or non-waste determination until receiving a decision on the facility's re-application from the Commissioner.

5. Facilities receiving a variance~~, Certificate to Operate~~ or non-waste determination must provide notification as required by subparagraph (5)(c) of this rule.

~~(h) Causes for Termination of the Certificate to Operate~~

~~This subparagraph shall not be effective until July 2, 2018.~~

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

~~2. The owner or operator's failure in the application or during the issuance process to disclose fully all relevant facts, or the owner or operator's misrepresentation of any relevant facts at any time;~~

~~3. A determination by the Commissioner that continuing the authorized activity endangers human health or the environment;~~

~~4. Failure of the owner or operator to timely pay the annual maintenance fees in accordance with Rule 0400-12-01-.08; or~~

~~5. At the request of the owner or operator, provided all hazardous secondary materials and residues have been removed to the satisfaction of the Commissioner.~~

~~(i) Duty to Comply with the Certificate to Operate~~

~~This subparagraph shall not be effective until July 2, 2018.~~

~~1. The owner or operator of the hazardous secondary material reclamation or intermediate facility shall comply with the conditions of the Certificate to Operate as determined necessary by the Commissioner.~~

~~2. Failure to comply with the conditions of the Certificate to Operate issued by the Commissioner shall subject the owner or operator of the hazardous secondary material reclamation or intermediate facility to an enforcement action, including, if applicable, operating a hazardous waste treatment, storage or disposal facility without a permit.~~

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

Subparagraph (c) of paragraph (5) of Rule 0400-12-01-.01 Hazardous Waste Management System: General is amended by deleting it in its entirety and substituting instead the following:

(c) Notification requirement for hazardous secondary materials. [40 CFR 260.42]

1. Facilities managing hazardous secondary materials under subparagraph (4)(b) of this rule, or subpart (1)(d)1(xxiii), (xxiv) or (xxvii) of Rule 0400-12-01-.02 must send a notification prior to operating under the regulatory provision and by March 1 of each even-numbered year thereafter to the Commissioner using forms provided by the department that include the following information:

(i) The name, address, and EPA ID number (if applicable) of the facility;

(ii) The name and telephone number of a contact person;

(iii) The NAICS code of the facility;

(iv) The regulation under which the hazardous secondary materials will be managed;

(v) For reclaimers and intermediate facilities managing hazardous secondary materials in accordance with subpart (1)(d)1(xxiv) of Rule 0400-12-01-.02, whether the reclaimer or intermediate facility has financial assurance.

~~(v)~~(vi) When the facility began or expects to begin managing the hazardous secondary materials in accordance with the regulation;

~~(vi)~~(vii) A list of hazardous secondary materials that will be managed according to the regulation (reported as hazardous waste codes that would apply if the hazardous secondary materials were managed as hazardous wastes);

~~(vii)~~(viii) For each hazardous secondary material, whether the hazardous secondary material, or any portion thereof, will be managed in a land-based unit;

~~(viii)~~(ix) The quantity of each hazardous secondary material to be managed annually; and

~~(ix)~~(x) The certification (included in the forms provided by the department) signed and dated by an authorized representative of the facility.

2. If a facility managing hazardous secondary materials has submitted a notification, but then subsequently stops managing hazardous secondary materials in accordance with subparagraph (4)(b) of this rule, or subpart (1)(d)1(xxiii), (xxiv) or (xxvii) of Rule 0400-12-01-.02 the facility must notify the Commissioner within thirty (30) days using forms provided by the department. For purposes of this part, a facility has stopped managing hazardous secondary materials if the facility no longer generates, manages and/or reclaims hazardous secondary materials under subparagraph (4)(b) of this rule, or subpart (1)(d)1(xxiii), (xxiv) or (xxvii) of Rule 0400-12-01-.02 and does not expect to manage any amount of hazardous secondary materials for at least one (1) year.

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

Subparagraph (d) of paragraph (5) of Rule 0400-12-01-.01 Hazardous Waste Management System: General is amended by deleting it in its entirety and substituting instead the following:

(d) Legitimate recycling of hazardous secondary materials [40 CFR 260.43]

1. Recycling of hazardous secondary materials for the purpose of the exclusions or exemptions from the hazardous waste regulations must be legitimate. Hazardous

secondary material that is not legitimately recycled is discarded material and is a solid waste. In determining if their recycling is legitimate, all persons must address ~~all~~ the requirements of ~~this~~ part 2 of this subparagraph and persons regulated under part (4)(c)3 and subparagraph (4)(e) of this rule and subparts (1)(d)1(xxiii) and (xxiv) of rule 0400-12-01-.02 must address the requirements of part 3 of this subparagraph.

2. Requirements that must be addressed by all persons recycling hazardous secondary materials:

(i) Legitimate recycling must involve a hazardous secondary material that provides a useful contribution to the recycling process or to a product or intermediate of the recycling process. The hazardous secondary material provides a useful contribution if it:

(I) Contributes valuable ingredients to a product or intermediate; or

(II) Replaces a catalyst or carrier in the recycling process; or

(III) Is the source of a valuable constituent recovered in the recycling process; or

(IV) Is recovered or regenerated by the recycling process; or

(V) Is used as an effective substitute for a commercial product.

(ii) The recycling process must produce a valuable product or intermediate. The product or intermediate is valuable if it is:

(I) Sold to a third party; or

(II) Used by the recycler or the generator as an effective substitute for a commercial product or as an ingredient or intermediate in an industrial process.

(iii) The generator and the recycler must manage the hazardous secondary material as a valuable commodity when it is under their control. Where there is an analogous raw material, the hazardous secondary material must be managed, at a minimum, in a manner consistent with the management of the raw material or in an equally protective manner. Where there is no analogous raw material, the hazardous secondary material must be contained. Hazardous secondary materials that are released to the environment and are not recovered immediately are discarded.

3. Requirements that must be addressed by persons regulated under part (4)(c)3 and subparagraph (4)(e) of this rule and subparts (1)(d)1(xxiii) and (xxiv) of Rule 0400-12-01-.02.

~~(iv)~~(i) ~~This subpart shall not be effective until July 2, 2018, in so far as it is applied through part (1)(b)7 of Rule 0400-12-01-.02.~~ The product of the recycling process must be comparable to a legitimate product or intermediate:

(I) Where there is an analogous product or intermediate, the product of the recycling process is comparable to a legitimate product or intermediate if:

I. The product of the recycling process does not exhibit a hazardous characteristic (as defined in paragraph (3) of Rule 0400-12-01-.02) that analogous products do not exhibit, and

II. The concentrations of any hazardous constituents found in appendix VIII of paragraph (30) of Rule 0400-12-01-.02 that are

in the product or intermediate are at levels that are comparable to or lower than those found in analogous products or at levels that meet widely-recognized commodity standards and specifications, in the case where the commodity standards and specifications include levels that specifically address those hazardous constituents.

(II) Where there is no analogous product, the product of the recycling process is comparable to a legitimate product or intermediate if:

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

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

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

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

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

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

(ii) Reserved.

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

~~a person to demonstrate that the recycling in question is legitimate in accordance with this subparagraph.~~)

~~2. Reserved~~

~~3. Reserved~~

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

Subpart (xxiv) of part 1 of subparagraph (d) of paragraph (1) of Rule 0400-12-01-.02 Identification and Listing of Hazardous Waste is amended by deleting it in its entirety and substituting instead the following:

(xxiv) ~~This subpart shall not be effective until July 2, 2018.~~ Hazardous secondary material that is generated and then transferred to a ~~verified reclamation facility, as defined in subparagraph (2)(a) of Rule 0400-12-01-.01,~~ person for the purpose of reclamation is not a solid waste, provided that:

(I) The material is not speculatively accumulated, as defined in subpart (a)3(viii) of this paragraph;

(II) The material is not handled by any person or facility other than the hazardous secondary material generator, the transporter, an intermediate facility or a reclaimer, and, while in transport, is not stored for more than ten (10) days at a transfer facility, as defined in subparagraph (2)(a) of Rule 0400-12-01-.01, and is packaged according to applicable Department of Transportation regulations at 49 CFR parts 173, 178, and 179 while in transport;

(III) The material is not otherwise subject to material-specific management conditions under part 1 of this subparagraph when reclaimed, and it is not a spent lead-acid battery (see subparagraph (7)(a) of Rule 0400-12-01-.09 and subparagraph (1)(d) of Rule 0400-12-01-.12), and it does not meet the listing description for K171 or K172 in subparagraph (4)(c) of this rule;

(IV) The reclamation of the material is legitimate, as specified under subparagraph (5)(d) of Rule 0400-12-01-.01;

(V) The hazardous secondary material generator satisfies all of the following conditions:

I. The material must be contained as defined in subparagraph (2)(a) of Rule 0400-12-01-.01. A hazardous secondary material released to the environment is discarded and a solid waste unless it is immediately recovered for the purpose of recycling. Hazardous secondary material managed in a unit with leaks or other continuing releases is discarded and a solid waste.

II. ~~The hazardous secondary material generator must arrange for transport of hazardous secondary materials to a verified~~ Prior to arranging for transport of hazardous secondary materials to a reclamation facility (or facilities)~~, as defined in subparagraph (2)(a) of Rule 0400-12-01-.01, in the United States or to a reclamation facility~~ where the management of the hazardous secondary materials is not addressed under a Part B permit issued under Rule 0400-12-01-.07 or interim status standards under Rule 0400-12-01-.05 or, if not in Tennessee, not addressed under a RCRA Part B permit or interim status standards in another state, the hazardous secondary material generator must make reasonable efforts to ensure that each

reclaimer intends to properly and legitimately reclaim the hazardous secondary material and not discard it, and that each reclaimer will manage the hazardous secondary material in a manner that is protective of human health and the environment. If the hazardous secondary material will be passing through an intermediate facility~~, the intermediate facility must be a verified intermediate facility, as defined in subparagraph (2)(a) of Rule 0400-12-01-.01, or~~ where the management of the hazardous secondary materials ~~at that facility must be~~ is not addressed under a Part B permit issued under Rule 0400-12-01-.07 or interim status standards under Rule 0400-12-01-.05, or, if not in Tennessee, not addressed under a RCRA Part B permit or interim status standards in another state, ~~and~~ the hazardous secondary material generator must make contractual arrangements with the intermediate facility to ensure that the hazardous secondary material is sent to the reclamation facility identified by the hazardous secondary material generator, and the hazardous secondary material generator must perform reasonable efforts to ensure that the intermediate facility will manage the hazardous secondary material in a manner that is protective of human health and the environment. Reasonable efforts must be repeated at a minimum of every three (3) years for the hazardous secondary material generator to claim the exclusion and to send the hazardous secondary materials to each reclaimer and any intermediate facility. In making these reasonable efforts, the generator may use any credible evidence available, including information gathered by the hazardous secondary material generator, provided by the reclaimer or intermediate facility, and/or provided by a third party. The hazardous secondary material generator must affirmatively answer all of the following questions for each reclamation facility and any intermediate facility:

A. Does the available information indicate that the reclamation process is legitimate pursuant to subparagraph (5)(d) of Rule 0400-12-01-.01? In answering this question, the hazardous secondary material generator can rely on their existing knowledge of the physical and chemical properties of the hazardous secondary material, as well as information from other sources (e.g., the reclamation facility, audit reports, etc.) about the reclamation process. (By responding to this question, the hazardous secondary material generator has also satisfied its requirement in subparagraph (5)(d) of Rule 0400-12-01-.01 to be able to demonstrate that the recycling is legitimate).

B. Does the publicly available information indicate that the reclamation facility and any intermediate facility that is used by the hazardous secondary material generator notified the appropriate authorities of hazardous secondary materials reclamation activities pursuant to subparagraph (5)(c) of Rule 0400-12-01-.01 and have they notified the appropriate authorities that the financial assurance condition is satisfied per item (VI)VI of this subpart? In answering these questions, the hazardous secondary material generator can rely on the available information documenting the reclamation facility's and any intermediate facility's compliance with the notification requirements per subparagraph (5)(c) of Rule

0400-12-01-.01, including the requirement in subpart (5)(c)1(v) of Rule 0400-12-01-.01 to notify the appropriate authorities whether the reclaimer or intermediate facility has financial assurance.

C. Does publicly available information indicate that the reclamation facility or any intermediate facility that is used by the hazardous secondary material generator has not had any formal enforcement actions taken against the facility in the previous three (3) years for violations of the RCRA hazardous waste regulations and has not been classified as a significant non-complier with RCRA Subtitle C? In answering this question, the hazardous secondary material generator can rely on the publicly available information from EPA or the Department. If the reclamation facility or any intermediate facility that is used by the hazardous secondary material generator has had a formal enforcement action taken against the facility in the previous three (3) years for violations of the RCRA hazardous waste regulations and has been classified as a significant non-complier with RCRA Subtitle C, does the hazardous secondary material generator have credible evidence that the facilities will manage the hazardous secondary materials properly? In answering this question, the hazardous secondary material generator can obtain additional information from EPA, the Department, or the facility itself that the facility has addressed the violations, taken remedial steps to address the violations and prevent future violations, or that the violations are not relevant to the proper management of the hazardous secondary materials.

D. Does the available information indicate that the reclamation facility and any intermediate facility that is used by the hazardous secondary material generator have the equipment and trained personnel to safely recycle the hazardous secondary material? In answering this question, the generator may rely on a description by the reclamation facility or by an independent third party of the equipment and trained personnel to be used to recycle the generator's hazardous secondary material.

E. If residuals are generated from the reclamation of the excluded hazardous secondary materials, does the reclamation facility have the permits required (if any) to manage the residuals? If not, does the reclamation facility have a contract with an appropriately permitted facility to dispose of the residuals? If not, does the hazardous secondary material generator have credible evidence that the residuals will be managed in a manner that is protective of human health and the environment? In answering these questions, the hazardous secondary material generator can rely on publicly available information from EPA or the Department, or information provided by the facility itself.

III. The hazardous secondary material generator must maintain for a minimum of three (3) years documentation and certification that reasonable efforts were made for each reclamation facility and, if

applicable, intermediate facility where the management of the hazardous secondary materials is not addressed under a Part B permit issued under Rule 0400-12-01-.07 or interim status standards under Rule 0400-12-01-.05, or, if not in Tennessee, not addressed under a RCRA Part B permit or interim status standards in another state prior to transferring hazardous secondary material. Documentation and certification must be made available upon request by the Commissioner within seventy two (72) hours, or within a longer period of time as specified by the Commissioner. The certification statement must:

A. Include the printed name and official title of an authorized representative of the hazardous secondary material generator company, the authorized representative's signature, and the date signed;

B. Incorporate the following language: "I hereby certify in good faith and to the best of my knowledge that, prior to arranging for transport of excluded hazardous secondary materials to [insert name(s) of reclamation facility and any intermediate facility], reasonable efforts were made in accordance with subitem (1)(d)1(xxiv)(V)II of Rule 0400-12-01-.02 to ensure that the hazardous secondary materials would be recycled legitimately, and otherwise managed in a manner that is protective of human health and the environment, and that such efforts were based on current and accurate information.".

~~III.~~IV. The hazardous secondary material generator must maintain at the generating facility for no less than three (3) years records of all off-site shipments of hazardous secondary materials. For each shipment, these records must, at a minimum, contain the following information:

A. Name of the transporter and date of the shipment;

B. Name and address of each reclaimer and, if applicable, the name and address of each intermediate facility to which the hazardous secondary material was sent; and

C. The type and quantity of hazardous secondary material in the shipment.

~~IV.~~V. The hazardous secondary material generator must maintain at the generating facility for no less than three (3) years confirmations of receipt from each reclaimer and, if applicable, each intermediate facility for all off-site shipments of hazardous secondary materials. Confirmations of receipt must include the name and address of the reclaimer (or intermediate facility), the type and quantity of the hazardous secondary materials received and the date which the hazardous secondary materials were received. This requirement may be satisfied by routine business records (e.g., financial records, bills of lading, copies of DOT shipping papers, or electronic confirmations of receipt);

~~V.~~VI. The hazardous secondary material generator must comply with the emergency preparedness and response conditions in paragraph (13) of this rule.

(VI) Reclaimers of hazardous secondary material excluded from regulation under this exclusion and ~~verified~~ intermediate facilities, as defined in subparagraph (2)(a) of Rule 0400-12-01-.01, satisfy all of the following conditions:

I. The reclaimer and intermediate facility must maintain at its facility for no less than three (3) years records of all shipments of hazardous secondary material that were received at the facility and, if applicable, for all shipments of hazardous secondary materials that were received and subsequently sent off-site from the facility for further reclamation. For each shipment, these records must at a minimum contain the following information:

A. Name of the transporter and date of the shipment;

B. Name and address of the hazardous secondary material generator and, if applicable, the name and address of the reclaimer or intermediate facility which the hazardous secondary materials were received from;

C. The type and quantity of hazardous secondary material in the shipment; and

D. For hazardous secondary materials that, after being received by the reclaimer or intermediate facility, were subsequently transferred off-site for further reclamation, the name and address of the (subsequent) reclaimer and, if applicable, the name and address of each intermediate facility to which the hazardous secondary material was sent.

II. The intermediate facility must send the hazardous secondary material to the reclaimer(s) designated by the hazardous secondary materials generator.

III. The reclaimer and intermediate facility must send to the hazardous secondary material generator confirmations of receipt for all off-site shipments of hazardous secondary materials, within thirty (30) days of receipt. Confirmations of receipt must include the name and address of the reclaimer (or intermediate facility), the type and quantity of the hazardous secondary materials received and the date which the hazardous secondary materials were received. This requirement may be satisfied by routine business records (e.g., financial records, bills of lading, copies of DOT shipping papers, or electronic confirmations of receipt).

IV. The reclaimer and intermediate facility must manage the hazardous secondary material in a manner that is at least as protective as that employed for analogous raw material and must be contained. An "analogous raw material"' is a raw material for which a hazardous secondary material is a substitute and serves the same function and has similar physical and chemical properties as the hazardous secondary material.

V. The intermediate or reclamation facility must have the equipment and trained personnel needed to safely manage the hazardous secondary material and must meet emergency preparedness and response requirements under paragraph (13) of this rule.

~~V.~~VI. Any residuals that are generated from reclamation processes will be managed in a manner that is protective of human health and the environment. If any residuals exhibit a hazardous characteristic according to paragraph (3) of this rule, or if they themselves are specifically listed in paragraph (4) of this rule, such residuals are hazardous wastes and must be managed in accordance with the applicable requirements of Rules 0400-12-01-.01 through 0400-12-01-.10.

~~VI.~~VII. The reclaimer and intermediate facility have financial assurance as required under paragraph (8) of this rule~~,~~.

~~VII. The reclaimer and intermediate facility have been issued a Certificate to Operate under part (4)(b)2 of Rule 0400-12-01-.01 or have a Part B permit issued under Rule 0400-12-01-.07 or interim status standards under Rule 0400-12-01-.05 that address the management of the hazardous secondary materials;~~

~~VIII. If not operating under a Part B permit issued under Rule 0400-12-01-.07 or interim status standards under Rule 0400-12-01-.05 that address the management of the hazardous secondary materials, the reclaimer and intermediate facility develops and maintains a hazardous secondary material acceptance plan. The reclaimer only accepts hazardous secondary materials for reclamation that comply with the hazardous waste acceptance plan as approved by the Commissioner under part (4)(b)2 of Rule 0400-12-01-.01; and~~

(VII) ~~All~~ In addition, all persons claiming the exclusion under this subpart must provide notification as required under subparagraph (5)(c) of Rule 0400-12-01-.01.

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

Paragraph (13) of Rule 0400-12-01-.02 Identification and Listing of Hazardous Waste is amended by deleting it in its entirety and substituting instead the following:

(13) Emergency Preparedness and Response for Management of Excluded Hazardous Secondary Materials [40 CFR 261 Subpart M]

(a) Applicability [40 CFR 261.400]

The requirements of this paragraph apply to those areas of an entity managing hazardous secondary materials excluded under subpart (1)(d)1(xxiii) and/or (xxiv) of this rule where hazardous secondary materials are generated or accumulated on site.

1. A generator of hazardous secondary material, or an intermediate or reclamation facility ~~operating under a Certificate to Operate under part (4)(b)2 of Rule 0400-12-01-.01,~~ excluded from regulation under subpart (1)(d)1(xxiv) of this rule that accumulates 6000 kg or less of hazardous secondary material at any time must comply with subparagraphs (b) and (c) of this paragraph.

2. A generator of hazardous secondary material, or an intermediate or reclamation facility ~~operating under a Certificate to Operate under part (4)(b)2 of Rule 0400-12-01-.01~~ excluded from regulation under subpart (1)(d)1(xxiv) of this rule that accumulates more than 6000 kg of hazardous secondary material at any time must comply with subparagraphs (b) and (d) of this paragraph.

(b) Preparedness and prevention [40 CFR 261.410]

1. Maintenance and operation of facility

Facilities generating or accumulating hazardous secondary material must be maintained and operated to minimize the possibility of a fire, explosion, or any unplanned sudden or non-sudden release of hazardous secondary materials or hazardous secondary material constituents to air, soil, or surface water which could threaten human health or the environment.

2. Required equipment

All facilities generating or accumulating hazardous secondary material must be equipped with the following, unless none of the hazards posed by hazardous secondary material handled at the facility could require a particular kind of equipment specified below:

(i) An internal communications or alarm system capable of providing immediate emergency instruction (voice or signal) to facility personnel;

(ii) A device, such as a telephone (immediately available at the scene of operations) or a hand-held two-way radio, capable of summoning emergency assistance from local police departments, fire departments, or state or local emergency response teams;

(iii) Portable fire extinguishers, fire control equipment (including special extinguishing equipment, such as that using foam, inert gas, or dry chemicals), spill control equipment, and decontamination equipment; and

(iv) Water at adequate volume and pressure to supply water hose streams, or foam producing equipment, or automatic sprinklers, or water spray systems.

3. Testing and maintenance of equipment

All facility communications or alarm systems, fire protection equipment, spill control equipment, and decontamination equipment, where required, must be tested and maintained as necessary to assure its proper operation in time of emergency.

4. Access to communications or alarm system

(i) Whenever hazardous secondary material is being poured, mixed, spread, or otherwise handled, all personnel involved in the operation must have immediate access to an internal alarm or emergency communication device, either directly or through visual or voice contact with another employee, unless such a device is not required under part 2 of this subparagraph.

(ii) If there is ever just one employee on the premises while the facility is operating, he must have immediate access to a device, such as a telephone (immediately available at the scene of operation) or a hand-held two-way radio, capable of summoning external emergency assistance, unless such a device is not required under part 2 of this subparagraph.

5. Required aisle space

The hazardous secondary material generator or intermediate or reclamation facility ~~operating under a Certificate to Operate under part (4)(b)2 of Rule 0400-12-01-.01~~ excluded from regulation under subpart (1)(d)1(xxiv) of this rule must maintain aisle space to allow the unobstructed movement of personnel, fire protection equipment, spill control equipment, and decontamination equipment to any area of facility operation in an emergency, unless aisle space is not needed for any of these purposes.

6. Arrangements with local authorities

(i) The hazardous secondary material generator or an intermediate or reclamation facility ~~operating under a Certificate to Operate under part (4)(b)2 of Rule 0400-12-01-.01~~ excluded from regulation under subpart (1)(d)1(xxiv) of this rule must attempt to make the following arrangements, as appropriate for the type of waste handled at his facility and the potential need for the services of these organizations:

(I) Arrangements to familiarize police, fire departments, and emergency response teams with the layout of the facility, properties of hazardous secondary material handled at the facility and associated hazards, places where facility personnel would normally be working, entrances to roads inside the facility, and possible evacuation routes;

(II) Where more than one police and fire department might respond to an emergency, agreements designating primary emergency authority to a specific police and a specific fire department, and agreements with any others to provide support to the primary emergency authority;

(III) Agreements with state emergency response teams, emergency response contractors, and equipment suppliers; and

(IV) Arrangements to familiarize local hospitals with the properties of hazardous waste handled at the facility and the types of injuries or illnesses which could result from fires, explosions, or releases at the facility.

(ii) Where state or local authorities decline to enter into such arrangements, the hazardous secondary material generator or an intermediate or reclamation facility ~~operating under a Certificate to Operate under part (4)(b)2 of Rule 0400-12-01-.01~~ excluded from regulation under subpart (1)(d)1(xxiv) of this rule must document the refusal in the operating record.

(c) Emergency procedures for facilities generating or accumulating 6000 kg or less of hazardous secondary material [40 CFR 261.411]

A generator or an intermediate or reclamation facility ~~operating under a Certificate to Operate under part (4)(b)2 of Rule 0400-12-01-.01~~ excluded from regulation under subpart (1)(d)1(xxiv) of this rule that generates or accumulates 6000 kg or less of hazardous secondary material must comply with the following requirements:

1. At all times there must be at least one employee either on the premises or on call (i.e., available to respond to an emergency by reaching the facility within a short period of time) with the responsibility for coordinating all emergency response measures specified in part 4 of this subparagraph. This employee is the emergency coordinator.

2. The generator or intermediate or reclamation facility ~~operating under a Certificate to Operate under part (4)(b)2 of Rule 0400-12-01-.01~~ excluded from regulation under subpart (1)(d)1(xxiv) of this rule must post the following information next to the telephone:

(i) The name and telephone number of the emergency coordinator;

(ii) Location of fire extinguishers and spill control material, and, if present, fire alarm; and

(iii) The telephone number of the fire department, unless the facility has a direct alarm.

3. The generator or an intermediate or reclamation facility ~~operating under a Certificate to Operate under part (4)(b)2 of Rule 0400-12-01-.01~~ excluded from regulation under subpart (1)(d)1(xxiv) of this rule must ensure that all employees are thoroughly familiar

with proper waste handling and emergency procedures, relevant to their responsibilities during normal facility operations and emergencies.

4. The emergency coordinator or his designee must respond to any emergencies that arise. The applicable responses are as follows:

   (i) In the event of a fire, call the fire department or attempt to extinguish it using a fire extinguisher;

   (ii) In the event of a spill, contain the flow of hazardous waste to the extent possible, and as soon as is practicable, clean up the hazardous waste and any contaminated materials or soil;

   (iii) In the event of a fire, explosion, or other release which could threaten human health outside the facility or when the generator or an intermediate or reclamation facility ~~operating under a Certificate to Operate under part (4)(b)2 of Rule 0400-12-01-.01~~ excluded from regulation under subpart (1)(d)1(xxiv) of this rule has knowledge that a spill has reached surface water, the generator or an intermediate or reclamation facility ~~operating under a Certificate to Operate under part (4)(b)2 of Rule 0400-12-01-.01~~ excluded from regulation under subpart (1)(d)1(xxiv) of this rule must immediately notify the National Response Center (using their 24-hour toll free number 800/424-8802). The report must include the following information:

      (I) The name, address, and U.S. EPA Identification Number of the facility;

      (II) Date, time, and type of incident (e.g., spill or fire);

      (III) Quantity and type of hazardous waste involved in the incident;

      (IV) Extent of injuries, if any; and

      (V) Estimated quantity and disposition of recovered materials, if any.

(d) Contingency planning and emergency procedures for facilities generating or accumulating more than 6000 kg of hazardous secondary material [40 CFR 261.420]

A generator or an intermediate or reclamation facility ~~operating under a Certificate to Operate under part (4)(b)2 of Rule 0400-12-01-.01~~ excluded from regulation under subpart (1)(d)1(xxiv) of this rule that generates or accumulates more than 6000 kg of hazardous secondary material must comply with the following requirements:

1. Purpose and implementation of contingency plan

   (i) Each generator or an intermediate or reclamation facility ~~operating under a Certificate to Operate under part (4)(b)2 of Rule 0400-12-01-.01~~ excluded from regulation under subpart (1)(d)1(xxiv) of this rule that accumulates more than 6000 kg of hazardous secondary material must have a contingency plan for his facility. The contingency plan must be designed to minimize hazards to human health or the environment from fires, explosions, or any unplanned sudden or non-sudden release of hazardous secondary material or hazardous secondary material constituents to air, soil, or surface water.

   (ii) The provisions of the plan must be carried out immediately whenever there is a fire, explosion, or release of hazardous secondary material or hazardous secondary material constituents which could threaten human health or the environment.

2. Content of contingency plan

(i) The contingency plan must describe the actions facility personnel must take to comply with parts 1 and 6 of this subparagraph in response to fires, explosions, or any unplanned sudden or non-sudden release of hazardous secondary material or hazardous secondary material constituents to air, soil, or surface water at the facility.

(ii) If the generator or an intermediate or reclamation facility ~~operating under a Certificate to Operate under part (4)(b)2 of Rule 0400-12-01-.01~~ excluded from regulation under subpart (1)(d)1(xxiv) of this rule accumulating more than 6000 kg of hazardous secondary material has already prepared a Spill Prevention, Control, and Countermeasures (SPCC) Plan in accordance with 40 CFR part 112, or some other emergency or contingency plan, he need only amend that plan to incorporate hazardous waste management provisions that are sufficient to comply with the requirements of this rule. The hazardous secondary material generator or an intermediate or reclamation facility ~~operating under a Certificate to Operate under part (4)(b)2 of Rule 0400-12-01-.01~~ excluded from regulation under subpart (1)(d)1(xxiv) of this rule may develop one contingency plan which meets all regulatory requirements. The Department recommends that the plan be based on the National Response Team's Integrated Contingency Plan Guidance ("One Plan"). When modifications are made to non-Rule Chapter 0400-12-01 provisions in an integrated contingency plan, the changes do not trigger the need for a permit modification under Rule 0400-12-01-.07.

(iii) The plan must describe arrangements agreed to by local police departments, fire departments, hospitals, contractors, and state and local emergency response teams to coordinate emergency services, pursuant to part (b)6 of this paragraph.

(iv) The plan must list names, addresses, and phone numbers (office and home) of all persons qualified to act as emergency coordinator (see part 5 of this subparagraph), and this list must be kept up-to-date. Where more than one person is listed, one must be named as primary emergency coordinator and others must be listed in the order in which they will assume responsibility as alternates.

(v) The plan must include a list of all emergency equipment at the facility (such as fire extinguishing systems, spill control equipment, communications and alarm systems (internal and external), and decontamination equipment), where this equipment is required. This list must be kept up to date. In addition, the plan must include the location and a physical description of each item on the list, and a brief outline of its capabilities.

(vi) The plan must include an evacuation plan for facility personnel where there is a possibility that evacuation could be necessary. This plan must describe signal(s) to be used to begin evacuation, evacuation routes, and alternate evacuation routes (in cases where the primary routes could be blocked by releases of hazardous waste or fires).

3. Copies of contingency plan

A copy of the contingency plan and all revisions to the plan must be:

(i) Maintained at the facility; and

(ii) Submitted to all local police departments, fire departments, hospitals, and state and local emergency response teams that may be called upon to provide emergency services.

4. Amendment of contingency plan

The contingency plan must be reviewed, and immediately amended, if necessary,

whenever:

(i) Applicable rules are revised;

(ii) The plan fails in an emergency;

(iii) The facility changes--in its design, construction, operation, maintenance, or other circumstances--in a way that materially increases the potential for fires, explosions, or releases of hazardous secondary material or hazardous secondary material constituents, or changes the response necessary in an emergency;

(iv) The list of emergency coordinators changes; or

(v) The list of emergency equipment changes.

5. Emergency coordinator

At all times, there must be at least one employee either on the facility premises or on call (i.e., available to respond to an emergency by reaching the facility within a short period of time) with the responsibility for coordinating all emergency response measures. This emergency coordinator must be thoroughly familiar with all aspects of the facility's contingency plan, all operations and activities at the facility, the location and characteristics of waste handled, the location of all records within the facility, and the facility layout. In addition, this person must have the authority to commit the resources needed to carry out the contingency plan. The emergency coordinator's responsibilities are more fully spelled out in part 6 of this subparagraph. Applicable responsibilities for the emergency coordinator vary, depending on factors such as type and variety of hazardous secondary material(s) handled by the facility, and type and complexity of the facility.

6. Emergency procedures

(i) Whenever there is an imminent or actual emergency situation, the emergency coordinator (or his designee when the emergency coordinator is on call) must immediately:

(I) Activate internal facility alarms or communication systems, where applicable, to notify all facility personnel; and

(II) Notify appropriate state or local agencies with designated response roles if their help is needed.

(ii) Whenever there is a release, fire, or explosion, the emergency coordinator must immediately identify the character, exact source, amount, and areal extent of any released materials. He may do this by observation or review of facility records or manifests and, if necessary, by chemical analysis.

(iii) Concurrently, the emergency coordinator must assess possible hazards to human health or the environment that may result from the release, fire, or explosion. This assessment must consider both direct and indirect effects of the release, fire, or explosion (e.g., the effects of any toxic, irritating, or asphyxiating gases that are generated, or the effects of any hazardous surface water run-offs from water or chemical agents used to control fire and heat-induced explosions).

(iv) If the emergency coordinator determines that the facility has had a release, fire, or explosion which could threaten human health, or the environment, outside the facility, he must report his findings as follows:

(I) If his assessment indicates that evacuation of local areas may be advisable, he must immediately notify appropriate local authorities. He

must be available to help appropriate officials decide whether local areas should be evacuated; and

(II) He must immediately notify either the government official designated as the on-scene coordinator for that geographical area, or the National Response Center (using their 24-hour toll free number 800/424-8802). The report must include:

I. Name and telephone number of reporter;

II. Name and address of facility;

III. Time and type of incident (e.g., release, fire);

IV. Name and quantity of material(s) involved, to the extent known;

V. The extent of injuries, if any; and

VI. The possible hazards to human health, or the environment, outside the facility.

(v) During an emergency, the emergency coordinator must take all reasonable measures necessary to ensure that fires, explosions, and releases do not occur, recur, or spread to other hazardous secondary material at the facility. These measures must include, where applicable, stopping processes and operations, collecting and containing released material, and removing or isolating containers.

(vi) If the facility stops operations in response to a fire, explosion or release, the emergency coordinator must monitor for leaks, pressure buildup, gas generation, or ruptures in valves, pipes, or other equipment, wherever this is appropriate.

(vii) Immediately after an emergency, the emergency coordinator must provide for treating, storing, or disposing of recovered secondary material, contaminated soil or surface water, or any other material that results from a release, fire, or explosion at the facility. Unless the hazardous secondary material generator can demonstrate, in accordance with part (1)(c)3 or part (1)(c)4 of this rule, that the recovered material is not a hazardous waste, the owner or operator becomes a generator of hazardous waste and must manage it in accordance with all applicable requirements of Rules 0400-12-01-.03, 0400-12-01-.04 and 0400-12-01-.05.

(viii) The emergency coordinator must ensure that, in the affected area(s) of the facility:

(I) No secondary material that may be incompatible with the released material is treated, stored, or disposed of until cleanup procedures are completed; and

(ii) All emergency equipment listed in the contingency plan is cleaned and fit for its intended use before operations are resumed.

(ix) The hazardous secondary material generator must note in the operating record the time, date, and details of any incident that requires implementing the contingency plan. Within 15 days after the incident, he must submit a written report on the incident to the Commissioner. The report must include:

(I) Name, address, and telephone number of the hazardous secondary material generator;

(II) Name, address, and telephone number of the facility;

(III) Date, time, and type of incident (e.g., fire, explosion);

(IV) Name and quantity of material(s) involved;

(V) The extent of injuries, if any;

(VI) An assessment of actual or potential hazards to human health or the environment, where this is applicable; and

(VII) Estimated quantity and disposition of recovered material that resulted from the incident.

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

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

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

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the Underground Storage Tanks and Solid Waste Disposal Control Board on 02/07/2018, and is in compliance with the provisions of T.C.A. § 4-5-222.

I further certify the following:

Notice of Rulemaking Hearing filed with the Department of State on: *12/06/17*

Rulemaking Hearing(s) Conducted on: (add more dates). *01/30/18*

Date: February 7, 2018

Signature: Jared L. Lynn

Name of Officer: Jared L. Lynn

Title of Officer: Chairman

CAROL L. GRICE STATE OF TENNESSEE NOTARY PUBLIC DAVIDSON COUNTY, TENN.

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

Notary Public Signature: Carol L. Grice

My commission expires on: March 3, 2020

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

Rule Chapter Number(s): 0400-12-01

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

Herbert H. Slatery III

Herbert H. Slatery III
Attorney General and Reporter

3/15/2018
Date

Department of State Use Only

Filed with the Department of State on: 3/21/18

Effective on: 6/19/18

Tre Hargett

Tre Hargett
Secretary of State

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G.O.C. STAFF RULE ABSTRACT

DEPARTMENT:	Safety
DIVISION:	Handgun Permits
SUBJECT:	Department of Safety Approved Handgun Safety Program
STATUTORY AUTHORITY:	None
EFFECTIVE DATES:	June 13, 2018 through June 30, 2019
FISCAL IMPACT:	Minimal
STAFF RULE ABSTRACT:	Changes are being made throughout the rules. Most of these changes are already standard practice and in place, so the rules needed to be updated to reflect the changes. Relevant changes include:

- Combining private and public schools under the definition of Handgun Safety Schools;
- Requiring school owners to attend training/seminars with the Department;
- Requiring instructors to verify student identity;
- Requires remedial training for instructor;
- Implementing out standard operating practices to the firing ranges;
- Requiring an inspection fee when a school makes changes that require an inspection to be made. Annual inspections are already conducted with a fee charged. Charging an inspection fee each time an inspection is required will help offset the costs to the Department;
- Increases the required liability insurance limits to coincide with today's liability risks. These limits have not been changed since 1996; and
- Clarifies and revises the suspension and appeals procedures.

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.

(Insert statement here)

§ 4-5-403. Economic impact statement

As part of the rulemaking process for any proposed rule that may have an impact on small businesses, each agency shall prepare an economic impact statement as an addendum for each rule that is deemed to affect small businesses, which shall be published in the Tennessee administrative register, filed with the secretary of state and made available to all interested parties, including the secretary of state, attorney general and reporter and the government operations committees of the senate and the house of representatives, and as described for rules in part 2 of this chapter. The secretary of state may require the online submission of economic impact statements filed pursuant to this part. The statement shall include the following:

(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:

New and existing Handgun Safety Schools that conduct the required TN Handgun Carry Permit classes for citizens wishing to obtain their TN handgun Carry Permit and new and existing Certified Handgun Instructors certified by the State of Tennessee to teach the Handgun Carry Permit classes.

Currently there are approximately 350 certified Handgun Safety Schools across the state. The application/renewal fee for these schools is currently (and will remain) $50 per year. At this time, there are approximately 1550 TN Handgun Instructors certified to teach the Handgun Carry Permit Class. The renewal/application fee for Instructors is $25 every three years.

(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 record keeping requirements are not burdensome and will not require any professional skills.

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

The Department does not anticipate any adverse impacts to small businesses or consumers. The proposed changes to the Rules should provide for a positive impact for school owners and instructors.

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

The proposed changes to the rule should not have any significant impact to schools and instructors. The changes are not burdensome or costly.

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

The department is not aware of any state or federal counterparts. Handgun Carry Permit classes, schools or instructors are not regulated by the federal government. The Department of Safety is **the only** state agency that regulates Handgun Permit classes, schools and instructors in Tennessee.

(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.

No small business that conducts handgun permit classes will be exempted from all of any part of this 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)

(Insert statement here)

The rule will affect local governments that operate handgun safety permit schools approved by the department.

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;

Changes are being made throughout the rules. Most of these changes are already standard practice and in place, so the rules needed to be updated to reflect the changes. Relevant changes include:

Combining private and public schools under the definition of Handgun Safety Schools.

Requiring school owners to attend training/seminars with the Department.

Requiring instructors to verify student identity.

Requires remedial training for instructor.

Implementing out standard operating practices to the firing ranges.

Requiring an inspection fee when a school makes changes that require an inspection to be made. Annual inspections are already conducted with a fee charged. Charging an inspection fee each time an inspection is required will help offset the costs to the Department.

Increases the required liability insurance limits to coincide with today's liability risks. These limits have not been changes since 1996.

Clarifies and revises the suspension and appeals procedures.

(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;

Handgun Permit Safety Schools approved by the Tennessee Department of Safety and Homeland Security, Handgun Permit Instructors.

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

None.

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

Minimal to none.

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

Lisa Knight, Program Director, Handgun Permits

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

Lisa Knight, Program Director, Handgun Permits; Liz Hale, Legal Services Director; Gerry Crownover, Staff Attorney; Colonel Tract Trott, THP; Major Mark Proctor, THP

(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

Lisa Knight, 1148 Foster Avenue, Cooper Hall, Nashville, TN 37243, (615) 251-5330, Lisa.Knight@tn.gov; Liz Hale, 312 Rosa Parks Ave., 25th Floor, Snodgrass Tower, Nashville, TN 37243, (615) 251-5349, Lizabeth.Hale@tn.gov; Gerry Crownover, 1150 Foster Avenue, McCord Hall, Nashville, TN 37243, (615) 251-5277, Gerry.Crownover@tn.gov; Colonel Tracy Trott, 1150 Foster Avenue, Nashville, TN 37243, (615) 251-5121, Tracy.Trott@tn.gov; Major Mark Proctor, 1150 Foster Avenue, Nashville, TN 37243, (615) 687-2307, Mark.Proctor@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: 03-15-18
Rule ID(s): 6720
File Date: 3/15/18
Effective Date: 6/13/18

Proposed Rule(s) Filing Form

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

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

Agency/Board/Commission:	Tennessee Department of Safety
Division:	Handgun Permits
Contact Person:	Lisa Knight, Program Director
Address:	1148 Foster Avenue, Nashville, TN
Zip:	37243
Phone:	(615) 251-5330
Email:	Lisa.Knight@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**
1340-02-03	Department of Safety Approved Handgun Safety Program
Rule Number	**Rule Title**
1340-02-03-.01	Purpose and Scope
1340-02-03-.02	Definitions
1340-02-03-.03	Handgun Safety School Requirements
1340-02-03-.04	Application Requirements
1340-02-03-.05	Handgun Safety Course Requirements
1340-02-03-.06	Instructor Requirements
1340-02-03-.07	Firing Range Requirements
1340-02-03-.08	Fees
1340-02-03-.09	Financial Responsibility Requirements
1340-02-03-.10	Suspension, Revocation or Denial of Certification

1340-02-03-.08	Fees
1340-02-03-.09	Financial Responsibility Requirements
1340-02-03-.10	Suspension, Revocation or Denial of Certification
1340-02-03-.11	Certificate of Completion for Students
1340-02-03-.12	General Regulations

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

Amendments:

Chapter 1340-02-03 Department of Safety Approved Handgun Safety Program with all of its Rules 1340-02-03-.01 through 1340-02-03-.12 is amended by deleting the text in its entirety and by substituting instead the following language so that, as amended the Chapter and its Rules shall read:

Rules
of
Department of Safety

Chapter 1340-02-03

Department of Safety Approved Handgun Safety Program

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1340-02-03-.01 Purpose and Scope.

To establish uniform statewide minimum standards for the certification of Handgun Safety Schools, instructors for non-police individuals, and the approval of those programs under the provisions of *T.C.A.§ 39-17-1351* and Public Chapter Number 905.

Authority: *T.C.A. §§ 4-3-2009, ~~and~~ 39-17-1351 and 39-17-1360.* ***Administrative History:*** *Original rule filed January 25,1995; effective April 10, 1995. Amendment filed September 16, 1996; effective January 28, 1997.*

1340-02-03-.02 Definitions.

(1) Classroom - An approved set location certified by the Department for the classroom instruction.

(~~1~~2) Commercially Manufactured Ammunition - Ammunition manufactured by a company and/or business properly licensed by the Federal Bureau of Alcohol Tobacco and Firearms.

(~~2~~3) Commissioner - The Commissioner of the Tennessee Department of Safety.

(~~3~~4) Department - The Tennessee Department of Safety.

(~~4~~5) Eye protection - Meets or Exceeds ANSI Z-87.1 Standard.

(~~5~~6) Firing Line - A line from which gunfire is directed toward targets.

(~~6~~7) Firing Range - A set location ~~certified~~ approved by the Department where ~~,at which,~~ firearm training is conducted with live ammunition.

(~~7~~8) Handgun Safety Course - A course of instruction provided by the Department,~~outlined herein~~ which provides education in the fundamentals of handgun safety and the use and operation of handguns for non-police residents of Tennessee,outlined herein.

(~~8~~9) Handgun Safety Program - A Department approved Handgun Safety Course as required by T.C.A. § 39-17-1351 as amended.

(10) Handgun Safety School - An organization, individual, corporation or government entity certified by the Department to conduct handgun safety courses as required by T.C.A. § 39-17-1351.

(~~9~~11) Hearing protection - Meets or Exceeds ANSI S3.19-1974 Standards.

(12) Inspector- A person subordinate to the Program Director tasked with auditing and inspecting schools and instructors to ensure compliance with the rules of the handgun safety school program.

(~~10~~13) Instructor - An individual ~~either approved~~ certified by the Department to conduct a Handgun Safety Course for ~~private entities or, a full-time, salaried, POST certified law enforcement officer approved as a firearm instructor by the chief administrative officer of his or her agency and who conducts Handgun Safety Courses for his or her agency or another public Handgun Safety School.~~ a Tennessee Handgun Carry Permit.

(~~11~~14) POST - Police Officers Standards of Training.

~~(12) Private Handgun Safety School - A private organization, individual, corporation, or other public entity approved by the Department to conduct Handgun Safety Courses.~~

(~~13~~15) Program Director - A person designated by the Commissioner to plan, organize and administer the Handgun Safety Program.

~~(14) Public Handgun Safety School - A Tennessee Sheriff's Department or Police Department in a Tennessee county having a metropolitan form of government approved by the Department to conduct Handgun Safety Courses.~~

(~~15~~16) Student - Any person enrolled in a Handgun Safety School who meets the requirements set forth herein under regulation 1340-02-03-.05(9).

(~~16~~17) Workday - Any day when the Department offices are open to the public.

Authority: *T.C.A. §§ 4-3-2009, ~~and~~ 39-17-1351 and 39-17-1360.* ***Administrative History:*** *Original rule filed January 25,* 1995; effective April 10, 1995. Amendment filed September 16, 1996; effective January 28, 1997.

1340-02-03-.03 Handgun ~~Training~~ Safety School Requirements

(1) ~~There shall be two (2) separate classifications of Handgun Safety Schools; Public and Private.~~ Any organization, individual, business or government entity, that seeks to provide the Handgun Safety Program and to issue training certificates for the purpose of allowing individuals to apply for a Tennessee civilian handgun carry permit under T.C.A. § 39-17-1351, must qualify as a Handgun Safety School.

~~(a) Any Tennessee Sheriff's Department or Police Department in a Tennessee County having a metropolitan form of government is hereby certified by the Department as a Public Handgun Safety School and is hereby authorized to conduct Handgun Safety Schools/Courses under the provisions herein.~~

~~(b) Any private agency, organization, corporation, individual or public entity other than those specified in 1340-2-3-.03(1)(a) that agrees to comply with the rules set forth herein may make application with the Department for Private Handgun Safety School certification.~~

(2) All Non-Government Entity Handgun Safety School owners must have a current business license.

(3) The Handgun Safety School must maintain an established place of business in this State.

(a) The Handgun Safety School must have at least one (1) Department certified instructor.

(b) The place of business must have a telephone (land line or cell).

(c) The certificate issued to the Handgun Safety School shall be prominently displayed at approved classroom premises.

d) Once a handgun school has been issued a certificate, a new certificate must be issued in the event of any change in ownership, place of business or name.

(e) Any school owner wishing to conduct classes in two or more locations, must establish an additional school at each location. Owners will be required to complete the application process for each school and pay a separate fee of $50 per school, per year.

(f) All approved classrooms must have internet connection or access to internet for score submission within twenty-four (24) hours of class completion.

(a) If there is no reliable source of internet to the classroom or access to the internet, a school may utilize an alternate internet connection to download and updates to the course materials.

(b) The school shall be required to have internet in the classroom within six (6) months of a reliable source of internet becoming available in the school's area.

(~~2~~4) All Handgun Safety Schools agree to conduct Handgun Safety Courses which meet the minimum standards set forth herein under section .05.

(~~3~~5) Handgun Safety Schools shall ~~use~~ only use ~~those~~ instructors who have a ~~current~~ valid certificate issued by the Department. ~~which meet the qualifications set forth in 1340-2-3-.06.~~

(~~4~~6) Handgun Safety Schools shall be responsible for all phases of the Handgun Safety Program including, but not limited to:

(a) Assuring all Departmental rules and regulations are complied with;

(b) Maintaining accurate records of all program costs, student participation, accident and incident reports, and providing these records to the Program Director or Department Inspector for inspection upon request;

(c) Advising the Department in writing immediately of any change(s) in the information ~~supplied~~ submitted on the ~~their~~ application; you may fax this information or email it to the Inspector, Inspector Supervisor and the Program Director.

(d) Securing and maintaining the classroom and range sites while class is in session;

(e) Ensuring that all students complete the release, waiver, and indemnification forms supplied by the Department ~~or approved by the Program Director~~;

(f) Providing to the Program Director schedules of Handgun Safety Courses, upon request;

(g) Providing any additional records or reports as requested by the Program Director; ~~and~~

(h) Being available for periodic on-site inspection by the Department; ~~and, with Private Handgun Safety Schools, the Sheriff of the county or the Police Chief of a municipality in which the Handgun Safety School is located.~~;

(i) Conducting a minimum of two (2) classes per year in order to maintain certification;

(j) For any students not processed online, the school must provide the Department with a class roster the following business day once class is completed by either fax or email to the Inspector, Inspector Supervisor and Program Director.

(k) Owner or Manager/Designee must attend in-service training as determined by the Department; and

(l) All classroom and range instruction must be completed within forty-eight (48) hours of the beginning of the class. This instruction must include all students together.

(7) Handgun Safety Schools, which meet the qualifications and provisions herein, will be approved to provide Handgun Safety Courses and will be issued a certification by the Department valid for a period of one (1) year.

(8) It is the owner's responsibility to comply with the requirements of the ADA of 1990 (Americans with Disabilities Act), EPA (Environmental Protection Agency) and TOSHA (Tennessee Occupational Safety Hazard Act).

(9) All schools must use the Department's online system for processing student applications, certificates of completion, and utilize classroom instructional materials provided by the Department.

~~(5) Private Handgun Safety Schools which meet the minimum qualifications and provisions herein, and upon the discretion of the Commissioner, will be approved to provide Handgun Safety Courses and will be issued a certification by the Department.~~

~~(a) For Public Handgun Safety Schools the certification shall be valid indefinitely;~~

~~(b) For Private Handgun Safety Schools the certification shall be valid for a period to be determined by the Program Director based on their application and financial responsibility information.~~

Authority: *T.C.A. §§ 4-3-2009, ~~and~~ 39-17-1351 and 39-17-1360.* ***Administrative History:*** *Original rule filed January 25, 1995; effective April 10, 1995. Amendment filed September 16, 1996; effective January 28, 1997.*

1340-02-03-.04 Application ~~Procedure~~ Requirements.

~~(1) Public Handgun Safety Schools:~~

~~(a) No application is necessary.~~

~~(2) Private Handgun Safety Schools:~~

(~~a~~1) Any private agency, organization, corporation, individual or public entity, that agrees to comply with the rules set forth herein, may apply ~~for~~ to become certified as a Handgun Safety School. ~~certification~~.

(~~b~~2) The school owner ~~They~~ shall make application on forms supplied by the Department.

(~~c~~3) The school owner ~~They~~ shall pay the application fee ~~specified~~ of fifty dollars ($50.00) as specified in regulation 1340-02-03-.08.

(~~d~~4) Upon receipt, the Department will process the application and conduct an on-site inspection of the ~~facilities~~ classroom and range ~~if the Commissioner or Program Director deem it necessary; and,~~.

(~~e~~5) The school owner ~~applicant~~ will be contacted, via U.S. mail, and advised of the approval or denial of the application.

(~~1~~a) If the application is denied, the ~~applicant~~ school owner will be informed of the reason.

(6) It is the school owner's responsibility to ensure that the school certification is renewed annually and is received by the Department at least thirty (30) days prior to the expiration date. The renewal application shall include a copy of the current certificate of liability insurance policy, which includes the school name as the insured and lists the Department as the certificate holder, and include payment of the renewal fees.

(7) The school owner is responsible for making sure all Handgun Safety Classes are taught at Department approved Classroom and Range locations for their school by a valid certified instructor.

(8) School owners must have an internet connection or ability to access the internet. This requirement is necessary for school owners/instructors to complete rosters, report scores and receive program updates including the lesson plan.

(a) Ability to access the internet includes, but is not limited to, other businesses that offer internet connections, or governmental entities such as libraries.

(~~8~~9) Instructor Application Requirements:

(a) Any persons, who meets the qualifications outlined in ~~Section 1340-02-03-.06 of these rules~~, section .06 herein, may make application on a form supplied by the Department.

(b) ~~They~~ The applicant shall pay the application fee of twenty-five dollars ($25.00) specified ~~in Rule 1340-02-03-.08.~~ in section .08 herein.

(c) Upon receipt, the Department will process the application and request additional information, if the Commissioner or Program Director deems it necessary. ~~and,~~

(d) The applicant will be contacted, via U.S. mail, and advised of the approval or denial of the application. If the application is denied, the applicant will be informed of the reason.

(e) It is the instructor's responsibility to ensure that his/her certification is renewed at least thirty (30) days prior to the expiration date. The renewal application shall include payment of renewal fees.

Authority: *T.C.A. §§ 4-3-2009, ~~and~~ 39-17-1351 and 39-17-1360.* ***Administrative History****: Original rule filed January 25, 1995; effective April 10, 1995. Amendment filed September 16, 1996; effective January 28, 1997.*

1340-02-03-.05 Handgun Safety Course Requirements.

(1) The Instructor must verify the student's identification utilizing the online system. If the student is not registered in the online system, the student will be required to provide one (1) valid government issued photo identification to the instructor.

(~~1~~2) The Handgun Safety Course shall be a minimum of eight (8) hours in length, including a ten (10) minute break per hour. The course shall include both classroom and range portions of instruction. The eight (8) hour class does not include meal breaks or drive time. ~~Each Handgun Safety Course shall consist of two (2) separate but inter-related areas of instruction; classroom instruction and firing range instruction.~~

~~(2) The Handgun Safety Course shall be a minimum of eight (8) hours in length, including a ten (10) minute break per hour.~~

(a) The classroom instruction shall ~~be a minimum of four (4) hours; and~~, include only the course curriculum provided by the Department. This portion must be taught only at a Department approved classroom location and prior to any firing range instruction.

(b) The firing range instruction shall ~~be a minimum of four (4) hours.~~ include only the course curriculum established within these regulations. This portion must be taught only at an approved range location.

(3) Handgun Safety Schools and instructors shall only utilize the instructional ~~outline and video tapes~~ material provided by the Department.

~~(4) Instructional outlines and video tapes will be provided to each Handgun Safety School upon their approval by the Department.~~

(4) A written examination and handgun firing qualification shall be administered to each student.

(a) The written examination shall be individually taken by the student and consist of only those questions provided by the Department.

(b) The test is provided in two (2) versions; "Test A & B". In each class, fifty percent (50%) of students shall complete Test A and fifty percent (50%) shall complete Test B to ensure proper testing procedures.

(c) This shall be a closed book test with no notes, materials or aids allowed.

(d) The Instructor shall proctor and grade the examinations personally.

(e) The written examination must be administered and the students must pass prior to firing range qualifications.

(f) Instructors may assist students by reading the test questions; however, the student must be able to mark their answer choice on the answer sheet without assistance.

5) The handgun firing qualification shall be the course of fire specified by the Department.

(a) Each student must fire a minimum of fifty (50) rounds. This will consist of twenty (20) rounds fired from the three (3) yard line (9 feet), twenty rounds (20) from the five (5) yard line (15 feet), and ten (10) rounds from the seven (7) yard line (21 feet).

(b) Instructors shall only coach the student during the first firing sequence.

(c) Students must fire the required rounds independently with no physical aids or assistance from anyone.

(d) All firing will be conducted at a distance no greater than twenty-six (26) feet from the berm.

(e) It is recommended the student have one hundred (100) rounds available for range qualification. If the student shoots a score of seventy percent (70%) or better with the first fifty (50) rounds, the instructor may record that score as final qualification. Should the student not score seventy percent (70%) or better, they will be allowed to shoot the remaining fifty (50) rounds. If at the end of the second firing session a seventy percent (70%) or better score is not obtained, the student has failed the course. Instructor must inform the student they must retake the entire eight (8) hour course on another day.

(f) Students must be able to complete the live fire (qualification) portion unassisted. No aids or assistance from an instructor will be allowed. Exceptions will be for weapon or ammunition malfunctions, at which time an instructor may assist the student with clearing and making the handgun safe.

(6) A minimum score of seventy percent (70%) must be achieved on the written examination and a minimum score of seventy percent (70%) must be achieved on the firing qualification, separately, to successfully pass the Handgun Safety Course; and

(7) A copy of all written tests to include the score, range score, and witnessed waiver forms for each student must be retained by the Handgun Safety School for a minimum of three (3) years from the date of completion.

~~(5) Handgun Safety Schools may utilize other instructional outlines provided they:~~

~~(a) Submit a written request to the Program Director and receive written approval;~~

~~(b) Furnish the Department a copy of the proposed instructional outline, with lesson plan and source documents if requested;~~

~~(c) Identify in writing the topics in their outline which will replicate the information in the Department provided outline; and,~~

~~(d) Incorporate their instruction with the Department provided videotape.~~

~~(6) A written examination and handgun firing qualification shall be administered to each student.~~

~~(a) The written examination shall consists of, as a minimum, a core of questions provided by the Department and other questions selected by the Handgun Safety School:~~

~~1. up to a maximum of fifty (50) questions;~~

~~(b) The handgun firing qualification shall, as a minimum, include the course of fire specified by the Department;~~

~~(c) A minimum score of seventy percent (70%) must be achieved on the written examination and firing qualification separately to successfully pass the Handgun Safety Course; and,~~

~~(d) A copy of all scores shall be maintained by the Handgun Safety School for a minimum of five (5) years from the date of the examinations.~~

(8) Classroom and Range size:

(a) The classroom shall be of sufficient size to ~~adequately~~ audibly and visually accommodate the total number of students approved by the Department. No classroom will exceed a maximum of fifty (50) students. Each student will be provided a fixed (desk/table) work space to facilitate note taking and examination.

(b) There shall be a minimum of one (1) instructor per fifty (50) students during classroom and legal instruction.

(c) There shall be a minimum of one (1) instructor per five (5) students during the actual live firing portion of the range instruction; and

(d) In no case shall the number of students on the firing line exceed the number of established firing positions.

(e) Only instructors approved by the Department shall be on the firing range during live fire.

(f) No ammunition is allowed in classroom.

g) A Handgun Safety school, having more than one classroom at one location, may only conduct classes for no more total students than indicated on the school certificate within a calendar day.

(~~8~~9) ~~No students under the age of sixteen (16) shall be allowed to enroll in any Handgun Safety Course~~. Only persons 21 years of age or older shall be allowed to attend or enroll in a Handgun Safety Course, unless:

(a) The person is 20 years of age and their 21st birthday is within six (6) months from the date of the course; or

(b) The person is eighteen (18) years of age or older and currently on active duty in any branch of the military or is an honorably discharged veteran and provides the instructor with either a current active duty ID card or DD214 prior to attending the course.

(~~9~~10) While on, or within ~~fifty (50)~~ twenty-five (25) yards of an active firing line, all students and instructors ~~and observers~~ must wear approved hearing protection and approved eye protection, provided by the school at no additional charge, if student does not have protection.

~~(10) Qualification with more than one (1) handgun~~:

~~(a) If, while undergoing the handgun safety instruction, a student desires to qualify with a different make, model or caliber of handgun, they are required only to take the four (4) hour range instructional portion of the Handgun Safety Course; and,~~

~~(b) A certificate of completion will be completed under the provisions of 1340-2-3-.11~~.

(11) Certificates of completion provided by the Department, whether paper certificates or certificates provided through the online system, shall only be issued to students upon successful completion of both the classroom and firing range instruction. Sharing of certificates and/or passwords to the online system among schools and instructors is prohibited.

(~~11~~12) Type of ammunition:

(a) All ammunition used by students during training shall be of quality commercial manufacture.

~~(b) Reloaded ammunition is acceptable only if it is of commercial manufacture.~~

(~~12~~13) Type of handguns:

(a) Handguns used by students in a Handgun Safety Course shall be of quality commercial manufacture and free from operational defects;

(b) After inspection, if in the opinion of the instructor, the handgun is unsafe, it shall not be used. ~~All handguns shall be inspected by an instructor prior to the firing range portion of the instruction; and,~~

~~1. If, in the opinion of the instructor, the handgun is unsafe it shall not be used.~~

(c) The Department shall not establish restrictions on the type, make, model or caliber of handguns used by students in a Handgun Safety Course; however,

1. Each Handgun Safety School may establish restrictions on the caliber or type of handgun used in their Handgun Safety Course~~(s). state CERTIFIED HANDGUN TRAINING CHAPTER 1340-2-3~~

~~2. Each Handgun Training School may establish restrictions on the caliber or type of handgun used in their Handgun Training Course(s).~~

(14) Scoring of Targets

(a) Each standard B29 silhouette target shall have no more than fifty (50) rounds total. Each round will have a value of two (2) points each and shall be counted as follows:

1. Any hit on the silhouette from the seven (7) ring into the center of the target counts as two (2) points.

2. Any hits on the silhouette but outside the seven (7) ring counts as one (1) point.

3. Any shots outside of the silhouette count as zero (0).

4. If a round breaks the line, it shall be counted at the next higher value. For example, if someone hits the paper but has a shot that breaks the silhouette line, then that shot shall count as one (1) point. If round is in the silhouette but breaks the seven (7) line then it shall count as two (2) points.

Authority: *T.C.A. §§ 4-3-2009, ~~and~~ 39-17-1351 and 39-17-1360.* ***Administrative History:*** *Original rule filed January 25, 1995; effective April 10, 1995. Amendment filed September 16, 1996; effective January 28, 1997.*

1340-02-03-.06 Instructor Requirements.

~~(1) Public Handgun Safety Schools may use handgun instructors who are a full time, salaried, POST certified law enforcement officer approved as a firearms instructor by the chief administrative officer of his or her agency and who conducts Handgun Safety Courses for his/her agency or another Public Handgun Safety School.~~

~~(2) Private Handgun Safety Schools shall use instructors which must meet the following minimum qualifications:~~

(1) Handgun Safety Schools shall use Instructors who meet all of the following minimum qualifications:

(a) Applicant must have a valid Handgun Carry Permit or be a full time current P.O.S.T. certified law enforcement officer approved as a firearms instructor.

(~~a~~b) Instructor shall ~~B~~be at least twenty-one (21) years of age.

(c) Instructor shall pay the application fee specified of twenty-five dollars ($25.00), which will be for a three (3) year certification.

(~~b~~d) Instructor shall not have been convicted of a felony. ~~or any drug or alcohol related offense in the past ten (10) years;~~

(e) Instructor shall not have been convicted of a domestic violence or stalking charge.

(f) Instructor shall not have been convicted of any drug related offenses.

(g) Instructor shall not have been convicted of any alcohol related offenses in the past ten (10) years.

(h) Instructor shall not have an active order of protection against him/her.

(~~e~~i) Instructor shall submit proof of the completion of a Department approved firearm/handgun instructors training course. ~~and~~

1. Approved instructor training courses include~~, but are not limited to~~, those instructed by the National Rifle Association (NRA), National Sheriffs Association (NSA), International Association of Chiefs of Police (IACP), Police Officers Standards of Training (POST), Federal Bureau of Investigation (FBI), International Practical Shooting Confederation (IPSC), United States Concealed Carry Association (USCCA), and ~~others approved by~~ the Department of Safety.

2. Instructors, previously approved by the Department, who have received certification from another source of training, may retain their TN Certified Handgun Instructor certification for as long as their certification remains valid. If their TN Certified Handgun Instructor certification is allowed to expire or for another reason becomes invalid, the instructor would have to seek certification from the Department under subdivision 1.

~~2. The Commissioner shall make the final determination on approved courses.~~

(~~d~~j) Instructor shall possess ~~an~~ a current instructor's certificate issued by the Department.

~~1. Certificate is valid for three (3) years from date of issuance.~~

1. It is the instructor's responsibility to ensure that a renewal application and fee is received by the Department at least thirty (30) days prior to the expiration date.

2. Upon receipt, the Department will process the application and request additional information if the Commissioner or Program Director deems it necessary; and

3. Instructors must attend in-service training as determined by the Department.

4. If, at any time, the credentials used to become a certified instructor are revoked, suspended, expired, cancelled or denied by the issuing agency, the Department will take the same action on their state certification to teach handgun safety courses.

5. If, at any time, an instructor's proficiency in teaching the Department Handgun Safety Program does not meet Department standards, the instructor may be required to attend and successfully complete remedial training as determined by

the Department. If the instructor fails to successfully complete the remedial training, this may result in a suspension of the instructor's certification.

(k) The applicant will be contacted, via mail, and advised of the approval or denial of the application.

~~(3) Instructors for Public Handgun Safety Schools who instruct for Private Handgun Safety Schools and Instructors for Private Handgun Safety Schools who instruct for Public Handgun Safety Schools must meet the requirement of 1340-2-3-.06(2).~~

~~(4) Handgun Safety Schools may utilize personnel other than Department Certified Instructors to instruct only that portion of classroom instruction directly related to the legal liabilities and other legal aspects of the instruction.~~

Authority: *T.C.A. §§ 4-3-2009, ~~and~~ 39-17-1351 and 39-17-1360.* ***Administrative History:*** *Original rule filed January 25, 1995; effective April 10, 1995. Amendment filed September 16, 1996; effective January 28, 1997.*

1340-02-03-.07 Firing Range Requirements.

(1) Ranges shall be of adequate size to safely accommodate the number of students being trained.

(2) Ranges are to be constructed in such a manner as to ~~ensure~~ provide for the safety of the students, instructors, spectators and all others in the immediate area.

(3) Ranges shall have a bullet impact backstop (berm) that will stop and render harmless bullets fired into it with all handgun caliber ammunition from all firing positions. This shall be accomplished without ricocheting projectiles or debris striking individuals at the firing lane.

(4) Outdoor Range:

(a) (Height) The backstop minimum height is twelve (12) feet. This height is the lowest measurement of the compacted or settled height.

(b) (Width) The width of the backstop shall extend a minimum of eight (8) feet beyond the end target unless the range has side berms.

(c) (Slope) The range side of the backstop (side facing the shooter) must be as steep as possible, but not less than forty-five (45°) degree slope or a ratio of one (1) to one (1).

(d) (Thickness) Backstop shall be constructed with a minimum thickness at twelve feet (12') level of four (4) feet.

(e) (Side Berms) It must be a minimum of eight (8) feet high at the lowest measurement of compacted or settled height. It must be four (4) feet thick at the eight feet (8') level. It must extend five (5) feet past the last shooting position.

(f) All berms shall be free and clear of debris, such as high grass, trees, rocks, or anything that could cause ricochet or safety issues.

(5) Indoor Range:

(a) Backstop and bullet traps shall be constructed of materials capable of stopping the maximum caliber of ammunition allowed on the range.

(b) Backstop plates shall have a minimum thickness of point three seven five (.375) inches and shall be angled at forty-five (45°) degrees.

(c) The plating used for backstops and bullet traps shall have manufacture specifications of no less than AR-500.

(d) Steel plates supported by concrete or masonry should be anchored by expansion bolts or toggle bolts as suitable for construction with flush countersunk heads, with no more than twelve (12) inches on center of edges of each plate.

(e) Baffles are required and must extend the entire width of the range and downward to cover and protect from ricochet.

(f) Walls, ceilings, and floors must be hardened, solid, and/or bulletproof. Example: Walls, ceilings and floors must be hardened and solid, constructed of bullet proof materials.

(g) Ventilation and filtering system must comply with OSHA Lead Standard for General Industry 29 CFR 1910.1025, as well as all state and local building codes, laws, and regulations.

(6) All ranges shall meet the boundary line requirements set forth in T.C.A. § 39-17-316(c)(1).

(7) All ranges shall provide adequate lighting to allow shooters and instructors to clearly see the targets from all firing positions.

(~~3~~8) Access to the ranges should be limited, with controlled points of ingress.

(~~4~~9) Warning signs, flags, lights and/or audible devices shall be utilized to ensure safety ~~to others~~.

(~~5~~10) All ranges shall have a current first aid kit and fire suppression device on site.

(~~6~~11) All ranges shall have ~~ready~~ immediate access to a telephone or other communication device in the event of an emergency situation.

(~~7~~12) All ranges must document compliance with all applicable local county and municipal ordinances.

(~~8~~13) All firing shall be done on standard silhouette ~~type~~ B29 targets. ~~or others approved by the Program Director~~.

(14) Anyone on the range providing assistance to students during qualification must be certified as an instructor by the Department.

(15) The range shall have warning signs posted at all access points clearly identifying the area as a "firing range".

(16) The range must have a restroom facility in the immediate area.

(~~9~~17) The overall safety of any firing range shall be determined by the Program Director.

***Authority**: T.C.A. §§39-17-1315(b)(2) and 39-17-1360, and Public Chapter 943 of 1994.* ***Administrative History**: Original rule filed January 25, 1995; effective April10,1995.*

1340-02-03-.08 Fees.

(1) Fees charged by Handgun Safety Schools for the instruction of students shall not be established by the Department and are considered individual contracts between the student and Handgun Safety Schools.

(2) Application Fees:

(a) ~~Private~~ Handgun Safety Schools making application to the Department shall remit an application fee of fifty dollars ($50.00) to the Department. Fees are non-refundable.

1. This same fee shall apply upon application for renewal for previously approved Handgun Safety Schools.

(b) Instructors making application to the Department shall remit an application fee of twenty five dollars ($25.00) to the Department. Fees are non-refundable.

1. This same fee shall apply upon application for renewal for previously approved Instructors.

(c) If, at any time, a school owner requests a classroom or range location change, or an alternate range, the owner must submit such request in writing to the Department on approved forms and pay a twenty-five ($25.00) inspection fee.

(d) If at any time the school receives a warning letter or suspension that requires a re-inspection of either the range or classroom, it is the school owner's responsibility to notify the Department, in writing, when corrections are completed and pay a twenty-five ($25.00) re-inspection fee.

***Authority:** T.C.A. §§4-3-2009, ~~and~~ 39-17-1351 and 39-17-1360.* ***Administrative History**: Original rule filed January 25, 1995; effective April 10, 1995. Amendment filed September 16, 1996; effective January 28, 1997.*

1340-02-03-.09 Financial Responsibility Requirements.

(1) Each Handgun Safety School must obtain, maintain, and provide evidence of financial responsibility as a condition of approval for certification.

(2) ~~Public~~ Handgun Safety Schools, that are government entities, shall meet these requirements under the provisions of the Governmental Tort Liability provisions of State law. (T.C.A. Title 29, Chapter 20 ~~et seq.~~)

(3) ~~Private~~ Handgun Safety Schools, that are private entities, may comply with the financial responsibility requirement by providing the Department one (1) of the following:

(a) Written proof of commercial liability insurance coverage provided by a single limit policy with a limit of not less than ~~three hundred thousand dollars ($300,000)~~ one million dollars ($1,000,000) applicable to one (1) ~~accident;~~ occurrence;

(b) Written proof of liability insurance provided by a split limit policy with a limit of not less than ~~one hundred and fifty thousand dollars ($150,000)~~ five hundred thousand dollars ($500,000) for bodily injury or death of one (1) person, with not less than ~~three hundred thousand dollars ($300,000)~~ one million dollars ($1,000,000) for bodily injury or death of two (2) or more persons in any one (1) ~~accident,~~ occurrence, and not less than ~~fifty thousand dollars ($50,000)~~ one hundred and fifty thousand dollars ($150,000) for damage to property in any one (1) ~~accident;~~ occurrence:

(c) A deposit of cash in the amount of ~~three hundred thousand dollars ($300,000)~~ one million dollars ($1,000,000);

(d) The execution and filing of a bond in the amount of ~~three hundred thousand dollars ($300,000)~~ one million dollars ($1,000,000); or

(e) The filing of a surety in an amount of not less than ~~three hundred thousand dollars ($300,000)~~ one million dollars ($1,000,000) subject to approval by the Commissioner.

(4) No policy or bond shall be effective unless it bears an issuance and expiration date, and is issued by an insurance company or surety company licensed to do business in this state ~~and unless such policy or bond provides security not less than the amounts specified in 1340-2-3-.09(3)~~.

(5) This requirement does not preclude insurance which by its nature provides coverage for this purpose as well as other general liability provisions.

***Authority**: T.C.A. §§ 39-17-1315(b)(2) and 39-17-1360, and Public Chapter 943 of 1994.* ***Administrative History:** Original rule filed January 25, 1995; effective April 10, 1995. Amendment filed September 16, 1996; effective January 28, 1997.*

1340-02-03-.10 Suspension, Revocation or Denial of Certification.

(1) The ~~Commissioner, or his or her designee~~, Department may, upon receipt of satisfactory evidence from the Program Director, suspend, revoke, refuse to issue, or refuse to renew the certification of a Handgun Safety School or handgun instructor if:

(a) The holder of any certificate fails to comply with the provisions of the rules and regulations of the Department or any associated state statute;

(b) The holder of any certification has made a false statement or has concealed a material fact in connection with his application;

(c) The holder of any certification has been guilty of a fraudulent practice in attempting to obtain for himself or another certification;

(d) ~~Written notice of the cancellation of insurance or bond required by the regulation is received by the Department and the certificate holder does not present satisfactory evidence of financial responsibility to the Department prior to the effective date of the cancellation; and~~ A Handgun Safety School fails to maintain/provide the Department with a facially valid proof of financial responsibility that meets the requirements of section .09 herein; or

(e) The holder of any certification fails to maintain the minimum standards established herein.

(2) Any suspension, revocation or denial of certification issued for violation of these rules and regulations shall be governed by the ~~contested case~~ provisions of T.C.A. Title 4, Chapter 5. (Uniform Administrative Procedures Act).

(a) A proposed suspension may be initiated if the Department finds any violation set forth in these rules and regulations.

1. If any violations of these rules and regulations are found, the Department shall notify the certificate holder of the violation in writing. The certificate holder shall have thirty (30) days from the date of the notice to show satisfactory compliance to the Program Director or designated Department representative.

2. If, after thirty (30) days from the date of the violation notice, the certificate holder has failed to comply with the rules and regulations set forth, the Department shall issue a Notice of Proposed Suspension by mail to the certificate holder advising the holder of the reason for this action or intended action of the Department and of the opportunity for an administrative hearing before a hearing officer. The Administrative Hearing request must be submitted in writing to the Department within fifteen (15) days from receipt of the Notice of Proposed Suspension.

3. The Department shall provide the certificate holder a hearing before a hearing officer on the date and time specified in the notice. The sole issue to be considered is whether the certificate holder violated any rules set forth in these rules and regulations. An Initial Order will be entered by the hearing officer within fifteen (15) days of the completed hearing. If the certificate holder fails to request a hearing or fails to appear for the administrative hearing, the hearing officer will issue an Initial Order of Suspension.

4. If the hearing officer upholds the findings of the Department, an Initial Order of Suspension will be issued and a copy will be mailed to the certificate holder.

(b) A summary suspension shall be initiated against the certificate holder if the Department finds that public health, safety, or welfare imperatively requires emergency action.

1. Prior to the institution of the Department proceedings, the Department shall give notice by mail to the certificate holder of the fact or conduct that warrants the intended action, and it will state that the certificate holder shall be given an opportunity to show compliance with all lawful requirements for retention of the license. If the Department finds that public health, safety, or welfare imperatively requires emergency action, a summary suspension of a license may be ordered pending proceedings for revocation or other action. These proceedings shall be promptly instituted and determined. In issuing an Order of Summary Suspension, the Department shall use one (1) of the following procedures:

(i) The Department shall issue a notice to the certificate holder providing an opportunity for a prompt hearing, review, or conference before the Program Director prior to the issuance of an Order of Summary Suspension; or

(ii) The Department shall proceed with the summary suspension and notify the certificate holder of the opportunity for a hearing before the Program

Director within seven (7) business days of the issuance of the Order of Summary Suspension.

(c) The notice provided to the certificate holder may be provided by any reasonable means. It shall inform the certificate holder of the reason for the action or intended action of the agency and of the opportunity for an informal hearing, review, or conference before the Program Director. The informal hearing, review, or conference described by this section shall not be required to be held under the contested case provisions of the Uniform Administrative Procedures Act. The hearing, review, or conference is intended to provide a reasonable opportunity for the certificate holder to present the holder's version of the situation to the Program Director. Whether the hearing, review, or conference is held before or after an Order of Summary Suspension, the sole issue to be considered is whether the public health, safety, or welfare imperatively required emergency action by the Department.

***Authority**: T.C.A. §§ 4-3-2009, ~~and~~ 39-17-1351 and 39-17-1360. **Administrative History**: Original rule filed January 25, 1995; effective April 10, 1995. Amendment filed September 16, 1996; effective January 28, 1997.*

1340-02-03-.11 Certificate of Completion for Students.

(1) Students, who successfully complete a Handgun Safety Course conducted by Department approved and Certified Handgun Safety School, shall be issued a certificate of completion. This form will be provided by the Department. Only forms supplied by the Department will be acceptable.

