

G.O.C. STAFF RULE ABSTRACT

DEPARTMENT: State Board of Equalization

SUBJECT: Fees for Transferring Property Tax Exemptions

STATUTORY AUTHORITY: Tennessee Code Annotated, Sections 67-1-305 and 67-5-212

EFFECTIVE DATES: March 12, 2013 through June 30, 2013

FISCAL IMPACT: Minimal

STAFF RULE ABSTRACT: These amendments modify existing rules for processing religious, charitable, and related property tax exemptions. These amendments limit the transfer fee to the minimum in cases in which exempt property is transferred between related exempt entities with no change in use.

Public Hearing Comments

The Board received no comments on this rule.

Impact on Local Governments

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

The proposed amendment to Rule 0600-08-.01 abating property tax exemption application fees in certain cases of transfers between affiliated entities, would not significantly affect local governments because the fee inures solely to the state agency. The rule amendment abates the fee in the case of transfers between affiliated entities with no change in use, because the time and effort of processing these applications is significantly less than the typical application.

Regulatory Flexibility Addendum

Pursuant to TCA §4-5-401 et seq., the Board has reviewed these amendments for their impact on small business and determined the impact would be negligible. This conclusion is based on the fact small businesses are not eligible for the charitable and related property tax exemptions affected by the rules.

Department of State
Division of Publications
 312 Rosa L. Parks Avenue, 8th Floor Tennessee Tower
 Nashville, TN 37243
 Phone: 615-741-2650
 Fax: 615-741-5133
 Email: sos.information@state.tn.us

For Department of State Use Only

Sequence Number: 12-07-12
 Rule ID(s): 5345
 File Date: 12/12/12
 Effective Date: 3/12/13

Rulemaking Hearing Rule(s) Filing Form

Rulemaking Hearing Rules are rules filed after and as a result of a rulemaking hearing. TCA Section 4-5-205

Agency/Board/Commission:	State Board of Equalization
Division:	
Contact Person:	Kelsie Jones, Executive Secretary
Address:	Ste. 1700, 505 Deaderick St., Nashville, TN
Zip:	37243-1402
Phone:	615-747-5379
Email:	kelsie.jones@cot.tn.gov

Revision Type (check all that apply):

- Amendment
- New
- Repeal

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

Chapter Number	Chapter Title
0600-08	Exemptions
Rule Number	Rule Title
0600-08-.01	Application Form and Fees

Substance of rule amendments:

Rule 0600-8-.01 Application Form and Fees is amended by adding the following numbered paragraph:

(3) Notwithstanding the value of the property which is the subject of an application, the minimum fee only shall be due when application is made for exemption of property that is exempt at the time of transfer and is being transferred between affiliated institutions with no change in use.

Authority: T.C.A. §§67-1-305 and 67-5-212 (b).
 Legal Contact:

Kelsie Jones, Executive Secretary
 State Board of Equalization
 Ste. 1700 – 505 Deaderick Street
 Nashville, TN 37243-0280
 615/747-5379

Contact for disk acquisition: Kelsie Jones

The roll call vote by the Board on these rulemaking hearing rules was as follows:

SS-7039 (January, 2009) 1
 C:\Users\ig02119\AppData\Local\Microsoft\Windows\Temporary Internet Files\Content.Outlook\S7OIIBOH\2012
 amendments ss format.doc

Board Member	Aye	No	Abstain	Absent
Bennett				X
Button	X			
Hargett	X			
Lillard	X			
Roberts	X			
Slatery	X			
Wilson	X			

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the State Board of Equalization on 10/15/12 and is in compliance with the provisions of TCA 4-5-222.

I further certify the following:

Notice of Rulemaking Hearing filed with the Department of State on: 9/20/11

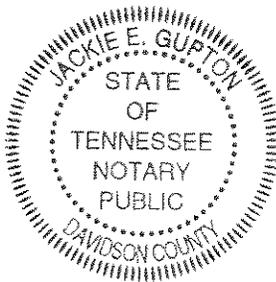
Rulemaking Hearing(s) Conducted on: 11/21/11

Date: 10-31-12

Signature: Kelsie Jones

Name of Officer: Kelsie Jones

Title of Officer: Executive Secretary



Subscribed and sworn to before me on: 10-31-12

Notary Public Signature: Jackie E. Gupston

My commission expires on: 8-17-15

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

12-3-12
Date

Department of State Use Only

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

Effective on: 3/12/13

Tre Hargett

Tre Hargett
Secretary of State

RECEIVED
 012 DEC 12 AM 10:37
 SECRETARY OF STATE
 PUBLICATIONS

G.O.C. STAFF RULE ABSTRACT

DEPARTMENT: State Board of Education

SUBJECT: Formal Reprimands of Teachers

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

EFFECTIVE DATES: May 31, 2013 through June 30, 2013

FISCAL IMPACT: Minimal

STAFF RULE ABSTRACT:

Pursuant to State Board of Education Rule 0520-2-4-.01(9)(b) the State Board of Education may revoke, suspend or refuse to issue or renew a license for several reasons listed in the rule.

