

## G.O.C. STAFF RULE ABSTRACT

DEPARTMENT: Agriculture

DIVISION: Consumer and Industry Services

SUBJECT: General Use Pesticides

STATUTORY AUTHORITY: Tennessee Code Annotated, Sections 43-8-106 and 62-21-118

EFFECTIVE DATES: June 29, 2014 through June 30, 2015

FISCAL IMPACT: No increase or decrease of revenues and expenditures

STAFF RULE ABSTRACT: These amendments expand the current rules to apply to the application of general use pesticides as well as restricted use pesticides. Fourteen subcategories of certification for pesticide application are being eliminated to simplify the licensing process.

The new rules regarding worker protection, pesticide containment, pesticide disposal and recordkeeping for private applicators were adopted by reference to the Code of Federal Regulations so that the department can enforce these provisions at the state level in lieu of direct enforcement by the Environmental Protection Agency and the United States Department of Agriculture.

## 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.



## TENNESSEE DEPARTMENT OF AGRICULTURE

**JULIUS JOHNSON**  
COMMISSIONER

**REGULATORY SERVICES**

October 29, 2013

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

RE: Rulemaking Hearing October 29, 2013

I served as hearing officer for the Rulemaking Hearing on October 29, 2013 concerning 0080-06-16 Regulations Governing Use of Pesticides and 0080-06-27 Worker Protection.

There were no questions or comments from the public during the hearing.

Sincerely,

K. David Waddell /s/

K. David Waddell  
Counsel

### **Regulatory Flexibility Addendum**

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

- (1) Type or types of small business subject to the proposed rule that would bear the cost of, and/or directly benefit from the proposed rule:

All pest control companies and individuals that hold a commercial certification are affected by these rules.

- (2) Identification and estimate of the number of small businesses subject to the proposed rule:

There are 1429 licensed pest control companies in Tennessee. The vast majority of which are small businesses.

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

These rules do not impose additional reporting or recordkeeping not already required.

- (4) Statement of the probable effect on impacted small businesses and consumers:

Fourteen (14) subcategories of certification are eliminated by these rules. The certification and recertification process is clarified and simplified. The pest control industry will have a less intrusive and less complicated licensing process. Consumers will still be assured pest control operators are qualified to do their jobs.

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

A relaxation of any provision of these rules could cause the loss of the state authority to enforce pesticide rules instead of EPA.

- (6) Comparison of the proposed rule with any federal or state counterparts:

Pesticides are regulated by EPA. Upon application, states may be approved to carry out equivalent programs instead of direct enforcement by EPA. These rules represent Tennessee's approved equivalent enforcement program.

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

The size of the business does not ameliorate the need for pesticides to be applied correctly and safely.

### **Impact on Local Governments**

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

These rule changes will not have an impact on local governments.

**Department of State  
Division of Publications**

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**For Department of State Use Only**

Sequence Number: 03-15-14  
Rule ID(s): 5678 5679  
File Date: 3/31/14  
Effective Date: 10/29/14

# Rulemaking Hearing Rule(s) Filing Form

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

<b>Agency/Board/Commission:</b>	Tennessee Department of Agriculture
<b>Division:</b>	Consumer and Industry Services
<b>Contact Person:</b>	K. David Waddell
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**Revision Type (check all that apply):**

- Amendment  
 New  
 Repeal

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

Chapter Number	Chapter Title
0080-06-16	Regulations Governing Use of Pesticides
Rule Number	Rule Title
0080-06-16-.02	Definitions
0080-06-16-.03	Certification Requirements
0080-06-16-.04	Recertification Requirements
0080-06-16-.05	Record Keeping
0080-06-16-.07	Use of Restricted Use Pesticides
0080-06-16-.09	Civil Fine Schedule
0080-06-16-.10	Pesticide Management and Disposal
Chapter Number	Chapter Title
0080-06-27	Worker Protection
Rule Number	Rule Title
0080-06-27-.01	Definitions
0080-06-27-.02	Worker Protection Standard
0080-06-27-.03	WPS Trainer Requirements
0080-06-27-.04	Notice to Farm Labor Contractors

RULES  
OF  
DEPARTMENT OF AGRICULTURE  
DIVISION OF ~~PLANT INDUSTRIES~~ CONSUMER AND INDUSTRY Services  
CHAPTER 0080-6-16  
REGULATIONS GOVERNING USE OF  
~~RESTRICTED-USE PESTICIDES~~

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0080-6-16-.04 Recertification Requirements	0080-6-16-.09 Civil Fine Schedule
0080-6-16-.05 Record Keeping	

0080-6-16-.01 GENERAL

- (1) The Commissioner of Agriculture determines that the use and application of restricted use pesticides may affect public health and environment.
- (2) To use, buy or sell restricted use pesticides, an individual must be certified by the Commissioner or hold a valid pest control operator's license or act under the direct supervision of a licensee or certificate holder.

Authority: T.C.A. §62-2120(4).

0080-6-16-.02 DEFINITIONS.

- (1) CATEGORY - means an area of licensing or certification for which commercial applicators pest control operators of general or restricted use applicators are qualified.  
~~Commercial applicators must be certified in one or more of these areas.~~
- (2) CERTIFIED APPLICATOR - means any individual who is certified by the Commissioner of Agriculture as authorized to use, buy, sell or supervise the use of general or restricted use pesticides.
- (3) COMMERCIAL APPLICATOR - means a person who uses or supervises the use of, sells or buys restricted use pesticides for any purpose, or for use on any property other than as defined under ~~Private Applicator or Commercial Pest Control Operator~~. Commercial applicators must be certified in the category of service being offered prior to taking the license examinations.
- (4) ~~COMMERCIAL PEST CONTROL OPERATOR - means an individual who uses, supervises the use of, buys or sells restricted use pesticides for the purpose of engaging in custom application.~~ a person or business entity who engages in the custom application of pesticides or inspection of real property for the purpose of issuing a wood destroying insect inspection report and who has demonstrated to the satisfaction of the pest control licensing and advisory board such person's qualifications to design and direct pest control and inspection operations.
- (5) CUSTOM APPLICATION - means the application of pesticides for a fee.

- ~~(6)~~ EXTERNAL TRAINING – means training conducted outside of a pest control operators place of business and open to anyone to attend training conducted by an outside presenter who is not employed by the pest control company making the training request.
- ~~(7)~~ General Use Pesticides – means a pesticide which may be purchased and used by individuals without obtaining any special certification or licensing.
- ~~(8)~~ IN-HOUSE TRAINING – means training that is conducted within the employer's place of business and attendance is limited to those employed by that specified company only. In-house training includes, but is not limited to internet training, computer-based CD-ROM or DVD training.
- ~~(6)~~ (9) PRIVATE APPLICATOR - means an individual who uses, supervises the use of or buys any pesticide which is classified for restricted use for purposes of producing an agricultural commodity on property owned or rented by him or his employer or if applied without compensation other than trading of personal services between producers of agricultural commodities, on the property of another person.
- ~~(10)~~ RECERTIFICATION – means the authorization every three (3) years by the commissioner to use, supervise the use of, sell, or buy general or restricted use pesticides.
- ~~(11)~~ RECIPROCITY – means an agreement between the Tennessee Department of Agriculture and state(s) that have similar laws and regulations for the purpose of obtaining certification only. All associated fees are the responsibility of the applicator.
- ~~(7)~~(12) RESTRICTED USE PESTICIDE - means any pesticide classified for restricted use by the Commissioner of Agriculture.
- ~~(8)~~ SUBCATEGORY – means an area of certification for commercial pest control operators.
- ~~(13)~~ RESTRICTED USE PESTICIDE DEALER – means an individual certified in the certification category of Pesticide Dealer who wholesales or retails restricted use pesticides.
- ~~(9)~~(14) UNDER THE DIRECT SUPERVISION - means any application or sale of a pesticide by a competent person certified applicator acting under the instructions and control of an a private applicator, commercial applicator or commercial pest control operator who is available if and when needed. even though such certified applicator is not physically present at the time and place the pesticide is applied or sold An application or sale is under the direct supervision of an applicator or operator if the applicator or operator is physically present or in direct communication by conventional means of communication.

Authority: T.C.A. §62-2420(4). §§43-8-106 and 62-21-118.

0080-6-16-.03 CERTIFICATION REQUIREMENTS.

(1) REQUIREMENTS FOR CERTIFICATION AS A PRIVATE APPLICATOR CERTIFICATION REQUIREMENTS

- (a) Successfully complete a specialized training session provided by the University of Tennessee Extension Service teaching the proper use of restricted use pesticides. Send a copy of the three-part form signed by the extension agent verifying the completion of

training to the Tennessee Department of Agriculture with appropriate fee (s) as outlined in T.C.A. § 43-1-703.

- (b) Be certified to use restricted use pesticides in any other state having comparable certification requirements. Individuals who hold a current certification from another state must apply for a reciprocal Private Applicator card with the Tennessee Department of Agriculture.
- (c) If one meets the requirements of certification then that certification expires on October 21, four years after October 21 following original certification. Private applicator certification expires on October 21 of the 3<sup>rd</sup> year of the certification period.
- (d) All individuals must be 16 years of age and be a U.S. Citizen or possess a current VISA or other proof of qualified alien status prior to becoming privately certified.

(2) REQUIREMENTS FOR CERTIFICATION AS A COMMERCIAL APPLICATOR.

- ~~(a) — Pass a written examination on general knowledge of pesticides, offered by the Tennessee Department of Agriculture. This examination entails pest identification, application techniques, safety in handling, mixing, and applying pesticides, environmental hazards in using pesticides, knowledge and responsibilities under Tennessee and Federal Statutes and regulations, and labels and labeling comprehension. Pass a specific written examination in the category in which applicant desires to be certified, or~~
- ~~(b) — Be certified to use restricted use pesticides in any other state having comparable certification requirements.~~
- ~~(c) — If one meets the requirements of certification as a commercial applicator then that certification expires on October 21, four years after the October 21 following original certification.~~

COMMERCIAL PESTICIDE APPLICATOR CERTIFICATION REQUIREMENTS

- (a) All individuals must be 16 years of age and be a U.S. Citizen or possess a current VISA or other proof of qualified alien status prior to becoming a commercial pesticide applicator.
- (b) Complete a commercial certification exam application form and submit to the commissioner with appropriate fees as outlined in T.C.A. § 43-1-703.
- (c) Applicant must score seventy (70) percent or higher to pass the commercial certification exam.
- (d) Individuals who cannot take a scheduled examination due to circumstances beyond their control must contact the Department within forty-eight (48) hours of the scheduled examination to reschedule or their examination fee shall be forfeited.
- (e) Individuals who fail the certification exam will have a two (2) week waiting period before being rescheduled.
- (f) Individuals exhibiting unethical behavior during an examination shall fail the test and be ineligible to take the certification exam for one (1) year.
- (g) Individuals who possess a certification from another state which has a reciprocal agreement with the Tennessee Department of Agriculture will be issued a commercial pesticide applicator certification card. The applicant shall submit a copy of the front and back of the

current applicator card issued by the reciprocating state along with the reciprocity application form furnished by the commissioner.

(h) Commercial applicator certification expires on December 31<sup>st</sup> of the 3<sup>rd</sup> year of the certification period.

(3) REQUIREMENTS FOR CERTIFICATION AS A COMMERCIAL PEST CONTROL OPERATOR.

(a) Anyone who charges a fee for custom application as a Commercial Pest Operator must hold a valid pest control operator's license.

(b) Any person desiring to be licensed as a Pest Control Operator must meet the requirements of T.C.A. §§ ~~62-2104~~ 62-21-101 et seq.

(c) Original certification expires at the end of five (5) years.

(4) ~~CATEGORIES AND SUBCATEGORIES IN WHICH OF COMMERCIAL APPLICATORS AND COMMERCIAL PEST CONTROL OPERATORS ARE CERTIFIED.~~

(a) Agricultural Pest Control (C01)

1. Description -This category includes commercial applicators using or supervising the use of general or restricted use pesticides in production of agricultural crops, including ~~without limiting the foregoing~~ but not limited to, tobacco, peanuts, cotton, feed grains, soybeans, and forage; small fruits, tree fruits and nuts, ~~as well as on~~ grasslands and non-crop agricultural land.

2. Standards of Competency-Applicators must demonstrate a practical knowledge of the crops grown and the specific pests of those crops on which they may be using restricted use pesticides. The importance of such competency is amplified by the extension areas involved, the quantities of pesticides needed, and the ultimate use of many commodities as food and feed. Practical knowledge is required concerning soil and water problems, preharvest intervals, re-entry intervals, phytotoxicity, and potential for environmental contamination, non-target injury and community problems resulting from the use of restricted use pesticides in agricultural areas.

~~3. Subcategories~~

~~(i) Weed Control-Agricultural~~

~~(I) Description-This subcategory includes commercial pest control operators using or supervising the use of restricted use pesticides in the control of plants, whether woody or herbaceous, by the application generally classed as herbicides to planted and/or cultivated crops or to land otherwise used in agricultural production.~~

~~(II) Standards of Competency-Applicators shall demonstrate practical and technical knowledge of all types of weeds encountered in the production of agricultural crops and formulations of pesticides used in their control. They must also demonstrate a practical knowledge of the time, placement, soil types, type of crops being treated and at the same time provide maximum protection for the environment around the area being treated.~~

(ii) Agricultural Ground Equipment

- (I) Description—This subcategory includes commercial pest control operators using or supervising the use of pesticides in the control of insects, fungi, bacteria, and weeds in the production of agricultural crops. Agricultural fumigation is excluded from this category.
- (II) Standards of Competency—Applicators must demonstrate practical and technical knowledge of the crops grown and the specific pests of those crops on which they may be using pesticides. Their competency must be demonstrated in type and quantity of pesticide needed to control the various pests encountered. Practical knowledge is required in run-off or drift problems and the environmental contamination that could occur.

(iii) Fumigation-Agricultural

- (I) Description—This subcategory includes commercial pest control operators using or supervising the use of restricted use pesticide fumigants in the control of soil pests in the production of agricultural crops.
- (II) Standards of Competency—Applicators shall demonstrate practical and technical knowledge of fumigants used in the fumigation of agricultural soils, the type of pests being controlled, such as weeds, fungi, insects, bacteria, and nematodes. They must also demonstrate practical knowledge of time and placement of applications, types of safety equipment necessary to protect those involved in application and the residual effect fumigants may have on the crop being treated.

(i) Agricultural—Animal

- (I) Description—This sub-category includes commercial applicators using or supervising the use of pesticides directly to animals for the control of pests and diseases.
- (II) Standards of Competency—Applicators applying pesticides directly to animals must demonstrate practical knowledge of such animals and their associated pests. A practical knowledge is also required concerning specific pesticide toxicity and residue potential, since host animals will frequently be used for food. Further, the applicator must know the relative hazards associated with such factors as formulation, application techniques, age of animals, stress, and extent of treatment.

(b) Forest Pest Control (C02)

1. Description-This category includes commercial applicators using or supervising the use of general or restricted use pesticides to control pests in the maintenance and production of ornamental trees, shrubs, flowers, and turf. forest, forest nurseries, and forest seed producing areas.

2. Standards of Competency-Applicators shall demonstrate practical knowledge of the types of forests, forest nurseries, and seed production in this State and the pests involved. They should possess practical knowledge of the cyclic occurrence of certain pests and specific population dynamics as a basic for programming pesticide applications. A practical knowledge is required of the relative biotic agents and their vulnerability to the pesticides to be applied. Because forest stands may be large and frequently include natural aquatic habitats and harbor wildlife, the consequences of pesticide use may be difficult to assess. The applicator must demonstrate practical knowledge of control methods which will minimize the possibility of secondary problems such as unintended effects on wildlife. Knowledge of proper use of specialized equipment must be demonstrated, especially as it may relate to meteorological factors and adjacent land use.