~~(a) The certificate shall bear the following minimal information:~~

~~1. Student:~~

~~(i) Full name, social security number, and county of residence.~~

~~2. Handgun Safety School:~~

~~(i) Name of Safety School, and Department assigned identification number.~~

~~3. Instructor:~~

~~(i) Name, signature and social security number.~~

~~4. Handgun:~~

~~(i) Manufacturer's name, model, and caliber.~~

~~5. Issuance date.~~

(2) Certificates issued by Department approved Handgun Safety Schools will be accepted by the Department of Safety for consideration in the application for a handgun carry permit under the provisions of T.C.A. § 39-17-1351.

(~~a~~3) It is not necessary for a student to take a Handgun Safety Course in their county of residence.

Authority: *T.C.A. §§ 4-3-2009, ~~and~~ 39-17-1351 and 39-17-1360.* ***Administrative History****: Original rule filed January 25, 1995; effective April 10, 1995. Amendment filed September 16, 1996; effective January 28, 1997.*

1340-02-03-.12 General Requirements.

(1) The rules, regulations, and requirements established herein are minimums and may be expanded.

(2) No alcoholic beverages of any type or narcotic drugs shall be brought onto, consumed, or stored on the premises of any Handgun Training School site.

(3) No prohibited handguns, as defined by T.C.A. § 39-17-1302, of any type will be possessed by any person on the premises of any site a Handgun Training School is being conducted.

(4) Any authorized representative of the Department shall be permitted to inspect the Handgun Safety School site at any time during normal State business hours, as defined in T.C.A. § 4-4-105 or during the conducting of a Handgun Safety Course.

(5) During the period of time in which the classroom and range portion of the course are being conducted, no third party materials or presentations may be given to the students in the classroom or on the range, including during any breaks. Such materials may be made available to students outside of the classroom but should not disrupt the course of instruction.

Authority: *T.C.A. §§ 4-3-2009, ~~and~~ 39-17-1351 and 39-17-1360.* ***Administrative History:*** *Original rule filed January 25, 1995; effective April 10, 1995. Amendment filed September 16, 1996; effective January 28, 1997.*

* 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 Tennessee Department of Safety 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: 11/6/17

Signature: Colonel Tracy Trott

Name of Officer: Tracy Trott

Title of Officer: Colonel, Tennessee Highway Patrol

VICKIE TAYLOR STATE OF TENNESSEE NOTARY PUBLIC WILSON COUNTY

Subscribed and sworn to before me on: 11/6/17

Notary Public Signature: Vickie Taylor

My commission expires on: 7/11/2020

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

Herbert H. Slatery III

Herbert H. Slatery III
Attorney General and Reporter

12/15/2017
Date

Department of State Use Only

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Filed with the Department of State on: 3/15/18

Effective on: 6/13/18

Tre Hargett

Tre Hargett
Secretary of State

G.O.C. STAFF RULE ABSTRACT

DEPARTMENT:	Labor and Workforce Development
DIVISION:	Bureau of Workers' Compensation
SUBJECT:	General Rules of the Workers' Compensation Program
STATUTORY AUTHORITY:	Tennessee Code Annotated, Section 50-6-233
EFFECTIVE DATES:	May 31, 2018 through June 30, 2019
FISCAL IMPACT:	Minimal
STAFF RULE ABSTRACT:	These rules are amendments to existing general rules of the Bureau of Workers' Compensation concerning forms and procedures regarding workers' compensation claims in Tennessee.

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: In 0800-02-01-.04 Required Proof of Coverage Filings:

Subsection (2): While we do not object to the requirement that notices of cancellation be filed with NCCI within one working day of cancellation, we recommend that penalties be suspended when failure to file is due to technical difficulties beyond the insurer's control, such as an interruption in system availability.

Response: The Bureau agrees and will take into consideration all applicable circumstances before issuing any penalty in any situation.

Subsection (4): Instead of requiring adjusting entities to send the Notice of Employer Rights and Responsibilities in a Workers' Compensation Claim and the Tennessee Worker's Compensation Posting notice, it would be more efficient and cost-effective for these notices to be available for download from the Bureau's website, making employers responsible to download and post them.

Response: The bureau agrees and will generate this notice.

Comment: In 0800-02-01-.06 Medical Panels:

Subsection (1)(b): Requiring physicians to be "qualified, willing and able to treat in a timely manner" before being listed on a panel is impractical, since in some instances willingness to treat cannot be ascertained until the physician reviews medical records of a specific injured worker.

Response: The bureau agrees in part and this subsection has been amended. The bureau agrees that there is a need to improve care to injured workers. Willingness to treat is a requirement in T.C.A. § 50-6-204 to be listed on a panel of physicians.

Subsection (6): Giving employees the final choice as to which physician from within a specialty practice group shall become the authorized treating physician inappropriately undermines the employer's ability to direct medical treatment in order to ensure that injured workers return to work as quickly and successfully as possible.

Response: The bureau disagrees with the comment.

Comment: In 0800-02-01-.06(1), chiropractors should be included in the rule to mirror TCA 50-6-204(a)(3)(A)(i). In 0800-02-01-.06, we request that the following language be struck from (7): "may determine medical causation regarding the injury". TN WC statutes do not require the ATP to determine medical causation. We believe that if the ATP delegates this to a Physician Assistant, the PA should be the one making this determination under the ATP's supervision.

Response: Regarding chiropractors, the bureau agrees and the suggested change was made. Regarding determination causation, the bureau disagrees. There is no statutory authority for a Physician Assistant to determine causation. The definition of "injury" in TCA 50-6-102 and discussion of medical treatment in TCA 50-6-204 only reference "physician" regarding compensability and authorized medical treatment.

Comment: The proposed rules are too specific and detailed in many instances. The rules are notable for their lack of basic due process. The rules provide "after the fact" due process instead of a contested case hearing prior to the imposition of a penalty. The contested case hearing should occur before the penalty is assessed.

Response: The bureau disagrees with the comment regarding a pre-penalty contested case hearing, which is

contrary to the workers' compensation law and bureau rules. The bureau has statutory authority and rule authority to follow the UAPA contested case hearing process, as utilized by the Secretary of State. See TCA 50-6-118(c) and Bureau Rule 0800-02-13.

Comment: The rules are focused on protections for the injured worker and few safe harbors for regulated entities.

Response: The bureau disagrees with the comments regarding the bureau rules being focused on "protections for the injured worker and few safe harbors for regulated entities." See TCA 50-6-419 for the Tennessee General Assembly mandate through rulemaking, including civil penalties, in order to assure that injured employees are treated fairly and to assure that claims are handled in an appropriate and uniform manner.

Comment: Definition of "adjuster" is too broad and may capture persons who do not adjust claims. The rules conflate the concepts of risk-bearing and non-risk bearing entities with the definition of "adjusting entity" in the rules.

Response: The bureau agrees in part, and the definition of "adjuster" has been amended to be consistent with other rules. There was no suggestion as to how to modify the definition of "adjusting entity."

Comment: The rules introduce significant and unnecessary costs into the wc system.

Response: The bureau disagrees. Costs should be minimal.

Comment: It may be helpful to have the Advisory Council and possibly the MAC and MPC to review and comment on the proposed rules.

Response: The bureau disagrees. The roles of the Medical Advisory Committee and Medical Payment Committee do not extend to rules related to the adjustment of claims. The Advisory Council on Workers' Compensation may, but is not required to, make recommendations "relating to the promulgation or adoption of legislation or rules." The Advisory Council will receive a copy of the rules that are submitted to the Attorney General.

Comment: In 0800-02-01-.04(2), providing notice to NCCI within one calendar day is unrealistic and unduly burdensome.

Response: The bureau agrees and the notice period has been changed to fifteen (15) calendar days.

Comment: 0800-02-01-.04. Self-insurance groups are not members of NCCI and have no current obligation to provide info to NCCI so they should be exempt from NCCI filing requirement.

Response: The bureau agrees and has made the requested change,

Comment: In 0800-02-01-.05(1), this is too broad. It should be limited to claims that are properly subject to the workers' compensation law.

Response: The bureau agrees with the comment, but thehe Scope section confirms that these rules are for those entities subject to the TN Workers' Compensation Law.

Comment: In 0800-02-1-.06(b): Willingness to treat is unduly burdensome and costly for employer to investigation doctor every time panel is provided. "Timely" services by physician is not defined and is ambiguous and should not be the ER's responsibility.

Response: The bureau agrees and this section has been amended for clarification purposes.

Comment: In 0800-02-01-.06(5): It is unduly burdensome and costly for a particular physician's name to be on the panel. The name of the clinic should be sufficient.

Response: The bureau disagrees. T.C.A. § 50-6-204 specifies that a panel of physicians be provided.

Comment: Rule 0800-02-01-.06(5) and (6) appear inconsistent. With clinics a particular doctor must be identified, but not with a specialty practice group.

Response: The bureau disagrees that it is inconsistent. With clinics, the Medical Director must be included to ensure that an MD is available to review the records of the injured worker's medical treatment. TCA 50-6-204(a)(3)(A)(i) allows specialty practice groups to be listed on panels.

Comment: 0800-02-01-.06(7): If adjusters have to reject info signed off on by practice extenders, this will have the effect of additional unnecessary costs to the adjusting of a claim.

Response: Adjusters don't have to reject this information. The rule specifically allows mid-levels to treat injured workers. It just prohibits mid-levels from being listed on the panel.

Comment: 0800-02-01-.12 duplicates .04(4). Can a link to the bureau website be provided?

Response: Yes, the form is available on the bureau's website.

Comment: Providing the Beginner's Guide is too burdensome for employers.

Response: The bureau disagrees. The bureau will provide a link on its website for this information.

Comment: Requiring an employer to provide a copy of the Beginner's Guide to Tennessee Workers' Compensation would be onerous for many unsophisticated employers. Small businesses and sole proprietors do not maintain a human resources office or personnel equipped to provide the Beginner's Guide within three days of the notice of injury. Under the proposed rules, the adjusting entity does not have to advise the employer of the requirement to provide the Beginner's Guide until the third business day after the notice of injury (the employer must report the injury to the adjusting entity within one business day and then the adjusting entity must contact the employer within two business days of the employer's reporting the claim). Thus, the employer would have mere hours to obtain a copy of the Beginner's Guide and provide it to the employee.

Response: The bureau agrees, and the Beginner's Guide may be distributed by the insurance carrier. A link to this will be provided on the bureau's website.

Comment: How will the beginner's guide be given to the injured worker? Needs clarification on electronic mail or in person, etc.

Response: The Beginner's Guide may be provided electronically and is to be provided by the adjuster.
Comment: Tenn. Code Ann. §50-6-101 specifically states, "This chapter shall be cited to as the 'Workers' Compensation Law'..." Further, in other Rules, the law is referenced as the Workers' Compensation Law.

Response: The bureau agrees and has made the recommended change.

Comment: Employee is not a defined term under the Rules, as the proposed Rules define "claimant."

Response: The bureau agrees and the term has been changed to "employee".

Comment: Definitions of "adjuster" and "adjusting entity" are inconsistent with other rules.

Response: The bureau agrees and edits were made for consistency in the definitions in other rules.

Comment: Rule 0800-02-01-.04. Required Proof of Coverage Filings. Pursuant to subsection (3), self-insured employers are exempt from subsections (1) and (2), but what about the Adjusting Entity for the self-insured employer? Under subsection (3), self-insured employers must file evidence of procurement, renewal, and/or cancellation of workers' compensation insurance, so the Adjusting Entity would have no obligation in this regard. Is this correct?

Response: The bureau agrees, as proof of coverage filings are not applicable to self-insured employers.

Comment: Under the current Rule 0800-02-01-.06(2), self-insured employers are exempt from this requirement so it is suggested they be exempt under the proposed Rule as well.

Response: The bureau agrees. Self-insured employers would be exempt from this reporting requirement.

Comment: Employers and adjusters generally do not know if the medical provider can treat the employee in a timely manner at the time the Panel of Physicians is offered but may be subject to a penalty if the medical provider is not able to provide timely treatment after the fact? This is a harsh result when an employer and adjuster are dealing with a situation out of their control.

Response: The bureau disagrees. Doctors should not be on panels if they are unable or unwilling to treat injured workers. The employer has a responsibility to ascertain the provider's willingness to provide treatment at the time the doctor was placed on the panel, as there are existing penalties for in the Enforcement Procedure Rule 0800-02-24-.05(d) and (e).

Comment: In 0800-02- 01.06(5) Walk-in clinics, urgent care facilities and other similar providers may be an option on a medical panel if the provider is staffed by at least one physician and the name of the staff physician or medical director is also indicated on the panel. Associated walk-in clinics, urgent care facilities and other similar providers may be listed on the same medical panel to the extent allowed by law provided different staff physicians or medical directors are named for each different location. This proposed Rule is burdensome in that it would require employers to phone every medical provider every time a Panel of Physicians is offered to ensure the name of the staff physician and/or medical director is unchanged.

Response: The bureau disagrees with the comment. Employer/carrier should not list a doctor on panel if the doctor will not treat an injured worker.

Comment: Rule 0800-02-01-.06(6) is wholly unreasonable if it would allow an employee to choose any physician who accepts workers' compensation injuries within a specialty practice to treat the employee as it would negate the right of the employer to control the medical treatment provided to the employee. Also, how does this interact with Tenn. Code Ann. §50-6-204(a)(3)(B) which requires the employee be provided a list of 3 independent reputable physicians, surgeons, chiropractors, or specialty practice groups not associated in practice together that are within a 125 mile radius of the employee's community of residence when 3 or more independent reputable physicians, surgeons, chiropractors, or specialty practice groups not associated in practice together are not available in the employee's community? Further, please clarify if this Rule only pertains to Panel of Physicians provided after a referral to a specialist.

Response: The bureau agrees in part and has clarified the rule to ensure that employers know how to maintain their rights regarding creation of panels.

Comment: In 0800-02-01-.06(7) ...Notwithstanding this use of practice extenders in treatment settings, only the supervising physician may be listed on an Employee Choice of Physician Form C-42, may determine medical causation regarding the injury, may issue a permanent impairment rating, and may determine the date of an injured employee's maximum medical improvement. Aside from the concerns noted above in subsection (5), it is very possible the "supervising physician" overseeing the employee medical treatment may not be the staff physician and/or medical director required to be listed on the Panel of Physicians.

Response: It would not apply to the one physician the ATP referred, but would apply if the employer chose to provide a panel of three. No change is recommended or needed in this rule.

Comment: In 0800-02-01-.06(8) In cases involving an injury that occurred on or after July 1, 2014, and the authorized treating physician, selected by the employee from an initial panel, refers the employee for specialized care, the employer shall be deemed to have accepted the referral, unless the employer, within three (3) business days, provides a panel of three (3) or more independent reputable physicians, surgeons, chiropractors or specialty practice groups to the employee pursuant to T.C.A. 50-6-204(a)(3)(A). Is this Rule necessary when the same is codified at Tenn. Code Ann. § 50-6-204(a)(3)(A)(ii)?

Response: The bureau disagrees. The rule adds clarity to the statute.

Comment: In 0800-02-01-.06(8):
a. If a panel of three (3) specialists is provided, the employee shall select a provider from the panel and that provider shall become the employee's authorized treating physician.
Is this Rule necessary when the same is codified at Tenn. Code Ann. § 50-6-204(a)(3)(E) and is a bit different?

Response: The rule adds clarity to the statute.

Comment: Rule 0800-02-01-.08. Additional Forms. (2) Employers that are exempt from the Act and elect to be covered shall indicate that election by properly securing workers' compensation coverage. Such employers that subsequently wish to withdraw their acceptance of the provisions of the Workers' Compensation Law shall notify each of their employees affected by the withdrawal of the acceptance via certified mailing to the last known address of each affected employee at least ten (10) working days prior to canceling or not renewing the coverage. Such withdrawal shall not be effective until this notification has occurred.
This proposed Rule would apply to our municipal entities who can opt of workers' compensation. This proposed

Rule is unduly burdensome in terms of providing notice to employees and the notice is of no effect as the employee could not change the decision. This raises the issue of why notice would have to be provided at all? Please advise as to the purpose. Under the current Rule the only required notice is to the Administrator.

Response: The bureau disagrees. The cities and municipalities are exempt from the WC Law unless they opt in. They will no longer have to file notice with the bureau or administrator that they are electing to be included in the wc law. Employees need to know whether their employer is included or not in the wc system.

Comment: Three business days is too aggressive. The first panel is the difficult one. The current five business day requirement more appropriate. Also, two business days to send out the notice of reported injury is too restrictive and will increase the workload of the adjuster. This might be addressed by the liaison requirement. If there is a change of adjuster, there should be a notice, but maybe either one or the other (notice of reported injury or notice of a change) go out to the injured worker to serve the same purpose.

Response: The bureau disagrees that three business days is too short to provide a panel. Many states require the panel to be provided within one business day. The bureau disagrees with the comment about two business days to send the notice of reported injury being too restrictive. Both of these notices are important and should be provided to the injured worker.

Comment: In .06 (7), the Physician Assistant should be able to address causation since the PA is more familiar with the patient, and since working under the ATP, the PA can do this.

Response: The bureau disagrees. The PA is not a physician as required in TCA 50-6-204 and cannot address causation or provide an impairment rating.

Comment: Rule 0800-02-01-0.05 Employer Claims Reporting Requirements
I am concerned about the language "An employer must accept any notice of a claim". The language is broad and could circumvent what has been established as proper notice. My suggestion would be to change the language to "Once notice is received of a claim". I would also like the ability to point the employee to the Bureau's website rather than actually providing a copy of the Beginner's Guide to Tennessee Workers' Compensation.

Response: The bureau agrees in part with the comment and has edited this rule. Providing a link to the beginner's guide on the bureau website is permissible.

Comment: Regarding reporting the claim to the TPA within 1 business day when we know about an injury, will this affect self-insured employers? I'm not sure how that will affect us since we "hold" some claims in EHS(Our nurses dept) for a while on occasion depending on the circumstances (i.e. employee wants us to be aware of a strain or soreness but doesn't feel a need for treatment at the time of report, etc.).

Response: The reporting requirement to the TPA/Carrier does not apply to self-insured employers.

Comment: We also send occasional "for report only" claims to our TPA which require no investigations. As a part of this, we do include the form with the MD choice with the employee's signature so hopefully this will suffice. However, I'm not sure how they will look at it based on these potential regulations. I suspect other employers do these very same things which I feel are proper but may be questioned according to the new proposals.

Response: The bureau agrees that the reporting requirement and panel of physician requirements should be met. No changes to the rules were recommended.

Comment: In 0800-02-01-.06, the term "appropriate panel" needs defining or clarification.

My suggestion is to define "appropriate panel" with an example that includes the name of the physician, State medical license number and that the physician's office and distance from the EE home. An appropriate panel must include physicians within the EE community if available. If the EE with an ortho knee injury lives in Smyrna then it is not appropriate to give him physician list of orthos with one in Murfreesboro and one in Smithville (50 miles away)and one in McMinnville (70 miles away) when Nashville has 250 within 25 miles.

I think the Bureau needs to define what an "appropriate panel" clearly within these rules based upon the statute and case law. An appropriate panel to me is a panel of physicians within the specialty to treat the work related injury within the EE community whereby at least one of the three are not in the same practice or practice group and are not located more than twenty-five (25) miles from the EE residences unless there are not enough physicians within twenty-five (25) miles to produce the panel of 3, in which case the panel my include no more than two (2) physicians

that are no greater than seventy-five (75) miles from the EE residence.

Putting a definition out there that has true consequences will reduce the number of PDBs filed on this issue. If the WCATP is going to be presumed correct and is chosen from a list produced by a very knowledgeable EE and Carrier and given to an unknowledgeable injured worker, then rules need to be made and followed by the ER and Carrier on the panel issue. 90% of the time the EE is unrepresented at the time the panel is given.

Response: The bureau agrees with the comment, and a clarifying change has been made to the medical panel section of these rules.

Comment: Regarding the requirement that employers give a copy of the Beginner's Guide to everyone filing a claim. The Guide is very explicit in explaining that the employee's SUPERVISOR should be the one first notified, and that the SUPERVISOR is the one who must complete the 'required forms' which are listed on the website. (And the website (tn.gov/workforce/topic/forms) lists 137 forms with no indication as to which the supervisor is supposed to complete, so this is confusing.) The Guide says the SUPERVISOR must give the employee the panel of doctors....

So I fear giving the Beginner's Guide attached here will cause some confusion and possibly some unnecessary backlash if the worker think's we aren't following the rules.

Also, Can you change the 1st (1) requirement for employer's: 0800-02-01-.05 to instead of providing a copy of the Beginner's Guide with every claim filed, to requiring the employer to tell/give the employee information about the website, where they can look-up/read the Guide for themselves as well as maybe get some other info.

Response: The beginner's guide refers to supervisor instead of employer, which may be confusing. The bureau has changed the language in beginner's guide to read "employer" instead of "supervisor". An employer may refer an injured worker to the bureau's website for this information.

Comment: TAA has a Worker's Compensation Pool, TENNESSEE AUTOMOTIVE ASSOCIATION SELF-INSURED TRUST (TAASIT) which provides primarily franchised motor vehicle dealers with worker's compensation insurance. TAASIT requests that you exempt their type of pools from the rules proposed by TDLWFD. It is a duplication of regulation and effort in many instances and is unnecessary in this instance.

Response: Self-insured employers and pools are subject to the workers' compensation law and rules. However, under Rule 0800-02-01-.04(3), self-insured employers and pools are exempt from this section, but must file proof of coverage with the Department of Commerce and Insurance in accordance with T.C.A. § 50-6-405 with a copy to the bureau.

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 should not 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 a negative 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 are amendments to existing general rules of the Bureau of Workers' Compensation concerning forms and procedures regarding workers' compensation claims in Tennessee.

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

T.C.A. § 50-6-233: The bureau's administrator may promulgate rules and regulations implementing the workers' compensation law.

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

Workers' compensation insurance carriers and employers, including self-insured employers, 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:

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: 03-02-18
Rule ID(s): 6711
File Date: 3/2/18
Effective Date: 5/31/18

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

(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)

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

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**
0800-02-01	General Rules of the Workers' Compensation Program
Rule Number	**Rule Title**
0800-02-01-.01	Scope of Rules
0800-02-01-.02	Definitions
0800-02-01-.03	Designation of Insurance Rate Service Organization
0800-02-01-.04	Required Proof of Coverage Filings
0800-02-01-.05	Employer Claims Reporting Requirements
0800-02-01-.06	Medical Panels
0800-02-01-.07	Claims Form and Claims Resolution Filing Requirements
0800-02-01-.08	Additional Forms
0800-02-01-.09	Medical Reports
0800-02-01-.10	Civil Penalties
0800-02-01-.11	Records/Copies
0800-02-01-.12	Required Posting

RULES
OF
TENNESSEE DEPARTMENT OF LABOR
BUREAU OF WORKER'S COMPENSATION

CHAPTER 0800-02-01
GENERAL RULES OF THE WORKERS' COMPENSATION PROGRAM

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0800-02-01-.01 ~~PURPOSE AND SCOPE.~~Scope of Rules

This chapter shall apply to all employees, employers, adjusting entities, and providers of services related to workers' compensation claims subject to the Tennessee Workers' Compensation LawAct ~~(the Act)~~.

~~(1) Purpose. The purpose of this chapter and the within rules is to set out the reporting requirements and procedures for the state's Workers' Compensation program. These rules set out the forms required for reporting, time limits, and civil penalties which may be assessed by the Division of Workers' Compensation. They also establish the records available from the Division and procedure for obtaining records.~~

~~(2) Scope. This chapter and the within rules apply to all employers, self-insured employers, insurance carriers, and/or employees subject to the "Workers' Compensation Law."~~

Authority: *T.C.A § 50-6-101 et seq., Title 50, Chapter 10.* ***Administrative History:*** *Original rule certified June 10, 1974. Amendment filed September 19, 1974; effective October 19, 1974. Repealed and new rule filed February 19, 1987; effective April 5, 1987.*

0800-02-01-.02 ~~DEFINITIONS.~~**Definitions**

~~(1)~~ The terms contained within these rules shall have the same definitions as those established by the Workers' Compensation Law and the case law interpreting it. When any terms that are used in these rules differ from the definition established by the Tennessee Workers' Compensation Law, the definition established by the Tennessee Workers' Compensation Law shall govern.

~~(2) "Director" shall mean the Director of the Workers' Compensation Division of the Tennessee Department of Labor. As of the date of filing these rules, the Director may be contacted as follows:~~

~~Director, Division of Workers' Compensation~~
~~Tennessee Department of Labor and Workforce Development~~
~~220 French Landing Drive~~
~~Nashville, Tennessee 37243~~

~~(3) "Division" shall mean the Division of Workers' Compensation within the Tennessee Department of Labor.~~

~~(Rule 0800-02-01-.02, continued)~~

~~(4) "Filing" shall be effective when received by the Division and shall be done through electronic data interchange whenever possible.~~

~~(5) "Self-insured Employers" shall include group self-insured employers.~~

(1) "Adjusting entity" means a trade or professional association, managing general agency, pool, third party administrator and/or insurance company licensed to write workers' compensation insurance in Tennessee and shall also mean a self-insured employer or group self-insured employers possessing a valid certificate of authority from the commissioner of commerce and insurance pursuant to T.C.A §50-6-405.

(2) "Adjuster," "claims adjuster," "med-only adjuster" or "claims handler" means a representative of an adjusting entity who investigates workers' compensation claims for purposes of making compensability determinations, files or causes claims forms to be filed with the Bureau, commences benefits, and/or makes settlement recommendations based on the insured's liability on behalf of a self-insured employer, trade or professional association, third party administrator, and/or insurance company.

(3) "Administrator" shall have the same definition of "Administrator" as in T.C.A. §50-6-102.

(4) "Bureau" means the Tennessee Bureau of Workers' Compensation as defined in Tenn. Code Ann. § 50-6-102, an autonomous unit attached to the Department of Labor and Workforce Development for administrative matters only, pursuant to Tenn. Code Ann. § 4-3-1409.

~~"Claimant" means an individual who is claiming benefits under the Act.~~

(5) "Electronic Data Interchange" or "EDI" means the electronic communication method that provides standards for exchanging data via any electronic means. The term "EDI" encompasses the entire electronic data interchange process, including the transmission, message flow, document format, and software used to interpret the documents using the standards established by the IAIABC and the Release Version accepted by the Bureau at the time of the filing.

(6) "Employee shall have the same definition of "Employee" as in T.C.A. §50-6-102.

(7) "Employer" shall have the same definition of "Employer" as in T.C.A. §50-6-102.

(8) "File" means to successfully submit claims information in the manner required by Bureau Rules. Success is achieved when claims information is filed in the manner required by the Bureau Rules and its acceptance is acknowledged by the Bureau. Success is not achieved if the Bureau receives and its acceptance is not acknowledged by the Bureau or if the Bureau subsequently rejects or returns claims information that has been submitted but is incomplete or fails to use the correct form or formats.

(9) "Form" means the original document as is available on the Bureau's website on the date of the filing.

(10) "IAIABC" means the International Association of Industrial Accident Boards and Commissions.

(11) "Insured" shall have the same definition of "Employer" as in T.C.A. §50-6-102.

(12) "Rate Service Organization" shall have the same definition of "Rate Service Organization as in T.C.A. §56-5-102.

Authority: *T.C.A §§ 50-6-101 et seq. and 50-6-102.* ***Administrative History:*** *Original rule filed February 19, 1987; effective April 5, 1987. Amendments filed March 25, 2013; effective June 23, 2013.*

~~**0800-02-01-.03 CIVIL PENALTIES.** The Workers' Compensation Law requires the filing of forms as outlined in the following section, and the Director shall assess and collect civil penalties as defined in Rule 0800-02-01-.04 through Rule 0800-02-01-.16.~~

~~***Authority:*** *T.C.A §§ 50-6-101 et seq. and 50-6-102.* ***Administrative History:*** *Original rule filed February 19, 1987; effective April 5, 1987.*~~

0800-02-01-.03 Designation of Insurance Rate Organization

The Insurance Rate Service Organization designated for purposes that include the filing of insurance policy provisions and coverages and the determination of job classifications for applicable Bureau Rules shall be posted on the Bureau's website.

Authority: T.C.A §§ 56-5-120, 56-5-110, 50-6-901, 56-5-320. New rule filed _____; effective _____.

~~**0800-02-01-.04 REPEALED.**~~

~~***Authority:*** *T.C.A. §§ 50-6-118, 50-6-233, 50-6-412, and 50-6-801.* ***Administrative History:*** *Original rule filed February 19, 1987; effective April 5, 1987. Repeal filed January 3, 2003; effective May 30, 2003.*~~

0800-02-01-.04 Required Proof of Coverage Filings

(1) An adjusting entity must file appropriate evidence with the designated Rate Service Organization of an employer's procurement or renewal of workers' compensation insurance within thirty (30) calendar days of the procurement or renewal. Failure to timely file the appropriate evidence would subject the offending party to a potential penalty as described in 0800-02-01-.10(2) below.

(2) An adjusting entity must file appropriate evidence, with the designated Rate Service Organization, of the cancellation of an employer's workers' compensation insurance within fifteen (15) calendar ~~one (1) working~~ days of the cancellation. Failure to timely file the appropriate evidence would subject the offending party to a potential penalty as described in 0800-02-01-.10(2) below.

(3) Self-insured employers and pools are exempt from ~~the requirements of paragraphs (1) and (2) of~~ this ~~sub~~section, but must file evidence with the Department of Commerce and Insurance in accordance with T.C.A §50-6-405 and provide a copy to the Bureau of Workers' Compensation coverage unit.

(4) Not later than five (5) business days of the date of the procurement and each subsequent renewal of a policy, the adjusting entity is required to mail a copy of the Notice of Employer Rights and Responsibilities in a Workers' Compensation Claim and a copy of the Tennessee Workers' Compensation Posting Notice via electronic mail or first class US Mail to the employer at the address provided on the policy. These documents, produced by the Bureau, provide information regarding employer and employee rights, responsibilities, duties, and obligations under the Workers' Compensation Law. Failure to timely mail a required form would subject the offending party to a potential penalty as described in 0800-02-01-.10(2) below.

Authority: T.C.A §§ 50-6-118, 50-6-405, 50-6-406, and 50-6-402. Administrative History: Original rule filed February 19, 1987; effective April 5, 1987. Repeal and new rule filed _____; effective _____.

~~**0800-02-01-.05 FAILURE TO FILE CERTIFICATE OF INSURER.** Employers and/or insurance carriers of an employer must file with the Director of Workers' Compensation written evidence of compliance with the insurance coverage requirements of TCA §50-6-405. Self-insured employers are exempt from this section, but must file with the Department of Commerce and Insurance in accordance with T.C.A §50-6-405(a)(2).~~

~~(1) Workers' Compensation Form I-1 (Certificate of Insurer) is the written evidence required by Rule 0800-02-01-.05, and a copy can be found in Appendix A (together with copies of all other Forms). Form I-1 shall be submitted within thirty (30) days after procurement or renewal~~

~~of suitable workers' compensation insurance.~~

~~(2) The penalty for non-compliance with Rule 0800-02-01-.05 is $100 for each fifteen (15) days past the required date for filing until Form I-1 is received.~~

~~(3) "Notice of Cancellation." Upon cancellation of any Workers' Compensation insurance policy, Form I-2 shall be immediately filed with the Director.~~

~~***Authority:*** *T.C.A §§ 50-6-118 and 50-6-405.* ***Administrative History:*** *Original rule filed February 19, 1987; effective April 5, 1987.*~~

0800-02-01-.05 Employer Claims Reporting Requirements

(1) An employer must accept any notice of a claim for workers' compensation benefits from any employee or employee's representative alleging an injury. ~~or the employee's representative and must provide a copy of the Beginner's Guide to Tennessee Workers' Compensation, available on the Bureau's website, to the injured employee contemporaneously with the provision of the panel described in 0800-02-01-.06.~~

(2) In order to ensure that Workers' Compensation claims are acted on promptly, employers shall report all known or reported accidents or injuries to their adjusting entity within one (1) business day of knowledge of injury.

(3) Unless otherwise specifically authorized by law, employers are prohibited from paying any benefits that are due because of a work-related injury in any manner that unlawfully shifts the responsibility away from the adjusting entity or conceals the occurrence of the injury or the extent of payments for benefits.

(4) To assist the Bureau in its efforts to implement and enforce any of its programs rules in a timely and efficient manner, a party shall provide the Bureau with any requested and relevant information. When the request includes specific instructions, only the information that complies with those instructions shall be sent.

Authority: T.C.A §§ 50-6-207, 50-6-114, 50-3-701, 50-6-201, 50-6-128, and 50-6-419. Repeal and new rule filed _____; effective _____.

~~**0800-02-01-.06 FIRST REPORT OF INJURY.**~~

~~Each employer, self-insured employer, and/or insurer shall file a Form C-20 (Tennessee Employer's First Report of Work Injury or Illness) in accordance with the following:~~

~~(1) The Form C-20 shall be filed with the Division in all cases where the injury or illness results in the receipt of medical treatment outside of the employer's premises, absence from work, retention of a permanent impairment, or death. Except as provided in paragraph (2) of this Rule, in no event shall the requirement to file Form C-20 differ based upon the number of days between the injury or illness and the employee's return to employment.~~

~~(2) Employers, other than self-insured employers, shall report the injuries or illnesses described in paragraph (1) of this Rule to their insurer within one (1) business day of knowledge of the injury or illness. Insurers, and self-insured employers, shall file the Form C-20 with the Division as soon as possible, but not later than fourteen (14) days after knowledge of an~~

(Rule 0800-02-01-.06, continued)

~~injury or illness of a nature that an employee does not return to his or her employment within seven (7) days after the occurrence of the injury or illness. Reports of injuries or illnesses in which an employee returns to his or her employment within seven (7) days or fewer shall be filed as soon as possible, but not later than the fifteenth (15th) day of the month following the month in which the injury or illness occurred.~~

~~(3) The penalty for non-compliance with Rule 0800-02-01-.06 is $25 for each fifteen (15) days past the required date for filing. Where non-compliance is the result of the employee's failure to provide the employer with notice of the injury, the employer shall submit written evidence of the lack of knowledge of the injury upon the Division's request. The Division may adjust and/or eliminate the penalty based on such written evidence.~~

~~***Authority:*** *T.C.A. §§ 50-3-701; 50-3-702; 50-6-102; 50-6-118; 50-6-201; and 50-6-233.* ***Administrative History:*** *Original rule filed February 19, 1987; effective April 5, 1987. Repeal and new rule filed March 25, 2013; effective June 23, 2013.*~~

0800-02-01-.06 Medical Panels

~~The employer shall provide the employee an appropriate initial panel of physicians on an Employee Choice of Physician Form C-42 upon report of a workplace injury, other than those requiring emergency care, as defined in the workers' compensation statutes.~~

~~The panel shall list the names of medical providers made available by the employer to treat the injured employee.~~

~~A provider, physician or specialty practice group must be qualified, willing and able to treat in a timely manner the nature of the injury or condition reported in order to be listed on a panel.~~

~~An injured employee seeking medical treatment shall select one of the listed providers to become the treating physician.~~

(1) Following receipt of notice of a workplace injury and the employee expressing a need for medical care, an employer shall, as soon as practicable but no later than three (3) business days after receipt of such request, provide the employee a panel of physicians as prescribed in T.C.A. § 50-6-204. A medical provider must be qualified, willing and able to treat in a timely manner the injury or condition reported to be listed on a panel.

(2) In the absence of evidence establishing a defense, where the employer fails to provide an appropriate initial panel of physicians to the employee within three (3) business days from the date the employer has notice of a work-related injury and the employee expressed a need for medical care, or provides a panel of physicians to the employee that does not meet statutory requirements, the employer may be assessed a civil penalty as provided in 0800-02-01-.10. The determination of whether a penalty is appropriate is a determination separate from and not dependent upon the ultimate compensability of the claim.

~~In any case where the employer fails to provide an appropriate initial panel of physicians to the employee within three (3) business days from the date the employer has notice of an injury, or provides a panel of physicians to the injured employee that does not meet statutory requirements, the employer may be assessed a civil penalty as provided in 0800-02-01-.10.~~

(3) The employer shall immediately provide proper emergency assistance (i.e. EMT, ambulance, etc.) for any workplace injury that causes the need for emergency care. After the injured employee's medical condition has stabilized, the employer shall follow the requirements of subsection (1) above, the same as any alleged workplace injury not requiring emergency care.

(Rule 0800-02-01-.06, continued)

(4) Employers may direct injured employees to onsite, in-house or other similar employer-sponsored medical providers prior to providing an initial panel of physicians for an examination as allowed in T.C.A. §50-6-204(d)(1). Having such a provider examine the injured employee does not satisfy nor alleviate the requirement for providing an appropriate panel within the three (3) business days referenced in 0800-02-01-.06(2) above. Employers may list that employer-sponsored medical provider as an option on the medical panel provided the provider meets the statutory requirements; however, the employee has the ultimate decision regarding which physician is selected.

(5) Walk-in clinics, urgent care facilities and other similar providers may be an option on a medical panel if the provider is staffed by at least one physician and the name of the staff physician or medical director is also indicated on the panel. Associated walk-in clinics, urgent care facilities and other similar providers may be listed on the same medical panel to the extent allowed by law provided different staff physicians or medical directors are named for each different location.

~~When a specialty practice group, consisting of multiple physicians willing to treat workers' compensation employees, is provided as an option on any panel provided by the employer and chosen by the employee, the employee will have the final choice as to which appropriate physician from within that group shall become the authorized treating physician.~~

(6) When the name of a specialty practice group, consisting of multiple physicians willing to treat workers' compensation employees, is provided as an option on any panel provided by the employer rather than an individual physician's name and that group is chosen by the employee, the employee will have the final choice as to which appropriate physician from within that group shall become the authorized treating physician.

(7) Nurse Practitioners, Physician Assistants and other mid-level practice extenders under the supervision, direction and ultimate responsibility of a licensed physician accountable to the Board of Medical Examiners may provide medical treatment ordered by an attending physician to an injured employee in accordance with their licensing. Notwithstanding this use of practice extenders in treatment settings, only the supervising physician may be listed on an Employee Choice of Physician Form C-42, may determine medical causation regarding the injury, may issue a permanent impairment rating, and may determine the date of an injured employee's maximum medical improvement.

(8) In cases involving an injury that occurred on or after July 1, 2014, and the authorized treating physician, selected by the employee from an initial panel, refers the employee for specialized care, the employer shall be deemed to have accepted the referral, unless the employer, within three (3) business days, provides a panel of three (3) or more independent reputable physicians, surgeons, chiropractors or specialty practice groups to the employee pursuant to T.C.A. 50-6-204(a)(3)(A).

a. If a panel of three (3) specialists is provided, the employee shall select a provider from the panel and that provider shall become the employee's authorized treating physician.

b. For purposes of this section, receipt of the referral by the employer shall be accomplished whenever a copy of the referral is received at the employer or carrier's place of business by facsimile, email, post, hand delivery or commercial delivery service.

Authority: T.C.A. §§ 4-3-1409, 50-6-204, 50-6-233, 50-6-116, 50-6-419, and 50-6-118. Administrative History: Original rule filed December 22, 2014; effective date March 22, 2015. Repeal and new rule filed _____; effective _____.

~~**0800-02-01-.07 NOTICE OF FIRST PAYMENT OR DENIAL.** Upon making the first payment or upon denying a claim after proper investigation, the employer, self-insured employer, or insurance company must notify the Director immediately by submitting one of the following:~~

~~*Notice of First Payment of Compensation, Form C-22; or~~
~~*Notice of Denial of Claim for Compensation, Form C-23.~~

~~(1) "First Payment of Compensation." Employers, self-insured employers, and/or insurance~~

(Rule 0800-02-01-.06, continued)

~~companies must file Form C-22 (Notice of First Payment of Compensation) with the Director.~~

~~(a) The penalty for failure to immediately notify the Director of the first payment of compensation is $10 for each fifteen (15) days past the required date the payment was issued until the notice is received by the Director. Said penalty shall not exceed Two Hundred ($200.00) Dollars for any individual violation of this regulation.~~

~~(b) The penalty for failure to pay the first payment in accordance with TCA §50-6-205(b) is $50 for each fifteen (15) days past the date when payment is due. Said penalty shall not exceed One Thousand Five Hundred ($1,500.00) Dollars for any individual violation of this regulation.~~

~~(2) "Notice of Denial." Insurance carriers and/or self-insured employers must submit to the Director notice of denial of compensation on Form C-23.~~

~~(a) The penalty for failure to immediately notify the Director of denial of workers' compensation benefits is $10 for each fifteen (15) days past the date of denial until the notice is received.~~

~~(b) Bad Faith Denial. The penalty for a bad faith denial of a claim shall be an amount equal to the amount of unpaid benefits up to a maximum of $500.~~

~~(c) Bad faith shall be determined by the Director and shall include such conduct as denial of a claim based on the fact that the employee filed a lawsuit.~~

~~***Authority:*** *T.C.A §§ 50-6-101; 50-6-118; 50-6-205(b); 50-6-205(c); 50-6-303 and 4-5-202.*~~
~~***Administrative History:*** *Original rule filed February 19, 1987; effective April 5, 1987. Amendment filed March 5, 1993; effective April 19, 1993.*~~

0800-02-01-.07 Claims Form And Claims Resolution Filing Requirements

(1) When forms are reproduced, they shall be reproduced in their entirety, including any instructions, and shall not be modified without written consent of the Administrator. A form may be revised by the Bureau at any time at the discretion of the Administrator and shall be made available by the Bureau at no cost.

(2) Each adjusting entity shall file all required claims forms and claims resolution documents in accordance with Rules 0800-2-14 Claims Handling Standards.

Authority: T.C.A § 50-6-419. New rule filed _____; effective _____.

~~**0800-02-01-.08 NOTICE OF CHANGE OR STOP IN BENEFIT PAYMENTS FOR ANY CAUSE OTHER THAN FINAL SETTLEMENT.** Insurance carriers and/or self-insured employers must submit to the Division notice of change or stop in benefits payment on Form C-26. Form C-26 must be filed immediately upon change or stop in the payment of benefits.~~

(Rule 0800-02-01-.08, continued)

~~(1) The penalty for non-compliance with Rule 0800-02-01-.08 is $10 for each fifteen (15) days past the date the change or stop occurred until notice is received by the Director.~~

~~(2) The penalty for failure to pay benefits at least semi-monthly as required by TCA §50-6-205(b) is $50 for each fifteen (15) days past the date when payment is due.~~

~~***Authority:*** *T.C.A §§ 50-6-205 and 50-6-118.* ***Administrative History:*** *Original rule filed February 19, 1987; effective April 5, 1987.*~~

0800-02-01-.08 Additional Forms

(1) Any corporate officer who personally elects to be exempted from the Workers' Compensation Law shall file written notice of such election with the employer with a copy provided to the Bureau in accordance with the provisions of TCA §50-6-104 on Form I-6. Any corporate officer who had previously filed a Form I-6 and elects to revoke that decision and wishes to be covered by the Workers' Compensation Law shall immediately notify the employer and the Bureau on Form I-7.

(2) Employers that are exempt from the Workers' Compensation Law and elect to be covered shall indicate that election by properly securing workers' compensation coverage. Such employers that subsequently wish to withdraw their acceptance of the provisions of the Workers' Compensation Law shall notify each of their employees affected by the withdrawal of the acceptance via certified mailing to the last known address of each affected employee at least ten (10) working days prior to canceling or not renewing the coverage. Such withdrawal shall not be effective until this notification has occurred.

(3) An employee or prospective employee who wishes to waive compensation for claims arising out of aggravation or repetition of the conditions of heart disease, heart attack, or coronary failure or occlusion or who wishes to waive receipt of compensation for any aggravation of a specific identified occupational disease, pursuant to the provisions of the Workers' Compensation Law, or who are diagnosed as epileptics and who elect, pursuant to the provisions of the Workers' Compensation Law, not to be subject to the Workers' Compensation Law for injuries resulting because of epilepsy shall request the approval of the Bureau of the waiver on Form I-10, 11, 12. Requests for the revocation of a previously approved Form I-10, 11, 12 shall be furnished to the Bureau on Form I-13.

(4) Common carriers who wish to provide workers' compensation insurance coverage under the Tennessee Workers' Compensation Law to a leased operator and/or a leased owner/operator shall notify the Bureau on Form I-14 & 16. Any such previously filed Form I-14 may be terminated by the leased operator, leased owner/operator, or common carrier by providing written notice of such termination to the Bureau and to all other parties on Form I-16.

(5) General contractors who wish to provide workers' compensation insurance coverage under the Workers' Compensation Law to an individual subcontractor shall notify the Bureau on Form I-15. Such previously filed Form I-15 may be terminated by the subcontractor or general contractor by providing written notice of such termination to the Bureau on Form I-17.

Authority: T.C.A §§ 50-6-102; 50-6-104; 50-6-106; 50-6-106; 50-6-307; 50-6-213; and 50-6-902. Administrative History: Original rule filed February 19, 1987; effective April 5, 1987. Repeal and new rule filed _____; effective _____.

~~**0800-02-01-.09 NOTICE OF CONTROVERSY.** Where payments have been made without an award, and the employer subsequently elects to controvert his liability, Form C-27 (Notice of Controversy) shall be filed with the Director within fifteen (15) days of the due date of the first omitted payment.~~

~~***Authority:*** *T.C.A § 50-6-205(d).* ***Administrative History:*** *Original rule filed February 19, 1987; effective April 5, 1987.*~~

(Rule 0800-02-01-.08, continued)

0800-02-01-.09 Medical Reports

A party, in lieu of a physician's deposition, may file a Standard Form Medical Report for Industrial Injuries-Form C-32 with the Administrator. The attending physician may charge a fee of up to One Hundred and Fifty Dollars ($150.00) for completion and certification of the form.

Authority: T.C.A §§ 4-3-103; 4-3-1403; 50-6-101 et seq., 50-6-118; 50-6-126; 50-6-204; 50-6-235 and 4-5-202. Administrative History: Original rule filed February 19, 1987; effective April 5, 1987. Amendment filed March 5, 1993, effective April 19, 1993. Repeal and new rule filed _____; effective _____.

~~**0800-02-01-.10 NOTICE OF LAWSUIT.** Employees and/or employee representatives shall submit to the Director notice of filing of any lawsuit concerning workers' compensation benefits. Form C-28 must be filed to satisfy this notice requirement. This notice must be forwarded within ten (10) days of filing of the lawsuit. The penalty for non-compliance with Rule 0800-02-01-.10 is $50.~~

~~***Authority:** T.C.A § 50-6-205(d). **Administrative History:** Original rule filed February 19, 1987; effective April 5, 1987.*~~

0800-02-01-.10 Civil Penalties

(1) The Bureau shall assess and collect civil penalties as defined in the Bureau's Rules.

(2) A violation of any Workers' Compensation Rule included in Chapters 0800-02 without a defined penalty may result in a civil penalty of not less than fifty dollars ($50.00) nor more than five thousand dollars ($5,000), per violation.

(3) Prior to assessing a civil penalty against a party, the Bureau shall provide the party appropriate written notice of any potential penalty(ies) and allow the party an opportunity to submit evidence of compliance with the applicable Rules. If compliance is not established, a civil penalty shall be assessed pursuant to the applicable rules. The Bureau's Rules shall be posted on the Bureau's website. Where a civil penalty is imposed pursuant to the applicable rules, the assessed party may request a contested case hearing under Rules 0800-02-13.

(4) Uncontested penalties shall be paid within 20 days of the date of the Bureau's notice of assessment of penalty and in the form of a check or money order made payable to the Treasurer, State of Tennessee and submitted to the Administrator.

(5) Unpaid penalties may be collected in a civil action in the name of the State of Tennessee in any court of competent jurisdiction.

Authority: T.C.A §§ 50-6-101 et seq., 50-6-102, 50-6-104; 50-6-106; 50-6-213; 50-6-307; 50-6-213. Administrative History: Original rule filed February 19, 1987; effective April 5, 1987. Repeal and new rule filed _____; effective _____.

~~**0800-02-01-.11 SETTLEMENTS AND RELEASES.** Copies of all settlements and releases shall be filed by the employer with the Director within ten (10) days after such settlements are made.~~

~~***Authority:** T.C.A § 50-6-228. **Administrative History:** Original rule filed February 19, 1987; effective April 5, 1987.*~~

0800-02-01-.11 Records/Copies

(1) Workers' compensation settlement documents are public records.

(2) Pursuant to T.C.A. §50-3-702(b) workers' compensation claims records are exempt from public disclosure.

(Rule 0800-02-01-.08, continued)

(3) Pursuant to T.C.A. §50-6-131 medical records held by the Bureau are not public records and are exempt from public disclosure or inspection.

(4) Any person has a right to inspect public records. The right to "inspect" encompasses a right to view existing records and request a copy of them. It does not include a right to request searches for records not known to exist. Subject to an offer of employment, employers may request the Bureau to confirm the truthfulness of an applicant's answers regarding prior workers' compensation claims.

(5) Copies of the Workers' Compensation records disclosable under state law may be obtained by written request made to:

Tennessee Bureau of Workers' Compensation
ATTN: Records' Custodian
220 French Landing Drive, 1-B
Nashville, Tennessee 37243-1002

(6) Fees for researching and copying shall be ten dollars for the first twenty-five (25) pages and twenty-five cents (25¢) for each page after 25 pages.

(7) The Bureau shall charge an additional fee of $10.00 for certified records.

(8) Payments of fees for records shall be made by credit card, check or money order payable to Treasurer, State of Tennessee and submitted to the Administrator. Payment in cash will not be accepted. Payment is due upon receipt of the requested material. Requestors will not be entitled to receive additional records until all payments for records provided within the previous sixty (60) days have been received.

Authority: T.C.A §§50-6-238; 50-6-131, New rule filed _____; effective _____.

~~**0800-02-01-.12 JUDGMENTS AND COURT APPROVED SETTLEMENTS.** Employers, insurance companies, and/or self-insured employers shall forward certified copies of judgments or court approved settlements to the Director within ten (10) days of entry by the Court. The penalty for non-compliance with Rule 0800-02-01-.12 is $50.~~

~~***Authority:** T.C.A § 50-6-206. **Administrative History:** Original rule filed February 19, 1987; effective April 5, 1987.*~~

0800-02-01-.12 Required Posting

(1) Within five (5) business days of the date of the procurement or renewal of a policy, the adjusting entity is required to mail a copy of the Tennessee Workers' Compensation Posting Notice, available on the Bureau's website, via electronic mail or first class US Mail to the employer at the address provided on the policy. Failure to timely mail this form would subject the offending party to a potential penalty as described in 0800-02-01-.10(2).

(2) Each employer is required to notify their employees of the services offered by the Bureau, the duties and obligations of the employer and employee and the name, address and telephone number employees may contact for additional information. This requirement shall be met by the continuous posting of the Tennessee Workers' Compensation Posting Notice, available on the Bureau's website, in one (1) or more conspicuous place(s) at each worksite.

Authority: T.C.A. §§50-6-407. New rule filed _____; effective _____.

(Rule 0800-02-01-.08, continued)

~~**0800-02-01-.13 REPORT OF ALL PAYMENTS.** Employers, self-insured employers, and/or insurance carriers must submit Form C-29 (Final Report of Payment and Receipt of Compensation) to the Director within thirty (30) days following the final payment of compensation. Form C-29 shall include all compensation benefits paid on a claim, including all medical expenses, hospital expenses, funeral expenses, and legal costs. Form C-29 must be submitted in all cases where any benefit payment has been made, including cases where settlements or judgments (with or without court approval) have been entered. The penalty for non-compliance with Rule 0800-02-01-.13 is $50 for each fifteen (15) days past the date when Form C-29 is due, until received by the Director.~~

~~***Authority:*** *T.C.A § 50-6-206.* ***Administrative History:*** *Original rule filed February 19, 1987; effective April 5, 1987.*~~

~~**0800-02-01-.14 WITHDRAWAL FROM WORKERS' COMPENSATION LAW.** Every employer subject to the Tennessee Workers' Compensation Law that reduces the number of its employees to less that five (5) and wishes to withdraw from the Tennessee Workers' Compensation Law must file written notice of withdrawal with the Director in accordance with Karstens v. Wheeler Millwork, CAB & Supply, 614 S.W.2d 37 (1981). All withdrawals shall be submitted on Form I-3.~~

(Rule 0800-02-01-.14, continued)

~~***Authority:*** *T.C.A § 50-6-206.* ***Administrative History:*** *Original rule filed February 19, 1987; effective April 5, 1987.*~~

~~**0800-02-01-.15 ADDITIONAL FORMS.** Additional forms which must be filed with the Director:~~

~~(1) "Sole Proprietor Election" (I-4). A sole proprietor who elects to be considered as an employee pursuant to TCA §50-6-102(a)(2)(B) shall notify the Director of the election on Form I-4.~~

~~(2) "Sole Proprietor Withdrawal of Election" (I-5). A sole proprietor who wishes to withdraw the election to be an employee and the acceptance of the Workers' Compensation Law shall notify the Director by filing Form I-5.~~

~~(3) "Corporate Officer Exemption" (I-6). Any corporate officer who elects to be exempt from the operation of the Workers' Compensation Law shall file notice of such election with the Director in accordance with the provisions of TCA §50-6-104 on Form I-6.~~

~~(4) "Corporate Officer Revocation of Exemption" (I-7). A corporate officer who revokes an exemption from coverage of the Workers' Compensation Law pursuant to TCA §50-6-104 shall notify the Director of the revocation of the election of the exemption on Form I-7.~~

~~(5) "Exempt Employers Election" (I-8). Employers who are exempt from the operation of the Workers' Compensation Law and who elect to be covered by the Law pursuant to TCA §50-6-106(4) and (5) shall notify the Director of the election to accept the provisions of the Workers' Compensation Law on Form I-8.~~

~~(6) "Exempt Employers Withdrawal of Election" (I-9). Employers under TCA §50-6-106(4) and (5) who wish to withdraw their acceptance of the provisions of the Workers' Compensation Law shall notify the Director of withdrawal of the acceptance on Form I-9.~~

~~(7) "Occupational Disease Waiver" (I-11). An employee who wishes to waive receipt of compensation for aggravation of a specific occupational disease, pursuant to the provisions of TCA §50-6-307(a), shall notify the Director of the waiver of compensation on Form I-11. Notification of the revocation of such election shall be furnished to the Division on Form I-13.~~

~~(8) "Heart Waiver" (I-10). An employee or prospective employee who wishes to waive compensation for claims arising out of aggravation or repetition of the conditions of heart disease, heart attack, or coronary failure or occlusion, pursuant to the provisions of TCA §50-6-307(b), shall notify the Director of the waiver on Form I-10. Such form shall be accompanied by a copy of a medical statement giving the prior history of the condition. Notification of the revocation of such election shall be furnished to the Director on Form I-13.~~

~~(9) "Epileptic Waiver" (I-12). Persons who are epileptics and who elect, pursuant to the provisions of TCA §50-6-213, not to be subject to the Workers' Compensation Law for injuries resulting because of epilepsy shall notify the Director of the election not to be subject on Form I-12. Notification of the revocation of such election shall be furnished to the Division on Form I-13.~~

~~(10) "Agreement of Common Carrier" (I-14). Common carriers who wish to provide workers' compensation insurance coverage under the Tennessee Workers' Compensation Law to a leased operator and/or a leased owner/operator shall execute I-14 in triplicate, the original to be sent to the Tennessee Workers' Compensation Division, one copy to be sent to the workers' compensation insurance company, and one copy to remain with the common carrier.~~

(Rule 0800-02-01-.15, continued)

~~(11) "Termination of Agreement of Common Carrier" (I-16). Such election of coverage may be terminated by the leased operator, leased owner/operator, or common carrier by providing written notice of such termination to the division and to all other parties consenting to the prior election. Termination of this agreement shall be furnished to the Division on Form I-16.~~

~~(12) "Agreement of General Contractor" (I-15). General contractors who wish to provide workers' compensation insurance coverage under the Tennessee Workers' Compensation Law to an individual subcontractor shall execute Form I-15 in triplicate, the original to be sent to the Tennessee Workers' Compensation Division, one copy to be sent to the workers' compensation insurance company and one copy to remain with the general contractor.~~

~~(13) "Termination of Agreement of General Contractor" (I-17). Such election of coverage may be terminated by the subcontractor or general contractor by providing written notice of such termination to the division and to all other parties consenting to the prior election. Termination of this agreement shall be furnished to the Division on Form I-17.~~

~~***Authority:*** *T.C.A §§ 50-6-102(a)(2)(B); 50-6-104; 50-6-106(4); 50-6-106(5); 50-6-307(a); 50-6-307(b) and 50-6-213.* ***Administrative History:*** *Original rule filed February 19, 1987; effective April 5, 1987.*~~

~~**0800-02-01-.16 MEDICAL REPORTS.**~~

~~(1) Medical reports filed with the Director shall include the Attending Physicians Report which is Form C-30 and the Medical Waiver and Consent form which is Form C-31.~~

~~(2) A party, in lieu of a deposition, may file with the Director a Standard Form Medical Report For Industrial Injuries which is Form C-32.~~

~~(3) The attending physician may charge a fee of up to One Hundred and Fifty Dollars ($150.00) for completion and certification of Form C-32.~~

~~(4) The Director may assess a civil penalty against the attending physician of up to Three Hundred Dollars ($300.00) for failure to timely (within two (2) weeks of the physical examination) file Form C-32.~~

~~(5) A party assessed a penalty pursuant to section (4) above may appeal such decision directly to the Medical Director for the Tennessee Department of Labor. Said appeal must be submitted in writing and within ten (10) working days of receipt of notice of assessed penalty. The Medical Director or his designee shall issue a decision within thirty (30) days. This decision shall be final.~~

~~***Authority:*** *T.C.A §§ 4-3-103; 4-3-1403; 50-6-101 et seq., 50-6-118; 50-6-126; 50-6-204; 50-6-235 and 4-5-202.* ***Administrative History:*** *Original rule filed February 19, 1987; effective April 5, 1987. Amendment filed March 5, 1993, effective April 19, 1993.*~~

~~**0800-02-01-.17 NOTICE OF ASSESSMENT OF PENALTY.** The Division shall provide written notice of penalties assessed pursuant to the within rules.~~

~~***Authority:*** *T.C.A §§50-6-102(a)(2)(B); 50-6-104; 50-6-106(4) (5); 50-6-213; 50-6-307(a); 50-6-307(b) and 50-6-213.* ***Administrative History:*** *Original rule filed February 19, 1987; effective April 5, 1987.*~~

~~**0800-02-01-.18 WORKERS' COMPENSATION BENEFIT CASES IN LITIGATION.** Where a civil penalty may be imposed pursuant to the within rules and the action (or failure to act) which initiates the penalty is the subject of litigation, the Director shall assess the penalty after a final determination of the issue is made by the Court.~~

(Rule 0800-02-01-.18, continued)

~~***Authority:*** *T.C.A §§ 50-6-102(a)(2)(B); 50-6-104; 50-6-106(4) (5); 50-6-213; 50-6-307(a); 50-6-307(b) and 50-6-213.* ***Administrative History:*** *Original rule filed February 19, 1987; effective April 5, 1987.*~~

~~**0800-02-01-.19 EFFECTIVE DATE.** The civil penalties which may be assessed pursuant to the within rules apply only after the effective date of the rules and only to those injuries occurring on or after July 1, 1985.~~

~~***Authority:*** *T.C.A §§50-6-102(a)(2)(B); 50-6-104; 50-6-106(4) (5); 50-6-213; 50-6-307(a); 50-6-307(b) and 50-6-213.* ***Administrative History:*** *Original rule filed February 19, 1987; effective April 5, 1987.*~~

~~**0800-02-01-.20 PAYMENT AND COLLECTION OF PENALTIES.** The procedure for payment and collection of civil penalties is as follows:~~

~~(1) Payment of Penalties. Penalties shall be made payable to the Treasurer, State of Tennessee and submitted directly to the Director for remittal to the Second Injury Fund. Penalties shall be paid within 20 days of the date of the Division's notice of assessment of penalty.~~

~~(2) Collection of Penalties. Penalties may be collected in a civil action in the name of the State of Tennessee in any court of competent jurisdiction.~~

~~***Authority:*** *T.C.A § 4-3-103; 4-3-1403 and 50-6-118.* ***Administrative History:*** *Original rule filed February 19, 1987; effective April 5, 1987.*~~

~~**0800-02-01-.21 FORMS.** The requirement for forms mentioned in these rules are:~~

~~(1) All forms may be obtained from the Director without charge;~~

~~(2) Copies of each form are contained in Appendix A of these rules;~~

~~(3) The information set out on each form in Appendix A is the information required by these rules; and~~

~~(4) Forms may be revised at any time at the discretion of the Director. Copies of these revised forms will be available from the Director.~~

~~***Authority:*** *T.C.A § 50-6-233.* ***Administrative History:*** *Original rule filed February 19, 1987; effective April 5, 1987.*~~

~~**0800-02-01-.22 RECORDS/COPIES.**~~

~~(1) Copies of the Workers' Compensation records disclosable under state law may be obtained by written request made to the Director.~~

~~(2) Fees for copying shall be $.25 per page plus actual postage costs. Payments of copying and postage fees shall be made by check or money order payable to Treasurer, State of Tennessee. Payment is due upon receipt of the requested material. Payment in cash will not be accepted.~~

~~APPENDIX A - FORMS~~

~~Insurance Forms~~

~~1-1 Coverage~~

~~1-2 Cancellation~~

(Rule 0800-02-01-.22, continued)

~~1-3 Withdrawal of Coverage - Reduction in Workforce~~

~~1-4 Sole Proprietor Election~~

~~1-5 Withdrawal of Sole Proprietor Election~~

~~1-6 Exemption of Corporate Officer~~

~~1-7 Revocation of Exemption~~

~~1-8 Exempt Employers Election Withdrawal~~

~~1-9 Exempt, Employers Election Withdrawal 1-~~

~~10 Heart Waiver~~

~~1-11 Occupational Disease Waiver~~

~~1-12 Epileptic Waiver~~

~~1-13 Withdrawal of Waiver~~

~~Claim Forms~~

~~C-20 Report of Injury~~

~~C-21 Monthly Report of Non-Compensable Injuries & Disease~~

~~C-22 Notice of First Payment~~

~~C-23 Notice of Denial~~

~~C-24 Notice of Investigation~~

~~C-25 Final Determination~~

~~C-26 Notice of Change or Stop of Benefits~~

~~C-27 Notice of Controversy~~

~~C-28 Notice of Lawsuit~~

~~C-29 Final Report and Receipt of Compensation~~

~~C-30 Attending Physician~~

~~C-31 Medical Waiver and Consent~~

~~C-32 Standard Form Medical Report for Industrial Injuries~~

~~Workers' Compensation Statistical Data Form~~

~~SD- I Workers' Compensation Statistical Data Form~~

~~***Authority:*** *T.C.A §§ 50-6-101; 50-6-103; 50-6-119; 50-6-233; 50-6-235 and 4-5-202.* ***Administrative History:*** *New rule filed February 19, 1987; effective April 5, 1987. Amendment filed January 30, 1991;*~~

(Rule 0800-02-01-.22, continued)

~~*effective May 1, 1991. Amendment filed March 5, 1993; effective April 19, 1993. Amendment filed April 30, 1999; effective August 27, 1999.*~~

~~**0800-02-01-.23 INSURANCE AND/OR ADJUSTER OFFICE.**~~

~~(1) Each insurance carrier or self-insured employee providing workers' compensation insurance shall provide to the Director of the Division of Workers' Compensation on a timely basis the following information:~~

~~(a) Name of insurance company.~~

~~(b) Name of self-insured employer.~~

~~(c) Name of contract adjuster, address and current telephone number if the insurance carrier or self-insured employer does not have an office in Tennessee.~~

~~(d) Address of office in Tennessee.~~

~~(e) Telephone number.~~

~~(f) Name, address and telephone number of individual with authority to commence temporary total disability benefits and medical care benefits.~~

~~(2) Each insurance carrier or self-insured, employer shall notify the Director of the Division of Workers' Compensation of any change in name, address or phone number of the above requirements within ten (10) days of said change.~~

~~***Authority:*** *T.C.A §§50-6-101; 50-6-103; 50-6-119; 50-6-233; 50-6-235 and 4-5-202.* ***Administrative History:*** *Original rule filed March 5, 1993; effective April 19, 1993.*~~

~~**0800-02-01-.24 STATISTICAL DATA FORM.**~~

~~(1) Filing Requirements.~~

~~(a) Each employer or such employer's agent that is party to a workers' compensation case, at the conclusion of the case must file a Statistical Data Form SD-1 with the clerk of the court in which the case is pending, contemporaneously with the filing of the final order or settlement. An order of the court is not final until a Form SD-1 is fully completed and filed with the clerk of the court.~~

~~(b) In cases involving a workers' compensation settlement which is submitted to the Division for approval, a copy of Form SD-1 shall also be completed and submitted to the Division for approval, at the time of the submission of the settlement for approval. A settlement approved by the Division is not final until a Form SD-1 is fully completed and received by the Division.~~

~~(2) On or before the tenth (10th) day of each calendar month, the clerk of the court in which the case is pending shall forward to the Director all Forms SD-1 filed with the clerk during the preceding calendar month.~~

~~(3) Filing Fee.~~

~~(a) A fee of one dollar ($1.00) shall be paid to the clerk of the court in which the case is pending for each Form SD-1 filed with the clerk.~~

(Rule 0800-02-01-.24, continued)

~~(b) The one dollar ($1.00) fee associated with the filing of the Form SD-1 shall be a part of the court costs accruing to the clerk, and shall be collected in the same manner and in addition to the other costs in the case.~~

~~(4) The employee and any agent of the employee must cooperate with the employer in completing Form SD-1.~~

~~***Authority:*** *T.C.A. §§50-6-101; 50-6-419 and 50-6-244.* ***Administrative History:*** *Original rule filed April 30, 1999; effective August 27, 1999.*~~

~~0800-02-01-.25 MEDICAL PANELS.~~

~~(1) Time requirement for provision of panel of physicians. Upon notice of any workplace injury, other than a minor injury for which no person could reasonably believe requires treatment from a physician, the employer shall immediately provide the injured employee a panel of physicians that meets the statutory requirements for treatment of the injury. In any case where the employer fails to provide a panel of physicians to the employee within a reasonable amount of time, but in no instance longer than five (5) business days from the date the employer has notice of an injury that would qualify for medical benefits, or provides a panel of physicians to the injured employee that does not meet statutory requirements on more than one (1) occasion for the subject injury, the employer may be assessed a civil penalty, not to exceed five thousand dollars ($5,000).~~

~~(2) Provision of three (3) physician list upon referral by original treating physician. In cases where the authorized treating physician, selected by the employee from the original three (3) physician panel provided by the employer, refers the employee for specialized care, the employer shall be deemed to have accepted the referral, unless the employer, within three (3) business days, provides a panel of three (3) or more independent reputable physicians, surgeons, chiropractors or specialty practice groups.to the employee pursuant to T.C.A. 50-6-204(a)(3)(A). If a panel of three (3) specialists is provided, the employee shall select a provider from the panel and that provider shall become the employee's authorized treating physician. For purposes of this section, receipt of the referral by the employer shall be accomplished whenever a copy of the referral is received at the employer or carrier's place of business by facsimile, email, post, hand delivery or commercial delivery service.~~

~~***Authority:*** *T.C.A. § 4-3-1409, 50-6-204, 50-6-233, and 50-6-118.* ***Administrative History:*** *Original rule filed December 22, 2014; effective date March 22, 2015.*~~

~~0800-02-01-.26 SECOND INJURY FUND REIMBURSEMENTS.~~

~~(1) Any party seeking reimbursement from the Second Injury Fund pursuant to T.C.A. § 50-6-238(b) (2013) shall submit proof of the amount of money paid pursuant to the order of the specialist contemporaneously with the party's submission of a certified copy of an appropriate order to the Division via certified mail.~~

~~(2) A copy of a signed SD-1 form for the claim shall constitute proof of payment. If an SD-1 is not available, any of the following may be submitted as proof of payment:~~

~~(a) Copies of EOB's (Explanation of Benefits) from the provider showing the provision of medical services for the claim;~~

~~(b) Copies of checks demonstrating payment for temporary disability or medical benefits provided to the employee for the claim; or~~

~~(c) Any other proof of payment deemed acceptable by the Division.~~

~~(3) A reimbursement request that does not include documentation satisfying the requirements of this rule shall not be considered as having been received by the Division and interest as provided by T.C.A. § 50- 6-238(b) (2013) shall not begin to accrue until such documentation has been received by the Division.~~

~~***Authority:*** *T.C.A. § 4-3-1409, 50-6-238 (2013), and 50-6-233. Administrative History: Original rule filed December 22, 2014; effective March 22, 2015.*~~

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

Board Member	Aye	No	Abstain	Absent	Signature (if required)

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 12-13-17 and is in compliance with the provisions of T.C.A. § 4-5-222.

I further certify the following:

Notice of Rulemaking Hearing filed with the Department of State on June 30, 2017.

Rulemaking Hearing Conducted on August 29, 2017.

Date: December 13, 2017

Signature: Abbie Hudgens

Name of Officer: Abbie Hudgens

Title of Officer: Administrator, Bureau of Workers' Compensation

DARLENE CARVER-MCDONALD STATE OF TENNESSEE NOTARY PUBLIC DAVIDSON COUNTY MY COMMISSION EXPIRES 3-8-2021

Subscribed and sworn to before me on:

Notary Public Signature: Darlene Carver McDonald

My commission expires on: March 8, 2021

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

2/15/2018
Date

Department of State Use Only

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Filed with the Department of State on: 3/2/18

Effective on: 5/31/18

Tre Hargett
Tre Hargett
Secretary of State

G.O.C. STAFF RULE ABSTRACT

DEPARTMENT:	Labor and Workforce Development
DIVISION:	Bureau of Workers' Compensation
SUBJECT:	Adjuster and Adjusting Entity Certification Program
STATUTORY AUTHORITY:	Tennessee Code Annotated, Section 50-6-419
EFFECTIVE DATES:	May 31, 2018 through June 30, 2019
FISCAL IMPACT:	Minimal
STAFF RULE ABSTRACT:	These rules establish a voluntary adjuster certification program for workers' compensation claims in Tennessee.

***NOTE: This is a new rule. The redline copy of the rule contains no strikethroughs or underlining.

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:
0800-02-27.04 Certification Process for Adjusters

Recommend permitting reciprocity with other state's adjuster certification programs, particularly neighboring states.

Response: The bureau disagrees with the comment. The certification program is voluntary but is specific to Tennessee law. Reciprocity would not be beneficial for those adjusters seeking training in Tennessee claims handling.

Comment:
0800-02-27-.05 Re-certification Process for Adjusters

Requiring adjusters to take an examination every two years upon recertification seems excessive.

Response: The bureau disagrees. Since the certification is voluntary in nature, a two-year recertification exam is appropriate to stay current on law and procedural regulations.

Comment: Recommend relaxing the requirement that 75% of supervisors be certified, since these individuals are not handling claims on a day-to-day basis.

Response: The bureau disagrees. Since supervisors by nature oversee the work of the adjusters whom they supervise, it is important that the supervisors have at least as much, if not more, knowledge of the TN law and bureau rules as their TN adjusters.

Comment: We also recommend permitting insurers to rely on outside sources to provide training, instead of being required to establish and implement their own programs.

Response: The bureau agrees, and this proposed amendment has been deleted from the rules.

Comment: Even though the adjuster certification program is voluntary, this will likely result in a mandatory certification as TPAs try to gain competitive advantage over one another by touting their certifications. RFPs for TPA services may start to include certification as a requirement for bidding. Most adjusting entities are already regulated by the Department of Commerce and Insurance. The adjuster certification program and claims handling rules are therefore unnecessary.

Response: The bureau disagrees. The certification program is not a license and is voluntary. The bureau met with the Department of Commerce and Insurance to verify that their department had no regulation of adjusters in their Department, which primarily regulates insurance companies and not individual insurance adjusters.

Further, in TCA 50-6-419, the general assembly has given the administrator of the bureau the following authority:

(a) Notwithstanding any other provision of this part or of title 56 to the contrary, in order to assure that injured employees are treated fairly and to assure that claims are handled in an appropriate and uniform manner, the administrator of the bureau of workers' compensation shall set standards by rule governing the adjustment and settlement of workers' compensation claims by insurance carriers, self-insured employers, and any entity acting on behalf of an insurance carrier or self-insured employer in the resolution of claims brought pursuant to this title. The standards may include, but are not limited to, standards governing contact with an employee after notice of injury has been given, the processing of claims and procedures for making an offer of settlement.

(b) The administrator shall promulgate rules and regulations to effectuate the purposes of this section. The rules and regulations shall be promulgated in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5.

(c) (1) The administrator may enforce the standards described in this section, and any rules promulgated pursuant to this section, through assessment of civil penalties pursuant to the Uniform Administrative Procedures Act, compiled in title 4, chapter 5, against any entity employing individuals who adjust workers' compensation claims under this title. Such penalties may be in an amount not less than fifty dollars ($50.00) nor more than five thousand dollars ($5,000) per violation. Each separate act shall constitute a separate violation and may subject the entity to assessment of additional civil penalties.

Comment: The adjuster rules will harm small and mid-sized adjusting firms more than large firms who have their own in-house training courses or who have funds to hire independent trainers. Smaller TPAs do not have the resources to provide this training.

Response: The bureau disagrees we disagree, but have amended the rule to allow only a minimum amount of training that should be provided to any adjuster that is handling Tennessee WC claims.

Comments: The definition of "adjusting entity" should be modified to avoid confusion of TPA and payor concepts. The current definition could capture as many as 3 different entities, and 2 of those may not be providing adjusting services. Also, the definition of adjuster is overly broad. It should be limited to natural persons employed by an adjusting entity who adjust claims, determine compensability, etc. As drafted it may include private investigators and case managers. Also, "trade or professional organization" should not be included.

Response: The bureau agrees in part. This is a voluntary program as indicated in the "Scope" section. If an entity is confused or unsure, they could choose to not participate or contact the bureau for guidance. The definition of "adjuster" has been amended.

Comment: An Associate in Claims (AIC) should automatically qualify for a certification. Those having 5 years or more of experience adjusting TN claims should automatically qualify for certification. Also, certifications should be for life and should not have to be renewed every two years.

Response: The bureau disagrees. The Tennessee voluntary certification is specific to Tennessee. The renewal provides an opportunity to keep up to date on current law and procedures.

Comment: The bureau should grant basic due process rights in suspending or cancelling certifications.

Response: UAPA contested case hearing rules have been adopted by the bureau. TCA 50-6-118 and the bureau rules do not require a pre-penalty contested case hearing, but allow for a post-assessment appeal.

Comment: Regarding certification, need to make sure there are ADA provisions for those who have special needs or disabilities, such as having the test read to them, extra time to complete the testing, etc.

Response: The bureau agrees with the comment regarding ADA provisions for those who have disabilities or special needs; and the appropriate accommodations will be made.

Comment: Proposed Rule 0800-02-27.01(2) Scope: We support the apparent intent of the rules to make the certification process for adjusters and the certification process for adjusting entities voluntary for adjusters and adjusting entities, respectively. However, the rule, as drafted, can be interpreted as making the adjuster certification program voluntary while making the adjusting entity certification program mandatory. We oppose making the adjusting entity certification program mandatory.
Recommended wording: This chapter and the rules within apply to all adjusting entities and adjusters subject to the provisions of the Tennessee Workers' Compensation Law that choose to participate in the adjusting entity certification program or adjuster certification program, respectively.

Response: The bureau agrees and has made the recommended change.

Comment: Rule 0800-02-27-.02 Definitions in subsection (2) "Adjuster" "claims adjuster, "med-only adjuster", or "claims handler" means a representative of an adjusting entity who investigates workers' compensation claims, files or causes claims forms to be filed with the Bureau, commences benefits, and/or makes settlement recommendations based on the insured's liability on behalf of a self-insured employer, trade or professional

association, third party administrator, and/or insurance company. This is a little different than the definition of an adjuster and claims handler found under proposed Rule 0800-02-01-.02, which is "(2) "Adjuster" or "claims handler" means a representative of an adjusting entity who investigates workers' compensation claims, files or causes claims forms to be filed with the Bureau, commences benefits, and/or makes settlement recommendations based on the insured's liability on behalf of a self-insured employer, trade or professional association, third party administrator, and/or insurance company."

Response: The bureau agrees and the definitions have been edited for consistency with other rules.

Comment: Rule 0800-02-27.03 Application and Renewal Fees. (1) The application fee and renewal fee for adjuster certification and adjusting entity certification shall be posted on the Bureau's website. The appropriate fee to be submitted with the application shall be the fee in effect on the date of the application. The fees are unknown at this point?

Response: Yes, the fee will be determined by the Administrator.

Comment: In Rule 0800-02-27.04 Certification Process for Adjusters (3) An adjuster, not successful in passing the examination and wishing to take the examination again, must apply, pay all appropriate fees and participate in all required instructions, as though for an initial application, prior to re-taking the examination.
Suggested that a period of six months be permitted in which an adjuster could take the final examination again after failing, before making the adjuster "start from scratch" in the Certification Process.

Response: The bureau disagrees with the comment.