Currently under the rule and policy, there is no option for the State Board to issue a formal reprimand for a licensed teacher who engages in conduct which may not rise to the level of a suspension, but where Board action is required. Amending the rules and policy to include formal reprimand as an option ensures that those instances of misconduct are not only recorded with the State Board of Education, but are also reported to the National Association of State Directors of Teacher Education and Certification (NASDTEC) Clearinghouse.

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.

Rules
Of
The State Board of Education

Chapter 0520-02-04
General Information and Regulations

(9) Denial, Formal Reprimand, Suspension and Revocation of License.

(a) Automatic Revocation of License. The State Board of Education shall automatically revoke the license of a licensed teacher or administrator without the right to a hearing upon receiving verification of the identity of the teacher or administrator together with a certified copy of a criminal record showing that the teacher or school administrator has been convicted of any felony or offense listed at T.C.A. § 40-35-501(i)(2) or T.C.A. § 39-17-417 (including conviction on a plea of guilty or nolo contendere). The Board will notify persons whose licenses are subject to automatic revocation at least 30 days prior to the Board meeting at which such revocation shall occur.

(b) Denial, Formal Reprimand, Suspension or Revocation of License. The State Board of Education may revoke, suspend, reprimand formally, or refuse to issue or renew a license for the following reasons:

1. Conviction of a felony,
2. Conviction of possession of narcotics,
3. Being on school premises or at a school-related activity involving students while documented as being under the influence of, possessing or consuming alcohol or illegal drugs,
4. Falsification or alteration of a license or documentation required for licensure,
5. Denial, suspension or revocation of a license or certificate in another jurisdiction for reasons which would justify denial, suspension or revocation under this rule, or
6. Other good cause. Other good cause shall be construed to include noncompliance with security guidelines for TCAP or successor tests pursuant to Tenn. Code Ann. § 49-1-607, default on a student loan pursuant to Tenn. Code Ann. § 49-5-108(d)(2) or failure to report under part (e).

For purposes of this part (b), "conviction" includes entry of a plea of guilty or nolo contendere or entry of an order granting pre-trial or judicial diversion.

A person whose license has been denied, suspended or revoked may not serve as a volunteer or be employed, directly or indirectly, as an educator, paraprofessional, aide,

substitute teacher or in any other position during the period of the denial, suspension or revocation.

- (d) Notice of Hearing. Any person whose license is to be denied, suspended, formally reprimanded or revoked under part (b) or who is refused a license or certificate under part (c) shall be entitled to written notice and an opportunity for a hearing to be conducted as a contested case under the Tennessee Uniform Administrative Procedures Act, T.C.A. §4-5-301, et seq.

G.O.C. STAFF RULE ABSTRACT

DEPARTMENT: Safety

DIVISION: Highway Patrol

SUBJECT: Ignition Interlock Device Program

STATUTORY AUTHORITY: Tennessee Code Annotated, Sections 55-10-412 and 55-10-423

EFFECTIVE DATES: May 31, 2013 through June 30, 2013

FISCAL IMPACT: Minimal

STAFF RULE ABSTRACT:

This rule establishes uniform, statewide, minimum standards for ignition interlock devices and for the approval and certification of persons and/or entities that provide and/or install such devices. The existing rule is being repealed. The new amended rule will be placed under the rule chapter for the Tennessee Highway Patrol.

Revisions to the new amended rule include the maximum fees that may be charged for installing, leasing, purchasing, monitoring, removing and maintaining an ignition interlock device, and requirements that ensure that certified ignition interlock installers operate within established guidelines and have the ability to provide such devices to any resident in the state.

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.