(c) Ornamental and Turf Pest Control (C03)

(a) Description-This category includes commercial applicators using or supervising the use of general or restricted use pesticides to control pests in the maintenance and production of ornamental trees, including fruit trees, shrubs, flowers, turf, residential and commercial lawns, golf greens, athletic fields and the like.

2. Standards of Competency-Applicators shall demonstrate practical knowledge of pesticide problems associated with the production and maintenance of ornamental trees, shrubs, plantings, and turf, including cognizance of potential phytotoxicity due to a wide variety of plant material, drift, and persistence beyond the intended period of pest control. Because of the frequent proximity of human habitations to application activities, applicators in this category must demonstrate practical knowledge of application methods which will minimize or prevent hazards to humans, pets, and other animals.

3. ~~Subcategories~~

(i) ~~Lawn and Turf Maintenance~~

(I) ~~Description-This subcategory includes commercial pest control operators using or supervising the use of restricted use pesticides for the control of pests of turf such as that found in lawns, golf greens, athletic fields and the like.~~

(II) ~~Standards of Competency-Applicators shall demonstrate practical and technical knowledge of pesticide problems associated with the production and maintenance of lawn and turf. Due to close proximity of other plant materials and human habitation to application activities, applicators in this category must demonstrate practical knowledge of application methods which minimize or prevent hazards to plants, humans, pets, and other domestic animals.~~

(ii) ~~Horticultural~~

- (I) ~~—Description—This subcategory includes commercial pest control operators using or supervising the use of restricted use pesticides for the control of pests and diseases of shrubs, trees (including fruit trees) and the like, encountered in pest control services on the grounds of clubs, institutions, residences, orchards, etc.~~
- (II) ~~—Standards of Competency—Applicators must demonstrate practical and technical knowledge of pesticide problems associated with the production and maintenance of ornamental trees, shrubs, and other herbaceous plants (including fruit trees) in and around buildings, parks, orchards, and plant nurseries. Because of the frequent proximity of humans during application activities, applicators must demonstrate in this category practical knowledge of application methods which will minimize or prevent hazards to humans, pets, and other animals.~~

(d) Seed Treatment (C04)

1. Description—This category includes commercial applicators using or supervising the use of general or restricted use pesticides on seeds.
2. Standards of Competency—Applicators shall demonstrate practical knowledge of types of seeds that require chemical protection against pests and factors such as seed coloration, carriers, and surface active agents which influence pesticide binding and may affect germination. They must demonstrate practical knowledge of hazards associated with handling, sorting and mixing, and misuse of treated seed into food and feed channels, as well as proper disposal of unused treated seeds.

(e) Aquatic Pest Control (C05)

1. Description—This category includes commercial applicators using or supervising the use of general or restricted use pesticides in aquatic environments.
2. Standards of Competency—Applicators shall demonstrate practical knowledge of the secondary effects, which can be caused by improper application rates, incorrect formulations, and faulty application, of restricted use pesticides used in this category. They shall demonstrate practical knowledge of various water use situations and the potential of downstream effects. Further, they must have practical knowledge concerning potential pesticide effects on plants, fish, birds, beneficial insects and other organisms, which may be present in aquatic environments. These applicators shall demonstrate practical knowledge of the principles of limited area application.

(f) Right-of-Way Pest Control (C06)

1. Description—This category includes commercial applicators using or supervising the use of general or restricted use pesticides to control pests in the maintenance of public roads, electric power lines, pipelines, railway rights-of-way or other similar areas. This category includes the control of plants, whether wood or herbaceous, to industrial sites and rights-of-way such as but not limited to highways, transmission lines, and drainage ditches.

2. Standards of Competency-Applicators shall demonstrate practical knowledge of a wide variety of environments since rights-of-way can traverse many different terrains, including waterways. They shall demonstrate practical knowledge of problems of runoff, drift, and excessive foliage destruction and ability to recognize target organisms. They shall also demonstrate practical knowledge of the nature of herbicides and the need for containment of these pesticides within the right-of-way area, and the impact of their application activities in the adjacent areas and communities.

3. ~~Subcategories~~

(i) ~~Weed Control-Right-of-Way and Industrial~~

~~(I) Description-This subcategory includes commercial pest control operators using or supervising the use of restricted use pesticides for the control of plants, whether wood or herbaceous, to industrial sites and rights-of-way such as, but not limited to highways, transmission lines, drainage ditches, etc. These chemicals may be desiccants, defoliants, growth regulators, soil sterilizing agents, and the like.~~

~~(II) Standards of Competency-Applicators must demonstrate practical and technical knowledge of a wide variety of environments since rights-of-way can traverse many different terrains, including waterways. They shall demonstrate knowledge of herbicides used in weed control around industrial sites and rights-of-way. They shall demonstrate knowledge on runoff, drift, and excessive foliage destruction and ability to recognize target organisms. They shall also demonstrate practical knowledge of herbicides such as how they kill plants and the impact of their application activities in the adjacent areas and communities.~~

(g) Industrial, Institutional, Structural and Health Related Pest Control (C07)

1. Description-This category includes commercial applicators using or supervising the use of general or restricted use pesticides in, on, and around food handling establishments, human dwellings, institutions, such as schools and hospitals, industrial establishments, including warehouses and grain elevators, and any other structures and adjacent area, public or private; and for the protection of stored, processed, or manufactured products. This category includes the control of birds and rodents.
2. Standards of Competency - Applicators must demonstrate a practical knowledge of a wide variety of pests including their life cycles, types of formulations appropriate for their control and methods of application that avoid contamination of food, damage and contamination of habitat and exposure of people and pets. Since human exposure, including babies, children, pregnant women, and elderly people, is frequently a potential problem, applicators must demonstrate practical knowledge of the specific factors which may lead to a hazardous condition, including continuous exposure in the various situations encountered in this category. Because health related pest control may involve outdoor applications, applicators must also demonstrate practical knowledge of environmental conditions particularly related- to this activity.

### 3. Subcategories

#### (i) Wood-Destroying Organisms

(I) Description This subcategory includes commercial pest control operators using or supervising the use of restricted use pesticides for the control of termites, various wood borers, carpenter bees, carpenter ants, and decay without regard to the type or use or structure involved. Control of silverfish, mealworms, roaches, etc., which may damage wood or wood products infrequently, are not included in this subcategory.

(II) Standards of Competency Applicators must demonstrate practical and technical knowledge of pests that destroy wood and wood products, their life cycles, types of damage, and the type of pesticide formulations used in their control. Since there are human and animal exposure during and after treatment, they must demonstrate practical knowledge in the use and placement of pesticides in and around structures to protect humans, other animals and the environment.

#### (ii) General Pest Control and Product Control (Household and Commercial)

(I) Description This subcategory includes commercial pest control operators using or supervising the use of restricted use pesticides to control those pests encountered in or about residences (homes, apartments, etc.) and commercial operations (stores, motels, office buildings, etc.) This subcategory does not include those pests specifically included in other subcategories, such as bird control or termite control.

(II) Standards of Competency Applicators in this category must demonstrate practical and technical knowledge of a wide variety of pests including life cycles, living habits, and the types and kind of food they desire. Since these applications will be made in homes and all types of commercial buildings, where humans, pets, and foods are involved, applicators must know how to make application of pesticides to control these pests and at the same time provide maximum protection to people, pets, food, and their environment.

#### (iii) General Pest Control and Rodent Control (Non-restricted)

(I) Description This subcategory includes commercial pest control operators using or supervising the use of restricted use pesticide to control those vertebrate or invertebrate pests encountered in or about industrial, manufacturing, or processing plants, dumps, warehouses, institutions, hospitals, schools, residences, stores, motels, office buildings, or such other operations as may be subject to regulatory practices from such agencies as the U.S. Food and Drug Administration, the U.S. Department of Agriculture or the Interstate Commerce Commission. This category does not include those pests specifically covered by other categories such as termite control, wood control, bird control, etc.

(II) Standards of Competency Applicators must demonstrate practical and technical knowledge of a wide variety of pests including

their life cycles, living habits, the types of formulations appropriate for their control and methods of application that will avoid contamination of food, habitat, and exposure of people and pets. Since these pests are encountered in or about residences (homes and apartments, etc.), industrial, manufacturing, or processing plants, dumps, warehouses, institutions, hospitals, schools, and areas arraign these buildings, applicators must demonstrate a practical knowledge of the placement of pesticides so as to provide maximum protection for the environment and at the same time control their pests.

(iv) — Fumigation-Non-restricted

(I) — Description—This subcategory includes commercial pest control operators using or supervising the use of restricted use pesticide fumigants in the control of structural pests and pests found in all types of buildings, ships, boxcars, trailers, and other additional sites other than agricultural land.

(II) — Standards of Competency—Applicators shall demonstrate practical and technical knowledge of the application of all types of fumigants used in industrial, manufacturing, or processing plants, warehouses, institutions, food storage areas, ships, boxcars, and other structures where pest may occur. They shall also demonstrate practical knowledge of the necessary equipment for application, safety equipment for the protection of the applicator, and the protection for those areas around the site being fumigated. Since many foods are involved, applicators must demonstrate his or her knowledge of using the proper fumigant to kill the target pest and at the same time not contaminate foods and other products that may be used for human and other animal consumption.

(v) — Fumigation-Structural and Commercial

(I) — Description—This subcategory includes commercial pest control operators using or supervising the use of restricted use pesticide fumigants in the control of structural pests and pests found in and commercial buildings.

(II) — Standards of Competency—Applicators must demonstrate practical and technical knowledge in the application of fumigants and the effects it has on the control of structural pests and pests found in commercial buildings. They shall also demonstrate practical knowledge of the necessary application equipment, safety equipment necessary to protect the applicator and protecting the area around the site being fumigated. Since food and fiber is often encountered in warehousing areas, the applicator must demonstrate practical knowledge of the type of fumigants that can be used safely and no contaminate food and fiber used for human or other animal consumption.

(vi) — Bird Control

(I) — Description—This subcategory includes commercial pest control operators using or supervising the use of restricted use pesticides for the control of pest birds.

(II) — Standards of Competency—Applicators shall demonstrate practical and technical knowledge in the identification of

~~protected and non-protected species, types of control measures, both chemical and mechanical devices and the habitat where birds live. Applicators shall also demonstrate practical knowledge of how pesticides used in bird control affects the environment. This is very important in bird control since most bird roosts occur in wooded and urban areas near their food supply.~~

~~(vii) Consulting Entomologist~~

- ~~(I) Description—This subcategory includes commercial pest control operators offering consulting services with reference to insect pests and other entomological problems. Licensing in this subcategory does not authorize the performance of control work.~~
- ~~(II) Standards of Competency—He or she must demonstrate practical knowledge of insect pests and the problems they may create wherever infestations occur. He or she must demonstrate practical knowledge of insect life cycles, control measures, stages in life cycles in which control is best achieved quantities of pesticides needed to effectively control the pests involved, and how the use of pesticides may or may not affect the environment.~~

(h) Public Health Pest Control (C08)

1. Description - This category includes all governmental employees and commercial applicators who use or supervise the use of pesticides relative to public health programs on public land and public waters and which are not specifically covered by other categories of certification described herein. ~~in public health programs or in the commercial application of pesticides for the management and control of pests having medical and public health importance.~~
2. Standards of Competency - Applicators shall demonstrate practical knowledge of vector-disease transmission as it relates to and influences application programs. A wide variety of pests is involved, and it is essential that they be known and recognized, and appropriate life cycles and habitats be understood as a basis for control strategy. These applicators shall have practical knowledge of a great variety of environments ranging from streams to those conditions found in buildings. They should also have practical knowledge of the importance and employment of such non-chemical control methods as sanitation, waste disposal, and drainage.

(i) Demonstration and Research and Regulatory Pest Control (C10)

1. Description - This category includes State, Federal, or other governmental employees who recommend, use or supervise the use of general or restricted use pesticides in the control of regulated pests. This category also includes: ~~(1)~~ individuals who conduct or supervise public demonstrations of demonstrate to the public the proper use and application techniques of for application of general or restricted use pesticides ~~or supervise such demonstration~~, and ~~(2)~~ persons conducting field research with pesticides, and that in doing so, use or supervise the use of general or restricted use pesticides. Included in the first group are such persons as extension specialists and county agents, commercial representatives demonstrating pesticide products, and those individuals

demonstrating methods used in public programs. The second group includes: State, Federal, commercial and other persons conducting field research on or utilizing restricted use pesticides.

2. Standards of Competency - Persons demonstrating the safe and effective use of pesticides to other applicators and the public will be expected to meet comprehensive standards reflecting a broad spectrum of pesticide uses. Many different pest problem situations will be encountered in the course of activities associated with demonstration, and practical knowledge of problems, pests, and population levels occurring in each demonstration situation is required. Further, they should demonstrate an understanding of pesticide organism interactions and the importance of integrating pesticide use with other control methods. Applicators shall demonstrate practical knowledge of regulated pests, applicable laws relating to quarantine and other regulations of pests, and the potential impact on the environments of restricted use pesticides used in suppression and eradication programs. They shall demonstrate knowledge of factors influencing introduction, spread, and population dynamics of relevant pests. Their knowledge shall extend beyond that required by their immediate duties since their services are frequently in other areas of the country where emergency measures are invoked to control regulated pests, and where individual judgments must be made in new situations.

(j) Wood Preservatives (C11)

1. Description - In general, it is expected that applicators of this category possess a practical knowledge of the specific standards required for categories (a) (C01) through (t) (C07) above applicable to their particular activity. In addition, they shall meet the specific standards required for categories (a) (C01) through (t) (C07) of this section as may be applicable to that particular activity. Including the use or supervising the use of general or restricted pesticides.
2. Standards of Competency - Producers and applicators shall demonstrate practical and technical knowledge of wood preservatives. They should demonstrate knowledge in the type of pests being controlled. They must also demonstrate practical knowledge in the methods of applying the preservatives to wood. Applicators should have knowledge of types of safety equipment necessary to protect those involved in the application as well as the after effects of application to plants, humans, pets, and other domestic animals.

(k) Pesticide Dealers (C12)

1. Description -This category is for persons who are engaged in wholesale or retail sales of restricted use pesticides. Each dealer location selling restricted use pesticides must have a certified dealer at that location. Each certified dealer shall be responsible for the actions of every person who acts as the dealer's employee or agent in the sale of restricted use pesticides. Persons holding a current Pesticide Dealer certification are allowed to purchase and use restricted use pesticides. This category does not allow for custom application of pesticides.
2. Standards of Competency - Persons would demonstrate the practical knowledge to advise applicators and the public on the safe and effective use of pesticides. They shall also be expected to meet comprehensive standards reflecting a broad knowledge of pesticide uses. They shall also demonstrate an understanding of

pesticide-organism interactions and the importance of integrating pesticide use with other control methods.

(l) Antifouling Marine Paint (C13)

1. Description - This category includes commercial applicators using or supervising the use of general or restricted use antifouling marine paints.
2. Standards of Competency - Applicators shall demonstrate practical knowledge of TBT product labels and understand why they are classified as RUP. Applicators shall demonstrate a knowledge of the health and environmental hazards associated with the use of antifouling paints. They shall demonstrate practical knowledge of the application and testing equipment and have knowledge of the need and use of personal protective equipment. In addition, applicators will demonstrate knowledge of proper storage, handling, transport, and disposal including disposal of excess material, waste, and containers.

(m) Microbial Pest Control (C14)

1. Description - This category includes commercial applicators using or supervising the use of general or restricted pesticides to control microorganisms (bacteria, fungi, algae and viruses) in cooling towers, water treatment plants, restoration treatments targeting mold and fungus.
2. Standards of Competency - Applicators shall demonstrate practical knowledge of antimicrobial agents in the control of bacteria, fungi, algae and viruses. Applicators shall demonstrate knowledge of the health and environmental hazards associated with the use of antimicrobial agents in cooling towers, water treatment plants, and restoration treatments targeting mold and fungus. They shall demonstrate practical knowledge of the application and testing equipment and have knowledge of the need and use of personal protective equipment. They shall also demonstrate knowledge of proper storage, handling, transport and disposal including disposal of excess material, waste and containers.