Comment: The length of term for a certification designation is twenty-four (24) months from the date of designation. Suggested that the term of certification be increased.

Response: The bureau agrees. Two years is consistent with other states that have a similar certification program, but this may be extended at the discretion of the Administrator.

Comment: In Rule 0800-02-27.05 Re-certification Process for Adjusters (3) The length of term for a re-certification designation is twenty-four (24) months from the date of designation.
Suggested that the term of recertification be increased. Further, one of our insureds suggested it would be more reasonable to require a certain number of hours of continuing education per certification period, rather than retesting for recertification, as this would be more in line with other professional standards in Tennessee.

Response: The bureau agrees. The 24-month period will be a minimum and will be subject to extension by the Administrator.

Comment: In Rule 0800-02-27.06 Loss of Certification for Adjusters (2) Any adjuster losing certification shall be sent, via USPS to their last known address a Notice of Removal by the Bureau stating the reasons for having lost the certification status. Such mailing constitutes notice. (3) An adjuster shall have thirty (30) calendar days from the date the Notice of Removal is sent in which to appeal by responding in writing to the removal and to submit any responsive supporting documentation to the Bureau for consideration. Failure of an adjuster to submit a timely response to the Notice of Removal shall result in the closure of the appeal.
If this is being deemed an appeal, then notice and opportunity to be heard should be provided before certification is removed or denied. From a practical standpoint, if certification is removed or denied and an adjuster later sufficiently proves the same was improper, the adjuster would have to go through the entire certification process again although the removal or denial was improper. The same comment applies for loss of certification of adjusting entities in Rule 0800-02-27-.09(5).

Response: The bureau disagrees. Reinstatement does not require going through the recertification process.

Comment: Rule 0800-02-27.07. Certification Process for Adjusting Entities (3) The term for a certification designation is twelve (12) months from the date of designation. Suggested that the term of certification be increased to that of an adjuster as currently written or longer as suggested.

Response: The bureau agrees and will extend the period to 24 months.

Comment: Rule 0800-02-27.10. Required Training Program for Certified Adjusting Entities. (2) At least 50% of those training hours shall be conducted in-person with an instructor or by a Tennessee licensed attorney. Any training not conducted in-person may be done on-the-job under the supervision of an instructor or a Tennessee-Certified

adjuster or through any other appropriate method. Shouldn't this read "...a Training Entity or by a Tennessee licensed attorney" instead since Training Entity is the defined terms under the Rules?

Response: The bureau agrees and has eliminated this requirement.

Comment: Adjusters – Current adjusters/claim managers with experience 7 years' experience or more should be grandfathered into the certification requirement. Then should be added to the mandatory annual continuing education requirement.

Response: The bureau disagrees. The voluntary certification is Tennessee specific and includes training on Tennessee law and regulations.

Comment: Adjusting Entities – Must train their adjusters with verifiable training methods within 12 months of the application to handle claims within TN. Application will include and audit by TDOL. (What type of cost can we expect to incur associated with the training mandated by the state?)

Response: Costs should be minimal for this training.

Comment: Adjuster Certification – Will this be voluntary or will it be required? Does it apply to self-administered employers? Will the Claims Manager that works for Ingram, with 25 years' experience handling workers comp claims in Tennessee, be required to take hours of training and a test every 2 years? If a test needs to be passed, it seems like courseware can be provided without any mandatory classes or training. Also, every two years is way too often to recertify. Many other professions, you pass the test once and then have continuing education to maintain certification. Seems like this would be a boon to the Bureau's annual conference. In brief, I am not against some form of certification if it is achieved on merit and not just a cash grab from the Bureau and if that certification does not lead to extraneous costs and lost time due to required training. My biggest concern is that the adjuster licensing will simply add cost to the system. If they plan on doing this, they need to make the tests mean something. They have to have some content. They cannot be obtained as easily as buying a fishing license. Some should fail the test.

Response: This is a voluntary certification. Self-insured employers may participate. Two years for recertification is consistent with other states. The bureau disagrees regarding the alleged "cash grab" as the program is voluntary. This is not a licensing, but a certification. Costs should not be prohibitive.

Comment: There is a typo on page 7 of the Adjuster, Entity Certification Program presentation. It refers to for C-41 as 'Employee Choice of Physician Form'. Shouldn't that be C-42? C-41 is the Wage Statement.

Response: The bureau agrees and the change has been made.

Comment: References to the Tennessee Workers' Compensation Act should be changed to Tennessee Workers' Compensation Law to be consistent with the language in T.C.A. § 50-6-101 et seq.

Response: The bureau agrees and the change has been made.

Comment: In the Purpose and Scope section, clarification is requested regarding the voluntary nature of the program, in light of language in .04(5) dealing with certified adjuster title.

Response: The program is voluntary in nature.

Comment: What will the application and renewal fee be?

Response: This fee will be determined by the Administrator and will be in an amount sufficient to cover the cost of administering the program.

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 should not 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 a negative 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 establish a voluntary adjuster certification program for workers' compensation claims in Tennessee.

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

T.C.A. § 50-6-419 mandates the administrator of the bureau of workers' compensation set standards by rule governing the adjustment and settlement of workers' compensation claims.

(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;

Workers' compensation insurance carriers and self-insured employers who participate in this voluntary 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:

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

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

None

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For Department of State Use Only
Sequence Number: 03-01-18
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File Date: 3/2/18
Effective Date: 5/31/18

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

(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)

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

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**
0800-02-27	Adjuster and Adjusting Entity Certification Program
Rule Number	**Rule Title**
0800-02-27-.01	Purpose and Scope
0800-02-27-.02	Definitions
0800-02-27-.03	Application and Renewal Fees
0800-02-27-.04	Certification Process for Adjusters
0800-02-27-.05	Re-certification Process for Adjusters
0800-02-27-.06	Loss of Certification for Adjusters
0800-02-27-.07	Certification Process for Adjusting Entities
0800-02-27-.08	Re-certification Process for Adjusting Entities
0800-02-27-.09	Loss of Certification for Adjusting Entitles
0800-02-27-.10	Required Training Programs for Certified Adjusting Entities
0800-02-27-.11	Civil Penalties

Rules of the
Bureau of Workers' Compensation

Chapter 0800-02-27
Adjuster and Adjusting Entity Certification Program
New Rules

Rule 0800-02-27.01 Purpose and Scope

(1) Purpose: The general purposes of this program are to assure that employees sustaining an injury arising out of and in the scope of employment are treated fairly and to assure that workers' compensation claims are handled in an appropriate and uniform manner.

(2) Scope: This chapter and the rules within apply to all adjusting entities and adjusters subject to the provisions of the Tennessee Workers' Compensation Law who choose to participate in the adjusting entity certification program or adjuster certification program, respectively.

Authority: T.C.A. §§ 50-6-101, 50-6-119, 50-6-127, 50-6-233, 50-6-415, and 50-6-419.

Rule 0800-02-27.02 Definitions

The terms contained within these rules that are not specifically defined within these rules shall have the same definitions as those established by the Workers' Compensation Law and the case law interpreting it. When any terms that are used in these rules differ from the definition established by the Workers' Compensation Law, the definition established by the Workers' Compensation Law shall govern.

(1) "Adjusting entity" means a trade or professional association, managing general agency, pool, third party administrator and/or insurance company licensed to write workers' compensation insurance in Tennessee and shall also mean a self-insured employer or group self-insured employers possessing a valid certificate of authority from the commissioner of commerce and insurance pursuant to T.C.A. § 50-6-405.

(2) "Adjuster", "claims adjuster", "med-only adjuster", or "claims handler" means a representative of an adjusting entity who investigates workers' compensation claims for the purposes of making compensability determinations, files or causes claims forms to be filed with the Bureau, commences benefits, and/or makes settlement recommendations based on the insured's liability on behalf of a self-insured employer, trade or professional association, third party administrator, and/or insurance company.

(3) "Administrator" means the same as the definition of "Administrator" in T.C.A. § 50-6-102.

(4) "Bureau" means the Tennessee Bureau of Workers' Compensation as defined in T.C.A. § 50-6-102, an autonomous unit attached to the Department of Labor and Workforce Development for administrative matters only, pursuant to T.C.A. § 4-3-1409.

(5) "Certified adjuster" means an adjuster who has successfully completed the certification requirements for adjusters as determined by the Bureau.

(6) "Course" means any program of instruction, approved by the Bureau, given to satisfy the certification requirements of this program.

(7) "Curriculum" means a course of study, approved by the Bureau, which satisfies the certification requirements of this program.

(8) "Training" means a course of instruction, approved by the Bureau, provided by a training entity that includes the topics specified by the Bureau to meet the initial training requirements of this program.

(9) "Training Entity" means any person or organization recognized as such by the Bureau for the purpose of providing the adjuster training required by the Bureau.

(10) "Workers' Compensation Law" means the applicable Tennessee Workers' Compensation Law in effect,

pursuant to T.C.A. § 50-6-101 et seq.

Authority: T.C.A. §§ 50-6-102, 50-6-233, 50-6-415, and 50-6-419.

Rule 0800-02-27.03 Application and Renewal Fees

(1) The application fee and renewal fee for adjuster certification and adjusting entity certification shall be posted on the Bureau's website. The appropriate fee to be submitted with the application shall be the fee in effect on the date of the application.

Authority: T.C.A. §§ 50-6-101, 50-6-119, 50-6-127, 50-6-233, 50-6-415, and 50-6-419.

Rule 0800-02-27.04 Certification Process for Adjusters

(1) Prior to being designated as "certified", an adjuster shall:

    (a) Make proper application, provide all required documentation and pay all appropriate fees;

    (b) Complete all required curriculum with a training entity in effect at the time of the application;

    (c) Achieve a passing score, as determined by the Bureau, on all final examinations; and

    (d) Be approved by and designated as such by the Bureau.

(2) No adjuster can take any examination unless that person has attended all required instruction required for that examination.

(3) An adjuster, not successful in passing the examination and wishing to take the examination again, must apply, pay all appropriate fees and participate in all required instructions, as though for an initial application, prior to re-taking the examination.

(4) The length of term for a certification designation is a minimum of twenty-four (24) months from the date of designation, at the discretion of the Administrator. Notice will be sent to adjusters that have been certified by the Bureau at least thirty (30) calendar days prior to the expiration of their certification.

(5) An adjusting entity shall not allow an individual who has not been so designated by the Bureau to act as a certified adjuster of Tennessee workers' compensation claims.

(6) There shall be no reciprocity granted based on certification or licensure achieved in another state's program.

(7) Adjusters designated as certified by this program shall be able to indicate his/her achievement on a résumé and job application only during the time frame the adjuster is so recognized.

Authority: T.C.A. §§ 50-6-101, 50-6-119, 50-6-127, 50-6-233, 50-6-415, and 50-6-419.

Rule 0800-02-27.05 Re-certification Process for Adjusters

(1) Prior to becoming re-certified, an adjuster shall have achieved an initial certified adjuster designation and shall complete the curriculum required for re-certification at the time of the renewal application.

(2) Re-certification training, including achieving a passing score on the final examination, shall be completed with the Training Entity prior to an adjuster being designated as a certified adjuster.

(3) The length of term for a re-certification designation is a minimum of twenty-four (24) months from the date of designation, at the discretion of the Administrator. Notice will be sent to adjusters that have been certified by the Bureau at least thirty (30) calendar days prior to the expiration of their certification.

(4) A certified adjuster shall not be required to be re-trained and re-designated in order to adjust claims for a different insurer, self-insured employer or third-party administrator during the period of time in which their personal certification remains current and valid.

Authority: T.C.A. §§ 50-6-101, 50-6-119, 50-6-127, 50-6-233, 50-6-415, and 50-6-419.

Rule 0800-02-27.06 Loss of Certification for Adjusters

(1) The Administrator may revoke or refuse to renew an adjuster's previously granted certification permanently or temporarily based upon any of the following grounds:

(a) Failure of a certified adjuster to fulfill the requirements for re-certification prior to the end of the term of certification;

(b) Misrepresentation on the certification application, as determined by the Administrator; or,

(c) Refusal or substantial failure to comply with the provisions of these Rules.

(2) Any adjuster losing certification shall be sent, via USPS to their last known address, a Notice of Removal by the Bureau stating the reasons for having lost the certification status. Such mailing constitutes notice.

(3) An adjuster shall have thirty (30) calendar days from the date the Notice of Removal is sent in which to appeal by responding in writing to the removal and to submit any responsive supporting documentation to the Bureau for consideration. Failure of an adjuster to submit a timely response to the Notice of Removal shall result in the closure of the appeal.

Authority: T.C.A. §§ 50-6-101, 50-6-119, 50-6-127, 50-6-233, 50-6-415, and 50-6-419.

Rule 0800-02-27.07 Certification Process for Adjusting Entities

(1) Prior to being designated a "certified" adjusting entity an entity shall:

(a) Make proper application, provide all required documentation and pay all appropriate fees.

(b) Establish and implement a training program that complies with the requirements set forth in these Rules for adjusters that process Tennessee claims.

1. Verifiable training provided by the adjusting entity to its adjusters that was provided within twelve (12) months of an adjusting entity's initial application that meets the requirements stated within these Rules may be used to satisfy the requirements of this section.

(c) For the cumulative twelve (12) calendar months prior to application, meet or exceed the requirements of the Bureau's Rules Claims Handling Standards, Rules 0800-02-14 and General Rules, Rules 0800-02-01, and the Medical Fee Schedule, Rules 0800-02-17-.20 in the timely filing/provision of:

1. First Report of Work Injury Forms

2. Employee Choice of Physician Forms

3. First Report of Payment of Compensation Forms

4. Notice of Change or Termination of Compensation Benefits Forms

5. Statistical Data Forms

6. Payment(s) to medical providers

(d) Have at least 60% of its adjusters that process Tennessee workers' compensation claims be recognized as "certified" by the Bureau.

(e) Have at least 75% of its supervisors that supervise adjusters that process Tennessee workers' compensation claims be recognized as "certified" by the Bureau, and

(f) Be approved by and recognized as such by the Bureau.

(2) Documentation submitted with the application shall include:

(a) The individual names and total number of persons adjusting Tennessee workers' compensation claims, including claims supervisors, on behalf of the applicant on the date of the application;

(b) The total number of adjusters and medical-only adjusters who have been awarded a Tennessee Adjuster Certification as of the date of the application;

(c) An audit of the adjusting entity's achievements relative to the benchmarks listed above for the twelve (12) calendar months ending with the month three months prior to the date of the application (example: For an application dated June 1, the audit would be for the months of April 1 of the previous year through March 31 of the current year).

(3) The term for a certification designation is twenty-four (24) months from the date of designation.

(4) Failure of a certified adjusting entity to fulfill the requirements for post-designation training shall result in that entity being no longer considered a certified adjusting entity.

(5) An adjusting entity which is not designated by the Bureau to be a certified adjusting entity shall not identity itself as holding such recognition.

Authority: T.C.A. §§ 50-6-101, 50-6-119, 50-6-127, 50-6-233, 50-6-415, and 50-6-419.

Rule 0800-02-27.08 Re-Certification Process for Adjusting Entities

(1) Prior to becoming re-certified, an adjusting entity shall have achieved an initial Certified adjusting entity designation, submit a completed renewal application with all appropriate fees and shall meet the requirements of Rule 0800-02-27.07 above at the time of the renewal application.

(2) The length of term for a re-certification designation is twenty-four (24) months from the date of designation.

Authority: T.C.A. §§ 50-6-101, 50-6-119, 50-6-127, 50-6-233, 50-6-415, and 50-6-419.

Rule 0800-02-27.09 Loss of Certification for Adjusting Entities

(1) The Administrator may revoke or refuse to renew an adjusting entity's previously granted certification permanently or temporarily based upon any of the following grounds:

(a) Failure of a certified adjusting entity to fulfill the requirements for re-certification prior to the end of the term of certification;

(b) Misrepresentation on the certification application, as determined by the Administrator; or,

(c) Refusal or substantial failure to comply with the provisions of these Rules.

(2) Any adjusting entity losing certification shall be sent, via USPS to their last known address, a Notice of Removal by the Bureau stating the reasons for having lost the certification status. Such mailing constitutes notice.

(3) An adjusting entity shall have thirty (30) calendar days from the date the Notice of Removal is sent in which to

appeal by responding in writing to the removal and to submit any responsive supporting documentation to the Bureau for consideration. Failure of an adjusting to submit a timely response to the Notice of Removal shall result in the closure of the appeal.

Authority: T.C.A. §§ 50-6-101, 50-6-119, 50-6-127, 50-6-233, 50-6-415, and 50-6-419.

Rule 0800-02-27.10 Required Training Program for Certified Adjusting Entities

(1) Prior to being recognized as a certified adjusting entity by the Bureau, an adjusting entity shall establish and implement a training program for adjusters that process Tennessee claims and shall provide:

(a) Newly-hired medical-only adjusters with at least eight (8) hours of claims-related training;

(b) Newly-hired or newly-appointed claims adjusters with at least twelve (12) hours of claims-related training;

(c) Medical-only and claims adjusters, who are not newly-hired or newly-appointed, with at least two (2) hours of Tennessee-specific training each year; and

(d) Supervising Adjusters who are not newly-hired or newly-appointed with at least four (4) hours of Tennessee-specific claims processing training each year.

(2) All required training for new hires or newly-appointed adjusters shall be provided within the first thirty (30) calendar days of the date or hire or appointment to the position and shall include:

(a) Overview of the information contained one the Tennessee Bureau of Workers' Compensation's Internet homepage

(b) Overview of the Tennessee Workers' Compensation Law including:

1. Notice requirements for employers and claimants
2. Adjuster duties when an injury is reported by an employer
3. Time frame for accepting/denying claim
4. Elements of good faith
5. Claims forms filing requirements/EDI
6. Exclusive remedy

(c) Insurance principles of compensation

1. Medical evidence
2. Investigations
3. Documentation
4. Tennessee-specific Compensability Issues

(i) Course of employment/Arising out of employment
(ii) Covered injuries
(iii) Occupational diseases

5. Denying a claim

(i) Willful misconduct
(ii) Intoxication
(iii) Failure to use safety equipment
(iv) Statute of limitations

6. Fraud

(d) Medical billing codes

(e) Benefits provisions

1. Tennessee requirements for medical panels
2. Medical benefits
3. Temporary disability benefits
4. Permanent disability benefits and issues concerning impairment ratings
5. Future medical benefits
6. Death benefits

(f) Return to work and vocational rehab

(g) Cumulative trauma and gradually occurring injuries

(h) Medical terminology and abbreviations

1. Medical reports
2. Medical specialties
3. Common occupational injuries and diseases
4. Common medical tests

(i) Controlling Costs

1. Employee Choice of Physician Form C-42
2. Medical Fee Schedule
3. Case Management
4. Utilization Review
5. Treatment Guidelines and Drug Formulary

(j) Settlement negotiations

1. Mediation and Ombudsman Services of Tennessee (MOST)
2. Court of Workers' Compensation Claims
3. Workers' Compensation Appeals Board

(k) Ethical Issues

1. Elements of bad faith
2. Tennessee's Penalty statutes

(3) All required training for medical-only and claims adjusters and Supervisors, who are not newly-hired or newly-appointed, shall include information regarding industry best practices as well as any updates to the Workers' Compensation Law or to the Bureau's rules and/or programming areas.

(4) Adjusting entities recognized by this program shall be allowed to indicate its claims processing services are "Recognized by the Tennessee Bureau of Workers' Compensation as a certified adjusting entity in advertising and on its letterhead only during the time frame the adjusting entity is so recognized.

(5) The Bureau may, at its discretion, provide the names and other non-protected personal information, of any adjuster or adjusting entity that has been certified by this program on its website or in any other means it chooses.

Authority: T.C.A. §§ 50-6-101, 50-6-119, 50-6-127, 50-6-233, 50-6-415, and 50-6-419.

Rule 0800-02-27.11 Civil Penalties

In addition to other fees provided by applicable law and regulation, violations of any of these rules shall be subject to enforcement by the Administrator pursuant to T.C.A. § 50-6-419.

Authority: T.C.A. §§ 50-6-101, 50-6-119, 50-6-127, 50-6-233, 50-6-415, and 50-6-419.

* 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 12-11-17 and is in compliance with the provisions of T.C.A. § 4-5-222.

I further certify the following:

Notice of Rulemaking Hearing filed with the Department of State on June 30, 2017.

Rulemaking Hearing Conducted on August 29, 2017.

Date: December 11, 2017

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 11, 2017

Notary Public Signature: S. 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

2/15/2018
Date

Department of State Use Only

Filed with the Department of State on: 3/2/18

Effective on: 5/31/18

Tre Hargett
Secretary of State

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PUBLICATIONS

G.O.C. STAFF RULE ABSTRACT

AGENCY:	Tennessee Real Estate Appraiser Commission
DIVISION:	Regulatory Boards
SUBJECT:	Appraisal Management Company Registration and Regulation
STATUTORY AUTHORITY:	Section 1473 of the Dodd-Frank Act added a new section 1124 to Title XI of FIRREA, which established minimum requirements for regulating AMCs. The Tennessee Real Estate Appraiser Commission voted to adopt these rules, because if Tennessee does not adopt the new federal requirements then AMCs in Tennessee would not be allowed to perform appraisals in federally related transactions.
EFFECTIVE DATES:	June 19, 2018 through June 30, 2019
FISCAL IMPACT:	Minimal.
STAFF RULE ABSTRACT:	These proposed rules amend the current rules to implement changes to comply with federal requirements regarding Appraisal Management Companies ("AMC"). Specifically, the amendments include the following: (1) An AMC must disclose if any person owning the entity has had a license or certificate to act as an appraiser refused, revoked or surrendered. (2) An AMC must disclose certain convictions for any person that owns 10% or more of the AMC. (3) Adding a definition of "good moral character." (4) Adding a penalty fee for any violation of Tennessee Code Annotated, § 62-39-427.

Regulatory Flexibility Addendum

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

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

   The rule may affect Appraisal Management Companies (AMCs) that apply for a license in Tennessee by requiring that they disclose certain information about their ownership. Although it is difficult to predict the number of AMC applicants that may be affected by this rule change, the Commission believes that number will be small.

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 would require minimal, if any, costs for compliance.

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

   The proposed rule may affect some AMCs, but we believe that number will be very small and that the rule will have minimal impact on those AMCs.

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 Commission is not aware of any alternative methods to achieve the goals exhibited by these rules.

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

   Congress has implemented new federal requirements for AMCs. The Dodd-Frank Act established minimum requirements for the regulation of AMCs by adding a new section to Title XI of FIRREA. *See § 12 U.S.C. 3353.* Additionally, under the new federal statute, if a state does not adopt the new federal requirements, AMCs in that state cannot perform appraisals in any federally-related transactions. Tennessee passed legislation during the 2017 legislative session to adopt the new federal requirements.

   At this time, approximately 40 states have either adopted or proposed to adopt the new federal requirements. Therefore, the vast majority of those states have similar rules regarding AMCs.

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:

   An exemption would not benefit small businesses.

Impact on Local Governments

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

The Tennessee Real Estate Appraiser Commission does not foresee any impact on local governments.

Additional Information Required by Joint Government Operations Committee

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

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

These rules amend the current rules to implement changes to comply with federal requirements regarding Appraisal Management Companies ("AMC"). Specifically, the amendments include:

(1) An AMC must disclose if any person owning the entity has had a license or certificate to act as an appraiser refused, revoked or surrendered.
(2) An AMC must disclose certain convictions for any person that owns 10% or more of the AMC.
(3) Adding a definition of "good moral character."
(4) Adding a penalty fee for any violation of T.C.A. § 62-39-427.

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

Section 1473 of the Dodd-Frank Act added a new section 1124 to Title XI of FIRREA, which established minimum requirements for regulating AMCs. The Tennessee Real Estate Appraiser Commission voted to adopt these rules, because if Tennessee does not adopt the new federal requirements AMCs in Tennessee would not be allowed to perform appraisals in federally related transactions.

(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;

Appraisal Management Companies (AMC). We believe AMCs would urge 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;

There are no known opinions of the Attorney General and Reporter or any judicial ruling that directly relates to this rule.

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

This rule will have minimal, if any, impact on the state and local government revenues and expenditures.

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

Sarah M. Mathews, Assistant General Counsel for the Tennessee Real Estate Appraiser Commission

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

Sarah M. Mathews, Assistant General Counsel for the Tennessee Real Estate Appraiser Commission

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

Sarah M. Mathews 500 James Robertson Parkway, Nashville, TN 37243 (615) 532-6303 Sarah.Mathews@tn.gov

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

There is no known additional relevant information.

Department of State
Division of Publications
312 Rosa L. Parks 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: 03-19-18
Rule ID(s): 6724
File Date: 3/21/18
Effective Date: 6/19/18

Proposed Rule(s) Filing Form

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

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

Agency/Board/Commission:	Tennessee Real Estate Appraiser Commission
Division:	Regulatory Boards
Contact Person:	Sarah Mathews
Address:	500 James Robertson Parkway, Nashville, TN
Zip:	37243
Phone:	615-532-6303
Email:	Sarah.Mathews@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**
1255-08	Appraisal Management Company Registration and Regulation
Rule Number	**Rule Title**
1255-08-.01	Registration Application Requirements
1255-08-.02	Background Checks
1255-08-.07	Administrative Penalties

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Sequence Number: _____

Rule ID(s): _____

File Date: _____

Effective Date: _____

Proposed Rule(s) Filing Form - REDLINE

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

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

Agency/Board/Commission:	Tennessee Real Estate Appraiser Commission
Division:	Regulatory Boards
Contact Person:	Sarah Mathews
Address:	500 James Robertson Parkway, Nashville, TN
Zip:	37243
Phone:	615-532-6303
Email:	Sarah.Mathews@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**
1255-08	Appraisal Management Company Registration and Regulation
Rule Number	**Rule Title**
1255-08-.01	Registration Application Requirements
1255-08-.02	Background Checks
1255-08-.07	Administrative Penalties

Chapter 1255-08
Appraisal Management Company Registration and Regulation
Amendments

Rule 1255-08-.01 Registration Application Requirements is amended by deleting the rule and substituting instead the following:

(1) An applicant for registration as an Appraisal Management Company or an entity that is exempt from the registration requirements pursuant to T.C.A. § 62-39-404(1) must submit a written application on the prescribed form. The application shall include the following information and certifications:

(a) The name, business address, telephone number and email address of the person or entity seeking registration.

(b) Designation of an agent for service of process within the state and an irrevocable Uniform Consent to Service of Process.

(c) If the entity is not a corporation that is domiciled in this state, the name and contact information for the company's agent for service of process in this state.

(d) The name, address and contact information for any individual or entity owning ten percent (10%) or more of the Appraisal Management Company.

(e) The name, address and contact information for an individual designated as the controlling person.

(f) Certification that ~~the controlling~~ any person owning the entity, in whole or in part, directly or indirectly, has ~~had~~ never ~~been convicted of a criminal act involving moral turpitude nor~~ had a license or certificate to act as an appraiser refused, revoked or surrendered in lieu of disciplinary action in any state.

(g) Certification that the Appraisal Management Company is not more than ten percent (10%) owned by ~~an individual or entity~~ any person who ~~that~~ has been convicted of any felony or a misdemeanor involving the theft of services, money or property, or has had an appraiser license, certification or registration denied, revoked or suspended subject to a disciplinary proceeding in any state.

(2) A registration fee of two thousand dollars ($2,000.00) is required at the time of application.

(3) The applicant shall post with the Commission at the time of application a surety bond in the amount of twenty thousand dollars ($20,000.00).

(a) The bond shall accrue to the State for the benefit of a claimant against the registrant to secure the performance of the registrant's obligation.

(b) Any claims reducing the face amount of the bond must be restored at the time of the biennial renewal.

(4) Upon completion of the registration application and payment of all fees, the Commission shall issue the registrant a unique registration number and shall publish a list of all registered Appraisal Management Companies.

(5) For purposes of Chapter 1255-08 and the Tennessee Appraisal Management Company Registration and Regulation Act, unless context otherwise requires:

(a) "Good Moral Character" means a person has not been convicted of or pled nolo contendere to any felony or a misdemeanor involving theft of services, money or property, and has never had an appraiser license, certification or registration denied, revoked or suspended in any state.

Authority: T.C.A. §§ 62-39-403, 62-39-407, 62-39-408, 62-39-409, 62-39-410 and 62-39-423.

Rule 1255-08-.02 Background Checks is amended by deleting the phrase "individual" and substituting instead the phrase "person" and deleting the phrase "or any individual designated as the controlling person of the Appraisal Management Company" so that, as amended, the rule shall read:

Any ~~individual~~ person owning more than ten percent (10%) of the Appraisal Management Company ~~or any individual designated as the controlling person of the Appraisal Management Company~~ shall submit a background check at time of application.

Authority: T.C.A. §§ 62-39-409 and 62-39-410.

Rule 1255-08-.07 Administrative Penalties is amended by adding a new subparagraph (1)(o) immediately following current subparagraph (1)(n) and renumbering the subsequent subparagraphs accordingly so that, as amended, subparagraphs (1)(o) – (q) shall read:

(o) T.C.A. § 62-39-427.....$50- $1,000

(~~o~~p) Rule 1255-08-.01 ..... $50 - $1,000

(~~p~~q) Commission Order ..... $50 - $1,000

Authority: T.C.A. §§ 56-1-308, 62-39-411, 62-39-412, 62-39-413, 62-39-418, 62-39-419, 62-39-420, 62-39-421, 62-39-422, 62-39-424 and 62-39-425.

Rules of Tennessee Real Estate Appraiser Commission
Chapter 1255-08 Appraisal Management Company Registration and Regulation
Rule 1255-08-.01 – Rule 1255-08-.08

* 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)
Rosemarie Johnson	X				
Mark Johnstone	X				
Warren Mackara				X	
Rex Garrison	X				
Randall Thomas	X				
Jason Bennett	X				
Vacant					
Vacant					
Vacant					

I certify that this is an accurate and complete copy of proposed rules, lawfully promulgated and adopted by the Commission on 7/11/2017, 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: 2/13/2018

Signature: Sarah M. Mathews

Name of Officer: SARAH M. MATHENS

Title of Officer: ASST. 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: February 13, 2018

Notary Public Signature: Carol McGlynn

My commission expires on: Nov. 5, 2019

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

Herbert H. Slatery III

Herbert H. Slatery III
Attorney General and Reporter

3/12/2018
Date

Rules of Tennessee Real Estate Appraiser Commission
Chapter 1255-08 Appraisal Management Company Registration and Regulation
Rule 1255-08-.01 – Rule 1255-08-.08

Department of State Use Only

Filed with the Department of State on: 3/21/18

Effective on: 6/19/18

Tre Hargett
Secretary of State

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PUBLIC ACTS

G.O.C. STAFF RULE ABSTRACT

AGENCY:	Tennessee Real Estate Appraiser Commission
DIVISION:	Regulatory Boards
SUBJECT:	Registered Trainees
STATUTORY AUTHORITY:	Under the provisions of Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA), the AQB establishes the minimum education, experience, and examination requirements for real property appraisers to obtain a state license or certification. State appraiser regulatory agencies are required to implement real property appraiser licensing and certification requirements that are no less stringent than those issued by the AQB. Appraisal Qualifications Board: Real Property Appraiser Qualification Criteria (Effective January 1, 2015) III. Generic Education Criteria F. Criteria Specific to Continuing Education. 11. The equivalent of fourteen class hours of instruction in courses or seminars for each year during the period preceding the renewal is required.
EFFECTIVE DATES:	June 19, 2018 through June 30, 2019
FISCAL IMPACT:	Minimal
STAFF RULE ABSTRACT:	The proposed rule clarifies the current rule and would bring Tennessee's rules in compliance with standards established by the Appraisal Qualification Board (AQB). The current rule has been interpreted to provide a waiver of the continuing education requirement upon a registered trainee's first renewal. But the AQB standards require that all registered trainees undergo fourteen (14) hours of continuing education per year. Because Tennessee has a two-year renewal period, the proposed rule requires all registered trainees to obtain twenty-eight (28) hours of continuing education to prior to their first renewal.

Regulatory Flexibility Addendum

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

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

   The proposed rule would not directly affect any small businesses.

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

   The proposed rule would require minimal, if any, costs for compliance.

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

   The proposed rule would not affect small businesses, but requires that registered trainees obtain their required continuing education prior to their first renewal.

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 Commission knows of no other alternative method to achieve the goals exhibited by this rule.

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

   There is no comparison, but the proposed rule change is required to comply with federal standards.

   Under the provisions of Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA), the Appraiser Qualifications Board (AQB) establishes the minimum education, experience, and examination requirements for real property appraisers to obtain a state license or certification. State appraiser regulatory agencies are required to implement real property appraiser licensing and certification requirements that are no less stringent than those issued by the AQB.

   Tennessee has adopted the AQB standards, which requires that every applicant for a real estate appraiser license complete at least fourteen (14) hours of continuing education during the period preceding the renewal. See T.C.A. § 62-39-303(2).

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:

   An exemption for small businesses would not be beneficial.

Impact on Local Governments

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

The Tennessee Real Estate Appraiser Commission foresees no impact on any local governments.

Additional Information Required by Joint Government Operations Committee

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

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

The proposed rule clarifies the current rule and would bring Tennessee's rules in compliance with standards established by the Appraisal Qualification Board (AQB). The current rule has been interpreted to provide a waiver of the continuing education requirement upon a registered trainee's first renewal. But the AQB standards require that all registered trainees undergo fourteen (14) hours of continuing education per year. Because Tennessee has a two-year renewal period, the proposed rule requires all registered trainees to obtain twenty-eight (28) hours of continuing education to prior to their first renewal.

(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;

Under the provisions of Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA), the AQB establishes the minimum education, experience, and examination requirements for real property appraisers to obtain a state license or certification. State appraiser regulatory agencies are required to implement real property appraiser licensing and certification requirements that are no less stringent than those issued by the AQB.

Appraisal Qualifications Board: Real Property Appraiser Qualification Criteria (Effective January 1, 2015)
III. Generic Education Criteria
F. Criteria Specific to Continuing Education.
11. The equivalent of fourteen class hours of instruction in courses or seminars for each year during the period preceding the renewal is required.

For AQB Standards, please visit: https://appraisalfoundation.sharefile.com/share?#/view/sf69aa596c754c6fa

(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 affect registered trainees upon their first renewal cycle.

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

There are no known opinions of the Attorney General and Reporter or any judicial ruling that directly relates to this rule.

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

This rule will have a very minimal, if any, impact on the state and local government revenues and expenditures.

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

Sarah M. Mathews, Assistant General Counsel for the Tennessee Real Estate Appraiser Commission

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

Sarah M. Mathews, Assistant General Counsel for the Tennessee Real Estate Appraiser Commission

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

Sarah M. Mathews 500 James Robertson Parkway, Nashville, TN 37243 (615) 532-6303 Sarah.Mathews@tn.gov

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

There is no known additional relevant information.

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For Department of State Use Only

Sequence Number: 03-20-18
Rule ID(s): 6725
File Date: 3/21/18
Effective Date: 6/19/18

Proposed Rule(s) Filing Form

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

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

Agency/Board/Commission:	Tennessee Real Estate Appraiser Commission
Division:	Regulatory Boards
Contact Person:	Sarah Mathews
Address:	500 James Robertson Parkway, Nashville, TN
Zip:	37243
Phone:	615-532-6303
Email:	Sarah.Mathews@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**
1255-01	General Provisions
Rule Number	**Rule Title**
1255-01-.12	Registered Trainee

Redline – 2017 Proposed Rules
Tennessee Real Estate Appraiser Commission

Chapter 1255-01
General Provisions
Amendment

Rule 1255-01-.12(7)(a) is amended by deleting the phrase "in excess of two (2) years" and replacing the phrase "a registered trainee who remains" with "any person" and the phrase "the next" with the word "each" so that as amended subparagraph (7)(a) reads:

(7) Continuing Education.

(a) ~~A registered trainee who remains~~ Any person in the classification of registered trainee ~~in excess of two (2) years~~ shall be required to obtain a minimum of twenty-eight (28) classroom hours of instruction in courses, seminars, workshops, or conferences approved by the Commission prior to ~~the next~~ each renewal period (hereinafter, "continuing education").

Authority: T.C.A. §§ 62-39-203 and 62-39-337.

Rules of Tennessee Real Estate Appraiser Commission
Chapter 1255-01 General Provisions
Rule 1255-01-.12 Registered Trainee

* 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)
Rosemarie Johnson	X				
Mark Johnstone	X				
Warren Mackara	X				
Rex Garrison	X				
Randall Thomas	X				
Jason Bennett				X	
Vacant					
Vacant					
Vacant					

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

Date: 2/13/2018

Signature: Sarah M. Mathews

Name of Officer: SARAH M. MATHEWS

Title of Officer: ASST. 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: February 13, 2018

Notary Public Signature: Carol McGlynn

My commission expires on: Nov. 5, 2019

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

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

3/12/2018
Date

Rules of Tennessee Real Estate Appraiser Commission
Chapter 1255-01 General Provisions
Rule 1255-01-.12 Registered Trainee

Department of State Use Only

Filed with the Department of State on: 3/21/18

Effective on: 6/19/18

Tre Hargett
Secretary of State

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PUBLICATIONS

G.O.C. STAFF RULE ABSTRACT

AGENCY:	Board for Licensing Health Care Facilities
DIVISION:	
SUBJECT:	Facility Standards / Renewal Fees
STATUTORY AUTHORITY:	Tennessee Code Annotated, Section 68-11-216
EFFECTIVE DATES:	June 19, 2018 through June 30, 2019
FISCAL IMPACT:	None
STAFF RULE ABSTRACT:	The amendment to Rule 1200-08-01-.02(4) increases annual renewal fees for hospitals, per bed. The amendment to 1200-08-06-.02(4) increases annual renewal fees for nursing homes per bed. The amendment to Rule 1200-08-10-.02(2)(b) increases annual renewal fees for ASTCs. The amendment to 1200-08-11-.02(2)(b) increases annual renewal fees for Homes for the Aged, per bed. The amendment to Rule 1200-08-26-.02(2)(b) increases annual renewal fees for Home Health Organizations Providing Home Health Services.

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 regarding this proposed rules, 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.

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 rules 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: March 15, 2018

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 rules would directly affect hospitals, nursing homes, ambulatory surgical treatment centers, homes for the aged, and home health organizations providing home health services.

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 rules will increase administrative costs for the above-listed facilities as the renewal fees are being increased.

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

   Hospitals, nursing homes, ambulatory surgical treatment centers, homes for the aged, and home health organizations providing home health services will have to pay an increased renewal fee.

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

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

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 rules do not provide for exemptions regarding 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;

The amendment to Rule 1200-08-01-.02(4) increases annual renewal fees for hospitals, per bed.

The amendment to 1200-08-06-.02(4) increases annual renewal fees for nursing homes per bed.

The amendment to Rule 1200-08-10-.02(2)(b) increases annual renewal fees for ASTCs.

The amendment to 1200-08-11-.02(2)(b) increases annual renewal fees for Homes for the Aged, per bed.

And, the amendment to Rule 1200-08-26-.02(2)(b) increases annual renewal fees for Home Health Organizations Providing Home Health Services.

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

T.C.A. § 68-11-216.

(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;

Hospitals, nursing homes, ambulatory surgical treatment centers, homes for the aged, and home health organizations providing home health services are directly affected by these fees increases. Many facilities and associations connected with these facilities support these proposed fee increases.

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

None.

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

These rules should not affect state or local government revenues or 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.

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

None.

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Sequence Number: 03-21-18
Rule ID(s): 6726-6730
File Date: 3/21/18
Effective Date: 6/19/18

Rulemaking Hearing Rule(s) Filing Form

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

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

Agency/Board/Commission:	Board for Licensing Health Care Facilities
Division:	
Contact Person:	Caroline Tippens, Assistant General Counsel
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

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

Chapter Number	**Chapter Title**
1200-08-01	Standards for Hospitals
Rule Number	**Rule Title**
1200-08-01-.02	Licensing Procedures

Chapter Number	**Chapter Title**
1200-08-06	Standards for Nursing Homes
Rule Number	**Rule Title**
1200-08-06-.02	Licensing Procedures

Chapter Number	**Chapter Title**
1200-08-10	Standards for Ambulatory Surgical Treatment Centers
Rule Number	**Rule Title**
1200-08-10-.02	Licensing Procedures

Chapter Number	**Chapter Title**
1200-08-11	Standards for Homes for the Aged
Rule Number	**Rule Title**

1200-08-11-.02	Licensing Procedures

Chapter Number	Chapter Title
1200-08-26	Standards for Homecare Organizations Providing Home Health Services
Rule Number	**Rule Title**
1200-08-26-.02	Licensing Procedures

(Rule 1200-08-01-.01, continued)

(b) Preparation of the operating room for surgical procedures by ensuring that surgical equipment is functioning properly and safely; and

(c) Passing instruments, equipment or supplies to a surgeon, sponging or suctioning an operative site, preparing and cutting suture material, holding retractors, transferring but not administering fluids or drugs, assisting in counting sponges, needles, supplies, and instruments, and performing other similar tasks as directed during a surgical procedure.

(88) Surrogate. An individual, other than a patient's agent or guardian, authorized to make a health care decision for the patient.

(89) Transfer. The movement of a patient between hospitals at the direction of a physician or other qualified medical personnel when a physician is not readily available but does not include such movement of a patient who leaves the facility against medical advice. The term does not apply to the commitment and movement of mentally ill and mentally retarded persons and does not apply to the discharge or release of a patient no longer in medical need of hospital care or to a hospital's refusal, after an appropriate medical screening, to render any medical care on the grounds that the person does not have a medical need for hospital care.

(90) Treating Health Care Provider. A health care provider who at the time is directly or indirectly involved in providing health care to the patient.

(91) Treating Physician. The physician selected by or assigned to the patient and who has the primary responsibility for the treatment and care of the patient. Where more than one physician shares such responsibility, any such person may be deemed to be the "treating physician."

(92) Voluntary Delivery. The action of a mother in leaving an unharmed infant aged seventy-two (72) hours or younger on the premises of a hospital with any hospital employee or member of the professional medical community without expressing any intention to return for such infant, and failing to visit or seek contact with such infant for a period of thirty (30) days thereafter.

Authority: *T.C.A. §§ 4-5-202, 4-5-204, 39-11-106, 68-11-202, 68-11-204, 68-11-207, 68-11-209, 68-11-210, 68-11-211, 68-11-213, 68-11-224, 68-11-255, 68-11-1802, 68-57-101, 68-57-102, and 68-57-105.* ***Administrative History:*** *Original rule certified June 7, 1974. Amendment filed April 3, 1974; effective May 3, 1974. Amendment filed November 30, 1984; effective December 30, 1984. Repeal and new rule filed May 22, 1986; effective June 21, 1986. Amendment filed April 26, 1996; effective July 8, 1996. Amendment filed November 30, 1999; effective February 6, 2000. Repeal, except for Paragraphs (1), (5), (8), (10), (11), (13), (16), (29) and (37) as promulgated February 6, 2000, and new rule filed March 18, 2000; effective May 30, 2000. Amendment filed April 17, 2000; effective July 1, 2000. Amendment filed September 17, 2002; effective December 1, 2002. Amendment filed April 11, 2003; effective June 25, 2003. Amendment filed April 28, 2003; effective July 12, 2003. Amendment filed August 27, 2004; effective November 10, 2004. Amendments filed September 6, 2005; effective November 20, 2005. Amendment filed February 23, 2006; effective May 9, 2006. Amendment filed February 7, 2007; effective April 23, 2007. Amendment filed February 22, 2010; effective May 23, 2010. Amendments filed March 18, 2010; effective June 16, 2010. Amendment filed January 3, 2012; effective April 2, 2012. Amendment filed March 27, 2015; effective June 25, 2015.*

1200-08-01-.02 LICENSING PROCEDURES.

(1) No person, partnership, association, corporation, or state, county or local government unit, or any division, department, board or agency thereof, shall establish, conduct, operate, or maintain in the State of Tennessee any hospital without having a license. A license shall be issued only to the applicant named and only for the premises listed in the application for

(Rule 1200-08-01-.02, continued)

licensure. Licenses are not transferable or assignable and shall expire and become invalid annually on the anniversary date of their original issuance. The license shall be conspicuously posted in the hospital.

(2) In order to make application for a license:

(a) The applicant shall submit an application on a form prepared by the department.

(b) Each applicant for a license shall pay an annual license fee based on the number of hospital beds. The fee must be submitted with the application and is not refundable.

(c) The issuance of an application form is in no way a guarantee that the completed application will be accepted or that a license will be issued by the department. Patients shall not be admitted to the hospital until a license has been issued. Applicants shall not hold themselves out to the public as being a hospital until the license has been issued. A license shall not be issued until the facility is in substantial compliance with these rules and regulations including submission of all information required by T.C.A. §68-11-206(1), or as later amended, and of all information required by the Commissioner.

(d) The applicant must prove the ability to meet the financial needs of the facility.

(e) The applicant shall not use subterfuge or other evasive means to obtain a license, such as filing for a license through a second party when an individual has been denied a license or has had a license disciplined or has attempted to avoid inspection and review process.

(f) The applicant shall allow the hospital to be inspected by a Department surveyor. In the event that deficiencies are noted, the applicant shall submit a plan of corrective action to the Board that must be accepted by the Board. Once the deficiencies have been corrected, then the Board shall consider the application for licensure.

(3) A proposed change of ownership, including a change in a controlling interest, must be reported to the department a minimum of thirty (30) days prior to the change. A new application and fee must be received by the department before the license may be issued.

(a) For the purposes of licensing, the licensee of a hospital has the ultimate responsibility for the operation of the facility, including the final authority to make or control operational decisions and legal responsibility for the business management. A change of ownership occurs whenever this ultimate legal authority for the responsibility of the hospital's operation is transferred.

(b) A change of ownership occurs whenever there is a change in the legal structure by which the hospital is owned and operated.

(c) Transactions constituting a change of ownership include, but are not limited to, the following:

1. Transfer of the facility's legal title;

2. Lease of the facility's operations;

3. Dissolution of any partnership that owns, or owns a controlling interest in, the facility;

(Rule 1200-08-01-.02, continued)

4. One partnership is replaced by another through the removal, addition or substitution of a partner;

5. Removal of the general partner or general partners, if the facility is owned by a limited partnership;

6. Merger of a facility owner (a corporation) into another corporation where, after the merger, the owner's shares of capital stock are cancelled;

7. The consolidation of a corporate facility owner with one or more corporations; or,

8. Transfers between levels of government.

(d) Transactions which do not constitute a change of ownership include, but are not limited to, the following:

1. Changes in the membership of a corporate board of directors or board of trustees;

2. Two (2) or more corporations merge and the originally-licensed corporation survives;

3. Changes in the membership of a non-profit corporation;

4. Transfers between departments of the same level of government; or,

5. Corporate stock transfers or sales, even when a controlling interest.

(e) Management agreements are generally not changes of ownership if the owner continues to retain ultimate authority for the operation of the facility. However, if the ultimate authority is surrendered and transferred from the owner to a new manager, then a change of ownership has occurred.

(f) Sale/lease-back agreements shall not be treated as changes in ownership if the lease involves the facility's entire real and personal property and if the identity of the leasee, who shall continue the operation, retains the exact same legal form as the former owner.

~~(4) Each hospital, except those operated by the U.S. Government or the State of Tennessee, making application for license under this chapter shall pay annually to the department a fee based on the number of hospital beds, as follows:~~

~~(a)~~	~~Less than 25 beds~~	~~$ 800.00~~
~~(b)~~	~~25 to 49 beds, inclusive~~	~~$ 1,000.00~~
~~(c)~~	~~50 to 74 beds, inclusive~~	~~$ 1,200.00~~
~~(d)~~	~~75 to 99 beds, inclusive~~	~~$ 1,400.00~~
~~(e)~~	~~100 to 124 beds, inclusive~~	~~$ 1,600.00~~
~~(f)~~	~~125 to 149 beds, inclusive~~	~~$ 1,800.00~~
~~(g)~~	~~150 to 174 beds, inclusive~~	~~$ 2,000.00~~

(Rule 1200-08-01-.02, continued)

~~(h) 175 to 199 beds, inclusive $ 2,200.00~~

~~For hospitals of two hundred (200) beds or more the fee shall be two thousand four hundred dollars ($2,400.00) plus two hundred dollars ($200.00) for each twenty-five (25) beds or fraction thereof in excess of one hundred ninety-nine (199) beds. The fee shall be submitted with the application or renewal and is not refundable.~~

(4) Each hospital, except those operated by the U.S. Government or the State of Tennessee, making application for license under this chapter shall pay annually to the department a fee based on the number of hospital beds, as follows:

(a)	Less than 25 beds	$ 1,040.00
(b)	25 to 49 beds, inclusive	$ 1,300.00
(c)	50 to 74 beds, inclusive	$ 1,560.00
(d)	75 to 99 beds, inclusive	$ 1,820.00
(e)	100 to 124 beds, inclusive	$ 2,080.00
(f)	125 to 149 beds, inclusive	$ 2,340.00
(g)	150 to 174 beds, inclusive	$ 2,600.00
(h)	175 to 199 beds, inclusive	$ 2,860.00

For hospitals of two hundred (200) beds or more the fee shall be two thousand eight hundred and sixty dollars ($2,860.00) plus two hundred dollars ($200.00) for each twenty-five (25) beds or fraction thereof in excess of one hundred ninety-nine (199) beds. The fee shall be submitted with the application or renewal and is not refundable.

(5) Renewal.

(a) In order to renew a license, each hospital shall submit to periodic inspections by Department surveyors for compliance with these rules. If deficiencies are noted, the licensee shall submit an acceptable plan of corrective action and shall remedy the deficiencies. In addition, each licensee shall submit a renewal form approved by the board and applicable renewal fee prior to the expiration date of the license.

(b) If a licensee fails to renew its license prior to the date of its expiration but submits the renewal form and fee within sixty (60) days thereafter, the licensee may renew late by paying, in addition to the renewal fee, a late penalty of one hundred dollars ($100) per month for each month or fraction of a month that renewal is late; provided that the late penalty shall not exceed twice the renewal fee.

(c) In the event that a licensee fails to renew its license within the sixty (60) day grace period following the license expiration date, then the licensee shall reapply for a license by submitting the following to the Board office:

1. a completed application for licensure;

2. the license fee provided in rule 1200-08-01-.02(4); and

3. any other information required by the Health Services and Development Agency.

(Rule 1200-08-01-.02, continued)

(d) Upon reapplication, the licensee shall submit to an inspection of the hospital by Department of Health surveyors.

Authority: *T.C.A. §§ 4-5-201, 4-5-202, 4-5-204, 68-11-201, 68-11-202, 68-11-204, 68-11-206, 68-11-209, 68-11-209(a)(1), 68-11-210, 68-11-216 and Chapter 846 of the Public Acts of 2008, §1, T.C.A. §68-11-206(a)(5) [effective January 1, 2009].* ***Administrative History:*** *Original rule certified June 7, 1974. Repeal and new rule filed May 22, 1986; effective June 21, 1986. Amendment filed January 16, 1992; effective March 2, 1992. Repeal and new rule filed March 18, 2000; effective May 30, 2000. Amendment filed December 2, 2003; effective February 15, 2004. Amendment filed January 19, 2007; effective April 4, 2007. Public necessity rules filed April 29, 2009; effective through October 11, 2009. Emergency rules filed October 9, 2009; effective through April 7, 2010. Amendments filed September 24, 2009; effective December 23, 2009. Amendment filed December 16, 2013; effective March 16, 2014.*

1200-08-01-.03 DISCIPLINARY PROCEDURES.

(1) The board may suspend or revoke a license for:

(a) Violation of federal or state statutes;

(b) Violation of the rules as set forth in this chapter;

(c) Permitting, aiding or abetting the commission of any illegal act in the hospital;

(d) Conduct or practice found by the board to be detrimental to the health, safety, or welfare of the patients of the hospital; and

(e) Failure to renew license.

(2) The board may consider all factors which it deems relevant, including but not limited to the following when determining sanctions:

(a) The degree of sanctions necessary to ensure immediate and continued compliance;

(b) The character and degree of impact of the violation on the health, safety and welfare of the patients in the facility;

(c) The conduct of the facility in taking all feasible steps or procedures necessary or appropriate to comply or correct the violation; and

(d) Any prior violations by the facility of statutes, regulations or orders of the board.

(3) Inappropriate transfers are prohibited and violation of the transfer provisions shall be deemed sufficient grounds to suspend or revoke a hospital's license.

(4) When a hospital is found by the department to have committed a violation of this chapter, the department will issue to the facility a statement of deficiencies. Within ten (10) days of the receipt of the deficiencies, the hospital must return a plan of correction indicating the following:

(a) How the deficiency will be corrected;

(b) The date upon which each deficiency will be corrected;

(c) What measures or systemic changes will be put in place to ensure that the deficient practice does not recur; and

(Rule 1200-08-06-.01, continued)

(66) State. A state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or a territory or insular possession subject to the jurisdiction of the United States.

(67) Student. A person currently enrolled in a course of study that is approved by the appropriate licensing board.

(68) Supervising Health Care Provider. The designated physician or, if there is no designated physician or the designated physician is not reasonably available, the health care provider who has undertaken primary responsibility for an individual's health care.

(69) Surrogate. An individual, other than a resident's agent or guardian, authorized to make a health care decision for the resident.

(70) Survey. An on-site examination by the department to determine the quality of care and/or services provided.

(71) Transfer. The movement of a resident between nursing homes at the direction of a physician or other qualified medical personnel when a physician is not readily available. The term does not include movement of a resident who leaves the facility against medical advice. The term does not apply to the commitment and movement of mentally ill and mentally retarded persons, the discharge or release of a resident no longer in need of nursing home care, or a nursing home's refusal, after an appropriate medical screening, to render any medical care on the grounds that the person does not have a medical need for nursing home care.

(72) Treating Health Care Provider. A health care provider who at the time is directly or indirectly involved in providing health care to the resident.

(73) Treating Physician. The physician selected by or assigned to the resident and who has the primary responsibility for the treatment and care of the resident. Where more than one physician shares such responsibility, any such physician may be deemed to be the "treating physician."

Authority: *T.C.A. §§ 4-5-202, 4-5-204, 39-11-106, 68-11-201, 68-11-202, 68-11-204, 68-11-206, 68-11-207, 68-11-209, 68-11-210, 68-11-211, 68-11-213, 68-11-224, 68-11-234, 68-11-1802, and 71-6-121.* ***Administrative History:*** *Original rule filed March 27, 1975; 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 April 11, 2003; effective June 25, 2003. Amendment filed April 28, 2003; effective July 12, 2003. Amendments filed September 21, 2005; effective December 5, 2005. Amendment filed February 7, 2007; effective April 23, 2007. Amendment filed July 18, 2007; effective October 1, 2007. Amendment filed January 3, 2012; effective April 2, 2012. Amendment filed March 27, 2015; effective June 25, 2015. Amendment filed September 15, 2015; effective December 14, 2015.*

1200-08-06-.02 LICENSING PROCEDURES.

(1) No person, partnership, association, corporation, or state, county or local government unit, or any division, department, board or agency thereof, shall establish, conduct, operate, or maintain in the State of Tennessee any nursing home without having a license. A license shall be issued only to the applicant named and only for the premises listed in the application for licensure. Satellite facilities shall be prohibited. Licenses are not transferable or assignable and shall expire and become invalid annually on the anniversary date of their original issuance. The license shall be conspicuously posted in the nursing home.

(2) In order to make application for a license:

(Rule 1200-08-06-.02, continued)

(a) The applicant shall submit an application on a form provided by the department along with a copy of the Certificate of Need (CON) issued by the Tennessee Health Services and Development Agency (HSDA). Any condition placed on the CON will also be placed on the license.

(b) Each applicant for a license shall pay an annual license fee based on the number of nursing home beds. The fee must be submitted with the application and is not refundable.

(c) The issuance of an application form is in no way a guarantee that the completed application will be accepted or that a license will be issued by the department. Residents shall not be admitted to the nursing home until a license has been issued. Applicants shall not hold themselves out to the public as being a nursing home until the license has been issued. A license shall not be issued until the facility is in substantial compliance with these rules, including submission of all information required by T.C.A. § 68-11-206(1) or as later amended, and all information required by the Commissioner.

(d) The applicant shall not use subterfuge or other evasive means to obtain a license, such as filing for a license through a second party when an individual has been denied a license or has had a license disciplined or has attempted to avoid inspection and review process.

(e) The applicant shall allow the nursing home to be inspected by a Department surveyor. In the event that deficiencies are noted, the applicant shall submit a plan of corrective action to the Board that must be accepted by the Board. Once the deficiencies have been corrected, then the Board shall consider the application for licensure.

(3) A proposed change of ownership, including a change in a controlling interest, must be reported to the department a minimum of thirty (30) days prior to the change. A new application and fee must be received by the department before the license may be issued.

(a) For the purpose of licensing, the licensee of a nursing home has the ultimate responsibility for the operation of the facility, including the final authority to make or control operational decisions and legal responsibility for the business management. A change of ownership occurs whenever this ultimate legal authority for the responsibility of the nursing home's operation is transferred.

(b) A change of ownership occurs whenever there is a change in the legal structure by which the nursing home is owned and operated.

(c) Transactions constituting a change of ownership include, but are not limited to, the following:

1. Transfer of the facility's legal title;

2. Lease of the facility's operations;

3. Dissolution of any partnership that owns, or owns a controlling interest in, the facility.

4. One partnership is replaced by another through the removal, addition or substitution of a partner;

5. Removal of the general partner or general partners, if the facility is owned by a limited partnership;

(Rule 1200-08-06-.02, continued)

6. Merger of a facility owner (a corporation) into another corporation where, after the merger, the owner's shares of capital stock are canceled;

7 The consolidation of a corporate facility owner with one or more corporations; or,

8. Transfers between levels of government.

(d) Transactions which do not constitute a change of ownership include, but are not limited to, the following:

1. Changes in the membership of a corporate board of directors or board of trustees;

2. Two (2) or more corporations merge and the originally-licensed corporation survives;

3. Changes in the membership of a non-profit corporation;

4. Transfers between departments of the same level of government; or,

5. Corporate stock transfers or sales, even when a controlling interest.

(e) Management agreements are generally not changes of ownership if the owner continues to retain ultimate authority for the operation of the facility. However, if the ultimate authority is surrendered and transferred from the owner to a new manager, then a change of ownership has occurred.

(f) Sale/lease-back agreements shall not be treated as changes in ownership if the lease involves the facility's entire real and personal property and if the identity of the leasee, who shall continue the operation, retains the same legal form as the former owner.

~~(4) Each nursing home, except those operated by the U.S. Government or the State of Tennessee, making application for license under this chapter shall pay annually to the department a fee based on the number of nursing home beds, as follows:~~

~~(a) Less than 25 beds~~	~~$ 800.00~~
~~(b) 25 to 49 beds, inclusive~~	~~$ 1,000.00~~
~~(c) 50 to 74 beds, inclusive~~	~~$ 1,200.00~~
~~(d) 75 to 99 beds, inclusive~~	~~$ 1,400.00~~
~~(e) 100 to 124 beds, inclusive~~	~~$ 1,600.00~~
~~(f) 125 to 149 beds, inclusive~~	~~$ 1,800.00~~
~~(g) 150 to 174 beds, inclusive~~	~~$ 2,000.00~~
~~(h) 175 to 199 beds, inclusive~~	~~$ 2,200.00~~

~~For nursing homes of two hundred (200) beds or more the fee shall be two thousand four hundred dollars ($2,400.00) plus two hundred dollars ($200.00) for each twenty-five (25) beds or fraction thereof in excess of one hundred ninety-nine (199) beds. The fee shall be submitted with the application or renewal and is not refundable. When additional beds are~~

(Rule 1200-08-06-.02, continued)

~~licensed, the licensing procedures for new facilities must be followed and the difference between the fee previously paid and the fee for the new bed capacity, if any, must be paid.~~

(4) Each nursing home, except those operated by the U.S. Government or the State of Tennessee, making application for license under this chapter shall pay annually to the department a fee based on the number of nursing home beds, as follows:

(a)	Less than 25 beds	$ 1,040.00
(b)	25 to 49 beds, inclusive	$ 1,300.00
(c)	50 to 74 beds, inclusive	$ 1,560.00
(d)	75 to 99 beds, inclusive	$ 1,820.00
(e)	100 to 124 beds, inclusive	$ 2,080.00
(f)	125 to 149 beds, inclusive	$ 2,340.00
(g)	150 to 174 beds, inclusive	$ 2,600.00
(h)	175 to 199 beds, inclusive	$ 2,860.00

For nursing homes of two hundred (200) beds or more the fee shall be two thousand eight hundred and sixty dollars ($2,860.00) plus two hundred dollars ($200.00) for each twenty-five (25) beds or fraction thereof in excess of one hundred ninety-nine (199) beds. The fee shall be submitted with the application or renewal and is not refundable. When additional beds are licensed, the licensing procedures for new facilities must be followed and the difference between the fee previously paid and the fee for the new bed capacity, if any, must be paid.

(5) Renewal.

(a) In order to renew a license, each nursing home shall submit to periodic inspections by Department surveyors for compliance with these rules. If deficiencies are noted, the licensee shall submit an acceptable plan of corrective action and shall remedy the deficiencies. In addition, each licensee shall submit a renewal form approved by the board and applicable renewal fee prior to the expiration date of the license.

(b) If a licensee fails to renew its license prior to the date of its expiration but submits the renewal form and fee within sixty (60) days thereafter, the licensee may renew late by paying, in addition to the renewal fee, a late penalty of one hundred dollars ($100) per month for each month or fraction of a month that renewal is late; provided that the late penalty shall not exceed twice the renewal fee.

(c) In the event that a licensee fails to renew its license within the sixty (60) day grace period following the license expiration date, then the licensee shall reapply for a license by submitting the following to the Board office:

1. a completed application for licensure;

2. the license fee provided in rule 1200-08-06-.02(4); and

3. any other information required by the Health Services and Development Agency.

(Rule 1200-08-06-.02, continued)

(d) Upon reapplication, the licensee shall submit to an inspection of the facility by Department of Health surveyors.

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, 68-11-209(a)(1), 68-11-210, 68-11-216, Chapter 846 of the Public Acts of 2008, §1, T.C.A. §68-11-206(a)(5) [effective January 1, 2009].* ***Administrative History:*** *Original rules 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 December 30, 1986; effective February 13, 1987. Repeal and new rule filed January 31, 2000; effective April 15, 2000. Amendment filed November 19, 2003; effective February 2, 2004. Amendment filed September 21, 2005; effective December 5, 2005. Amendment filed January 19, 2007; effective April 4, 2007. Public necessity rules filed April 29, 2009; effective through October 11, 2009. Emergency rules filed October 9, 2009; effective through April 7, 2010. Amendments filed September 24, 2009; effective December 23, 2009. Amendment filed December 16, 2013; effective March 16, 2014.*

1200-08-06-.03 DISCIPLINARY PROCEDURES.

(1) The board may suspend or revoke a license for:

(a) Violation of federal statutes or rules;

(b) Violation of state statutes or the rules as set forth in this chapter;

(c) Permitting, aiding or abetting the commission of any illegal act in the nursing home;

(d) Conduct or practice found by the board to be detrimental to the health, safety, or welfare of the residents of the nursing home; and,

(e) Failure to renew the license.

(2) The board may consider all factors which it deems relevant, including but not limited to the following, when determining sanctions:

(a) The degree of sanctions necessary to ensure immediate and continued compliance;

(b) The character and degree of impact of the violation on the health, safety and welfare of the residents in the facility;

(c) The conduct of the facility in taking all feasible steps or procedures necessary or appropriate to comply or correct the violation; and,

(d) Any prior violations by the facility of statutes, rules or orders of the commissioner or the board.

(3) The Board shall have the authority to place a facility on probation. To be considered for probation, a facility must have had at least two (2) separate substantiated complaint investigation surveys within six (6) months, where each survey had at least one deficiency cited at the level of substandard quality of care or immediate jeopardy, as those terms are defined at 42 CFR 488.301. None of the surveys can have been initiated by an unusual event or incident self reported by the facility.

(a) If a facility meets the criteria for probation, the board may hold a hearing at its next regularly scheduled meeting to determine if the facility should be placed on probation. Prior to initiating such a hearing, the board shall provide notice to the facility detailing what specific non-compliance the board had identified that the facility must respond to at the probation hearing.

(Rule 1200-08-10-.01, continued)

(a) Preparation of the operating room and the sterile field for surgical procedures by preparing sterile supplies, instruments, and equipment using sterile technique;

(b) Preparation of the operating room for surgical procedures by ensuring that surgical equipment is functioning properly and safely; and

(c) Passing instruments, equipment or supplies to a surgeon, sponging or suctioning an operative site, preparing and cutting suture material, holding retractors, transferring but not administering fluids or drugs, assisting in counting sponges, needles, supplies, and instruments, and performing other similar tasks as directed during a surgical procedure.

(70) Surrogate. An individual, other than a patient's agent or guardian, authorized to make a health care decision for the patient.

(71) Transfer. The movement of a patient at the direction of a physician or other qualified medical personnel when a physician is not readily available but does not include such movement of a patient who leaves the facility against medical advice.

(72) Treating Health Care Provider. A health care provider who at the time is directly or indirectly involved in providing health care to the patient.

Authority: *T.C.A. §§ 4-5-202, 4-5-204, 39-11-106, 68-11-202, 68-11-204, 68-11-206, 68-11-209, 68-11-211, 68-11-216, 68-11-224, 68-11-1802, 68-57-101, 68-57-102, and 68-57-105.* ***Administrative History:*** *Original rule filed July 22, 1977; effective August 22, 1977. Amendment filed August 10, 1982; effective September 9, 1982. Repeal and new rule filed June 30, 1992; effective August 14, 1992. Amendment filed March 12, 1993; effective April 26, 1993. Repeal and new rule filed March 21, 2000; effective June 4, 2000. Amendment filed April 11, 2003; effective June 25, 2003. Amendment filed April 28, 2003; effective July 12, 2003. Amendment filed June 16, 2003; effective August 30, 2003. Amendment filed May 20, 2004; effective August 3, 2004. Amendments filed September 9, 2005; effective November 23, 2005. Amendment filed February 23, 2006; effective May 9, 2006. Amendment filed February 7, 2007; effective April 23, 2007. Amendment filed February 22, 2010; effective May 23, 2010. Amendment filed January 3, 2012; effective April 2, 2012. Amendment filed March 27, 2015; effective June 25, 2015.*

1200-08-10-.02 LICENSING PROCEDURES.

(1) No person, partnership, association, corporation, or state, county or local government unit, or any division, department, board or agency thereof, shall establish, conduct, operate, or maintain in the State of Tennessee any ASTC without having a license. A license shall be issued only to the applicant named and only for the premises listed in the application for licensure. Licenses are not transferable or assignable and shall expire and become invalid annually on the anniversary date of their original issuance. The license shall be conspicuously posted in the ASTC.

(2) In order to make application for a license:

(a) The applicant shall submit an application on a form prepared by the department.

~~(b) Each applicant for a license shall pay an annual license fee in the amount of one thousand eighty dollars ($1,080.00). The fee must be submitted with the application and is not refundable.~~

(b) Each applicant for a license shall pay an annual license fee in the amount of one thousand four hundred and four dollars ($1,404.00). The fee must be submitted with the application and is not refundable.

(Rule 1200-08-10-.02, continued)

(c) The issuance of an application form is in no way a guarantee that the completed application will be accepted or that a license will be issued by the department. Patients shall not be admitted to the ASTC until a license has been issued. Applicants shall not hold themselves out to the public as being an ASTC until the license has been issued. A license shall not be issued until the facility is in substantial compliance with these rules and regulations including submission of all information required by Tennessee Code Annotated § 68-11-206(l), or as later amended, and all information required by the Commissioner.

(d) The applicant must prove the ability to meet the financial needs of the facility.

(e) The applicant shall not use subterfuge or other evasive means to obtain a license, such as filing for a license through a second party when an individual has been denied a license or has had a license disciplined or has attempted to avoid inspection and review process.

(f) The applicant shall allow the ambulatory surgical treatment center to be inspected by a Department surveyor. In the event that deficiencies are noted, the applicant shall submit a plan of corrective action to the Board that must be accepted by the Board. Once the deficiencies have been corrected, then the Board shall consider the application for licensure.

(3) Each ASTC, when issued a license, shall be classified according to the type of services rendered or category of patients served. The ASTC shall confine its services to those described in its license and shall advertise only the services which it is licensed to perform. The classification shall be listed on the license.

(4) A proposed change of ownership must be reported to the department a minimum of thirty (30) days prior to the change. A new application and fee must be received by the department before the license may be issued.

(a) For purposes of licensing, the licensee of an ASTC has the ultimate responsibility for the operation of the facility, including the final authority to make or control operational decisions and legal responsibility for the business management. A change of ownership occurs whenever this ultimate legal authority for the responsibility of ASTC operations is transferred.

(b) A change of ownership occurs whenever there is a change in the legal structure by which the facility is owned and operated and any ownership interest of the preceding or succeeding entity changes.

(c) Transactions constituting a change of ownership include, but are not limited to, the following:

1. Transfer of the facility's legal title;

2. Lease of the facility's operation;

3. Dissolution of any partnership that owns, or owns a controlling interest in, the facility;

4. One partnership is replaced by another through the removal, addition or substitution of a partner;

(Rule 1200-08-10-.02, continued)

5. Merger of a facility owner (a corporation) into another corporation where, after the merger, the owner's shares of capital stock are canceled;

6. The consolidation of a corporate facility owner with one or more corporations; or,

7. Transfers between levels of government.

(d) Transactions which do not constitute a change of ownership include, but are not limited to, the following:

1. Changes in the membership of a corporate board of directors or board of trustees;

2. Two (2) or more corporations merge and the originally-licensed corporation survives;

3. Changes in the membership of a non-profit corporation;

4. Transfers between departments of the same level of government; or,

5. Corporate stock transfers or sales, even when a controlling interest.

(e) Management agreements are generally not changes of ownership if the owner continues to retain ultimate authority for the operation of the facility. However, if the ultimate authority is surrendered and transferred from the owner to a new manager, then a change of ownership has occurred.

(f) Sale/lease-back agreements shall not be treated as changes in ownership if the lease involves the facility's entire real and personal property and if the identity of the leasee, who shall continue the operation, retains the same legal form as the former owner.

(5) Renewal.

(a) In order to renew a license, each ambulatory surgical treatment center shall submit to periodic inspections by Department surveyors for compliance with these rules. If deficiencies are noted, the licensee shall submit an acceptable plan of corrective action and shall remedy the deficiencies. In addition, each licensee shall submit a renewal form approved by the board and applicable renewal fee prior to the expiration date of the license.

(b) If a licensee fails to renew its license prior to the date of its expiration but submits the renewal form and fee within sixty (60) days thereafter, the licensee may renew late by paying, in addition to the renewal fee, a late penalty of one hundred dollars ($100) per month for each month or fraction of a month that renewal is late; provided that the late penalty shall not exceed twice the renewal fee.

(c) In the event that a licensee fails to renew its license within the sixty (60) day grace period following the license expiration date, then the licensee shall reapply for a license by submitting the following to the Board office:

1. a completed application for licensure;

2. the license fee provided in rule 1200-08-10-.02(2)(b); and

3. any other information required by the Health Services and Development Agency.

(Rule 1200-08-10-.02, continued)

(d) Upon reapplication, the licensee shall submit to an inspection of the facility by Department of Health surveyors.

Authority: *T.C.A. §§ 4-5-202, 4-5-204, 68-11-201, 68-11-202, 68-11-204, 68-11-206(a)(5), 68-11-206, 68-11-209, 68-11-209(a)(1), 68-11-210, 68-11-216, and Chapter 846 of the Public Acts of 2008, §1.* ***Administrative History:*** *Original rule filed July 22, 1977; effective August 22, 1977. Amendment filed February 26, 1985; effective March 28, 1985. Repeal and new rule filed June 30, 1992; effective August 14, 1992. Repeal and new rule filed March 21, 2000; effective June 4, 2000. Amendment filed June 16, 2003; effective August 30, 2003. Amendment filed January 19, 2007; effective April 4, 2007. Amendment filed July 18, 2007; effective October 1, 2007. Public necessity rules filed April 29, 2009; effective through October 11, 2009. Emergency rules filed October 9, 2009; effective through April 7, 2010. Amendments filed September 24, 2009; effective December 23, 2009. Amendment filed December 16, 2013; effective March 16, 2014.*

1200-08-10-.03 DISCIPLINARY PROCEDURES.

(1) The board may suspend or revoke a license for:

(a) Violation of federal or state statutes;

(b) Violation of the rules as set forth in this chapter;

(c) Permitting, aiding or abetting the commission of any illegal act in the ASTC;

(d) Conduct or practice found by the board to be detrimental to the health, safety, or welfare of the patients of the ASTC; and

(e) Failure to renew license.

(2) The board may consider all factors which it deems relevant, including but not limited to the following when determining sanctions:

(a) The degree of sanctions necessary to ensure immediate and continued compliance;

(b) The character and degree of impact of the violation on the health, safety and welfare of the patients in the facility;

(c) The conduct of the facility in taking all feasible steps or procedures necessary or appropriate to comply or correct the violation; and,

(d) Any prior violations by the facility of statutes, regulations or orders of the board.

(3) When an ambulatory surgical treatment center is found by the department to have committed a violation of this chapter, the department will issue to the facility a statement of deficiencies. Within ten (10) days of the receipt of the statement of deficiencies the facility must return a policy of correction indicating the following:

(a) How the deficiency will be corrected;

(b) The date upon which each deficiency will be corrected;

(c) What measures or systemic changes will be put in place to ensure that the deficient practice does not recur; and

(Rule 1200-08-11-.01, continued)

(49) State. A state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or a territory or insular possession subject to the jurisdiction of the United States.

(50) Supervising Heath Care Provider. The designated physician or, if there is no designated physician ot the designated physician is not reasonably available, the health care provider who has undertaken primary responsibility for an individual's health care.

(51) Surrogate. An individual, other that a resident's agent or guardian, authorized to make a health care decision for the resident.

(52) Treating Health Care Provider. A health care provider who at the time is directly or indirectly involved in providing health care to the resident.

Authority: *T.C.A. §§ 4-5-202, 4-5-204, 39-11-106, 68-11-201, 68-11-202, 68-11-204, 68-11-206, 68-11-207, 68-11-209, 68-11-210, 68-11-211, 68-11-213, 68-11-216, 68-11-224, and 68-11-1802.* ***Administrative History:*** *Original rule filed June 21, 1979; effective August 6, 1979. Amendment filed August 16, 1988; effective September 30, 1988. Amendment filed January 30, 1992; effective March 15, 1992. Amendment filed December 7, 1993; effective February 20, 1994. Repeal and new rule filed July 27, 2000; effective October 10, 2000. Amendment filed April 11, 2003; effective June 25, 2003. Amendment filed April 28, 2003; effective July 12, 2003.Amendment filed September 8, 2006; effective November 22, 2006. Amendment filed February 7, 2007; effective April 23, 2007. Amendment filed February 23, 2007; effective May 9, 2007. Amendment filed January 3, 2012; effective April 2, 2012. Amendment filed March 27, 2015; effective June 25, 2015.*

1200-08-11-.02 LICENSING PROCEDURES.

(1) No person, partnership, association, corporation, or state, county or local government unit, or any division, department, board or agency thereof, shall establish, conduct, operate, or maintain in the State of Tennessee any home for the aged without having a license. A license shall be issued only to the applicant named and only for the premises listed in the application for licensure. Licenses are not transferable or assignable and shall expire and become invalid annually on the anniversary date of their original issuance. The license shall be conspicuously posted in the home for the aged.

(2) In order to make application for a license:

(a) The applicant shall submit an application on a form prepared by the department.

~~(b) Each applicant for a license shall pay an annual license fee based on the number of beds as follows:~~

~~1.~~	~~Less than 6 beds~~	~~$ 300.00~~
~~2.~~	~~6 to 24 beds, inclusive~~	~~$ 800.00~~
~~3.~~	~~25 to 49 beds, inclusive~~	~~$ 1,000.00~~
~~4.~~	~~50 to 74 beds, inclusive~~	~~$ 1,200.00~~
~~5.~~	~~75 to 99 beds, inclusive~~	~~$ 1,400.00~~
~~6.~~	~~100 to 124 beds, inclusive~~	~~$ 1,600.00~~
~~7.~~	~~125 to 149 beds, inclusive~~	~~$ 1,800.00~~
~~8.~~	~~150 to 174 beds, inclusive~~	~~$ 2,000.00~~

(Rule 1200-08-11-.02, continued)

~~9. 175 to 199 beds, inclusive $ 2,200.00~~

~~For homes for the aged of two hundred (200) beds or more the fee shall be two thousand four hundred dollars ($2,400.00) plus two hundred dollars ($200.00) for each twenty-five (25) beds or fraction thereof in excess of one hundred ninety-nine (199) beds. The fee shall be submitted with the application or renewal and is not refundable.~~

(b) Each applicant for a license shall pay an annual license fee based on the number of beds as follows:

1.	Less than 6 beds	$ 390.00
2.	6 to 24 beds, inclusive	$ 1,040.00
3.	25 to 49 beds, inclusive	$ 1,300.00
4.	50 to 74 beds, inclusive	$ 1,560.00
5.	75 to 99 beds, inclusive	$ 1,820.00
6.	100 to 124 beds, inclusive	$ 2,080.00
7.	125 to 149 beds, inclusive	$ 2,340.00
8.	150 to 174 beds, inclusive	$ 2,600.00
9.	175 to 199 beds, inclusive	$ 2,860.00

For homes for the aged of two hundred (200) beds or more the fee shall be two thousand eight hundred and sixty dollars ($2,860.00) plus two hundred dollars ($200.00) for each twenty-five (25) beds or fraction thereof in excess of one hundred ninety-nine (199) beds. The fee shall be submitted with the application or renewal and is not refundable.