(If applicable, insert Regulatory Flexibility Addendum here)

Regulatory Flexibility Analysis

Pursuant to the Regulatory Flexibility Act of 2007, T.C.A. 4-5-401, et seq., the Department of Safety submits the following regulatory flexibility analysis:

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

The proposed rule does not overlap, duplicate or conflict with other federal, state or local government rules.
- (2) Clarity, conciseness, and lack of ambiguity in the rule:

The proposed rule exhibits clarity, conciseness, and lack of ambiguity.
- (3) The establishment of flexible compliance and reporting requirements for small businesses:

The proposed rule establishes flexible compliance and/or reporting requirements for small businesses.
- (4) The establishment of friendly compliance and reporting requirements for small businesses:

The proposed does establish friendly compliance and/or reporting requirements for small businesses.
- (5) The consolidation or simplification of compliance or reporting requirements for small businesses:

The proposed rule consolidates and simplifies compliance and/or reporting requirements for small businesses.
- (6) The establishment of performance standards for small businesses as opposed to design or operational standards required in the proposed rule:

The proposed rule does not establish performance standards for small businesses as opposed to design or operational standards.
- (7) The unnecessary creation of entry barriers or other effects that stifle entrepreneurial activity, curb innovation, or increase costs.

The proposed rule does not unnecessarily create entry barriers or other effects that stifle entrepreneurial activity, curb innovation, or increase costs.

Impact on Local Governments

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

The proposed rule does not have any projected impact on local governments.

**Department of State
Division of Publications**

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

For Department of State Use Only

Sequence Number: 12-13-12
Rule ID(s): 5351-5352
File Date: 12-17-12
Effective Date: _____

Proposed Rule(s) Filing Form

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

Agency/Board/Commission: Tennessee Department of Safety
Division: Highway Patrol Division
Contact Person: Gerry Crownover, Staff Attorney
Address: 1150 Foster Avenue, Nashville, TN
Zip: 37243
Phone: (615) 251-5277
Email: 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
1340-03-06 1340-01-14	Rules of Ignition Interlock Device Program
Rule Number	Rule Title
1340-03-06-.01 1340-01-14-.01	Purpose and Scope
1340-03-06-.02 1340-01-14-.02	Definitions
1340-03-06-.03 1340-01-14-.03	Application Procedures
1340-03-06-.04 1340-01-14-.04	General Requirements
1340-03-06-.05 1340-01-14-.05	Approved Ignition Interlock Device Requirements
1340-03-06-.06 1340-01-14-.06	Ignition Interlock Installer – Owner/Personnel Requirements
1340-03-06-.07 1340-01-14-.07	Ignition Interlock Installation Requirements
1340-03-06-.08 1340-01-14-.08	Orientation of Program Participant
1340-03-06-.09 1340-01-14-.09	Proof of Installation of Ignition Interlock Devices
1340-03-06-.10 1340-01-14-.10	Monitoring Requirements
1340-03-06-.11 1340-01-14-.11	Repair or Replacement of Ignition Interlock Device
1340-03-06-.12	Program Status Report

1340-01-14-12	
1340-03-06-13 1340-01-14-13	Fees
1340-03-06-14 1340-01-14-14	Financial Responsibility Requirements
1340-03-06-15 1340-01-14-15	Liability
1340-03-06-16 1340-01-14-16	Audits and Inspections
1340-03-06-17 1340-01-14-17	Suspension, Revocation or Denial of Certification
1340-03-06-18 1340-01-14-18	Administrative Hearings

(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 1340-01-14, Rules of Ignition Interlock Device Program is repealed.

Authority: T.C.A. §§ 4-3-2009 and 55-10-412.

Chapter 1340-03-06, Rules of Ignition Interlock Device Program is proposed as new:

Rules
of
The Tennessee Department of Safety
Driver Control Division
Highway Patrol Division

Chapter ~~1340-01-14~~
Chapter 1340-03-06
Rules of Ignition Interlock Device Program

1340-03-06-.01 Purpose and Scope.

To establish uniform, statewide, minimum standards for ignition interlock devices and for the certification of ignition interlock device providers installers and the approval of such providers installers pursuant to T.C.A. § 55-10-412(e)(5).

Authority: T.C.A. §§ 4-3-2009 and 55-10-412.

1340-03-06-.02 Definitions.

- (1) Approved Ignition Interlock Device Provider Installer means an individual or business which has been approved and certified by the Department as meeting all of the minimum requirements set forth in these rules.
- (2) Commissioner means the commissioner of the Tennessee Department of Safety.
- (3) Department means the Tennessee Department of Safety.
- (4) Ignition Interlock Device means a device which connects a motor vehicle ignition system to a breath-alcohol analyzer and prevents a motor vehicle ignition from starting if a driver's blood alcohol level exceeds the calibrated setting on the device.
- (5) Ignition Interlock Device Provider means a person or company engaged in the business of manufacturing, selling, leasing, servicing and/or monitoring ignition interlock devices.
- (6) Ignition Interlock Device Installer means a person or company, affiliated with an Ignition Interlock Device Provider and engaged in the installation, monitoring, maintaining, and removal of ignition interlock devices.