(n) ~~Trainer, Worker Protection Standard~~

- ~~1. Description - This category includes private and commercial applicators who train workers and handlers of pesticides. The trainer must be able to teach all the subjects required in the Standards of Competency (below). Trainers must be able to train pesticide handlers, workers, and early entry workers.~~
  - ~~(i) Pesticide handlers include those who (1) are employed (including self-employed) for any type of compensation by an agricultural establishment or a commercial pesticide handling establishment that uses pesticides in the production of agricultural plants on a farm, forest, nursery, or greenhouse; and (2) are doing any of the following tasks: mixing, loading, transferring or applying pesticides; handling opened containers of pesticides; acting as a flagger, cleaning, handling, adjusting, or repairing the parts of mixing, loading, or application equipment that may contain pesticide residues; assisting with the application of pesticides, including incorporating the pesticide into the soil after the application has occurred, entering a greenhouse or other enclosed area after application of pesticides; entering a treated outdoor area after application of any soil~~

fumigant to adjust or remove soil coverings, performing tasks as a crop advisor; and disposing of pesticides or pesticide containers.

- (ii) ~~Workers include those who (1) are employed (including self-employed) for any type of compensation and (2) are doing tasks such as harvesting, weeding, or watering relating to the production of agricultural plants on a farm, forest, nursery or greenhouse.~~
- (iii) ~~Early entry workers include those who enter treated areas prior to the expiration of a restricted entry interval and come in contact with anything that has been treated with a pesticide, including soil, water, air and plant surfaces in three work situations: (1) short term tasks that last less than one (1) hour and do not involve hand labor, (2) tasks that are necessary because of an agricultural emergency, and (3) specific tasks approved by the Environmental Protection Agency through a formal exception process.~~

2. ~~Standards of Competency – Any person seeking certification in this category must be certified as a commercial or private applicator in Tennessee.~~

- (i) ~~A trainer shall be able to present general pesticide information to workers either orally, from written materials, or audiovisually in a manner that the workers can understand (such as through a translator). The trainer shall also be able to respond to workers questions. The pesticide safety training materials must include, at a minimum, the following subjects: (1) Format and meaning of information contained on pesticide labels and in labeling, (2) Hazards of pesticides resulting from toxicity and exposure, (3) Routes through which pesticides can enter the body, (4) Signs and symptoms of common types of pesticide poisoning, (5) Emergency first aid for pesticide injuries or poisoning, (6) How to obtain emergency medical care, (7) Routine and emergency decontamination procedures, including eye flushing, (8) Hazards from chemigation and drift, (9) Hazards from pesticide residues on clothing, (10) Warnings about taking pesticides or containers home, (11) Precautions to reduce the risks of illness or injury resulting from workers occupational exposure to pesticides including application and entry restrictions, the design of the warning sign, posting of warning signs, oral warnings, the availability of specific information about applications, and the protection against retaliatory acts.~~
- (ii) ~~A trainer shall be able to present general pesticide information to handlers either orally, from written materials, or audiovisually in a manner that the handlers can understand. The trainer shall also be able to respond to handlers questions. The pesticide safety training materials Must include, at a minimum, the following subjects: (1) Format and meaning of information contained on pesticide labels and in labeling, (2) Hazards of pesticides resulting from toxicity or exposure, (3) Routes through which pesticides can enter the body, (4) Signs and symptoms of common types of pesticide poisoning, (5) Emergency first aid for pesticide injuries or poisoning, (6) How to obtain emergency medical care, (7) Routine and emergency decontamination procedures, (8) Need for and appropriate use of personal protective equipment, (9) Prevention, recognition, and first aid treatment of heat related illness, (10) Safety requirements for handling, transporting storing, and disposing of pesticides, including general procedures for spill cleanup, (11)~~

Environmental concerns such as drift, runoff, and wildlife hazards, (12) Warnings about taking pesticides or pesticide containers home, and (13) Requirements that must be followed by the handlers' employers for the protection of handlers and other persons, including (a) the prohibition against applying pesticides in a manner that will cause contact with workers or other persons, (b) the requirement to use personal protective equipment, (c) the provisions for training and decontamination, and (d) protection against retaliatory acts.

(iii) ~~A trainer shall be able to present general pesticide information to early entry workers either orally, from written materials, or audiovisually in a manner that the early entry workers can understand. The trainer shall also be able to respond to early entry workers questions. The pesticide safety training materials must include, at a minimum, the same information that must be taught to workers and, in addition, the trainer must instruct early entry workers (1) how to put on, use, and take off early entry personal protective equipment (PPE) correctly, (2) the importance of washing thoroughly after removing PPE, (3) how to prevent, recognize, and give first aid for heat stress, and (4) when and what kind of decontamination site must be provided to early entry workers.~~

~~1. Those who are certified as trainers must keep a roster of names and addresses of those who the trainer personally trained.~~

#### Sewer Line Treatment (C16)

1. Description – This category includes commercial applicators using or supervising the use of general or restricted use pesticides in sewer lines and wastewater treatment facilities.
2. Standards of Competency - Applicators shall demonstrate the practical knowledge of metam-sodium products for root control. Applicators shall demonstrate a knowledge of health and environmental hazards associated with metam-sodium in sewer lines and wastewater treatment facilities. They shall demonstrate practical knowledge of the need to use personal protective equipment. In addition, applicators will demonstrate the knowledge of proper storage, handling, transport, spills, cleanup, and waste disposal.

Authority: T.C.A. §§43-8-106 and 62-21-118.

#### 0080-6-16-.04 RECERTIFICATION REQUIREMENTS.

- (1) After original certification expires ~~one must be recertified, to use, apply, supervise, sell or buy restricted use pesticides, or be a certified technician one must be recertified.~~
- (2) ~~Requirements for Recertification~~ Private Applicator Recertification Requirements
  - (a) Private Applicator - Successfully complete an instructional course offered by the University of Tennessee Extension Service beginning in January of the last year in the current certification period, within the last two years of the current certification period. Private Applicator certification shall expire on October 21<sup>st</sup> every third year.
  - (3)(b) ~~Restricted Use Applicator~~ Commercial Pesticide Applicator Recertification Requirements

- (a)4. Acquire a specified number of points during the current certification period. Points will be awarded for attending conferences, programs, seminars, etc., which will present information pertinent to the individual's certification category. The sponsors of the meetings awarding the recertification points must send a copy of the program to the Tennessee Department of Agriculture, and it must meet guidelines approved by the Department, or All commercial pesticide applicators shall obtain the required continuing education credits (CEU's) in the category of certification or re-test in the same category to maintain certification.
- (b)2. Pass updated written examination. These requirements must be completed with every fifth licensing year. Individuals becoming certified on or after July 1<sup>st</sup> of the third (3<sup>rd</sup>) year of the certification period will be rolled over to the next 3 year recertification period.
- (c) Each certification category shall require the following continuing education credits (CEU's)
1. Thirty (30) CEU's for certification category: C07 – Industrial, Institutional, Structural and Health Related Pest Control.
  2. Eighteen (18) CEU's for certification categories: C01 – Agricultural Plant and Animal, C03 – Ornamental Turf, C06 Right of Way, C08 – Public Health, C10 – Demonstration, Research and Regulatory Pest Control and C12 – Pesticide Dealer and LHA (Limited Herbicide Applicator)
  3. Twelve (12) CEU's for certification categories: C02 – Forest Pest Control, C04 Seed Treatment, and C05 Aquatic Pest Control.
  4. Nine (9) CEU's for certification categories: C11 Wood Preservatives, C13 Antifouling Marine Paint, C14 Microbials, and C16 Sewer Line Treatment.
- (d) Continuing Education Units shall be prorated for those becoming certified during the recertification period.
- (e) Continuing Education Units shall only be awarded for electronic media used in conjunction with a presentation as part of In-house training.
- (f) Applications submitted by industry for training are required to be in the Tennessee Department of Agriculture office no later than 30 days prior to the date of the training session. Applications submitted by educational institutions shall be submitted to the University of Tennessee, Pesticide Safety Education Program (PSEP).
- (g) All attendance rosters from industry and educational institutions are required to be submitted to TDA no later than 30 days after training. If training rosters are not received, sponsors and/or facilitator's may not be approved for future training.
- (h) The sponsor shall permit representatives from TDA and/or UT PSEP employees to attend training sessions without being assessed registration fees.

- (i) One (1) continuing education unit shall be warranted per hour for certification related topics.
- (j) In-house points will be limited to 50% of the total CEU requirement. Individuals may accrue half of their CEU's internally and the remaining half externally or accrue all of their CEU's by attending external meetings.
- (k) No more than 75% of the required continuing education units shall be accrued at any one external meeting.
- (l) Applicators shall be required to retest the third year if the required number of continuing education units are not obtained prior to the expiration date.
- (m) Applicators shall notify the department in writing if there is a change in name or address.
- (n) Commercial Pesticide Applicator recertification shall expire every third year on December 31.

Authority: T.C.A. §§43-8-106, 62-21-118

0080-6-16-.05 RECORD KEEPING.

- ~~(1) All commercial applicators and commercial pest control operators shall keep true and accurate records and retain such for a period of two (2) years and make these available on demand to the Commissioner of Agriculture or his designee.~~
- ~~(2) These records must show:~~
  - ~~(a) Pesticide used.~~
  - ~~(b) Target pest.~~
  - ~~(c) What crop, plant, house, business or building pesticide is applied on or to and location thereof.~~
  - ~~(d) Dosage rate.~~
  - ~~(e) The landowner, producer or other person employing such applicator.~~
  - ~~(f) Date used.~~
  - ~~(g) Amount of pesticide applied.~~

Authority: T.C.A. §62-21-20(4).

C.F.R Title 7, Subtitle B, Chapter 1, Subchapter E, Part 110 – Recordkeeping on Restricted Use Pesticides By Certified Applicators; Surveys and Reports is adopted by reference by the Department of

Agriculture as the state standards for pesticide recordkeeping for private applicators using restricted use pesticides.

Authority: T.C.A. §§43-8-106 and 62-21-118.

0080-6-16-.06 DENIAL, SUSPENSION OR REVOCATION OF CERTIFICATION.

The Commissioner of Agriculture may revoke, suspend, or deny certification or licenses after proper hearing as a contested case under the "Administrative Procedures Act" (T.C.A. 4-514), for violation of any statute, rule or regulation concerning the use, purchase or sale of pesticides.

Authority: T.C.A. §62-2120(4). Administrative History: Original rule filed October 7, 1977; effective November 7, 1977.

0080-6-16-.07 USE OF RESTRICTED USE PESTICIDES.

- (1) No one may use or buy a restricted use pesticide unless certified as a Private Applicator or a Commercial Applicator, or unless licensed as a Commercial Pest Control Operator by the Commissioner of Agriculture.
- (2) No person shall use a pesticide in a manner inconsistent with its labeling.
- (3) No person shall act as a private applicator unless he is certified as such by the Commissioner of Agriculture.
- (4) No person shall act as a commercial applicator unless certified by the Commissioner of Agriculture as such and he may only act in the category in which he is certified.
- (5) No person shall act as a Commercial Pest Control Operator unless he holds a valid Pest Control Operator's license and may only act in the category which he is licensed.
- (6) No one holding a Pesticide Dealer certification shall sell a restricted use pesticide to a non-certified person.
- (7) No one shall sell restricted use pesticides until certified in the category of Pesticide Dealer and obtain a Restricted Use Pesticide Dealer's license.
- (8) Restricted use pesticide sales records shall be submitted yearly with the renewal for Pesticide Dealer license.

Authority: T.C.A. §62-2120(4).

0080-6-16-.08 EXEMPTIONS.

Individuals licensed under T.C.A. 43-2901 et seq. are exempt from the provisions of these regulations while engaged in the commercial aerial application of pesticides.

Authority: T.C.A. §62--2120(4).

0080-6-16-.09 CIVIL FINE SCHEDULE.

Pursuant to the provisions of T.C.A. 4-3-204(b), the following shall be the minimum and maximum amounts to be imposed as civil penalties for violations of the "Tennessee Insecticide, Fungicide and Rodenticide Act".

(1) LABEL VIOLATIONS	MINIMUM	MAXIMUM
(a) Lacks Signal Word and/or Caution: Keep Out of Reach of Children	<u>\$100.00</u>	<u>\$500.00</u>
1. Toxicity Level-Danger	<u>\$150.00</u>	<u>\$500.00</u>
2. Toxicity Level-Warning	<u>125.00</u>	<u>500.00</u>
3. Toxicity Level-Caution	<u>100.00</u>	<u>500.00</u>
(b) Lacks Required Precautionary Labeling. MINIMUM-MAXIMUM	<u>\$100.00</u>	<u>\$500.00</u>
1. Adverse Effects-Probable	<u>\$250.00</u>	<u>\$500.00</u>
2. Adverse Effects-Unknown	<u>200.00</u>	<u>500.00</u>
3. Adverse Effects-Not Probable	<u>100.00</u>	<u>500.00</u>
(c) Deficient Precautionary Statements: Lacks Symbols and/or Statements.	<u>\$100.00</u>	<u>\$500.00</u>
1. Highly Toxic Material	<u>\$250.00</u>	<u>\$500.00</u>
(d) Deficient Precautionary Statements: Lacks Symbols and/or Statements.	<u>\$100.00</u>	<u>\$500.00</u>
1. Toxicity Level-Danger	<u>\$150.00</u>	<u>\$500.00</u>
2. Toxicity Level-Warning	<u>125.00</u>	<u>500.00</u>
3. Toxicity Level-Caution	<u>100.00</u>	<u>500.00</u>
(e) Unwarranted Statements With Respect to Product Safety.		
1. False or Misleading Safety Claim.		
(i) Adverse Effects-Probable	<u>\$200.00</u>	<u>\$500.00</u>
(ii) Adverse Effects-Unknown	<u>175.00</u>	<u>500.00</u>
(iii) Adverse Effects-Not Probable	<u>150.00</u>	<u>500.00</u>
2. Claims Differ From Those Accepted in Connection With Product Registration		
(i) Claims Unacceptable	<u>\$200.00</u>	<u>\$500.00</u>
(ii) Claims Acceptable	<u>175.00</u>	<u>500.00</u>
(iii) Economic Fraud	<u>150.00</u>	<u>500.00</u>
(fd) Directions For use.	<u>\$100.00</u>	<u>\$500.00</u>
1. Inadequate Directions.		
(i) Likely to result in misuse and/or mishandling	<u>\$250.00</u>	<u>\$500.00</u>

	(ii) Likelihood of misuse and/or mishandling unknown	200.00	500.00
	(iii) Not likely to result in misuse and/or mishandling	150.00	500.00
	(iv) Result in illegal residues	200.00	500.00
2.	Directions For Use Differ From Those Accepted In Connection With Product Registration		
	(i) Mishandling and/or misuse - likely	\$250.00	\$500.00
	(ii) Likelihood of mishandling and/or misuse - Unknown	200.00	500.00
	(iii) Likelihood of mishandling and/or misuse - Not Likely	150.00	500.00
(ge)	Defective Ingredient Statement	\$100.00	\$500.00
1.	Totally Lacking.		
	(i) Toxicity Level - Danger	\$250.00	\$500.00
	(ii) Toxicity Level - Warning	200.00	500.00
	(iii) Toxicity Level - Caution	150.00	500.00
2.	Formulation Differs (supported by chemical analysis)	MINIMUM	MAXIMUM
	(i) Adverse Effects - Probable	\$250.00	\$500.00
	(ii) Adverse Effects - Unknown	200.00	500.00
	(iii) Adverse Effects - Not Probable	150.00	500.00
(f)	Failure To Bear Required Statement Of Net Weight Or Content	\$50.00	\$500.00
(g)	Failure To Bear Name And Address Of Producer, Registrant Or Person For Whom Manufactured	\$50.00	\$500.00
(h)	Labeling Is Detached, Altered, Defaced Or Destroyed	\$100.00	\$500.00
	1. Adverse Effects - Probable	\$150.00	\$500.00
	2. Adverse Effects - Unknown	100.00	500.00
	3. Adverse Effects - Not Probable	75.00	500.00
(i)	Ingredient Statement Absent On Immediate Container	\$100.00	\$500.00
(j)	Ingredient Statement Does Not Appear On Front Panel Of Immediate Container	\$50.00	\$500.00
(k)	Label Does Not Bear A Registration Number Or Established Number	\$50.00	\$500.00
(l)	Net Weight Not Stated On Label	\$50.00	\$500.00