(c) The issuance of an application form is in no way a guarantee that the completed application will be accepted or that a license will be issued by the department. Residents shall not be admitted to the home until a license has been issued. Applicants shall not hold themselves out to the public as being a home for the aged until the license has been issued. A license shall not be issued until the facility is in substantial compliance with these rules.

(d) The applicant must prove the ability to meet the financial needs of the facility.

(e) The applicant shall not use subterfuge or other evasive means to obtain a license, such as filing for a license through a second party when an individual has been denied a license or has had a license disciplined or has attempted to avoid inspection and review process.

(f) The applicant shall allow the residential home for the aged to be inspected by a Department surveyor. In the event that deficiencies are noted, the applicant shall submit a plan of corrective action to the Board that must be accepted by the Board. Once the deficiencies have been corrected, then the Board shall consider the application for licensure.

(Rule 1200-08-11-.02, continued)

(3) A proposed change of ownership, including a change in a controlling interest, must be reported to the department a minimum of thirty (30) days prior to the change. A new application and fee must be received by the department before the license may be issued.

(a) For the purpose of licensing, the licensee of a home for the aged has the ultimate responsibility for the operation of the facility, including the final authority to make or control operational decisions and legal responsibility for the business management. A change of ownership occurs whenever this ultimate legal authority for the responsibility of the home's operation is transferred.

(b) A change of ownership occurs whenever there is a change in the legal structure by which the home is owned and operated.

(c) Transactions constituting a change of ownership include, but are not limited to, the following:

1. Transfer of the facility's legal title;

2. Lease of the facility's operations;

3. Dissolution of any partnership that owns, or owns a controlling interest in, the facility;

4. One partnership is replaced by another through the removal, addition or substitution of a partner;

5. Removal of the general partner or general partners, if the facility is owned by a limited partnership;

6. Merger of a facility owner (a corporation) into another corporation where, after the merger, the owner's shares of capital stock are canceled;

7. The consolidation of a corporate facility owner with one or more corporations; or

8. Transfers between levels of government.

(d) Transactions which do not constitute a change of ownership include, but are not limited to, the following:

1. Changes in the membership of a corporate board of directors or board of trustees;

2. Two (2) or more corporations merge and the originally-licensed corporation survives;

3. Changes in the membership of a non-profit corporation;

4. Transfers between departments of the same level of government; or

5. Corporate stock transfers or sales, even when a controlling interest.

(e) Management agreements are generally not changes of ownership if the owner continues to retain ultimate authority for the operation of the facility. However, if the ultimate authority is surrendered and transferred from the owner to a new manager, then a change of ownership has occurred.

(Rule 1200-08-11-.02, continued)

(f) Sale/lease-back agreements shall not be treated as changes in ownership if the lease involves the facility's entire real and personal property and if the identity of the leasee, who shall continue the operation, retains the exact same legal form as the former owner.

(4) Renewal.

(a) In order to renew a license, each residential home for the aged shall submit to periodic inspections by Department surveyors for compliance with these rules. If deficiencies are noted, the licensee shall submit an acceptable plan of corrective action and shall remedy the deficiencies. In addition, each licensee shall submit a renewal form approved by the board and applicable renewal fee prior to the expiration date of the license.

(b) If a licensee fails to renew its license prior to the date of its expiration but submits the renewal form and fee within sixty (60) days thereafter, the licensee may renew late by paying, in addition to the renewal fee, a late penalty of one hundred dollars ($100) per month for each month or fraction of a month that renewal is late; provided that the late penalty shall not exceed twice the renewal feee.

(c) In the event that a licensee fails to renew its license within the sixty (60) day grace period following the license expiration date, then the licensee shall reapply for a license by submitting the following to the Board office:

1. a completed application for licensure; and

2. the license fee provided in rule 1200-08-11-.02(2)(b).

(d) Upon reapplication, the licensee shall submit to an inspection of the facility by Department of Health surveyors.

(5) A license shall be issued only for the location designated and the licensee named in the application. If a home moves to a new location, a new license will be required before residents are admitted. A licensee who plans to relocate must contact the department to inspect the new building prior to relocation.

(6) Any admission in excess of the licensed bed capacity is prohibited.

(7) A separate license shall be required for each home for the aged when more than one home is operated under the same management or ownership.

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, 68-11-209(a)(1), 68-11-210, 68-11-216, Chapter 846 of the Public Acts of 2008, §1, T.C.A. §68-11-206(a)(5) [effective January 1, 2009].* ***Administrative History:*** *Original rule filed June 21, 1979; effective August 6, 1997. Amendment filed August 16, 1988; effective September 30, 1988. Amendment filed January 30, 1992; effective March 15, 1992. Repeal and new rule filed July 27, 2000; effective October 10, 2000. Amendment filed November 19, 2003; effective February 2, 2004. Amendment filed September 8, 2006; effective November 22, 2006. Amendment filed January 19, 2007; effective April 4, 2007. Public necessity rules filed April 29, 2009; effective through October 11, 2009. Emergency rules filed October 9, 2009; effective through April 7, 2010. Amendments filed September 24, 2009; effective December 23, 2009. Amendment filed December 16, 2013; effective March 16, 2014.*

1200-08-11-.03 DISCIPLINARY PROCEDURES.

(1) The board may suspend or revoke a license for:

(Rule 1200-08-26-.01, continued)

(66) Supervision. Authoritative procedural guidance by a qualified person for the accomplishment of a function or activity with initial direction and periodic inspection of the actual act of accomplishing the function or activity. Periodic supervision must be provided if the person is not a licensed or certified assistant, unless otherwise provided in accordance with these rules.

(67) Surrogate. An individual, other than a patient's agent or guardian, authorized to make a health care decision for the patient.

(68) Treating Health Care Provider. A health care provider who at the time is directly or indirectly involved in providing health care to the patient.

Authority: *T.C.A. §§ 4-5-202, 4-5-204, 39-11-106, 68-11-201, 68-11-202, 68-11-207, 68-11-209, 68-11-210, 68-11-211, 68-11-213, 68-11-224, and 68-11-1802.* ***Administrative History:*** *Original rule filed May 31, 2000; effective August 14, 2000. Amendment filed April 11, 2003; effective June 25, 2003. Amendment filed April 28, 2003; effective July 12, 2003. Amendment filed May 27, 2004; effective August 10, 2004. Amendments filed December 2, 2005; effective February 15, 2006. Amendment filed February 7, 2007; effective April 23, 2007. Amendment filed January 3, 2012; effective April 2, 2012. Amendment filed March 27, 2015; effective June 25, 2015. Amendment filed September 15, 2015; effective December 14, 2015.*

1200-08-26-.02 LICENSING PROCEDURES.

(1) No person, partnership, association, corporation, or state, county or local government unit, or any division, department, board or agency thereof, shall establish, conduct, operate, or maintain in the State of Tennessee any home care organization providing home health services without having a license. A license shall be issued to the person or persons named and for the premises listed in the application for licensure and for the geographic areas specified by the certificate of need or at the time of the original licensing. The name of the home care organization providing home health services shall not be changed without first notifying the department in writing. Licenses are not transferable or assignable and shall expire and become invalid annually on the anniversary date of their original issuance. The license shall be conspicuously posted in the home care organization providing home health services.

(2) In order to make application for a license:

(a) The applicant shall submit an application on a form prepared by the Department.

~~(b) Each applicant for a license shall pay an annual license fee in the amount of one thousand eighty dollars ($1,080.00). The fee must be submitted with the application and is not refundable.~~

(b) Each applicant for a license shall pay an annual license fee in the amount of one thousand four hundred and four dollars ($1,404.00). The fee must be submitted with the application and is not refundable.

(c) The issuance of an application form is in no way a guarantee that the completed application will be accepted or that a license will be issued by the Department. Patients shall not be admitted to the agency until a license has been issued. Applicants shall not hold themselves out to the public as being an agency until the license has been issued. A license shall not be issued until the agency is in substantial

(Rule 1200-08-26-.02, continued)

compliance with these rules, including submission of all information required by T.C.A. §68-11-206(1) or as later amended, and all information required by the Commissioner.

(d) The applicant must prove the ability to meet the financial needs of the agency.

(e) The applicant shall not use subterfuge or other evasive means to obtain a license, such as filing for a license through a second party when an individual has been denied a license or has had a license disciplined or has attempted to avoid inspection and review process.

(f) The applicant shall allow the home care agency providing home health services to be inspected by a Department surveyor. In the event that deficiencies are noted, the applicant shall submit a plan of corrective action to the Board that must be accepted by the Board. Once the deficiencies have been corrected, then the Board shall consider the application for licensure.

(3) A proposed change of ownership, including a change in a controlling interest, must be reported to the Department a minimum of thirty (30) days prior to the change. A new application and fee must be received by the Department before the license may be issued.

(a) For the purposes of licensing, the licensee of an agency has the ultimate responsibility for the operation of the agency, including the final authority to make or control operational decisions and legal responsibility for the business management. A change of ownership occurs whenever this ultimate legal authority for the responsibility of the agency's operation is transferred.

(b) A change of ownership occurs whenever there is a change in the legal structure by which the agency is owned and operated.

(c) Transactions constituting a change of ownership include, but are not limited to the following:

1. Transfer of the agency's legal title;

2. Lease of the agency's operations;

3. Dissolution of any partnership that owns, or owns a controlling interest in, the agency;

4. One partnership is replaced by another through the removal, addition or substitution of a partner;

5. Removal of the general partner or general partners, if the agency is owned by a limited partnership;

6. Merger of an agency owner (a corporation) into another corporation where, after the merger, the owner's shares of capital stock are canceled;

7. The consolidation of a corporate agency owner with one or more corporations; or

8. Transfers between levels of government.

(d) Transactions which do not constitute a change of ownership include, but are not limited to, the following:

(Rule 1200-08-26-.02, continued)

1. Changes in the membership of a corporate board of directors or board of trustees;

2. Two (2) or more corporations merge and the originally-licensed corporation survives;

3. Changes in the membership of a non-profit corporation;

4. Transfers between departments of the same level of government; or

5. Corporate stock transfers or sales, even when a controlling interest.

(e) Management agreements are generally not changes of ownership if the owner continues to retain ultimate authority for the operation of the agency. However, if the ultimate authority is surrendered and transferred from the owner to a new manager, then a change of ownership has occurred.

(f) Sale/lease-back agreements shall not be treated as changes in ownership if the lease involves the agency's entire real and personal property and if the identity of the lessee, who shall continue the operation, retains the exact same legal form as the former owner.

(4) Renewal.

(a) In order to renew a license, each home care agency providing home health services shall submit to periodic inspections by Department surveyors for compliance with these rules. If deficiencies are noted, the licensee shall submit an acceptable plan of corrective action and shall remedy the deficiencies. In addition, each licensee shall submit a renewal form approved by the board and applicable renewal fee prior to the expiration date of the license.

(b) If a licensee fails to renew its license prior to the date of its expiration but submits the renewal form and fee within sixty (60) days thereafter, the licensee may renew late by paying, in addition to the renewal fee, a late penalty of one hundred dollars ($100) per month for each month or fraction of a month that renewal is late; provided that the late penalty shall not exceed twice the renewal fee.

(c) In the event that a licensee fails to renew its license within the sixty (60) day grace period following the license expiration date, then the licensee shall reapply for a license by submitting the following to the Board office:

1. a completed application for licensure;

2. the license fee provided in rule 1200-08-26-.02(2)(b); and

3. any other information required by the Health Services and Development Agency.

(d) Upon reapplication, the licensee shall submit to an inspection of the facility by Department of Health surveyors.

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, 68-11-209(a)(1), 68-11-210, 68-11-216, Chapter 846 of the Public Acts of 2008, §1, T.C.A. §68-11-206(a)(5) [effective January 1, 2009].* ***Administrative History:*** *Original rule filed May 31, 2000; effective August 14, 2000. Amendment filed November 19, 2003; effective February 2, 2004. Amendment filed January 19, 2007; effective April 4, 2007. Public necessity rules filed April 29, 2009; effective through October 11,*

(Rule 1200-08-26-.02, continued)
2009. Emergency rules filed October 9, 2009; effective through April 7, 2010. Amendment filed September 24, 2009; effective December 23, 2009. Amendment filed December 16, 2013; effective March 16, 2014.

1200-08-26-.03 DISCIPLINARY PROCEDURES.

(1) The Board may suspend or revoke a license for:

(a) Violation of federal or state statutes;

(b) Violation of the rules as set forth in this chapter;

(c) Permitting, aiding or abetting the commission of any illegal act in the agency or the patient's home;

(d) Conduct or practice found by the Board to be detrimental to the health, safety, or welfare of the patients of the agency; or

(e) Failure to renew the license.

(2) The Board may consider all factors which it deems relevant, including but not limited to the following when determining sanctions:

(a) The degree of sanctions necessary to ensure immediate and continued compliance;

(b) The character and degree of impact of the violation on the health, safety and welfare of the patient of the agency;

(c) The conduct of the agency in taking all feasible steps or procedures necessary or appropriate to comply or correct the violation; and

(d) Any prior violations by the agency of statutes, rules or orders of the Board.

(3) Inappropriate transfers are prohibited and violation of the transfer provisions shall be deemed sufficient grounds to suspend or revoke an agency's license.

(4) When an agency is found by the Department to have committed a violation of this chapter, the Department will issue to the agency a statement of deficiencies. Within ten (10) days of receipt of the statement of deficiencies the agency must return a plan of correction indicating the following:

(a) How the deficiency will be corrected;

(b) The date upon which each deficiency will be corrected;

(c) What measures or systemic changes will be put in place to ensure that the deficient practice does not recur; and

(d) How the corrective action will be monitored to ensure that the deficient practice does not recur.

(5) Either failure to submit a plan of correction in a timely manner or a finding by the Department that the plan of correction is unacceptable shall subject the agency's license to possible disciplinary action.

* 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)
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 rulemaking hearing rules, lawfully promulgated and adopted by the Board for Licensing Health Care Facilities (board/commission/ other authority) on 03/15/2018 (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: *01/18/18 (mm/dd/yy)*

Rulemaking Hearing(s) Conducted on: (add more dates). *03/15/18 (mm/dd/yy)*

Date: March 15, 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: 3-15-18

Notary Public Signature: Suzanne Mechkowski

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

SUZANNE MECHKOWSKI
STATE OF TENNESSEE NOTARY PUBLIC
SUMNER COUNTY

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

Rule Chapter Number(s): 1200-08-01, 1200-08-06, 1200-08-10, 1200-08-11, 1200-08-26

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

3/19/2018
Date

Department of State Use Only

Filed with the Department of State on: 3/21/18

Effective on: 6/19/18

Tre Hargett
Secretary of State

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G.O.C. STAFF RULE ABSTRACT

AGENCY:	Tennessee Collection Services Board
DIVISION:	Regulatory Boards
SUBJECT:	Standards of Practice
STATUTORY AUTHORITY:	The proposed rules are created under the authority granted to the Tennessee Collection Services Board by Tennessee Code Annotated, § 62-20-104(9) and incorporates the Fair Debt Collection Practices Act (15 U.S.C.A. § 1692) into Tennessee regulations.
EFFECTIVE DATES:	June 5, 2018 through June 30, 2019
FISCAL IMPACT:	None
STAFF RULE ABSTRACT:	These proposed rules include debt purchasers and/or persons who purchase the debts of others under the scope of debt collectors for the State of Tennessee. These proposed rules set forth standards of practice for debt collectors in the State of Tennessee.

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;**
   This proposed rule change sets forth standards of practice for debt purchasers and/or companies who purchase debts of another. Currently, there are 933 active collection services agencies and 6 branches licensed in the State of Tennessee.

2. **The projected reporting, recordkeeping and other administrative costs required for compliance with the proposed rule, including the type of professional skills necessary for preparation of the report or record;**
   There are no increased administrative costs for the implementation of these rules and there will not be additional professional skills necessary for these changes.

3. **A statement of the probable effect on impacted small businesses and consumers;**
   Small business and consumers will have clarification on the Collection Service Board's authority as it relates to purchasers and/or companies who purchase debts of another, as well as the standards of practice for those aforementioned licensees.

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

5. **A comparison of the proposed rule with any federal or state counterparts; and**
   This proposed rule change most closely reflects the Fair Debt Collection Practices Act, 15 U.S.C.A. § 1692.

6. **Analysis of the effect of the possible exemption of small businesses from all or any part of the requirements contained in the proposed rule.**
   Exempting small businesses from any part of the requirements would reduce the protection of the consumers who look to the Tennessee Collection Service Board to regulate the industry's licensees and standards of practice.

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)

There is no expected impact on local government by the promulgation of the proposed rules.

Additional Information Required by Joint Government Operations Committee

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

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

The proposed rules include debt purchasers and/or persons who purchase the debts of others under the scope of debt collectors for the State of Tennessee. These proposed rules set forth standards of practice for debt collectors in the State of Tennessee.

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

The proposed rules are created under the authority granted to the Tennessee Collection Services Board by T.C.A. § 62-20-104(g) and incorporates the Fair Debt Collection Practices Act (15 U.S.C.A. § 1692) into Tennessee regulations.

(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 affect licensed debt collectors who are debt purchasers and future debt collectors who are debt purchasers.

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

There are no opinions of the attorney general and reporter or any judicial ruling that directly relates 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;

There is no probable increase or decrease in state and local government revenues and expenditures resulting from the promulgation of these rules of two percent (2%) or greater or five hundred thousand dollars ($500,000).

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

Ashley N. Thomas
Assistant General Counsel
Division of Regulatory Boards
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;

Ashley N. Thomas
Assistant General Counsel
Division of Regulatory Boards
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

Ashley N. Thomas 500 James Robertson Parkway Nashville, TN 37243 (615) 741-3072 ashley.thomas@tn.gov

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

No additional information requested.

Department of State
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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: 03-09-18
Rule ID(s): 6717
File Date: 3/7/18
Effective Date: 6/5/18

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 Collection Services Board
Division:	Department of Commerce and Insurance
Contact Person:	Ashley N. Thomas, Assistant General Counsel
Address:	500 James Robertson Parkway
Zip:	37243
Phone:	(615) 741-3072
Email:	ashley.thomas@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**
0320-05	Standards of Practice
Rule Number	**Rule Title**
0320-05-.01	Definitions
0320-05-.02	Acquisition of Location Information
0320-05-.03	Communication in Connection with Debt Collection
0320-05-.04	Harassment or Abuse
0320-05-.05	False or Misleading Representations
0320-05-.06	Unfair Practices
0320-05-.07	Validation of Debts
0320-05-.08	Multiple Debts
0320-05-.09	Furnishing Certain Deceptive Forms
0320-05-.10	Administrative Enforcement

Chapter 0320-05
Collection Services Board
New Rules

Chapter 0320-05 Standards or Practice is added as a new chapter containing the following rules:

CHAPTER 0320-05
Standards of Practice

Table of Contents

0320-05-.01 Definitions
0320-05-.02 Acquisition of Location Information
0320-05-.03 Communication in Connection with Debt Collection
0320-05-.04 Harassment or Abuse
0320-05-.05 False or Misleading Representations
0320-05-.06 Unfair Practices
0320-05-.07 Validation of Debts
0320-05-.08 Multiple Debts
0320-05-.09 Furnishing Certain Deceptive Forms
0320-05-.10 Administrative Enforcement

New Rule 0320-05-.01 Definitions is added and reads:

0320-05-.01 Definitions

(1) "Board" means the Tennessee Collection Services Board.

(2) "Communication" means the conveying of information regarding a debt directly or indirectly to any person through any medium.

(3) "Consumer" means any natural person obligated or allegedly obligated to pay any debt.

(4) "Creditor" means any person who offers or extends credit creating a debt or to whom a debt is owed, but such term does not include any person to the extent that he receives an assignment or transfer of a debt in default solely for the purpose of facilitating collection of such debt for another.

(5) "Debt" means any obligation or alleged obligation of a consumer to pay money arising out of a transaction in which the money, property, insurance, or services which are the subject of the transaction are primarily for personal, family, or household purposes, whether or not such obligation has been reduced to judgment. The term includes any debt, whether defaulted or not.

(6) "Collection service" has the same meaning as "Collection service" under T.C.A. § 62-20-102.

(7) "Debt collector" means a person acting on behalf of a collection service licensed or required to be licensed by the Board to collect, or attempt to collect, delinquent accounts, bills or other forms of indebtedness.

(8) "Location information" means a consumer's place of residence and the telephone number at such place, or the consumer's place of employment.

(9) "State" means the state of Tennessee.

Authority: T.C.A. § 62-20-104(g).

New Rule 0320-05-.02 Acquisition of Local Information is added and reads:

0320-05-.02 Acquisition of Local Information

(1) Any debt collector communicating with any person other than the consumer for the purpose of acquiring location information about the consumer shall:

(a) identify himself, state that he is confirming or correcting location information concerning the consumer, and, only if expressly requested, identify his employer;

(b) not state that the consumer owes any debt;

(c) not communicate with any such person more than once unless requested to do so by such person or unless the debt collector reasonably believes that the earlier response of such person is erroneous or incomplete and that such person now has accurate or complete location information;

(d) not communicate by post card;

(e) not use any language or symbol on any envelope or in the contents of any communication with a person who is not the consumer that indicates that the debt collector is in the debt-collection business or that the communication relates to the collection of a debt; and

(f) after the debt collector knows the consumer is represented by an attorney with regard to the subject debt and has knowledge of, or can readily ascertain, such attorney's name and address, not communicate with any person other than that attorney, unless the attorney fails to respond within a reasonable period of time to communication from the debt collector.

Authority: T.C.A. § 62-20-104(g).

New Rule 0320-05-.03 Communication in Connection with Debt Collection is added and reads:

0320-05-.03 Communication in Connection with Debt Collection

(1) Communication with the consumer generally

(a) Without the prior consent of the consumer provided directly to the debt collector or collection service or the express permission of a court of competent jurisdiction, a debt collector may not communicate with a consumer in connection with the collection of any debt

1. at any unusual time or place or a time or place known or which should be known to be inconvenient to the consumer. In the absence of knowledge of circumstances to the contrary, a debt collector shall assume that the convenient time for communicating with a consumer is after 8:00 a.m. and before 9:00 p.m., local time at the consumer's location;

2. if the debt collector knows the consumer is represented by an attorney with respect to such debt and has knowledge of, or can readily ascertain, such attorney's name and address, unless the attorney fails to respond within a reasonable period of time to a communication from the debt collector or unless the attorney consents to direct communication with the consumer; or

3. at the consumer's place of employment if the debt collector knows or has reason to know that the consumer's employer prohibits the consumer from receiving such communication.

(2) Communication with third parties

(a) Except as otherwise authorized in this rule, without the prior consent of the consumer provided directly to the debt collector or collection service, or the express permission of a court of competent jurisdiction, or as reasonably necessary to effectuate a post-judgment judicial remedy, a debt collector may not communicate, in connection with the collection of any debt, with any

person other than the consumer, his attorney, a consumer reporting agency if otherwise permitted by law, the creditor, the attorney of the creditor, or the attorney of the collection service.

(3) Ceasing communication

(a) If a consumer notifies a debt collector or collection service in writing that the consumer refuses to pay a debt or that the consumer wishes the debt collector to cease further communication with the consumer, the debt collector or collection service shall not communicate further with the consumer with respect to such debt, except

1. to advise the consumer that the debt collector's further efforts are being terminated;

2. to notify the consumer that the debt collector or creditor may invoke specified remedies which are ordinarily invoked by such debt collector or creditor; or

3. where applicable, to notify the consumer that the debt collector or creditor intends to invoke a specified remedy.

(b) If such notice from the consumer is made by mail, notification shall be complete upon receipt.

Authority: T.C.A. § 62-20-104(g).

New Rule 0320-05-.04 Harassment or Abuse is added and reads:

0320-05-.04 Harassment or Abuse

(1) A debt collector or collection service may not engage in any conduct the natural consequence of which is to harass, oppress, or abuse any person in connection with the collection of a debt. Without limiting the general application of this prohibition, the following conduct is a violation of this section:

(a) The use or threat of use of violence or other criminal means to harm the physical person, reputation, or property of any person.

(b) The use of obscene or profane language or language the natural consequence of which is to abuse the hearer or reader.

(c) The publication of a list of consumers who allegedly refuse to pay debts, except to a consumer reporting agency.

(d) The advertisement for sale of any debt to coerce payment of the debt.

(e) Causing a telephone to ring or engaging any person in telephone conversation repeatedly or continuously with intent to annoy, abuse, or harass any person at the dialed number.

(f) Except as provided in section 0320-05-.02, the placement of telephone calls without meaningful disclosure of the caller's identity.

Authority: T.C.A. § 62-20-104(g).

New Rule 0320-05-.05 False or Misleading Representations is added and reads:

0320-05-.05 False or Misleading Representations

(1) A debt collector or collection service may not use any false, deceptive, or misleading representation or means in connection with the collection of any debt. Without limiting the general application of this prohibition, the following conduct is a violation of this section:

(a) The false representation or implication that the debt collector or collection service is vouched for, bonded by, or affiliated with the United States or State of Tennessee, including the use of any badge, uniform, or facsimile thereof.

(b) The false representation of:

1. the character, amount, or legal status of any debt; or

2. any services rendered or compensation that may be lawfully received by any debt collector or collection service for the collection of a debt.

(c) The false representation or implication that any individual is an attorney or that any communication is from an attorney.

(d) The representation or implication that nonpayment of any debt will result in the arrest or imprisonment of any person or the seizure, garnishment, attachment, or sale of any property or wages of any person unless such action is lawful and the debt collector or creditor intends to take such action.

(e) The threat to take any action that cannot legally be taken or that is not intended to be taken.

(f) The false representation or implication that a sale, referral, or other transfer of any interest in a debt shall cause the consumer to:

1. lose any claim or defense to payment of the debt; or

2. become subject to any practice prohibited by this rule.

(g) The false representation or implication that the consumer committed any crime or other conduct, which false representation or implication is made to disgrace the consumer.

(h) Communicating or threatening to communicate to any person credit information that is known or that should be known to be false, including the failure to communicate that a disputed debt is disputed.

(i) The use or distribution of any written communication that simulates or is falsely represented to be a document authorized, issued, or approved by any court, official, or agency of the United States or State of Tennessee, or which creates a false impression as to its source, authorization, or approval.

(j) The use of any false representation or deceptive means to collect or attempt to collect any debt or to obtain information concerning a consumer.

(k) The failure to disclose in the initial communication with the consumer, whether written or oral, that the debt collector is attempting to collect a debt and that any information obtained will be used for that purpose, and the failure to disclose in subsequent communications that the communication is from a debt collector, except that this paragraph shall not apply to a formal pleading made in connection with a legal action.

(l) The false representation or implication that accounts have been turned over to innocent purchasers for value.

(m) The false representation or implication that documents are legal process.

(n) The use of any business, company, or organization name other than the registered name of the debt collector or collection service's business, company, or organization.

(o) The false representation or implication that documents are not legal process forms or do not require action by the consumer.

(p) The false representation or implication that a debt collector operates or is employed by a consumer reporting agency.

Authority: T.C.A. § 62-20-104(g).

New Rule 0320-05-.06 Unfair Practices is added to Chapter 0320-05 and reads:

0320-05-.06 Unfair Practices

(1) A debt collector or collection service may not use unfair or unconscionable means to collect or attempt to collect any debt. Without limiting the general application of this prohibition, the following conduct is a violation of this section:

(a) The collection of any amount (including any interest, fee, charge, or expense incidental to the principal obligation) unless such amount is expressly authorized by the agreement creating the debt or is permitted by law.

(b) The acceptance by a debt collector or collection service from any person of a check or other payment instrument postdated by more than five (5) days unless such person is notified in writing of the debt collector's intent to deposit such check or instrument not more than ten (10) nor less than three (3) business days prior to such deposit.

(c) The solicitation by a debt collector or collection service of any postdated check or other postdated payment instrument for the purpose of threatening or instituting criminal prosecution.

(d) Depositing or threatening to deposit any postdated check or other postdated payment instrument prior to the date on such check or instrument.

(e) Causing charges to be made to any person for communications by concealment of the true purpose of the communication. Such charges include, but are not limited to, collect telephone calls and telegram fees.

(f) Taking or threatening to take any nonjudicial action to effect dispossession or disablement of property if:

1. there is no present right to possession of the property claimed as collateral through an enforceable security interest;

2. there is no present intention to take possession of the property; or

3. the property is exempt by law from such dispossession or disablement.

(g) Communicating with a consumer regarding a debt by post card.

(h) Using any language or symbol, other than the collection service's address, on any envelope when communicating with a consumer by use of the mails or by telegram, except that a debt collector may use his business name if such name does not indicate that he is in the debt-collection business.

Authority: T.C.A. § 62-20-104(g).

New Rule 0320-05-.07 Validation of Debts is added and reads:

0320-05-.07 Validation of Debts

(1) Notice of debt; contents. Within five (5) days after the initial communication with a consumer in connection with the collection of any debt, a debt collector shall, unless the following information is contained in the initial communication or the consumer has paid the debt, send the consumer a written notice containing:

(a) the amount of the debt;

(b) the name of the creditor to whom the debt is owed;

(c) a statement that unless the consumer, within thirty (30) days after receipt of the notice, disputes the validity of the debt, or any portion thereof, the debt will be assumed to be valid by the collection service;

(d) a statement that if the consumer notifies the collection service in writing within the thirty-day period that the debt, or any portion thereof, is disputed, the collection service will obtain verification of the debt or a copy of a judgment against the consumer and a copy of such verification or judgment will be mailed to the consumer by the collection service; and

(e) a statement that, upon the consumer's written request within the thirty-day period, the collection service will provide the consumer with the name and address of the original creditor, if different from the current creditor.

(2) Disputed debts. If the consumer notifies the debt collector or collection service in writing within the thirty-day period described in paragraph (1) that the debt, or any portion thereof, is disputed, or that the consumer requests the name and address of the original creditor, the collection service shall cease collection of the debt, or any disputed portion thereof, until the collection service obtains verification of the debt or a copy of a judgment, or the name and address of the original creditor, and a copy of such verification or judgment, or name and address of the original creditor, is mailed to the consumer by the collection service. Collection activities and communications that do not otherwise violate this rule may continue during the thirty-day period referred to in paragraph (1) unless the consumer has notified the debt collector in writing that the debt, or any portion of the debt, is disputed or that the consumer requests the name and address of the original creditor. Any collection activity and/or communication during the thirty-day period may not overshadow or be inconsistent with the disclosure of the consumer's right to dispute the debt or request the name and address of the original creditor.

(3) Legal pleadings. A communication in the form of a formal pleading in a civil action shall not be treated as an initial communication for purposes of subsection (1).

(4) Notice provisions. The sending or delivery of any form or notice that does not relate to the collection of a debt and is expressly required by the Internal Revenue Code of 1986 [26 USCS §§ 1 et seq.], title V of Gramm-Leach-Bliley Act [15 USCS §§ 6801 et seq.], the Bankruptcy Reform Act of 1978 [11 U.S.C.A. §§ 1 et seq.] or any provision of Federal or Tennessee law relating to notice of data security breach or privacy, or any regulation prescribed under any such provision of law, shall not be treated as an initial communication in connection with debt collection for purposes of this section.

Authority: T.C.A. § 62-20-104(g).

New Rule 0320-05-.08 Multiple Debts is added and reads:

0320-05-.08 Multiple Debts

If any consumer owes multiple debts and makes any single payment to any collection service with respect to such debts, such collection service may not apply such payment to any debt that is disputed by the consumer and, where applicable, shall apply such payment in accordance with the consumer's directions.

Authority: T.C.A. § 62-20-104(g).

New Rule 0320-05-.09 Furnishing Certain Deceptive Forms is added and reads:

0320-05-.09 Furnishing Certain Deceptive Forms

(1) It is unlawful to design, compile, and/or furnish any form knowing that such form would be used to create the false belief by a consumer that a person other than the creditor of such consumer is participating in the collection of or in an attempt to collect a debt such consumer allegedly owes such creditor, when in fact such person is not so participating.

(2) Any person who violates this section shall be liable to the same extent and in the same manner as a debt collector is liable under section 0320-04-.01 for failure to comply with a provision of this rule.

Authority: T.C.A. § 62-20-104(g).

New Rule 0320-05-.10 Administrative Enforcement is added and reads:

0320-05-.10 Administrative Enforcement

The Board shall be authorized to enforce compliance with the rules of this chapter. For purpose of the exercise by the Board of its functions and powers under the Tennessee Collection Service Act, a violation of the rules of this chapter shall be deemed an unfair or deceptive act or practice in violation of the Tennessee Collection Service Act. Any act by a debt collector acting on behalf of a collection service that constitutes a violation of the rules of the board, including those in this chapter, shall constitute a violation by the collection service.

Authority: T.C.A. § 62-20-104(g).

* 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)
Bart Howard	X				
Steven Harb	X				
Chip Hellmann				X	
Josh R. Holden	X				
Angela Hoover				X	

I certify that this is an accurate and complete copy of proposed rules, lawfully promulgated and adopted by the Tennessee Collection Services Board on 08/16/2017, 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: 01/24/2018

Signature: Ashley N. Thomas

Name of Officer: Ashley N. Thomas

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 24, 2018

Notary Public Signature: Carol McGlynn

My commission expires on: Nov. 5, 2019

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

Herbert H. Slatery III
Attorney General and Reporter

3/1/2018
Date

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Filed with the Department of State on: 3/7/18

Effective on: 6/5/18

Tre Hargett
Secretary of State

G.O.C. STAFF RULE ABSTRACT

AGENCY:	Tennessee Board for Licensing Contractors
DIVISION:	Regulatory Boards
SUBJECT:	Licensing / Monetary Limitations and Incompetency and Gross Negligence Home Improvement Contractors / Bonds
STATUTORY AUTHORITY:	The two amendments and the new rule are all in response to recent legislation passed by the 2017 Tennessee General Assembly. • The amendment to state the unlimited license status is in response to Public Chapter 237 which raised the threshold on general contractor's license limitations requiring CPA audits. The Board wanted their unlimited license status to remain the same but to put this in the rules for clarification. • The new rule adopting Residential Construction Performance Guidelines is in response to Public Chapter 215 which requires certain administrative entities to formally adopt outside codes or guidelines that have an effect on licensure. • The deletion of subparagraph (a) is in response to Public Chapter 226 section 5 which no longer allows home improvement contractors to apply for licensure using cash bonds.
EFFECTIVE DATES:	June 20, 2018 through June 30, 2019
FISCAL IMPACT:	None
STAFF RULE ABSTRACT:	• The Board has stated in rule the unlimited monetary classification threshold on licensure. • The new rule adopting Residential Construction Performance Guidelines formally adopts a guideline that has an effect on licensure. • The deletion of subparagraph (a) deletes all information regarding cash bonds for home improvement contractors since those are no longer accepted.

Regulatory Flexibility Addendum

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

1. **The type or types of small business and an identification and estimate of the number of small businesses subject to the proposed rule that would bear the cost of, or directly benefit from the proposed rule;**
   The proposed rules will affect more than 40 trades and professions across all facets of the construction industry in Tennessee. In total the Board licenses approximately 16,600 general contractors and 1,370 home improvement contractors. The vast majority of these licensees are considered small businesses.

2. **The projected reporting, recordkeeping and other administrative costs required for compliance with the proposed rule, including the type of professional skills necessary for preparation of the report or record;**
   There is no additional expected record keeping or additional reporting necessary.

3. **A statement of the probable effect on impacted small businesses and consumers;**
   The effect on small businesses will be positive. These rules allow for contractors to be on notice of what guidelines inspectors use in inspecting their work in the event of a complaint. The other changes are expected to have low impact on small businesses other than making clear the rules and regulations of the Board in response to legislative alterations and in their effort put consumer protection first.

4. **A description of any less burdensome, less intrusive or less costly alternative methods of achieving the purpose and objectives of the proposed rule that may exist, and to what extent the alternative means might be less burdensome to small business;**
   There are no less burdensome, less intrusive or less costly methods of achieving the purpose of these proposed rules. These rules were developed specifically for small businesses since the majority of licensed contractors in Tennessee are small businesses.

5. **A comparison of the proposed rule with any federal or state counterparts; and**
   There are no federal counterparts to the proposed rules. The proposed rules are in response to the recent legislative session. Bordering states have differing schemes for how they regulate contractors:

   - Kentucky has no state regulation on general contractors. In Georgia, home improvement contractors are not separately licensed from general contractors. It does not appear that filing a bond is required to obtain licensure. In Texas, home builders are not required to be licensed through the state; however, most municipalities require licensure and these municipal requirements often include proof of liability insurance. Ohio does not separate home improvement contractors from general contractors. However, it does not appear that any contractors are required to file a bond to obtain licensure.

   - Georgia contractors' standard of care is defined as "an inability to practice a business or profession with reasonable skill and safety to the public or has become unable to practice the profession with reasonable skill and safety to the public by reason of illness, use of alcohol, drugs, narcotics, chemicals, or any other type of material," and, "gross negligence, repeated or persistent negligence or negligence resulting in a significant danger to life or property." The Georgia consumer protection website puts consumers on notice that builders can be sued using the Georgia Rights to Repair Act, which is officially codified (O.C.G.A. Sections 8-2-35 through 8-2-43).

   - Georgia does require that an applicant provide satisfactory proof that they possess financial responsibility and obtain $500,000 in general liability insurance.

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 overwhelming majority of businesses that are affected by these rules are small businesses. These rules do not create any additional requirements for small businesses.

Impact on Local Governments

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

The proposed rules are not expected to have an impact on local governments.

Additional Information Required by Joint Government Operations Committee

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

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

- The Board has stated in rule the unlimited monetary classification threshold on licensure.
- The new rule adopting Residential Construction Performance Guidelines formally adopts a guideline that has an effect on licensure.
- The deletion of subparagraph (a) deletes all information regarding cash bonds for home improvement contractors since those are no longer accepted.

(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 two amendments and the new rule are all in response to recent legislation passed by the 2017 Tennessee General Assembly.

- The amendment to state the unlimited license status is in response to Public Chapter 237 which raised the threshold on general contractor's license limitations requiring CPA audits. The Board wanted their unlimited license status to remain the same but to put this in the rules for clarification.
- The new rule adopting Residential Construction Performance Guidelines is in response to Public Chapter 215 which requires certain administrative entities to formally adopt outside codes or guidelines that have an effect on licensure.
- The deletion of subparagraph (a) is in response to Public Chapter 226 section 5 which no longer allows home improvement contractors to apply for licensure using cash bonds.

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

These rules are produced to comply with the Tennessee General Assembly's legislation. We are unaware of groups outside of the legislature or the Board that have either urged or opposed these rules. The Board urges the adoption of these rules to comply with the legislature.

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

None known.

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

None known.

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

Ashley N. Thomas
Assistant General Counsel
Division of Regulatory Boards
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;

Ashley N. Thomas Assistant General Counsel Division of Regulatory Boards 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

Ashley N. Thomas, Assistant General Counsel 500 James Robertson Parkway Nashville, Tennessee 37243 (615) 741-3702 ashley.thomas@tn.gov

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

None known.

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Sequence Number: 03-22-18
Rule ID(s): 6731-6732
File Date: 3/22/18
Effective Date: 6/20/18

Proposed Rule(s) Filing Form

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

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

Agency/Board/Commission:	Tennessee Board for Licensing Contractors
Division:	Regulatory Boards
Contact Person:	Ashley N. Thomas
Address:	500 James Robertson Parkway, Nashville, TN
Zip:	37243
Phone:	615-741-3072
Email:	ashley.thomas@tn.gov

Revision Type (check all that apply):
x 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**
0680-01	Licensing
Rule Number	**Rule Title**
0680-01-.13	Monetary Limitations
0680-01-.31	Incompetency and Gross Negligence

Chapter Number	**Chapter Title**
0680-07	General Regulations for Home Improvement Contractors
Rule Number	**Rule Title**
0680-07-.13	Bonds

Chapter 0680-01
Licensing
Amendments

The Table of Contents is amended by adding Rule 0680-01-.31 Incompetency and Gross Negligence, so that as amended, it shall read as follows:

Table of Contents

0680-01-.01	Application for License
0680-01-.02	Consideration of Applications
0680-01-.03	Special Meetings
0680-01-.04	Repealed
0680-01-.05	Repealed
0680-01-.06	Reinstatement of Invalid License
0680-01-.07	Repealed
0680-01-.08	Change of Address or Officers
0680-01-.09	Change in Mode of Operation
0680-01-.10	Renewal of Licenses
0680-01-.11	Joint Ventures
0680-01-.12	General and Specialty Classifications
0680-01-.13	Monetary Limitations
0680-01-.14	Request for Change of Classifications or Limitation
0680-01-.15	Review and Adjustment of Classifications and Monetary Limitation
0680-01-.16	Appendix A of Rule 0680-01-.12 (Classification System)
0680-01-.17	Repealed
0680-01-.18	Unlawful Bidding
0680-01-.19	Civil Penalties
0680-01-.20	Fees
0680-01-.21	Citation Penalties
0680-01-.22	Exemption
0680-01-.23	Requalification of Agent
0680-01-.24	Bidding Procedures
0680-01-.25	Contracting in Correct Name; Change of Name
0680-01-.26	License Required for Property Owners
0680-01-.27	Misconduct
0680-01-.28	Emergency Actions
0680-01-.29	Limited Residential License
0680-01-.30	Expedited Procedure for Military Personnel and Spouses
0680-01-.31	Incompetency and Gross Negligence

0680-01-.13 Monetary Limitations shall be amended by adding paragraph (9), so that the whole rule, as amended, reads as follows:

0680-01-.13 Monetary Limitations.

(1) Generally, the monetary limitation placed on a classification of a license may be determined as follows:

(a) For applicants having no apparent deficiency with respect to plant or equipment, the lesser of:

1. Ten (10) times the applicant's net worth; or

2. Ten (10) times the applicant's working capital. Accounts receivable that are more than three (3) months overdue may not be included within the calculation of working capital.

(b) At the Board's discretion, renewal applicants having no apparent deficiency with respect to plant or equipment, but with limited working capital, the greater of:

1. Ten (10) times the applicant's working capital; or

2. Fifty percent (50%) of the applicant's net worth.

(c) For other applicants, a lesser amount reflecting the degree of lack of plant or equipment.

(2) Lines of credit and indemnities (on forms furnished by the Board) may be considered to raise a

monetary limitation. Lines of credit may be added up to its full value to the working capital. Credit for indemnities will be limited to fifty percent (50%). However, if the applicant has a negative working capital, lines of credit will be recognized at fifty percent (50%) of value.

(3) A Guaranty Agreement, line of credit, bond, or other indemnity may be required in addition to the financial statement in the following situations,

(a) Applicants that have a primarily cash financial statement without fixed assets and;

(b) If an applicant company is completely or partly owned by a parent company then the Board may require the parent company to provide a financial statement along with a "Guaranty Agreement" in which the parent company agrees to guarantee the debts and obligations of the subsidiary company for all debts and obligations arising out of the contracting activities of the applicant. If the parent company cannot provide a "Guaranty Agreement" they may request the board to consider a bond in the Board's format. This bond would not be accepted in lieu of providing a financial statement.

(4) A Guaranty Agreement may be utilized when an applicant wishes to supplement the working capital and/or net worth portion of their financial statement. The guarantor must submit a personal financial statement with a personal guaranty agreement.

(5) The Board reserves the right to accept or decline Guaranty Agreements as a supplement to applicant financial statements depending on the individual circumstances of each application.

(6) If a guarantor's spouse is named on the financial statement submitted with the Guaranty Agreement then the named spouse must also sign the Guaranty Agreement.

(7) All Guaranty Agreements shall expire on the same date as the license that the agreement was provided to support.

(8) Subject to such tolerance, no contractor shall engage, or offer to engage, in any project of which the cost (including all material and labor furnished by or through another source other than the owner) would exceed the monetary limitation placed on his license. If a contractor holds a license with more than one classification with different monetary limits, the monetary limits shall not be combined to bid a project.

(a) A tolerance of ten percent (10%) of the monetary limit is allowed, except for the BC-A/r licensees.

(9) Where an applicant can demonstrate having a minimum working capital and net worth of three hundred thousand dollars ($300,000) or more, the Board may, in its discretion, award the applicant an unlimited license, allowing the contractor to bid or offer to contract on any project within a classification the contractor is licensed of any size that the contractor can financially support.

Authority: T.C.A. § 62-6-108, 62-6-111, and 62-6-116.

Chapter 0680-01
Licensing
New Rules

0680-01-.31 Incompetency and Gross Negligence shall be created as a new rule and shall read as follows:

0680-01-.31 Incompetency and Gross Negligence.

Incompetency and gross negligence as used in T.C.A. § 62-6-118(a) shall be defined by a standard of care determined by the Board, in its discretion. When defining this standard of care for residential builders the Board may use:

(1) the Residential Construction Performance Guidelines, issued by the National Association of Home Builders, the most current edition, or

(2) community and industry standards.

Authority: T.C.A. §§ 62-6-119, 62-6-108.

Chapter 0680-07
General Regulations for Home Improvement Contractors
Amendments

0680-07-.13 Bonds, paragraph (2) shall be amended by deleting subparagraph (a) in its entirety, and renumbering the remaining subparagraphs so they follow alphabetically and numerically, and the rule, as amended, shall read as follows:

(2) Description of Bonds.

~~(a) Cash Bonds.~~
~~Cash bonds may not include personal checks.~~
~~Cash bonds may include:~~

~~1. Currency, which shall be deposited with the State Treasurer, subject to the order of the Board, and which may not earn interest;~~

~~2. Cashier's check, certificate of deposit for a term of at least two (2) years or certified check:~~

~~(i) Issued by a financial institution;~~

~~(ii) Showing the name of the purchaser; and~~

~~(iii) Assigned and payable to the Board;~~

~~3. Savings and loan association certificates, passbook or share accounts, credit union or share accounts, passbook savings or other similar accounts assigned and payable to the Board, which shall be issued for periods of not less than one (1) year and accompanied by delivery of the certificate passbook, share account, certificate, passbook or other similar account to the Board.~~

~~(b) Property Bond~~

~~1. A property bond shall be the assignment to the Board by an owner applicant of an interest of ten thousand dollars ($10,000.00) in real property located in Tennessee; and submission of a title search showing any encumbrances on the property.~~

~~2. The Board may require the applicant to submit an appraisal of the property to ascertain that the unencumbered value of the property is at least ten thousand dollars ($10,000.00).~~

(a)~~(c)~~ Surety Bond.

1. A surety bond shall be in the amount of ten thousand dollars ($10,000.00), issued to a home improvement contractor by an approved insurance company authorized to do business in Tennessee, for the benefit of a claimant, who has been damaged by the contractor's breach of a home improvement contract. If the bond ceases to be in effect, the home improvement contractor's license shall become invalid.

2. The Board may refuse to accept a bond written for a home improvement contractor by a surety which has failed to meet its obligations under this subtitle.

(b)~~(d)~~ Letter of Credit.

1. A bond in the form of an irrevocable letter of credit shall be an agreement, between a financial institution and a home improvement contractor on record at the Board wherein the FDIC insured financial institution agrees to extend an irrevocable line of credit amounting to ten thousand dollars ($10,000.00), for the purpose of honoring claims filed with the Board.

2. The irrevocable letter of credit shall show the name of the financial institution extending the credit and the name of the applicant or home improvement contractor to whom the letter of credit was issued as it appears on the applicant's or home improvement contractor's license application.

Authority: T.C.A. §§ 62-6-506(h) and 62-6-513(3).

Proposed Rules of the Board for Licensing Contractors
Chapter 0680-01; 0680-07
Rule 0680-01-.13; 0680-01-.31; 0680-07-.13

* 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)
Jack Ronnie Tickle	x				
Keith Whittington	x				
William Mason				x	
Reese Smith	x				
Jerry Hayes	x				
Cindi Debusk	x				
Mark Brodd	x				
Ernest Owens	x				
Randy Chase				x	

I certify that this is an accurate and complete copy of proposed rules, lawfully promulgated and adopted by the Board on May 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: 02/08/2018

Signature: Ashley N. Thomas

Name of Officer: Ashley N. Thomas

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: February 8, 2018

Notary Public Signature: Carol McGlynn

My commission expires on: Nov. 5, 2019

Proposed Rules of the Board for Licensing Contractors
Chapter 0680-01; 0680-07
Rule 0680-01-.13; 0680-01-.31; 0680-07-.13

Agency/Board/Commission: Board for Licensing Contractors

Rule Chapter Number(s): 0680-01; 0680-07

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 H. Slatery III
Attorney General and Reporter

3/12/2018
Date

Department of State Use Only

Filed with the Department of State on: 3/22/18

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Tre Hargett
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Secretary of State

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G.O.C. STAFF RULE ABSTRACT

DEPARTMENT:	Commerce and Insurance
DIVISION:	Insurance
SUBJECT:	Credit for Reinsurance
STATUTORY AUTHORITY:	Tennessee Code Annotated, Sections 56-2-208 and 56-2-209
EFFECTIVE DATES:	May 31, 2018 through June 30, 2019
FISCAL IMPACT:	None
STAFF RULE ABSTRACT:	This rulemaking adopts the latest revisions made to the NAIC Model Regulation for Credit for Reinsurance. The proposed rule makes numerous technical updates on reporting requirements, compliance reviews, and standards for collateral used by reinsurers seeking to assume risks originated by Tennessee-licensed insurance companies. This rulemaking also adopts rules for a new classification of reinsurer, the certified reinsurer. A reinsurer who obtains certified reinsurer status will be able to more easily sell reinsurance to Tennessee-licensed insurance companies since those companies will be able to efficiently cede risks to the reinsurer. A certified reinsurer agrees to make regular financial reports to the Department and submit to the jurisdiction of Tennessee courts.

Public Hearing Comments

Comment 1

One comment was received from Lloyds America, Inc. on behalf of Underwriters at Lloyd's, London in support of the National Association of Insurance Commissioners (NAIC) Model Credit for Reinsurance Law and Regulation and Tennessee's adoption of the model regulation through this rulemaking. The commenter further stated that the revised model act and regulation was the product of over a decade of deliberation and debate among state insurance regulators with input from both ceding insurers and reinsurers and the final version was carefully crafted to strike a balance between the competing interests of all parties. The commenter stated that Lloyds position is that reinsurance collateral modernization is critical for the United States to maintain its competitive position in the international insurance market and that this modernization would be ineffective without uniform adoption of the model act and regulation in all states.

Response to Comment 1

This rulemaking does adopt the latest revisions to NAIC Model Regulation 786, the Credit for Reinsurance Model Regulation. The Tennessee General Assembly adopted the latest revisions to NAIC Model Law 785, the Credit for Reinsurance Model Law through the adoption of 2016 Tenn. Public Acts Ch. 735, §§ 6-7, which amended T.C.A. §§ 56-2-208 and 56-2-209.

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 has considered whether the proposed rules in these Rulemaking Hearing Rules are such that they will have an economic impact on small businesses (businesses with fifty (50) or fewer employees). These rules permissively regulate the activity of large reinsurers not licensed as a domestic insurance company in this state. These reinsurers would typically not fall within the definition of a small business. These rules will have an impact on domestic insurance companies regulated by the Department who do business with reinsurers. A minority of domestic insurance companies regulated by the Department would meet the definition of a small business.

Pursuant to T.C.A. § 4-5-402, the following methods were considered when adopting these rules:

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

These rules do not overlap, duplicate, or conflict with other laws or regulations. Insurance companies are primarily regulated on the state and not the federal level. The Department of Commerce and Insurance is the agency responsible for regulating insurance companies in this state.

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

These rules were drafted to be as clear and concise as practicable given the context of the requirements of regulating international reinsurance transactions.

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

The compliance and reporting requirements imposed by these rules fall upon large international reinsurers and will not be a burden to small businesses in Tennessee.

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

The compliance and reporting requirements imposed by these rules fall upon large international reinsurers and will not be a burden to small businesses in Tennessee.

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

The compliance and reporting requirements imposed by these rules fall upon large international reinsurers and will not be a burden to small businesses in Tennessee.

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

These rules do not impose any performance, design or operational standards on small businesses in Tennessee.

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

These rules are designed to improve the ability of domestic insurance companies to access the international reinsurance market. This will benefit small insurance companies as it will give them access to the financial resources needed to grow. The additional regulatory compliance requirements in these rules will be borne by the large international reinsurers who desire an efficient and stable regulatory system under which they can sell reinsurance to domestic insurance companies of all sizes 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://publications.tnsosfiles.com/acts/106/pub/pc1070.pdf) of the 2010 Session of the General Assembly)

This rule will not have an impact on local governments.

Additional Information Required by Joint Government Operations Committee

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

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

This rulemaking adopts the latest revisions made to the NAIC Model Regulation for Credit for Reinsurance. The proposed rule makes numerous technical updates on reporting requirements, compliance reviews, and standards for collateral used by reinsurers seeking to assume risks originated by Tennessee-licensed insurance companies. This rulemaking also adopts rules for a new classification of reinsurer, the certified reinsurer. A reinsurer who obtains certified reinsurer status will be able to more easily sell reinsurance to Tennessee-licensed insurance companies since those companies will be able to efficiently cede risks to the reinsurer. A certified reinsurer agrees to make regular financial reports to the Department and submit to the jurisdiction of Tennessee courts.

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

There are no federal regulations mandating promulgation of this rule. These rules adopt NAIC Model Regulation 786 on credit for reinsurance. These rule revisions update statutory references and requirements to be consistent with the promulgation of 2016 Tenn. Public Acts Ch. 735, §§ 6-7, which amended T.C.A. §§ 56-2-208 and 56-2-209. The 2016 Act adopted NAIC Model Law 785 on credit for reinsurance.

(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 insurance industry, both domestic insurers and international reinsurers, are expected to urge adoption of this rule.

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

None known.

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

None anticipated.

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

Michael Humphreys, Assistant Commissioner for Insurance; Rachel Jrade-Rice, Director of Insurance; Ben Whitehouse, Supervising Attorney & Assistant General Counsel for Insurance.

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

Benjamin Whitehouse, Supervising Attorney & Assistant General Counsel for 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

Davy Crockett Tower, 8th Floor, 500 James Robertson Parkway, Nashville, Tennessee 37243; 615-741-2616; ben.whitehouse@tn.gov

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

None.

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Sequence Number: 03-03-18
Rule ID(s): 6712
File Date: 3/2/18
Effective Date: 5/31/18

Rulemaking Hearing Rule(s) Filing Form

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

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

Agency/Board/Commission:	Department of Commerce and Insurance
Division:	Insurance
Contact Person:	Benjamin Whitehouse, Supervising Attorney & Assistant General Counsel for Insurance
Address:	Davy Crockett Tower, 8th Floor 500 James Robertson Parkway Nashville, Tennessee
Zip:	37243
Phone:	615-741-2616
Email:	ben.whitehouse@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**
0780-01-63	Credit for Reinsurance.
Rule Number	**Rule Title**
0780-01-63-.01	Authority.
0780-01-63-.02	Purpose.
0780-01-63-.03	Credit for Reinsurance – Reinsurer Licensed in this State.
0780-01-63-.04	Credit for Reinsurance – Accredited Reinsurers.
0780-01-63-.05	Credit for Reinsurance – Reinsurer Domiciled and Licensed in Another State.
0780-01-63-.06	Credit for Reinsurance – Reinsurers Maintaining Trust Funds.
0780-01-63-.07	Credit for Reinsurance – Certified Reinsurers.
0780-01-63-.08	Credit for Reinsurance Required by Law.
0780-01-63-.09	Asset or Reduction From Liability for Reinsurance Ceded to an Unauthorized

	Assuming Insurer Not Meeting the Requirements of Rules 0780-01-63-.03 through 0780-01-63-.08.
0780-01-63-.10	Trust Agreements Qualified Under Rule 0780-01-63.09.
0780-01-63-.11	Letters of Credit Qualified Under Rule 0780-01-63.09.
0780-01-63-.12	Other Security.
0780-01-63-.13	Reinsurance Contract.
0780-01-63-.14	Contracts Affected.
0780-01-63-.15	Severability.
Appendix A	Form AR-1
Appendix B	Form CR-F
Appendix C	Form CR-S
Appendix D	Form CR-1

Amendments

Chapter 0780-01-63 Credit for Reinsurance is amended by deleting the chapter in its entirety and substituting the following language so that, as amended, the chapter shall read:

Chapter 0780-01-63
Credit for Reinsurance

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0780-01-63-.07 Credit for Reinsurance – Certified Reinsurers.
0780-01-63-.08 Credit for Reinsurance Required by Law.
0780-01-63-.09 Asset or Reduction From Liability for Reinsurance Ceded to an Unauthorized Assuming Insurer Not Meeting the Requirements of Rules 0780-01-63-.03 through 0780-01-63-.08.
0780-01-63-.10 Trust Agreements Qualified Under Rule 0780-01-63-.09.
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APPENDIX A Form AR-1
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0780-01-63-.09~~8~~ Asset or Reduction From Liability for Reinsurance Ceded to an Unauthorized Assuming Insurer Not Meeting the Requirements of Rules 0780-01-63-.03 through 0780-01-63-.08.
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~~EXHIBIT~~ APPENDIX A Form AR-1
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0780-01-63-.01 Authority.

This chapter is promulgated pursuant to the authority granted by T.C.A. §§ 56-2-208(b)(6), 56-2-209(e), and 56-2-301.

Authority: T.C.A. §§ 56-2-208(b)(6), 56-2-209(e), and 56-2-301.

0780-01-63-.02 Purpose~~/ Application With Other Standards~~.

~~(1)~~ The purpose of this chapter is to set forth rules and procedural requirements which the commissioner deems necessary to carry out the provisions of T.C.A. §§ 56-2-208 and 56-2-209. The actions and information required by this chapter are hereby declared to be necessary and appropriate in the public interest and for the protection of the ceding insurers and policyholders in this state.

~~(2) Credit for reinsurance shall be allowed a domestic ceding insurer as either an asset or a deduction from liabilities on account of reinsurance ceded only when the reinsurer at a minimum meets the requirements of T.C.A. §§ 56-2-208 or 56-2-209 and this chapter. However, the requirements of those sections and this chapter shall be in addition to any other requirements of law or rule applicable to reinsurance agreements including, but not limited to, Chapter 0780-01-62.~~

Authority: T.C.A. §§ 56-2-208, 56-2-209(e), and 56-2-301.

0780-01-41-.03 Credit for Reinsurance – Reinsurer Licensed in this State.

Pursuant to T.C.A. § 56-2-208(b)(2)~~(1)~~, the commissioner shall allow credit for reinsurance ceded by a domestic insurer to an assuming insurers that was~~which were~~ licensed in this state as of any~~the~~ date ~~of the ceding insurer's statutory financial statement~~on which statutory financial statement credit for reinsurance is claimed.

Authority: T.C.A. §§ 56-2-208(b)(2)~~(1)~~, 56-2-209(e), and 56-2-301.

0780-01-63-.04 Credit for Reinsurance – Accredited Reinsurers.

(1) Pursuant to T.C.A. § 56-2-208(b)(3)~~(2)~~, the commissioner shall allow credit for reinsurance ceded by a domestic insurer to an assuming insurer that~~which~~ is accredited as a reinsurer in this state as of the date ~~of the ceding insurer's statutory financial statement~~on which statutory financial statement credit for reinsurance is claimed. An accredited reinsurer must~~is one which~~:

(a) Files with the commissioner a properly executed Form AR-1 (~~attached as an exhibit to this chapter~~adopted as Appendix A of this chapter and incorporated herein by reference) as evidence of its submission to this state's jurisdiction and to this state's authority to examine its books and records; and

(b) Files with the commissioner a certified copy of ~~a letter or~~ a certificate of authority or other acceptable~~of compliance as~~ evidence that it is licensed to transact insurance or reinsurance in at least one state, or, in the case of a United States branch of an alien assuming insurer, is entered through and licensed to transact insurance or reinsurance in at least one state; and

(c) Files annually with the commissioner a copy of its annual statement filed with the insurance department of its state of domicile or, in the case of an alien assuming insurer, with the state through which it is entered and in which it is licensed to transact insurance or reinsurance, and a copy of its most recent audited financial statement; and

(d) Maintains a surplus as regards policyholders in an amount not less than twenty million dollars ($20,000,000), or obtain affirmative approval of the commissioner upon a finding that it has adequate financial capacity to meet its reinsurance obligations and is otherwise qualified to assume reinsurance from domestic insurers. ~~and whose accreditation has not been denied by the commissioner within ninety (90) days of its submission or, in the case of companies with a surplus as regards policyholders of not less than twenty million dollars ($20,000,000), whose accreditation has been approved by the commissioner.~~

(2) If the commissioner determines that the assuming insurer has failed to meet or maintain any of these qualifications, the commissioner may upon~~after~~ written notice and opportunity for hearing pursuant to the Uniform Administrative Procedures Act, T.C.A. § 4-5-101 et seq., suspend or revoke the accreditation. Credit shall not~~No credit shall~~ be allowed a domestic ceding insurer under this chapter~~with respect to reinsurance ceded~~ if the assuming insurer's accreditation has been~~denied or if the accreditation has been~~ revoked by the commissioner, or if the reinsurance was ceded while the assuming insurer's accreditation was under suspension by the commissioner~~after such notice and hearing~~.

Authority: T.C.A. §§ 56-2-208(b)(3)~~(2)~~, 56-2-209(e), and 56-2-301.

0780-01-63-.05 Credit for Reinsurance – Reinsurer Domiciled and Licensed in Another State.

(1) Pursuant to T.C.A. § 56-2-208(b)(4)~~(3)~~ the commissioner shall allow credit for reinsurance ceded by a domestic insurer to an assuming insurer that as of any date on which statutory financial statement credit for reinsurance is claimed: ~~which, as of the date of the ceding insurer's statutory financial statement;~~

(a) Is domiciled ~~and licensed~~ in (or, in the case of a United States branch of an alien assuming insurer, is entered through ~~and licensed in~~) a state that~~which~~ employs standards regarding credit for reinsurance substantially similar to those applicable under T.C.A. §§ 56-2-208 and 56-2-209 and this chapter;

(b) Maintains a surplus as regards policyholders in an amount not less than twenty million dollars ($20,000,000); and

(c) Files a properly executed Form AR-1 (Appendix A of this chapter) with the commissioner as evidence of its submission to this state's ~~jurisdiction and this state's~~ authority to examine its books and records.

(2) The provisions of this rule relating to surplus as regards policyholders shall not apply to reinsurance ceded and assumed pursuant to pooling arrangements among insurers in the same holding company system. As used in this rule, "substantially similar" standards means credit for reinsurance standards that~~which~~ the commissioner determines in the commissioner's sole discretion to equal or exceed the standards of T.C.A. §§ 56-2-208 and 56-2-209 and this chapter.

Authority: T.C.A. §§ 56-2-208, 56-2-209, and 56-2-301.

0780-01-63-.06 Credit for Reinsurance – Reinsurers Maintaining Trust Funds.

(1) Pursuant to T.C.A. § 56-2-208(b)(5)~~(4)~~, the commissioner shall allow credit for reinsurance ceded by a domestic insurer to an assuming insurer which, as of any date on which statutory financial statement credit for reinsurance is claimed, and thereafter for so long as credit for reinsurance is claimed, ~~the date of the ceding insurer's statutory financial statement~~ maintains a trust fund in an amount prescribed below in a qualified United States financial institution as defined in T.C.A. § 56-2-209(d), for the payment of the valid claims of its United States ~~policyholders and~~ domiciled ceding insurers, their assigns and successors in interest. The assuming insurer shall report annually to the commissioner substantially the same information as that required to be reported on the National Association of Insurance Commissioners ~~(NAIC)~~ annual statement form by licensed insurers, to enable the commissioner to determine the sufficiency of the trust fund.

(2) The following requirements apply to the following categories of assuming insurer:

(a) The trust fund for a single assuming insurer shall consist of funds in trust in an amount not less than the assuming insurer's liabilities attributable to reinsurance ceded by United States domiciled insurers ~~business written in the United States~~, and in addition, the assuming insurer shall maintain a trusteed surplus of not less than twenty million dollars ($20,000,000), except as provided in subparagraph (b) of this paragraph.

(b) ~~The trust fund for a group including incorporated and individual unincorporated underwriters shall consist of funds in trust in an amount not less than the group's aggregate liabilities attributable to business written in the United States and, in addition, the group shall maintain a trusteed surplus of which one hundred million dollars ($100,000,000) shall be held jointly for the benefit of the United States ceding insurers of any member of the group. The incorporated members of the group shall not be engaged in any business other than underwriting as a member of the group and shall be subject to the same level of solvency regulation and control by the group's domiciliary regulator as are the unincorporated members. The group shall make available to the commissioner annual certifications by the group's domiciliary regulator and its independent public accountants of the solvency of each underwriter member of the group.~~ At any time after the assuming insurer has permanently discontinued underwriting new business secured by the trust for at least three (3) full years, the commissioner with principal regulatory oversight of the trust may authorize~~d~~ a reduction in the required trusteed surplus, but only after a finding, based on an assessment of the risk, that the new required surplus level is adequate for the protection of United States ceding insurers, policyholders and claimants in light of reasonably foreseeable adverse loss development. The risk assessment may involve an actuarial review, including an independent analysis of reserves and cash flows, and shall consider all material risk factors, including when applicable the lines of business involved, the stability of the incurred loss estimates and the effect of the surplus requirements on the assuming insurer's liquidity or solvency. The

minimum required trusteed surplus may not be reduced to an amount less than thirty percent (30%) of the assuming insurer's liabilities attributable to reinsurance ceded by United States ceding insurers covered by the trust.

(c) ~~The trust fund for a group of incorporated insurers under common administration, whose members possess aggregate policyholders surplus of ten billion dollars ($10,000,000,000) (calculated and reported in substantially the same manner as prescribed by the annual statement instructions and Accounting Practices and Procedures Manual of the National Association of Insurance Commissioners) and which has continuously transacted an insurance business outside the United States for at least three (3) years immediately prior to making application for accreditation, shall consist of funds in trust in an amount not less than the assuming insurers' liabilities attributable to business ceded by United States ceding insurers to any members of the group pursuant to reinsurance contracts issued in the name of such group and, in addition, the group shall maintain a joint trusteed surplus of which one hundred million dollars ($100,000,000) shall beheld jointly for the benefit of United States ceding insurers of any member of the group. The group shall file with the commissioner a properly executed Form AR-1 as evidence of its submission to this state's jurisdiction and this state's authority to examine the books and records of any of its members and shall certify that any member examined will bear the expense of any such examination. The group shall make available to the commissioner annual certifications by the members' domiciliary regulators and their independent public accountants of the solvency of each member of the group.~~

1. The trust fund for a group including incorporated and individual unincorporated underwriters shall consist of:

   (i) For reinsurance ceded under reinsurance with an inception, amendment or renewal date on or after January 1, 1993, funds in trust in an amount not less than the respective underwriters' several liabilities attributable to business ceded by United States domiciled ceding insurers to any underwriter of the group;

   (ii) For reinsurance ceded under reinsurance agreements with an inception date on or before December 31, 1992, and not amended or renewed after that date, notwithstanding the other provisions of this chapter, funds in trust in an amount not less than the respective underwriters' several insurance and reinsurance liabilities attributable to business written in the United States; and

   (iii) In addition to these trusts, the group shall maintain a trusteed surplus of which one hundred million dollars ($100,000,000) shall be held jointly for the benefit of the United States ceding insurers of any member of the group for all the years of the account.

2. The incorporated members of the group shall not be engaged in any business other than underwriting as a member of the group and shall be subject to the same level of regulation and solvency control by the group's domiciliary regulator as are the unincorporated members. The group shall, within ninety (90) days after its financial statements are due to be filed with the group's domiciliary regulator, provide to the commissioner:

   (i) An annual certification by the group's domiciliary regulator of the solvency of each underwriter member of the group; or

(ii) If a certification is unavailable, a financial statement, prepared by independent public accountants, of each underwriter member of the group.

(d) 1. The trust fund for a group of incorporated insurers under common administration, whose members possess aggregate policyholders surplus of ten billion dollars ($10,000,000,000) (calculated and reported in substantially the same manner as prescribed by the annual statement instructions and Accounting Practices and Procedures Manual of the National Association of Insurance Commissioners) and which has continuously transacted an insurance business outside the United States for at least three (3) years immediately prior to making application for accreditation, shall:

(i) Consist of funds in trust in an amount not less than the assuming insurers' several liabilities attributable to business ceded by United States domiciled ceding insurers to any members of the group pursuant to reinsurance contracts issued in the name of such group;

(ii) Maintain a joint trusteed surplus of which one hundred million dollars ($100,000,000) shall be held jointly for the benefit of United States domiciled ceding insurers of any member of the group; and

(iii) File with the commissioner a properly executed Form AR-1 (Appendix A of this chapter) as evidence of the submission to this state's authority to examine the books and records of any of its members and shall certify that any member examined will bear the expense of any such examination.

2. Within ninety (90) days after the statements are due to be filed with the group's domiciliary regulator, the group shall file with the commissioner an annual certification of each underwriter member's solvency by the member's domiciliary regulators, and financial statements, prepared by independent public accountants, of each underwriter member of the group.

(3) (a) ~~The trust shall be established in a form approved by the commissioner and complying with T.C.A. § 56-2-208(4) and this rule.~~ Credit for reinsurance shall not be granted unless the form of the trust and any amendments to the trust have been approved by either the commissioner of the state where the trust is domiciled or the commissioner of another state who, pursuant to the terms of the trust instrument, has accepted responsibility for regulatory oversight of the trust. The form of the trust and any trust amendments also shall be filed with the commissioner of every state in which the ceding insurer beneficiaries of the trust are domiciled. The trust instrument shall ~~at a minimum~~ provide that:

~~(a)~~1. Contested claims shall be valid and enforceable out of funds in trust to the extent remaining unsatisfied thirty (30) days after entry of the final order of any court of competent jurisdiction in the United States;~~.~~

~~(b)~~2. Legal title to the assets of the trust shall be vested in the trustee for the benefit of the grantor's United States ceding insurers, their assigns and successors in interest;~~.~~

~~(c)~~3. The trust shall be subject to examination as determined by the commissioner;~~.~~

~~(d)~~4. The trust shall remain in effect for as long as the assuming insurer, or any member or former member of a group of insurers, shall have outstanding obligations under reinsurance agreements subject to the trust; and~~.~~

~~(e)~~5. No later than February 28 of each year the trustees of the trust shall report to the commissioner in writing setting forth the balance in the trust and listing the trust's investments at the preceding year-end, and shall certify the date of termination of the trust, if so planned, or certify that the trust shall not expire prior to the following December 31.

~~(f) No amendment to the trust shall be effective unless reviewed and approved in advance by the commissioner.~~

(b) 1. Notwithstanding any other provisions of the trust instrument, if the trust fund is inadequate because it contains an amount less than the amount required by this paragraph or if the grantor of the trust has been declared insolvent or placed into receivership, rehabilitation, liquidation or similar proceedings under the laws of its state or country of domicile, the trustee shall comply with an order of the commissioner with regulatory oversight over the trust or with an order of a court of competent jurisdiction directing the trustee to transfer to the commissioner with regulatory oversight over the trust or other designated receiver all of the assets of the trust fund.

2. The assets shall be distributed by and claims shall be filed with and valued by the commissioner with regulatory oversight over the trust in accordance with the laws of the state in which the trust is domiciled applicable to the liquidation of domestic insurance companies.

3. If the commissioner with regulatory oversight over the trust determines that the assets of the trust fund or any part thereof are not necessary to satisfy the claims of the United States beneficiaries of the trust, the commissioner with regulatory oversight over the trust shall return the assets, or any part thereof, to the trustee for distribution in accordance with the trust agreement.

4. The grantor shall waive any right otherwise available to it under United States law that is inconsistent with this provision.

(4) For purposes of this rule, the term "liabilities" shall mean the assuming insurer's gross liabilities attributable to reinsurance ceded by United States domiciled insurers excluding liabilities that are otherwise secured by acceptable means, and, shall include:

(a) For business ceded by domestic insurers authorized to write accident and health, and property and casualty insurance:

1. Losses and allocated loss expenses paid by the ceding insurer, recoverable from the assuming insurer;

2. Reserves for losses reported and outstanding;

3. Reserves for losses incurred but not reported;

4. Reserves for allocated loss expenses; and

5. Unearned premiums.

(b) For business ceded by domestic insurers authorized to write life, health, and annuity insurance:

1. Aggregate reserves for life policies and contracts net of policy loans and net due and deferred premiums;

2. Aggregate reserves for accident and health policies;

3. Deposit funds and other liabilities without life or disability contingences; and

4. Liabilities for policy and contract claims.

(5) Assets deposited in trusts established pursuant to T.C.A. § 56-2-208(b) and this rule shall be valued according to their current fair market value and shall consist only of cash in United States dollars, certificates of deposit issued by a United States financial institution as defined in T.C.A. § 56-2-209(c), clean, irrevocable, unconditional and "evergreen" letters of credit issued or confirmed by a qualified United States institution as defined in T.C.A. § 56-2-209(c), and investments of the type specified in this subsection, but investments in or issued by an entity controlling, controlled by or under common control with either the grantor of the beneficiary of the trust shall not exceed five percent (5%) of total investments. No more than twenty percent (20%) of the total of the investments in the trust may be foreign investments authorized under Rule 0780-01-63-.06(5)(a)(5), Rule 0780-01-63-.06(5)(c), Rule 0780-01-63-.06(5)(f)(2) or Rule 0780-01-63-.06(5)(g), and no more than ten percent (10%) of the total of the investments in the trust may be securities denominated in foreign currencies. For purposes of applying the preceding sentence, a depository receipt denominated in United States dollars and representing rights conferred by a foreign security shall be classified as a foreign investment denominated in a foreign currency. The assets of a trust established to satisfy the requirements of T.C.A. § 56-2-208(b) shall be invested only as follows:

(a) Government obligations that are not in default as to principal or interest, that are valid and legally authorized and that are issued, assumed or guaranteed by:

1. The United States or by any agency or instrumentality of the United States;

2. A state of the United States;

3. A territory, possession or other governmental unit of the United States;

4. An agency or instrumentality of a governmental unit referred to in parts 2 and 3 of this subparagraph if the obligations shall be by law (statutory or otherwise) payable, as to both principal and interest, from taxes levied or by law required to be levied or from adequate special revenues pledged or otherwise appropriated or by law required to be provided for making these payments, but shall not be obligations eligible for investment under this paragraph if payable solely out of special assessments on properties benefited by local improvements; or

5. The government of any other country that is a member of the Organization for Economic Cooperation and Development and whose government obligations are rated A or higher, or equivalent, by a rating agency recognized by the Securities Valuation Office of the National Association of Insurance Commissioners;

(b) Obligations that are issued in the United States, or that are dollar denominated and issued in a non-United States market, by a solvent United States institution (other than an insurance company) or that are assumed or guaranteed by a solvent United States institution (other than an insurance company) and that are not in default as to principal or interest if the obligations:

1. Are rated A or higher (or the equivalent) by a securities rating agency recognized by the Securities Valuation Office of the National Association of Insurance Commissioners, or if not so rated, are similar in structure or other material respects to other obligations of the same institution that are so rated;

2. Are insured by at least one authorized insurer (other than the investing insurer or a parent, subsidiary or affiliate of the investing insurer) licensed to insure obligations in this state and, after considering the insurance, are rated AAA (or the equivalent) by a securities rating agency recognized by the Securities Valuation Office of the National Association of Insurance Commissioners; or

3. Have been designated as Class One or Class Two by the Securities Valuation Office of the National Association of Insurance Commissioners;

(c) Obligations issued, assumed or guaranteed by a solvent non-United States institution chartered in a country that is a member of the Organization for Economic Cooperation and Development or obligations of United States corporations issued in a non-United States currency, provided that in either case the obligations are rated A or higher, or the equivalent, by a rating agency recognized by the Securities Valuation Office of the National Association of Insurance Commissioners;

(d) An investment made pursuant to the provisions of Rule 0780-01-63-.06(5)(a), (b) or (c) shall be subject to the following additional limitations:

1. An investment in or loan upon the obligations of an institution other than an institution that issues mortgage-related securities shall not exceed five percent (5%) of the assets of the trust;

2. An investment in any one mortgage-related security shall not exceed five percent (5%) of the assets of the trust;

3. The aggregate total investment in mortgage-related securities shall not exceed twenty-five percent (25%) of the assets of the trust; and

4. Preferred or guaranteed shares issued or guaranteed by a solvent United States institution are permissible investments if all of the institution's obligations are eligible as investments under Rule 0780-01-63-.06(5)(b)(1) and (3), but shall not exceed two percent (2%) of the assets of the trust.