(m)	Label Does Not Bear Name, Brand, Trademark Under Which Product Was Sold	\$50.00 - \$500.00
(2)	FORMULATION VIOLATIONS	
(a)	Chemical Deficiencies	\$100.00 - \$500.00
	1. <del>Adverse Effects - Probable</del>	<del>\$250.00 - \$500.00</del>
	(e) <del>Adverse Effects - Unknown</del>	<del>200.00 - 500.00</del>
	3. <del>Adverse Effects - Not Probable</del>	<del>150.00 - 500.00</del>
(b)	Net Weight.	<u>\$100.00 - \$500.00</u>
	1. <del>Not stated on label</del>	<del>\$50.00 - \$500.00</del>
	2. <del>Less than stated on label</del>	<del>\$50.00 - 500.00</del>
(c)	Chemical Contamination.	<u>\$100.00 - \$500.00</u>
	1. <del>Significant levels</del>	<del>\$250.00 - \$500.00</del>
	2. <del>Trace levels</del>	<del>\$175.00 - 500.00</del>
(d)	Highly Over Formulated	<u>\$250.00 - \$500.00</u>
	1. <del>Adverse Effects - Probable</del>	<del>\$250.00 - \$500.00</del>
	2. <del>Adverse Effects - Unknown</del>	<del>\$200.00 - 500.00</del>
	3. <del>Adverse Effects - Not Probable</del>	<del>\$150.00 - 500.00</del>

(3) USE VIOLATIONS

(a)	Use Or Disposal Of A Pesticide In A Manner Inconsistent With Its Labeling.	<u>\$250 - \$500</u>
	1. <del>Adverse Effects - Probable</del>	<del>\$250.00 - \$500.00</del>
	2. <del>Adverse Effects - Unknown</del>	<del>\$200.00 - 500.00</del>
	3. <del>Adverse Effects - Not Probable</del>	<del>\$150.00 - 500.00</del>
(b)	Violation of Stop Sale, Use Or Removal Order	\$250.00 - \$500.00
(c)	Chemical Contamination.	
	1. <del>Significant levels</del>	<del>\$250.00 - \$500.00</del>
	2. <del>Trace levels</del>	<del>\$175.00 - 500.00</del>

(4) RECORDS, BOOKS, DOCUMENTATION

- |     |  |                   |
|-----|--|-------------------|
| (a) | Failure to Maintain As Required By TIFRA And FIFRA | \$100.00 \$500.00 |
| (b) | Failure To Produce For Inspection                  | \$250.00 \$500.00 |

(5) REGISTRATION OF PRODUCTS

- |     |  |                            |
|-----|--|----------------------------|
| (a) | <u>Failure To Have Products Registered</u> | <u>\$100.00 - \$500.00</u> |
|-----|--|----------------------------|

Authority: T.C.A. §§4-3-204 and 43-8-107.

Chapter 0080-06-16  
Regulations Governing Use of Pesticides

New

0080-06-16-.10 Pesticide Management and Disposal

- (1) The Department of Agriculture adopts herein by reference the current versions of 40 C.F.R. Part 165, Subpart A.
- (2) The Department of Agriculture adopts herein by reference the current version of 40 C.F.R. Part 165, Subpart E, as the State standards for pesticide containment structures.

Authority: T.C.A. §§43-8-106 and 62-21-118.

Chapter 0080-06-27  
Worker Protection

New

0080-06-27.-01 Definitions

Farm Labor Contractor means any person who hires or contracts for services of workers for any type of compensation, to perform activities related to the production of agricultural plants, but does not own or is responsible for, the management or condition of the agricultural establishment.

Authority: T.C.A. §§43-8-106 and 62-21-118..

0080-06-27.-02 Worker Protection Standard (WPS)

The Commissioner of Agriculture adopts by reference, including subsequent amendments, Part 170 of Title 40 of the Code of Federal Regulations titled Worker Protection Standards and Part 156 Subpart K of the Code of Federal Regulations titled Worker Protection Statements.

Authority: T.C.A. §§43-8-106 and 62-21-118..

0080-06-27-.03 WPS Trainer Requirements

- (1) Persons currently certified as an private applicator of general or restricted use pesticides or certified as a commercial applicator in categories CO1, CO3 or C10, are exempt from the pesticide safety trainer requirements and may provide WPS training required in 40 C.F.R. §170.130(d)(1) and §170.230(c)(1).
- (2) A Trainer shall submit a signed roster to the Department verifying that workers and handlers have been trained according to the requirements of 40 C.F.R. §170.130(d)(1) and §170.230(c)(1). The roster shall include the following:
  - (a) The name, address, telephone number, and signature of the applicant;
  - (b) The date of the training.
- (3) The Commissioner or designee shall be permitted to inspect places where WPS training is being held and to question trainers and attendees to determine compliance with the requirements of this Section.
- (4) The following may be grounds for suspension, revocation, or denial of WPS Trainer privileges:
  - (a) failing to follow the worker and handler training requirements prescribed in 40 C.F.R. §170.130(d)(1), §170.130(4), §170.230(c)(1) and §170.230(4).
  - (b) failing to maintain the training information prescribed in 0080-6-27-.03(2)
  - (c) acting as a trainer without authorization.
  - (d) failing to fulfill the requirements of the affidavit as prescribed in subsection (2).
  - (e) having had a similar authorization revoked, suspended or denied in any jurisdiction within the last 3 years.

Authority: T.C.A. §§43-8-106 and 62-21-118..

0080-06-27-.04 Notice to Farm Labor Contractors.

- (1) The owner or operator of an agricultural establishment shall provide the farm labor contractor who performs work on that agricultural establishment with:
  - (a) the location of the agricultural establishment's central posting site; and
  - (b) the restrictions on entering a treated area as specified in 40 C.F.R. § 170.120(d), if a treated area is within 1/4 mile of where workers will be working and the treated area is not posted as allowed or required in 40 C.F.R. §170.120(a), (b) and (c), the farm labor contractor shall:
    1. post or provide worker(s) in writing, with the information in 40 C.F.R. § 170.122, or shall post or provide the worker in writing, the specific location of the central posting site for each agricultural establishment on which the worker will be working;
    2. provide worker(s) with restrictions on entering a treated area as specified in 40 C.F.R. § 170.120(d) if the treated area on the agricultural establishment where a worker will be working is within 1/4 mile of where the worker is working, and the

treated area and is not posted as allowed or required in 40 C.F.R. § 170.120(a), (b) and (c).

Authority: T.C.A. §§43-8-106 and 62-21-118.

Board Member	Aye	No	Abstain	Absent	Signature (if required)

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the Tennessee Department of Agriculture on 12/05/2013, 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: 08/20/13

Rulemaking Hearing(s) Conducted on: 10/29/13

Date: 12/11/2013

Signature: *Julius Johnson*

Name of Officer: Julius Johnson

Title of Officer: Commissioner

Subscribed and sworn to before me on: Dec 11, 2013

Notary Public Signature: *Boyce M. Jackson*

My commission expires on: 09/11/2017



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

*Robert E. Cooper, Jr.*  
 Robert E. Cooper, Jr.  
 Attorney General and Reporter

3-21-14  
 Date

**Department of State Use Only**

Filed with the Department of State on: 3/31/14

Effective on: 10/29/14

*Tre Hargett*

Tre Hargett  
 Secretary of State

RECEIVED  
 2014 MAR 31 AM 9:30  
 OFFICE OF  
 SECRETARY OF STATE

## G.O.C. STAFF RULE ABSTRACT

DEPARTMENT: Environment and Conservation

DIVISION: Radiological Health

SUBJECT: Transporters of Radioactive Materials

STATUTORY AUTHORITY: Tennessee Code Annotated, Section 68-202-105

EFFECTIVE DATES: June 15, 2014 through June 30, 2015

FISCAL IMPACT: Minimal

STAFF RULE ABSTRACT: The amendment to Rule 0400-20-04-07 merely changes the address information for the Division of Radiological Health.

The amendments to Rule 0400-20-10-32 are designed to eliminate requirements inconsistent with a provision of the federal Price-Anderson Act (42 U.S.C. § 2210), which provides a federal guarantee of response to any nuclear incident. The department's existing rule requires a transporter under federal contract to maintain insurance coverage or demonstrate some other form of financial assurance in order for the transporter to receive a license from the state Division of Radiological Health, but, the United States Department of Energy provides indemnity coverage for such transporters of radiological materials and prevents such transporters from being reimbursed for insurance claims. For this reason, the state rule is being amended to eliminate unnecessary and burdensome financial assurance requirements for all transporters of radioactive materials under federal contract with the United States Department of Energy.

The amendment to Rule 0400-20-10-32 does not change or affect the existing financial assurance requirements for transporters who are not under contract with the United States Department of Energy.

## **Public Hearing Comments**

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

There were no comments received during the comment period.

### Regulatory Flexibility Addendum

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

The amendment to Rule 0400-20-04-.07 merely changes the address information for the Division of Radiological Health.

The amendments to Rule 0400-20-10-.32 are designed to eliminate requirements inconsistent with a provision of the federal Price-Anderson Act (42 U.S.C. § 2210), which provides a federal guarantee of response to any nuclear incident. The department's existing rule requires a transporter under federal contract to maintain insurance coverage or demonstrate some other form of financial assurance in order for the transporter to receive a license from the state Division of Radiological Health. But, the United States Department of Energy provides indemnity coverage for such transporters of radiological materials and prevents such transporters from being reimbursed for insurance claims. For this reason, the state rule is being amended to eliminate unnecessary and burdensome financial assurance requirements for all transporters of radioactive materials under federal contract with the United States Department of Energy. The amendment to Rule 0400-20-10-.32 does not change or affect the existing financial assurance requirements for transporters who are not under contract with the United States Department of Energy.

- (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.

Some of the contract transporters for the Department of Energy may be 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 will be no additional reporting, recordkeeping or other administrative costs resulting from this proposed rule.

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

Without this proposed rule contract transporters will be required to pay for insurance that will not be reimbursable as a cost from DOE and required to make a guarantee of indemnification that is both not necessary and far less reliable than the federal government's assumption of liability.

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

No alternative are available.

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

The Department's rules will be consistent with federal and state counterparts.

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

Exempting small businesses from this proposed rule would result in denying them of the benefits it offers.

## **Impact on Local Governments**

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

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

**Department of State  
Division of Publications**

312 Rosa L. Parks Avenue, 8th Floor Snodgrass/TN Tower  
Nashville, TN 37243  
Phone: 615-741-2650  
Fax: 615-741-5133  
Email: [register.information@tn.gov](mailto:register.information@tn.gov)

**For Department of State Use Only**

Sequence Number: 03-07-14  
Rule ID(s): 5671-5672  
File Date: 3/17/14  
Effective Date: 6/15/14

## Rulemaking Hearing Rule(s) Filing Form

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

<b>Agency/Board/Commission:</b>	Environment and Conservation
<b>Division:</b>	Radiological Health
<b>Contact Person:</b>	Laura Turner
<b>Address:</b>	William R. Snodgrass Tennessee Tower 312 Rosa L. Parks Avenue, 15th Floor Nashville, Tennessee
<b>Zip:</b>	37243
<b>Phone:</b>	(615) 532-0364
<b>Email:</b>	<a href="mailto:Laura.S.Turner@tn.gov">Laura.S.Turner@tn.gov</a>

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

- Amendment  
 New  
 Repeal

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

Chapter Number	Chapter Title
0400-20-04	General Provisions
Rule Number	Rule Title
0400-20-04-.07	Notifications, Reports, and Other Communications

Chapter Number	Chapter Title
0400-20-10	Licensing and Registration
Rule Number	Rule Title
0400-20-10-.32	Licensing of Shippers of Radioactive Material Into or Within Tennessee

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

Chapter 0400-20-04  
General Provisions

Amendments

Paragraph (1) of Rule 0400-20-04-.07 Notifications, Reports and Other Communications is amended by deleting the paragraph in its entirety and substituting the following so that paragraph (1) shall read as follows:

- (1) Address notifications and reports required by these regulations, communications concerning these regulations and applications filed thereunder as follows:
  - (a) Telephone notifications and communications, 7:00 a.m. Central Time to 4:30 p.m. Central Time, except weekends and holidays:  
Division of Radiological Health 615-532-0364
  - (b) Telephone notifications, all other times:  
Tennessee Emergency Management Agency (TEMA): 1-800-262-3300
  - (c) Applications, written notifications, reports and communications:  
Division of Radiological Health  
Tennessee Department of Environment and Conservation  
~~L & C Annex, Third Floor~~ William R. Snodgrass, Tennessee Tower, 15<sup>th</sup> Floor  
401 Church Street 312 Rosa Parks Avenue  
Nashville, Tennessee 37243-1532
  - (d) Facsimile communications:  
Division of Radiological Health ~~615-532-7938~~ 615-532-0614

Authority: T.C.A. §§ 68-202-101 et seq., 68-202-201 et seq. and 4-5-201 et seq.

Chapter 0400-20-10  
Licensing and Registration

Amendments

Paragraph (4) of Rule 0400-20-10-.32 Licensing of Shippers of Radioactive Material Into or Within Tennessee is amended by deleting subparagraph (b) in its entirety and instead substituting the following:

- (b) ~~Before~~ Except as provided in part 6 of this subparagraph, before a license for delivery shall be issued, the shipper must deposit and maintain with the Division an acceptable form of financial assurance in the amount of \$500,000; or, provide to the Division satisfactory evidence of liability insurance.
  1. For purposes of this paragraph, liability insurance shall mean coverage of \$500,000 per occurrence and \$1,000,000 aggregate, or as otherwise provided by State law.
  2. Any insurance carried pursuant to Section 2210 of Title 42 of the United States Code and U.S. NRC Regulations (10 CFR Part 140) of November 30, 1988, as amended shall be sufficient to meet the requirements of this subparagraph.
  3. Liability insurance shall be specific to the packaging, transportation, disposal, storage

and delivery of radioactive waste.

4. Shippers maintaining liability insurance for the purpose of this paragraph may provide to the Division a certificate of insurance from their insurer indicating the policy number, limits of liability, policy date and specific coverage for packaging, transportation, disposal, storage pending disposal and delivery of radioactive materials.
5. A cash or corporate surety bond previously posted will be returned to the shipper upon notification to the Division in writing of his intention to cease shipments of radioactive waste into or within the State. Such bond will be returned after the last such shipment is accepted safely at its destination.
6. The requirements of this subparagraph shall not apply to any contractor or subcontractor to the United States Department of Energy that has contract terms consistent with the Price-Anderson Act, 42 U.S.C. § 2210.

Paragraph (4) of Rule 0400-20-10-.32 Licensing of Shippers of Radioactive Material Into or Within Tennessee is amended by adding a new subparagraph (e) to read as follows:

- (e) Any contractor or subcontractor to the United States Department of Energy is not required to meet the requirements of subparagraph (d) of this paragraph as long as it has a contract provision based on the DOE regulations implementing the Price-Anderson Act, 42 U.S.C. § 2210.

Authority: T.C.A. §§ 68-202-101 et seq., 68-202-201 et seq. and 4-5-201 et seq.

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the Commissioner of the Department of Environment and Conservation on 02/03/2014 (mm/dd/yyyy), and is in compliance with the provisions of T.C.A. § 4-5-222.

I further certify the following:

Notice of Rulemaking Hearing filed with the Department of State on: 11/05/13

Rulemaking Hearing(s) Conducted on: (add more dates). 01/29/14

Date: 2-3-14 Robert J. Martinesu, Jr.

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

Name of Officer: Robert J. Martinesu, Jr.

Title of Officer: Commissioner, TDEC



My Commission Expires JULY 6, 2015

Subscribed and sworn to before me on: February 3, 2014

Notary Public Signature: Beth B. Smith

My commission expires on: July 6, 2015

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.

Robert E. Cooper, Jr.  
Robert E. Cooper, Jr.  
Attorney General and Reporter

3-13-14  
Date

**Department of State Use Only**

Filed with the Department of State on: 3/17/14

Effective on: 6/15/14

Tre Hargett  
Tre Hargett  
Secretary of State

RECEIVED  
2014 MAR 17 PM 4:00  
OFFICE OF  
SECRETARY OF STATE

## G.O.C. STAFF RULE ABSTRACT

DEPARTMENT: Safety

DIVISION: Legal Division, Driver Improvement Section

SUBJECT: Points for Moving Violations

STATUTORY AUTHORITY: Tennessee Code Annotated, Section 55-50-505

EFFECTIVE DATES: August 29, 2014 through June 30, 2015

FISCAL IMPACT: Minimal or no impact on revenues and expenditures

STAFF RULE ABSTRACT: This proposal amends the existing Tennessee Driver Improvement Program, Chapter 1340-01-04, by revising three (3) sections.

Rule 1340-01-04-03, Schedule of Points, has been reorganized to better distinguish between points for violations in non-commercial vehicles and points for violations in commercial vehicles. Also, state law and federal regulations have been added to more clearly identify each moving violation. Definitions have been added for commercial and non-commercial vehicles. In addition, the schedule has been updated to include certain specific violations that are identified in the existing rule as "miscellaneous violations." The schedule has been further updated to include certain violations for which points are currently being assessed, but have not yet been included in the rules. Other minor housekeeping updates have been made as well.

Rule 1340-01-04-06, Suspension of Driver License for Physical and Mental Disabilities, has been revised and reorganized to be more reader friendly. The major revision being made will allow drivers to have their required medical evaluations completed and signed by a physician, nurse practitioner or physician assistant. The current rule requires such evaluations to be completed and signed by a physician only.

Rule 1340-01-04-07, Suspension of Driver License for Failing to Pass or Submit to Re-Examination, has also been revised and clarified to be more reader friendly.

**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.

This proposed rule has no impact on small businesses.

### **Impact on Local Governments**

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

This proposed rule has no projected impact on local governments.

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Division of Publications**

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**For Department of State Use Only**

Sequence Number: 03-12-14  
Rule ID(s): 5677  
File Date: 3/26/14  
Effective Date: 8/29/14

## 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.*

<b>Agency/Board/Commission:</b>	Tennessee Department of Safety & Homeland Security
<b>Division:</b>	Legal Division, Driver Improvement Section
<b>Contact Person:</b>	Gerry Crownover, Staff Attorney IV
<b>Address:</b>	1150 Foster Avenue, Nashville, TN
<b>Zip:</b>	37243
<b>Phone:</b>	(615) 251-5277
<b>Email:</b>	Gerry.Crownover@tn.gov

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

- Amendment
- New
- Repeal

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

Chapter Number	Chapter Title
1340-01-04	Tennessee Driver Improvement Program
Rule Number	Rule Title
1340-01-04-.03	Schedule of Points
1340-01-04-.06	Suspension of Driver License for Physical or Mental Disabilities
1340-01-04-.07	Suspension of Driver License for Failing to Pass or Submit to Re-Examination

(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>)

Rules  
of  
Tennessee Department of Safety  
Driver Improvement

Chapter 1340-01-04  
Tennessee Driver Improvement Program

Amendments

Rule 1340-01-04-.03 Schedule of Points is amended by deleting the language in its entirety and substituting new language, so that, as amended the Rule shall read:

1340-01-04-.03 Schedule of Points.

(1) **Definitions.** As used in this Chapter 1340-01-04, unless the context otherwise requires:

- (a) "Commercial Motor Vehicle" means a motor vehicle or combination of motor vehicles used in commerce to transport passengers or property if the motor vehicle:
1. Has a gross vehicle weight rating or gross combination weight rating of twenty-six thousand one (26,001) or more pounds;
  2. Is designed to transport more than fifteen (15) passengers, including the driver; or
  3. Is of any size and is used in the transportation of hazardous materials, as defined in this section.
  4. The following vehicles and groups of vehicles shall not be considered commercial motor vehicles for the purposes of this Chapter:
    - (i) Vehicles that are controlled and operated by a farmer or nursery worker that are used to transport either agricultural products, farm machinery, or farm supplies to or from a farm or nursery, and are not used in the operations of a common or contract motor carrier and are used within one hundred fifty (150) miles of the person's farm or nursery;
    - (ii) Vehicles designed and used solely as emergency vehicles that are necessary for the preservation of life or property or the execution of emergency governmental functions performed under emergency conditions and not subject to normal traffic regulation. This exemption shall apply to vehicles operated by paid or non-paid personnel;
    - (iii) Vehicles operated for military purposes by active duty military personnel; members of the military reserves; members of the national guard on active duty, including personnel on full-time national guard duty, personnel on part-time national guard training, and national guard military technicians (civilians who are required to wear military uniforms); and active duty United States coast guard personnel. This exception is not applicable to United States reserve technicians;
    - (iv) Vehicles designed and used primarily as recreational vehicles (i.e., vehicles primarily designed as temporary living quarters for recreational camping or travel);
    - (v) Vehicles leased strictly and exclusively to transport personal possessions or family members for nonbusiness purposes.

- (b) "Commercial Motor Vehicle Hauling Hazardous Materials" means a Commercial Motor vehicle carrying any material that has been designated as hazardous under 49 U.S.C. § 5103 and is required to be placarded under subpart F of 49 C.F.R. § 172 or any quantity of a material listed as a select agent or toxin in 42 C.F.R. § 73.
- (c) "Non-Commercial Motor Vehicle" means every device in, upon, or by which any person or property is or may be transported or drawn upon a public highway, excepting devices moved by human power or used exclusively upon stationary rails or tracks that is not considered a Commercial Motor Vehicle.

(2) **Moving Traffic Violations - Points for Non-Commercial Motor Vehicles**

- (a) Speeding – non-commercial motor vehicle  
T.C.A. § 55-8-152
  - 1. Tickets and court abstracts where speed not indicated 3
  - 2. Speeding 1 through 5 m.p.h. in excess of speed zone 1
  - 3. Speeding 6 through 15 m.p.h. in excess of speed zone 3
  - 4. Speeding 16 through 25 m.p.h. in excess of speed zone 4
  - 5. Speeding 26 through 35 m.p.h. in excess of speed zone 5
  - 6. Speeding 36 through 45 m.p.h. in excess of speed zone 6
  - 7. Speeding 46 and above in excess of speed zone 8
  - 8. Speed less than posted minimum 3  
T.C.A. § 55-8-154
- (b) Speeding in construction zone – non-commercial motor vehicle  
T.C.A. § 55-8-153
  - 1. Tickets and court abstracts where speed not indicated 4
  - 2. Speeding 1 through 5 m.p.h. in excess of posted speed 2
  - 3. Speeding 6 through 15 m.p.h. in excess of posted speed 4
  - 4. Speeding 16 through 25 m.p.h. in excess of posted speed 5
  - 5. Speeding 26 through 35 m.p.h. in excess of posted speed 6
  - 6. Speeding 36 m.p.h. and above in excess of posted speed 8
- (c) Driving too fast for conditions, failure to reduce speed to avoid an accident  
T.C.A. § 55-8-152 3
- (d) Operating at erratic or suddenly changing speeds  
T.C.A. § 55-8-152 3
- (e) Reckless endangerment by vehicle – misdemeanor  
T.C.A. § 39-13-103 8
- (f) Reckless driving  
T.C.A. § 55-10-205 6
- (g) Careless or negligent driving 4

	T.C.A. § 55-8-136	
(h)	Failure to obey traffic instructions T.C.A. § 55-8-109	4
(i)	Improper passing T.C.A. §§ 55-8-116, 55-8-117, 55-8-118, 55-8-119, 55-8-120 & 55-8-121	4
(j)	Wrong way, side or direction T.C.A. § 55-8-120	4
(k)	Following improperly T.C.A. § 55-8-124	3
(l)	Following emergency vehicles unlawfully T.C.A. § 55-8-132	3
(m)	Failure to yield the right-of-way T.C.A. §§ 55-8-128 & 55-8-197	4
(n)	Failure to yield right of way to emergency vehicles; Failure to change lane/slow down for authorized vehicles on roadside T.C.A. § 55-8-132	6
(o)	Making improper turn T.C.A. §§ 55-8-140, 55-8-141 & 55-8-142	3
(p)	Failure to signal direction or to reduce speed suddenly T.C.A. § 55-8-142	3
(q)	Stopping, standing, obstructing, or blocking traffic T.C.A. §§ 55-8-158, 55-8-159, 55-8-159 & 55-8-160	3
(r)	Coasting; operating gears disengaged T.C.A. § 55-8-167	3
(s)	Improper backing T.C.A. § 55-8-163	3
(t)	Improper starting, burning rubber, spinning tires, peeling out T.C.A. § 55-8-136(b)	3
(u)	Driver view or mechanism obstructed T.C.A. § 55-8-165	3
(v)	Driving mountain highway – control/audible warning T.C.A. § 55-8-166	3
(w)	Inability to maintain control of vehicle T.C.A. § 55-8-136(b)	3
(x)	Improper operation of or riding on a motorcycle T.C.A. § 55-8-164	3
(y)	Improper lane or location, driving on roadways laned for traffic T.C.A. § 55-8-123	3
(z)	Use of controlled access roadway T.C.A. §§ 55-8-126 & 55-8-127	4
(aa)	Inattentive driving, due care, failure to drive in careful manner, unsafe lookout,	3

	improper driving T.C.A. § 55-8-136	
(bb)	Miscellaneous traffic violation; any offense involving the unsafe operation of a Non-Commercial Motor Vehicle not herein specified	3
(cc)	Cross private property to avoid stop sign or signal T.C.A. § 55-8-109	4
(dd)	Operating vehicle while using cell phone (under 18) T.C.A. § 55-50-311	6
(ee)	Passing stopped school, church or youth bus taking on or discharging passengers T.C.A. § 55-8-151	8
(ff)	Violation of driver license or <del>certificate</del> restrictions; operating contrary to conditions specified on driver license T.C.A. §§ 55-50-311 & 55-50-331(f)	6
(gg)	Failure to stop at railroad crossing T.C.A. §§ 55-8-145, 55-8-146 & 55-8-147	8
(hh)	Leaving scene of a <del>accident</del> crash (no revocation action) T.C.A. §§ 55-10-101 & 55-10-102	5
(ii)	Failure to report a <del>accident</del> crash T.C.A. § 55-10-111	4
(jj)	Operating without driver license or <del>certificate</del> in possession T.C.A. § 55-50-351	2
(kk)	Operating without being licensed or without license required for type of vehicle operated T.C.A. §§ 55-50-302 & 55-50-331	3
(ll)	Operating while driver license required for type of vehicle operated is under suspension, revocation or cancellation T.C.A. § 55-50-504	8
(mm)	Fleeing law enforcement officer (Misdemeanor) T.C.A. § 39-16-602	8
(nn)	Child endangerment (Misdemeanor) T.C.A. § 55-10-403	8
(3)	Contributing to occurrence of a Crash (both Commercial Motor Vehicle & Non-Commercial Motor Vehicle) T.C.A. §§ 55-10-101 & 55-10-102	
(a)	Contributing to a <del>accident</del> crash involving property damage (including crashes occurring on private property or in government vehicle)	3
(b)	Contributing to a <del>accident</del> crash resulting in bodily injury (including crashes occurring on private property or in government vehicle)	4
(c)	Contributing to a <del>accident</del> crash resulting in another's death (including crashes occurring on private property or in government vehicle)	8
(4)	Moving Traffic Violations - Points for Commercial Motor Vehicles	

(a)	Speeding in a Commercial Motor Vehicle: T.C.A. § 55-8-152	
1.	Tickets and court abstracts where speed not indicated	4
2.	Speeding, 1-5 m.p.h. in excess of posted speed zone	2
3.	Speeding, 6-14 m.p.h. in excess of posted speed zone	4
4.	Excessive speeding where speed not indicated	6
5.	Excessive speeding, 15-25 m.p.h. in excess of posted speed zone	5
6.	Excessive speeding, 26-35 m.p.h. in excess of posted speed zone	6
7.	Excessive speeding, 36 m.p.h. and above in excess of posted speed zone	7
8.	Speed less than posted minimum T.C.A. § 55-8-154	4
(b)	Speeding in a Commercial Motor Vehicle in a construction zone: T.C.A. § 55-8-153	
1.	Tickets and abstracts where speed not indicated	5
2.	Speeding, 1-5 m.p.h. in excess of posted speed zone	3
3.	Speeding, 6-14 m.p.h. in excess of posted speed zone	5
4.	Speeding, 15-25 m.p.h. in excess of posted speed zone	5
5.	Speeding, 26-35 m.p.h. in excess of posted speed zone	6
6.	Speeding, 36 m.p.h. and above in excess of posted speed zone	7
(c)	Reckless driving T.C.A. § 55-10-205	7
(d)	Careless or negligent driving T.C.A. § 55-8-136	5
(e)	Improper passing T.C.A. §§ 55-8-116, 55-8-117, 55-8-118, 55-8-119, 55-8-120 & 55-8-121	4
(f)	Improper or erratic lane change T.C.A. § 55-8-123	5
(g)	Following Improperly T.C.A. § 55-8-124	4
(h)	Failure to obey traffic instructions T.C.A. § 55-8-109	4
(i)	Wrong way, side or direction T.C.A. § 55-8-120	4
(j)	Failure to yield right of way T.C.A. §§ 55-8-128 & 55-8-197	4

(k)	<b>Making improper turn</b> T.C.A. §§ 55-8-140, 55-8-141, & 55-8-142	4
(l)	<b>Failure to signal direction</b> T.C.A. § 55-8-142	3
(m)	<b>Passing stopped school, church or youth bus taking on or discharging passengers</b> T.C.A. § 55-8-151	8
(n)	<b>Miscellaneous traffic violations; any offense involving the unsafe operation of a commercial motor vehicle not herein specified</b>	3
(o)	<b>Following emergency vehicle unlawfully</b> T.C.A. § 55-8-132	3
(p)	<b>Failure to yield to emergency vehicles</b> T.C.A. § 55-8-132	6
(q)	<b>Operating improperly due to drowsiness</b> 49 C.F.R. § 1327 & 49 C.F.R. § 392.3; T.C.A. §§ 55-8-136 & 55-50-202	5
(r)	<b>Violation of truck lane restriction</b> T.C.A. § 55-8-195	3
(s)	<b>Driving Commercial Motor Vehicle without obtaining a Commercial Driver License</b> 49 C.F.R. § 383.23; T.C.A. §§ 55-50-302 & 55-50-202	8
(t)	<b>Driving Commercial Motor Vehicle without a current Commercial Driver License on person</b> 49 C.F.R. § 383.23 & 49 C.F.R. § 383.41; T.C.A. §§ 55-50-351, 55-50-404, 55-50-413 & 55-50-202	3
(u)	<b>Driving Commercial Motor Vehicle without proper endorsement or class of Commercial Driver License</b> 49 C.F.R. § 383.23 & 49 C.F.R. § 383.91; T.C.A. §§ 55-50-302, 55-50-404 & 55-50-202	6
(v)	<b>Conviction driving while disqualified or while canceled</b> 49 C.F.R. § 383.23 & 49 C.F.R. § 383.91; T.C.A. §§ 55-50-504 & 55-50-202	8
(5)	<b>Moving Traffic Violations - Points for Commercial Motor Vehicles Hauling Hazardous Material</b>	
(a)	<b>Speeding in a Commercial Motor Vehicle Hauling Hazardous Material</b> T.C.A. § 55-8-152	
	1. Tickets and abstracts where speed not indicated	5
	2. Speeding 1-5 m.p.h. in excess of posted speed zone	3
	3. Speeding 6-14 m.p.h. in excess of posted speed zone	5
	4. Speeding, 15-25 m.p.h. in excess of posted speed zone	5
	5. Speeding, 26-35 m.p.h. in excess of posted speed zone	6
	6. Speeding, 36 m.p.h. and above in excess of posted speed zone	7
	7. Speed less than posted minimum T.C.A. § 55-8-154	5