(e) As used in this rule:

1. "Mortgage-related security" means an obligation that is rated AA or higher (or the equivalent) by a securities rating agency recognized by the Securities Valuation Office of the National Association of Insurance Commissioners and that either:

(i) Represents ownership of one or more promissory notes or certificates of interest or participation in the notes (including any rights designed to assure servicing of, or the receipt or timeliness of receipt by the holders of the notes, certificates, or participation of amounts payable under, the notes, certificates or participation), that:

(I) Are directly secured by a first lien on a single parcel of real estate, including stock allocated to a dwelling unit in

a residential cooperative housing corporation, upon which is located a dwelling or mixed residential and commercial structure, or on a residential manufactured home as defined in 42 U.S.C. § 5402(6), whether the manufactured home is considered real or personal property under the laws of the state in which it is located; and

(II) Were originated by a savings and loan association, savings bank, commercial bank, credit union, insurance company, or similar institution that is supervised and examined by a federal or state housing authority, or by a mortgagee approved by the Secretary of Housing and Urban Development pursuant to 12 U.S.C. §§ 1709 and 1715-b, or, where the notes involve a lien on the manufactured home, by an institution or by a financial institution approved for insurance by the Secretary of Housing and Urban Development pursuant to 12 U.S.C. § 1703; or

(ii) Is secured by one or more promissory notes or certificates of deposit or participations in the notes (with or without recourse to the insurer of the notes) and, by its terms, provides for payments of principal in relation to payments, or reasonable projections of payments, or notes meeting the requirements of Subpart (i), items (1) and (2) of this Part.

2. "Promissory notes," when used in connection with a manufactured home, shall also include a loan, advance or credit sale as evidenced by a retail installment sales contract or other instrument.

(f) Equity Interests.

1. Investments in common shares or partnership interests of a solvent United States institution are permissible if:

(i) Its obligations and preferred shares, if any, are eligible as investments under this subsection; and

(ii) The equity interests of the institution (except an insurance company) are registered on a national securities exchange as provided in the Securities Exchange Act of 1934, 15 U.S.C. §§ 78a to 78kk or otherwise registered pursuant to that Act, and if otherwise registered, price quotations for them are furnished through a nationwide automated quotations system approved by the Financial Industry Regulatory Authority, or successor organization. A trust shall not invest in equity interests under this subparagraph an amount exceeding one percent (1%) of the assets of the trust even though the equity interests are not so registered and are not issued by an insurance company.

2. Investments in common shares of a solvent institution organized under the laws of a country that is a member of the Organization for Economic Cooperation and Development, if:

(i) All its obligations are rated A or higher, or the equivalent, by a rating agency recognized by the Securities Valuation Office of the National Association of Insurance Commissioners; and

(ii) The equity interests of the institution are registered on a securities exchange regulated by the government of a country that is a member of the Organization for Economic Cooperation and Development;

3. An investment in or loan upon any one institution's outstanding equity interests shall not exceed one percent (1%) of the assets of the trust. The cost of an investment in equity interests made pursuant to this paragraph, when added to the aggregate cost of other investments in equity interests then held pursuant to this paragraph, shall not exceed ten percent (10%) of the assets in the trust.

(g) Obligations issued, assumed or guaranteed by a multinational development bank, provided the obligations are rated A or higher, or the equivalent, by a rating agency recognized by the Securities Valuation Office of the National Association of Insurance Commissioners.

(h) Investment Companies.

1. Securities of an investment company registered pursuant to the Investment Company Act of 1940, 15 U.S.C. § 80a, are permissible investments if the investment company:

(i) Invests at least ninety percent (90%) of its assets in the types of securities that qualify as an investment under Rule 0780-01-63-.06(5)(a), (b), or (c) or invests in securities that are determined by the commissioner to be substantively similar to the types of securities set forth in Rule 0780-01-63-.06(5)(a), (b), or (c); or

(ii) Invests at least ninety percent (90%) of its assets in the types of equity interests that qualify as an investment under Rule 0780-01-63-.06(5)(f)(1).

2. Investments made by a trust in investment companies under this subparagraph shall not exceed the following limitations:

(i) An investment in an investment company qualifying under Rule 0780-01-63-.06(5)(h)(1)(i) shall not exceed ten percent (10%) of the assets in the trust and the aggregate amount of investment in qualifying investment companies shall not exceed twenty-five percent (25%) of the assets in the trust; and

(ii) Investments in an investment company qualifying under Rule 0780-01-63-.06(5)(h)(1)(ii) shall not exceed five percent (5%) of the assets in the trust and the aggregate amount of investment in qualifying investment companies shall be included when calculating the permissible aggregate value of equity interests pursuant to Rule 0780-01-63-.06(5)(f)(1).

(i) Letters of Credit.

1. In order for a letter of credit to qualify as an asset of the trust, the trustee shall have the right and obligation pursuant to the deed of trust or some other binding agreement (as duly approved by the commissioner), to immediately draw down the full amount of the letter of credit and hold the proceeds in trust for the beneficiaries of the trust if the letter of credit will otherwise expire without being renewed or replaced.

2. The trust agreement shall provide that the trustee shall be liable for its negligence, willful misconduct or lack of good faith. The failure of the

trustee to draw against the letter of credit in circumstances where such draw would be required shall be deemed to be negligence and/or willful misconduct.

(6) A specific security provided to a ceding insurer by an assuming insurer pursuant to Rule 0780-01-63-.08 shall be applied, until exhausted, to the payment of liabilities of the assuming insurer to the ceding insurer holding the specific security prior to, and as a condition precedent for, presentation of a claim by the ceding insurer for payment by a trustee of a trust established by the assuming insurer pursuant to this section.

Authority: T.C.A. §§ 56-2-208~~(4)~~, 56-2-209~~(e)~~, and 56-2-301.

0780-01-63-.07 Credit for Reinsurance – Certified Reinsurers.~~Required by Law.~~

(1) Pursuant to T.C.A. § 56-2-208(b)(6), the commissioner shall allow credit for reinsurance ceded by a domestic insurer to an assuming insurer that has been certified as a reinsurer in this state at all times for which statutory financial statement credit is claimed under this section. The credit allowed shall be based upon the security held by or on behalf of the ceding insurer in accordance with a rating assigned to the certified reinsurer by the commissioner. The security shall be in a form consistent with the provisions of T.C.A. §§ 56-2-208(b)(6) and 56-2-209(a) and (b) and either Rule 0780-01-63-.10, Rule 0780-01-63-.11 or Rule 0780-01-63-.12. The amount of security required in order for full credit to be allowed shall correspond with the following requirements:

(a)

Ratings	Security Required
Secure – 1	0%
Secure – 2	10%
Secure – 3	20%
Secure – 4	50%
Secure – 5	75%
Vulnerable – 6	100%

(b) Affiliated reinsurance transactions shall receive the same opportunity for reduced security requirements as all other reinsurance transactions.

(c) The commissioner shall require the certified reinsurer to post one hundred percent (100%), for the benefit of the ceding insurer or its estate, security upon the entry of an order of rehabilitation, liquidation or conservation against the ceding insurer.

(d) In order to facilitate the prompt payment of claims, a certified reinsurer shall not be required to post security for catastrophe recoverables for a period of one (1) year from the date of the first instance of a liability reserve entry by the ceding company as a result of a loss from a catastrophic occurrence as recognized by the commissioner. The one (1) year deferral period is contingent upon the certified reinsurer continuing to pay claims in a timely manner. Reinsurance recoverables for only the following lines of business as reported on the National Association of Insurance Commissioners annual financial statement related specifically to the catastrophic occurrence will be included in the deferral:

Line 1: Fire

1. Line 2: Allied Lines
2. Line 3: Farmers multiple peril
3. Line 4: Homeowners multiple peril
4. Line 5: Commercial multiple peril
5. Line 9: Inland Marine
6. Line 12: Earthquake
7. Line 21: Auto physical damage

(e) Credit for reinsurance under this section shall apply only to reinsurance contracts entered into or renewed on or after the effective date of the certification of the assuming insurer. Any reinsurance contract entered into prior to the effective date of the certification of the assuming insurer that is subsequently amended after the effective date of the certification of the assuming insurer, or a new reinsurance contract, covering any risk for which collateral was provided previously, shall only be subject to this section with respect to losses incurred and reserves reported from and after the effective date of the amendment or the new contract.

(f) Nothing in this section shall prohibit the parties to a reinsurance agreement from agreeing to provisions establishing security requirements that exceed the minimum security requirements established for certified reinsurers under this section.

(2) Certification Procedure.

(a) The commissioner shall post notice on the insurance department's website promptly upon receipt of any application for certification, including instructions on how members of the public may respond to the application. The commissioner may not take final action on the application until at least thirty (30) days after posting the notice required by this subparagraph.

(b) The commissioner shall issue written notice to an assuming insurer that has made application and been approved as a certified reinsurer. Included in such notice shall be the rating assigned the certified reinsurer in accordance with Rule 0780-01-63-.07(1). The commissioner shall publish a list of all certified reinsurers and their ratings on the insurance department's website.

(c) In order to be eligible for certification, the assuming insurer shall meet the following requirements:

1. The assuming insurer must be domiciled and licensed to transact insurance or reinsurance in a Qualified Jurisdiction, as determined by the commissioner pursuant to Rule 0780-01-63-.07(3).

2. The assuming insurer must maintain capital and surplus, or its equivalent, of no less than two hundred fifty million dollars ($250,000,000) calculated in accordance with 0780-01-63-.07(2)(d)(8). This requirement may also be satisfied by an association including incorporated and individual unincorporated underwriters having minimum capital and surplus equivalents (net of liabilities) of at least two hundred fifty million dollars ($250,000,000) and a central fund containing a balance of at least two hundred fifty million dollars ($250,000,000).

3. The assuming insurer must maintain financial strength ratings from two (2) or more rating agencies deemed acceptable by the commissioner. These ratings shall be based on interactive communication between the rating agency and the assuming insurer and shall not be based solely on publicly available information. These financial strength ratings will be one factor used by the commissioner in determining the rating that is assigned to the assuming insurer. Acceptable rating agencies include the following:

(i) Standard & Poor's;

(ii) Moody's Investors Service;

(iii) Fitch Ratings;

(iv) A.M. Best Company; or

(v) Any other Nationally Recognized Statistical Rating Organization

4. The certified reinsurer must comply with any other requirements reasonably imposed by the commissioner.

(d) Each certified reinsurer shall be rated on a legal entity basis, with due consideration being given to the group rating where appropriate, except that an association including incorporated and individual unincorporated underwriters that has been approved to do business as a single certified reinsurer may be evaluated on the basis of its group rating. Factors that may be considered as part of the evaluation process include, but are not limited to, the following:

1. The certified reinsurer's financial strength rating from an acceptable rating agency. The maximum rating that a certified reinsurer may be assigned will correspond to its financial strength rating as outlined in the table below. The commissioner shall use the lowest financial strength rating received from an approved rating agency in establishing the maximum rating of a certified reinsurer. A failure to obtain or maintain at least two (2) financial strength ratings from acceptable rating agencies will result in loss of eligibility for certification:

Ratings	**Best**	**S&P**	**Moody's**	**Fitch**
Secure – 1	AA+	AAA	Aaa	AAA
Secure – 2	A+	AA+, AA, AA-	Aa1, Aa2, Aa3	AA+, AA, AA-
Secure – 3	A	A+, A	A1, A2	A+, A
Secure – 4	A-	A-	A3	A-
Secure – 5	B++, B+	BBB+, BBB, BBB-	Baa1, Baa2, Baa3	BBB+, BBB, BBB-
Vulnerable – 6	B, B-C++, C+, C, C-, D, E, F	BB+, BB, BB-, B+, B, B-, CCC, CC, C, D, R	Ba1, Ba2, Ba3, B1, B2, B3, Caa, Ca, C	BB+, BB, BB-, B+, B, B-, CCC+, CC, CCC-, DD

2. The business practices of the certified reinsurer in dealing with its ceding insurers, including its record of compliance with reinsurance contractual terms and obligations;

3. For certified reinsurers domiciled in the United States, a review of the most recent applicable National Association of Insurance Commissioners Annual Statement Blank, either Schedule F (for property/casualty reinsurers) or Schedule S (for life and health reinsurers);

4. For certified reinsurers not domiciled in the United States, a review annually of Form CR-F (for property/casualty reinsurers), attached as Appendix B to this chapter and incorporated herein by reference, or Form CR-S (for life and health reinsurers), attached as Appendix C to this chapter and incorporated herein by reference;

5. The reputation of the certified reinsurer for prompt payment of claims under reinsurance agreements, based on an analysis of ceding insurers' Schedule F reporting of overdue reinsurance recoverables, including the proportion of obligations that are more than ninety (90) days past due or are in dispute, with specific attention given to obligations payable to companies that are in administrative supervision or receivership;

6. Regulatory actions against the certified reinsurer;

7. The report of the independent auditor on the financial statements of the insurance enterprise, on the basis described in Part 8, below;

8. For certified reinsurers not domiciled in the United States, audited financial statements (audited U.S. GAAP basis if available, audited IFRS basis statements are allowed but must include an audited footnote reconciling equity and net income to a U.S. GAAP basis, or, with the permission of the state insurance commissioner, audited IFRS statements with reconciliation to U.S. GAAP certified by an officer of the company), regulatory filings, and actuarial opinion (as filed with the non-United States jurisdiction supervisor). Upon the initial application for certification, the commissioner will consider audited financial statements for the last three (3) years filed with its non-United States jurisdiction supervisor;

9. The liquidation priority of obligations to a ceding insurer in the certified reinsurer's domiciliary jurisdiction in the context of an insolvency proceeding;

10. A certified reinsurer's participation in any solvent scheme of arrangement, or similar procedure, which involves United States ceding insurers. The commissioner shall receive prior notice from a certified reinsurer that proposes participation by the certified reinsurer in a solvent scheme of arrangement; and

11. Any other information deemed relevant by the commissioner.

(e) Based on the analysis conducted under Rule 0780-01-63-.07(2)(d)(5) of a certified reinsurer's reputation for prompt payment of claims, the commissioner may make appropriate adjustments in the security the certified reinsurer is required to post to protect its liabilities to United States ceding insurers, provided that the commissioner shall, at a minimum, increase the security the certified reinsurer is required to post by one rating level under Rule 0780-01-63-.07(2)(d)(1) if the commissioner finds that:

1. More than fifteen percent (15%) of the certified reinsurer's ceding insurance clients have overdue reinsurance recoverables on paid losses of ninety (90) days or more which are not in dispute and which exceed one hundred thousand dollars ($100,000) for each cedent; or

2. The aggregate amount of reinsurance recoverables on paid losses which are not in dispute that are overdue by ninety (90) days or more exceeds fifty million dollars ($50,000,000).

(f) The assuming insurer must submit a properly executed Form CR-1 (adopted as Appendix D of this chapter and incorporated herein by reference) as evidence of its submission to the jurisdiction of this state, appointment of the commissioner as an agent for the service of process in this state, and agreement to provide security for one hundred percent (100%) of the assuming insurer's liabilities attributable to reinsurance ceded by United States ceding insurers if it resists enforcement of a final United States judgment. The commissioner shall not certify any assuming insurer that is domiciled in a jurisdiction that the commissioner has determined does not adequately and promptly enforce final United States judgments or arbitration awards.

(g) The certified reinsurer must agree to meet applicable information filing requirements as determined by the commissioner, both with respect to an initial application for certification and on an ongoing basis. All information submitted by

certified reinsurers which are not otherwise public information subject to disclosure shall be exempted from disclosure under T.C.A. § 10-7-503 and shall be withheld from public disclosure. The applicable information filing requirements are, as follows:

1. Notification within ten (10) days of any regulatory actions taken against the certified reinsurer, any change in the provisions of its domiciliary license or any change in rating by an approved rating agency, including a statement describing such changes and the reasons therefore;

2. Annually, Form CR-F (Appendix B of this chapter) or CR-S (Appendix C of this chapter), as applicable;

3. Annually, the report of the independent auditor on the financial statements of the insurance enterprise, on the basis described in Part 4, below.

4. Annually, audited financial statements (audited U.S. GAAP basis if available, audited IFRS basis statements are allowed but must include an audited footnote reconciling equity and net income to a U.S. GAAP basis, or, with the permission of the state insurance commissioner, audited IFRS statements with reconciliation to U.S. GAAP certified by an officer of the company), regulatory filings, and actuarial opinion (as filed with the certified reinsurer's supervisor). Upon the initial certification, audited financial statements for the last three (3) years filed with the certified reinsurer's supervisor;

5. At least annually, an updated list of all disputed and overdue reinsurance claims regarding reinsurance assumed from United States domestic ceding insurers;

6. A certification from the certified reinsurer's domestic regulator that the certified reinsurer is in good standing and maintains capital in excess of the jurisdiction's highest regulatory action level; and

7. Any other information that the commissioner may reasonably require.

(h) Change in Rating or Revocation of Certification.

1. In the case of a downgrade by a rating agency or other disqualifying circumstance, the commissioner shall upon written notice assign a new rating to the certified reinsurer in accordance with the requirements of Rule 0780-01-63-.07(2)(d)(1).

2. The commissioner shall have the authority to suspend, revoke, or otherwise modify a certified reinsurer's certification at any time if the certified reinsurer fails to meet its obligations or security requirements under this section, or if other financial or operating results of the certified reinsurer, or documented significant delays in payment by the certified reinsurer, lead the commissioner to reconsider the certified reinsurer's ability or willingness to meet its contractual obligations.

3. If the rating of a certified reinsurer is upgraded by the commissioner, the certified reinsurer may meet the security requirements applicable to its new rating on a prospective basis, but the commissioner shall require the certified reinsurer to post security under the previously applicable security requirements as to all contracts in force on or before the effective date of the upgraded rating. If the rating of a certified reinsurer is downgraded by the commissioner, the commissioner shall require the

certified reinsurer to meet the security requirements applicable to its new rating for all business it has assumed as a certified reinsurer.

4. Upon revocation of the certification of a certified reinsurer by the commissioner, the assuming insurer shall be required to post security in accordance with Rule 0780-01-63-.09 in order for the ceding insurer to continue to take credit for reinsurance ceded to the assuming insurer. If funds continue to be held in trust in accordance with Rule 0780-01-63-.06, the commissioner may allow additional credit equal to the ceding insurer's *pro rata* share of such funds, discounted to reflect the risk uncollectibility and anticipated expenses of trust administration. Notwithstanding the change of a certified reinsurer's rating or revocation of its certification, a domestic insurer that has ceded reinsurance to that certified reinsurer may not be denied credit for reinsurance for a period of three (3) months for all reinsurance ceded to that certified reinsurer, unless the reinsurance is found by the commissioner to be at high risk of uncollectibility.

(3) Qualified Jurisdictions.

(a) If upon conducting an evaluation under this section with respect to the reinsurance supervisory system of any non-United States assuming insurer, the commissioner determines that the jurisdiction qualifies to be recognized as a qualified jurisdiction, the commissioner shall publish notice and evidence of such recognition on the insurance department's website. The commissioner may establish a procedure to withdraw recognition of those jurisdictions that are no longer qualified.

(b) In order to determine whether the domiciliary jurisdiction of a non-United States assuming insurer is eligible to be recognized as a qualified jurisdiction, the commissioner shall evaluate the reinsurance supervisory system of the non-United States jurisdiction, both initially and on an ongoing basis, and consider the rights, benefits and the extent of reciprocal recognition afforded by the non-United States jurisdiction to reinsurers licensed and domiciled in the United States. The commissioner shall determine the appropriate approach for evaluating the qualifications of such jurisdictions, and create and publish on the insurance department's website a list of jurisdictions whose reinsurers may be approved by the commissioner as eligible for certification. A qualified jurisdiction must agree to share information and cooperate with the commissioner with respect to all certified reinsurers domiciled within that jurisdiction. Additional factors to be considered in determining whether to recognize a qualified jurisdiction, in the discretion of the commissioner, include but are not limited to the following:

1. The framework under which the assuming insurer is regulated.

2. The structure and authority of the domiciliary regulator with regard to solvency regulation requirements and financial surveillance.

3. The substance financial and operating standards for assuming insurers in the domiciliary jurisdiction.

4. The form and substance of financial reports required to be filed or made publicly available by reinsurers in the domiciliary jurisdiction and the accounting principles used.

5. The domiciliary regulator's willingness to cooperate with United States regulators in general and the commissioner in particular.

6. The history of performance by assuming insurers in the domiciliary jurisdiction.

7. Any documented evidence of substantial problems with the enforcement of final United States judgments in the domiciliary jurisdiction. A jurisdiction will not be considered to be a qualified jurisdiction if the commissioner has determined that it does not adequately and promptly enforce final United States judgments or arbitration awards.

8. Any relevant international standards or guidance with respect to mutual recognition of reinsurance supervision adopted by the International Association of Insurance Supervisors or successor organization.

9. Any other matters deemed relevant by the commissioner.

(c) A list of qualified jurisdictions is published through the National Association of Insurance Commissioners Committee Process. The commissioner shall consider this list in determining qualified jurisdictions. If the commissioner approves a jurisdiction as qualified that does not appear on the list of qualified jurisdictions, the commissioner shall provide thoroughly documented justification with respect to the criteria provided under Rule 0780-01-63-.07(3)(b).

(d) United States jurisdictions that meet the requirements for accreditation under the National Association of Insurance Commissioners financial standards and accreditation program shall be recognized as qualified jurisdictions.

(4) Recognition of Certification Issued by a National Association of Insurance Commissioners Accredited Jurisdiction

(a) If an applicant for certification has been certified as a reinsurer in a National Association of Insurance Commissioners accredited jurisdiction, the commissioner has the discretion to defer to that jurisdiction's certification, and to defer to the rating assigned by that jurisdiction, if the assuming insurer submits a properly executed Form CR-1 (Appendix A of this chapter) and such additional information as the commissioner requires. The assuming insurer shall be considered to be a certified reinsurer in this state.

(b) Any change in the certified reinsurer's status or rating in the other jurisdiction shall apply automatically in this state as of the date it takes effect in the other jurisdiction. The certified reinsurer shall notify the commissioner of any change in its status or rating within ten (10) days after receiving notice of the change.

(c) The commissioner may withdraw recognition of the other jurisdiction's rating at any time and assign a new rating in accordance with Rule 0780-01-63-.07(2)(h).

(d) The commissioner may withdraw recognition of the other jurisdiction's certification at any time, with written notice to the certified reinsurer. Unless the commissioner suspends or revokes the certified reinsurer's certification in accordance with 0780-01-63-.07(2)(h), the certified reinsurer's certification shall remain in good standing in this state for a period of three (3) months, which shall be extended if additional time is necessary to consider the assuming insurer's application for certification in this state.

(5) Mandatory Funding Clause.

In addition to the clauses required under Rule 0780-01-63-.13, reinsurance contracts entered into or renewed under this rule shall include a proper funding clause, which requires the certified reinsurer to provide and maintain security in an amount sufficient to avoid the imposition of any financial statement penalty on the ceding insurer under this rule for reinsurance ceded to the certified reinsurer.

(6) The commissioner shall comply with all reporting and notification requirements that may be established by the National Association of Insurance Commissioners with respect to certified reinsurers and qualified jurisdictions.

Authority: T.C.A. §§ 56-2-208~~(5)~~, 56-2-209~~(e)~~, and 56-2-301.

0780-01-63-.08~~7~~ Credit for Reinsurance Required by Law

Pursuant to T.C.A. § 56-2-208(b)(7)~~(5)~~, the commissioner shall~~may~~ allow credit for reinsurance ceded by a domestic insurer to an assuming insurer not meeting the requirements of T.C.A. § 56-2-208~~(1), (2), (3) or (4)~~(b)(2), (3), (4), (5), or (6), but only as ~~with respect~~ to the insurance of risks located in jurisdictions where the ~~such~~ reinsurance is required by the applicable law~~s~~ or regulation~~s~~ of that jurisdiction. As used in this rule, "jurisdiction" means ~~any~~ state, district or territory of the United States and any lawful national government.

Authority: T.C.A. §§ 56-2-208~~(5)~~, 56-2-209~~(e)~~, and 56-2-301.

0780-01-63-.09~~8~~ Asset or Reduction from Liability for Reinsurance Ceded to an Unauthorized Assuming Insurer Not Meeting the Requirements of Rules 0780-01-63-.03 through 0780-01-63-.08.

(1) Pursuant to T.C.A. § 56-2-209(a) the commissioner shall allow a reduction from liability for reinsurance ceded by a domestic insurer to an assuming insurer not meeting the requirements of T.C.A. § 56-2-208(b) in an amount not exceeding the liabilities carried by the ceding insurer. The ~~Such~~ reduction shall be in the amount of funds held by or on behalf of the ceding insurer, including funds held in trust for the exclusive benefit of the ceding insurer, under a reinsurance contract with such assuming insurer as security for the payment of obligations under the reinsurance contract~~ thereunder~~. The ~~Such~~ security shall~~ must~~ be held in the United States subject to withdrawal solely by, and under the exclusive control of, the ceding insurer or, in the case of a trust, held in a qualified United States financial institution as defined in T.C.A. § 56- 2-209(d). This security may be ~~maybe~~ in the form of any of the following:

(a) Cash;

(b) Securities listed by the Securities Valuation Office of the National Association of Insurance Commissioners, including those deemed exempt from filing as defined by the Purposes and Procedures Manual of the Securities Valuation Office, and qualifying as admitted assets;

(c) Clean, irrevocable, unconditional and "evergreen" letters of credit issued or confirmed by a qualified United States financial institution, as defined in T.C.A. § 56-2-209(c), effective no later than December 31 of the year for which filing is being made, and in the possession of, or in trust for, the ceding insurer~~ company~~ on or before the filing date of its annual statement. Letters of credit meeting applicable standards of issuer acceptability as of the dates of their issuance (or confirmation) shall, notwithstanding the issuing (or confirming) institution's subsequent failure to meet applicable standards of issuer acceptability, continue to be acceptable as security until their expiration, extension, renewal, modification or amendment, whichever first occurs~~.~~; or

(d) Any other form of security acceptable to the commissioner.

(2) An admitted asset or a reduction from liability for reinsurance ceded to an unauthorized assuming insurer pursuant to this rule ~~Rule 0780-01-63-.08(1)(a), (b) and (c)~~ shall be allowed only when the requirements of~~ Rules 0780-01-63-.09, .10, or .11 are met.~~ Rule 0780-01-63-.13 and the applicable portions of Rule 0780-01-63-.10, Rule 0780-01-63-.11, or Rule 0780-01-63-.12 have been satisfied.

Authority: T.C.A. §§ 56-2-208, 56-2-209, and 56-2-301.

0780-01-63-.10~~09~~ Trust Agreements Qualified Under Rule 0780-01-63-.09~~8~~

(1) As used in this rule:

(a) "Beneficiary" means the entity for whose sole benefit the trust has been established and any successor of the beneficiary by operation of law. If a court of law appoints a successor in interest to the named beneficiary, then the named beneficiary includes and is limited to the court appointed domiciliary receiver (including conservator, rehabilitator or liquidator).

(b) "Grantor" means the entity that has established a trust for the sole benefit of the beneficiary. When established in conjunction with a reinsurance agreement, the grantor is the unlicensed, unaccredited assuming insurer.

(c) "Obligations", as used in Rule 0780-01-63-.10(2)(k)~~subparagraph (2)(k)~~, below, means:

1. Reinsured losses and allocated loss expenses paid by the ceding company, but not recovered from the assuming insurer;

2. Reserves for reinsured losses reported and outstanding;

3. Reserves for reinsured losses incurred but not reported; and

4. Reserves for allocated reinsured loss expenses and unearned premiums.

(2) ~~Trust agreements qualified under Rule 0780-01-63-.08 shall include the following required conditions.~~ Required Conditions.

(a) The trust agreement shall be entered into between the beneficiary, the grantor and a trustee which shall be a qualified United States financial institution as defined in T.C.A. § 56-2-209(d).

(b) The trust agreement shall create a trust account into which assets shall be deposited.

(c) All assets in the trust account shall be held by the trustee at the trustee's office in the United States~~, except that a bank may apply for the commissioner's permission to use a foreign branch office of such bank as trustee for trust agreements established pursuant to this rule. If the commissioner approves the use of such foreign branch office as trustee, then its use must be approved by the beneficiary in writing and the trust agreement must provide that the written notice described in part (2)(d)1., below, must also be presentable, as a matter of legal right, at the trustee's principal office in the United States~~.

(d) The trust agreement shall provide that:

1. The beneficiary shall have the right to withdraw assets from the trust account at any time, without notice to the grantor, subject only to written notice from the beneficiary to the trustee;

2. No other statement or document is required to be presented in order to withdraw assets, except that the beneficiary may be required to acknowledge receipt of withdrawn assets;

3. It is not subject to any conditions or qualifications outside the trust agreement; and

4. It shall not contain references to any other agreements or documents except as provided for under ~~subparagraph (k), below~~ Rule 0780-01-63-.10(2)(k) and (l).

(e) The trust agreement shall be established for the sole benefit of the beneficiary.

(f) The trust agreement shall require the trustee to:

1. Receive assets and hold all assets in a safe place;

2. Determine that all assets are in such form that the beneficiary, or the trustee upon direction by the beneficiary, may whenever necessary negotiate any such assets, without consent or signature from the grantor or any other person or entity;

3. Furnish to the grantor and the beneficiary a statement of all assets in the trust account upon its inception and at intervals no less frequent than the end of each calendar quarter;

4. Notify the grantor and the beneficiary within ten (10) days, of any deposits to or withdrawals from the trust account;

5. Upon written demand of the beneficiary, immediately take any and all steps necessary to transfer absolutely and unequivocally all right, title and interest in the assets held in the trust account to the beneficiary and deliver physical custody of the assets to the beneficiary; and

6. Allow no substitutions or withdrawals of assets from the trust account, except on written instructions from the beneficiary, except that the trustee may, without the consent of but with notice to the beneficiary, upon call or maturity of any trust asset, withdraw such asset upon condition that the proceeds are paid into the trust account.

(g) The trust agreement shall provide that at least thirty (30) days, but not more than forty-five (45) days, prior to termination of the trust account, written notification of termination shall be delivered by the trustee to the beneficiary.

(h) The trust agreement shall be made subject to and governed by the laws of the state in which the trust is domiciled.

(i) The trust agreement shall prohibit invasion of the trust corpus for the purpose of paying commission to, or reimbursing the expenses of, the trustee. In order for a letter of credit to qualify as an asset of the trust, the trustee shall have the right and the obligation pursuant to the deed of trust or some other binding agreement (as duly approved by the commissioner), to immediately draw down the full amount of the letter of credit and hold the proceeds in trust for the beneficiaries of the trust if the letter of credit will otherwise expire without being renewed or replaced.

(j) The trust agreement shall provide that the trustee shall be liable for its own negligence, willful misconduct or lack of good faith. The failure of the trustee to draw against the letter of credit in circumstances where such draw would be required shall be deemed to be negligence and/or willful misconduct.

(k) Notwithstanding other provisions of this chapter, when a trust agreement is established in conjunction with a reinsurance agreement covering risks other than life, annuities and accident and health, where it is customary practice to provide a trust agreement for a specific purpose, ~~such a~~ the trust agreement may~~, notwithstanding any other conditions in this chapter,~~ provide that the ceding-_insurer shall undertake to use and apply amounts drawn upon the trust

account, without diminution because of the insolvency of the ceding insurer or the assuming insurer, only for the following purposes:

1. To pay or reimburse the ceding insurer for the assuming insurer's share under the specific reinsurance agreement regarding any losses and allocated loss expenses paid by the ceding insurer but not recovered ~~received~~ from the assuming insurer, or for unearned premiums due to the ceding insurer if not otherwise paid by the assuming insurer;

2. To make payment to the assuming insurer of any amounts held in the trust account that exceed one hundred two ~~102~~ percent (102%) of the actual amount required to fund the assuming insurer's obligations under the specific reinsurance agreement; or

3. Where the ceding insurer has received notification of termination of the trust account and where the assuming insurer's entire obligations under the specific reinsurance agreement remain unliquidated and undischarged ten (10) days prior to the termination date, to withdraw amounts equal to the obligations and deposit those amounts in a separate account, in the name of the ceding insurer in any qualified United States financial institution as defined in T.C.A. § 56-2-209(d) apart from its general assets, in trust for such uses and purposes specified in P~~p~~arts 1~~.~~ and 2~~.~~, above, as may remain executory after such withdrawal and for any period after the termination date.

(I) ~~The reinsurance agreement entered into in conjunction with the trust agreement may, but need not, contain the provisions required by part(4)(a)2., below, so long as these required conditions are included in the trust agreement.~~ Notwithstanding other provisions of this chapter, when a trust agreement is established to meet the requirements of Rule 0780-01-63-.09 in conjunction with a reinsurance agreement covering life, annuities or accident and health risks, where it is customary to provide a trust agreement for a specific purpose, the trust agreement may provide that the ceding insurer shall undertake to use and apply amounts drawn upon the trust account, without diminution because of the insolvency of the ceding insurer or the assuming insurer, only for the following purposes:

1. To pay or reimburse the ceding insurer for:

   (i) The assuming insurer's share under the specific reinsurance agreement of premiums returned, but not yet recovered from the assuming insurer, to the owners of policies reinsured under the reinsurance agreement on account of cancellations of the policies; and

   (ii) The assuming insurer's share under the specific reinsurance agreement of surrenders and benefits or losses paid by the ceding insurer, but not yet recovered from the assuming insurer, under the terms and provisions of the policies reinsured under the reinsurance agreement;

   and

2. To pay to the assuming insurer amounts held in the trust account in excess of the amount necessary to secure the credit or reduction from liability for reinsurance taken by the ceding insurer; or

3. Where the ceding insurer has received notification of termination of the trust and where the assuming insurer's entire obligations under the specific reinsurance agreement remain unliquidated and undischarged

ten (10) days prior to the termination date, to withdraw amounts equal to the assuming insurer's share of liabilities, to the extent that the liabilities have not yet been funded by the assuming insurer, and deposit those amounts in a separate account, in the name of the ceding insurer in any qualified United States financial institution apart from its general assets, in trust for the uses and purposes specified in Parts 1 and 2, above, as may remain executory after withdrawal and for any period after the termination date.

(m) Either the reinsurance agreement or the trust agreement must stipulate that the assets deposited in the trust account shall be valued according to their current fair market value and shall consist only of cash in United States dollars, certificates of deposit issued by a United States bank and payable in United States dollars, and investments permitted under Title 56 of the Tennessee Code Annotated or any combination of the above, provided investments in or issued by an entity controlling, controlled by or under common control with either the grantor or the beneficiary of the trust shall not exceed five percent (5%) of total investments. The agreement may further specify the types of investments to be deposited. If the reinsurance agreement covers life, annuities or accident and health risks, then the provisions required by this paragraph must be included in the reinsurance agreement.

(3) ~~The following are permitted conditions for trust agreements qualified under Rule 0780-01-63-.08:~~ Permitted Conditions.

(a) The trust agreement may provide that the trustee may resign upon delivery of a written notice of resignation, effective not less than ninety (90) days after receipt by the beneficiary and grant or of the notice and that the trustee may be removed by the grantor by delivery to the trustee and the beneficiary of a written notice of removal, effective not less than ninety (90) days after ~~receipt by~~ the trustee and the beneficiary ~~of~~ receive the notice, provided that no such resignation or removal shall be effective until a successor trustee has been duly appointed and approved by the beneficiary and the grantor and all assets in the trust have been duly transferred to the new trustee.

(b) The grantor may have the full and unqualified right to vote any shares of stock in the trust account and to receive from time to time payments of any dividends or interest upon any shares of stock or obligations included in the trust account. Any such interest or dividends shall be either forwarded promptly upon receipt to the grantor or deposited in a separate account established in the grantor's name.

(c) The trustee may be given authority to invest, and accept substitutions of, any funds in the account, provided that no investment or substitution shall be made without prior approval of the beneficiary, unless the trust agreement specifies categories of investments acceptable to the beneficiary and authorizes the trustee to invest funds and to accept substitutions which the trustee determines are at least equal in current fair market value to the assets withdrawn and that are consistent with the restrictions in ~~part (4)(a)2., below~~ Rule 0780-01-63-.10(4)(a)(2).

(d) The trust agreement may provide that the beneficiary may at any time designate a party to which all or part of the trust assets are to be transferred. ~~Such t~~Transfer may be conditioned upon the trustee receiving, prior to or simultaneously, other specified assets.

(e) The trust agreement may provide that, upon termination of the trust account, all assets not previously withdrawn by the beneficiary shall, with written approval by the beneficiary, be delivered over to the grantor.

(4) Additional permitted conditions applicable to reinsurance agreements~~.~~:

(a) A reinsurance agreement~~, which is entered into in conjunction with a trust agreement and the establishment of a trust account,~~ may contain provisions that:

1. Require the assuming insurer to enter into a trust agreement and to establish a trust account for the benefit of the ceding insurer, and specifying what the agreement is to cover;

~~2. Stipulate that assets deposited in the trust account shall be valued according to their current fair market value and shall consist only of cash (United States legal tender), certificates of deposit (issued by a United States bank and payable in United States legal tender), and investments of the types permitted by T.C.A. § 56-3-303 respecting permitted investments for domestic insurers or any combination of the above, provided that such investments are issued by an institution that is not the parent, subsidiary or affiliate of either the grantor or the beneficiary. The reinsurance agreement may further specify the types of investments to be deposited. Where a trust agreement is entered into in conjunction with a reinsurance agreement covering risks other than life, annuities and accident and health, then the trust agreement may contain the provisions required by this subparagraph (a) in lieu of including such provisions in the reinsurance agreement;~~

~~3~~2. Require the assuming insurer, prior to depositing assets with the trustee, to execute assignments or endorsements in blank, or to transfer legal title to the trustee of all shares, obligations or any other assets requiring assignments, in order that the ceding insurer, or the trustee upon the direction of the ceding insurer, may whenever necessary negotiate these assets without consent or signature from the assuming insurer or any other entity;

~~4~~3. Require that all settlements of account between the ceding insurer and the assuming insurer be made in cash or its equivalent; and

~~5~~4. Stipulate that the assuming insurer and the ceding insurer agree that the assets in the trust account, established pursuant to the provisions of the reinsurance agreement, may be withdrawn by the ceding insurer at ~~anytime~~ any time, notwithstanding any other provisions in the reinsurance agreement, and shall be utilized and applied by the ceding insurer or its successors in interest by operation of law, including without limitation any liquidator, rehabilitator, receiver or conservator of such company, without diminution because of insolvency on the part of the ceding insurer or the assuming insurer, only for the following purposes:

(i) To pay or reimburse the ceding insurer for: ~~the assuming insurer's share of premiums returned to the owners of policies reinsured under the reinsurance agreement because of cancellations of such policies;~~

(I) The assuming insurer's share under the specific reinsurance agreement of premiums returned, but not yet recovered from the assuming insurer, to the owners of policies reinsured under the reinsurance agreement because of cancellations of such policies;

(II) The assuming insurer's share of surrenders and benefits or losses paid by the ceding insurer pursuant to the provisions of the policies reinsured under the reinsurance agreement; and

(III) Any other amounts necessary to secure the credit or reduction from liability for reinsurance taken by the ceding insurer;

and

(ii) ~~To reimburse the ceding insurer for the assuming insurer's share of surrenders and benefits or losses paid by the ceding insurer pursuant to the provisions of the policies reinsured under the reinsurance agreement;~~ To make payment to the assuming insurer of amounts held in the trust account in excess of the amount necessary to secure the credit or reduction from liability for reinsurance taken by the ceding insurer.~~;~~

~~(iii) To fund an account with the ceding insurer in an amount at least equal to the deduction, for reinsurance ceded, from the ceding insurer liabilities for policies ceded under the agreement. The account shall include, but not be limited to, amounts for policy reserves, claims and losses incurred (including losses incurred but not reported), loss adjustment expenses and unearned premium reserves; and~~

~~(iv) To pay any other amounts the ceding insurer claims are due under the reinsurance agreement.~~

(b) The reinsurance agreement may also contain provisions that:

1. Give the assuming insurer the right to seek approval from the ceding insurer, which shall not be unreasonably or arbitrarily withheld, to withdraw from the trust account all or any part of the trust assets and transfer those assets to the assuming insurer, provided:

(i) The assuming insurer shall, at the time of withdrawal, replace the withdrawn assets with other qualified assets having a current fair market value equal to the market value of the assets withdrawn so as to maintain at all times the deposit in the required amount; or

(ii) After withdrawal and transfer, the current fair market value of the trust account is no less than one hundred two ~~102~~ percent (102%) of the required amount.

~~The ceding insurer shall not unreasonably or arbitrarily withhold its approval.~~

2. Provide for~~:~~ the return of any amount withdrawn in excess of the actual amounts required for Rule 0780-01-63-.10(4)(a)(4), and for interest payments at a rate not in excess of the prime rate of interest on such amounts;

~~(i) The return of any amount withdrawn in excess of the actual amounts required for subparts (4)(a)5., (i), (ii) and (iii), above, or in the case of subpart (4)(a)5.(iv), above, any amounts that are subsequently determined not to be due; and~~

~~(ii) Interest payments, at a rate not in excess of the prime rate of interest, on the amounts held pursuant to subpart (4)(a)5. (iii), above.~~

3. Permit the award by any arbitration panel or court of competent jurisdiction of:

(i) Interest at a rate different from that provided in ~~subpart (4)(b)2.(ii)~~ Part 2, above~~,~~;

(ii) Court of arbitration costs~~,~~;

(iii) Attorney's fees~~,~~; and

(iv) Any other reasonable expenses.

(c) Financial reporting.

A trust agreement may be used to reduce any liability for reinsurance ceded to an unauthorized assuming insurer in financial statements required to be filed with this department in compliance with the provisions of this chapter when established on or before the date of filing of the financial statement of the ceding insurer. Further, the reduction for the existence of an acceptable trust account may be up to the current fair market value of acceptable assets available to be withdrawn from the trust account at that time, but such reduction shall be no greater than the specific obligations under the reinsurance agreement that the trust account was established to secure.

(d) Existing agreements.

Notwithstanding the effective date of this chapter, any trust agreement or underlying reinsurance agreement in existence prior to the effective date of this chapter will continue to be acceptable until January 1, ~~1996~~2019, at which time the agreement will have to be in full compliance with this chapter for the trust agreement to be acceptable.

(e) The failure of any trust agreement to specifically identify the beneficiary as defined in ~~paragraph (1) of this rule~~ Rule 0780-01-63-.10(1) shall not be construed to affect any actions or rights which the commissioner may take or possess pursuant to the provisions of the laws of this state.

Authority: T.C.A. §§ 56-2-208, 56-2-209, and 56-2-301.

0780-01-63-.~~10~~11 Letters of Credit Qualified Under Rule 0780-01-63-.0~~8~~9

(1) ~~Letters of credit qualified under Rule 0780-01-63-.08~~ The letter of credit must be clean, irrevocable and unconditional and issued or confirmed by a qualified United States financial institution as defined in T.C.A. § 56-2-209(c). ~~Each~~ The letter of credit shall contain an issue date and expiration date and shall stipulate that the beneficiary need only draw a sight draft under the letter of credit and present it to obtain funds and that no other document need be presented. The letter of credit shall also indicate that it is not subject to any condition or qualifications outside the letter of credit. In addition, the letter of credit itself shall not contain reference to any other agreements, documents or entities, except as provided in ~~subparagraph (9)(a)~~ Rule 0780-01-63-.11(8)(a), below. As used in this rule, "beneficiary" means the domestic insurer for whose benefit the letter of credit has been established and any successor of the beneficiary by operation of law. If a court of law appoints a successor in interest to the named beneficiary, then the named beneficiary includes and is limited to the court appointed domiciliary receiver (including conservator, rehabilitator or liquidator).

(2) The heading of the letter of credit may include a boxed section which contains the name of the applicant and other appropriate notations to provide a reference for the letter of credit. The boxed section shall be clearly marked to indicate that such information is for internal identification purposes only.

(3) The letter of credit shall contain a statement to the effect that the obligation of the qualified United States financial institution under the letter of credit is in no way contingent upon reimbursement with respect thereto.

(4) The term of the letter of credit shall be for at least one (1) year and shall contain an "evergreen clause" which prevents the expiration of the letter of credit without due notice from the issuer. The "evergreen clause" shall provide for a period of no less than thirty (30) days~~'~~ notice prior to expiration date or nonrenewal.

(5) The letter of credit shall state whether it is subject to and governed by the laws of this state or the Uniform Customs and Practice for Documentary Credits of the International Chamber of Commerce ~~(Publication 400)~~ Publication 600 (UCP 600) or International Standby Practices of the International Chamber of Commerce Publication 590 (ISP98), or any successor publication, and all drafts drawn thereunder shall be presentable at an office in the United States of a qualified United State financial institution.

(6) If the letter of credit is made subject to the Uniform Customs and Practice for Documentary Credits of the International Chamber of Commerce (Publication 4600) or International Standby practices of the International Chamber of Commerce Publication 590 (ISP98), or any successor publication, ~~then~~ the letter of credit shall specifically address and ~~make provision~~provide for an extension of time to draw against the letter of credit in the event that one or more of the occurrences specified in Article 36~~19~~ of Publication 6400 occur.

~~(7) The letter of credit shall be issued or confirmed by a qualified United States financial institution authorized to issue letters of credit, pursuant to T.C.A. § 56-2-209(c).~~

(7~~8~~) If the letter of credit is issued by a United States financial institution authorized to issue letters of credit by the laws under which it was organized, other than a qualified United States financial institution as defined in T.C.A. § 56-2-209(c), then the following additional requirements shall be met:

(a) The issuing qualified United States financial institution shall formally designate the confirming qualified United States financial institution as its agent for the receipt and payment of the drafts, and

(b) The "evergreen clause" shall provide for thirty (30) days notice prior to expiration date or nonrenewal.

(8~~9~~) Reinsurance agreement provisions.

(a) The reinsurance agreement in conjunction with which the letter of credit is obtained may contain provisions which:

1. Require the assuming insurer to provide letters of credit to the ceding insurer and specify what they are to cover.

2. Stipulate that the assuming insurer and ceding insurer agree that the letter of credit provided by the assuming insurer pursuant to the provisions of the reinsurance agreement may be drawn upon at any time, notwithstanding any other provisions in the agreement, and shall be utilized by the ceding insurer or its successors in interest only for one or more of the following reasons:

(i) To pay or reimburse the ceding insurer for:

(I) The assuming insurer's share under the specific reinsurance agreement of premiums returned, but not yet recovered from the assuming insurers, to the owners

of policies reinsured under the reinsurance agreement on account of cancellations of such policies;

(II) The assuming insurer's share, under the specific reinsurance agreement, of surrenders and benefits or losses paid by the ceding insurer, but not yet recovered from the assuming insurers, under the terms and provisions of the policies reinsured under the reinsurance agreement; and

(III) Any other amounts necessary to secure the credit or reduction from liability for reinsurance taken by the ceding insurer;

(ii) Where the letter of credit will expire without renewal or be reduced or replaced by a letter of credit for a reduced amount and where the assuming insurer's entire obligations under the reinsurance agreement remain unliquidated and undischarged ten (10) days prior to the termination date, to withdraw amounts equal to the assuming insurer's share of the liabilities, to the extent that the liabilities have not yet been funded by the assuming insurer and exceed the amount of any reduced or replacement letter of credit, and deposit of those amounts in a separate account in the name of the ceding insurer in a qualified U.S. financial institution apart from its general assets, in trust for such uses and purposes as specified in Rule 0780-01-63-.11(8)(a)(2)(i) as may remain after withdrawal and for any period after the termination date.

~~(i) To reimburse the ceding insurer for the assuming insurer's share of premiums returned to the owners of policies reinsured under the reinsurance agreement on account of cancellations of such policies;~~

~~(ii) To reimburse the ceding insurer for the assuming insurer's share of surrenders and benefits or losses paid by the ceding insurer under the terms and provisions of the policies reinsured under the reinsurance agreement;~~

~~(iii) To fund an account with the ceding insurer in an amount at least equal to the deduction, for reinsurance ceded, from the ceding insurer's liabilities for policies ceded under the agreement (such amount shall include, but not be limited to, amounts for policy reserves, claims and losses incurred and unearned premium reserves); and~~

~~(iv) To pay any other amounts the ceding insurer claims are due under the reinsurance agreement.~~

3. All of the foregoing provisions of subparagraph (a) should be applied without diminution because of insolvency on the part of the ceding insurer or assuming insurer.

(b) Nothing contained in subparagraph (a), above, shall preclude the ceding insurer and assuming insurer from providing for:

1. An interest payment, at a rate not in excess of the prime rate of interest, on the amounts held pursuant to ~~subpart (a)2. (iii), above~~ Rule 0780-01-63-.11(8)(a)(2); ~~and/~~or

2. The return of any amounts drawn on the letters of credit in excess of the actual amounts required for the above or~~, in the case of subpart (a)2. (iv), above,~~ any amounts that are subsequently determined not to be due.

~~(c) When a letter of credit is obtained in conjunction with a reinsurance agreement covering risks other than life, annuities and health, where it is customary practice to provide a letter of credit for a specific purpose, then the reinsurance agreement may, in lieu of part (a)2., above, require that the parties enter into a "Trust Agreement" which may be incorporated into the reinsurance agreement or be a separate document.~~

~~(10) A letter of credit may not be used to reduce any liability for reinsurance ceded to an unauthorized assuming insurer in financial statements required to be filed with this department unless an acceptable letter of credit with the filing ceding insurer as beneficiary has been issued on or before the date of filing of the financial statement. Further, the reduction for the letter of credit may be up to the amount available under the letter of credit but no greater than the specific obligation under the reinsurance agreement which the letter of credit was intended to secure.~~

Authority: T.C.A. §§ 56-2-208, 56-2-209, and 56-2-301.

0780-01-63-.~~11~~12 Other Security.

A ceding insurer may take credit for unencumbered funds withheld by the ceding insurer in the United States subject to withdrawal solely by the ceding insurer and under its exclusive control.

Authority: T.C.A. §§ 56-2-208, 56-2-209, and 56-2-301.

0780-01-63-.~~12~~13 Reinsurance Contract.

~~(1)~~ Credit will not be granted, nor an asset or reduction from liability allowed, to a ceding insurer for reinsurance effected with assuming insurers meeting the requirements of Rule 0780-01-63-.03, Rule 0780-01-63-.04, Rule 0780-01-63-.05, Rule 0780-01-63-.06, Rule 0780-01-63-.07 or Rule 0780-01-63-.08~~9~~ ~~of this chapter~~ or otherwise in compliance with T.C.A. §§ 56-2-208 and 56-2-209 after the adoption of this chapter unless the reinsurance agreement:

~~(a)~~ (1) Includes a proper insolvency clause, which stipulates that reinsurance is payable directly to liquidator or successor without diminution regardless of the status of the ceding company, pursuant to T.C.A. § 56-2-207; ~~and~~

~~(b)~~ (2) Includes a provision pursuant to T.C.A. § 56-6-208~~(6)~~(b) whereby the assuming insurer, if an unauthorized assuming insurer, has submitted to the jurisdiction of an alternative dispute resolution panel or court of competent jurisdiction within the United States, has agreed to comply with all requirements necessary to give such court or panel jurisdiction, has designated an agent upon whom service of process may be effected, and has agreed to abide by the final decision of the court or panel~~.~~; and

(3) Includes a proper reinsurance intermediary clause, if applicable, which stipulates that the credit risk for the intermediary is carried by the assuming insurer.

Authority: T.C.A. §§ ~~56-2-207,~~ 56-2-208~~(6)~~, 56-2-209~~(e)~~, and 56-2-301.

0780-01-63-.~~13~~14 Contracts Affected.

All new and renewal reinsurance transactions entered into after the effective date of this chapter shall conform to the requirements of ~~this chapter in addition to the Tennessee Insurance Code and any other rules affecting reinsurance (such as Rule 0780-01-62) if credit is to be given to the~~

~~ceding insurer for such reinsurance~~ T.C.A. §§ 56-2-207, 56-2-208, and 56-2-209 and this chapter if credit is to be given to the ceding insurer for such reinsurance.

Authority: T.C.A. §§ 56-2-207, 56-2-208, 56-2-209~~(e)~~, and 56-2-301.

0780-01-63-.~~14~~15 Severability.

If any provision of this chapter, or ~~their application to any person or circumstance, is held invalid, such determination shall not affect other provisions or applications of this chapter which can be given effect without the invalid provision or application, and to that end the provisions of this chapter are severable.~~ the application of the provision to any person or circumstance, is held invalid, the remainder of the chapter, and the application of the provision to persons or circumstances other than those to which it is held invalid, shall not be affected.

Authority: T.C.A. §§ 56-2-208, 56-2-209~~(e)~~, and 56-2-301.

APPENDIX A: FORM AR-1

FORM AR-1

CERTIFICATE OF ASSUMING INSURER

I, _____, _____
(name of officer) (title of officer)

of _____, the assuming insurer
(name of assuming insurer)

under a reinsurance agreement with one or more insurers domiciled in

_____, hereby certify that
(name of state)

_____ ("Assuming Insurer"):
(name of assuming insurer)

1. Submits to the jurisdiction of any court of competent jurisdiction in _____
(ceding insurer's state of domicile)

for the adjudication of any issues arising out of the reinsurance agreement, agrees to comply with all requirements necessary to give such court jurisdiction, and will abide by the final decision of such court or any appellate court in the event of an appeal. Nothing in this paragraph constitutes or should be understood to constitute a waiver of Assuming Insurer's rights to commence an action in any court of competent jurisdiction in the United States, to remove an action to a United States District Court, or to seek a transfer of a case to another court as permitted by the laws of the United States or of any state in the United States. This paragraph is not intended to conflict with or override the obligation of the parties to the reinsurance agreement to arbitrate their disputes if such an obligation is created in the agreement.

2. Designates the Insurance Commissioner of _____
(ceding insurer's state of domicile)
as its lawful attorney upon whom may be served any lawful process in any action, suit or proceeding arising out of the reinsurance agreement instituted by or on behalf of the ceding insurer.

3. Submits to the authority of the Insurance Commissioner of _____ to examine
(ceding insurer's state of domicile)
its books and records and agrees to bear the expense of any such examination.

4. Submits with this form a current list of insurers domiciled in _____
(ceding insurer's state of domicile)
reinsured by Assuming Insurer and undertakes to submit additions to or deletions from the list to the Insurance Commissioner at least once per calendar quarter.

Dated: _____
(name of assuming insurer)

BY: _____
(name of officer)

_____
(title of officer)

FORM AR-1
CERTIFICATE OF ASSUMING INSURER

I, _____ _____
(name of officer) (title of officer)

of _____, the assuming insurer
(name of assuming insurer)

under a reinsurance agreement(s) with one or more insurers domiciled in

_____, hereby certify that
(name of state)

_____ ("Assuming Insurer"):
(name of assuming insurer)

1. Submits to the jurisdiction of any court of competent jurisdiction in

_____
(ceding insurer's state of domicile)

for the adjudication of any issues arising out of the reinsurance agreement(s), agrees to comply with all requirements necessary to give such court jurisdiction, and will abide by the final decision of such court or any appellate court in the event of an appeal. Nothing in this paragraph constitutes or should be understood to constitute a waiver of Assuming Insurer's rights to commence an action in any court of competent jurisdiction in the United States, to remove an action to a United States District Court, or to seek a transfer of a case to another court as permitted by the laws of the United States or of any state in the United States. This paragraph is not intended to conflict with or override the obligation of the parties to the reinsurance agreement(s) to arbitrate their disputes if such an obligation is created in the agreement(s).

2. Designates the Insurance Commissioner of _____
(ceding insurer's state of domicile)

as its lawful attorney upon whom may be served any lawful process in any action, suit or proceeding arising out of the reinsurance agreement(s) instituted by or on behalf of the ceding insurer.

3. Submits to the authority of the Insurance Commissioner of

_____ to examine its books and records
(ceding insurer's state of domicile)

and agrees to bear the expense of any such examination.

4. Submits with this form a current list of insurers domiciled in

_____ reinsured by Assuming Insurer and
(ceding insurer's state of domicile)

undertakes to submit additions to or deletions from the list to the Insurance Commissioner at least once per calendar quarter.

Dated: _____ _____
(name of assuming insurer)

BY: _____
(name of officer)

_____
(title of officer)

APPENDIX B: FORM CR-F

Form CR-F – PART 1
Assumed Reinsurance as of December 31, Current Year (000 Omitted)

1	2	3	4	6	Reinsurance On			9	10	11	12	13	14	15
					6	7	8							
Company Code or ID Number		Name of Reinsured	Domiciliary Jurisdiction	Assumed Premium	Paid Losses and Loss Adjustment Expenses	Known Case Losses and LAE	Cols. 6 + 7	Contingent Commissions Payable	Assumed Premiums Receivable	Unearned Premium	Funds Held By or Deposited With Reinsured Companies	Letters of Credit Posted	Amount of Assets Pledged or Compensating Balances to Secure Letters of Credit	Amount of Assets Pledged or Collateral Held in Trust
9999999 Totals														

Form CR-F – PART 2
Ceded Reinsurance as of December 31, Current Year (000 Omitted)

1	2	3	4	5	6	Reinsurance Recoverable On									Reinsurance Payable		18	19
						7	8	9	10	11	12	13	14	15	16	17		
Company Code or ID Number		Name of Reinsurer	Domiciliary Jurisdiction	Reinsurance Contracts Ceding 75% or More of Direct Premiums Written	Reinsurance Premiums Ceded	Paid Losses	Paid LAE	Known Case Loss Reserves	Known Case LAE Reserves	IBNR Loss Reserves	IBNR LAE Reserves	Unearned Premiums	Contingent Commissions	Cols. 7 through 14 Totals	Ceded Balances Payable	Other Amounts Due to Reinsurers	Net Amount Recoverable from Reinsurers Cols. 15 – [16 + 17]	Funds Held by Company Under Reinsurance Treaties
9999999 Totals																		

APPENDIX C: FORM CR-S

Form CR-S – PART 1 – SECTION 1

Reinsurance Assumed Life Insurance, Annuities, Deposit Funds and Other Liabilities
Without Life or Disability Contingencies, and Related Benefits Listed by Reinsured Company as of December 31, Current Year

1 Company Code or ID Number	2	3 Effective Date	4 Name of Reinsured	5 Location	6 Type of Reinsurance Assumed	7 Amount of In Force at End of Year	8 Reserve	9 Premiums	10 Reinsurance Payable on Paid and Unpaid Losses	11 Modified Coinsurance Reserve	12 Funds Withheld Under Coinsurance
Totals											

Form CR-S – PART 1 – SECTION 2

Reinsurance Assumed Accident and Health Insurance Listed by Reinsured Company as of December 31, Current Year

1 Company Code or ID Number	2	3 Effective Date	4 Name of Reinsured	5 Domiciliary Jurisdiction	6 Type of Reinsurance Assumed	7 Premiums	8 Unearned Premiums	9 Reserve Liability Other Than For Unearned Premiums	10 Reinsurance Payable on Paid and Unpaid Losses	11 Modified Coinsurance Reserve	12 Funds Withheld Under Coinsurance
Totals											

Form CR-S – PART 2

Reinsurance Recoverable on Paid and Unpaid Losses Listed by Reinsuring Company as of December 31, Current Year

1 Company Code or ID Number	2	3 Effective Date	4 Name of Company	5 Location	6 Paid Losses	7 Unpaid Losses
Totals—Life, Annuity and Accident and Health						

Form CR-S – PART 3 – SECTION 1

Reinsurance Ceded Life Insurance, Annuities, Deposit Funds and Other Liabilities Without Life or Disability Contingencies, and Related Benefits Listed by Reinsuring Company as of December 31, Current Year

1 Company Code or ID Number	2	3 Effective Date	4 Name of Company	5 Location	6 Type of Reinsurance Ceded	7 Amount in Force at End of Year	Reserve Credit Taken		10 Premiums	Outstanding Surplus Relief		13 Modified Coinsurance Reserve	14 Funds Withheld Under Coinsurance
							8 Current Year	9 Prior Year		11 Current Year	12 Prior Year		
Totals													

APPENDIX C: FORM CR-S (continued)

Form CR-S – PART 3 – SECTION 2

Reinsurance Ceded Accident and Health Insurance Listed by Reinsuring Company as of December 31, Current Year

1 Company Code or ID Number	2	3 Effective Date	4 Name of Company	5 Location	6 Type	7 Premiums	8 Unearned Premiums (Estimated)	9 Reserve Credit Taken Other than for Unearned Premiums	Outstanding Surplus Relief 10 Current Year	 11 Prior Year	12 Modified Coinsurance Reserve	13 Funds Withheld Under Coinsurance
Totals												

APPENDIX D: FORM CR-1

FORM CR-1

CERTIFICATE OF CERTIFIED REINSURER

I, _____, _____
(name of officer) (title of officer)

of _____, the assuming insurer
(name of assuming insurer)

under a reinsurance agreement with one or more insurers domiciled in _____,
in order to be considered for approval in this state, hereby certify that (name of state)

_____ ("Assuming Insurer"):
(name of assuming insurer)

1. Submits to the jurisdiction of any court of competent jurisdiction in _____
(ceding insurer's state of domicile)
for the adjudication of any issues arising out of the reinsurance agreement, agrees to comply with all requirements necessary to give such court jurisdiction, and will abide by the final decision of such court or any appellate court in the event of an appeal. Nothing in this paragraph constitutes or should be understood to constitute a waiver of Assuming Insurer's rights to commence an action in any court of competent jurisdiction in the United States, to remove an action to a United States District Court, or to seek a transfer of a case to another court as permitted by the laws of the United States or of any state in the United States. This paragraph is not intended to conflict with or override the obligation of the parties to the reinsurance agreement to arbitrate their disputes if such an obligation is created in the agreement.

2. Designates the Insurance Commissioner of _____
(ceding insurer's state of domicile)
as its lawful attorney upon whom may be served any lawful process in any action, suit or proceeding arising out of the reinsurance agreement instituted by or on behalf of the ceding insurer.

3. Agrees to provide security in an amount equal to 100% of liabilities attributable to U.S. ceding insurers if it resists enforcement of a final U.S. judgment or properly enforceable arbitration award.

4. Agrees to provide notification within 10 days of any regulatory actions taken against it, any change in the provisions of its domiciliary license or any change in its rating by an approved rating agency, including a statement describing such changes and the reasons therefore.

5. Agrees to annually file information comparable to relevant provisions of the NAIC financial statement for use by insurance markets in accordance with [cite relevant provision of the state equivalent of the Credit for Reinsurance Model Regulation].

6. Agrees to annually file the report of the independent auditor on the financial statements of the insurance enterprise.

7. Agrees to annually file audited financial statements, regulatory filings, and actuarial opinion in accordance with [cite relevant provision of the state equivalent of the Credit for Reinsurance Model Regulation].

8. Agrees to annually file an updated list of all disputed and overdue reinsurance claims regarding reinsurance assumed from U.S. domestic ceding insurers.

9. Is in good standing as an insurer or reinsurer with the supervisor of its domiciliary jurisdiction.

Dated: _____
(name of assuming insurer)

_____ BY: _____
(name of officer)

_____
(title of officer)

Board Member	Aye	No	Abstain	Absent	Signature (if required)
N/A					

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the Commissioner (board/commission/ other authority) on 01/30/2018 (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: 10/30/2017

Rulemaking Hearing(s) Conducted on: (add more dates). 1/9/2018

DENISE M. LEWIS
STATE OF TENNESSEE NOTARY PUBLIC
WILSON COUNTY, TENN.
My Commission Expires

Date: 1/30/18

Signature: Julie Mix McPeak

Name of Officer: Julie Mix McPeak

Title of Officer: Commissioner

Subscribed and sworn to before me on: 1/30/18

Notary Public Signature: Denise M. Lewis

My commission expires on: 1/15/20

Agency/Board/Commission: Tennessee Department of Commerce & Insurance

Rule Chapter Number(s): 0780-01-63

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

Herbert H. Slatery III

Herbert H. Slatery III
Attorney General and Reporter

3/1/2018
Date

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Filed with the Department of State on: 3/2/18

Effective on: 5/31/18

Tre Hargett
Secretary of State

G.O.C. STAFF RULE ABSTRACT

DEPARTMENT:	Austin Peay State University
DIVISION:	
SUBJECT:	Traffic and Parking Regulations
STATUTORY AUTHORITY:	Tennessee Code Annotated, Section 49-9-209(e); Public Acts 1839-1840, Ch. 98, § 5; and Public Acts 1807, Ch. 64
EFFECTIVE DATES:	June 12, 2018 through June 30, 2019
FISCAL IMPACT:	None
STAFF RULE ABSTRACT:	The purpose of these regulations is to facilitate the safe and orderly operation of University business and to provide parking facilities for this operation within the limits of available space. The rules define how to register motor vehicles who utilize parking lots owned by Austin Peay State University. They also describe designated parking zones and the criteria for parking in each zone. Further, the rule defines acceptable vehicle operators as well as violations, which would subject vehicle operators to fines. Finally, the rule clearly designates financial penalties for operators who receive violations.

Regulatory Flexibility Addendum

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

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

Impact on Local Governments

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

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

Additional Information Required by Joint Government Operations Committee

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

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

The purpose of these regulations is to facilitate the safe and orderly operation of University business and to provide parking facilities for this operation within the limits of available space. The rules define how to register motor vehicles who utilize parking lots owned by Austin Peay State University. They also describe designated parking zones and the criteria for parking in each zone. Further, the rule defines acceptable vehicle operators as well as violations, which would subject vehicle operators to fines. Finally, the rule clearly designates financial penalties for vehicle operators who receive violations.

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

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

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

It is essential that the Board adopt rules concerning traffic and parking to provide guidance to students, faculty, staff, and visitors to APSU. Similar rules were in place when APSU was under the Tennessee Board of Regents. Now that APSU has its own Board of Trustees, it is necessary to promulgate this rule. The rule impacts all persons operating motor vehicles on streets or lots owned by APSU. The Board urges adoption of these rules.

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

Not applicable.

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

Not applicable.

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

Michael J. Kasitz
Chief of Police
Austin Peay State University

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

Dannelle Whiteside
General Counsel
Austin Peay State University

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

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

Dannelle Whiteside General Counsel Austin Peay State University 931-221-7580 whitesided@apsu.edu Chief Michael J. Kasitz Chief of Police Austin Peay State University (931) 221-7786 kasitzj@apsu.edu

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

None.

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Email: publications.information@tn.gov

For Department of State Use Only

Sequence Number: 03-14-18
Rule ID(s): 6719
File Date: 3/14/18
Effective Date: 6/12/18

Proposed Rule(s) Filing Form

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

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

Agency/Board/Commission:	Austin Peay State University
Division:	
Contact Person:	Dannelle Whiteside
Address:	601 College Street, P.O. Box 4628 Clarksville, TN
Zip:	37044
Phone:	931-221-7580
Email:	whitesided@apsu.edu

Revision Type (check all that apply):

____ Amendment
_x_ New
____ Repeal

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

Chapter Number	**Chapter Title**
0240-05-01	Traffic and Parking Regulations
Rule Number	**Rule Title**
0240-05-01-.01	Introduction
0240-05-01-.02	Registration of Vehicles
0240-05-01-.03	Parking Zones
0240-05-01-.04	Vehicle Operation
0240-05-01-.05	Violations
0240-05-01-.06	Enforcement
0240-05-01-.07	Penalties
0240-05-01-.08	Appeals
0240-05-01-.09	Restrictions
0240-05-01-.10	Special Occasions and Emergencies
0240-05-01-.11	Pedestrian

Rules
of
Austin Peay State University

Chapter 0240-05-01
Traffic and Parking Regulations

Table of Contents

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0240-05-01-.02 Registration of Vehicles
0240-05-01-.03 Parking Zones
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0240-05-01-.06 Enforcement
0240-05-01-.07 Penalties
0240-05-01-.08 Appeals
0240-05-01-.09 Restrictions
0240-05-01-.10 Special Occasions and Emergencies
0240-05-01-.11 Pedestrian

0240-05-01-.01 Introduction.

(1) The purpose of these regulations is to facilitate the safe and orderly operation of Austin Peay State University ("The University") business and to provide parking facilities for this operation within the limits of available space.

(2) The Office of Public Safety is 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 a 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 APSU or on lots leased by APSU.

Authority: §49-9-209(e), Public Acts of Tennessee, 1839-1840, chapter 98, Section 5 and Public Acts of Tennessee, 1807, chapter 64, 40 C.F.R. §85.1703 (defining motor vehicles).

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

(1) All motor vehicles parked on APSU property between 7:30 a.m. and 4:30 p.m. or on lots leased by APSU must have a current APSU permit and be registered with APSU. Housing lots require a valid parking permit twenty-four (24) hours a day, seven (7) days a week.

(2) Permits are available for pickup/purchase at Parking Services. Students receive a permit as part of their access fee. Faculty and staff must purchase a parking permit.

(3) The permit must be hung on the rear view mirror of the vehicle. If the mirror prevents the permit from hanging, the permit must be displayed near the rear view mirror.

(4) Expired permits should be removed (or covered) so that only the current permit is displayed.

(5) Permits must be renewed at the beginning of each Fall semester and will be valid until the beginning of the following Fall semester so long as the registrant remains a student or an APSU employee.

(6) Hanging parking permits are issued to persons, not vehicles, and are required to be affixed to a vehicle. Permit holders are responsible for citations incurred with their permit and/or vehicle. Persons will also be held liable for a violation incurred by a vehicle, when that vehicle is reasonably shown to be associated to that person.

(7) Persons are entitled to only one (1) category of parking permit at a time. Persons will be identified by their primary affiliation with APSU. Graduate assistants and part-time student workers are eligible for student parking permits only.

(8) Permit holders are only eligible for one (1) parking permit at a time. This permit can be moved from one (1) vehicle to another. A second parking permit may be issued to students who live in married housing. Faculty/Staff/Students who present extraordinary circumstances may be authorized to have a second parking permit with the approval of the Director of Public Safety/Chief of Police. The cost of a second permit, if authorized, will be equal to the APSU access fee for parking. This fee will be prorated if purchased after the first month of the Fall semester.

(9) Permits are not transferable to any person other than the registrant, particularly to a person in a different parking category.

(10) Only persons who are neither students, nor faculty/staff are entitled to a visitor parking permit.

(11) Lost or stolen permits will be replaced for $10.00 upon making a report to Parking Services.

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

0240-05-01-.03 Parking Zones

(1) Parking is permitted only in marked areas with painted control lines. Parking is not permitted in seeded areas or gravel service areas utilized by Physical Plant.

(2) Faculty or Staff – Zone Color Red – Full-time faculty, staff, contract service employees, and adjunct instructors are authorized for this zone. Valid permits must be displayed between 7:30 a.m. and 4:30 p.m., Monday through Friday when APSU is in session.

(3) Resident Student – Zone Color Silver – Students who reside in the on-campus residence halls are authorized for this zone. Valid permits must be displayed twenty-four (24) hours a day, seven (7) days a week.

(4) Commuter Student and Married Housing – Zone Color Green – Students who reside off campus and students who reside in married housing are authorized for this zone. Valid permits must be displayed between 7:30 a.m. and 4:30 p.m., Monday through Friday when APSU is in session.

(5) Overflow – Zone Color Black – Any valid APSU permit is authorized for this zone. Valid permits must be displayed between 7:30 a.m. and 4:30 p.m., Monday through Friday when APSU is in session.

(6) ADA Accessible Parking – Zone Color Light-Blue – Persons utilizing ADA spaces on campus must have a placard issued by any state. Students, faculty, and staff who have a state issued placard must be registered with APSU Parking Services. APSU Parking checks to ensure the state issued placard is issued to the registrant and issues an APSU ADA Accessible parking permit. ADA Accessible Permit holders are authorized to park in any parking space on campus, except those spaces specifically reserved with a sign (example: Electric Vehicle Charging). Valid permits or state issued placards for ADA Accessible parking spaces must be displayed twenty-four (24) hours a day, seven (7) days a week.

(7) Visitor Parking Spaces – Visitor parking permits are issued by Parking Services. Areas where visitors can park will be listed on the parking permit provided. Visitor parking permits are available twenty-four (24) hours a day, seven (7) days a week at the Shasteen Building. APSU Departments may request visitor permits in advance by contacting Parking Services. Marked visitor spaces are enforced between 7:30 a.m. and 4:30 p.m., Monday through Friday, when APSU is in session.

(8) Yellow curbs, yellow or white striped areas, and yellow bumper blocks. No parking is permitted in these areas. These areas are enforced twenty-four (24) hours a day, seven (7) days a week.

(9) Temporary Parking Permits– Temporary permits are issued to community members who qualify for zoned parking but do not have their permit in their possession at the time they need to park. Temporary permits are available twenty-four (24) hours a day, seven (7) days a week.

(10) Motorcycle Parking –

(a) All motorcycles are to be parked in a parking space in their designated zone or in motorcycle only parking spaces.

(b) Motorcycles are not to block stairways, sidewalks, or pedestrian access.

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

0240-05-01-.04 Vehicle Operation.

(1) All persons operating a motor vehicle on APSU property or in the campus area, which includes City streets running through APSU 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) The maximum speed limit on the APSU campus and city streets are clearly marked. Streets interior to APSU campus are limited to twenty (20) mph. However, motor 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 motor 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 a roadway intended for motor vehicles is prohibited.

(7) All accidents must be reported to APSU Police immediately (931-221-7786). All motor vehicle break-ins or incidents should also be reported immediately.

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

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

(1) Parking Violations

(a) Out of Zone;

(b) Not a Parking Space;

(c) Loading Zone;

(d) Parking on Yellow Curb/No Parking Zone;

(e) Blocking Traffic;

(f) Parked Facing Traffic;

(g) Occupying Two (2) (or more) Spaces;

(h) Outside of Designated Space;

(i) Within Fifteen (15) feet of Fire Hydrant;

(j) Within Twenty (20) feet of entrance/exit/intersection;

(k) On Seeded Areas;

(l) Failure to Display Permit;

(m) No Permit or Improper Display of Permit;

(n) Altered, Lost, or Stolen Permit;

(o) Reserved – Visitor;

(p) Reserved – ADA Accessible Parking Only; and

(q) Warning Only.

(2) Moving Violations

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

(b) Failure to yield to pedestrian in crosswalk;

(c) Traveling wrong way on one-way street;

(d) Operating a motor vehicle off a marked roadway;

(e) Speeding;

(f) Failure to yield right of way;

(g) Failure to obey lawful directions of a police officer;

(h) Failure of motorcycle operator or rider to wear required headgear; and

(i) Failure to yield to emergency vehicle.

(3) Impounded Vehicle/Towed Vehicle

(a) APSU may tow without advance notice those motor vehicles parked in a fire lane, designated ADA accessible parking space, spaces reserved for designated vehicles or in such a manner as to impede the flow of traffic or to disrupt the orderly affairs of APSU.

(b) If a motor vehicle has unpaid parking citations APSU may impound/tow the vehicle, if advance notice and opportunity to contest have been given. Windshield notices and/or other methods of notification will be used to provide the operator of the vehicle with advance notice of APSU's intent to tow and the operator's right to a hearing.

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

0240-05-01-.06 Enforcement.

(1) The Office of Public Safety and Campus Police are tasked with enforcement of the parking regulations. The Director/Chief of Police is authorized to selectively enforce or not enforce certain regulations and parking categories based on special events and circumstances that require special accommodations.

(2) A motor vehicle parked in a manner which blocks a fire zone, emergency exit, flow of traffic, designated ADA accessible parking space, spaces reserved for designated vehicles, or otherwise poses a danger or disrupts the orderly affairs of APSU may be impounded, immobilized, or towed.

(3) A motor vehicle which has accumulated one hundred dollars ($100.00) or more in unpaid citations may be immobilized or towed.

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

0240-05-01-.07 Penalties.

(1) Parked in Visitor, maintenance, or emergency vehicle space: $35.00

(2) Parked in ADA Accessible Space: $200.00 - The fine for this parking violation is set by State law, T.C.A. §55-21-108. As of July 1, 2008, the fine was set at $200. The fine imposed under these regulations will increase or decrease automatically when increased or decreased by State law.

(3) All other parking violations: $25.00

(4) All moving violations when written as an APSU citation: $35.00

(5) Other Penalties

(a) Students who fail to pay violation fines or penalties will not be permitted to register for course work, to continue as a student, to receive credit, to receive a degree, or to obtain a transcript until the fines or penalties are paid.

(b) Repeated violations of parking regulations will be grounds for towing away, impoundment or immobilization in accordance with regulations under enforcement.

(c) Students who persist in violating these regulations or commit a single violation under extreme circumstances will be referred to the Dean of Students' office for disciplinary action which may lead to suspension or dismissal from APSU.

(d) Once a motor vehicle or owner has accumulated one hundred dollars ($100.00) of unpaid fines, his or her motor vehicle, if found parked upon APSU property or lots leased by APSU, will be immobilized or towed in accordance with regulations under 0240-05-01-.06 Enforcement.

(e) Any individual (student, faculty or staff) with outstanding citations will not be allowed to register a motor vehicle or purchase a parking permit until indebtedness is cleared.

(f) Repeated violations may result in the loss of parking privileges.

Authority: T.C.A. §49-9-209(e).

0240-05-01-.08 Appeals.

(1) Upon receipt of a citation, persons have three (3) class days to submit an appeal.

(2) Appeal forms are completed and submitted electronically through the parking management software.