(b)	Reckless driving T.C.A. § 55-10-205	8
(c)	Improper passing T.C.A. §§ 55-8-116, 55-8-117, 55-8-118, 55-8-119, 55-8-120 & 55-8-121	5
(d)	Improper or erratic lane change T.C.A. § 55-8-123	6
(e)	Following Improperly T.C.A. § 55-8-124	5
(f)	Careless or negligent driving T.C.A. § 55-8-136	6
(g)	Failure to obey traffic instructions T.C.A. § 55-8-109	5
(h)	Wrong way, side or direction T.C.A. § 55-8-120	5
(i)	Failure to yield right of way T.C.A. § 55-8-128 & 55-8-197	5
(j)	Making improper turn T.C.A. §§ 55-8-140, 55-8-141 & 55-8-142	5
(k)	Failure to signal direction or reduce speed T.C.A. § 55-8-142	4
(l)	Passing stopped school, church or youth bus taking or discharging passengers T.C.A. § 55-8-151	8
(m)	Following emergency vehicle unlawfully T.C.A. § 55-8-132	3
(n)	Miscellaneous traffic violations; any offense involving the unsafe operation of a commercial motor vehicle hauling hazardous material not herein specified	4
(o)	Conviction of driving while disqualified or cancelled T.C.A. § 55-50-504	8

Authority: T.C.A. §§ 4-5-202, 39-13-103, 39-16-602, 55-8-101 et seq., 55-10-205, 55-50-102, 55-50-202, 55-50-301 et seq., 55-50-401 et seq., and 55-50-504; 49 C.F.R. § 383, 49 C.F.R. § 392, 49 C.F.R. § 397 and 49 C.F.R. § 1327.

Administrative History:

Rule 1340-01-04-.06 Suspension of Driver License for Physical or Mental Disabilities is amended by deleting the language in its entirety and substituting new language, so that, as amended, the Rule shall read:

1340-01-04-.06 ~~Suspension of Driver License or Certificate for Driving~~ Suspension of Driver License for Physical or Mental Disabilities.

(1) Mental Standards:

- (a) Any driver who has been adjudged by a court of competent jurisdiction or has been evaluated by a psychiatrist, psychologist, or mental health facility and found to be suffering from any mental disease or ~~disease including~~ substance abuse, may have the driver's driving privileges suspended until such time as the driver has been restored to competency by court order, order from the superintendent of the mental facility, or other such method provided by law. The driver

must apply through the Driver Improvement Unit to receive a clearance/reinstatement order in order to recover, retain or obtain driving privileges.

- (b) If the driver claims to have been restored to competency, a certified copy of the court order or a written statement from a licensed psychiatrist or psychologist or mental health facility must first be mailed to the Driver Improvement Unit by such court, psychiatrist, psychologist or mental health facility.
- (c) After reviewing the certified court order or statement, the Department shall determine if the driver's driving privilege shall be reinstated. If approved, the driver will receive a clearance/reinstatement order from the Driver Improvement Unit.

(2) Physical Standards

- (a) ~~In cases where the Department receives such reports from other sources, e.g., private citizens, newspaper stories, accident reports not investigated by officers, or confidential information, written notice shall be sent notifying the driver that the information has been received, that the driver license or certificate for driving may be suspended and that the driver has the opportunity to~~ When the Department receives information about the ability of a driver to safely operate a motor vehicle, that driver shall be sent notice stating that the Department received information regarding his/her ability to safely operate a motor vehicle. The notice shall state the driver's driving privileges may be suspended. It shall also state that if the driver disagrees with a suspension, the driver may request an administrative hearing within thirty (30) days from the date of the notice. ~~The driver may be required to submit additional information. No action will be taken until the conclusion of the investigation or hearing, and any action at such time will be determined by the results of the investigation or hearing.~~ Throughout the investigation and/or hearing process, the driver may be questioned concerning the driver's physical condition and may be asked requested to submit a medical statement report. The Department shall provide medical report forms to the driver to be completed by the appropriate licensed medical professional.
- (a) (b) In all cases where medical statements reports are needed, the complaint/data must first be reviewed by the Department. Drivers who may be physically or mentally unfit to operate a motor vehicle upon the streets or highways of Tennessee may be identified in the following manner, and the review process invoked:
  1. A written complaint from law enforcement or driver license examiner;
  2. ~~Data contained in an accident report completed by a police officer or data voluntarily submitted by the driver in question~~ a crash report;
  3. Data provided by any reliable individual or person within the medical profession as determined by the Department obtained through the receipt of a signed letter by that individual;
  4. Drivers previously suspended and requesting a re-evaluation of their record due to a purported change in the status of mental or physical health;
  5. ~~Written referrals or complaints from physicians or medical professionals;~~ Data obtained from courts, private citizens, newspaper stories, ~~individuals~~ or information that would appear to be reliably obtained through other sources;
  6. Information from a person who has witnessed the driver's inability to drive because of a seizure or other condition through the receipt of a signed letter from that person; or
  7. Information from friends or relatives who know the driver's condition through the receipt of a signed letter.
- (c) ~~The Department shall notify in writing drivers reported to have a medical problem and the Department shall provide the appropriate medical statement forms and instructions to each driver undergoing a review to determine if the driver's driving privileges should~~

~~be suspended.~~ The medical ~~statement(s)~~ report forms must be completed by a licensed physician, physician assistant, or nurse practitioner (herein referred to as licensed medical professional) and should contain sufficient information regarding the driver's medical condition to enable the Department to determine whether the driver should be permitted to retain or obtain driving privileges. The information provided by the licensed medical professional must have been obtained within the last twelve (12) months. ~~The physician licensed medical professional shall be requested to provide an opinion about the driver's ability to drive. The physician's licensed medical professional's opinion, which is not binding on the Department, will be given consideration in conjunction with other available information.~~

(d) ~~The medical statement must contain the following information:~~

- ~~1. The cause of the seizures, lapse, blackouts or loss of consciousness or control;~~
- ~~2. The frequency of the seizures, lapse, blackouts or loss of consciousness or control;~~
- ~~3. The medication taken, if any, and the affect the medication will have on the driver's ability to drive;~~
- ~~4. The driver's compliance with treatment and/or medication; and~~
- ~~5. The physician's recommendation regarding driving ability.~~

The Department may use independent medical review boards to review and make recommendations if a driver is reported to have a mental or physical condition. The review boards will consist of licensed physicians in fields of specialized or general medicine. Physicians may serve on the medical review board in a voluntary capacity, or they may be paid by the Department if the Department deems such payment appropriate. The recommendations of the medical review board shall not be binding upon the Department.

(e) ~~The medical report forms completed by the physician licensed medical professional will be reviewed and one or more of the following actions shall take place:~~

- ~~1. If the physician licensed medical professional documents that the driver does not have a medical problem relating to the operation of a motor vehicle, the case may be closed. If the case is not closed, it may be referred to the medical review board to reconcile differences in the complaint and the medical statement report.~~
- ~~2. If the physician cannot positively document that the person does not have a medical condition relating to the operation of a motor vehicle, or if the physician feels that the person should not be allowed to drive for medical reasons, or if the Department so chooses, the medical forms may be forwarded to the medical review board. If the licensed medical professional determines that the person should not be allowed to drive because of a medical condition, the driver shall have his/her driving privileges suspended. If the licensed medical professional cannot determine with certainty whether or not the person has a medical condition relating to the safe operation of a motor vehicle, the Department may refer the case to the medical review board.~~
- ~~3. The medical review board may recommend that the case be closed or it may recommend the suspension of the driver license or certificate for driving suspension of the driver's driving privileges and state the conditions for the suspension. Upon receipt of the medical review board's recommendation, the Commissioner shall determine the status of the driver's driving privileges. Such determination may be appealed pursuant to the provisions of the Uniform Administrative Procedures Act.~~
- ~~4. At any time during the process, the Department and/or the medical review board may require additional medical information or evaluation before making a decision.~~

(f) The Department may require the driver to submit to a special driver examination in lieu of, or in addition to, the medical review process.

- (g) Drivers who fail to furnish the Department with the required medical information or request an administrative hearing within thirty (30) days of notice shall have their driving privileges suspended until such time as a favorable medical report is received and restoration of driving privileges is approved.
  - (h) The Department shall suspend and/or shall not issue a driver license ~~or certificate for driving~~ to anyone who suffers from uncontrolled epilepsy (also known as a seizure disorder), momentary lapse of consciousness or control due to epilepsy, cardiac syncope, diabetes, or other conditions until the driver has remained seizure-free or lapse free for a period of one (1) year, and then only upon receipt of a favorable medical statement from the driver's ~~physician~~ licensed medical professional. Provided, however, the driver may be approved for driving privileges if the driver's condition has been controlled for six (6) months and the Department receives a favorable medical report or statement ~~recommendation~~ from the driver's ~~physician and the Medical Review Board~~ licensed medical professional and the Department approves the issuance of the driver license. ~~or certificate for driving.~~
  - (i) In the following cases, the driver may be immediately suspended until the driver submits the medical ~~statement~~ information required by subparagraph (j) (c) and the medical ~~statement~~ information is reviewed in accordance with this rule:
    1. The driver admits to a history of seizures or other conditions that seriously affects driving ability; or
    2. A person practicing in the medical profession submits information that a driver has a condition that ~~affects driving ability~~ renders them unsafe to drive.
    3. ~~A person who has witnessed the driver's inability to drive because of a seizure or other condition submits information; Friends or relatives who know the driver's condition submit information that a driver has a condition that affects driving ability; or Courts or persons who have access to reliable information submit information that a driver may have a condition that affects driving ability.~~
  - (j) The procedures set forth in this rule also apply to other physical or mental disabilities where the Department has good cause to believe the driver would not be able to safely operate a motor vehicle. ~~because of lapses of consciousness or control.~~
  - (k) Drivers who have physical disabilities that can be compensated for by the use of physical controls or mechanical devices which enable the driver to safely operate a motor vehicle may be approved for licensing if they meet all other appropriate eligibility criteria.
  - (l) Drivers who are hearing impaired shall be restricted to the operation of vehicles equipped with left and right outside rear-view mirrors.
  - (m) Vision standards, including telescopic/biopic lens use by drivers with low vision, are located in the rules of the Driver License ~~Issuance~~ Services Division of the Department of Safety.
- (3) Any driver who is alleged to have a mental or physical disability may request an administrative hearing before a hearing officer within thirty (30) days from the date of written notification of the proposed suspension action. Any driver whose driving privileges have been suspended as a result of a physical or mental disability may appeal the decision of the Department by filing a petition pursuant to the Uniform Administrative Procedures Act (T.C.A. § 4-5-101 et seq.).

Authority: T.C.A. §§ 55-50-202, 55-50-303, 55-50-502 and 55-50-505. Administrative History:

Rule 1340-01-04-.07 Suspension of Driver License for Failing to Pass or Submit to Re-Examination is revised by deleting the language in Paragraphs (1), (2), (3) and (6) in its entirety and substituting new language, so that, as amended, the Rule shall read:

1340-01-04-.07 Suspension of Driver License or Certificate for Driving for Failing to Pass or Submit to Re-Examination.

- (1) ~~The Department may, upon receiving evidence sufficient to establish that a driver is incompetent~~ Upon receiving information that a driver may be unable to safely operate a motor vehicle or is otherwise not qualified to be licensed, ~~upon written notice of at least thirty (30) days to the driver,~~ the Department may require ~~such~~ the driver to submit to a driver re-examination and/or submit other information as deemed appropriate within thirty (30) days of receipt of said information. Such notice shall also inform the driver that he/she may request an administrative hearing within thirty (30) days from the date of the notice. ~~Pending the hearing, the Department may suspend the driver license or certificate for driving or permit the driver to retain the driver license or certificate for driving.~~ If a driver fails to submit to a re-examination, submit other appropriate information, or request a hearing within the required timeframe, the Department shall suspend the driver's driving privileges. ~~license or certificate for driving.~~
- (2) ~~Refusal or neglect of a driver to submit to a re-examination shall be grounds for suspension of the driver license or certificate for driving.~~ Periodic re-examinations may be required, such as once a year, in the case of mental or physical conditions, ~~or where there is a deterioration of the visual acuity or motor nerve response.~~
- (3) A driver required to undergo re-examination by the Department may take the written and/or vision portion of the driver examination test without limitation. If the driver fails the written portion, there may be a seven (7) day waiting period between each retest.
- (4) A driver required to undergo re-examination by the Department may take the on-the-road skills portion of the driver examination test three (3) times at thirty (30) day intervals. If successful, driving privileges shall be reinstated. If the driver does not pass on-the-road skills portion in three (3) attempts or less, the driver shall not be eligible to re-test for six (6) months from the date of the third test. If the driver does not pass the re-test(s) taken after waiting the six (6) month period, the driver shall not be eligible to re-test for twelve (12) months from the date of the last driver examination.
- (5) Drivers with a commercial driver license may be required to submit to re-examination in their commercial vehicle or school bus. If the driver fails the re-examination in the driver's commercial vehicle or school bus but wishes to downgrade to a Class D license, the driver may do so after successfully passing a complete examination in their personal vehicle.
- (6) Drivers who fail to submit to re-examination within thirty (30) days of written notification as required, or who fail to pass any part of the re-examination, or who do not ask for an administrative hearing within thirty (30) days of written notification shall have their driving privileges suspended until such time as they comply with the re-examination requirement.
- (7) Any driver required by the Department to undergo re-examination shall be notified that the driver may request an administrative hearing, provided such request is submitted in writing within thirty (30) days after the date of the written notice. Upon receipt of a request for an administrative hearing, the Department shall provide the driver a hearing before a hearing officer.
- (8) Any driver whose driving privilege is suspended under the Driver Improvement Program may appeal the suspension through the appeals process contained in the Uniform Administrative Procedures Act (T.C.A. § 4-5-101 et seq.).

Authority: T.C.A. §§ 55-50-202, 55-50-303, 55-50-322, 55-50-502 and 55-50-505. Administrative History:

\* 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)

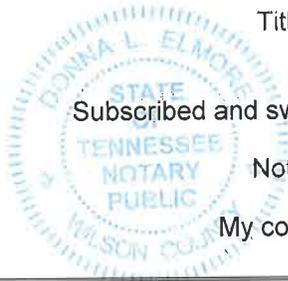
I certify that this is an accurate and complete copy of proposed rules, lawfully promulgated and adopted by the Department of Safety & Homeland Security on 01/22/14, and is in compliance with the provisions of T.C.A. § 4-5-222. The Secretary of State is hereby instructed that, in the absence of a petition for proposed rules being filed under the conditions set out herein and in the locations described, he is to treat the proposed rules as being placed on file in his office as rules at the expiration of sixty (60) days of the first day of the month subsequent to the filing of the proposed rule with the Secretary of State.

Date: 1/23/14 *GP*

Signature: *Gerry Crowover*

Name of Officer: Gerry Crowover

Title of Officer: Staff Attorney IV



Subscribed and sworn to before me on: 1/23/2014

Notary Public Signature: *Donna L. Elmore*

My commission expires on: 1/26/2014

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.

*RE Cooper Jr*  
 Robert E. Cooper, Jr.  
 Attorney General and Reporter  
3-18-14  
 Date

**Department of State Use Only**

Filed with the Department of State on: 3/26/14

Effective on: 8/29/14

*Tre Hargett*  
 Tre Hargett  
 Secretary of State

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

**DEPARTMENT:** State Board of Education

**DIVISION:**

**SUBJECT:** State Textbook Commission Bond Requirements

**STATUTORY AUTHORITY:** Tennessee Code Annotated, Section 49-1-302

**EFFECTIVE DATES:** August 29, 2014 through June 30, 2015

**FISCAL IMPACT:** Minimal

**STAFF RULE ABSTRACT:** This rule adjusts the bond amounts required of publishing companies to allow greater access to the textbook bidding process for small publishers.

**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)

This will have no impact on local governments.

**Department of State  
Division of Publications**

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Nashville, TN 37243  
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**For Department of State Use Only**

Sequence Number: 03-05-14  
Rule ID(s): 5669  
File Date: 3/13/14  
Effective Date: 8/29/14

# 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.*



<b>Agency/Board/Commission:</b>	State Board of Education
<b>Division:</b>	
<b>Contact Person:</b>	Dannelle F. Walker
<b>Address:</b>	1 <sup>st</sup> Floor, Andrew Johnson Tower 710 James Robertson Parkway Nashville, TN
<b>Zip:</b>	37243
<b>Phone:</b>	615-253-5707
<b>Email:</b>	Dannelle.Walker@tn.gov

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

- Amendment
- New
- Repeal

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

Chapter Number	Chapter Title
0520-05-01	Supplement to Contract – Policies of Tennessee State Textbook Commission
Rule Number	Rule Title
0520-05-01-.01	Definition
0520-05-01-.07	Amount of Performance Bond Required

Chapter 0520-05-01

Supplement to Contract – Policies of Tennessee State Textbook Commission~~Textbook Commission~~  
Amendment

Rule 0520-05-01-.01 Definition

Textbook means ~~shall be defined as any~~ medium or manual of instruction ~~which~~that contains a systematic presentation of the principles of a subject and ~~which~~that constitutes a major instructional vehicle for that subject

Rule 0520-05-01-.07 Amount of Performance Bond Required

- (1) The following scale shall designate the amount of performance bond required of each publishing company. "Book" means any item bid for sale with its own separate price.

No. of Books Officially Listed	Amount of Bond
1-10	<del>\$25,000.00</del> <u>50,000</u>
11-20	<del>\$50,000.00</del> <u>100,000</u>
21-30	<del>\$75,000.00</del> <u>150,000</u>
31-40	<del>\$100,000.00</del> <u>200,000</u>
41-50	<del>\$125,000.00</del> <u>250,000</u>
51 and over	<del>\$125,000.00</del> <u>250,000</u> plus <del>\$5,000.00</del> <u>10,000</u> per each additional book until \$1,000,000 <u>00</u> is reached.

\* 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)
Ayers	X				
Edwards	X				
Chancey	X				
Pearre	X				
Roberts	X				
Rogers	X				
Rolston	X				
Sloyan	X				
Wright	X				
Student Member	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 10/25/2013, and is in compliance with the provisions of T.C.A. § 4-5-222. The Secretary of State is hereby instructed that, in the absence of a petition for proposed rules being filed under the conditions set out herein and in the locations described, he is to treat the proposed rules as being placed on file in his office as rules at the expiration of sixty (60) days of the first day of the month subsequent to the filing of the proposed rule with the Secretary of State.

Date: 1-28-14

Signature: Gary Nixon

Name of Officer: Gary L. Nixon

Title of Officer: Executive Director



MY COMMISSION EXPIRES:  
January 9, 2016

Subscribed and sworn to before me on: 1/30/14

Notary Public Signature: Phyllis E. Childress

My commission expires on: \_\_\_\_\_

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.

RE Cooper, Jr.  
Robert E. Cooper, Jr.  
Attorney General and Reporter

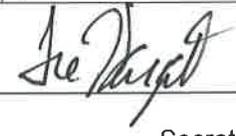
3-6-14

Date

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Filed with the Department of State on: 3/13/14

Effective on: 8/29/14



Tre Hargett  
Secretary of State

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## G.O.C. STAFF RULE ABSTRACT

**DEPARTMENT:** State Board of Education

**DIVISION:**

**SUBJECT:** Teacher Licensure

**STATUTORY AUTHORITY:** Tennessee Code Annotated, Section 49-1-302

**EFFECTIVE DATES:** August 29, 2014 through June 30, 2015

**FISCAL IMPACT:** Minimal

**STAFF RULE ABSTRACT:** This amendment to the current rule implements the Licensure Renewal Transition Policy to govern licensure renewal for state educators through August, 2015, whereupon new licensure rules will take effect. The transition policy shall include information relating to clinical practice and offer new metrics to measure the effectiveness of educators as well as educator preparation programs.

**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)

This will have no impact on local governments.

**Department of State  
Division of Publications**

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**For Department of State Use Only**

Sequence Number: 03-09-14

Rule ID(s): 5675

File Date: 3/24/14

Effective Date: 8/29/14

# 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.*

<b>Agency/Board/Commission:</b>	State Board of Education
<b>Division:</b>	
<b>Contact Person:</b>	Dannelle F. Walker
<b>Address:</b>	1 <sup>st</sup> Floor, Andrew Johnson Tower 710 James Robertson Parkway Nashville, TN
<b>Zip:</b>	37243
<b>Phone:</b>	615-253-5707
<b>Email:</b>	Dannelle.Walker@tn.gov

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

- Amendment  
 New  
 Repeal

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

Chapter Number	Chapter Title
0520-02-04	Licensure
Rule Number	Rule Title
0520-02-04-.14	Renewal of Teacher Licenses

Chapter 0520-02-04  
Licensure  
Amendment

(1) Prior to August 1, 2015, a license shall not be eligible for renewal unless such license expires prior to August 1, 2015.

~~(1) Professional License.~~

~~(a) — A professional license issued on a bachelor's degree is renewable upon verification of completion of ninety (90) renewal points within the ten (10) year period prior to the date of the renewal of the license. Renewal points are defined in the License Renewal Guide.~~

~~(b) — A professional license issued on a master's degree or above is renewable upon the presentation of evidence of five (5) years' experience within the ten (10) year period prior to the date of renewal of the license. In the absence of five (5) years of experience, the license is renewable upon verification of completion of ninety (90) renewal points within the ten (10) year period prior to the date of the renewal of the license.~~

~~(2) Apprentice License.~~

~~(a) — The holder of an apprentice teacher license who has three (3) years acceptable experience in a Tennessee public school during the period of license validity but who lacks the required positive evaluation to move to the professional teacher license shall be reissued the apprentice teacher license.~~

~~(b) — An apprentice teacher license issued on a bachelor's degree is renewable upon verification of completion of forty five (45) renewal points within the five (5) year period prior to the date of the renewal of the license. Renewal points are defined in the License Renewal Guide.~~

~~(c) — An apprentice teacher license issued on a master's degree or above is renewable upon the presentation of evidence of three (3) years' experience within the five (5) year period prior to the date of the renewal of the license.~~

\* 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)
Ayers	X				
Edwards	X				
Chancey	X				
Pearre	X				
Roberts	X				
Rogers	X				
Rolston	X				
Sloyan	X				
Wright	X				
Student Member	X				

I certify that this is an accurate and complete copy of proposed rules, lawfully promulgated and adopted by the State Board of Education on 10/25/2013, 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: Gary Nixon

Signature: 2-26-14

Name of Officer: Gary L. Nixon

Title of Officer: Executive Director



Subscribed and sworn to before me on: 2/27/14

Notary Public Signature: Phyllis E. Childress

My commission expires on: \_\_\_\_\_

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.

Robert E. Cooper, Jr.  
 Attorney General and Reporter

3-13-14  
 Date

Department of State Use Only

Filed with the Department of State on: 3/24/14

Effective on: 8/29/14



Tre Hargett  
Secretary of State

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SECRETARY OF STATE

## G.O.C. STAFF RULE ABSTRACT

DEPARTMENT: State Board of Education

DIVISION:

SUBJECT: Non-Public School Approval Process

STATUTORY AUTHORITY: Tennessee Code Annotated, Section 49-1-302, Public Chapter 85 of 2013 and Public Chapter 991 of 2012

EFFECTIVE DATES: August 29, 2014 through June 30, 2015

FISCAL IMPACT: Minimal

STAFF RULE ABSTRACT: The rule change requires non-public schools to comply with the requirements of Public Chapter 85 (2013) and Public Chapter 991 (2012) that stipulate the cut-off age for students to enroll in kindergarten and pre-kindergarten.

**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)

This will have no impact on local governments.

**Department of State  
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**For Department of State Use Only**

Sequence Number: 03-10-14  
Rule ID(s): 5676  
File Date: 3/24/14  
Effective Date: 8/29/14

# 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.*

<b>Agency/Board/Commission:</b>	State Board of Education
<b>Division:</b>	
<b>Contact Person:</b>	Dannelle F. Walker
<b>Address:</b>	1 <sup>st</sup> Floor, Andrew Johnson Tower 710 James Robertson Parkway Nashville, TN
<b>Zip:</b>	37243
<b>Phone:</b>	615-253-5707
<b>Email:</b>	Dannelle.Walker@tn.gov

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

- Amendment  
 New  
 Repeal

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

Chapter Number	Chapter Title
0520-07-02	Non-Public School Approval Process
Rule Number	Rule Title
0520-07-02-.02	Category I: State Department of Education Approval

Chapter Number	Chapter Title
0520-07-02	Non-Public School Approval Process
Rule Number	Rule Title
0520-07-02-.03	Category II: Agency Approval

<b>Chapter Number</b>	<b>Chapter Title</b>
0520-07-02	Non-Public School Approval Process
<b>Rule Number</b>	<b>Rule Title</b>
0520-07-02-.05	Category IV: Exempted Schools

<b>Chapter Number</b>	<b>Chapter Title</b>
0520-07-02	Non-Public School Approval Process
<b>Rule Number</b>	<b>Rule Title</b>
0520-07-02-.06	Category V: Acknowledged for Operation



Chapter 0520-07-02  
Non-Public School Approval Process  
Amendment

0520-07-02.02 Category I: State Department of Education Approval

- (1) A school may seek state approval by direct application to the State Department of Education. The criteria and procedures used in the evaluation of such schools are the same as for the public schools, and include the following:
  - (a) Each school shall comply with the requirements of T.C.A. § 49-6-3007 regarding the reporting of the names, ages, and addresses of all pupils in attendance to the superintendent of the public school system in which the student resides.
  - (b) Each school shall comply with all rules, regulations and codes of the city, county, and state regarding planning, construction, maintenance, and operation of the school.
  - (c) Each school shall observe all fire safety regulations and procedures promulgated by the Tennessee Fire Marshal.
  - (d) Each school shall comply with the requirements of T.C.A. §§ 49-6-104(a) and 49-6-201(b)(3) regarding the age requirements for students entering kindergarten and pre-kindergarten.

0520-07-02-.03 Category II: Agency Approval

- (1) The State Board of Education may approve the school approval procedures of non-public school accrediting agencies.
- (2) Schools holding full accreditation status with an approved agency are approved by the State Department of Education.
- (3) Home schools which may affiliate with an approved agency are not approvable under this category.
- (4) Procedures for Application as an Approved Non-Public School Accrediting Agency.
  - (a) An agency seeking approval shall apply to the State Department of Education and shall supply relevant information needed by the department.
  - (b) The State Department of Education shall review the application of the agency with respect to the criteria for approval and recommend to the State Board of Education that the application be approved or denied. The applicant agency may address the State Board of Education at the time its application is being considered.
- (5) Period of Approval.
  - (a) The period of approval for a recognized agency shall be five years.

(b) An agency which fails to meet the minimum standards for agency approval will have its approval revoked.

(6) Criteria for Approval of a Non-Public School Accrediting Agency.

(a) Scope of Operation of Agency. The agency shall:

1. Have a clearly written statement of its objectives;
2. Delineate the process by which it approves schools; and
3. Have at least five member schools, each with at least ten full-time students.

(b) Organization of Agency. The agency shall:

1. Specify qualifications for professional personnel for the agency;
2. Employ at least one full time director or superintendent; and
3. Be permitted to regulate schools which are not fully approved.

(c) Agency responsibilities. The agency shall:

1. Maintain written descriptions of the requirements for school accreditation, and of the levels or types of membership granted;
2. Re-evaluate approved schools annually;
3. Give advance publication of proposed changes in approval standards to schools. These changes must be approved in advance by the State Department of Education;
4. Advise schools or directly provide them with technical assistance to address deficiencies;
5. Publish approval policies and lists of approved schools;
6. Require schools to report on deficiencies which could affect approval status;
7. Have procedures for revocation of approval;
8. Provide a list of all courses taught and the grade levels at which they are taught at each school;
9. Publish and follow minimum standards using the following criteria (or, the agency may use the standards as set forth in the Rules, Regulations and Minimum Standards for the Governance of Public Schools in the State of Tennessee):

(i) Curriculum and Graduation.

- (I) The program shall include (but not be limited to) the areas of reading, composition, speech, mathematics, social studies, science, art, music, health and physical education.
  - (II) Each school shall use print and non-print materials, including textbooks, which are adequate to meet the needs of the instructional program. See Chapter 0520-01-03.
  - (III) Each student shall meet the same minimum requirements for graduation as students in public schools. The specific requirements are listed in Chapter 0520-01-03.
- (ii) In-service. Each school shall have a minimum of five days for in-service education per school year.
  - (iii) Teacher Licensure and Evaluation.
    - (I) Each agency shall submit its procedures for licensing teachers. If the agency does not use the Tennessee State Department of Education licensure system, it must use a comparable system based upon educational training.
    - (II) Each teacher or principal shall hold a valid teacher license or permit as defined by the agency covering the work assignment.
    - (III) Each agency shall develop procedures for evaluation of all professional school personnel.
  - (iv) Facilities.
    - (I) Each school shall comply with rules, regulations, and codes of the city, county, and state regarding planning of new buildings, alterations, and safety.
    - (II) Each school shall observe all fire safety regulations and procedures promulgated by the Tennessee Fire Marshal's Office.
    - (III) Each school shall have classrooms, laboratories, and libraries which are sufficient in number, adequate in space, and so constructed and arranged as to be conducive to carrying on the assigned activities. Playgrounds and physical education facilities shall be well maintained, free from hazards, and large enough to permit an adequate program of physical education.
  - (v) Administrative Rules.
    - (I) Each school shall maintain an operating schedule that includes the minimum number of instructional days and hours required of public schools. See Chapter 0520-01-03.