(3) Issuing officers will be afforded the opportunity to comment on appeals before they are presented to the appeal authority.

(4) The Student Tribunal shall hear and decide all student appeals.

(5) Students may further appeal the Tribunal's decision to the Vice President of Student Affairs, or designee, within three (3) class days of the finding by Student Tribunal.

(6) When APSU is not in session, the Dean of Students will hear and decide appeals.

(7) Staff and visitors' appeals shall be heard by a committee consisting of the Faculty Senate Chair or designee, Staff Council Chair or designee, and the Dean of Students.

(8) Anyone failing to appeal within three (3) class days of issuance of citation loses the right to appeal.

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

0240-05-01-.09 Restrictions. APSU streets or grounds may not be used by any firm, corporation or person for advertising or commercial purposes.

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

0240-05-01-.10 Special Occasion 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 Office of Public Safety and Campus Police as required by the conditions which prevail.

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

0240-05-01-.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) Violations of these regulations will be cited through appropriate channels for disciplinary action.

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

I certify that this is an accurate and complete copy of proposed rules, lawfully promulgated and adopted by Austin Peay State University on 05/19/17, 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.

VERONICA JACKSON
STATE OF TENNESSEE NOTARY PUBLIC
MONTGOMERY COUNTY

Date: 11-13-17

Signature: Alisa White

Name of Officer: Dr. Alisa White

Title of Officer: President, APSU

Subscribed and sworn to before me on: November 13, 2017

Notary Public Signature: Veronica Jackson

My commission expires on: December 16, 2020

Agency/Board/Commission: Austin Peay State University

Rule Chapter Number(s): 0240

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

12/12/2017
Date

Department of State Use Only

Filed with the Department of State on: 3/14/18

Effective on: 6/12/18

Tre Hargett
Secretary of State

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G.O.C. STAFF RULE ABSTRACT

DEPARTMENT:	Board of Trustees of the College Savings Trust Fund Program
DIVISION:	Financial Empowerment
SUBJECT:	Tennessee Baccalaureate Education System Trust
STATUTORY AUTHORITY:	Tennessee Code Annotated, Section 49-7-805
EFFECTIVE DATES:	June 3, 2018 through June 30, 2019
FISCAL IMPACT:	None
STAFF RULE ABSTRACT:	The proposed rules amend the current rules so that they are consistent with changes in the applicable law for the College Savings Trust Fund Program. Tenn. Code Ann. § 49-7-802 through § 49-7-826 was amended in 2014 and 2017 and the statutory changes are contained in Chapter 910 of the 2014 Public Acts and Chapter 400 of the 2017 Public Acts. Public Chapter 910 (2014) changed the name of the educational savings plan to the educational investment plan as one of the qualified tuition plans authorized by Title 49, Chapter 7, Part 8, and also added the authority to establish one (1) or more educational investment plan or plans which may consist of several different investment offerings. Public Chapter 400 (2017) changed the name of the Board from the Board of Trustees of the Baccalaureate Education System Trust Fund Program to the Board of Trustees of the College Savings Trust Fund Program. The 2017 statutory amendments also changed the composition of the Board to remove the Executive Director for the Tennessee Student Assistance Corporation since it is the same person as the Executive Director of the Tennessee Higher Education Commission, who is also a member of the Board. Additionally, the law was amended to add a rotating representative from one (1) of the six (6) public state institutions that are independent from the Board of Regents, and they are as follows: Austin Peay State University; East Tennessee State University; Middle Tennessee State University; Tennessee State University;

Tennessee Technological University; or The University of Memphis. In light of the 2017 statutory changes, the proposed rules change the definition of "Board" and change any references to the Board composition.

In addition to ensuring that the rules are consistent with current law, the proposed rules also amend Rule 1700-05-01-.11 relative to a plan termination. In August of 2015, the Board voted to terminate the educational services plan or the pre-paid tuition plan and closed the plan to new participants; the final plan termination date was November 30, 2015. Pursuant to T.C.A. § 49-7-824, a purchaser's tuition contract terminates when the plan terminates unless the purchaser's beneficiary is allowed to remain in the plan. Section 49-7-824(b) allows beneficiaries who have been accepted by or enrolled in an institution of higher education or are projected to graduate from high school no later than the third anniversary of the date the plan is terminated, to remain in the plan. For those beneficiaries who are not allowed to remain in the plan, the purchaser must make a written request to roll the tuition account over to another qualified tuition program. The law provides that if the purchaser does not make the request by the final plan termination date, then a refund shall be made to the person designated in the contract to receive the refund.

In an effort to ensure that those beneficiaries who have been allowed to remain in the plan as of the plan termination date, still meet the requirements in the law to continue remaining in the plan, the proposed rules outline the documentation that a purchaser would have to provide demonstrating that the beneficiary has either been accepted or enrolled in an institution of higher education or is projected to graduate high school no later than the third anniversary of the plan termination date. The proposed rules provide that should a purchaser provide the appropriate documentation showing that his or her beneficiary can remain in the plan, then the beneficiary's tuition unit shall be based on the weighted average tuition effective for the academic year in which the purchaser provides the documentation certifying that the beneficiary is eligible to remain in the plan. Should a purchaser fail to provide the appropriate documentation each year or have never provided the appropriate documentation to demonstrate the beneficiary's eligibility to remain in the plan, then the purchaser's contract shall be terminated and any refund or rollover amount shall be paid out at the weighted average tuition when eligibility documentation was last provided or when the plan was terminated (in the event that eligibility documentation was never provided).

Regulatory Flexibility Addendum

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

Not applicable.

Impact on Local Governments

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

None.

Additional Information Required by Joint Government Operations Committee

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

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

The proposed rules amend the current rules so that they are consistent with changes in the applicable law for the College Savings Trust Fund Program. Tenn. Code Ann. §49-7-802 through §49-7-826 was amended in 2014 and 2017 and the statutory changes are contained in Chapter 910 of the 2014 Public Acts and Chapter 400 of the 2017 Public Acts. Public Chapter 910 (2014) changed the name of the educational savings plan to the educational investment plan as one of the qualified tuition plans authorized by Title 49, Chapter 7, Part 8, and also added the authority to establish one (1) or more educational investment plan or plans the which may consist of several different investment offerings. Public Chapter 400 (2017) changed the name of the Board from the Board of Trustees of the Baccalaureate Education System Trust Fund Program to the Board of Trustees of the College Savings Trust Fund Program. The 2017 statutory amendments also changed the composition of the Board to remove the Executive Director for the Tennessee Student Assistance Corporation since it the same person as the Executive Director of the Tennessee Higher Education Commission, who is also a member of the Board. Additionally, the law was amended to add a rotating representative from one (1) of the six (6) public state institutions that are independent from the Board of Regents, and they are as follows: Austin Peay University; East Tennessee State University; Middle Tennessee State University; Tennessee State University; Tennessee Technological University; or The University of Memphis. In light of the 2017 statutory changes, the proposed rules change the definition of "Board" and change any references to the Board composition.

In addition to ensuring that the rules are consistent with current law, the proposed rules also amend Rule 1700-05-01-.11 relative to a plan termination. In August of 2015, the Board voted to terminate the educational services plan or the pre-paid tuition plan and closed the plan to new participants; the final plan termination date was November 30, 2015. Pursuant to T.C.A. §49-7-824, a purchaser's tuition contract terminates when the plan terminates unless the purchaser's beneficiary is allowed to remain in the plan. Section 49-7-824(b) allows beneficiaries who have been accepted by or enrolled in an institution of higher education or are projected to graduate from high school no later than the third anniversary of the date the plan is terminated, to remain in the plan. For those beneficiaries who are not allowed to remain in the plan, the purchaser must make a written request to roll the tuition account over to another qualified tuition program. The law provides that if the purchaser does not make the request by the final plan termination date, then a refund shall be made to the person designated in the contract to receive the refund.

In an effort to ensure that those beneficiaries who have been allowed to remain in the plan as of the plan termination date, still meet the requirements in the law to continue remaining in the plan, the proposed rules outline the documentation that a purchaser would have to provide demonstrating that the beneficiary has either been accepted or enrolled in an institution or higher education or is projected to graduate from high school no later than third anniversary of the plan termination date. The proposed rules provide that should a purchaser provide the appropriate documentation showing that his/her beneficiary can remain in the plan, then the beneficiary's tuition unit shall be based on the weighted average tuition effective for the academic year in which the purchaser provides the documentation certifying that the beneficiary is eligible to remain in the plan. Should a purchaser fail to provide the appropriate documentation each year or have never provided the appropriate documentation to demonstrate the beneficiary's eligibility to remain in the plan, then the purchaser's contract shall be terminated and any refund or rollover amount shall be paid out at the weighted average tuition when eligibility documentation was last provided or when the plan was terminated (in the event that eligibility documentation was never provided).

(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;

Tenn. Code Ann. §49-7-805. This statutory section contains the Board of Trustees of the College Savings Trust Fund Program's ("Board") general rulemaking authority to promulgate rules to implement the Board's purpose and authority.

(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 most directly affected by this rule are those purchasers who currently have an eligible educational savings plan (pre-paid plan) account and the purchasers' respective beneficiaries. The rules also affect account owners and their respective beneficiaries who have an educational investment plan account (TNStars account).

(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;

To the best of the Board's knowledge, there are no Attorney General opinions or any judicial ruling that directly relates to this rule.

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

The proposed rules will not result in an increase or decrease in state and local government revenues and expenditures

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

LaKesha Page; Board Administrator, Board of Trustees of the College Savings Trust Fund Program; Department of Treasury; 502 Deaderick Street, Andrew Jackson Building, 15th Floor; Nashville, Tennessee 37243 and Alison Cleaves, Legal Services Director; Department of Treasury; 502 Deaderick Street, Andrew Jackson Building, 13th Floor; Nashville, Tennessee 37243.

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

LaKesha Page; Board Administrator, Board of Trustees of the College Savings Trust Fund Program; Department of Treasury; 502 Deaderick Street, Andrew Jackson Building, 15th Floor; Nashville, Tennessee 37243 and Alison Cleaves, Legal Services Director; Department of Treasury; 502 Deaderick Street, Andrew Jackson Building, 13th Floor; Nashville, Tennessee 37243.

(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

LaKesha Page; Board Administrator, Board of Trustees of the College Savings Trust Fund Program; Department of Treasury; 502 Deaderick Street, Andrew Jackson Building, 15th Floor; Nashville, Tennessee 37243 and Alison Cleaves, Legal Services Director; Department of Treasury; 502 Deaderick Street, Andrew Jackson Building, 13th Floor; Nashville, Tennessee 37243.

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

Any additional information requested by committee relevant to the proposed rules will be submitted promptly upon request.

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For Department of State Use Only

Sequence Number: 03-04-18
Rule ID(s): 6713-6714
File Date: 3/5/18
Effective Date: 6/3/18

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:	Board of Trustees of the College Savings Trust Fund Program
Division:	Financial Empowerment
Contact Person:	LaKesha Page
Address:	502 Deaderick Street, 15th Floor, Andrew Jackson Building, Nashville, Tennessee
Zip:	37243
Phone:	(615) 532-5888
Email:	LaKesha.Page@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**
1700-05-01	Tennessee Baccalaureate Education System Trust
Rule Number	**Rule Title**
1700-05-01-.01	In General
1700-05-01-.02	Board Membership and Operations
1700-05-01-.03	Contract Acceptance
1700-05-01-.05	Purchase of Tuition Units
1700-05-01-.06	Tuition Payments
1700-05-01-.07	Notification of Intent to Use Tuition Payments
1700-05-01-.08	Change of Beneficiary and Transfer of Tuition Units
1700-05-01-.09	Scholarship Recipients
1700-05-01-.10	Contract Termination and Refunds
1700-05-01-.11	Plan Termination
1700-05-01-.17	Payments to Beneficiary

1700-05-01-.18	Rollovers

Chapter Number	Chapter Title
1700-05-04	Educational Savings Plan
Rule Number	**Rule Title**
1700-05-04-.01	In General
1700-05-04-.02	Board Operations
1700-05-04-.03	Enrollment
1700-05-04-.04	Contributions
1700-05-04-.05	Account Maintenance
1700-05-04-.06	Withdrawals
1700-05-04-.07	Reporting and Notice
1700-05-04-.08	Contract Designations May Not Be Defeated by Will
1700-05-04-.09	Plan Termination

This Chapter shall be amended by deleting the language contained in the title of the Chapter, that being the "Tennessee Baccalaureate Education System Trust", and replacing it with the language "Tennessee College Savings Trust".

Authority: §§49-7-801 and 49-7-805(16)

Paragraph (1) of Rule 1700-05-01-.01 In General is amended by the deleting the language contained in the paragraph in its entirety and replacing it with the following language, so that, as amended, the paragraph shall read:

(1) Purpose. T.C.A. Title 49, Chapter 7, Part 8 created the Tennessee College Savings Trust Act. The Act creates a trust program, as an agency and instrumentality of the State of Tennessee, under which families and other interested persons may save and invest for the qualified higher education expenses of attending an eligible educational institution. The Program may be comprised of two (2) types of qualified tuition plans as defined in the code, including one (1) or more educational investment plan or plans, which may consist of several different investment offerings or one (1) or more educational services plan or plans. The purpose of these rules is to establish requirements for participation, and administration of the educational services plan as required by and consistent with the Act. The requirements for participation and administration of the educational investment plan are set forth in Chapter 1700-05-04 of the Official Compilation of the Rules and Regulations of the State of Tennessee.

Authority: T.C.A. §§ 49-7-801, 49-7-802(11) and 49-7-805(16).

Paragraph (2) of Rule 1700-05-01-.01 In General is amended by adding the following new, appropriately designated subparagraphs:

( ) "Code" has the same meaning as set forth in T.C.A. §49-7-802(4).

( ) "Eligible Educational Institution" has the same meaning as set forth in T.C.A. §49-7-802(9).

Authority: T.C.A. §49-7-805(16).

Paragraph (2) of Rule 1700-05-01-.01 In General is amended by deleting subparagraph (j) in its entirety.

Authority: T.C.A. §49-7-805(16),

Paragraph (2) of Rule 1700-05-01-.01 In General is amended by deleting the language contained in subparagraphs (f), (h), (o), (p), (r), (v) and (w) in their entirety and replacing them with the following so that, as amended, the subparagraphs shall read:

(f) "Board" has the same meaning as given in T.C.A. §49-7-802(3).

RULES

OF

THE TREASURY DEPARTMENT

TENNESSEE COLLEGE SAVINGS TRUST BOARD ~~BACCALAUREATE EDUCATION SYSTEM TRUST BOARD~~

CHAPTER 1700-05-01

TENNESSEE BACCALAUREATE EDUCATION SYSTEM TRUST

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1700-05-01-.01 IN GENERAL.

(1) ~~Purpose. T.C.A., Title 49, Chapter 7, Part 8 created the Tennessee Baccalaureate Education System Trust Act. The Act creates a tuition program, as an agency and instrumentality of the State of Tennessee, under which parents and other interested persons may assist students in saving for tuition cost of attending colleges and universities. The tuition program is comprised of two (2) types of tuition plans: The Educational Savings Plan and the Educational Services Plan. The purpose of these rules is to establish requirements for participation, and administration of the Educational Services Plan as required by and consistent with the Act. The requirements for participation, and administration of the Educational Savings Plan are set forth in Chapter 1700-05-04 of the Official Compilation of the Rules and Regulations of the State of Tennessee.~~

Purpose. T.C.A. Title 49, Chapter 7, Part 8 created the Tennessee College Savings Trust Act. The Act creates a trust program, as an agency and instrumentality of the State of Tennessee, under which families and other interested persons may save and invest for the qualified higher education expenses of attending an eligible educational institution. The Program may be comprised of two (2) types of qualified tuition plans as defined in the code, including one (1) or more educational investment plan or plans, which may consist of several different investment offerings or one (1) or more educational services plan or plans. The purpose of these rules is to establish requirements for participation, and administration of the Educational Services Plan as required by and consistent with the Act. The requirements for participation and administration of the Educational Investment Plan are set forth in Chapter 1700-05-04 of the Official Compilation of the Rules and Regulations of the State of Tennessee.

(2) Definitions. For purposes of these rules:

(a) "Academic term" means the school segment consisting of a single semester, quarter, term or equivalent.

(b) "Academic year" means a school year consisting of two (2) semesters or three (3) quarters or terms. One (1) full academic year is actuarially defined to be all full-time tuition, as such term is defined in Rule 1700-05-01-.01(2)~~(v)~~ below, required to cover three (3) academic quarters at fifteen (15) credit hours per quarter or two (2) academic semesters at fifteen (15) credit hours per semester.

(c) "Account" means the record that contains the number of tuition units maintained on behalf of a beneficiary under the contract.

(d) "Beneficiary" means an individual designated under a tuition contract as the individual entitled to apply tuition units purchased under the contract to the payment of that individual's undergraduate, graduate and professional tuition, and "other educational costs" as that term is defined in Rule 1700-05-01-.01(2)~~(m)~~. The beneficiary or the purchaser must be a resident of the State of Tennessee at the time the contract was entered into by the purchaser and the Board.

(e) "Beneficiary's appointee" means the person who is named in the contract by the purchaser to exercise the rights of the beneficiary under the contract if the beneficiary is a minor, dies or is legally incompetent. The beneficiary's appointee may be the same person as the purchaser or the purchaser's appointee. The purchaser may change the designation at any time in writing to the Board.

(f) "Board" has the same meaning as given in T.C.A. § 49-7-802(3).

( ) "Code" has the same meaning as set forth in T.C.A. §49-7-802(4).

(g) "Contract" means an educational services plan tuition contract entered into under T.C.A. § 49-7-807 by the Board and a purchaser to provide for the payment of tuition and "other educational costs", as such term is defined in Rule 1700-05-01-.01(2)~~(m)~~ below.

(h) "Educational Investment Plan" has the same meaning as set forth in T.C.A. §49-7-802(6). ~~"Educational savings plan" means a plan which permits individuals, associations, corporations, trusts and other organized entities to make contributions to an account that is established by a purchaser for a designated beneficiary as set forth in Chapter 1700-05-04 of the Official Compilation of the Rules and Regulations of the State of Tennessee. The requirements for participation, and administration of the educational savings plan are set forth in Chapter 1700-05-04 of the Official Compilation of the Rules and Regulations of the State of Tennessee.~~

(i) "Educational services plan" means a plan which permits individuals, associations, corporations, trusts and other organized entities to purchase a tuition unit or units under a tuition contract entered into between a purchaser and the Board on behalf of a designated beneficiary that entitles the beneficiary to apply such units to the payment of that beneficiary's tuition and other educational costs.

( ) "Eligible Educational Institution" has the same meaning as set forth in T.C.A. §49-7-802(9).

~~(j) "Institution of higher education" has the same meaning as "eligible educational institution" under Section 529(e) of the Internal Revenue Code.~~

(k) "Member of the family" means the brother, sister, half brother, half sister, legally adopted brother, legally adopted sister, first cousin, niece or nephew of the original beneficiary, or such other person as may be defined as a "member of the family" under the sections of the Internal Revenue Code which are applicable to the program.

(l) "New beneficiary" means an individual to whom rights under the contract have been transferred pursuant to Rule 1700-05-01-.08.

(m) "Other educational costs" means fees and the costs of books, supplies and equipment required for the enrollment or attendance of the beneficiary at the institution of higher education where the beneficiary is enrolled. "Other educational costs" also means the costs of room and board, as defined in Rule 1700-05-01-.01(2)~~(s)~~ below, incurred while the beneficiary is enrolled in an institution of higher education on at least a half-time basis and expenses for special needs services in the case of a special needs beneficiary which are incurred in connection with the enrollment or attendance of the special needs beneficiary at the institution of higher education where the beneficiary is enrolled.

(n) "Permanent disability" means the inability to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or to be of long-continued and indefinite duration. An individual shall not be considered to have a permanent disability unless the individual furnishes proof of the existence thereof from a health care professional in such form and manner as the Board may require. The Board must approve any finding of a permanent disability.

(o) "Program" has the same meaning as set forth in T.C.A. §49-7-802(11). ~~means the two (2) types of tuition plans authorized under the Act (the educational savings plan as set forth in Chapter 1700-05-04 of the Official Compilation of the Rules and Regulations of the State of Tennessee and the educational services plan as set forth in these Rules), and the statutes, rules and policies of the Board that outline the requirements for participation~~

~~in the Tennessee Baccalaureate Education System Trust Program, as all such materials may be revised or amended from time to time.~~

(p) "Purchaser" has the same meaning as set forth in T.C.A. §49-7-802(12). ~~means an individual, association, corporation, trust or other organized entity who enters into a contract for the purchase of a tuition unit or units on behalf of a beneficiary.~~ Only one (1) individual, association, corporation, trust or other organized entity may be named as the contract purchaser.

(q) "Purchaser's appointee" means the person who is named in the contract by the purchaser to exercise the rights of the purchaser under the contract if the purchaser dies or becomes legally incompetent. The purchaser's appointee may be the beneficiary. The purchaser may change the designation at any time in writing to the Board. If the purchaser dies or becomes legally incompetent, the purchaser's appointee shall automatically become the purchaser for purposes of these rules and the contract, including, but not limited to, Rule 1700-05-01-.01(2)~~(r)~~.

(r) "Refund recipient" has the same meaning as set forth in T.C.A. §49-7-802(15). ~~means the person designated in the contract by the purchaser as the person entitled to terminate the contract and to receive refunds arising out of the contract pursuant to Rule 1700-05-01-.10 below.~~ The R~~r~~efund R~~r~~ecipient may only be either the P~~p~~urchaser or the B~~b~~eneficiary. The P~~p~~urchaser may change the designation at any time in writing to the Board, provided that only the P~~p~~urchaser or the B~~b~~eneficiary is designated. In the event the P~~p~~urchaser is named the R~~r~~efund R~~r~~ecipient and dies prior to receiving the refund, the B~~b~~eneficiary shall be entitled to any refund due under the C~~c~~ontract.

(s) "Room and board" means the amount incurred for room and board of a beneficiary, as limited by the last sentence of this subparagraph, if they are incurred during any academic term during which the beneficiary is enrolled in an institution of higher education on at least a half time basis. A beneficiary will be considered to be enrolled at least half-time if the beneficiary is enrolled for at least half the full-time academic workload for the course of study the beneficiary is pursuing as determined under the standards of the institution where the beneficiary is enrolled. The institution's standard for a full-time workload must equal or exceed the standard established by the Department of Education under the Higher Education Act and set forth in 34 CFR 674.2(b). The amount of room and board shall not exceed the amount treated as qualified higher education expenses under Section 529(e) of the Internal Revenue Code.

(t) "Tennessee resident" means a person who has a continuous physical presence and maintenance of a dwelling place within the State of Tennessee for at least twelve (12) months immediately prior to entering into a tuition contract hereunder, provided that absence from the State for short periods of time shall not affect the establishment of a residence. A minor child shall be deemed a Tennessee resident if the child's legal guardian, or noncustodial parent is a resident of Tennessee. Military or diplomatic personnel whose home of record is Tennessee shall also be deemed Tennessee residents for purposes of these rules.

(u) "Termination" means a discontinuance of the right to receive tuition payments or other benefits under a contract.

(v) "Tuition" has the same meaning as set forth in T.C.A. §49-7-802(18). ~~means the charges imposed to attend an institution of higher education as an undergraduate, graduate, or professional student and all mandatory fees required as a condition of enrollment for all students attending the institution of higher education in which the beneficiary is enrolled.~~ Fees which are considered to be mandatory fees are defined by the Eligible Educational

Institution ~~institution of higher education in~~ in which the B~~b~~eneficiary is enrolled. Mandatory fees do not include college application fees, entrance fees, orientation fees, out-of-state residency fees or other similar fees and charges.

(w) "Tuition unit" has the same meaning as given in T.C.A. § 49-7-802(20~~12~~).

(x) "Weighted average tuition" has the same meaning as given in T.C.A. § 49-7-807(b).

Authority: T.C.A. §§ 49-7-802, 49-7-802(1), (3) through (8), (10), (12), and (14), 49-7-803, 49-7-805, 49-7-805(8), (13), (14), and (16), 49-7-807, 49-7-807(b), 49-7-808, 49-7-809, and 49-7-809(a)(2), (a)(3), (a)(5), and (a)(10), and 49-7-811. Administrative History: Original rule filed October 30, 1996; effective February 28, 1997. Amendment filed March 6, 1998; effective July 29, 1998. Amendment filed May 29, 1998; effective September 28, 1998. Amendment filed July 31, 1998; effective November 28, 1998. Amendment filed August 31, 1999; effective December 29, 1999. Amendment filed February 28, 2002; effective June 28, 2002. Emergency rules filed December 29, 2011; effective through June 26, 2012. Amendments filed December 29, 2011; effective May 30, 2012.

1700-05-01-.02 BOARD MEMBERSHIP AND OPERATIONS.

(1) Board Membership.

(a) Generally. The Board shall be comprised of nine (9) members as follows: The State Treasurer; the Comptroller of the Treasury; the Commissioner of Finance and Administration; the Secretary of State; the Chancellor of the Board of Regents; the President of the University of Tennessee System; the Executive Director of the Tennessee Higher Education Commission; and the President of one (1) of the following state universities: Austin Peay State University; East Tennessee State University; Middle Tennessee State University; Tennessee State University; Tennessee Technological University; or The University of Memphis. ~~The Board shall be comprised of nine (9) members as follows: The State Treasurer; the Comptroller of the Treasury; the Commissioner of Finance and Administration; the Secretary of State; the Chancellor of the State Board of Regents; the President of the University of Tennessee System; the Executive Director of the Tennessee Student Assistance Corporation; the Executive Director of the Tennessee Higher Education Commission; and one (1) representative of the Tennessee Independent Colleges and Universities Association appointed by the State Treasurer in the manner and for the term prescribed in T.C.A. § 49-7-804(a)(9).~~

(b) Designees. Members of the Board may designate members of their respective staffs to attend meetings of the Board and to exercise the Board trustee's right to vote in the trustee's absence. The designations must be made in writing to the Board chair. ~~Members of the Board may designate members of their respective staffs to attend meetings of the Board and to exercise their right to vote in their absence. Such designations shall be in writing to the Board Chair and filed with the Secretary of State.~~

(c) Expense Reimbursement. Members of the Board shall serve without compensation but shall receive reasonable reimbursement for actual and necessary travel expenses in accordance with the travel regulations promulgated by the Tennessee Department of Finance and Administration and approved by the Attorney General and Reporter.

(2) Meetings.

(a) How Called. The Board shall meet at the call of the Chair or upon written request to the Chair by four (4) members of the Board. Unless circumstances prevent, the Secretary shall notify members of the date, time and location of each meeting at least two (2) days prior to the date of the meeting. Notice of the Board meetings shall be posted in the Legislative Plaza by the Board Secretary at least forty-eight (48) hours prior to any Board meeting.

(b) Telephone Conference. The Board may meet by telephone conference call upon a determination by the Board that the matters to be considered at that meeting require timely action by the Board, that physical presence by a quorum of the members is not practical within the period of time requiring action, and that participation by a quorum of the members by telephone is, therefore, necessary. Such determination, and a recitation of the facts and circumstances on which it is based, must be included in the minutes of the meeting and filed with the Office of the Secretary of State as prescribed in T.C.A. § 8-44-108. Unless circumstances prevent, the Board Secretary shall notify members of the date, time and location of any telephone conference meeting at least two (2) hours prior to the time of the telephone conference call. Notice of any meeting by telephone conference call shall be posted in the Legislative Plaza at least two (2) hours prior to any such meeting and shall state that the meeting will be conducted with some members participating by telephone. Any meeting held by telephonic means must comply with the provisions of T.C.A. § 8-44-108. Any member of the Board participating in a meeting by telephone shall be deemed present at the meeting for purposes of quorum requirements and voting, but not for purposes of determining travel expense reimbursement eligibility.

(c) Quorum. Five (5) members of the Board shall constitute a quorum for the transaction of business at a meeting of the Board. Voting upon action taken by the Board shall be conducted by a majority vote of the members present at the meeting of the Board; provided five (5) Board members are present at the meeting.

(3) Board Officers.

(a) Chair. The State Treasurer shall serve as Chair of the Board. The Chair shall preside at meetings of the Board and, together with the Board Secretary, set the agenda for each meeting. If the Chair is unable to attend a meeting of the Board, the Chair shall designate another member of the Board to preside at the meeting. The Chair shall have other duties and powers as may be assigned by the Board by majority vote.

(b) Secretary. The Director of the College Savings Trust Fund Program shall be the Board Secretary. The Secretary shall keep an accurate record of the proceedings and actions of the Board. Together with the Chair, the Secretary shall set the agenda for each meeting, notify the Board members and the public of meetings and distribute appropriate materials to the Board members. ~~The Director of the Tennessee Baccalaureate Education System Trust Division of the Treasury Department shall be the Board Secretary. The Secretary shall keep an accurate record of the proceedings and actions of the Board. Together with the Chair, the Secretary shall set the agenda for each meeting, notify Board members and the public of meetings and distribute appropriate materials to Board members.~~

(4) Delegation to State Treasurer. The Board hereby delegates to the State Treasurer the duty to carry out the day-to-day operations and responsibilities of the educational services plan, including, but not limited to, the duty to prescribe and approve the terms and conditions of any payroll deduction agreement authorized pursuant to T.C.A. § 49-7-805. In exercising such delegation, the State Treasurer shall be authorized to exercise such powers as are vested in the Board which are necessary to fulfill the delegated duties and responsibilities, and may assign any such duties and responsibilities to his staff as he deems necessary and proper. The State Treasurer may also

contract for the provision of all or any part of the services necessary for the management and operation of the Plan, provided the State Treasurer or his staff is actively involved on an ongoing basis in the administration of the Plan.

Authority: T.C.A. §§ 49-7-804, 49-7-804(a), (e), and (g), 49-7-805(4), 49-7-805(16), 49-7-805(17), and 4-3-2401. Administrative History: Original rule filed October 30, 1996; effective February 28, 1997. Amendment filed May 29, 1998; effective September 28, 1998. Amendment filed August 31, 1999; effective December 29, 1999.

1700-05-01-.03 CONTRACT ACCEPTANCE.

(1) Requirements. A tuition contract shall not become binding upon the Board and the purchaser until all of the following occur:

(a) Fee. Receipt by the Board of the appropriate application fee, if any, from the purchaser on behalf of a named beneficiary. The beneficiary or the purchaser must be a Tennessee resident as defined in Rule 1700-05-01-.01(2)~~(t)~~ at the time the contract is purchased;

(b) Completed Contract. Full completion of the tuition contract, including all required Social Security numbers and signatures, and return of the signed contract to the Board;

(c) Purchase Price. Receipt by the Board of the purchase price for at least one (1) tuition unit as consideration for the signed contract. All purchases of tuition units hereunder may be made only in cash and not in property. For purposes of these Rules, "cash" means United States dollars in the form of negotiable checks (other than travelers checks, cashiers checks, starter checks and credit card convenience checks), and payments made through payroll deductions or other similar methods acceptable to the State Treasurer; and

(d) Board Acceptance. Acceptance of the signed contract by the Board.

(2) Confirmation. Upon acceptance of the contract, the Board will send a confirmation of acceptance to the purchaser and will credit the account of the named beneficiary with the amount of tuition units initially purchased.

(3) Rejection. If a purchaser fails to provide all the information required in Paragraph (1) of this Rule within six (6) months of the Board's receipt of the proposed contract, the Board may reject the proposed contract and refund to the purchaser all amounts paid thereunder, less any applicable fee imposed by the Board pursuant to Rule 1700-05-01-.13. Rejection of a contract shall not preclude the purchaser from reapplying for a contract in the future provided the purchaser completes a new contract and pays any additional application fee which may be required by the Board pursuant to Rule 1700-05-01-.13.

Authority: T.C.A. §§ 49-7-802(1), (4) and (11), 49-7-804(g), 49-7-805(8), (10), (15), (16) and (17), 49-7-806, 49-7-807, 49-7-807(c), 49-7-809, and 49-7-809(1). Administrative History: Original rule filed October 30, 1996; effective February 28, 1997. Amendment filed March 6, 1998; effective July 29, 1998. Amendment filed May 29, 1998; effective September 28, 1998. Amendment filed August 31, 1999; effective December 29, 1999. Amendment filed February 28, 2002; effective June 28, 2002. Amendment filed December 30, 2004; effective April 29, 2005.

1700-05-01-.04 BENEFICIARY ACCOUNTS.

(1) Separate Accounting. The Board will maintain a separate individual account for each contract, showing the beneficiary and the number of tuition units purchased, used and refunded under the contract.

(2) Reports of Payment. If a payment has been made by the Board on behalf of a beneficiary or directly to a refund recipient, the Board will report to the beneficiary or the refund recipient information about the value of such payments to assist in determining that person's tax liability. The report will be furnished by no later than January 31 of the calendar year following the calendar year in which the payment was made.

(3) Order of Purchases and Distributions. For purposes of these rules, the first tuition unit purchased shall be deemed the first tuition unit paid out. Further, in determining whether a particular tuition unit has been refunded or applied toward tuition, the first tuition unit purchased shall be deemed the first refunded or applied.

Authority: T.C.A. §§ 49-7-805(16) and 49-7-812(b). Administrative History: Original rule filed October 30, 1996; effective February 28, 1997. Amendment filed July 31, 1998; effective November 28, 1998.

1700-05-01-.05 PURCHASE OF TUITION UNITS.

(1) Purchase Price.

(a) The Board shall set the purchase price of a tuition unit pursuant to T.C.A. §49-7-807.

(b) For those four-year public universities that have differential tuition, the annual undergraduate tuition for that university used to calculate the weighted average tuition shall be the lowest tuition amount that is paid by any portion of the student population in the university in each academic year. Using the lowest tuition amount, the weighted average tuition shall be calculated in accordance with T.C.A. §49-7-807.

(2) When Units May be Used. Tuition units may not be used to pay for tuition until two (2) full years have passed following their purchase.

(3) Who May Purchase Units. Tuition units may be purchased for an existing account by individuals or sources other than the purchaser thereof. However, all tuition units once purchased are pooled and are subject to the terms and conditions of the applicable contract.

(4) Limit on Number of Units. Subject to Section 529 of the Internal Revenue Code and the regulations promulgated thereunder, an individual may enter into both an educational services plan tuition contract as described in these rules and an educational investment plan tuition contract ~~educational savings plan tuition contract~~ as described in Chapter 1700-05-04 of the Official Compilation of the Rules and Regulations of the State of Tennessee on behalf of the same beneficiary. In addition, more than one individual may enter into an educational investment plan tuition contract ~~educational savings plan tuition contract~~, an educational services plan tuition contract, or both, on behalf of the same beneficiary. Provided, however, that no additional contributions can be made to any contract on behalf of the same beneficiary if at the time of the proposed contribution the total account balance of all contracts on behalf of the same beneficiary total a certain dollar amount as determined by majority vote of the Board pursuant to Rule 1700-05-01-.02 (2)(c). Such dollar amount will be set by the Board on an annual basis and shall not exceed the amount determined by actuarial estimates to be necessary to pay tuition, required fees, and room and board for seven (7) years of undergraduate enrollment at the highest cost eligible educational institution ~~institution of higher education~~.

Authority: T.C.A. §§ 49-7-805(11), (12), (14), (15), and (16), 49-7-806, and 49-7-807. Administrative History: Original rule filed October 30, 1996; effective February 28, 1997. Amendment filed March 6, 1998; effective July 29, 1998. Amendment filed August 31, 1999; effective December 29, 1999. Amendment filed February 28, 2002; effective June 28, 2002. Amendment filed March 31, 2004; effective July 29, 2004. Emergency rule filed December 29, 2011; effective through June 26, 2012. Amendment filed December 29, 2011; effective May 30, 2012. Amendment filed October 20, 2015; effective January 18, 2016.

1700-05-01-.06 TUITION PAYMENTS.

(1) Eligibility for Use. Subject to Rule 1700-05-01-.12 below, each tuition unit entitles the beneficiary to an amount equal to one percent (1%) of the weighted average tuition during the academic year in which it is used. To be eligible for use in any academic term, tuition units in a beneficiary's account must have been in his or her account for at least two (2) full years at the start of the academic term. If fewer tuition units are eligible for use than are required to pay tuition and other educational costs in that academic term, the Board will use only the eligible tuition units in the beneficiary's account.

(2) Part-time Attendance. If a beneficiary attends an eligible educational institution ~~institution of higher education~~ on a part-time basis, the beneficiary may use the number of tuition units required to pay for the part-time tuition and other educational costs incurred while enrolled at the institution.

(3) Payment to Institution of Higher Education. Except as provided in Rule 1700-05-01-.17, the Board will make payment directly to the eligible educational institution ~~institution of higher education~~ at which the beneficiary is enrolled. Payment for each academic term will be the amount due the institution for tuition and other educational costs based on the number of tuition units authorized for use by the beneficiary.

(4) Time Period for Use. A beneficiary may delay enrolling in an eligible educational institution ~~institution of higher education~~, attend an eligible educational institution ~~institution of higher education~~ on a part-time basis, or take time off between academic terms. Except as provided in Rule 1700-05-01-.10(4) below, there is no absolute time period in which the tuition units in a beneficiary's account must be used.

(5) No Guarantee of Residency Status. Purchase of tuition units does not guarantee status as a resident for determining the rate of tuition charged.

Authority: T.C.A. §§ 49-7-805(15) and (16), 49-7-807, and 49-7-809. Administrative History: Original rule filed October 30, 1996; effective February 28, 1997. Amendment filed May 29, 1998; effective September 28, 1998. Amendment filed July 31, 1998; effective November 28, 1998. Amendment filed August 31, 1999; effective December 29, 1999.

1700-05-01-.07 NOTIFICATION OF INTENT TO USE TUITION PAYMENTS.

(1) Once a beneficiary has been accepted for enrollment in an eligible educational institution ~~institution of higher education~~, the beneficiary may begin using tuition units for the payment of tuition and other educational costs of the beneficiary. Except as provided in Paragraph (2) below, there is no absolute time period within which the beneficiary must notify the Board of the beneficiary's intended use of tuition units.

(2) If a beneficiary desires the Board to send payment directly to the institution where the beneficiary is enrolled, the beneficiary must notify the Board in writing. The notification must include the name and address of the institution and the number of units needed to pay the tuition or other educational costs. If the beneficiary

intends to begin using the tuition units at the start of an academic year, the notification must be given by a certain date as shall be determined by resolution of the Board. If a beneficiary intends to use tuition units other than at the start of an academic year, the notification must be given by no later than thirty (30) calendar days prior to the start of the academic term in which the tuition units are to be applied. If a beneficiary fails to notify the Board within the time periods required in this Paragraph (2), the Board will assess a late fee to apply tuition units during the current academic year.

Authority: T.C.A. §§ 49-7-805(10), (14), and (16) and 49-7-807. Administrative History: Original rule filed October 30, 1996; effective February 28, 1997. Amendment filed August 31, 1999; effective December 29, 1999.

1700-05-01-.08 CHANGE OF BENEFICIARY AND TRANSFER OF TUITION UNITS.

(1) Change of Beneficiary. Subject to the conditions set forth in Paragraph (3) below, the purchaser shall have the right to change the beneficiary of the account at any time provided the new beneficiary is a "member of the family" of the original beneficiary, as such term is defined in Rule 1700-05-01-.01(2)~~(k),~~ and provided that either the purchaser or the new beneficiary is a Tennessee resident as defined in Rule 1700-05-01-.01(2)~~(t)~~ at the time of the change. If the Board has chosen to charge an application fee pursuant to Rule 1700-05-01-.13, then an application fee must be paid to change the beneficiary of the account.

(2) Transfer of Tuition Units. Subject to the conditions set forth in Paragraph (3) below, the purchaser shall have the right at any time to transfer all or a portion of the tuition units in the beneficiary's account to an account for a different beneficiary provided such beneficiary is a "member of the family" of the original beneficiary, as such term is defined in Rule 1700-05-01-.01(2)~~(k)~~. If the transfer is for a portion of the tuition units in the original beneficiary's account, the transfer will be permitted so long as at the time the transfer is completed by the Board the existing beneficiary and the new beneficiary will each have at least ten (10) tuition units in their respective accounts. If the Board has chosen to charge a transfer fee pursuant to Rule 1700-05-01-.13, then a transfer fee must be paid to transfer the funds. In addition, if the new beneficiary does not have an existing account, then (i) either the purchaser or the new beneficiary must be a Tennessee resident as defined in Rule 1700-05-01-.01(2)~~(t)~~ at the time of the transfer and (ii) if the Board has chosen to charge an application fee pursuant to Rule 1700-05-01-.13, then an application fee must also be paid to open the new account for the new beneficiary.

(3) Conditions. Any change of beneficiary or transfer of tuition units under this Paragraph is subject to the following conditions:

(a) Any request to change beneficiaries or to transfer tuition units must be made in writing, must state the name and Social Security number of the proposed new beneficiary and must be signed by the purchaser. If the request is for a transfer of tuition units to an existing account, the written request must state the account number to which the transfer is to be made;

(b) Payment of any applicable transfer fee charged by the Board pursuant to Rule 1700-05-01-.13;

(c) If applicable, payment of any application fee charged by the Board pursuant to Rule 1700-05-01-.13;

(d) The purchaser and the new beneficiary to whom the units are proposed to be transferred certifies in writing that no payment other than the above fees paid to the Board has been or will be made to anyone for the change

of beneficiary or transfer of the tuition units. If the new beneficiary is a minor, the certification shall be made on behalf of the new beneficiary by the new beneficiary's appointee; and

(e) Transfers or changes in beneficiaries under this Paragraph shall not be permitted to the extent they would constitute excess contributions under Rule 1700-05-01-.05(4).

(4) Eligibility for Use. Any tuition units in the account of a new beneficiary may be used immediately, provided all other conditions for use of the units have been met, including the two-year waiting period.

Authority: T.C.A. §§ 49-7-805(8), (10), and (13) through (16), and 49-7-809(a)(2) and (a)(8). Administrative History: Original rule filed October 30, 1996; effective February 28, 1997. Amendment filed March 6, 1998; effective July 29, 1998. Amendment filed August 31, 1999; effective December 29, 1999. Amendment filed February 28, 2002; effective June 28, 2002.

1700-05-01-.09 SCHOLARSHIP RECIPIENTS.

(1) If a beneficiary is the recipient of a scholarship, allowance or payment described in Section 25A(g)(2) of the Internal Revenue Code that the Board determines cannot be converted into money by the beneficiary, the Board will upon the request of the refund recipient and upon being furnished information about the scholarship, allowance or payment:

(a) Refund.

1. Pay a refund to the refund recipient in an amount equal to the value of the tuition units that are not needed to cover tuition or other educational costs on account of the scholarship, allowance or payment and which would have otherwise been paid during the academic term to the eligible educational institution ~~institution of higher education~~ at which the beneficiary is enrolled.

2. If the scholarship, allowance or payment has a duration that extends beyond one (1) academic term, the refund recipient may request a refund in advance of the scholarship payment. The amount of the refund payable to the refund recipient will be equal to (i) the total purchase price of all the tuition units in the beneficiary's account that are not needed to cover the future tuition or other educational costs on account of the scholarship, allowance or payment, (ii) plus one hundred percent (100%) of the difference between said purchase price and one percent (1%) of the weighted average tuition in the academic year the refund is made, multiplied by the number of tuition units in the beneficiary's account that are not needed to cover the future tuition or other educational costs on account of the scholarship, allowance or payment, (iii) minus any termination fee charged by the Board pursuant to Rule 1700-05-01-.13 below. Notwithstanding this Part, the refund payable on account of any tuition units that are not needed to cover the future tuition or other educational costs on account of the scholarship, allowance or payment that were purchased less than two (2) full years prior to the refund request shall equal the total purchase price paid for those units, minus any termination fee charged by the Board pursuant to Rule 1700-05-01-.13.

(b) Retain. Retain the tuition units in the beneficiary's account for later use;

(c) Transfer. Transfer the tuition units to a new beneficiary pursuant to Rule 1700-05-01-.08; or

(d) Rollover. Roll the tuition units over to another qualified tuition plan or program for the benefit of the beneficiary or to the credit of a different beneficiary who is a "member of the family" of the original beneficiary pursuant to Rule 1700-05-01-.18.

Authority: T.C.A. §§ 49-7-805(14) and (16), 49-7-809(a)(8), 49-7-809(d), and 49-7-811(d). Administrative History: Original rule filed October 30, 1996; effective February 28, 1997. Amendment filed May 29, 1998; effective September 28, 1998. Amendment filed August 31, 1999; effective December 29, 1999. Amendment filed February 28, 2002; effective June 28, 2002.

1700-05-01-.10 CONTRACT TERMINATION AND REFUNDS.

(1) Contract Termination. Except as provided in Paragraphs (3) and (4) of this Rule and in Rule 1700-05-01-.11 below, a contract may not be terminated for any reason except under one of the following circumstances. A termination request must be made in writing by the refund recipient and must be accompanied with documentation acceptable to the Board to substantiate the reason for contract termination.

(a) The beneficiary has died or suffers from a permanent disability, as such term is defined in Rule 1700-05-01-.01(2)~~(n)~~ above;

(b) The beneficiary is age eighteen (18) or older and has decided not to attend an eligible educational institution ~~institution of higher education~~;

(c) The beneficiary has completed the requirements for a degree that is less than a bachelor's degree at an eligible educational institution ~~institution of higher education~~ and the beneficiary does not plan to pursue further education;

(d) The beneficiary has completed the bachelor's degree requirements at an eligible educational institution ~~institution of higher education~~; or

(e) The beneficiary's account contains five (5) tuition units or less and no units have been purchased for the beneficiary's account for a period of at least three (3) consecutive years.

(2) Refund Amount.

(a) Death or Permanent Disability. In the event a contract is terminated due to the death or permanent disability of the beneficiary, the amount of the refund paid to the refund recipient shall be equal to the greater of the following:

1. One percent (1%) of the weighted average tuition in the academic year the contract is terminated, or if termination is due to death, in the academic year the death occurred, multiplied by the number of tuition units purchased and not used. Notwithstanding this Part, the refund payable on account of any tuition units that were purchased less than two (2) full years prior to the refund request shall equal the total purchase price paid for those units; or

2. The total purchase price of all tuition units purchased and not used.

(b) Voluntary Reasons. In the event a contract is terminated under any of the conditions described in Subparagraphs (1)(b) - (1)(e) above, the amount of the refund paid to the refund recipient shall be equal to: (i) the total purchase price of all tuition units purchased and not used, (ii) plus one hundred percent (100%) of the difference between said purchase price and one percent (1%) of the weighted average tuition in the academic year the contract is terminated, multiplied by the number of tuition units purchased and not used, (iii) minus any termination fee. Notwithstanding this Subparagraph, the refund payable on account of any tuition units that were purchased less than two (2) full years prior to the refund request shall equal the total purchase price paid for those units, minus any termination fee charged by the Board pursuant to Rule 1700-05-01-.13.

(3) Fraud. The Board may, at its sole discretion, terminate the contract if the beneficiary, the purchaser, the purchaser's appointee, or the beneficiary's appointee knowingly makes any false statement, or falsifies or permits to be falsified any record or records of the program. The amount of the refund to which the refund recipient is entitled under this Paragraph (3) shall be equal to the total purchase price of all tuition units purchased and not used.

(4) Inactivity. If a period of ten (10) consecutive years passes with no activity in a beneficiary's account or with no correspondence from the beneficiary, purchaser or their respective appointees, the Board shall report and deliver the amount of any refund payable under the contract to the State Treasurer pursuant to T.C.A., Title 66, Chapter 29, Part 1. Prior to delivering the refund to the State Treasurer, the Board will make reasonable efforts to locate the purchaser, beneficiary, and their respective appointees. The refund shall be equal to the amount provided for in Paragraph (2)(b) of this Rule. The ten-year period shall not commence any earlier than the year the beneficiary becomes eighteen (18) years of age, or the year the account was established, whichever is later. Upon payment of the refund to the State Treasurer, the Board's obligations under the contract shall cease.

(5) Timing of Refund. Any refund payable pursuant to Paragraph (1) above will be made in a lump sum payment to the refund recipient within sixty (60) days of the Board's receipt of a complete and substantiated request therefor. Provided, however, if the refund recipient is the beneficiary, the refund shall not be paid until the beneficiary reaches age twenty (20).

(6) Actual Termination Date. Actual termination of the contract will not occur until all tuition units in the beneficiary's account have been refunded under the applicable refund schedule.

Authority: T.C.A. §§ 49-7-805(10), (14), and (16) and 49-7-811. Administrative History: Original rule filed October 30, 1996; effective February 28, 1997. Amendment filed August 31, 1999; effective December 29, 1999. Amendment filed February 28, 2002; effective June 28, 2002.

1700-05-01-.11 PLAN TERMINATION.

(1) If the Board determines that the educational services plan is, for any reason, financially unfeasible, or is not beneficial to the citizens of Tennessee or to the State itself, then the Board, pursuant to T.C.A. § 49-7-823, may terminate the contracts. Subject to Rule 1700-05-01-.12 below, the amount of the refund to which the refund recipient is entitled shall be the refund provided for in Paragraph (2)(a) of Rule 1700-05-01-.10.

(2) In the event that the educational savings plan is terminated pursuant to T.C.A. §49-7-824 and a tuition contract remains in effect after the plan termination pursuant to T.C.A. §49-7-824(b), each purchaser shall annually certify each beneficiary's eligibility to remain in the plan. Each purchaser shall certify that each

beneficiary is eligible to remain in the educational Services plan by providing at least one (1) of the following forms of documentation for each beneficiary's upcoming academic year no later than September 1st each year:

(a) a high school or college transcript;

(b) an official letter from a high school administrator;

(c) an official college acceptance letter;

(d) a request for payment to an eligible educational institution in accordance with this chapter for each of the beneficiary's academic terms;

(e) an official enrollment letter or an invoice from an eligible educational institution reflecting the beneficiary's college enrollment status for each academic term; or

(f) any other documentation deemed acceptable by the educational services plan.

(3) If a purchaser provides the documentation required in this Rule by September 1st each year, then the beneficiary's tuition unit shall be based on the weighted average tuition effective for the academic year in which the purchaser provides certification of the beneficiary's eligibility to remain in the plan.

(4) If a purchaser fails to provide the documentation required by this Rule by September 1st each year, then the purchaser's tuition contract shall be terminated pursuant to T.C.A. §49-7-824(a) and any refund or rollover shall be paid out at the weighted average tuition effective for the academic year in which the purchaser last provided certification of the beneficiary's eligibility to remain in the plan.

(5) As of the effective date of this Rule, for those purchasers who have never submitted documentation identifying a beneficiary's eligibility to remain in the educational services plan pursuant to T.C.A. §49-7-824(b), the purchaser's tuition contract shall be terminated pursuant to T.C.A. §49-7-824(a) and any refund or rollover shall be paid out at the weighted average tuition effective for the academic year that the educational services plan was terminated.

(6) In the event that a purchaser certifies a beneficiary's status to remain in the educational services plan and then later changes the beneficiary on the account or transfers the tuition units to another beneficiary, the purchaser shall provide proof of the new beneficiary's eligibility to remain in the plan in accordance with this Rule. Should the purchaser change a beneficiary on an account from a beneficiary who is eligible to remain in the plan to a beneficiary who is not eligible to remain in the plan or becomes ineligible to remain in the plan, then the purchaser's tuition contract shall be terminated pursuant to T.C.A. §49-7-824(a) and the refund or rollover shall be paid out at the weighted average tuition effective for the academic year in which the purchaser last provided certification of the beneficiary's eligibility to remain in the plan.

Authority: T.C.A. §§ 49-7-805(16), 49-7-823, and 49-7-824. Administrative History: Original rule filed October 30, 1996; effective February 28, 1997. Amendment filed August 31, 1999; effective December 29, 1999. Amendment filed February 28, 2002; effective June 28, 2002.

1700-05-01-.12 GUARANTEE ONLY TO EXTENT OF PLAN FUNDS.

(1) Notwithstanding any other provision to the contrary, refunds and other benefits payable under a contract shall be deemed to be due and payable only to the extent that moneys are available therefor to the credit of the

educational services plan, and neither the State nor the Board shall be liable for any amount in excess of such sums.

(2) Should the educational services plan be terminated by the Board and the assets of the fund prove to be less than would be required to fully pay all obligations of the plan in full, the Board shall first defray all administrative expenses of the plan. The Board shall then reduce payments owed pursuant to a contract, pro rata, to the degree necessary to bring the total disbursement of the educational services plan within the amount of the remaining funds.

Authority: T.C.A. §§ 49-7-805(16), 49-7-823, and 49-7-824. Administrative History: Original rule filed October 30, 1996; effective February 28, 1997. Amendment filed August 31, 1999; effective December 29, 1999.

1700-05-01-.13 FEES.

(1) Fees Subject to Change. The Board may assess administrative fees for the purpose of administering the educational services plan. The types of fees and amount charged are subject to change by the Board during the life of any contract.

(2) Fee Types. Administrative fees include, but are not limited to, the following:

(a) Application fee;

(b) Termination fee;

(c) Tuition units transfer fee;

(d) Fee for failure to provide sufficient notification of intent to use contract benefits; and

(e) Fee for returned monetary items.

Authority: T.C.A. §§ 49-7-805(10) and (16). Administrative History: Original rule filed October 30, 1996; effective February 28, 1997. Amendment filed August 31, 1999; effective December 29, 1999.

1700-05-01-.14 NOTICES AND CHANGES.

(1) All notices, changes, and choices made under the contract must be in writing and received by the Board, along with any supporting documentation the Board may reasonably require and any applicable administrative fees.

Authority: T.C.A. §49-7-805(16). Administrative History: Original rule filed October 30, 1996; effective February 28, 1997.

1700-05-01-.15 CONTRACT DESIGNATIONS MAY NOT BE DEFEATED BY WILL.

(1) The right of a beneficiary or refund recipient to receive benefits in accordance with a contract shall not be defeated or impaired by any statute or rule of law governing the transfer of property by will or by intestate succession.

Authority: T.C.A. § 49-7-805(16). Administrative History: Original rule filed October 30, 1996; effective February 28, 1997.

1700-05-01-.16 SOCIAL SECURITY NUMBERS.

(1) To enable the Board to comply with the record keeping and reporting requirements of the Internal Revenue Code, disclosure of the Social Security numbers requested in the contract is mandatory. In the case of newborns who do not yet have a Social Security number, the Board will accept the contract conditionally for six (6) months of receipt of the proposed contract.

Authority: T.C.A. § 49-7-805(16). Administrative History: Original rule filed October 30, 1996; effective February 28, 1997.

1700-05-01-.17 PAYMENTS TO BENEFICIARY.

(1) Reimbursement of Costs Paid.

(a) Written Request. If the beneficiary has paid tuition or other educational costs required for the enrollment or attendance of the beneficiary at an eligible educational institution ~~institution of higher education~~, then the beneficiary may make a written request to the Board for reimbursement of the amount so paid. The request must contain a certification from the beneficiary that the amount requested was actually used to pay for his or her tuition or other educational costs. Third party documentation to substantiate the request shall not be required unless otherwise provided for in Section 529 of the Internal Revenue Code or the regulations promulgated thereunder.

(b) Amount and Timing of Payment. Any reimbursement made to a beneficiary under this Subparagraph will equal the amount requested, not to exceed the dollar value of the tuition units in the beneficiary's account that are eligible for use under Rule 1700-05-01-.06(1). The reimbursement will be paid to the beneficiary within sixty (60) days of receipt by the Board of the request required in Subparagraph (1)(a) of this Rule.

(2) Advance Payments.

(a) Written Request. If the beneficiary has been accepted for enrollment in an eligible educational institution ~~institution of higher education~~ and intends to use tuition units in the account for the payment of tuition or other educational costs required for the attendance of the beneficiary at the institution, then the beneficiary may make a written request to the Board for a

distribution to be made directly to the beneficiary for the payment of such costs. The request must contain a certification from the beneficiary that the distribution will be expended solely for his or her tuition or other educational costs.

(b) Amount and Timing of Payment. Within sixty (60) days of receipt of the request, the Board will pay to the beneficiary an amount equal to the funds requested, not to exceed the dollar value of the tuition units in beneficiary's account that are eligible for use under Rule 1700-05-01-.06(1).

Authority: T.C.A. §§ 49-7-805(14), 49-7-805(16), and 49-7-809(b). Administrative History: Original rule filed August 31, 1999; effective December 29, 1999. Amendment filed February 28, 2002; effective June 28, 2002.

1700-05-01-.18 ROLLOVERS.

(1) Rollovers to the Credit of Another Beneficiary. Subject to the conditions set forth in Paragraph (3) below, the purchaser may rollover all or a portion of the funds in the beneficiary's account to an account established for another beneficiary under the educational investment ~~savings~~ plan established in Chapter 1700-05-04 of the Official Compilation of the Rules and Regulations of the State of Tennessee or under another qualified tuition program established under Section 529 of the Internal Revenue Code provided that the beneficiary to whose account the funds are being transferred is a "member of the family" of the original beneficiary, as such term is defined in Rule 1700-05-01-.01(2)(k).

(2) Rollovers for the Benefit of the Same Beneficiary. Subject to the conditions set forth in Paragraph (3) below, the purchaser may also rollover all or a portion of the funds in the beneficiary's account to an account established for the same beneficiary under the educational investment ~~savings~~ plan established in Chapter 1700-05-04 of the Official Compilation of the Rules and Regulations of the State of Tennessee or under another qualified tuition program established under Section 529 of the Internal Revenue Code.

(3) Conditions. Any rollover under this Paragraph is subject to the following conditions:

(a) The purchaser makes a written rollover request to the Board on such forms as may be prescribed by the Board;

(b) Prior to honoring the rollover request, the Board may require the purchaser to establish that the plan or program to which the funds are being transferred is a qualified plan or program as defined in Paragraphs (1) and (2) above; and

(c) Any rollover under this Rule shall be administered in accordance with the applicable rollover provisions of the Internal Revenue Code.

(4) Rollover Amount. The amount payable pursuant to a rollover request shall equal (i) the total purchase price of all the tuition units in the beneficiary's account that are being transferred pursuant to the rollover request, (ii) plus one hundred percent (100%) of the difference between said purchase price and one percent (1%) of the weighted average tuition in the academic year the transfer is made, multiplied by the number of tuition units in the beneficiary's account that are being transferred pursuant to the rollover request, (iii) minus any transfer fee charged by the Board pursuant to Rule 1700-05-01-.13 above. Notwithstanding this Paragraph, the amount payable on account of any tuition units being transferred pursuant to a rollover request that were purchased less than two (2) full years prior to the rollover request shall equal the total purchase price paid for those units, minus any transfer fee charged by the Board pursuant to Rule 1700-05-01-.13.

Authority: T.C.A. §§ 49-7-805(16), 49-7-805(14), and 49-7-809(a)(8). Administrative History: Original rule filed February 28, 2002; effective June 28, 2002. Emergency rule filed December 29, 2011; effective through June 26, 2012. Amendment filed December 29, 2011; effective May 30, 2012. Amendment filed December 29, 2012; effective May 30, 2012.

RULES
OF
THE TREASURY DEPARTMENT
TENNESSEE BACCALAUREATE EDUCATION SYSTEM TRUST BOARD
CHAPTER 1700-05-04
EDUCATIONAL INVESTMENT PLAN ~~SAVINGS PLAN~~

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1700-05-04-.01 IN GENERAL.

(1) ~~Purpose. T.C.A., Title 49, Chapter 7, Part 8 created the Tennessee Baccalaureate Education System Trust Act. The Act creates a tuition program, as an agency and instrumentality of the State of Tennessee, under which parents and other interested persons may assist students in saving for the tuition cost of attending colleges and universities. The tuition program is comprised of two (2) types of tuition plans: the Educational Savings Plan and the Educational Services Plan. The purpose of these rules is to establish requirements for participation, and administration of the Educational Savings Plan as required by and consistent with the Act. The requirements for participation, and administration of the Educational Services Plan are set forth in Chapter 1700-05-01 of the Official Compilation of the Rules and Regulations of the State of Tennessee.~~

Purpose. T.C.A. Title 49, Chapter 7, Part 8 created the Tennessee College Savings Trust Act. The Act creates a trust program, as an agency and instrumentality of the State of Tennessee, under which families and other interested persons may save and invest for the qualified higher education expenses or attending an eligible educational institution. The Program may be comprised of two (2) types of qualified tuition plans as defined in the Code, including one (1) or more educational investment plan or plans, which may consist of several different investment offerings or one (1) or more educational services plan or plans. The purpose of these rules is to establish requirements for participation, and administration of the educational investment plan as required by and consistent with the Act. The requirements for participation and administration of the educational services plan are set forth in Chapter 1700-05-01 of the Official Compilation of the Rules and Regulations of the State of Tennessee.

(2) Definitions. For purposes of these rules:

(a) "Academic Term" means the school segment consisting of a single semester, quarter, term or equivalent.

(b) "Account" has the same meaning as set forth in T.C.A. §49-7-802(7). ~~means the record that contains the amount of contributions maintained on behalf of a Beneficiary under a Contract, plus the earnings or losses incurred thereon, including any Withdrawals made from the Account.~~

( ) "Account Owner" has the same meaning as set forth in T.C.A. §49-7-802(1).

(c) "Beneficiary" means an individual designated by the Account Owner and who meets the requirements of the Code. ~~under a Contract as the individual entitled to apply contributions and earnings accrued under the Contract to the payment of that individual's undergraduate, graduate and professional Qualified Higher Education Expenses as defined in 1700-05-04-.01(2)(p) below.~~

(d) "Board" has the same meaning as given in T.C.A. § 49-7-802(3~~2~~), which is comprised of the members described in T.C.A. § 49-7-804(a).

( ) "Code" has the same meaning as set forth in T.C.A. §49-7-802(4).

(e) "Contract" means an Educational Investment ~~Savings~~ Plan ~~tuition contract~~ entered into under T.C.A. § 49-7-808 by the Board and an Account Owner ~~Purchaser~~ to provide for the payment of Qualified Higher Education Expenses., ~~as such term is defined in Rule 1700-05-04-.01(2)(p), below.~~

( ) "Contributor" has the same meaning as set forth in T.C.A. §49-7-802(5).

(f) "Educational Investment Plan" has the same meaning as set forth in T.C.A. §49-7-802(6). ~~"Educational Savings Plan" means a plan which permits individuals, associations, corporations, trusts and other organized entities to make contributions to an Account that is established by a Purchaser for a designated Beneficiary.~~

(g) "Educational Services Plan" means a plan which permits individuals, associations, corporations, trusts and other organized entities to purchase a tuition unit or units September, under a tuition contract entered into between a purchaser and the Board on behalf of a designated beneficiary that entitles the beneficiary to apply such units to the payment of that beneficiary's tuition and other educational costs as set forth in Chapter 1700-05-01 of the Official Compilation of the Rules and Regulations of the State of Tennessee. The requirements for participation, and administration of the Educational Services Plan are set forth in Chapter 1700-05-01 of the Official Compilation of the Rules and Regulations of the State of Tennessee.

( ) "Eligible Educational Institution" has the same meaning as set forth in T.C.A. §49-7-802(9).

~~(h) "Institution of Higher Education" has the same meaning as "eligible educational institution" under Section 529 of the Internal Revenue Code.~~

(i) "Legally Incompetent" means that an individual has been declared incompetent by a court of law. An individual shall not be considered to be Legally Incompetent unless proof thereof is furnished in such form and manner as the Board may require.

(j) "Member of the Family" has the same meaning as "member of the family" under the sections of the Internal Revenue Code which are applicable to the Program.

(k) "New Beneficiary" means an individual to whom rights under the Contract have been transferred pursuant to Rule 1700-05-04-.05.

(l) "Permanent Disability" means the inability to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or to be of long-continued and indefinite duration. An individual shall not be considered to have a Permanent Disability unless proof is furnished of the existence thereof from a health care professional in such form and manner as the Board may require. The Board must approve any finding of a Permanent Disability.

(m) "Person" shall mean an individual, partnership, corporation, association, organization, government or governmental subdivision or agency, estate, trust or any other legal or commercial entity.

(m) "Program" has the same meaning as set forth in T.C.A. §49-7-802(11). ~~means the two (2) types of tuition plans authorized under the Act (the Educational Savings Plan and the Educational Services Plan), and the statutes, rules and policies of the Board that outline the requirements for participation in the Tennessee Baccalaureate Education System Trust Program, as all such materials may be revised or amended from time to time.~~

~~(n) "Purchaser" means an individual, association, corporation, trust or other organized entity who enters into a Contract for the creation and deposit of contributions to an Account on behalf of a Beneficiary and who controls all aspects of the Account, or in the case of the Purchaser's death or Legal Incompetence, the Purchaser's Appointee. Only one (1) individual, association, corporation, trust or other organized entity may be named as the Contract Purchaser.~~

(o) "Account Owner's~~Purchaser's~~ Appointee" means the person who is named in the Contract by the Account Owner ~~Purchaser~~ to exercise the rights of the Account Owner ~~Purchaser~~ under the Contract if the Account Owner ~~Purchaser~~ dies or becomes Legally Incompetent. The Account Owner's ~~Purchaser's~~ Appointee may be the Beneficiary. The Account Owner ~~Purchaser~~ may change the designation at any time in writing to the Board. If the Account Owner ~~Purchaser~~ dies or becomes Legally Incompetent, the Account Owner's ~~Purchaser's~~ Appointee shall automatically become the Account Owner ~~Purchaser~~ for purposes of these Rules and the Contract, including, but not limited to, the Refund Recipient. ~~Rule 1700-05-04-.01(2)(r).~~

(p) "Qualified Higher Education Expenses" has the same meaning as set forth in T.C.A. §49-7-802(13).~~given under Section 529 of the Internal Revenue Code and the regulations promulgated thereunder.~~

(q) "Redemption Value" has the same meaning as set forth in T.C.A. §49-7-802(14). ~~means the current cash value of an Account attributable to the sum of the principal invested, and the earnings or losses incurred thereon.~~

(r) "Refund Recipient" has the same meaning as set forth in T.C.A. §49-7-802(15). The Refund Recipient may only be the Account Owner. ~~means the person entitled to terminate the~~

~~Contract and to receive refunds arising out of the Contract. The Refund Recipient may only be the Purchaser.~~

(s) "Termination" means a discontinuance of the right to receive tuition payments or other benefits under a Contract.

(t) "Withdrawal" means a disbursement of funds from the Account that is directed by the Account Owner ~~Purchaser~~ to be paid to the Account Owner ~~Purchaser~~, an Eligible Educational Institution ~~Institution of Higher Education~~, or the Beneficiary.

Authority: T.C.A. §§ 49-7-805, 49-7-802, 49-7-803, 49-7-807, 49-7-808, 49-7-809, 49-7-811, and 49-7-812. Administrative History: Emergency rule filed December 29, 2011; effective through June 26, 2012. New rule filed December 29, 2011; effective May 30, 2012.

1700-05-04-.02 BOARD OPERATIONS.
(1) Meetings.
(a) How Called. The Board shall meet at the call of the Chair or upon written request to the Chair by four (4) members of the Board. Unless circumstances prevent, the Secretary shall notify members of the date, time and location of each meeting at least two (2) days prior to the date of the meeting. Notice of the Board meetings shall be posted in the Legislative Plaza by the Board Secretary at least forty-eight (48) hours prior to any Board meeting.

(b) Telephone Conference. The Board may meet by telephone conference call upon a determination by the Board that the matters to be considered at that meeting require timely action by the Board, that physical presence by a quorum of the members is not practical within the period of time requiring action, and that participation by a quorum of the members by telephone is, therefore, necessary. Such determination, and a recitation of the facts and circumstances on which it is based, must be included in the minutes of the meeting and filed with the Office of the Secretary of State as prescribed in T.C.A. § 8-44-108. Unless circumstances prevent, the Board Secretary shall notify members of the date, time and location of any telephone conference meeting at least two (2) hours prior to the time of the telephone conference call. Notice of any meeting by telephone conference call shall be posted in the Legislative Plaza at least two (2) hours prior to any such meeting and shall state that the meeting will be conducted with some members participating by telephone. Any meeting held by telephonic means must comply with the provisions of T.C.A. § 8-44-108. Any member of the Board participating in a meeting by telephone shall be deemed present at the meeting for purposes of quorum requirements and voting, but not for purposes of determining travel expense reimbursement eligibility.

(c) Quorum. Five (5) members of the Board shall constitute a quorum for the transaction of business at a meeting of the Board. Voting upon action taken by the Board shall be conducted by a majority vote of the members present at the meeting of the Board; provided five (5) Board members are present at the meeting.

(2) Board Officers.
(a) Chair. The State Treasurer shall serve as Chair of the Board. The Chair shall preside at meetings of the Board and, together with the Board Secretary, set the agenda for each meeting. If the Chair is unable to attend a meeting of the Board, the Chair shall designate another member of the Board to preside at the meeting. The Chair shall have other duties and powers as may be assigned by the Board by majority vote.

(b) Secretary. The Director of the College Savings Trust Fund Program shall be the Board Secretary. The Secretary shall keep an accurate record of the proceedings and actions of the Board. Together with the Chair, the Secretary shall set the agenda for each meeting, notify the Board members and the public of meetings and distribute appropriate materials to the Board members. ~~The Manager of the Tennessee Baccalaureate Education System Trust Division of the Treasury Department shall be the Board Secretary. The Secretary shall keep an accurate record of the proceedings and actions of the Board. Together with the Chair, the Secretary shall set the agenda for each meeting, notify Board members and the public of meetings and distribute appropriate materials to Board members.~~

(3) Delegation to State Treasurer. The Board hereby delegates to the State Treasurer the duty to carry out the day-to-day operations and responsibilities of the Educational Investment ~~Savings~~ Plan, including, but not limited to, the duty to prescribe and approve the terms and conditions of any payroll deduction agreement authorized pursuant to T.C.A. § 49-7-805. In exercising such delegation, the State Treasurer shall be authorized to exercise such powers as are vested in the Board which are necessary to fulfill the delegated duties and responsibilities, and may assign any such duties and responsibilities to his staff as he deems necessary and proper. The State Treasurer may also contract for the provision of all or any part of the services necessary for the management and operation of the Plan, provided the State Treasurer or his staff is actively involved on an ongoing basis in the administration of the Plan.
Authority: T.C.A. §§ 49-7-805 and 49-7-804. Administrative History: Emergency rule filed December 29, 2011; effective through June 26, 2012. New rule filed December 29, 2011; effective May 30, 2012.

1700-05-04-.03 ENROLLMENT.
(1) Requirements. The Account Owner ~~Purchaser~~ must fully complete the Contract, including all required signatures, and return the signed Contract to the Board to open an Account in the Educational Investment ~~Savings~~ Plan. A Contract shall not become binding upon the Board and the Account Owner ~~the Purchaser~~ unless it is complete and until all of the following occur:
(a) Investment Selection. The Account Owner ~~Purchaser~~ must select at least one investment option. If more than one investment option is chosen, the Account Owner ~~Purchaser~~ must allocate the contribution among the chosen investment options. The Board may limit the number of investment options that an Account Owner ~~Purchaser~~ may choose under any one single Contract;

(b) Initial Contribution. Receipt by the Board of an initial contribution of at least twenty-five dollars ($25.00) for each investment option chosen by the Account Owner ~~Purchaser~~. All contributions to an Account hereunder may be made only in cash and not in property. For purposes of these Rules, "cash" means United States dollars in the form of negotiable checks (other than travelers checks, cashiers checks, starter checks and credit card convenience checks), and payments made through payroll deductions or other similar methods acceptable to the Board;

(c) Board Acceptance. Acceptance of the signed Contract by the Board; and

(d) To enable the Board to comply with the record keeping and reporting requirements of the Internal Revenue Code, disclosure of the Social Security numbers requested in the Contract is mandatory. In the case of newborns who do not yet have a Social Security number, the Board

will accept the Contract conditionally for thirty (30) calendar days of receipt of the proposed Contract.

(2) Confirmation. Upon acceptance of the Contract, the Board will send a confirmation of acceptance to the Account Owner ~~Purchaser~~ and will credit the Account of the named Beneficiary with the amount of the initial contribution made.

(3) Rejection. If an Account Owner ~~Purchaser~~ fails to provide all the information required in Paragraph (1) of this Rule within thirty (30) calendar days of the Board's receipt of the proposed Contract, the Board may reject the proposed Contract and refund to the Account Owner ~~Purchaser~~ all amounts paid

thereunder, less any applicable fees. Rejection of a Contract shall not preclude the Account Owner ~~Purchaser~~ from enrolling in the Program in the future.

(4) Fraud. The Board may, at its sole discretion, terminate the Contract if the Beneficiary, the Account Owner ~~Purchaser~~, or the Account Owner~~Purchaser~~'s Appointee knowingly makes any false statement, or falsifies or permits to be falsified any record or records of the Program. The amount of the refund to which the Account Owner ~~Purchaser~~ is entitled under this Paragraph (4) shall be equal to the Redemption Value of the Account at the time the refund is made, minus any applicable fee charged by the Board.

(5) Inactivity. If a period of ten (10) consecutive years passes with no contributions having been made to the Beneficiary's Account or with no correspondence from the Beneficiary, Account Owner ~~Purchaser~~ or the Account Owner~~Purchaser~~'s Appointee, the Board shall report and deliver the amount of any refund payable under the Contract to the State Treasurer pursuant to T.C.A., Title 66, Chapter 29, Part 1. Prior to delivering the refund to the State Treasurer, the Board will make reasonable efforts to locate the Account Owner ~~Purchaser~~, Beneficiary, and the Account Owner~~Purchaser~~'s Appointee. The refund shall be equal to the Redemption Value of the Account at the time the refund is delivered, minus any applicable fee charged by the Board. The ten-year period shall not commence any earlier than the year the Beneficiary becomes eighteen (18) years of age, or the year the Account was established, whichever is later. Upon payment of the refund to the State Treasurer, the Board's obligations under the Contract shall cease.

(6) Fees. The Board may charge fees to the Account Owner ~~Purchaser~~ and/or collect fees from each Account for administration of the Program or for transactions under the Educational Investment ~~Savings~~ Plan.

(7) Separate Accounting. The Board will maintain a separate individual account for each Contract, showing the name of the Beneficiary and the Redemption Value of the Account, including any Withdrawals made from the Account.

Authority: T.C.A. §§ 49-7-805, 49-7-802, 49-7-806, 49-7-808, 49-7-809 and 49-7-812.
Administrative History: Emergency rule filed December 29, 2011; effective through June 26, 2012. New rule filed December 29, 2011; effective May 30, 2012.

1700-05-04-.04 CONTRIBUTIONS.
(1) Who May Make Contributions. Contributions may be made for an existing Account by an Account Owner or a Contributor; ~~by individuals or sources other than the Purchaser thereof as~~

~~provided under Section 529 of the Internal Revenue Code. H~~however, all contributions once made to an individual Account are pooled and are subject to the terms and conditions of the applicable Contract.

(2) How Contributions May be Made. Contributions may be made only in cash and not in property. For purposes of these Rules, "cash" has the meaning given in Rule 1700-05-04-.03(1)(b) above. Contributions may also be made in accordance with the Code as defined in T.C.A. §49-7-802(4). ~~by rollover of funds from another qualified tuition program established under Section 529 of the Internal Revenue Code by making a written rollover request to the Board on such forms as may be prescribed by the Board.~~

(3) Limit on Amount of Contributions. Subject to Section 529 of the Internal Revenue Code and the regulations promulgated thereunder, an individual may have both an Educational Investment ~~Savings~~ Plan tuition contract as described in these Rules and an Educational Services Plan tuition contract as described in Chapter 1700-05-01 of the Official Compilation of the Rules and Regulations of the State of Tennessee on behalf of the same Beneficiary. In addition, more than one individual may have an Educational Investment ~~Savings~~ Plan tuition contract, an Educational Services Plan tuition contract, or both, on behalf of the same Beneficiary. Provided, however, that no additional contributions can be made to any contract on behalf of the same Beneficiary if at the time of the proposed contribution the total account balance of all contracts on behalf of the same Beneficiary total a certain dollar amount as determined by majority vote of the Board pursuant to Rule 1700-05-04-.02(1)(c). Such dollar amount will be set by the Board on an annual basis and shall not exceed the amount determined by actuarial estimates to be necessary to pay Qualified Higher Education Expenses for seven (7) years of undergraduate enrollment at the highest cost Eligible Educational Institution. ~~Institution of Higher Education~~.

(4) No Guarantee of Acceptance nor Residency Status. Contributions to an Account hereunder do not guarantee that the Beneficiary will be accepted into an Eligible Educational Institution ~~Institution of Higher Education~~, that the Beneficiary will graduate from an Eligible Educational Institution ~~Institution of Higher Education~~, nor do contributions to an Account guarantee status as a resident for determining the rate of tuition charged by an Eligible Educational Institution. ~~Institution of Higher Education~~.
Authority: T.C.A. §§ 49-7-805, 49-7-806, 49-7-808, 49-7-809, and 49-7-810. Administrative History: Emergency rule filed December 29, 2011; effective through June 26, 2012. New rule filed December 29, 2011; effective May 30, 2012.