- (II) Each school which provides services to students certified as eligible students with disabilities shall meet all standards of the State Board of Education rule 0520-01-03-.09.
- (III) A child entering first grade shall be no less than six years of age on or before September 30. Any child five years of age on or before September 30 may be enrolled in kindergarten.
- (IV) Each school shall develop and implement a written policy on promotion and retention. The written policy shall be communicated to students and parents.
- (V) The maximum enrollments for an individual class shall be specified, shall not be subject to waiver, and shall not exceed the following:
  - I. Kindergarten through grade 3: 25 students
  - II. Grade 4: 28 students
  - III. Grades 5 through 6: 30 students
  - IV. Grades 7 through 12: 35 students
  - V. Vocational education, grades 7 through 12: 28 students; the average daily membership for any full-time vocational teacher shall not exceed 23 students.
- (VI) Each school shall maintain complete and accurate permanent records. A cumulative record for each student for all work through high school is required.
- (VII) Each school shall evaluate records and report the needs and progress of its pupils.
- (VIII) Each school shall provide a sufficient number of appropriately qualified administrators, librarians and guidance counselors for the student body served.
- (IX) Each principal or headmaster shall comply with the requirement of T.C.A. § 49-6-5001 that each child enrolled in school be vaccinated against disease.
- (X) Each principal or headmaster shall comply with the requirements of T.C.A. § 49-6-3007 regarding reporting the names, ages, and addresses of all pupils in attendance to the superintendent of the public school system in which the student resides.

(XI) Each school shall comply with the requirements of T.C.A. §§ 49-6-104(a) and 49-6-201(b)(3) regarding the age requirements for students entering kindergarten and pre-kindergarten.

- (vi) **Testing Program.** At least once every school year, each school shall give a nationally standardized achievement test covering the areas of reading, language arts, spelling, math, science, and social science to each pupil in grades 2 through 8 and grade 10; the results must be communicated to teachers and parents and kept on file at the school for one calendar year.

0520-07-02-.05 Category IV: Exempted Schools

- (1) Schools in this category are exempt from regulation regarding faculty, textbooks, and curriculum. T.C.A. § 49-50-801 defines a church related school as "a school operated by denominational, parochial or other bona fide church organizations, which are required to meet the standards of accreditation or membership of the Tennessee Association of Christian Schools, the Association of Christian Schools International, the Tennessee Association of Independent Schools, the Southern Association of Colleges and Schools, the Tennessee Association of Non-Public Academic Schools, the Tennessee Association of Church Related Schools or a school affiliated with Accelerated Christian Education, Inc."
- (2) Each school shall:
- (a) Comply with all rules and regulations and codes of the city, county, and state regarding planning of new building, alterations, and safety.
  - (b) Comply with all rules and regulations of the Tennessee Department of Health and Environment regarding construction, maintenance, and operation of the school plant.
  - (c) Observe all fire safety regulations and procedures promulgated by the Tennessee Fire Marshal's Office.
  - (d) Comply with the requirements of T.C.A. § 49-6-5001 that each child enrolled in school be vaccinated against disease.
  - (e) Comply with the requirement of T.C.A. § 49-6-3007 that the names, ages, and addresses of all pupils in attendance be reported to the superintendent of the public school system in which the student resides.
  - (f) Each school shall comply with the requirements of T.C.A. §§ 49-6-104(a) and 49-6-201(b)(3) regarding the age requirements for students entering kindergarten and pre-kindergarten.

0520-07-02-.06 Category V: Acknowledged for Operation

- (1) Schools in this category are those which are not category I, II, III, or IV schools. Schools in this category shall not include home schools.
- (2) Each school seeking acknowledgement for operation shall furnish to the State Department of Education the following information by November 1st of each year:
  - (a) Name, mailing address and telephone number of the school;
  - (b) Name and academic credentials of the principal or headmaster of the school;
  - (c) Number of students in each grade level as of October 1 of current school year;
  - (d) Name and academic credentials of each teacher and the subjects taught by that teacher;
  - (e) Certification that the school year provides an operating schedule that includes the minimum number of instructional days and hours as required of public schools. See Chapter 0520-01-03.
- (3) Each school shall keep on file the curriculum offered and shall make copies available for inspection by the State Department of Education and the public upon request.
- (4) Each school shall have facilities and fixed equipment which conform to the safety and health requirements of city, county, or state agencies.
- (5) Each school shall comply with all the rules and regulations and codes of the city, county, and state regarding planning of new buildings, alterations and safety.
- (6) Each school shall comply with all rules and regulations of the Tennessee Department of Health regarding construction, maintenance and operation of the school plant.
- (7) Each school shall observe all fire safety regulations and procedures promulgated by the Tennessee Fire Marshal's Office.
- (8) Each school shall comply with the requirement of T.C.A. § 49-6-5001 that each child in school be vaccinated against disease.
- (9) Each school shall comply with the requirement of § 49-6-3007 that the names, ages, and addresses of all pupils in attendance be reported to the public school system in which the student resides.
- (10) Each teacher shall possess at least baccalaureate degree, of which no more than twenty-five percent of course hours shall have been taken through home study or correspondence.
- (11) Each school shall administer a nationally standardized achievement test covering the basic academic areas at grade 2 through 8 and grade 10. Results of the test shall be used to improve the instruction of the students.

| (12) Each school shall comply with the requirements of T.C.A. §§ 49-6-104(a) and 49-6-201(b)(3) regarding the age requirements for students entering kindergarten and pre-kindergarten.

\* 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)
Ayers	X				
Edwards	X				
Chancey	X				
Pearre	X				
Roberts	X				
Rogers	X				
Rolston	X				
Sloyan	X				
Wright	X				
Student Member	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 10/25/2013, and is in compliance with the provisions of T.C.A. § 4-5-222. The Secretary of State is hereby instructed that, in the absence of a petition for proposed rules being filed under the conditions set out herein and in the locations described, he is to treat the proposed rules as being placed on file in his office as rules at the expiration of sixty (60) days of the first day of the month subsequent to the filing of the proposed rule with the Secretary of State.

Date: 1-28-14

Signature: Gary L. Nixon

Name of Officer: Gary L. Nixon

Title of Officer: Executive Director



MY COMMISSION EXPIRES:  
January 9, 2016

Subscribed and sworn to before me on: 1/30/14

Notary Public Signature: Phyllis E. Childress

My commission expires on: \_\_\_\_\_

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.

Robert E. Cooper, Jr.  
Robert E. Cooper, Jr.  
Attorney General and Reporter  
3-13-14

Date

Department of State Use Only

Filed with the Department of State on: 3/24/14

Effective on: 8/29/14



Tre Hargett  
Secretary of State

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

**DEPARTMENT:** Finance and Administration

**DIVISION:** Bureau of TennCare

**SUBJECT:** CoverKids Enrollees, Providers, and TennCare Select

**STATUTORY AUTHORITY:** Tennessee Code Annotated, Sections 71-3-1104 and 71-3-1110

**EFFECTIVE DATES:** June 15, 2014, through June 30, 2015

**FISCAL IMPACT:** The adoption of this rule is anticipated to decrease state annual expenditures by \$9,540,000.

**STAFF RULE ABSTRACT:** This rule replaces an emergency rule that allowed for the reduction in expenditures for the CoverKids program by changing from a commercial network to the TennCare Select Medicaid network, effective October 1, 2013.

## **Public Hearing Comments**

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

There were no public comments on this rule.

## **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.

The proposed rule reflects a requirement in the Appropriations Act, Public Chapter 453, effective July 1, 2013, to reduce expenditures for CoverKids. The reduction was to be accomplished by transitioning the persons enrolled in the CoverKids program from a commercial network of providers to the TennCare Select Medicaid network, effective October 1, 2013. The transition was not to result in a loss of covered services.

The transition was intended to save \$9,540,000 in annual state expenditures. Many providers of TennCare Select services are small businesses. However, due to a number of unknown factors including the variation in payment rates offered by TennCare Select to specific small business providers in comparison to those offered by the commercial network to these providers prior to October 1, 2013, the exact overall impact of this proposed rule on small businesses cannot be determined.

### **Impact on Local Governments**

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

The rule is not anticipated to have an impact on local governments.

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**For Department of State Use Only**

Sequence Number: 03-06-14  
Rule ID(s): 5670  
File Date: 3/27/14  
Effective Date: 6/15/14

## Rulemaking Hearing Rule(s) Filing Form

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

<b>Agency/Board/Commission:</b>	Tennessee Department of Finance and Administration
<b>Division:</b>	Bureau of TennCare
<b>Contact Person:</b>	George Woods
<b>Address:</b>	310 Great Circle Road
<b>Zip:</b>	37243
<b>Phone:</b>	(615) 507-6446
<b>Email:</b>	george.woods@tn.gov

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

- Amendments  
 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
0620-05-01	Cover Kids Rules
Rule Number	Rule Title
0620-05-01-.06	Providers

0620-05-01-.06 Providers.

(1) This rule shall be in effect from October 1, 2013.

(2) For purposes of this rule, the following definitions shall apply:

- (a) Covered services. Benefits listed in Rule 0620-05-01-.03 and authorized by the Plan Administrator ("PA").
- (b) CoverKids network. A group of health care providers that have entered into contracts with the PA to furnish covered services to CoverKids enrollees. These contracts may take the form of general contracts or single case agreements.
- (c) CoverKids provider. An appropriately licensed institution, facility, agency, person, corporation, partnership, or association that delivers health care services and that participates in the PA's network.
- (d) Emergency services, including emergency mental health and substance abuse emergency treatment services. Services to treat the sudden and unexpected onset of a medical condition that manifests itself by symptoms of sufficient severity, including severe pain, that a prudent layperson who possesses an average knowledge of health and medicine could reasonably expect the absence of immediate medical attention to potentially result in:
  - 1. Placing the person's (or with respect to a pregnant woman, her unborn child's) health in serious jeopardy; or
  - 2. Serious impairment to bodily functions; or
  - 3. Serious dysfunction of any bodily organ or part.
- (e) HealthyTNBabies. The program that provides coverage of maternity care for pregnant CoverKids enrollees, including the unborn children of pregnant women with no source of coverage who meet the CoverKids eligibility requirements.
- (f) Non-CoverKids provider. A health care provider of non-emergency services that does not participate in the PA's network.

(3) Payment in full.

- (a) All CoverKids providers, as defined in this rule, must accept as payment in full for provision of covered services to a CoverKids enrollee, the amount paid by the PA, plus any copayment required by the CoverKids program to be paid by the individual.
- (b) Any non-CoverKids providers who furnish CoverKids covered services by authorization from the PA must accept as payment in full for provision of covered services to CoverKids enrollees the amounts paid by the PA plus any copayment required by the CoverKids program to be paid by the individual.
- (c) CoverKids will not pay for non-emergency services furnished by non-CoverKids providers unless these services are authorized by the PA. Any non-CoverKids provider who furnishes CoverKids Program covered non-emergency services to a CoverKids enrollee without authorization from the PA does so at his own risk. He may not bill the patient for such services except as provided for in Paragraph (5).

(4) Non-CoverKids Providers.

- (a) In situations where the PA authorizes a service to be rendered by a non-CoverKids provider, payment to the provider shall be no less than 80% of the lowest rate paid by the PA to equivalent participating CoverKids network providers for the same service, consistent with the methodology contained in Rule 1200-13-13-.08(2)(a).
- (b) Covered medically necessary outpatient emergency services, when provided to CoverKids enrollees by non-CoverKids network hospitals, shall be reimbursed at 74% of the 2006 Medicare rates for the services, consistent with the methodology contained in Rule 1200-13-13-.08(2)(b). Emergency care to enrollees shall not require preauthorization.
- (c) Covered medically necessary inpatient hospital admissions required as the result of emergency outpatient services, when provided to CoverKids enrollees by non-CoverKids network hospitals, shall be reimbursed at 57% of the 2008 Medicare DRG rates (excluding Medical Education and Disproportionate Share components) determined according to 42 CFR § 412 for the services, consistent with the methodology contained in Rule 1200-13-13-.08(2)(c). Such an inpatient stay will continue until no longer medically necessary or until the patient can be safely transported to a network hospital, whichever comes first.
- (5) Providers may seek payment from a CoverKids enrollee only under the following circumstances. These circumstances include situations where the enrollee may choose to seek a specific covered service from a non-CoverKids provider.
- (a) If the services are not covered by the CoverKids program and, prior to providing the services, the provider informed the enrollee that the services were not covered.
- (b) If the services are not covered because they are in excess of an enrollee's benefit limit and one of the following circumstances applies:
1. The provider has information in her own records to support the fact that the enrollee has reached his benefit limit for the particular service being requested and, prior to providing the service, informs the enrollee that the service is not covered and will not be paid for by CoverKids. This information may include:
    - (i) A previous written denial of a claim on the basis that the service was in excess of the enrollee's benefit limit for a service within the same benefit category as the service being requested, if the time period applicable to the benefit limit is still in effect; or
    - (ii) That the provider had personally provided services to the enrollee in excess of his benefit limit within the same benefit category as the service being requested, if the time period applicable to that benefit period is still in effect; or
    - (iii) The enrollee's PA has provided confirmation to the provider that the enrollee has reached his benefit limit for the applicable service.
  2. The provider submits a claim for service to the PA and receives a written denial of that claim on the basis that the service exceeds the enrollee's benefit limit. After informing the enrollee and within the remainder of the period applicable to that benefit limit, the provider may bill the enrollee for services within that same exhausted benefit category without having to submit claims for those subsequent services for repeated PA denial. If the provider informed the enrollee prior to providing the service for which the claim was denied that the service would exceed the enrollee's benefit limit and would not be paid for by CoverKids, the provider may bill the enrollee for that service.
  3. The provider had previously taken the steps in parts 1. or 2. above and determined that the enrollee had reached his benefit limit for the particular service being requested, if the time period applicable to the benefit limit is still in effect, and informs the enrollee, prior to providing the service, that the service is not covered and will not be paid for by CoverKids.

- (c) If the services are covered only with prior authorization and prior authorization has been requested but denied, or is requested and a specified lesser level of care is approved, and the provider has given prior notice to the enrollee that the services are not covered, the enrollee may elect to receive those services for which prior authorization has been denied or which exceed the authorized level of care and be billed by the provider for such services.
- (6) Providers may not seek payment from a CoverKids enrollee under the following conditions:
- (a) The provider knew or should have known about the patient's CoverKids enrollment prior to providing services.
  - (b) The claim submitted to the PA for payment was denied due to provider billing error or a CoverKids claim processing error.
  - (c) The provider accepted CoverKids assignment on a claim and it is determined that another payer paid an amount equal to or greater than the CoverKids allowable amount.
  - (d) The provider failed to comply with CoverKids policies and procedures or provided a service which lacks medical necessity or justification.
  - (e) The provider failed to submit or resubmit claims for payment within the time periods required by the PA or CoverKids.
  - (f) The provider failed to inform the enrollee prior to providing a service not covered by CoverKids that the service was not covered and the enrollee may be responsible for the cost of the service. Services which are non-covered by virtue of exceeding limitations are exempt from this requirement if the provider has complied with paragraph (5) above.
  - (g) The enrollee failed to keep a scheduled appointment(s).
- (7) Pharmacy providers may not waive pharmacy copayments for CoverKids enrollees as a means of attracting business to their establishments. This does not prohibit a pharmacy from exercising professional judgment in cases where an enrollee may have a temporary or acute need for a prescribed drug, but is unable, at that moment, to pay the required copayment.

GW10114050R

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the Tennessee Department of Finance and Administration (board/commission/ other authority) on 03/12/2014 (mm/dd/yyyy), and is in compliance with the provisions of T.C.A. § 4-5-222.

I further certify the following:

Notice of Rulemaking Hearing filed with the Department of State on: 12/20/13

Rulemaking Hearing(s) Conducted on: (add more dates). 02/26/14



Date: 3/12/2014

Signature: [Handwritten Signature]

Name of Officer: Darin J. Gordon

Director, Bureau of TennCare

Title of Officer: Tennessee Department of Finance and Administration

Subscribed and sworn to before me on: 3/12/14

Notary Public Signature: [Handwritten Signature]

My commission expires on: AUG 28 2016

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

[Handwritten Signature]

Robert E. Cooper, Jr.  
Attorney General and Reporter

3-17-14

Date

**Department of State Use Only**

Filed with the Department of State on: 3/17/14

Effective on: 6/15/14

[Handwritten Signature]

Tre Hargett  
Secretary of State

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