1700-05-04-.05 ACCOUNT MAINTENANCE.
(1) Update Account Information. The Account Owner or any person authorized by the Account Owner ~~Purchaser~~ may make changes and updates to the Account information as needed. These changes include, but are not limited to, addresses;~~,~~ legal name ~~changes;~~, phone numbers;~~,~~ e-mail addresses;~~,~~ and changes to the designation of the Account Owner ~~Purchaser~~'s Appointee. The changes must be provided in writing or via electronic means acceptable to the Board.

(2) Change of Beneficiary. Subject to the conditions set forth in Paragraph (5) below, the Account Owner ~~Purchaser~~ shall have the right to change the Beneficiary of the Account at any time provided the New Beneficiary is a "Member of the Family" of the original Beneficiary, as such term is defined in Rule 1700-05-04-.01(2)~~(j)~~. If the Board has chosen to charge an

application fee pursuant to Rule 1700-05-04-.03(6), then an application fee must be paid to change the Beneficiary of the Account.

(3) Reallocation of Funds Among Investment Options. Subject to the conditions set forth in Paragraph (5) below, the Account Owner ~~Purchaser~~ shall have the right at any time to reallocate funds among investment options under a Contract held for a single Beneficiary provided there is at least twenty-five dollars ($25.00) in each surviving investment option at the conclusion of the reallocation.

(4) Transfer of Account Funds. Subject to the conditions set forth in Paragraph (5) below, the Account Owner ~~Purchaser~~ shall have the right at any time to transfer all or a portion of the funds in the Beneficiary's Account to an Account for a different Beneficiary provided the New Beneficiary is a "Member of the Family" of the original Beneficiary, as such term is defined in Rule 1700-05-04-.01(2)~~(j)~~. If the transfer is for a portion of funds in the original Account, the transfer will be permitted so long as at the time the transfer is completed by the Board the existing Beneficiary and the new Beneficiary will each have at least twenty- five dollars ($25.00) in their respective accounts. If the New Beneficiary does not have an existing Account and if the Board has chosen to charge an application fee pursuant to Rule 1700-05-04-.03(6), then an application fee must also be paid to open the new Account for the New Beneficiary. In addition and subject to the conditions set forth in Paragraph (5) below, the Account Owner ~~Purchaser~~ shall have the right to transfer all or a portion of the funds in the Beneficiary's Account to another account held for the same Beneficiary. If the Board has chosen to charge a transfer fee pursuant to Rule 1700-05-04-.03(6), then a transfer fee must be paid to transfer the funds.

(5) Conditions. Any change of Beneficiary, reallocation of funds among investment options, or transfer of funds under this Rule is subject to the following conditions:
(a) The request must be made in writing, signed by the Account Owner ~~Purchaser~~ and, if applicable, must state the name and Social Security number of the proposed New Beneficiary. If the request is for the reallocation of funds among investment options, the written request must specify the dollar amount to be reallocated and the selected investment option(s). If the request is for a transfer of funds to an existing Account, the written request must state the Account number to which the transfer is to be made;
(b) Payment of any applicable fees charged by the Board pursuant to Rule 1700-05-04-.03(6);
(c) The Account Owner ~~Purchaser~~ certifies in writing that no payment other than the above fees paid to the Board has been or will be made to anyone for a change of beneficiary or transfer of funds; and
(d) Transfers or changes in Beneficiaries under this Rule shall not be permitted to the extent that they would constitute excess contributions under Rule 1700-05-04-.04(3).
(6) Eligibility for Use. Any funds in the Account of a New Beneficiary may be used immediately, provided the funds have been on deposit in the original Beneficiary's Account for the twenty-one (21) day period prescribed in Rule 1700-05-04-.06(1) below.
(7) Limit on Reallocation of Funds Among Investment Options. The Account Owner ~~Purchaser~~ may reallocate funds among investment options once per calendar year or at such other times as permitted under Section 529 of the Internal Revenue Code and the regulations promulgated thereunder.
Authority: T.C.A. §§ 49-7-805, 49-7-808, and 49-7-809. Administrative History: Emergency rule filed December 29, 2011; effective through June 26, 2012. New rule filed December 29, 2011; effective May 30, 2012. Amendment filed April 11, 2014; effective September 28, 2014.

1700-05-04-.06 WITHDRAWALS.

(1) Eligibility. Once a Beneficiary has been accepted for enrollment in an Eligible Educational Institution ~~Institution of Higher Education~~, the Account Owner ~~Purchaser~~ may begin using funds on deposit in the Account for the payment of Qualified Higher Education Expenses of the Beneficiary. For purposes of these Rules, including for any payments or refunds provided for in Rule 1700-05-04-.06(4) below, funds shall not be deemed on deposit in the Account until the twenty-first (21st) day following receipt of the respective funds by the Board. If the Account Owner ~~Purchaser~~ desires the Board to send payment directly to the Eligible Educational Institution ~~Institution of Higher Education~~ where the Beneficiary is enrolled, the notification must include the name and address of the Institution and the amount of funds needed to pay the Qualified Higher Education Expenses. Failure to provide sufficient notice prior to the start of the Academic Term in which the funds would be used may result in an untimely payment being made to the Institution.

(2) Written Request. Any Withdrawal requests must be made in writing by the Account Owner ~~Purchaser~~ or via other means acceptable to the Board, including electronic means.

(3) Amount and Timing of Withdrawal. Subject to Rules 1700-05-04-.06(4) and 1700-05-04-.09 below, the Withdrawal amount will equal the amount requested, not to exceed the Redemption Value of the Beneficiary's Account at the time the Withdrawal is processed. The Withdrawal amount will be paid within sixty (60) calendar days of receipt by the Board of the request required in Subparagraph (2) of this Rule above.

(4) Types of Withdrawals.

(a) Withdrawals for Qualified Higher Education Expenses. The Account Owner ~~Purchaser~~ may direct payment to the Account Owner ~~Purchaser~~, the Beneficiary, or an Eligible Educational Institution ~~Institution of Higher Education~~ as an advance payment or as reimbursement for Qualified Higher Education Expenses. Third party documentation to substantiate the request shall not be required unless otherwise provided for in Section 529 of the Internal Revenue Code or the regulations promulgated thereunder.

(b) Withdrawals for Non-Qualified Higher Education Expenses. The Account Owner ~~Purchaser~~ may direct a Withdrawal from the Account for the payment of non-Qualified Higher Education Expenses provided the funds have been on deposit in the Account for at least twenty-one (21) calendar days and provided there is at least one hundred dollars ($100.00) in the Account once the Withdrawal is made. Such a Withdrawal may be made without causing termination of the Contract and without requiring the Refund Recipient to establish that the Withdrawal will be used for Qualified Higher Education Expenses. The earnings portion of Withdrawals made for non-Qualified Higher Education Expenses could be subject to federal taxation as prescribed under the sections of the Internal Revenue Code and the regulations promulgated thereunder which are applicable to the Program.

(c) Scholarship Refund. If a Beneficiary is the recipient of a scholarship, allowance or payment described in Section 25A(g)(2) of the Internal Revenue Code that the Board determines cannot be converted into money by the Beneficiary, the Account Owner ~~Purchaser~~ may request a Withdrawal of all or a portion of the funds in the Account. The Account Owner ~~Purchaser~~ must furnish information about the scholarship, allowance or payment to the Board. If the scholarship, allowance or payment has a duration that extends beyond one (1) Academic Term, the Account Owner ~~Purchaser~~ may request a refund in advance of the scholarship payment. The amount of the refund payable to the Account Owner ~~Purchaser~~ will be equal to the Redemption Value of the Beneficiary's Account that is not needed to cover the future

Qualified Higher Education Expenses on account of the scholarship, allowance or payment minus any applicable fee(s) charged by the Board.

(d) Contract Termination and Refund. Except as provided in Paragraph 4 (c) of this Rule above, a Contract may not be terminated for any reason except under one of the following circumstances: (i) the Beneficiary has died or suffers from a Permanent Disability; (ii) the Beneficiary is age eighteen (18) or older and has decided not to attend an Eligible Educational Institution ~~Institution of Higher Education~~; (iii) the Beneficiary has completed the requirements for a degree that is less than a bachelor's degree at an Eligible Educational Institution ~~Institution of Higher Education~~ and the Beneficiary does not plan to pursue further education; (iv) the Beneficiary has completed the bachelor's degree requirements at an Eligible Educational Institution ~~Institution of Higher Education~~; or (v) the Redemption Value of the Account equals one hundred dollars ($100.00) or less and no contributions have been deposited to the Beneficiary's Account for a period of at least twenty-one (21) consecutive days. The Contract termination request must be accompanied with documentation acceptable to the Board to substantiate the reason for Contract termination. In the event a Contract is terminated due to the Permanent Disability or death of the Beneficiary, the amount of the refund paid to the Account Owner ~~Purchaser~~ shall be equal to the Redemption Value of the Account at the time the refund is made. In the event a Contract is terminated under any of the conditions described in items (ii) – (v) above, the amount of the refund paid to the Refund Recipient shall be equal to the Redemption Value of the Account at the time the refund is made, minus any applicable fee charged by the Board. The Actual termination of the Contract will not occur until all funds in the Beneficiary's Account have been refunded.

(e) Rollovers out of the Program. The Account Owner ~~Purchaser~~ may rollover all or a portion of the funds in the Beneficiary's Account to an account established for the same Beneficiary or another Beneficiary under another qualified tuition program established under Section 529 of the Internal Revenue Code by making a rollover request to the Board on such forms as may be prescribed by the Board. If the rollover is for the benefit of another Beneficiary, the Beneficiary to whose Account the funds are being transferred must be a "Member of the Family" of the original Beneficiary, as such term is defined in Rule 1700-05-04-.01(2)~~(j)~~. Any rollover under this Rule shall be administered in accordance with the applicable rollover provisions of the Internal Revenue Code. Any rollover made under this Paragraph shall be equal to the amount requested, not to exceed the Redemption Value of the Beneficiary's Account, minus any applicable fees charged by the Board pursuant to Rule 1700-05-04-.03(6) above. The Redemption Value of the Account shall be determined as of the date the rollover is made. Authority: T.C.A. §§ 49-7-805, 49-7-809, 49-7-811, and 49-7-812. Administrative History: Emergency rule filed December 29, 2011; effective through June 26, 2012. New rule filed December 29, 2011; effective May 30, 2012. Amendments filed April 11, 2014; effective September 28, 2014.

1700-05-04-.07 REPORTING AND NOTICE.

(1) Reporting. A statement listing the activity, selected investment options, and Redemption Value of the Account will be sent to the Account Owner ~~Purchaser~~ periodically. The frequency of such statements will be set by the Board. If a payment has been made from an Account, the Board will report to the Beneficiary or the Account Owner ~~Purchaser~~, whichever is applicable, information about such payments to assist in determining that person's tax liability. The report will be furnished by no later than January 31st of the calendar year following the calendar year in which the payment was made. Disclosure documents will also be prepared by the Treasurer

~~Program~~ and made available to the Account Owner ~~Purchaser~~ prior to the Account Owner ~~Purchaser~~ opening an Account.

(2) Notice. Notice from the Program or Board, including but not limited to, Account statements, tax forms, and information about the Program, a Contract or an Account, may be in any form acceptable to the Board, which may include, but may not limited to, notice and reporting by electronic means.
Authority: T.C.A. §§ 49-7-805, and 49-7-809. Administrative History: Emergency rule filed December 29, 2011; effective through June 26, 2012. New rule filed December 29, 2011; effective May 30, 2012.

1700-05-04-.08 CONTRACT DESIGNATIONS MAY NOT BE DEFEATED BY WILL.
(1) The right of a Beneficiary or Account Owner ~~Purchaser~~ to receive benefits in accordance with a Contract shall not be defeated or impaired by any statute or rule of law governing the transfer of property by will or by intestate succession.
Authority: T.C.A. § 49-7-805(16). Administrative History: Emergency rule filed December 29, 2011; effective through June 26, 2012. New rule filed December 29, 2011; effective May 29, 2012.

1700-05-04-.09 PLAN TERMINATION.
(1) If the Board determines that the Educational Investment ~~Savings~~ Plan is, for any reason, financially unfeasible, or is not beneficial to the citizens of Tennessee or to the State itself, then the Board, pursuant to T.C.A. § 49-7-823, may terminate the Contracts. Subject to Paragraphs (2) and (3) of this Rule below, the amount of the refund to which the Account Owner ~~Purchaser~~ is entitled shall be equal to the Redemption Value of the Account at the time the refund is made.
(2) Notwithstanding any other provision to the contrary, refunds and other benefits payable under a Contract shall be deemed to be due and payable only to the extent that moneys are available therefore to the credit of the Educational Investment ~~Savings~~ Plan, and neither the State nor the Board shall be liable for any amount in excess of such sums.
(3) Should the Educational Investment ~~Savings~~ Plan be terminated by the Board and the assets of the fund prove to be less than would be required to fully pay all obligations of the Plan in full, the Board shall first defray all administrative expenses of the Plan. The Board shall then reduce payments owed pursuant to a Contract, pro rata, to the degree necessary to bring the total disbursement of the Educational Investment ~~Savings~~ Plan within the amount of the remaining funds.
Authority: T.C.A. §§ 49-7-805, 49-7-823 and 49-7-824. Administrative History: Emergency rule filed December 29, 2011; effective through June 26, 2012. New rule filed December 29, 2011; effective May 30, 2012.
September, 2014

* 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)
David H. Lillard, Jr.	X				
Tre Hargett	X				
Shiri Anderson	X				
Steven Gentile	X				
Greg Turner	X				
Renee Stewart	X				
Mitch Robinson	X				
Claude Pressnell	X				
Ron Maples	X				

I certify that this is an accurate and complete copy of proposed rules, lawfully promulgated and adopted by the (*board/commission/other authority*) on 07/18/2017, 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: 2/6/18

Signature: Alison Cleaves

Name of Officer: Alison Cleaves

Title of Officer: Legal Services Director

Subscribed and sworn to before me on: 2/6/2018

Notary Public Signature: Sandra B. Hurt

My commission expires on: 1/8/2019

Agency/Board/Commission: _____

Rule Chapter Number(s): _____

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

Herbert H. Slatery III

Herbert H. Slatery III
Attorney General and Reporter

3/1/2018
Date

Department of State Use Only

Filed with the Department of State on: 3/5/18

Effective on: 6/3/18

Tre Hargett
Secretary of State

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PUBLIC INFORMATIONS

G.O.C. STAFF RULE ABSTRACT

DEPARTMENT:	Board of Regents
DIVISION:	
SUBJECT:	Alcoholic Beverages
STATUTORY AUTHORITY:	Tennessee Code Annotated, Section 49-8-203
EFFECTIVE DATES:	June 20, 2018 through June 30, 2019
FISCAL IMPACT:	None.
STAFF RULE ABSTRACT:	The rule defines "alcoholic beverage" and "institutional property" and allows students who are of legal drinking age to possess as well as consume, under certain conditions, alcoholic beverages on property owned or controlled by institutions governed by the Tennessee Board of Regents, without being subject to disciplinary action.

Regulatory Flexibility Addendum

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

The rule amendment is not anticipated to have an impact on small business.

Impact on Local Governments

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

The rule amendment 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;

The rule defines "alcoholic beverage" and "institutional property" and allows students who are of legal drinking age to possess as well as consume, under certain conditions, alcoholic beverages on property owned or controlled by institutions governed by the Tennessee Board of Regents, without being subject to disciplinary action.

(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. § 49-8-203 Powers and Duties grants the Tennessee Board of Regents the power to establish policies and regulations regarding campus life of their institutions, including, but not limited to, the conduct of students, student housing, parking, and safety.

(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;

TBR Board, college administration, students, college law enforcement, who all urge adoption.

(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;

Mary G. Moody
General Counsel
Tennessee Board of Regents

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

Mary G. Moody
General Counsel
Tennessee Board of Regents

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

Mary G. Moody
Tennessee Board of Regents
1 Bridgestone Park, 3rd Floor

Nashville, Tennessee 37214
615-366-4438
Mary.Moody@tbr.edu

(l) 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

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C.L.A.S.S. DIVISION

For Department of State Use Only

Sequence Number: 03-23-18
Rule ID(s): 6733
File Date: 3/22/18
Effective Date: 6/20/18

Proposed Rule(s) Filing Form

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

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

Agency/Board/Commission:	Tennessee Board of Regents
Division:	Systemwide Student Rules
Contact Person:	Mary G. Moody
Address:	Office of General Counsel 1 Bridgestone Park, 3rd Floor Nashville, Tennessee
Zip:	37214
Phone:	615-366-4438
Email:	Mary.Moody@tbr.edu

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**
0240-02-01	Alcoholic Beverages
Rule Number	**Rule Title**
0240-02-01-.01	Alcoholic Beverages

RULES
OF
BOARD OF REGENTS
STATE UNIVERSITY AND COMMUNITY COLLEGE SYSTEM OF TENNESSEE

SYSTEMWIDE STUDENT RULES

CHAPTER 0240-02-01
ALCOHOLIC BEVERAGES

TABLE OF CONTENTS

0240-02-01-.01 Alcoholic Beverages

0240-02-01-.01 ALCOHOLIC BEVERAGES. ~~The use and/or possession of alcoholic beverages on university, community college, technical institute and area vocational-technical school owned or controlled property shall be prohibited.~~

(1) Definitions. As used in this rule,

(a) "Alcoholic Beverage" means and includes intoxicating liquors, wine and beer, as defined by T.C.A. § 57-3-101 and T.C.A. § 57-5-101;

(b) "Institution Property" means property owned or controlled by an institution governed by the Tennessee Board of Regents.

(2) The possession and/or consumption of alcoholic beverages by students under the age of twenty-one (21) on institution property is absolutely prohibited.

(3) The possession and/or consumption of alcoholic beverages by students age twenty-one (21) and over on property owned or controlled by an institution governed by the Tennessee Board of Regents is prohibited except:

(a) Students who are at least twenty-one (21) years of age may possess unopened containers of alcoholic beverages within their personal vehicles, provided that they may not open the containers or consume the contents while on institution property and the alcoholic beverage must be stored out of plain sight. When the student is not in the vehicle, the vehicle must remain locked.

(b) Students who are at least twenty-one (21) years of age may consume alcoholic beverages at an event on institution property for which the President has approved the serving and consumption of alcoholic beverages by those invited to the event and to which the student is an invited guest.

(4) Disciplinary Action

(a) Students violating this rule and/or any related system or institution policy shall be subject to discipline in accordance with the institution's disciplinary policy.

(b) Violation of this rule by students under the age of twenty-one (21) shall be reported to campus law enforcement.

(c) Except as prohibited by the Family Educational Rights and Privacy Act (FERPA) 20 U.S.C. § 1232(g), the institution shall notify a parent or legal guardian of a student under twenty-one (21) years of age if the student has committed a disciplinary violation with respect to the use or possession of alcoholic beverages on institution property.

Authority: T.C.A. § 49-8-203; T.C.A. § 49-7-146.

* 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)
Gov. Bill Haslam				X	
Hon. Candice McQueen				X	
Hon. Jai Templeton	X				
MaryLou Apple	X				
Larry Autry	X				
Greg Duckett	X				
Yolanda Greene				X	
Tom Griscom				X	
Joey Hatch	X				
Fran Marcum	X				
Jeremy Mitchell	X				
Barbara Prescott	X				
Emily Reynolds	X				
Leigh Shockey				X	
Danni Varlan	X				
Tom White	X				

I certify that this is an accurate and complete copy of proposed rules, lawfully promulgated and adopted by the Tennessee Board of Regents on 12/14/2017, 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: 2/20/2018

Signature: Mary G Moody

Name of Officer: Mary G. Moody

Title of Officer: General Counsel

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

Notary Public Signature: Carol A. Tomlinson

My commission expires on: 2-27-21

CAROL A TOMLINSON
STATE OF TENNESSEE NOTARY PUBLIC
RUTHERFORD COUNTY

Agency/Board/Commission: Tennessee Board of Regents

Rule Chapter Number(s): Chapter 0240-02-01 Alcoholic Beverages

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

3/12/2018
Date

Department of State Use Only

Filed with the Department of State on: 3/22/18

Effective on: 6/20/18

Tre Hargett
Secretary of State

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G.O.C. STAFF RULE ABSTRACT

DEPARTMENT:	State Board of Education
DIVISION:	
SUBJECT:	Pupil Transportation
STATUTORY AUTHORITY:	Tennessee Code Annotated, Section 49-6-2102
EFFECTIVE DATES:	June 12, 2018 through June 30, 2019
FISCAL IMPACT:	This rule will not impact state and local government revenues or expenditures.
STAFF RULE ABSTRACT:	The Department of Education met with the Department of Safety to revise the Pupil Transportation Rule to ensure the rule is aligned with all state and federal transportation laws. These revisions update the years of service and miles of recorded travel to align with current state law; clarify the period of service years for pre-titled buses; and update rules for commercial advertising to align with current state law.

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;

The Department of Education met with the Department of Safety to revise the Pupil Transportation Rule to ensure the rule is aligned with all state and federal transportation laws. These revisions update the years of service and miles of recorded travel to align with current state law; clarify the period of service years for pre-titled buses; and update rules for commercial advertising to align with current state law.

(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. § 49-6-2102 directs the State Board of Education to set the rules and regulations governing school transportation as needed to protect the lives and welfare of school children.

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

Local Education Agencies and bus operators are most directly affected by these rules. Neither of which has urged adoption or rejection of this rule. The State Board urges 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;

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

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

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Sequence Number: 03-13-18
Rule ID(s): 6718
File Date: 3/14/18
Effective Date: 6/12/18

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):
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**
0520-01-05	Pupil Transportation
Rule Number	**Rule Title**
0520-01-05-.01	Operation of School Buses
0520-01-05-.02	Minimum Standards for School Buses

RULES
OF
THE STATE BOARD OF EDUCATION

CHAPTER 0520-01-05
PUPIL TRANSPORTATION

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0520-01-05-.01 Operation of School Buses
0520-01-05-.02 Minimum Standards for School Buses
0520-01-05-.03 Repealed
0520-01-05-.04 through 0520-1-4-.10 Repealed

0520-01-05-.01 OPERATION OF SCHOOL BUSES.

(1) Records and Reports - The ~~superintendent~~ director of schools shall keep records of transportation costs and the number of pupils transported on a monthly basis, and make such reports as required by the Commissioner of Education.

(2) Liability Insurance (T.C.A. §49-6-2111).

(a) Minimum liability and property damage coverage shall be not less than the amount specified in the table below:

Kind of equipment passenger equipment (seating capacity)	Limit for bodily injuries to, or death of, one person	Limit of bodily injuries to, or death of, all persons injured or killed in one accident (subject to maximum of $100,000 for bodily injuries to, or death of, one person)	Limit for loss or damage in any one accident to property of others (including occupants)
All Capacities	$100,000	$300,000	$50,000

In the event that the local board of education (or the governmental entity with liability under the Governmental Tort Liability Act of 1973, as amended, T.C.A. §29-20-101 *et.* seq.) is unable to purchase insurance to cover its obligations hereunder except through an assigned risk pool, then the limits of liability in the three preceding categories shall be $20,000/$40,000/$10,000. If insurance is not purchased through an assigned risk pool or if the board of education or governmental entity elects to self-insure, then the greater limits above apply.

(b) School bus accidents shall be reported to the Department of Education, in the following manner:

1. Pupil injury and/or fatality accidents: By telephone within 24 hours of the accident; by written report within ten (10) days on the department provided School Bus Accident Report Form.

2. Property damage accidents: At the end of the school year on the Annual Pupil Transportation Report.

~~(3) Allocation of Funds - The allocation of minimum program funds for pupil transportation shall be based on a formula for the distribution of available funds.~~

(3) The Commissioner of Safety shall annually inspect each school bus that has been in use for fifteen (15) years or less from the in-service date and that transports school children~~,~~ in order to determine whether it can be used safely to protect the lives of school children.

~~(4)~~

~~(5)~~(4) Approved buses are identified as:

(a) Type C conventional buses with eighteen (18)~~5~~ years or less of service. After fifteen (15)~~2~~ years of service, year-to-year approval is required from the Commissioner of ~~Education~~Safety.

(b) Type D transit buses with eighteen (18)~~5~~ or less years of service. After fifteen (15) years of service, year-to-year approval is required from the Commissioner of Safety.

(c) Type C and D ~~transit~~ buses with ~~150,000~~200,000 miles or less of recorded travel and a maximum of eighteen (18)~~7~~ years in service.

(d) Type A buses with ~~single rear wheels and 10 years or less of service.~~ fifteen (15) years or less of service. If a Type A bus reaches the fifteenth ~~(15th)~~ year of service during a school year, the owner shall be allowed to operate the bus throughout the remainder of the school year. The owner shall immediately notify the department of safety when the bus reaches the fifteenth ~~(15th)~~ year, requiring discontinuance.

(e) Type B buses with fifteen (15) years or less of service ~~Type A buses with dual rear wheels and 12 years or less of service.~~

~~(f) Type C conventional buses remanufactured not later than the 10th nor earlier than the 7th year with 15 or less years of service.~~

~~(g) Type D transit buses remanufactured not later than the 15th nor earlier than the 12th year with 20 or less years of service.~~

(5) No bus purchased from an out-of-state entity that has been in use for more than fifteen (15) years from its in-service date may be in use unless it has been in service in this state for a minimum period of two (2) consecutive years. ~~Pre-titled school buses shall meet additional requirements pursuant to T.C.A. § 49-62109(b)(5).~~

(a) The two (2) year period of service shall start on the date of the first Department of Safety inspection.

~~(6)~~(b) The two (2) year period of service shall equal twenty-four (24) months.

~~(7) Approved buses are identified as:~~

~~(a) Type C conventional buses with eighteen (18) years or less of service. After fifteen (15) years of service, year-to-year approval is required from the Commissioner of Safety.~~

~~(b) Type D transit buses with eighteen (18) years or less of service.~~

~~(c) Type C or D transit buses with two hundred thousand (200,000) miles or less of recorded travel.~~

~~(d) Type A buses with single rear wheels and ten (10) years or less of service.~~

~~(e) Type A buses with dual rear wheels and twelve (12) years or less of service.~~

~~(f) Type B buses with fifteen (15) year or less years of service.~~

~~For Cross References to Pupil Transportation Laws see T.C.A. §§49-3-1006, 49-6--2101 et seq., 49-6-3104, 55-7-106, and 55-8-151.~~

~~(8)~~(6) Commercial advertising may be displayed on school buses as follows:

(a) Commercial advertising shall be permitted only on the rear quarter panels of the school bus; no more than two (2) advertisements per rear quarter panel shall be permitted.

(b) The size of commercial advertising per quarter panel shall not exceed ~~sixteen~~ thirty-six (~~16~~36") inches in height and ~~sixty~~ninety (~~(60~~90") inches in length, including any border or framing.

(c) The commercial advertising shall consist of black lettering on a white background.

(d) ~~No c~~Commercial advertising shall not include:
(e)

1. ~~of~~ Ttobacco or alcohol products.
~~shall be permitted.~~
2. Political campaign advertising, or ~~shall be expressly prohibited.~~

~~(d)~~3. Individual food items that cannot be sold to students through vending machines pursuant to T.C.A. § 49-6-2307.

~~(e)~~(f) Commercial advertising shall not cover any structural or sheet metal damage or alteration.

~~(f)~~(g) The local board of education shall adopt a policy to regulate commercial advertising on school buses. -Such policy shall address the following minimum standards:

1. Cost of the commercial advertising.

2. Designation of the individual(s) with the authority to sell and approve commercial advertising.

3. Definition of appropriate commercial advertising.

4. Specification of how the advertising will be attached, if not painted on the school bus.

5. Issues relating to contracts with independent contractors.

(i) All contracts for commercial advertising must comply with local board of education policy.

~~(ii)~~ Contracts with independent bus owners must indicate how the revenue from the commercial advertising will be allocated.
(ii)

~~(g) Commercial advertising shall be permitted only on the rear quarter panels of the school bus; no more than two (2) advertisements per rear quarter panel shall be permitted.~~

~~(h) The size of commercial advertising per quarter panel shall not exceed sixteen (16") inches in height and sixty (60") inches in length, including any border or framing.~~

~~(i) The commercial advertising shall consist of black lettering on a white background.~~

~~(j) No commercial advertising of tobacco or alcohol products shall be permitted. Political campaign advertising shall be expressly prohibited.~~

~~(k) Commercial advertising shall not cover any structural or sheet metal damage or alteration.~~

(7) The ~~State~~ Department of Education shall report annually on school bus accidents to the State Board of Education and to the State Department of Safety, Pupil Transportation Division. ~~(9)~~

~~(10)~~(8) A school bus shall not transport more students than the manufacturer's rated capacity. In order to allow for periods of adjustment, the Commissioner of Education may issue temporary permits of no more than thirty (30) school days in accordance with TCA §49-6-2110. When applying for a permit, the local board of education shall submit a plan stating how it will achieve compliance with the manufacturer's rated capacity. The Department of Education and the Department of Safety will work collaboratively to ensure that buses are brought into compliance.

Authority: *T.C.A. §§ 49-1-302; 49-6-2101 et seq., 46-6-2108, 49-6-2109, 55-7-106 and 55-8-151.* ***Administrative History:*** *Original rule certified June 10, 1974. Amendment filed July 15, 1976; effective August 15, 1976. Amendment filed February 28, 1978; effective March 30, 1978. Amendment filed October 15, 1979; effective January 8, 1980. Amendment filed November 3, 1981; effective March 16, 1982. Amendment filed June 4, 1982; effective July 19, 1982. Amendment filed January 10, 1984; effective April 15, 1984. Amendment filed June 27, 1984; effective July 27, 1984. Amendment filed May 28, 1986; effective June 27, 1986. Repeal and new rule filed March 16, 1992; effective June 29, 1992. Amendment filed April 27, 1998; effective August 28, 1998. Amendment filed November 18, 1999; effective March 30, 1999. Amendment filed December 19, 2002; effective April 30, 2003. Amendment filed May 19, 2005; effective September 28, 2005. Amendment filed May 26, 2015; effective August 24, 2015.*

0520-01-05-.02 MINIMUM STANDARDS FOR SCHOOL BUSES.

(1) All school buses purchased by a county, local school system, or private contractor shall meet the *Tennessee Minimum School Bus Standards* approved by the State Board of Education and all applicable federal motor vehicle safety standards.

(a) Van type equipment may be used to transport not more than ten ~~15~~ ~~1~~(10) ~~students~~ persons to and from interscholastic athletic or other interscholastic or school sponsored activities. Such van type equipment may be owned and operated by the local education agency or may be operated by or for the local education agency under a rental or for hire arrangement entered into by the agency with respect to the specific activity in connection with which such transportation is to be furnished.

1. Any van type equipment designed to transport not fewer than seven (7) nor more than ten (10) persons that is owned or rented by the school system and used to transport students must be in apparent safe operating condition ~~(as referenced in (a)3(i) of this rule),~~ insured to comport to the minimum requirements of T.C.A. §29-20-101 *et seq.*, and driven by a properly licensed employee of the school system.

~~2.~~ Any van type equipment designed to transport not fewer than seven (7) nor more than ten (10) persons operated for the local education agency under a for hire arrangement (both van and driver are arranged) to transport students must be in apparent safe operating condition ~~(as referenced in (a)3(i) of this rule)~~, insured to comport to the minimum requirements of T.C.A. §29-20-101 et seq., and driven by a properly licensed driver.

2.

~~3. Van type equipment designed to transport eleven (11) or more persons that is either owned or rented by the school system or operated for the local education agency under a for hire arrangement to transport students is prohibited. Van type equipment designed to transport not fewer than eleven (11) nor more than sixteen (16) persons can be used to transport up to fifteen (15) students. When transporting students, all drivers of such van type vehicles shall possess an appropriate school bus endorsed commercial driver's license issued by the Tennessee Department of Safety. Such van type equipment must be inspected by the Tennessee Department of Safety prior to its use. The inspections will be made at sites determined and scheduled by the Department of Safety. Local education agencies shall furnish evidence of insurance to the inspector of the van type vehicle at the time of inspection with limits which comport to the minimum requirements of T.C.A. §29-20-101 et seq. A sticker evidencing approval for operation shall be issued to the owner of the vehicle and shall be affixed to the vehicle at the time of completion of the inspection. The approval shall be effective for a one year period. The inspection shall include the following areas:~~

~~(i) The van-type equipment is in safe, operating condition including an inspection of brakes, tires, glass, and seat belts and an inspection for fluid leaks;~~

~~(ii) The drive shaft is restrained by drive shaft loop hangers, except for front wheel drive vans;~~

~~(iii) The van contains a fire extinguisher, first aid kit and a body fluid kit; and~~

~~(iv) The van has in place an internal release latch for all doors.~~

3.

~~4. No waivers shall be issued by any agency or department for the rules pertaining to the use of van type equipment.~~

~~5.~~ 4. Notwithstanding any part of this rule to the contrary, any van type equipment ~~designed to transport (11) or more persons~~ ~~purchased~~used by a local education agency ~~after the effective date of this rule~~ shall conform to all applicable Federal Motor Vehicle Safety Standards (FMVSS) if used for pupil transportation.

(2) Vehicles constructed for transporting children with disabilities shall comply generally with the Tennessee Minimum School Bus Standards approved by the State Board of Education, but~~,~~

because of special equipment, appropriate modifications shall be made for children with disabilities.

Authority: *T.C.A. §§ 49-1-30; 49-6-2102 and 49-6-2115.* ***Administrative History:*** *Original rule certified June 10, 1974. Amendment filed July 15, 1976; effective August 16, 1976. Amendment filed* ~~(Rule 0520-01-05-.02, continued)~~
February 28, 1978; effective March 30, 1978. Amendment filed January 9, 1979; effective February 23, 1979. Amendment filed April 14, 1980; effective May 28, 1980. Amendment filed November 13, 1981; effective March 16, 1982. Amendment filed September 28, 1982; effective December 15, 1982. Amendment filed April 15, 1983; effective May 16, 1983. Amendment filed May 28, 1986; effective June 27, 1986. Amendment filed January 15, 1987; effective April 29, 1987. Repeal and new rule filed March 16, 1992; effective June 29, 1992. Amendment filed May 28, 1999; effective September 28, 1999.

0520-01-05-.03 REPEALED.

Authority: *T.C.A. §§ 49-1-302 and 49-6-2102.* ***Administrative History:*** *(For history prior to June, 1992, see pages iii-ix). Repeal filed March 16, 1992; effective June 29, 1992. Amendment filed May 28, 1999; effective September 28, 1999.*

0520-01-05-.04 THROUGH 0520-01-05-.10 REPEALED.

Authority: *T.C.A. §§ 49-1-302 and 49-6-2102.* ***Administrative History:*** *(For history prior to June, 1992, see pages iii-ix). Repeal filed March 16, 1992; effective June 29, 1992.*

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

Board Member	Aye	No	Abstain	Absent	Signature (if required)
Chancey	X				
Cook	X				
Edwards	X				
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: 2/20/2018

Signature:

Name of Officer: Elizabeth Taylor

Title of Officer: General Counsel

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

Subscribed and sworn to before me on: 2-23-18

Notary Public Signature:

My commission expires on: 3-8-21

Agency/Board/Commission: Tennessee State Board of Education

Rule Chapter Number(s): Chapter 0520-01-05 Rules 0520-01-05-.01 and 0520-01-05-.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

3/6/2018
Date

Department of State Use Only

Filed with the Department of State on: 3/14/18

Effective on: 6/12/18

Tre Hargett
Secretary of State

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G.O.C. STAFF RULE ABSTRACT

DEPARTMENT: State Board of Education

DIVISION:

SUBJECT: Minimum Requirements for the Approval of Public Schools

STATUTORY AUTHORITY: Tennessee Code Annotated, Section 49-1-302

EFFECTIVE DATES: June 18, 2018 through June 30, 2019

FISCAL IMPACT: This item will not have a fiscal impact on a state or local government revenues and expenditures.

STAFF RULE ABSTRACT: Rule 0520-01-03- Minimum Requirements for the Approval of Public Schools describes the minimum rules and regulations that local education agencies must adhere to operate public schools. On June 30, 2017, the Department of Education convened an internal working group to review postsecondary readiness for students with disabilities. The working group identified language in the High School Policy that states "students with disabilities who fail to earn a yearly grade of seventy percent (70%) in a course that has an End of Course (EOC) examination may use the alternative performance based assessment (APBA) to add to their EOC score" as an item that should be removed from the rule because it is out of alignment with current law and State Board rule and because the standards on the APBA rubric are not aligned to current academic standards. Removing this provision will align the rule with the requirements in state law and State Board rule that TCAP scores be incorporated into a student's final grade as follows: fifteen percent (15%) in the 2017-2018 school year; and between fifteen percent (15%) and twenty-five percent (25%) based on local board policy in the 2018-19 school year and thereafter.

Additional changes to the rule include updating the language on reporting of waivers to align with legislation requiring the Department of Education to post all waiver requests granted by the Commissioner to the Department's website, removing language on student absence in

observance of religious holidays as this has been incorporated to the State Board's School Attendance Policy, removing the graduation with honors and distinction section as this has been incorporated to the state board's High School Policy, removing the APBA substitution, adding the altenate academic diploma option in alignment with revisions to the High School Policy, and removing the graduation with honors and distinction section as this has been incorporated to the State Board's High School Policy.

Regulatory Flexibility Addendum

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

This rule does not affect small businesses

Impact on Local Governments

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

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

Additional Information Required by Joint Government Operations Committee

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

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

Rule 0520-01-03- Minimum Requirements for the Approval of Public Schools describes the minimum rules and regulations that local education agencies must adhere to operate public schools. On June 30, 2017, the Department of Education convened an internal working group to review postsecondary readiness for students with disabilities. The working group identified language in the High School Policy that states "students with disabilities who fail to earn a yearly grade of seventy percent (70%) in a course that has an End of Course (EOC) examination may use the alternative performance based assessment (APBA) to add to their EOC score" as an item that should be removed from the rule because it is out of alignment with current law and State Board rule and because the standards on the APBA rubric are not aligned to current academic standards. Removing this provision will align the rule with the requirements in state law and State Board rule that TCAP scores be incorporated into a student's final grade as follows: fifteen percent (15%) in the 2017- 2018 school year; and between fifteen percent (15%) and twenty-five percent (25%) based on local board policy in the 2018-19 school year and thereafter.

Additional changes to the rule include updating the language on reporting of waivers to align with legislation requiring the Department of Education to post all waiver requests granted by the Commissioner to the Department's website, removing language on student absence in observance of religious holidays as this has been incorporated to the State Board's School Attendance Policy, removing the graduation with honors and distinction section as this has been incorporated to the state board's High School Policy , removing the APBA substitution, adding the alternate academic diploma option in alignment with revisions to the High School Policy, and removing the graduation with honors and distinction section as this has been incorporated to the State Board's High School Policy.

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

Pursuant to T.C.A. § 49-1-302, it is the duty of the State Board, and it has the power to develop and adopt policies for graduation requirements in kindergarten through grade twelve (K-12); review, approval or disapproval and classification of all public schools, kindergarten through grade twelve (K-12), or any combination of these grades.

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

This rule most directly affects local boards of education and educators who have neither urged adoption nor rejection of this rule. The State Board of Education and the Department of Education urge adoption of this rule.

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

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 item will not have a fiscal impact on a state or local government revenues and 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
Elizabeth.Taylor@tn.gov
1st Floor, Andrew Johnson Tower
710 James Robertson Parkway
Nashville, TN 37243
(615)-253-5707

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

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

N/A

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

For Department of State Use Only

Sequence Number: 03-17-18
Rule ID(s): 6722
File Date: 3/20/18
Effective Date: 6/18/18

Proposed Rule(s) Filing Form

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

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

Agency/Board/Commission:	State Board of Education
Division:	
Contact Person:	Elizabeth Taylor
Address:	Andrew Johnson Tower, 1st Floor 710 James Robertson Pkwy Nashville, TN
Zip:	37243
Phone:	615-253-5707
Email:	Elizabeth.Taylor@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**
0520-01-03	Minimum Requirements for the Approval of Public Schools
Rule Number	**Rule Title**
0520-01-03.01	Approval of Schools
0520-01-03-.02	Organization of Schools
0520-01-03-.03	Administration of Schools
0520-01-03-.05	State Academic Standards, Requirement C
0520-01-03-.06	Graduation, Requirement D
0520-01-03-.07	Library Information Center, Requirement E
0520-01-03-.08	Pupil Personnel Services, Requirement F
0520-01-03-.09	Special Education Programs and Services, Requirement G
0520-01-03-.10	Waivers

RULES
OF
THE STATE BOARD OF EDUCATION

CHAPTER 0520-01-03
MINIMUM REQUIREMENTS FOR THE APPROVAL OF PUBLIC SCHOOLS

TABLE OF CONTENTS

0520-01-03-.01	Approval of Schools	0520-01-03-.08	Pupil Personnel Services~~, Requirement F~~
0520-01-03-.02	Organization of Schools~~, Requirement A~~	0520-01-03-.09	Special Education Programs and Services~~, Requirement G~~
0520-01-03-.03	Administration of Schools~~, Requirement B~~	0520-01-03-.10	Waivers
0520-01-03-.04	Repealed	0520-01-03-.11	Repealed
0520-01-03-.05	State Academic Standards~~, Requirement C~~	0520-01-03-.12	Repealed
0520-01-03-.06	Graduation~~, Requirement D~~	0520-01-03-.13	Repealed
0520-01-03-.07	Library Information Center~~, Requirement E~~		

0520-01-03-.01 APPROVAL OF SCHOOLS.

(1) Inspections of Schools.

The Department of Education shall make periodic inspections of the schools under its control. These inspections shall be made to determine the extent to which local school systems operate in compliance with State Board of Education rules and regulations and to verify the information received on reports from local school officials.

(2) Approval Classifications for School Systems.

Each school system shall be classified as approved or non-approved. School systems classified as non-approved by the Commissioner of Education shall receive a written explanation of the reasons for such classification and shall be afforded the opportunity to respond. The ~~Commissioner's~~ commissioner's notification shall include a time by which corrective action shall be completed by the school system. If such corrective action is not taken within the time specified, the ~~Commissioner~~ commissioner shall impose sanctions on the school system which may include withholding part or all of state school funding to the non-approved system.

(3) Reports on School System Compliance with the Rules and Regulations.

The Department of Education shall make an annual report to the State Board of Education regarding each school system's compliance with the rules and regulations. The report shall include the approval status of each local school system, deficiencies identified by school in the approval process, an assessment of action needed to attain approval, local school system response, and sanctions imposed upon systems which do not comply.

(4) Reports on Waivers Granted by the Commissioner of Education.

The Department of Education shall post to its website any waiver of rules, regulations or policies granted by the department within five (5) business days of the ~~C~~commissioner's approval. The waivers shall include the name of the system requesting the waiver and an explanation of the waiver requested. ~~make an annual report to the State Board of Education identifying waivers granted by the Commissioner of Education to local school systems. The report shall include, but shall not be limited to, the name of the system, the party requesting the waiver, the specific rule to which the waiver applies, the rationale for the waiver as~~

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

~~presented in the waiver request, the date the waiver was approved, and the number of times the system has received a waiver for the same rule.~~

(5) Internal Audit.

The Department of Education shall maintain an internal audit function which shall assist the Department in the inspection of schools. Internal audit reports shall be presented to the Commissioner of Education and the State Board of Education.

Authority: *T.C.A. § 49-1-302.* ***Administrative History:*** *Original rule certified June 10, 1974. Amendment filed July 15, 1976; effective August 16, 1976. Amendment filed February 28, 1978; effective March 30, 1978. Amendment filed October 1, 1985; effective October 31, 1985. Amendment filed May 28, 1986; effective June 27, 1986. Repeal and new rule filed March 16, 1992; effective June 29, 1992.*

0520-01-03-.02 ORGANIZATION OF SCHOOLS.~~, REQUIREMENT A.~~

(1) Length of School Day for Students.

(a) The minimum length of the school day for students shall be six and one-half (6½) hours.

(b) School systems may provide for professional development during the school day under one of the following options:

1. School systems. School systems which elect to extend the school day to at least seven (7) hours for the purpose of meeting instructional time requirements missed due to dangerous or extreme weather conditions~~,~~ may allocate a portion of that extension for the purpose of faculty professional development, M-team meetings, S-team meetings, parent/teacher conferences, or other similar meetings, as permitted in T.C.A. § 49-6-3004(e)(1), under the following conditions:

(i) Prior to the beginning of the school year, the school system shall designate how many days shall be allocated for dangerous or extreme weather conditions and how many shall be allocated for student dismissals for faculty professional development, M-team meetings, S-team meetings, parent/teacher conferences, or other similar meetings. The total number of days shall not exceed thirteen (13).

(ii) Faculty professional development shall be consistent with standards and guidelines established by the State Board of Education.

(iii) School systems shall submit their plans for the allocation of excess time to the c~~C~~ommissioner ~~of Education~~ for approval.

2. Schools. School systems may adopt policies providing for individual schools to have school days of at least seven (7) hours in order to accumulate instructional time to be used for periodic early student dismissals for the purpose of faculty professional development. The following conditions shall apply to school systems exercising this option:

(i) Early dismissals shall not exceed the equivalent of thirteen (13) days and shall not exceed three and one-half (3½) hours in any week.

(ii) Students shall attend school one-hundred eighty (180) days.

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

(iii) Faculty professional development shall be consistent with standards and guidelines established by the State Board of Education.

(c) The length of the kindergarten day shall not be less than four (4) hours. Double sessions in any kindergarten program may be permitted so long as both sessions meet all legal requirements for kindergarten programs.

Authority: *T.C.A. §§ 49-1-302 and 49-6-3004.* ***Administrative History:*** *Original rule certified June 10, 1974. Amendment filed July 15, 1976; effective August 16, 1976. Amendment filed February 28, 1978; effective March 30, 1978. Amendment filed January 9, 1979; effective February 23, 1979. Amendment and new rule filed October 15, 1979; effective January 8, 1980. Amendment filed April 14, 1980; effective May 28, 1980. Amendment filed November 13, 1981; effective March 16, 1982. Amendment filed April 13, 1982; effective May 28, 1982. Repeal and new rule filed April 18, 1983; effective May 18, 1983. Amendment filed January 6, 1984; effective April 15, 1984. Amendment filed August 20, 1984; effective November 13, 1984. Amendment filed October 3, 1985; effective January 14, 1986. Amendment filed March 25, 1986; effective June 14, 1986. Amendment filed May 28, 1986; effective June 27, 1986. Amendment filed July 10, 1986; effective October 29, 1986. Amendment filed October 29, 1986; effective December 13, 1986. Amendment filed July 22, 1987; effective October 28, 1987. Amendment filed November 18, 1987; effective February 28, 1988. Amendment filed July 21, 1988; effective October 29, 1988. Repeal and new rule filed March 16, 1992; effective June 29, 1992. Amendment filed November 3, 1993; effective March 30, 1994. Amendment filed March 14, 1995; effective July 28, 1995. Amendment filed April 29, 1996; effective August 28, 1996.*

0520-01-03-.03 ADMINISTRATION OF SCHOOLS.~~, REQUIREMENT B.~~

(1) Teacher Assignment. Teachers shall be on duty at least seven (7) hours per day and such additional time as the administrative organization requires.

(2) Salaries and Licensure for all Licensed Personnel.

(a) The employment standards and licensure requirements established by the State Board of Education shall be applicable to all licensed personnel employed by a local board of education without regard to the source of financial support.

(b) A salary schedule applicable to all licensed personnel shall be approved by the local board of education.

(3) Class Size for Grades Kindergarten (K) through Twelve (12).

(a) Local boards of education shall have policies providing for class sizes in grades kindergarten (K) through twelve (12) in accordance with the following:

Grade Level	Average Class Size	Maximum Class Size
K-3	20	25
4-6	25	30
7-12	30	35
Career and Technical ~~Education~~ Education	20	25

(b) The average class size for a grade level unit (such as the unit K-3) shall not exceed the stated average, although individual classes within that grade level unit may exceed the average.

(c) No class shall exceed the prescribed maximum size.

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

(d) The average class size and the maximum class size shall be based on regular classroom teaching positions, exclusive of principal, assistant principal, counselor, elementary art, elementary music, elementary physical education, librarian, special education, or other specialized positions.

(e) Class size limits may be exceeded in such areas as typewriting and instrumental and vocal music classes, provided that the effectiveness of the instructional program in these areas is not impaired.

(f) Local school systems shall not establish split-grade classes for the purpose of complying with the provisions of the class size averages and maximums. However, these provisions do not prevent school systems from using multi-aged classes.

(g) Local boards of education must approve the establishment of any split-grade classes for any purpose.

(h) The average class size specified for the grade levels involved in split-grade classes will be the maximum size allowed in such classes.

(4) Planning Time.

(a) Local boards of education shall provide full-time classroom teachers in grades kindergarten (K) through twelve (12) with individual duty-free planning periods during the established instructional day.

(b) Individual planning time shall consist of two and one-half (2½) hours each week during which teachers have no other assigned duties or responsibilities other than planning for instruction. The two and one-half (2½) hours may be divided on a daily or other basis.

(c) Individual duty-free planning time shall not occur during any period that teachers are entitled to duty-free lunch.

(d) Any school system which is providing an individual duty-free planning period by extending the school day by thirty (30) minutes as of the beginning of the 2000-01 school year may continue such practice and satisfy the planning time requirements.

(e) The director of schools shall report annually to the ~~department~~ Department of ~~education~~ Education regarding compliance with the individual duty-free planning time requirement.

(5) Duty Free Lunch Period. In schools providing a lunch period for students, all teachers shall be provided each day with a lunch period during which they shall not have assigned duties. The lunch period for each teacher shall be at least the same amount of time as that allowed for students.

~~(6) Pupil Course Work Load. All full time students in grades nine through twelve (9-12) shall be enrolled each semester in subjects that produce a minimum of five (5) units of credit for graduation per year. Students with hardships and gifted students may appeal this requirement to the local school superintendent and then to the local board of education.~~

(~~7~~6) Summer Schools.

(a) Summer schools shall be under the control and management of the local board of education having jurisdiction.

(b) The following shall be required for grades nine (9) through twelve (9-12):

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

1. State academic standards shall be used for all courses.

2. Summer school teachers shall be licensed and hold endorsements in the subject areas in which they are teaching.

3. Any course work successfully completed in an approved summer school is fully transferable to any other approved school.

(~~8~~7) Student Evaluation in Grades Kindergarten (K) through grade eight (8).

(a) The student evaluation program for grades kindergarten (K) through grade eight (8) shall consist of the following:

1. A criterion-referenced test will be administered in subjects and grade levels in accordance with policy of the State Board of Education.

2. Based on achievement data from the benchmark years three (3), five (5), and eight (8), there shall be a research-based intervention initiated by the local education agency for students scoring below proficient in reading, language, and mathematics on the criterion referenced portion of the state achievement test. The intervention shall occur during the year following the benchmark assessment data. The Department of Education shall assist systems in the identification of effective intervention programs. Evidence of compliance with this requirement shall become a component of the school improvement plan.

3. An assessment of writing in grades five (5) and eight (8).

(b) State mandated student testing programs shall be undertaken in accordance with procedures published by the Department of Education. Local school systems shall develop local policies regarding security of test administration, consistent with Department of Education guidelines.

(c) ~~To assist the decision making process and to better inform policy,~~ Tthe ~~State~~ Department of Education shall annually report to the State Board of Education the number and percentage of students scoring in the ~~Below Basic~~below achievement level, but have been promoted to the next grade level by school system. This data shall be disaggregated by subgroups similar to those required for federal reporting.

(d) LEAs shall use the Response to Instruction and Intervention (RTI^2). RTI^2 shall include high-quality instruction and interventions tailored to student need where core instructional and intervention decisions are guided by student outcome data. Tiered interventions in the areas of reading, mathematics, and/or writing shall occur in general education depending on the needs of the student. If a student fails to respond to intensive interventions and is suspected of having a Specific Learning Disability, then the student may require special education interventions.

(~~9~~8) Admission and Enrollment of Students.

(a) Children entering kindergarten shall be five (5) years of age on or before August 15. However, a child does not have to enroll in school at five (5) years of age, but enrollment must occur no later than the beginning of the academic year following the child's sixth (6th) birthday.

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

(b) Any transfer student applying for admission who was legally enrolled in an approved kindergarten in another state and who will be five (5) years of age no later than December 31 of the current school year, shall be enrolled.

(c) A child must attend school until his/her eighteenth (18th) birthday, unless:

1. He or she has received a diploma or other certificate of completion of high school;

2. He or she is enrolled and making satisfactory progress in a course of instruction leading to a High School Equivalency Diploma; or

3. He or she is enrolled in a home school and has reached their seventeenth (17th) birthday.

(~~10~~9) Students Transferring From One School to Another.

(a) Students may transfer among public schools or among Category I, II, or III private schools (see Chapter 0520-07-02), without loss of credit for completed work. The school which the student leaves must supply a properly certified transcript showing the student's record of attendance, achievement, and the units of credit earned.

(b) Principals shall allow credit for work transferred from other schools only when substantiated by official transcripts. Students transferring from schools that are not approved by the ~~Tennessee~~ State Board of Education or by comparable agencies shall be allowed credit only when they have passed comprehensive written examinations approved, administered, and graded by the principal. Student scores from a recognized standardized test may substitute for the required comprehensive written examinations.

(c) The examination administered to students in grades one (1) through eight (~~1~~-8) shall cover only the last grade completed.

(d) The examinations administered to students in grades nine (9) through twelve (~~9~~-12) shall cover the individual subjects appearing on the official transcripts. The examination for subjects of more than one (1) unit need cover only the last unit completed. A student transferring from one school to another may count for graduation one-half (½) unit of credit in courses for which a minimum of one (1) unit is required only if the course is not offered in the school to which he or she is transferring.

(e) The principal is authorized to transmit transcripts of a student to any school to which the student transfers or applies for admission when the records are requested by the receiving school or institution. The parent or guardian of the student will be notified that the transcript is being sent.

(f) Local boards of education may admit pupils from outside their respective local school systems at any time.

(g) Local boards of education may arrange for the transfer of students residing within their systems to other school systems by establishing agreements with other local boards of education for the admission or transfer of students from one school system to another.

(h) The receiving board of education may set a time before or during the school year after which it will not accept transfer students. The receiving board of education may charge the non-resident student tuition to attend.

(i) If a local board of education otherwise permits non-resident students to transfer into its schools, it may not discriminate against any students solely on the grounds of their

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

rrace, sex, national origin or disability, nor may it charge such students a tuition over and aabove the usual tuition for non-disabled persons.

(~~11~~10) Public Virtual Schools.

(a) Public virtual schools must comply with all applicable ~~Tennessee~~ State Board of Education policies and rules and regulations.

(b) Public virtual schools shall:

1. Be approved by the local board of education;

2. Use technology to deliver a significant portion of instruction to its students via the Internet in a virtual or remote setting;

3. Review and provide access to a sequential curriculum that meets or exceeds the curriculum standards adopted by the ~~Tennessee~~ State Board of Education;

4. Meet the equivalent of the 180 days of instruction and six and one-half (6½) hours per day per academic year pursuant to T.C.A. § 49-6-3004;

5. Monitor participation and progress to ensure students meet participation requirements and make progress toward successful completion of courses;

6. Administer all state tests required of public school students to students enrolled in a virtual school in a proctored environment consistent with state test administration guidelines;

7. Be evaluated annually and report the extent to which the school demonstrates increases in student achievement, along with academic, fiscal, and operational performance;

8. Ensure that students with special needs, including students with disabilities and limited English proficiency are not excluded from enrolling and participating, further, the public virtual school is responsible for providing the services in the student's Individualized Education Program (IEP);

9. Ensure that all teachers employed to provide services to the students are endorsed in their grade or course and qualified to teach in Tennessee;

10. Ensure access to instructional materials, access to technology such as a computer and printer that may be necessary for participation in the program, and access to an Internet connection used for school work; and

11. Meet class size standards established by T.C.A. § 49-1-104. An individual virtual school may increase the enrollment in virtual classes by up to twenty-five percent (25%) over the class size standards established by T.C.A. § 49-1-104 if the school demonstrates student achievement growth at a level of "at expectations" or greater, as represented by the Tennessee Value-Added Assessment System (TVAAS) in the prior year.

(~~d~~c) Public virtual schools must comply with all compulsory attendance requirements including monitoring and reporting as required in T.C.A. § 49-6-3007.

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

1. The district establishing the public virtual school is required to report truancy to the juvenile court having jurisdiction over that student.

2. On or before August 1 of each year, the public virtual school shall notify all LEAs of the enrollment of students residing within the LEA's jurisdiction. LEAs shall be notified within two (2) weeks when changes occur relative to students residing within the LEA's jurisdiction.

3. Once a non-resident student has been accepted and enrolled in a public virtual school, it shall be the responsibility of the LEA that has established the public virtual school to maintain enrollment of that student until such a time as the student is withdrawn by the parent or guardian. If the student is withdrawn by the parent or guardian, the public virtual school shall send transcripts and other student records to the receiving school in a timely manner.

(~~12~~11) Records and Reports.

(a) A cumulative record provided to teachers by local school systems shall be kept up to date for each student, kindergarten (K) through grade twelve (12), and shall remain as local school property.

(b) Each school shall provide for the storage and safekeeping of all records and reports.

(c) The maintenance, use, dissemination and confidentiality of information in school records and reports shall be governed by written policies of the local board of education.

(~~13~~12) School Fees.

(a) No fees or tuitions shall be required of any student as a condition of attending public schools or using its equipment while receiving educational training. All school fees must be authorized by the local board of education. Local board policy will determine activities during the school day and supplies that are required for participation in courses offered for credit or grade for which the board authorizes the requesting of fees.

(b) The following school fees may be requested from but not required of any student, regardless of financial status (including eligibility for free or reduced price lunch):

1. Fees for activities that occur during regular school hours (the required 180 instructional days), including field trips, any portion of which fall within the school day; or for activities outside regular school hours if required for credit or grade;

2. Fees for activities and supplies required to participate in all courses offered for credit or grade, including interscholastic athletics and marching band if taken for credit in accordance with local board policies; and

3. Refundable security deposits collected by a school for use of school property for courses offered for credit or grade, including interscholastic athletics and marching band if taken for credit in accordance with local board policies.

(c) LEAs shall establish a process by which to waive the following school fees for students eligible for free or reduced price school lunches:

1. Fees or tuition applicable to courses taken for credit or grade during the summer by a student; except that non-resident students regularly enrolled in another school system may be required to pay fees or tuition for such summer courses; and

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

2. Fees required for graduation ceremonies.

(d) Fee waiver process for students eligible for free or reduced price lunch. At the beginning of the school year, at the time of enrollment, and/or at the time of requesting school fees, all students and their parents or legal guardians shall be given clear and prominent written notice of authorized fees that may be requested, and notice of the fee waiver process.

1. The parent or legal guardian of a student shall be given the opportunity to pay all or any portion of the school fee if they desire. However, if the parent chooses not

to pay a fee, the child may not be prevented from participating in the activity or course for which the fee is being requested.

2. Local education agencies shall provide written notice to parents or legal guardians of approval or denial of requests for fee waivers. Any denial shall contain the specific grounds for denial and shall afford the parent or legal guardian the opportunity for a personal meeting with the appropriate school personnel to discuss the validity of the denial.

3. Local education agencies shall keep copies of any forms, notices and/or instructions used by schools in the waiver of fees and shall keep records of any denials, appeals of denials, and resolution of such appeals.

(e) LEAs are authorized to require payment of the following fees by all affected students:

1. Fines imposed on all students for late-returned library books; parking or other traffic fines imposed for abuse of parking privileges on school property; or reasonable charges for lost or destroyed textbooks, library books, workbooks or any other property of the school;

2. Debts incurred pursuant to sectionparagraph ~~Rule 0520-01-03-.03(14~~13) of this rule, Withholding of Student Grades for Debts Owed to the School;

3. Refundable security deposits collected by a school for use of school property for participation in extracurricular activities;

4. Costs for extracurricular activities occurring outside the regular school day including sports, optional trips, clubs or social events; and

5. Non-resident tuition charged of all students attending a school system other than the one serving their place of residence.

(~~14~~13) Withholding of Student Grades for Debts Owed to the School.

(a) Local education agencies are authorized to withhold all grade cards, diplomas, certificates of progress or transcripts of a student who has taken property that belongs to a local education agency, or has incurred a debt to a school, until such student makes restitution in full. Unpaid school fees, as defined above, may not be considered debts owed to the school.

(b) No student shall be sanctioned under the provisions of this rule when the student is deemed to be without fault for the debt owed to the local education agency or the school.

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

(c) Nothing in this subparagraph authorizes any local education agency to limit the rights of parents to have access to their children's educational records pursuant to the Family Educational Rights and Privacy Act.

(d) Local education agencies shall afford the student and/or the student's parent the opportunity to appear and be heard if such student and/or the parent disputes the debt, the amount of the debt, or the application of sanctions.

~~(15) Student Absence in Observance of Religious Holidays.~~

~~Any student who misses a class or day of school because of the observance of a day set aside as sacred by a recognized religious denomination of which the student is a member or adherent, where such religion calls for special observances of such day, shall have the absence from that school day or class excused and shall be entitled to make up any school work missed without the imposition of any penalty because of the absence.~~

(~~16~~14) School Board, District School Improvement Planning.

(a) School Board Improvement Plan. Each local board of education shall develop, maintain, and implement a long-range strategic plan that addresses at least a five (5) -year period of time. The plan shall be updated every two (2) years and include a mission statement, goals, objectives and strategies, and address the State Board of Education master plan.

(b) District and School Improvement Plan. Each local board of education shall have each school under its jurisdiction develop, maintain, and implement a school improvement plan. The plan shall be updated every two (2) years and include areas such as curriculum, instruction, professional development, and community partnerships, and address the long-range strategic plan of the local board of education.

(~~17~~15) Multi-Hazard Emergency Operations Plans.

(a) Each local school system shall have a multi-hazard emergency operations plan to include, but not be limited to, fire, tornado, earthquake, flood, bomb threat, and armed intrusion.

(b) Each school shall practice emergency safety procedures.

(c) Each local education agency having jurisdiction that lies entirely or partially within one hundred (100) miles of the New Madrid Fault Line shall implement earthquake preparedness drills in each of the schools administered by such local education agency. The Guidebook for Developing Aa School Earthquake Safety Program published by the Federal Emergency Management Agency shall serve as the model plan for local education agencies to consider when adopting plans for earthquake preparedness drills. Affected local education agencies shall review and consider the entire guidebook to assure that their schools provide the optimal safety conditions for their students.

(d) Each school administered by a local education agency having jurisdiction that lies entirely or partially within one hundred (100) miles of the New Madrid Fault Line shall conduct at least two (2) earthquake preparedness drills every school year. A record of the earthquake preparedness drills, including the time and date, shall be kept in the

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

respective schools and shall be made available upon request by the Department of Education.

(e) Each school that utilizes a two (2)-way communication system shall ensure teaches and other personnel are properly and adequately trained on the use of the system.

(f) ~~Alternate~~ Alternative schools must maintain a two (2)-way communication system.

Authority: *T.C.A. §§ 49-1-302, 49-1-302(a)(2) and (13), 49-2-110, 49-2-114, 49-6-101, 49-6-201, 49-6-3001(c) and (c)(1), 49-6-3003, 49-6-3005(a) and (a)(4), 49-6-3104, 49-6-3105, 49-6-6201, and Sections 30, 78 through 80, and 88 of Chapter 535 of the Public Acts of 1992.* ***Administrative History:*** *Original rule certified June 10, 1974. Amendment filed February 28, 1978; effective March 30, 1978. Amendment filed April 14, 1980; effective May 28, 1980. Amendment filed July 19, 1982; effective October 13, 1982. Repeal and new rule filed April 18, 1983; effective May 18, 1983. Amendment filed June 10, 1983; effective September 14, 1983. Amendment filed June 27, 1984; effective July 27, 1984. Amendment filed June 28, 1984; effective July 28, 1984. Amendment filed May 28, 1986; effective June 27, 1986. Repeal and new rule filed March 16, 1992; effective June 29, 1992. Amendment filed July 21, 1992; effective October 28, 1992. Amendment filed September 1, 1992; effective December 29, 1992. Amendment filed October 11, 1995; effective February 28, 1996. Amendment filed April 29, 1996; effective August 28, 1996. Amendment filed May 31, 1996; effective September 27, 1996. Amendment filed May 28, 1999; effective September 28, 1999. Amendment filed August 31, 2001; effective December 28, 2001. Amendment filed March 28, 2002; effective July 29, 2002. Amendment filed June 30, 2003; effective October 28, 2003. Amendment filed March 1, 2005; effective July 29, 2005. Amendment filed September 6, 2007; effective January 28, 2008. Amendment filed April 30, 2009; effective August 28, 2009. Amendment filed October 20, 2009; effective March 31, 2010. Amendment filed March 25, 2010; effective August 29, 2010. Amendment filed December 19, 2012; effective May 30, 2012. Amendments filed March 21, 2012; effective August 29, 2012. Amendment filed February 6, 2013; effective July 29, 2013. Amendment to rule 0520-01-03-.03 (4) filed May 22, 2015; effective August 20, 2015.*

0520-01-03-.04 REPEALED.

Authority: *T.C.A. §§ 49-1-302, 49-5-5103, and 49-5-5202.* ***Administrative History:*** *Original rule certified June 10, 1974. Amendment filed June 30, 1975; effective July 30, 1975. Amendment filed July 15, 1976; effective August 16, 1976. Amendment filed February 28, 1978; effective March 30, 1978. Amendment filed January 9, 1979; effective February 23, 1979. Amendment filed October 15, 1979; effective January 9, 1980. Amendment filed April 14, 1980; effective May 28, 1980. Amendment filed November 13, 1981; effective December 28, 1981. Amendment filed June 24, 1984; effective July 27, 1984. Amendment filed June 28, 1984; effective July 28, 1984. Amendment filed June 28, 1984; effective September 11, 1984. Amendment filed August 20, 1984; effective November 13, 1984. Amendment filed January 31, 1985; effective April 16, 1985. Amendment filed June 24, 1985; effective September 13, 1985. Amendment filed September 30, 1985; effective December 14, 1985. Amendment filed December 31, 1985; effective March 17, 1986. Amendment filed May 28, 1986; effective June 27, 1986. Amendment filed July 10, 1986; effective October 29, 1986. Amendment filed October 29, 1986; effective December 13, 1986. Amendment filed October, 15, 1986; effective January 27, 1987. Amendment filed April 24, 1987; effective June 8, 1987. Amendment filed April 18, 1988; effective July 27, 1988. Amendment filed May 13, 1988; effective August 29, 1988. Amendment filed November 22, 1988; effective February 28, 1989. Amendment filed October 31, 1989; effective January 29, 1990. Amendment filed October 12, 1990; effective January 29, 1991. Repeal and new rule filed March 16, 1992; effective June 29, 1992. Repealed October 14, 2016.*

0520-01-03-.05 STATE ACADEMIC STANDARDS~~, REQUIREMENT C.~~.

(Rule 0520-01-03-.05, continued)

(1) Academic Standards.

(a) The State Board of Education shall adopt academic standards for each subject area, grades kindergarten (K) through twelve (12). The standards shall specify learning expectations and include performance indicators. The approved standards shall be the basis for planning instructional programs in each local school system.

(b) Adopted textbooks shall be aligned with state academic standards.

(c) Instruction in grades kindergarten (K) through twelve (12) in issues of current concern such as character education, environmental education, economic education, career education, family life education, substance use and abuse, AIDS education, sexual abuse prevention, cardiopulmonary resuscitation, and safety shall be incorporated in appropriate subject areas and grade levels.

(2) Experimental Projects and Special Courses.

(a) Local school systems may offer special courses not listed in 0520-01-03-.06 that have been approved by the Department of Education. Each course must be approved in advance each year by the Department of Education. Each special course approved by the Department shall be recommended to that state board for an approval period of three (3) or six (6) years.

(3) Grading and Promotion.

(a) Each school shall evaluate and report in writing to the parent(s) or legal guardian(s) each student's progress in each subject, at least every nine (9) weeks, in accordance with the school system's evaluation plan. A parent or legal guardian will sign or otherwise acknowledge the report and return it to the teacher. Local school systems may choose not to require parental acknowledgement of the grade report for students in grades seven (7) through twelve (~~7~~-12). If parental acknowledgement is not required, schools must publish annually the dates and method of reporting student progress and must provide ample opportunities for parents to notify the school of any concerns.

(b) Local school systems shall develop and implement grading, promotion, and retention policies for grades kindergarten (K) through eight (~~K~~-8). The policies shall be communicated annually to students and parents.

(c) Local school systems shall use the state board adopted uniform grading system for students enrolled in grades nine (9) through twelve (~~9~~-12) for reporting student grades for the determination of eligibility for HOPE scholarships.

(4) Reserved.

Authority: *T.C.A. §§ 37-1-603, 49-1-204, 49-1-302, 49-1-304, 49-1-404, 49-6-101, 49-6-209(d), 49-6-407, 49-6-1003, 49-6-1005, 49-6-1006, 49-6-1007, 49-6-1008, 49-6-1202, 49-6-1203, 49-6-1204, 49-6-1205, 49-6-1302, 49-6-2202, 49-6-2203, and 49-6-3001(c)(3)(A).* ***Administrative History:*** *Original rule certified June 10, 1974. Amendment filed June 30, 1975; effective July 30, 1975. Amendment filed July 15, 1976; effective August 16, 1976. Amendment filed October 3, 1985; effective January 14, 1986. Amendment filed January 17, 1986; effective April 15, 1986. Amendment filed May 28, 1986; effective June 27, 1986. Amendment filed August 26, 1986; effective November 29, 1986. Repeal and new rule filed March 16, 1992; effective June 29, 1992. Amendment filed April 28, 1992; effective July 29, 1992. Amendment filed September 1, 1992; effective December 29, 1992. Amendment filed January 21, 1994; effective May 31, 1994. Amendment filed April 29, 1996; effective August 28, 1996. Amendment filed January 14, 1997; effective May 30, 1997. Amendment filed April 27, 1998; effective August 28, 1998.*

(Rule 0520-01-03-.05, continued)

Amendment filed July 13, 1998; effective November 27, 1998. Amendment filed November 18, 1999; effective March 30, 1999. Amendment filed April 28, 2000; effective August 28, 2000. Amendment filed October 31, 2002; effective February 28, 2003. Amendment filed March 31, 2003; effective July 29, 2003. Amendment filed June 30, 2003; effective October 28, 2003. Amendment filed June 30, 2005; effective October 28, 2005. Amendments filed December 28, 2005; effective April 28, 2006. Amendments filed September 6, 2013; effective February 28, 2014. Amendment filed April 6, 2015; effective July 5, 2015.

(Rule 0520-01-03-.06, continued, ~~continued~~)

0520-01-03-.06 GRADUATION~~, REQUIREMENT D.~~.

(1) Graduation Requirements - All students will have access to a rigorous education that will prepare them for success in postsecondary and the workforce. All coursework should be aligned to the Tennessee Academic Standards for that subject and course.

(a) High School Diploma.

1. The following twenty-two (22) credits shall be required for graduation:

English language arts	4 credits
Mathematics	4 credits
Science	3 credits
Social Studies	3 credits
Physical Education and Wellness	1.5 credits
Personal Finance	0.5 credit
Elective Focus	3 credits
Foreign Language	2 credits
Fine Arts	1 credit

2. To earn a regular high school diploma, students must (1) earn the prescribed twenty-two (22)-credit minimum, (2) complete the ACT, SAT, or other eleventh (11th) grade assessment as determined by the commissioner of education, and (3) have a satisfactory record of attendance and discipline.

3. Students with disabilities will be included in regular classes to the degree possible and with appropriate support and accommodations. To earn a regular high school diploma, students with disabilities must earn the prescribed twenty-two (22)-credit minimum. ~~Students failing to earn a yearly grade of seventy percent (70%) in a course that has an End of Course examination and whose disability adversely affects performance in that test will be allowed, through an approved process, to add to their End of Course examination scores by demonstrating the state identified knowledge and skills contained within that course through an alternative performance-based assessment. The necessity for an alternative performance-based assessment must be determined through the student's Individualized Education Plan (IEP). The alternative performance-based assessment will be evaluated using a state-approved rubric.~~

4. A special education diploma may be awarded at the end of their fourth (4th) year of high school to students with disabilities who have (1) not met the requirements for a regular high school diploma, (2) have satisfactorily completed an IEP, and (3) have satisfactory records of attendance and conduct. Students who obtain the special education diploma may continue to work toward a regular high school diploma through the end of the school year in which they turn twenty-two (22) years old.

~~4.~~ 5. An occupational diploma may be awarded at the end of their fourth (4th) year of high school to students with disabilities who (1) have not met the requirements for a regular high school diploma, (2) have satisfactorily completed an IEP, (3) have satisfactory records of attendance and conduct, (4) have completed the occupational diploma Skills, Knowledge, and Experience Mastery Assessment (SKEMA) created by the Department of Education, and (5) have completed two (2) years of paid or non-paid work experience. The determination that an occupational diploma is the goal for a student with a disability will be made at the conclusion of the student's tenth (10th) grade year or two (2) academic years prior to the

(Rule 0520-01-03-.06, continued, ~~continued~~)

expected graduation date. Students who obtain the occupational diploma may continue to work towards the high school diploma through the end of the school year in which they turn twenty-two (22) years old.

6. An alternate academic diploma may be awarded to students with significant cognitive disabilities at the end of their fourth (4th) year of high school who have: (1) participated in the high school alternate assessments, (2) earned the prescribed twenty-two (22) credit minimum, (3) received special education services or supports and made satisfactory progress on an IEP, (4) have satisfactory records of aattendance and conduct, and (5) have completed a transition assessment(s) that measures, at a minimum, preparedness for postsecondary education and training; employment; independent living; and community involvement. The required credits may be earned either through the state-approved standards or through alternate academic diploma modified course requirements approved by the State Board. A student who earns an alternate academic diploma shall continue to be eligible for special education services under IDEA until he or she receives a regular high school diploma or through the school year in which the student turns twenty-two (22).

7. All full-time students in grades nine (9) through twelve (~~9~~-12) shall be enrolled each semester in subjects that produce a minimum of five (5) units of credit for graduation per year. Students with hardships and gifted students may appeal this requirement to the Director of Schools and then to the local board of education.

8. Students must complete four (4) credits of English, including English I, English II, English III, and English IV.

9.

~~5.~~ Students must complete four (4) credits of mathematics including Algebra I and II, Geometry or the equivalent Integrated Math I, II, and III, and another mathematics course beyond Algebra I or Integrated Math I. Students must be enrolled in a mathematics course each school year. Students who complete any of the required math credits prior to the ninth (9th) grade may receive graduation credit for that coursework; however, those students are still required to enroll in math during each high school year.

10.

Students with a qualifying disability who have deficits in mathematics as documented in the individualized education program (IEP) shall be required to achieve at least Algebra I and Geometry (or the equivalent Integrated Math I and Integrated Math II). The required number of credits in math will be achieved through strategies such as, but not limited to, increased time, appropriate methodologies, and accommodations as determined by the IEP team.

~~6.~~ 11. Students must complete three (3) credits of Science. Students must complete Biology, Chemistry or Physics, and a third lab science. Students with a qualifying disability as documented in the IEP shall be required to achieve at least Biology I and two (2) other lab science credits. The required number of credits in science will be achieved through strategies such as, but not limited to, increased time, appropriate methodologies, and accommodations as determined by the IEP team.

~~7.~~ 12. Students must complete three (3) credits of Social Studies. The content of the social studies courses will be consistent with Tennessee Academic Standards and with admissions requirements of Tennessee public institutions of

(Rule 0520-01-03-.06, continued, ~~continued~~)

higher education. Required courses include United States History and Geography, World History and Geography, Economics, and United States Government and Civics.

~~8.~~ 13. Students must complete one-half (½) credit in Personal Finance. Three (3) years of JROTC may be substituted for one-half (½) credit of Personal Finance if the JROTC instructor attends the Personal Finance training.

14. Students must complete one (1) credit in wellness. The wellness courses will integrate concepts from health, physical fitness, and wellness and may be taught by a team of teachers from one (1) or more teaching areas, including health, physical education, family and nutrition sciences, and health sciences education.

~~9.~~ Participation in marching band and interscholastic athletics may not be substituted for this aspect of the graduation requirements. Credit earned in two (2) years of JROTC may be substituted provided the local system has complied with requirements of the State Board of Education.

Credit for basic training may be substituted, upon the choice of the student, for the required credit in lifetime wellness and credit in one (1) elective course or for credit in two (2) elective courses.

~~10.~~ 15. Students must complete one-half (½) credit in physical education. This requirement may be met by substituting a documented and equivalent time of physical activity in marching band, JROTC, cheerleading, interscholastic athletics, school sponsored intramural athletics, and other areas approved by the local board of education.

~~11.~~ 16. Students must complete two (2) credits of the same Foreign Language. The credit requirement for foreign language may be waived by the local school district for students, under certain circumstances, to expand and enhance the elective focus.

~~12.~~ 17. Students must complete one (1) credit in Fine Arts. The credit requirement for fine arts may be waived by the local school district for students, under certain circumstances, to expand and enhance the elective focus.

~~13.~~ 18. Students must complete three (3) credits in an elective focus. All students will pursue a focused program of study designed to prepare them for the workforce and postsecondary study. The elective focus may be CTE, science and math, humanities, fine arts, AP/IB, or other areas approved by the local board of education. Students completing a CTE elective focus must complete three (3) credits in the same CTE career cluster or state-approved program of study.

~~14.~~ 19. Every candidate for graduation must have received a full year of computer education at some point during the candidate's educational career pursuant to T.C.A. § 49-6-1010.

~~(b) Graduation with Honors, State Honors, and State Distinction.~~

~~1. School systems may design student recognition programs that allow students to graduate with honors if they have met the graduation requirements and have obtained an overall grade point average of at least a 3.0 or higher on a 4.0 scale. School systems may set a higher GPA at their discretion. School systems may specify additional requirements, such as requiring students to demonstrate performance of distinction in one (1) or more areas.~~

(Rule 0520-01-03-.06, continued, ~~continued~~)

~~2. Students who score at or above all the subject area readiness benchmarks on the ACT or equivalent score on the SAT will graduate with state honors.~~

~~Each local school board shall develop a policy prescribing how students graduating with "state honors" will be noted and recognized.~~

~~3. Students will be recognized as graduating with "state distinction" by attaining a B or better average and completing one of the following:~~

~~(i) Earn a state or nationally recognized industry certification~~

~~(ii) Participate in at least one (1) of the Governor's Schools~~

~~(iii) Participate in one (1) of the state's ALL State musical organizations~~

~~(iv) Be selected as a National Merit Finalist or Semi-Finalist~~

~~(v) Attain a score of thirty one (31) or higher composite score on the ACT or SAT equivalent~~

~~(vi) Attain a score of three (3) or higher on at least two advanced placement exams~~

~~(vii) Successfully complete the International Baccalaureate Diploma Programme~~
~~(viii) Earn twelve (12) or more semester hours of transcripted postsecondary credit~~

~~Each local school board shall develop a policy prescribing how students graduating with "state distinction" will be noted and recognized.~~

~~4. Students that voluntarily complete at least ten (10) hours of community service each semester the student is in attendance at a public high school shall be recognized at their graduation ceremony.~~

~~Each local school board shall develop a policy prescribing how these students will be noted and recognized.~~

(b~~c~~) Examinations.

1. End of Course examinations will be given in English I, English II, English III, Algebra I, Geometry, Algebra II, Integrated Math I, Integrated Math II, Integrated Math III, U.S. History, Biology I, Chemistry, and Physics, upon development. Students are not required to pass any one (1) examination, but instead students must achieve a passing score for the course in accordance with the State Board of Education's Uniform Grading Policy.

2. The ~~department~~ Department of ~~education~~ Education shall provide raw score data from the End of Course (EOC) examinations to each local education agency (LEA) for the purpose of including student scores on the EOC examinations into a student's final grade for the course. The weight of the EOC examination on the student's final average shall be ten percent (10%) in the 2016-2017 school year, fifteen percent in the 2017-2018 school year; and shall be determined by the LEA from a range of not less than fifteen percent (15%) and not more than twenty-five percent (25%) in the 2018-2019 school year and thereafter.

   Each LEA must establish a local board policy that details the methodology used and the required weighting for incorporating students' scores on EOC examinations into final report card grades.

Results of individual student performance from all administered EOC examinations will be provided to LEAS in time to facilitate the inclusion of these results as part of the students' grade. If an LEA does not receive its students' EOC examination scores at least (5) instructional days before the scheduled end of the course, then the LEA may choose not to include its students' EOC examination scores in the students' final average.

3. As a strategy for assessing student readiness for postsecondary education, every public school student shall take either the ACT, SAT, or other eleventh (11th) grade assessment as determined by the Commissioner commissionerof Education.

4. All LEAs shall implement a project-based assessment in civics at least once in grades nine (9) through twelve (9-12) pursuant to T.C.A. § 49-6-1028.

5. Beginning January 1, 2017, students must participate in the United States civics test during the candidate's high school career pursuant to T.C.A. § 49-6-408.

(cd) Academic Program. All courses listed in State Board of Education Policy 3.205 may be offered for credit in grades nine (9) through twelve (12).

(de) Every local board of education shall develop a policy regarding the minimum and maximum units in any course or subject area for which a student may earn credit toward graduation.

(2) Testing for Credit.

(a) Local boards of education may adopt policies permitting students who are enrolled in grades nine (9) through twelve (12) and who have taken the equivalent of high school level courses to earn unit(s) of high school credit for these courses. Students may earn credit toward graduation upon passing a comprehensive written examination in accordance with standards determined by the local board of education.

(b) High school credit may not be given by examination in American History.

(3) Work-Based Learning Experiences.

(a) Students will have access to a system of structured work-based learning (WBL) experiences that allows them to apply classroom theories to practical problems and to explore career options.

(b) The state board's Work-Based Learning Framework will govern all WBL experiences. The Department of Education will provide school systems with a Work-Based Learning Policy Guide and a Work-Based Learning Implementation Guide to address training requirements, program expectations, and legal requirements. These documents will be reviewed annually by the Department of Education and will be updated as necessary for dissemination to school systems.

(4) Enrollment in College Level Courses.

(a) Local education agencies shall award high school credit to students who successfully complete college level courses aligned to a graduation requirement course, including general education and elective focus courses.

(Rule 0520-01-03-.06, continued, ~~continued~~)

~~(b)~~ (b) Early admission into college may be considered for a twelfth (12th) grade student who has at least a 3.5 grade point average and a minimum ACT composite score of twenty-five (25) (or equivalent SAT score). A student must have written endorsement from the high school principal, counseling staff, and the partnering postsecondary institution. The written agreement shall include a review by the principal of the postsecondary coursework and verification that it is appropriate to substitute for any remaining graduation requirements for the student. Written agreements submitted by the student and the parents must be placed on file in the office of the principal.

(c) A qualified student enrolled in high school may enroll in a postsecondary institution and take college-level courses, which are taught at the high school, postsecondary institution, or online by postsecondary faculty or credentialed adjunct faculty. Students who take and pass dual enrollment courses at a postsecondary institution shall have their postsecondary credits accepted by their local high school for credit as a substitution for an aligned graduation requirement course, including general education and elective focus courses. State funds to the local school system shall not be diminished because of the student's participation.

(d) Local boards of education may adopt policies providing for college-level courses to be offered during the school day on the high school campus. Such courses must be taught by a licensed high school teacher or credentialed postsecondary faculty member approved by the local school system and partnering postsecondary institution. These courses are to be considered part of the high school program, with content and instruction subject to the supervision of the school principal and local board of education.

(5) The High School Equivalency Testing (HiSET) Program and the Issuance of Equivalency Diplomas.

(a) The testing program is operated in accordance with the HiSET manual of the Education Testing Service and the rules established by the Department of Labor and Workforce Development.

(b) The chief examiners shall ensure that all examinees meet the state requirements for age, residency, proper identification, and any other qualifications prior to admission to the testing session.

(c) A candidate must be eighteen (18) years of age before being eligible to take the HiSET test. A seventeen (17) year old may be allowed to take the examination upon recommendation of the local school superintendent. The superintendent may require written documentation from the applicant to support this recommendation. This rule shall not be used to circumvent participation in the regular high school program.

(d) The HiSET test consists of five (5) core areas that count twenty (20) points each. In order to pass, the total composite score on the HiSET test shall not be less than forty-five (45) and no score on any one (1) core area of the test battery shall be less than eight (8).

Authority: *T.C.A. §§ 49-1-302, 49-1-302(a)(2) and (13), 49-6-101, 49-6-201, 49-6-3001(c) and (c)(1), 49-6-3003, 49-6-3005(a) and (a)(4), 49-6-3104, 49-6-3105, 49-6-6001(g), 49-6-6201, and Sections 30, 78 through 80, 88 of Chapter 535 of the Public Acts of 1992, and Public Chapter 448 (2013).* ***Administrative History:*** *Original rule certified June 10, 1974. Amendment filed July 18, 1974; effective August 17, 1974. Amendment filed June 30, 1975; effective July 30, 1975. Amendment filed July 15, 1976; effective August 16, 1976. Amendment filed February 28, 1978; effective March 30, 1978. Amendment filed January 9, 1979; effective February 23, 1979. Amendment filed October 15, 1979; effective January 8, 1980. Amendment filed April 14, 1980; effective May 28, 1980. Amendment filed April 13, 1982; effective May 28, 1982. Amendment filed September 28, 1982; effective December 15, 1982. Amendment filed January 19, 1983; effective April 18, 1983. Amendment filed September 28,*

(Rule 0520-01-03-.06, continued, ~~continued~~)

1983; effective December 14, 1983. Amendment filed January 6, 1984; effective April 15, 1984. Amendment filed June 28, 1984; effective July 28, 1984. Amendment filed June 28, 1984; effective September 11, 1984. Amendment filed May 12, 1985; effective August 13, 1985. Amendment filed October 3, 1985; effective January 14, 1986. Amendment filed March 25, 1986; effective June 14, 1986. Amendment filed May 28, 1986; effective June 27, 1986. Amendment filed July 10, 1987; effective October 28, 1987. Amendment filed July 22, 1987; effective October 28, 1987. Amendment filed September 20, 1987; effective December 29, 1987. Amendment filed November 18, 1987; effective February 28, 1988. Amendment filed April 18, 1988; effective July 27, 1988. Amendment filed May 13, 1988; effective August 29, 1988. Amendment filed October 18, 1988; effective January 29, 1989. Amendment filed November 22, 1988; effective February 28, 1989. Amendment filed November 16, 1989; effective February 28, 1990. Amendment filed June 5, 1990; effective September 26, 1990. Amendment filed October 12, 1990; effective January 29, 1991. Repeal and new rule filed March 16, 1992; effective June 29, 1992. Amendment filed June 24, 1992; effective September 28, 1992. Amendment filed July 21, 1992; effective October 28, 1992. Amendment filed September 1, 1992; effective December 29, 1992. Amendment filed April 14, 1993; effective July 28, 1993. Amendment filed August 10, 1993; effective December 29, 1993. Amendment filed October 28, 1993; effective March 1, 1994. Amendment filed January 21, 1994; effective May 31, 1994. Amendment filed January 31, 1995; effective May 31, 1995. Amendment filed March 27, 1995; effective July 28, 1995. Amendment filed May 31, 1996; effective September 27, 1996. Amendment filed April 27, 1998; effective August 28, 1998. Amendment filed July 13, 1998; effective November 27, 1998. Amendment filed November 18, 1999; effective March 30, 1999. Amendment filed May 28, 1999; effective September 28, 1999. Amendment filed November 30, 1999; effective March 29, 2000. Amendment filed April 28, 2000; effective August 28, 2000. Amendment filed July 31, 2000; effective November 28, 2000. Amendment filed October 31, 2000; effective February 28, 2001. Amendment filed August 31, 2001; effective December 28, 2001. Amendment filed December 31, 2001; effective April 30, 2002. Amendment filed March 28, 2002; effective July 29, 2002. Amendment filed October 31, 2002; effective February 28, 2003. Amendment filed March 31, 2003; effective July 29, 2003. Amendment filed June 30, 2003; effective October 28, 2003. Amendment filed August 30, 2004; effective December 29, 2004. Amendments filed May 19, 2005; effective September 28, 2005. Amendments filed June 30, 2005; effective October 28, 2005. Amendment filed June 19, 2007; effective October 26, 2007. Amendments filed September 6, 2007; effective January 28, 2008. Repeal and new rule filed June 11, 2008; effective October 28, 2008. Amendment filed July 17, 2009; effective December 29, 2009. Amendment filed February 24, 2010; effective July 29, 2010. Amendment filed February 6, 2013; effective July 29, 2013. Amendment filed June 18, 2013; effective November 28, 2013. Amendments filed September 6, 2013; effective February 28, 2014. Amendments filed October 7, 2013; to be effective March 31, 2014. However, the State Board of Education filed a withdrawal of the rule. Amendments filed November 27,.2013; effective April 30, 2014. Amendment filed May 8, 2014; effective October 29, 2014. Amendment filed October 13, 2015; effective January 11, 2015. Amendment to rule 0520-01-03-.06 (1)(b) filed May 22, 2015; effective August 20, 2015. Amendment to rule 0520-01-03-.06 (3) filed May 22, 2015; effective August 20, 2015. Amendments filed December 30, 2015; effective March 29, 2016.

0520-01-03-.07 LIBRARY INFORMATION CENTER, ~~REQUIREMENT E.~~

(1) School Library Information Center.

(a) All school libraries shall serve as resources for students, teachers, and community members to strengthen student learning. School library information specialists shall work collaboratively with classroom teachers and school administrators to integrate both curricular concepts and information skills that assist research and other learning activities. The collection and the services of the library shall adequately support the curricular priorities within the school.

(b) School libraries shall provide an environment that allows efficient access to resources, including both print and electronic. Schools must be organized to allow the library

(Rule 0520-01-03-.07, continued)

program m

to operate a flexible schedule that allows students and teachers to access resources at the point of need.

(c) School libraries shall provide parents and community members access to resources, so that the school library information center serves as a community resource.

(2) Library Information Center Personnel.

(a) Elementary/Middle Schools. Schools including grades kindergarten (K) through eight (K-8) or any combination thereof shall provide library information personnel as follows:

1. A school having a current average daily membership of 550 or more students shall have a full-time library information specialist with endorsement as a library information specialist.

2. A school with a current average daily membership of 400 to 549 students shall have a half-time library information specialist with endorsement as a library information specialist. During the time that the library is open during regular school hours and the library information specialist is not present, staff member(s) shall be designated to provide supervision to students in the library.

3. In a school with fewer than 400 students, a faculty member shall serve as a library information coordinator. If the library information coordinator is not present during the time that the library is open during regular school hours, staff member(s) shall be designated to provide supervision to students in the library.

4. It is optimal to have the library open outside the regularly scheduled school day and if library personnel specialist or coordinator is not present, appropriate supervision shall be provided to the students in the library.

(b) High Schools. Schools including any high school grade shall provide library information personnel as follows:

1. A school with a current average daily membership of 1,500 or more students shall have two (2) full-time library information specialists, each with endorsement as a library information specialist.

2. A school with a current average daily membership of more than 300 but less than 1,500 students shall have a full-time library information specialist with endorsement as a library information specialist.

3. A school with a current average daily membership of fewer than 300 students shall have a half-time library information specialist. During the time that the library is open during regular school hours and the library information specialist is not present, staff member(s) shall be designated to provide supervision to students in the library.

4. It is optimal to have the library open outside the regularly scheduled school day and if the library information specialist is not present, appropriate supervision shall be provided to the students in the library.

(3) Library Information Center Collection.

(Rule 0520-01-03-.07, continued)

The three (3) levels of collection standards for Tennessee school libraries are: Basic, Standard, and Exemplary. The criteria by which school library collections are evaluated are listed below:

(a) Item Count.

Basic collection - Contains a minimum of twelve (12) items per student in Average Daily Membership (ADM);

Standard collection - Contains fifteen (15) items per student in ADM; and

Exemplary collection - Contains eighteen (18) items per students in ADM.

(b) Collection Compilation.

1. Pamphlets, textbooks, class sets, periodicals, out-of-date items, and items in poor physical condition shall neither be counted nor reported in the total collection. No more than five (5) copies of the same print title may be counted to meet standards for a minimum number of items per student.

2. Digital resources should be accessible through a school library webpage or Online Public Access Catalog (OPAC) and may comprise fifty percent (50%) of the collection.

3. The library shall provide access to the virtual library administered by the Tennessee State Library and Archives and the library personnel should receive training. These resources may count for up to twenty percent (20%) of the overall collection or, in schools in which the librarian has received official training within the last five (5) years, they may count for up to thirty percent (30%) of the overall collection.

4. The collection shall include access to a current, complete encyclopedia in any format. In secondary schools, the collection shall also include an unabridged dictionary, one (1) foreign language dictionary in the native language of ESL students in attendance at the school, a local newspaper, and one (1) daily newspaper presenting news on both state and national levels. For digital materials, only full text should be counted in the total.

5. The collection should include a balance of fiction and nonfiction with an appropriate level of text complexity. The resources in the collection should be chosen to: complement and augment the most recently adopted curriculum standards, be a motivational springboard for student research, and encourage self-expression and curiosity by offering a variety of recreational reading material.

(c) Age.

Collections meeting the compilation standards are evaluated based on age of the collection as measured in years from the current year:

Basic collection – sixteen (16) years and older;

Standard collection – fifteen (15) years; and

Exemplary collection – fourteen (14) years or less.

(Rule 0520-01-03-.07, continued)

(d) Technology - Access to Digital Materials.

1. Workstations with ~~Internet~~ internet access in the library information center are sufficient to provide access for students. The number of workstations should be no less than the maximum average class size allowable by the state. A workstation may be a desktop, laptop, tablet or similar device, but devices available for checkout should not be counted in the total.

2. School libraries should be equipped with instructional technology, including, but not limited to, LCD projector, screen and/or interactive smart board, document camera, computer, etc., and provide user training for such devices.

3. Separate computers must be maintained for both the library management system/circulation and for the library personnel.

Authority: *T.C.A. §§ 49-1-302 and 49-3-305.* ***Administrative History:*** *Original rule certified June 10, 1974. Amendment filed June 30, 1985; effective July 30, 1975. Amendment filed July 15, 1976; effective August 16, 1976. Amendment filed February 28, 1978; effective March 30, 1978. Amendment filed January 9, 1979; effective February 23, 1979. Amendment filed October 15, 1979; effective January 8, 1980. Amendment filed June 27, 1984; effective July 27, 1984. Amendment filed October 1, 1985; effective January 14, 1986. Amendment filed May 28, 1986; effective June 27, 1986. Amendment filed July 22, 1987; effective October 28, 1987. Repeal and new rule filed March 16, 1992; effective June 29, 1992. Amendment filed March 28, 2002; effective July 29, 2002. Repeal and new rule filed May 16, 2014; effective October 29, 2014.*

0520-01-03-.08 PUPIL PERSONNEL SERVICES, ~~REQUIREMENT F.~~

(1) Each local board of education shall develop standards and policies for:

(a) Attendance Services

(b) Guidance Services

(c) School Psychological Services

(d) School Social Work Services

(e) School Health Services

(2) The school health services program shall include but not be limited to the following:

(a) Each local school system shall have a written policy providing for a physical examination of every child entering school for the first time. A doctor of medicine, osteopathic physician, physician assistant, certified nurse practitioner, or a properly trained public health nurse shall perform this examination. No child shall be admitted to school without proof of immunization except those who are exempt by statute as provided in T.C.A. § 49-6-5001.

(b) Each local school system shall have a written policy providing for a physical examination of every student participating in interscholastic athletics. A doctor of medicine, osteopathic physician, physician assistant, or certified nurse practitioner shall perform this examination.

(c) Each local school system shall have a written policy for excluding pupils with communicable diseases and for readmitting them following recovery. In the case of diseases (listed in Regulations Governing Communicable Diseases in Tennessee:

Tennessee Department of Health) the policy shall be in accordance with the recommendations of the State Department of Health as approved by the State ~~Commissioner~~ commissioner~~of Education~~.

(d) Each local school system shall have a written policy for handling drug/alcohol problems that may arise in the schools.

(e) Each local school system shall develop procedures for reporting suspected cases of child abuse and neglect as provided in T.C.A. § 37-1-403.

(f) After an offer of employment has been made to an applicant and prior to the commencement of the employment duties, each employee shall present a physician's certificate showing a satisfactory health record. Employees shall present a certificate thereafter at intervals determined by the State Department of Health and approved by the ~~State C~~commissioner~~ of Education~~. The provisions of this subsection shall be administered in a manner consistent with the Americans with Disabilities Act (42 U.S.C.A. § 12101 *et. seq*) and the associated regulations (29 C.F.R. Part 1630 *et. seq*).

(g) HIV, HIV-Related Illness, and AIDS.

1. All children with HIV, HIV-related illness, and AIDS infection who enroll in the public school systems of Tennessee shall attend and participate in educational programs appropriate to meet medical and educational needs.

2. Each local school system shall:

   (i) Develop a comprehensive local AIDS plan that addresses appropriate education programs, confidentiality, liability, personnel, safety, curriculum, education, communications and public relations. The plan will be developed in conjunction with public health officials based upon guidelines approved by the State Board of Education.

   (ii) Include in the AIDS plan education/training programs for all school personnel, parents, and board members; and cooperate with other community organizations and state agencies in AIDS education for all citizens.

   (iii) Include in the AIDS plan a policy for personnel with HIV, HIV-related illness and AIDS infection. Employment conditions will be determined on a case-by-case basis. The review of individual cases will involve at a minimum the superintendent or designee, the employee's physician, and a public health official.

3. Information including names, records, reports, and/or correspondence and any other identifying information on HIV, HIV-related illness and AIDS infection status for any individual child or adult shall be maintained in confidence.

4. Local school systems and school personnel shall implement for all children and adults the universal precautions as defined by the State Department of Health for handling blood and other body fluids. Information about universal precautions and related safety procedures shall be distributed by the State Department of Education to all school systems and school personnel in Tennessee.

* HIV, HIV-related illness and AIDS infection are the three (3) terms used to denote the three (3) medically diagnosed stages of the infection caused by Human

(Rule 0520-01-03-.08, continued)

Immunodeficiency Virus. (AIDS - Acquired Immune Deficiency Syndrome; ARC - ~~Aids~~ AIDS Related Complex; and HIV Infection - Human Immunodeficiency Virus antibodies detected in blood.)

Authority: *T.C.A. §§ 49-1-302, 49-1-302(a)(2) and (13).* ***Administrative History:*** *Original rule certified June 10, 1974. Amendment filed October 3, 1974; effective November 2, 1974. Amendment filed June 30, 1975; effective July 30, 1975. Amendment filed January 15, 1976; effective April 15, 1976. Amendment filed July 15, 1976; effective August 16, 1976. Amendment filed February 28, 1978; effective March 30, 1978. Amendment filed January 9, 1979; effective February 23, 1979. Amendment filed April 14, 1980; effective May 28, 1980. Amendment filed October 1, 1985; effective January 14, 1986. Amendment filed May 28, 1986; effective June 27, 1986. Amendment filed July 10, 1986; effective October 29, 1986. Amendment filed July 22, 1987; effective October 28, 1987. Amendment filed October 18, 1988; effective January 29, 1989. Amendment filed November 16, 1989; effective February 28, 1990. Repeal and new rule filed March 16, 1992; effective June 29, 1992. Amendment filed October 11, 1995; effective February 28, 1996. Amendment filed April 29, 1996; effective August 28, 1996. Amendment filed November 30, 1999; effective March 29, 2000. Amendment filed April 30, 2001; effective August 28, 2001. Amendment filed April 17, 2006; effective August 28, 2006. Amendment to rule 0520-01-03-.08 filed June 11, 2008; to become effective October 28, 2008; was withdrawn August 4, 2008.*

0520-01-03-.09 SPECIAL EDUCATION PROGRAMS AND SERVICES~~, REQUIREMENT G.~~

~~For Requirement H, see~~See ~~Chapter~~ Rule 0520-01-09.

Authority: *T.C.A. § 49-10-101 et seq.* ***Administrative History:*** *Original rule filed June 10, 1974. Amendment filed October 3, 1974; effective November 2, 1974. Amendment filed June 30, 1975; effective July 30, 1975. Amendment filed January 15, 1976; effective April 15, 1976. Amendment filed July 15, 1976; effective August 16, 1976. Amendment filed February 28, 1978; effective March 30, 1978. Amendment filed January 9, 1979; effective February 23, 1979. Amendment filed April 14, 1980; effective May 28, 1980. Amendment filed June 27, 1984; effective July 27, 1984. Amendment filed May 12, 1985; effective August 13, 1985. Amendment filed October 1, 1985; effective January 14, 1986. Amendment filed May 28, 1986; effective June 27, 1986. Amendment filed July 10, 1986; effective October 29, 1986. Repeal and new rule filed March 16, 1992; effective June 29, 1992. Repealed and new rule filed August 18 1993; effective December 29, 1993. Amendment filed June 21, 1995; effective October 27, 1995. Amendment filed August 7, 1995; effective December 29, 1995. (For Requirement H, see Chapter 0520-01-09, per Tennessee State Board of Education letter dated April 29, 1999.)*

0520-01-03-.10 WAIVERS.

(1) The ~~Commissioner~~ commissioner ~~of Education~~ is authorized to grant waivers to a school that does not comply with these rules and regulations only when requested by action of the local board of education.

(2) For limitation on the ~~Commissioner's~~ commissioner's authority to waive rules and regulations, see T.C.A. §§ 49-1-104 and 49-1-203.

Authority: *T.C.A. §§ 49-1-203 and 49-1-302.* ***Administrative History:*** *Original rule certified June 10, 1974. Amendment filed January 9, 1979; effective February 23, 1979. Amendment filed October 15, 1979; effective January 8, 1980. Amendment filed November 13, 1981; effective March 16, 1982. Amendment filed April 13, 1982; effective May 28, 1982. Amendment filed April 12, 1983; effective May 12, 1983. Amendment filed May 7, 1985; effective June 6, 1985. Amendment filed May 28, 1986; effective June 27, 1986. Amendment filed August 26, 1986; effective November 29, 1986. Amendment filed December 30, 1986; effective March 31, 1987. Amendment filed May 21, 1987; effective August 29, 1989. Amendment filed April 18, 1988; effective July 27, 1988. Amendment filed January 23, 1989; effective March 9, 1989. Amendment filed November 16, 1989; effective February 28, 1990. Repeal and new rule filed March 16, 1992; effective June 29, 1992.*

(Rule 0520-01-03-.10, continued)

0520-01-03-.11 THROUGH 0520-01-03-.13 REPEALED.

Authority: *T.C.A. §§ 49-1-103 and 49-1-302.* ***Administrative History:*** *(For history prior to June, 1992, see pages iii-ix). Repeal filed March 16, 1992; effective June 29, 1992.*

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

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

I certify that this is an accurate and complete copy of proposed rules, lawfully promulgated and adopted by the Tennessee State Board of Education on 10/20/2017 and is in compliance with the provisions of T.C.A. § 4-5-222. 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: 2/23/18

Signature:

Name of Officer: Elizabeth Taylor

Title of Officer: General Counsel

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

Subscribed and sworn to before me on: 2-23-18

Notary Public Signature:

My commission expires on: 3-8-21

Agency/Board/Commission: Tennessee State Board of Education

Rule Chapter Number(s): Chapter 0520-01-03 Minimum Requirements for the Approval of Public Schools

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

3/12/2018
Date

Department of State Use Only

Filed with the Department of State on: 3/20/18

Effective on: 6/18/18

Tre Hargett
Secretary of State

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SECRETARY OF STATE
PUBLIC ACTS

G.O.C. STAFF RULE ABSTRACT

DEPARTMENT:	Higher Education Commission
DIVISION:	
SUBJECT:	Immunizations For Newly Matriculating Students
STATUTORY AUTHORITY:	Tennessee Code Annotated, Sections 49-7-124 and 49-7-125 and Public Chapter 166 (2017)
EFFECTIVE DATES:	June 18, 2018 through June 30, 2019
FISCAL IMPACT:	There is no financial impact resulting from the proposed repeal of this rule.
STAFF RULE ABSTRACT:	Chapter 1540-01-09 Immunizations For Newly Matriculating Students provides guidance for institutions and students regarding the meningococcal and hepatitis immunizations required for new students in the state's higher education institutions under T.C.A. §§ 49-7-124 and 49-7-125. Public Chapter 166 of 2017 transferred this authority to the governing boards of each institution, necessitating the repeal of the Administrative Rules for these requirements.

Regulatory Flexibility Addendum

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

Description of Proposed Rule:

The Tennessee Higher Education Commission (THEC) intends to file the proposed repeal of rules pursuant to T.C.A. § 4-5-202 in lieu of a rulemaking hearing repealing Chapter 1540-01-09 Immunizations For Newly Matriculating Students. It is the intent of THEC to repeal these rules without a public rulemaking hearing unless a petition requesting such hearing is filed within sixty (60) days after the first day of the month subsequent to the filing of the proposed repeal of the rules with the Secretary of State. THEC has rule promulgation authority relating to the immunizations required of newly matriculating students in the state's higher education institutions under T.C.A. §§ 49-7-124 and 49-7-125. Public Chapter 166 transferred this authority to the governing boards of each institution, necessitating the repeal of the Administrative Rules for these requirements.

Regulatory Flexibility Analysis - Methods of Reducing the Impact of Rules on Small Businesses:

1. Overlap, duplicate, or conflict with other federal, state, and local governmental rules:

   The transfer of authority of the repealed rules will not overlap, duplicate, or conflict with other federal, state, and local governmental rules.

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

   Since the proposed rules will transfer the rulemaking authority under these rules to the governing boards of the public institutions, the clarity, conciseness, or lack of ambiguity of the rules to repeal the rules is not applicable.

3. Flexible compliance and/or reporting requirements for small businesses:

   Since the proposed rules will transfer the rulemaking authority under these rules to the governing boards of the public institutions, flexible compliance and/or reporting requirements for small businesses is not applicable.

4. Friendly schedules or deadlines for compliance and/or reporting requirements:

   Since the proposed rules will transfer the rulemaking authority under these rules to the governing boards of the public institutions, the friendly schedules or deadlines for compliance and/or reporting requirements is not applicable.

5. Consolidation or simplification of compliance or reporting requirements:

   Since the proposed rules will transfer the rulemaking authority under these rules to the governing boards of the public institutions the consolidation or simplification of compliance or reporting requirements is not applicable.

6. Performance standards for small businesses:

   Since the proposed rules will transfer the rulemaking authority under these rules to the governing boards of the public institutions, the performance standards for small businesses is not applicable.

7. Barriers or other effects that stifle entrepreneurial activity, curb innovation, or increase costs:

Since the proposed rules will transfer the rulemaking authority under these rules to the governing boards of the public institutions the performance standards for small businesses is not applicable.

Furthermore, the statute requires that the agency, as part of the rulemaking process for any proposed rule that may have an impact on small businesses, shall prepare an economic impact statement as an addendum for each rule. The statement shall include the following: the type or types of small businesses and an identification and estimate of the number of small businesses subject to the proposed rule that would bear the cost of, and/or directly benefit from the proposed rules; 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; a statement of the probable effect on impacted small businesses and consumers; 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 businesses; a comparison of the proposed rule with any federal or state counterparts; and analysis of the effect of the possible exemption of small businesses from all or any part of the requirements contained in the proposed rule.

Economic Impact Statement

1. Types of small businesses directly affected:

   Not applicable. The proposed repeal of the rules was drafted to facilitate administration of the program for the eligible postsecondary institutions and should have no impact on small businesses.

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

   There are no significant reporting, recordkeeping, or other administrative costs that will result from the repeal of the rules.

3. Probable effect on small businesses:

   Not applicable.

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

   As the proposed repeal of these rules does not significantly impact the cost to the postsecondary institutions, there is no alternative method to propose.

5. Comparison with federal and state counterparts:

   There are no federal or state counterparts to the issues addressed by the proposed repeal of the rules.

6. Effect of possible exemption of small businesses:

   There will be no exemptions created by the proposed repeal of the rules.

Impact on Local Governments

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

The repeal of the rules for Immunizations for Newly Matriculating Students Chapter 1540-01-09, as proposed, shall have no projected impact on local governments.

Additional Information Required by Joint Government Operations Committee

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

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

Chapter 1540-01-09 Immunizations For Newly Matriculating Students provides guidance for institutions and students regarding the meningococcal and hepatitis immunizations required for new students in the state's higher education institutions under T.C.A. §§ 49-7-124 and 49-7-125. Public Chapter 166 of 2017 transferred this authority to the governing boards of each institution, necessitating the repeal of the Administrative Rules for these requirements.

(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;

Formerly, T.C.A. §§ 49-7-124 and 49-7-125 authorized the Tennessee Higher Education Commission (THEC) to promulgate rules for Immunizations For Newly Matriculating Students. Public Chapter 166 of 2017 transferred this authority to the governing boards of each institution, necessitating the repeal of the Administrative Rules for these requirements.

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

THEC, the University of Tennessee system, the Board of Regents system, and the six locally governed institutions (LGIs) are most directly affected by the proposed rule. The aforementioned state authorities urge the adoption of the proposed 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 or the necessity to promulgate the rule;

There are no opinions of the attorney general and reporter or any judicial ruling that directly relates to these proposed rules.

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

There is no financial impact resulting from the proposed repeal of this rule.

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

Scott Sloan, Chief of Staff and General Counsel and Brett Gipson, Deputy General Counsel

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

Scott Sloan, Chief of Staff and General Counsel and Brett Gipson, 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

Scott Sloan, Chief of Staff and General Counsel
Tennessee Higher Education Commission
Suite 1900, Parkway Towers
Nashville, TN 37243
615.741.7571
Scott.Sloan@tn.gov

Brett Gipson, Deputy General Counsel
Tennessee Higher Education Commission
Suite 1900, Parkway Towers
Nashville, TN 37243
615.253.5335
Brett.Gipson@tn.gov

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

There have been no requests for additional information received to-date.

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: 03-16-18
Rule ID(s): 6721
File Date: 3/20/18
Effective Date: 6/18/18

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 Higher Education Commission
Division: Higher Education
Contact Person: Scott Sloan, Chief of Staff and General Counsel
Address: Suite 1900, Parkway Towers, 404 James Robertson Parkway, Nashville, TN
Zip: 37243
Phone: 615.741.7571
Email: Scott.Sloan@tn.gov

Revision Type (check all that apply):
___ Amendment
___ 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**
1540-01-09	Immunizations For Newly Matriculating Students
Rule Number	**Rule Title**
1540-01-09-.01	Definitions
1540-01-09-.02	Notice of Information
1540-01-09-.03	Waiver for Hepatitis B Vaccination
1540-01-09-.04	Proof of Immunization Against Meningococcal Disease

RULES
OF
TENNESSEE HIGHER EDUCATION COMMISSION

CHAPTER 1540-01-09
IMMUNIZATIONS FOR NEWLY MATRICULATING STUDENTS

REPEALED

~~TABLE OF CONTENTS~~

~~1540-01-09-.01 Definitions~~
~~1540-01-09-.02 Notice of Information~~
~~1540-01-09-.03 Waiver for Hepatitis B Vaccination~~
~~1540-01-09-.04 Proof of Immunization Against Meningococcal Disease~~

~~1540-01-09-.01 DEFINITIONS.~~

~~(1) "New incoming students" or "student" for the purpose of this chapter shall mean those students enrolling in an institution of higher learning for the first time, regardless of the level at which the student is matriculating. Additionally, the terms shall apply only to persons enrolled in a course or courses offered for college credit toward an associate's degree or higher.~~

~~(2) "Institution of higher learning" for the purposes of this chapter shall mean any institution of postsecondary education that generally limits enrollment to graduates of secondary schools, and awards degrees at either the associate, baccalaureate, or graduate level. It is the intent that the Tennessee Colleges of Applied Technology operating under the jurisdiction of the Tennessee Board of Regents would be among the institutions exempt from the requirements of these rules.~~

~~***Authority:*** *Acts of 2003; Public Chapters 104 and 136, 2013 Public Acts, Chapters 114 and 473, T.C.A. §§ 49-7-124 and 49-7-125,.* ***Administrative History:*** *Original rule filed August 14, 2003; effective December 29, 2003. Emergency rule filed September 3, 2013; effective through March 2, 2014. Amendment filed September 3, 2013; effective February 28, 2014.*~~

~~1540-01-09-.02 NOTICE OF INFORMATION.~~

~~Each institution of higher learning in the state shall provide to all new incoming students, and/or the parent or guardian of new incoming students, information concerning hepatitis B disease. The information shall be provided to the student and/or parent or guardian prior to matriculation and include the risk factors and dangers of each disease as well as information on the availability and effectiveness of the respective vaccines for persons who are at-risk for the diseases. The institutions shall utilize information from the Centers for Disease Control and/or the American College Health Association in satisfying this requirement.~~

~~***Authority:*** *Acts of 2003; Public Chapters 104 and 136, and 2013 Public Acts, Chapters 114, and 473, and T.C.A. §§ 49-7-124 and 49-7-125.* ***Administrative History:*** *Original rule filed August 14, 2003; effective December 29, 2003. Emergency rule filed September 3, 2013; effective through March 2, 2014. Amendment filed September 3, 2013; effective February 28, 2014.*~~

~~1540-01-09-.03 WAIVER FOR HEPATITIS B VACCINATION.~~

~~(Rule 1540-01-09-.03, continued)~~

~~(1) Prior to matriculating into the institution, the new incoming student and/or the student's parent or guardian shall complete and sign a waiver form to indicate that the student and/or the student's parent or guardian has received the information required by Rule 1540-01-09-.02 and has chosen to have the student vaccinated or has not chosen to have the student vaccinated.~~

~~(2) The waiver may be part of the information document required by Rule 1540-01-09-.02.~~

~~(3) A student who is eighteen (18) years of age may sign the waiver, but for minors, the student's parent or guardian must sign the waiver.~~

~~(4) The institution shall maintain the signed waiver forms in a manner and location consistent with the maintenance of similar confidential education records.~~

~~***Authority:*** *Acts of 2003; Public Chapters 104 and 136, 2013 Public Acts, Chapter 114, and T.C.A. §§ 49-7-125.* ***Administrative History:*** *Original rule filed August 14, 2003; effective December 29, 2003. Emergency rule filed September 3, 2013; effective through March 2, 2014. Amendment filed September 3, 2013; effective February 28, 2014.*~~

~~1540-01-09-.04 PROOF OF IMMUNIZATION AGAINST MENINGOCOCCAL DISEASE.~~

~~(1) New incoming students through the age of 21 who live in on-campus student housing at public institutions of higher learning shall provide proof of adequate immunization against meningococcal disease as recommended for adults in the current advisory committee on immunization practices "Recommended Adult Immunization Schedule" published by the Centers for Disease Control and Prevention.~~

~~(2) A student may be exempted from this requirement only under the following circumstances:~~

~~(a) Where a physician licensed by the board of medical examiners, the board of osteopathic examiners or a health department certifies in writing that a particular vaccine is contraindicated for one (1) of the following reasons:~~

~~1. The individual meets the criteria for contraindication set forth in the manufacturer's vaccine package insert; or~~

~~2. The individual meets that criteria for contraindication published by the centers for disease control or the advisory committee on immunization practices; or~~

~~3. In the best professional judgment of the physician, based upon the individual's medical condition and history, the risk of harm from the vaccine outweighs the potential benefit.~~

~~(b) Where a parent or guardian or, in the case of an adult student, the student provides to the school a written statement, affirmed under penalties of perjury, that vaccination conflicts with the religious tenets and practices of the parent or guardian or, in the case of an adult student, the student.~~

~~***Authority:*** *2013 Public Acts, Chapter 114.* ***Administrative History:*** *Emergency rule filed September 3, 2013; effective through March 2, 2014. Original rule filed September 3, 2013; effective Febryary 28, 2014.*~~

The vote by the Commission on these rules was as follows:

Commission Member	Aye	No	Abstain	Absent	Signature (if required)
Evan Cope, Chair, Murfreesboro - Middle Tennessee	X				
Dr. Nancy Dishner, Johnson City - East Tennessee	X				
Jimmy Johnston, Gallatin - Middle Tennessee	X				
Pam Koban, Nashville - Middle Tennessee	X				
Mintha Roach, Knoxville - East Tennessee	X				
Vernon Stafford, Jr., Memphis - West Tennessee	X				
Frank L. Watson, Jr., Memphis - West Tennessee	X				
A C Wharton, Jr., Secretary, Memphis - West Tennessee				X	
Tre Hargett, Secretary of State	X				
Justin P. Wilson, State Comptroller				X	
David H. Lillard, Jr., State Treasurer	X				
Jeremy Chisenhall, Voting Ex-Officio, Student Member-Austin Peay State University	X				

I certify that this is an accurate and complete copy of proposed rules, lawfully promulgated and adopted by the Tennessee Higher Education Commission on 07/27/2017, 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 ninety (90) days of the filing of the proposed rule with the Secretary of State.

Date: 1-26-18

Signature: [signature]

Name of Officer: Mike Krause

Title of Officer: Executive Director

CORSINA DICKSON WILEY
STATE OF TENNESSEE
08/04/2020
DAVIDSON COUNTY

Subscribed and sworn to before me on: 01-26-2018

Notary Public Signature: [signature]

My commission expires on: 08-04-2020

Agency/Board/Commission: TENNESSEE HIGHER EDUCATION COMMISSION

Rule Chapter Number(s): 1540-01-09

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

3/6/2018
Date

Department of State Use Only

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SECRETARY OF STATE
PUBLICATIONS

Filed with the Department of State on: 3/20/18

Effective on: 6/18/18

Tre Hargett
Secretary of State

G.O.C. STAFF RULE ABSTRACT

DEPARTMENT:	Higher Education Commission
DIVISION:	
SUBJECT:	Public Higher Education Fee Discounts for Children of Licensed Public School Teachers and State Employees
STATUTORY AUTHORITY:	Tennessee Code Annotated, §§ 8-50-115 and 49-7-119
EFFECTIVE DATES:	June 5, 2018 through June 30, 2019
FISCAL IMPACT:	There is no financial impact to THEC resulting from the proposed rule changes.
STAFF RULE ABSTRACT:	Chapter 1540-01-05 Public Higher Education Fee Discounts for Children of Licensed Public School Teachers and State Employees allows every child in Tennessee under twenty-four (24) years of age whose parent is employed as a full-time state employee, or as a licensed teacher in any public school in Tennessee, to receive a twenty-five percent (25%) discount on tuition to any state operated institution of higher education. Children of retired state employees with twenty-five (25) years of service and retired teachers with thirty (30) years of service are also eligible. The revisions to the rules include language clarifying that the children of teachers employed by public charter schools are eligible for the discount under T.C.A. § 49-7-119, consistent with Tennessee Attorney General Opinion No. 17-09; includes language adding the six state university boards as governing bodies operating institutions at which qualifying children may use a fee discount; and clarifies that appeals regarding the determination of eligibility of applicants for a fee waiver will be handled by the institutions subject to institutional procedures in place for admissions decisions.

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.

Description of Proposed Rule:

The Tennessee Higher Education Commission (THEC) intends to file the proposed rules pursuant to T.C.A. § 4-5-202 in lieu of a rulemaking hearing amending Chapter 1540-01-05 Public Higher Education Fee Discounts for Children of Licensed Public School Teachers and State Employees. It is the intent of THEC to promulgate these rules without a public rulemaking hearing unless a petition requesting such hearing is filed within sixty (60) days after the first day of the month subsequent to the filing of the proposed rule with the Secretary of State. THEC has rule promulgation authority for the state's public higher education fee discount program, available to the children of licensed public school teachers and state employees. Recent legislative enactments and an Attorney General's Opinion have necessitated revisions to the Administrative Rules for these programs.

The revisions to the rules include language clarifying that the children of teachers employed by public charter schools are eligible for the discount under T.C.A. § 49-7-119, consistent with Tennessee Attorney General Opinion No. 17-09; includes language adding the six state university boards as governing bodies operating institutions at which qualifying children may use a fee discount; and clarifies that appeals regarding the determination of eligibility of applicants for a fee waiver will be handled by the institutions subject to institutional procedures in place for admissions decisions.

Regulatory Flexibility Analysis - Methods of Reducing the Impact of Rules on Small Businesses:

1. Overlap, duplicate, or conflict with other federal, state, and local governmental rules:

   The proposed rules will not overlap, duplicate, or conflict with other federal, state, and local governmental rules.

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

   The proposed rules were patterned to ensure clarity and conciseness of the language of the rules and to eliminate possible ambiguity in the interpretation of the rules.

3. Flexible compliance and/or reporting requirements for small businesses:

   The proposed rules were drafted to facilitate administration of the program for eligible postsecondary education institutions.

4. Friendly schedules or deadlines for compliance and/or reporting requirements:

   THEC worked diligently with the colleges and universities that are most directly affected by these proposed rules to ensure that proposed compliance and reporting requirements can be practically applied by eligible institutions administering the program.

5. Consolidation or simplification of compliance or reporting requirements:

   The proposed rules were drafted to ensure solid, easily interpreted, compliance and reporting requirements.

6. Performance standards for small businesses:

   THEC expects the eligible institutions engaged in the administration of the Public Higher Education Fee Discounts for Children of Licensed Public School Teachers and State Employees

to comply with all applicable rules.

7. Barriers or other effects that stifle entrepreneurial activity, curb innovation, or increase costs:

   The proposed rules do not contain any foreseeable inhibitors to small business entrepreneurial activities.

Furthermore, the statute requires that the agency, as part of the rulemaking process for any proposed rule that may have an impact on small businesses, shall prepare an economic impact statement as an addendum for each rule. The statement shall include the following: the type or types of small businesses and an identification and estimate of the number of small businesses subject to the proposed rule that would bear the cost of, and/or directly benefit from the proposed rules; 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; a statement of the probable effect on impacted small businesses and consumers; 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 businesses; a comparison of the proposed rule with any federal or state counterparts; and analysis of the effect of the possible exemption of small businesses from all or any part of the requirements contained in the proposed rule.

Economic Impact Statement:

1. Types of small businesses directly affected:

   Not applicable. The proposed rules were drafted to facilitate administration of the program for the eligible postsecondary institutions and should have no impact on small businesses.

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

   There are no significant reporting, recordkeeping, or other administrative costs that will result from the promulgation of these proposed rules.

3. Probable effect on small businesses:

   Not applicable.

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

   As these proposed rules do not significantly impact the cost to the postsecondary institutions, there is no alternative method to propose.

5. Comparison with federal and state counterparts:

   There are no federal or state counterparts to the issues addressed by these proposed rules.

6. Effect of possible exemption of small businesses:

   There will be no exemptions created by these proposed rules.

Impact on Local Governments

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

The rules for Public Higher Education Fee Discounts for Children of Licensed Public School Teachers and State Employees Chapter 1540-01-05, as proposed, shall have no projected impact on local governments.

Additional Information Required by Joint Government Operations Committee

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

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

Chapter 1540-01-05 Public Higher Education Fee Discounts for Children of Licensed Public School Teachers and State Employees allows every child in Tennessee under twenty-four (24) years of age whose parent is employed as a full-time state employee, or as a licensed teacher in any public school in Tennessee, to receive a twenty-five percent (25%) discount on tuition to any state operated institution of higher education. Children of retired state employees with twenty-five (25) years of service and retired teachers with thirty (30) years of service are also eligible.

The revisions to the rules include language clarifying that the children of teachers employed by public charter schools are eligible for the discount under T.C.A. § 49-7-119, consistent with Tennessee Attorney General Opinion No. 17-09; includes language adding the six state university boards as governing bodies operating institutions at which qualifying children may use a fee discount; and clarifies that appeals regarding the determination of eligibility of applicants for a fee waiver will be handled by the institutions subject to institutional procedures in place for admissions decisions.

(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. § 8-50-115 and § 49-7-119 authorize the Tennessee Higher Education Commission (THEC) to promulgate rules for the Public Higher Education Fee Discounts for Children of Licensed Public School Teachers and State Employees.

(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;

THEC worked diligently with the Tennessee Board of Regents, the University of Tennessee system, and the six locally governed institutions directly affected by these rules.

These organizations and individuals urge adoption of these rules.

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

These revisions adds language clarifying that the children of teachers employed by public charter schools are eligible for the discount under T.C.A. § 49-7-119, consistent with Tennessee Attorney General Opinion No. 17-09.

(E) An estimate of the probable increase or decrease in state and local government revenues and expenditures, if any, resulting from the promulgation of this rule, and assumptions and reasoning upon which the estimate is based. An agency shall not state that the fiscal impact is minimal if the

fiscal impact is more than two percent (2%) of the agency's annual budget or five hundred thousand dollars ($500,000), whichever is less;

There is no financial impact to THEC resulting from the proposed rule changes.

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

Scott Sloan, THEC Chief of Staff and General Counsel and Brett Gipson, Deputy General Counsel

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

Scott Sloan, THEC Chief of Staff and General Counsel and Brett Gipson, 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

Scott Sloan, Chief of Staff and General Counsel
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Brett Gipson, Deputy General Counsel
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Suite 1900, Parkway Towers
Nashville, TN 37243
615.253.5335
Brett.Gipson@tn.gov

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

There have been no requests for additional information received to-date.

Department of State
Division of Publications
312 Rosa L. Parks Ave., 8th Floor, Snodgrass/TN Tower
Nashville, TN 37243
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Sequence Number: 03-07-18
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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 Higher Education Commission
Division: Higher Education
Contact Person: Scott Sloan, Chief of Staff and General Counsel
Address: Suite 1900, Parkway Towers, 404 James Robertson Parkway, Nashville, TN
Zip: 37243
Phone: 615.741.7571
Email: Scott.Sloan@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**
1540-01-05	Public Higher Education Fee Discounts for Children of Licensed Public School Teachers and State Employees
Rule Number	**Rule Title**
1540-01-05-.01	Definitions
1540-01-05-.04	Appeal Procedures

RULES
OF
TENNESSEE HIGHER EDUCATION COMMISSION

CHAPTER 1540-01-05
PUBLIC HIGHER EDUCATION FEE DISCOUNTS FOR CHILDREN OF LICENSED PUBLIC SCHOOL TEACHERS AND STATE EMPLOYEES

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1540-01-05-.01 DEFINITIONS.

(1) Children under the age of twenty-four (24): Dependent children, twenty-three (23) years of age or younger, of certified public school teachers or employees of the State of Tennessee who are:

(a) The natural children or legally adopted children of the teacher or state employee.

(b) The stepchildren of the teacher or state employee living with the teacher or state employee in a parent/children relationship.

(c) Otherwise eligible and living in a parent/children relationship with the teacher or state employee, such as children of deceased parents who are being raised by a grandparent who is employed as a teacher or state employee.

(d) Children, as described in (a) through (c) above, of a teacher who died while employed as a public school teacher, or of a retired teacher who died after entering retirement, and who are utilizing the benefit at the time of the parent/teacher's death.

(2) Deceased state employee: Person who at the time of their death was a full-time employee of the State of Tennessee.

(~~2~~3) Full-time ~~C~~certified teacher in any public school in Tennessee or Teacher: Teacher, supervisor, principal, superintendent and other personnel who is licensed by the Tennessee Department of Education or by a branch of the U.S. Armed Forces to teach Reserve Officer Training Corps, and employed by any public~~local~~ school system or public charter school for service in public~~,~~ elementary and secondary schools in Tennessee supported in whole or in part by state funds whose position requires them to be on the job on school days throughout the school year at least the number of hours during which schools in the local board of education are in session. This term shall also include full-time technology coordinators employed by any public~~local~~ school system~~,~~ for service in public secondary schools in Tennessee supported in whole or in part by state funds.

~~(3) Deceased state employee: Person who at the time of their death was a full-time employee of the State of Tennessee.~~

~~(4) Full-time teacher or Teacher: School employee whose position requires them to be on the job on school days throughout the school year at least the number of hours during which schools in the local board of education are in session.~~

(Rule 1540-01-05-.01, continued)

(~~4~~5) Full-time employee of the State of Tennessee: Employee of the executive, judicial or legislative branches of Tennessee state government:

(a) classified as "full-time" and scheduled to work one thousand nine hundred and fifty (1,950) hours or more per fiscal year; or

(b) employees, regardless of classification, and scheduled to work one thousand six hundred (1600) hours per fiscal year and who receive employment benefits provided to all full-time employees.

(5) Full-time supervisor,~~s~~ principal, superintendent, and other personnel: School employee who is licensed by the Tennessee Department of Education whose current assignments, regardless of their classification, requires his or her services each working day at least a number of hours equal to a regular working day.

~~(6) Full-time employee of the State of Tennessee: Employee of the executive, judicial or legislative branches of Tennessee state government:~~

~~(a) classified as "full-time" and scheduled to work one thousand nine hundred and fifty (1,950) hours or more per fiscal year; or~~

~~(b) employees, regardless of classification, and scheduled to work one thousand six hundred (1600) hours per fiscal year and who receive employment benefits provided to all full-time employees.~~

(6~~7~~) Maintenance F~~f~~ee or Tuition: A fee charged to students enrolled in credit courses. It is an enrollment or registration fee and is calculated based on the number of student credit hours for which the student enrolls. Alternatively, at colleges of applied technology this term refers to program fees. Maintenance Fee or Tuition does not include application for admission fees, student activity fees, debt service fees, lab fees, applied music fees, the cost of books or other course materials, dormitory charges, or meal plans.

(7~~8~~) Retired state employee: Employee of the State of Tennessee who retires after a minimum of twenty-five (25) years of full-time creditable service~~, although he or she may be deceased at the time the children seeks the benefit provided by this chapter.~~.

(8~~9~~) Retired teacher: A certified teacher as defined in this chapter who retires after a minimum of thirty (30) years of full-time creditable service in Tennessee public schools or who receives disability retirement after a minimum of twenty-five (25) years of full-time creditable service in Tennessee public schools.

(9~~10~~) State operated institution of higher learning or Institution: Any institution operated by the Board of Trustees of the University of Tennessee,~~ or~~ the Tennessee Board of Regents, or a state university board which offers courses of instruction beyond the high school level.

***Authority**: T.C.A. §§ 8-50-115, 49-7-119, ~~2013 Public Acts, Chapter 345, 2005 Public Acts, Chapter 447, and 2003 Public Acts, Chapter 136.~~ **Administrative History:** Original rule filed September 6, 1990; effective December 29, 1990. Amendment filed October 27, 1992; effective January 28, 1993. Amendment filed October 20, 1993; effective March 1, 1994. Amendment filed February 3, 2000; effective June 28, 2000. Repeal and new rule filed August 31, 2004; effective December 29, 2004. Public necessity rule filed June 3, 2005; effective through November 15, 2005. Amendment filed June 3, 2005; effective October 28, 2005. Public necessity rule filed September 1, 2005; effective through February 13, 2006. Amendment filed September 1, 2005; effective January 27, 2006. Amendment filed September 1, 2005; effective January 27, 2006. Amendments filed October 17, 2013; effective March 31, 2014.*

1540-01-05-.02 ELIGIBILITY.

(1) The successful applicant for a student fee discount must meet all of the following:

(a) Be twenty-three (23) years of age or under;

(b) Be a child of a teacher or state employee or deceased state employee in Tennessee as defined in this chapter;

(c) Be eligible according to the regulations in this chapter; and

(d) Be eligible for enrollment at the institution for which a student fee discount is sought according to the academic rules and regulations of the institution.

(2) Eligible children may enroll in any number of courses up to and including full-time study.

(3) Fee discounts are only available for courses classified as undergraduate as defined by the institutions.

(4) Eligibility for the discount will be based on the employment status of the teacher or state employee and the age of the child on the first day of classes for the term as determined by the institution. A change in employment status or the child's age after the first day of classes will affect eligibility for the discount only for subsequent terms.

(5) At the time of enrollment, the student must present a completed form for children of teachers or state employees certifying eligibility to receive a tuition discount. This form must be signed by the teacher or state employee, his or her employer, and the student. Forms are available at the public higher education institutions or at the Commission's website <www.state.tn.us/thec>. Children of retired state employees and retired teachers must have this form signed by a designated official of the State Treasury Department, Division of Retirement to verify that the identified state employee or teacher has retired- with the required number of years of creditable service. For children of state employees killed on the job or in the line of duty, the form must be signed by a designated official of the state agency at which the employee was last employed.

Authority**: T.C.A. §§ 8-50-115, 49-7-119, and 2013 Public Acts, Chapter 345.* ***Administrative History: *Original rule filed September 6, 1990; effective December 29, 1990. Amendment filed October 27, 1992; effective January 28, 1993. Amendment filed October 20, 1993; effective March 1, 1994. Amendment filed April 4, 1994; effective August 28, 1994. Repeal and new rule filed August 31, 2004; effective December 29, 2004. Amendment filed October 17, 2013; effective March 31, 2014.*

1540-01-05-.03 LIMITATIONS.

(1) Fee discounts will not be retroactive for prior terms. Fee discounts are available only by application and should be approved prior to the beginning of the term for which a discount is being sought.

(2) The fee discount described by this chapter may not be used in conjunction with any other fee waiver or discount program. No eligible child shall receive a discount greater than twenty-five percent (25%) for any one term under the provisions of the programs described by this chapter.

(3) The Higher Education Commission shall develop a methodology for allocating appropriations to reimburse institutions for actual fee discounts provided pursuant to this program.

(Rule 1540-01-05-.05, continued)

Authority: T.C.A. §§ 8-50-115 and 49-7-119. ***Administrative History:*** *Original rule filed September 6, 1990; effective December 29, 1990. Amendment filed October 27, 1992; effective January 28, 1993. Amendment filed April 4, 1994; effective August 28, 1994. Repeal and new rule filed August 31, 2004; effective December 29, 2004.*

1540-01-05-.04 APPEAL PROCEDURES.

(1) Appeals regarding the determination of eligibility of the applicant will be available through the respective institution in a manner consistent with institutional procedures now in place for admissions decisions.

Authority: *T.C.A. §§ 8-50-115 and 49-7-119.* ***Administrative History:*** *Original rule filed September 6, 1990; effective December 29, 1990. Repeal and new rule filed August 31, 2004; effective December 29, 2004.*

1540-01-05-.05 REPEALED.
Authority: *T.C.A. §§ 8-50-115 and 49-7-119.* ***Administrative History:*** *Original rule filed September 6, 1990; effective December 29, 1990. Repeal and new rule filed August 31, 2004; effective December 29, 2004.*

The vote by the Commission on these rules was as follows:

Commission Member	Aye	No	Abstain	Absent	Signature (if required)
Evan Cope, Chair, Murfreesboro - Middle Tennessee	X				
Dr. Nancy Dishner, Johnson City - East Tennessee	X				
Jimmy Johnston, Gallatin - Middle Tennessee	X				
Pam Koban, Nashville - Middle Tennessee	X				
Mintha Roach, Knoxville - East Tennessee	X				
Vernon Stafford, Jr., Memphis - West Tennessee	X				
Frank L. Watson, Jr., Memphis - West Tennessee	X				
A C Wharton, Jr., Secretary, Memphis - West Tennessee				X	
Tre Hargett, Secretary of State	X				
Justin P. Wilson, State Comptroller				X	
David H. Lillard, Jr., State Treasurer	X				
Jeremy Chisenhall, Voting Ex-Officio, Student Member-Austin Peay State University	X				

I certify that this is an accurate and complete copy of proposed rules, lawfully promulgated and adopted by the Tennessee Higher Education Commission on 07/27/2017, 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 ninety (90) days of the filing of the proposed rule with the Secretary of State.

Date: 1-26-18

Signature:

Name of Officer: Mike Krause

Title of Officer: Executive Director

Subscribed and sworn to before me on: 01-26-18

Notary Public Signature:

My commission expires on: 08-04-2020

WILEY DICKSON COUNTY CORSINA STATE OF TENNESSEE 08/04/2020

Agency/Board/Commission: TENNESSEE HIGHER EDUCATION COMMISSION

Rule Chapter Number(s): 1540-01-05

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

3/1/2018
Date

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Filed with the Department of State on: 3/7/18

Effective on: 6/5/18

Tre Hargett
Secretary of State

G.O.C. STAFF RULE ABSTRACT

DEPARTMENT:	Higher Education Commission
DIVISION:	
SUBJECT:	Public Higher Education Fee Waivers for State Employees
STATUTORY AUTHORITY:	Tennessee Code Annotated, Section 8-50-114
EFFECTIVE DATES:	June 5, 2018 through June 30, 2019
FISCAL IMPACT:	There shall be no significant increase or decrease in state and local government revenues and expenditures resulting from the promulgation of these rules.
STAFF RULE ABSTRACT:	Chapter 1540-01-04 Public Higher Education Fee Waiver for State Employees allows full-time employees of the executive, judicial, or legislative branch of State government to take one course, undergraduate or graduate, at any State supported college, university, or College of Applied Technology, as well as the Tennessee Foreign Language Institute. The revisions to the rules include language replacing outdated terms such as "technology centers" with "colleges of applied technology;" includes language adding the six (6) state university boards as governing bodies operating institutions at which employees may use a fee waiver; updates language indicating that state employees may only use a fee waiver for "one (1) course per term" to "one (1) course at a time" to mirror language in T.C.A. § 8-50-114; adds language allowing for an exemption from the "one (1) course at a time" limitation for employees who are required to work more hours each week than typically required of full time employment for at least four (4) weeks per year, as enacted by Public Chapter 471; and clarifies the intent of current language prescribing that appeals regarding the determination of eligibility of applicants for a fee waiver will be handled by the institutions subject to institutional procedures in place for admissions decisions.

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.

Description of Proposed Rule:

The Tennessee Higher Education Commission (THEC) intends to file the proposed rules pursuant to T.C.A. § 4-5-202 in lieu of a rulemaking hearing amending Chapter 1540-01-04 Public Higher Education Fee Waivers for State Employees. It is the intent of THEC to promulgate these rules without a public rulemaking hearing unless a petition requesting such hearing is filed within sixty (60) days after the first day of the month subsequent to the filing of the proposed rule with the Secretary of State. THEC has rule promulgation authority for the state's public higher education fee waiver program, available to state employees. Recent legislative enactments have necessitated revisions to the Administrative Rules for these programs.

The revisions to the rules include language replacing outdated terms such as "technology centers" with "colleges of applied technology;" includes language adding the six (6) state university boards as governing bodies operating institutions at which employees may use a fee waiver; updates language indicating that state employees may only use a fee waiver for "one (1) course per term" to "one (1) course at a time" to mirror language in T.C.A. § 8-50-114; adds language allowing for an exemption from the "one (1) course at a time" limitation for employees who are required to work more hours each week than typically required of full time employment for at least four (4) weeks per year, as enacted by Public Chapter 471; and clarifies that appeals regarding the determination of eligibility of applicants for a fee waiver will be handled by the institutions subject to institutional procedures in place for admissions decisions.

Regulatory Flexibility Analysis - Methods of Reducing the Impact of Rules on Small Businesses:

1. Overlap, duplicate, or conflict with other federal, state, and local governmental rules:

   The proposed rules will not overlap, duplicate, or conflict with other federal, state, and local governmental rules.

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

   The proposed rules were patterned to ensure clarity and conciseness of the language of the rules and to eliminate possible ambiguity in the interpretation of the rules.

3. Flexible compliance and/or reporting requirements for small businesses:

   The proposed rules were drafted to facilitate administration of the program for eligible postsecondary education institutions.

4. Friendly schedules or deadlines for compliance and/or reporting requirements:

   THEC worked diligently with the colleges and universities that are most directly affected by these proposed rules to ensure that proposed compliance and reporting requirements can be practically applied by eligible institutions administering the program.

5. Consolidation or simplification of compliance or reporting requirements:

   The proposed rules were drafted to ensure solid, easily interpreted, compliance and reporting requirements.

6. Performance standards for small businesses:

THEC expects the eligible institutions engaged in the administration of the Public Higher Education Fee Waivers for State Employees Program to comply with all applicable rules.

7. Barriers or other effects that stifle entrepreneurial activity, curb innovation, or increase costs:

   The proposed rules do not contain any foreseeable inhibitors to small business entrepreneurial activities.

Furthermore, the statute requires that the agency, as part of the rulemaking process for any proposed rule that may have an impact on small businesses, shall prepare an economic impact statement as an addendum for each rule. The statement shall include the following: the type or types of small businesses and an identification and estimate of the number of small businesses subject to the proposed rule that would bear the cost of, and/or directly benefit from the proposed rules; 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; a statement of the probable effect on impacted small businesses and consumers; 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 businesses; a comparison of the proposed rule with any federal or state counterparts; and analysis of the effect of the possible exemption of small businesses from all or any part of the requirements contained in the proposed rule.

Economic Impact Statement:

1. Types of small businesses directly affected:

   Not applicable. The proposed rules were drafted to facilitate administration of the program for the eligible postsecondary institutions and should have no impact on small businesses.

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

   There are no significant reporting, recordkeeping, or other administrative costs that will result from the promulgation of these proposed rules.

3. Probable effect on small businesses:

   Not applicable.

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

   As these proposed rules do not significantly impact the cost to the postsecondary institutions, there is no alternative method to propose.

5. Comparison with federal and state counterparts:

   There are no federal or state counterparts to the issues addressed by these proposed rules.

6. Effect of possible exemption of small businesses:

   There will be no exemptions created by these proposed rules.

Impact on Local Governments

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

The rules for Public Higher Education Fee Waivers for State Employees Chapter 1540-01-04, as proposed, shall have no projected impact on local governments.

Additional Information Required by Joint Government Operations Committee

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

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

Chapter 1540-01-04 Public Higher Education Fee Waiver for State Employees allows full-time employees of the executive, judicial, or legislative branch of State government to take one course, undergraduate or graduate, at any State supported college, university, or College of Applied Technology, as well as the Tennessee Foreign Language Institute.

The revisions to the rules include language replacing outdated terms such as "technology centers" with "colleges of applied technology;" includes language adding the six (6) state university boards as governing bodies operating institutions at which employees may use a fee waiver; updates language indicating that state employees may only use a fee waiver for "one (1) course per term" to "one (1) course at a time" to mirror language in T.C.A. § 8-50-114; adds language allowing for an exemption from the "one (1) course at a time" limitation for employees who are required to work more hours each week than typically required of full time employment for at least four (4) weeks per year, as enacted by Public Chapter 471; and clarifies the intent of current language prescribing that appeals regarding the determination of eligibility of applicants for a fee waiver will be handled by the institutions subject to institutional procedures in place for admissions decisions.

(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. § 8-50-114 authorizes the Tennessee Higher Education Commission (THEC) to promulgate rules for the Public Higher Education Fee Waivers for State Employees and 2017 Tenn. Pub. Ch. 471 enacts an exemption from the "one (1) course at a time" limitation for employees who are required to work more hours each week than typically required of full time employment for at least four (4) weeks per year; the proposed rules also revise language indicating that state employees may only use a waiver for "one (1) course per term" to "one (1) course at a time" to mirror language in T.C.A. § 8-50-114.

(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 employees, THEC, the University of Tennessee system, the Board of Regents system, and the six locally governed institutions (LGIs) are most directly affected by the proposed rule. The aforementioned state authorities urge 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;

There are no opinions of the attorney general and reporter or any judicial ruling that directly relates to these proposed rules.

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

There shall be no significant increase or decrease in state and local government revenues and expenditures resulting from the promulgation of these rules.

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

Scott Sloan, Chief of Staff and General Counsel and Brett Gipson, Deputy General Counsel

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

Scott Sloan, Chief of Staff and General Counsel and Brett Gipson, 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

Scott Sloan, Chief of Staff and General Counsel Tennessee Higher Education Commission Suite 1900, Parkway Towers Nashville, TN 37243 615.741.7571 Scott.Sloan@tn.gov Brett Gipson, Deputy General Counsel Tennessee Higher Education Commission Suite 1900, Parkway Towers Nashville, TN 37243 615.253.5335 Brett.Gipson@tn.gov

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

There have been no requests for additional information received to-date.

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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 Higher Education Commission
Division: Higher Education
Contact Person: Scott Sloan, Chief of Staff and General Counsel
Address: Suite 1900, Parkway Towers, 404 James Robertson Parkway, Nashville, TN
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Email: Scott.Sloan@tn.gov

Revision Type (check all that apply):
X Amendment
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___ 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**
1540-01-04	Public Higher Education Fee Waivers for State Employees
Rule Number	**Rule Title**
1540-01-04-.01	Definitions
1540-01-04-.02	Eligibility
1540-01-04-.03	Limitations
1540-01-04-.04	Appeal Procedures
1540-01-04-.05	Repealed

RULES
OF
THE TENNESSEE HIGHER EDUCATION COMMISSION

CHAPTER 1540-01-04
PUBLIC HIGHER EDUCATION FEE WAIVERS FOR STATE EMPLOYEES

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1540-01-04-.01 DEFINITIONS.

(1) Course: Undergraduate or graduate credit courses at a state supported college or university, ~~to~~ certificate or diploma credit courses at the TCATs~~technology centers~~, or any course offered by the ~~TFLI~~TFLI.

(2) Full-time Eemployee of the State of Tennessee: Employee of the executive, judicial, or legislative branches of Tennessee state government:

(a) classified as "full-time" and scheduled to work one thousand nine hundred and fifty (1,950) hours or more per fiscal year; or

(b) employees, regardless of classification, ~~and~~ scheduled to work a minimum of one thousand six hundred (1,600) hours per fiscal year and who receive employment benefits provided to all full-time employees.

(3) Member of the General Assembly: Individual currently holding office as a member of either the House of Representatives or Senate and elected pursuant to Article II of the Tennessee Constitution.

(4) Institution: Any s~~S~~tate supported community college, ~~or~~ university, or college of applied technology ~~center or Institution: Any institution~~ operated by the Board of Trustees of the University of Tennessee, ~~or~~ the Tennessee Board of Regents, or a state university board that ~~which~~ offers courses of instruction beyond the high school level, and the TFLI, as established by Tennessee Code Annotated Title 49, Chapter 50, Part 13.

(5) TCAT: Tennessee College of Applied Technology.

(~~5~~6) ~~Tennessee Foreign Language Institute or~~ TFLI: Tennessee Foreign Language Institute.

(~~6~~7) Term: The time frame in which a course is offered ~~by the Institution, and for purposes of these rules includes Fall, Spring, Summer and special session terms,~~ as defined by the institution~~individual universities and colleges. It is the intent of these rules that over the course of special session terms and the two Summer semester terms an employee or member of the General Assembly will be limited to no more than two courses, the instruction periods of which shall not overlap. For the technology centers and the TFLI, "term" refers to a three month reporting period. The four terms are:~~

~~July 1 - September 30~~
~~October 1 - December 31~~
~~January 1 - March 31~~
~~April 1 - June 30~~

(Rule 1540-01-04-.01 continued)

(~~7~~8) Fees that are waived by this program are defined as follows:

(a) Debt Sservice Ffee: A fee charged to students for the retirement of indebtedness that may be included in the maintenance fee charges.

(b) Maintenance Ffee: A fee charged to students enrolled in credit courses~~. It is~~ as an enrollment or registration fee and is calculated based on the number of student credit hours for which the student enrolls.

(c) Registration Ffee: Maintenance fee as described above.

(d) Student Aactivity Ffee: A fee charged to students in addition to tuition and maintenance fees that is based on the credit hour enrollment of the student. Some institutions include the student activity fee in the maintenance fee rather than as a separate charge. The student activity fee supports health services, athletics, student newspapers and social and cultural events.

(e) Tuition Ccharge: A fee charged to students classified as non-residents in addition to the maintenance fee.

Authority: *T.C.A. § 8-50-114.* ***Administrative History:*** *Original rule filed September 6, 1990; effective December 29, 1990. Repeal and new rule filed August 31, 2004; effective December 29, 2004. Public necessity rule filed June 3, 2005; effective through November 15, 2005. Amendment filed June 3, 2005; effective October 28, 2005.*

1540-01-04-.02 ELIGIBILITY.

(1) A full-time employee of the State of Tennessee or a member of the General Assembly shall be eligible to enroll in one (1) course ~~per term~~at a time at any state supported ~~college, university or technology center, or the Tennessee Foreign Language Institute~~institution without paying the tuition charge, maintenance fee, student activity fee, or registration fee.

(2) Eligibility for the fee waiver shall be determined as of the first day of classes for the term at the ~~respective Iinstitutions' or TFLI's first day of classes for the term~~. To receive the fee waiver, the ~~E~~employee or the member of the General Assembly must be eligible for enrollment at the ~~i~~institution for which a fee waiver is sought according to the academic rules and regulations of the ~~i~~institution ~~or the TFLI~~. The employee must also have six (6) months or more of continuous service as a full-time employee to receive the fee waiver. A change in employment status after the first day of classes will affect eligibility for the fee waiver only for subsequent terms.

(3) A full-time employee of the State of Tennessee or a member of the General Assembly who is otherwise eligible for a waiver of tuition and fees pursuant to T.C.A. § 8-50-114 who is required to work more hours each week than typically required of full-time employment for at least four (4) weeks per year shall be exempt from the requirement that the waiver be used for only one (1) course at a time. Certification of eligibility for this exemption shall be completed by the applicant's employer at the time of application for the waiver. Nothing in this section shall allow an employee to exceed enrollment in more than four courses per academic year.

Authority: *T.C.A. § 8-50-114.* ***Administrative History:*** *Original rule filed September 6, 1990; effective December 29, 1990. Repeal and new rule filed August 31, 2004; effective December 29, 2004.*

1540-01-04-.03 LIMITATIONS.

(1) Fee waivers not certified as exempt under Rule 1540-01-04-.02(3) are limited to one (1) course

(Rule 1540-01-04-.03 continued)

~~per term~~at a time. Fees will not be waived for non-credit or correspondence courses. Employees are not eligible for fee waivers at more than one ~~I~~institution ~~per term~~at a time. ~~For the purposes of this paragraph, the term "Institution" shall include the TFLI.~~

(2) Fees and charges ~~which~~ that will not be waived include the cost of books or other course materials ~~which~~ that are retained by the student, application fees, off-campus facilities fees, parking fees, traffic fines, and fees assessed that are applied to the cost of the course or ~~which~~ that directly support the department offering the course such as applied music fees, lab fees, fees assessed to offset the cost of offering distance education courses or courses offered in a particular discipline.

(3) Fees will not be waived for programs for which part-time or course by course enrollment is prohibited as determined by the ~~I~~institutions. Examples include, but are not limited to, programs of law, medicine, dentistry, pharmacy, and veterinary medicine.

(4) The fee waiver program described in this ~~Chapter~~ Rule 1540-01-04 may not be used in conjunction with any other fee waiver or discount program.

(5) At the time of enrollment, the ~~E~~employee must have a completed state employee fee waiver form signed by ~~his or her~~the employer certifying that the applicant is a full-time employee with at least six (6) months of continuous service. Forms are available at the ~~higher education~~ institutions or on the Commission's website https://www.tn.gov/thec/bureaus/legal-and-external-affairs/redirect-legal-and-external-affairs/fee-waiver-and-fee-discount-programs/fee-waiver.html~~<www.state.tn.us/thec>~~.

(6) Enrollment may be limited or denied by the ~~college, university, technology center, or the TFLI~~institution on an individual basis according to space availability.

(7) No tuition paying student shall be denied enrollment in a course because of state employee enrollments pursuant to this ~~Act~~fee waiver program.

(8) Rights and privileges provided to full-time employees of the ~~state university and community college system and the University of Tennessee~~institutions pursuant to T.C.A. § 49-7-116 shall not be affected or diminished by the ~~Act~~provisions of this fee waiver program.

(9) The Tennessee Higher Education Commission shall develop a methodology for allocating appropriations to reimburse ~~I~~institutions ~~and the TFLI~~ for fees waived pursuant to this program.

Authority: *T.C.A. § 8-50-114.* ***Administrative History:*** *Original rule filed September 6, 1990; effective December 29, 1990. Repeal and new rule filed August 31, 2004; effective December 29, 2004.*

1540-01-04-.04 APPEAL PROCEDURES.

(1) Appeals regarding the determination of eligibility of the applicant will be available through the respective institution in a manner consistent with institutional procedures now in place for admissions decisions.

Authority: *T.C.A. § 8-50-114.* ***Administrative History:*** *Original rule filed September 6, 1990; effective December 29, 1990. Repeal and new rule filed August 31, 2004; effective December 29, 2004.*

1540-01-04-.05 REPEALED.

Authority: *T.C.A. § 8-50-114.* ***Administrative History:*** *Original rule filed September 6, 1990; effective December 29, 1990. Repeal and new rule filed August 31, 2004; effective December 29, 2004.*

The vote by the Commission on these rules was as follows:

Commission Member	Aye	No	Abstain	Absent	Signature (if required)
Evan Cope, Chair, Murfreesboro - Middle Tennessee	X				
Dr. Nancy Dishner, Johnson City - East Tennessee	X				
Jimmy Johnston, Gallatin - Middle Tennessee	X				
Pam Koban, Nashville - Middle Tennessee	X				
Mintha Roach, Knoxville - East Tennessee	X				
Vernon Stafford, Jr., Memphis - West Tennessee	X				
Frank L. Watson, Jr., Memphis - West Tennessee	X				
A C Wharton, Jr., Secretary, Memphis - West Tennessee				X	
Tre Hargett, Secretary of State	X				
Justin P. Wilson, State Comptroller				X	
David H. Lillard, Jr., State Treasurer	X				
Jeremy Chisenhall, Voting Ex-Officio, Student Member-Austin Peay State University	X				

I certify that this is an accurate and complete copy of proposed rules, lawfully promulgated and adopted by the Tennessee Higher Education Commission on 07/27/2017, 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 ninety (90) days of the filing of the proposed rule with the Secretary of State.

Date: 1-26-18

Signature: [signature]

Name of Officer: Mike Krause

Title of Officer: Executive Director

CORSINA DICKSON - WILEY
STATE OF TENNESSEE
08/04/2020
DAVIDSON COUNTY

Subscribed and sworn to before me on: 01-26-2018

Notary Public Signature: [signature]

My commission expires on: 8-04-2020

Agency/Board/Commission: TENNESSEE HIGHER EDUCATION COMMISSION

Rule Chapter Number(s): 1540-01-04

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.

[signature]
Herbert H. Slatery III
Attorney General and Reporter

3/1/2018
Date

Department of State Use Only

Filed with the Department of State on: 3/7/18

Effective on: 6/5/18

[signature]
Tre Hargett
Secretary of State

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PUBLIC RULES