- (7) Ignition Interlock Device Provider Installer Certificate means a certificate provided by the Department, once the Department is satisfied that the Ignition Interlock Device Installer complies with all of the minimum requirements set forth in this rule.
- (8) Ignition Interlock Program means the Department of Safety's system of regulating ignition interlock devices, installers, and providers.
- (9) Ignition Interlock Program Participant means an individual who has been ordered by a court, pursuant to the provisions of T.C.A. § 55-10-412, to operate a motor vehicle which has been equipped with a functioning ignition interlock device.

Authority: T.C.A. §§ 4-3-2009 and 55-10-412.

1340-03-06-.03 Ignition Interlock Device Provider Application Procedures.

- (1) Any individual or corporation business shall make application to be an approved and certified Ignition Interlock Device Installer on using forms supplied by the Department.
 - (a) The application shall be completed in full and shall include the following:
 - 1. Name and physical address of individual or business applying to be an Approved Ignition Interlock Provider Device Installer; ~~The addresses of planned locations in Tennessee.~~
 - 2. The physical addresses of planned installation locations in Tennessee;
 - 3. A list of the names of the persons who will be installing, servicing or ~~uninstalling~~ removing the ignition interlock devices;
 - 4. Three (3) or more business references;
 - 5. Information pertaining to the business' or individual's experience in providing the services of installing, servicing and ~~uninstalling~~ removing ignition interlock devices in other jurisdictions;
 - 6. A statewide criminal history background check performed through the Tennessee Bureau of Investigation (TBI);
 - 7. A copy of the current fee schedule for installation, monitoring, servicing, leasing, maintaining, and removal of devices.
 - 8. The name and address of the Ignition Interlock Device Provider that the applicant intends to be affiliated with (installing that provider's device).
- (2) Upon receipt of the application, the Department will process the application and conduct an on-site inspection; and
- (3) The applicant will be notified by U.S. mail of the approval or denial of the application. If the application is approved, the applicant shall receive the Ignition Interlock Provider Installer Certificate, which shall be valid for one (1) year. If the application is denied, the applicant will be informed of the reason.
- (4) An entity desiring to become an approved installer must apply separately for each Ignition Interlock Device Provider that they intend to be affiliated with, including submission of an application and all required information under (1)(a).

Authority: T.C.A. §§ 4-3-2009 and 55-10-412.

1340-03-06-.04 General Requirements.

- (1) The rules, regulations and requirements established herein are minimums, and may be exceeded by the Approved Ignition Interlock Device Installer and Provider.
- (2) The Approved Ignition Interlock Device Installer and Provider shall comply with all administrative rules and regulations that the Department may promulgate concerning the Ignition Interlock Program.

- (3) An Approved Ignition Interlock Device Installer and Provider shall have the ability to carry out the requirements as stated in this rule.
- (4) An Approved Ignition Interlock Device Provider Installer shall provide and maintain a service center within the geographical boundaries of the state of Tennessee, which is easily accessible and open during normal business hours.
- (5) An Approved Ignition Interlock Device Provider Installer shall comply with all minimum requirements for installation and any other state and federal laws applicable to ignition interlock devices or providers.
- (6) In order to continue as an Approved Ignition Interlock Device Provider Installer, the Approved Ignition Interlock Device Provider shall submit to the Department an application to renew its—the installer's certification and criminal history background checks on all installers sixty (60) days before the expiration of its certificate. The Department shall notify the Approved Ignition Interlock Device Installer and Provider of its decision before the expiration date of the current certificate. If re-approved, the Approved Ignition Interlock Installer and Provider shall receive a certificate valid for one (1) year. If re-certification is denied, the Department will make a written finding of the reason for denial. The Approved Ignition Interlock Provider shall have ten (10) days from the date of notification to correct any deficiencies and notify the Department in writing of such correction. The Approved Ignition Interlock Provider may also request a hearing pursuant to Paragraph 1340-1-14-18-Rule 1340-03-06-.18.

Authority: T.C.A. §§ 4-3-2009 and 55-10-412.

1340-03-06-.05 Approved Ignition Interlock Device Requirements.

- (1) Only ignition interlock devices that are alcohol specific fuel cell devices may be used. These must be capable of recording, through a reliable electronic information system, all reports required in these rules. It is mandatory that all devices meet or exceed the manufacturing standards established by the National Highway Traffic Safety Administration (NHTSA) in the Federal Register/Vol. 57, No. 67/ Tuesday, April 7, 1992. Adherence to these standards must be verified by a laboratory which subscribes to the quality code of the International Standards Organization of the American National Standards Institute – or another commensurate laboratory approved by the Department.
- (2) A breath alcohol content (BAC) of .02 or greater shall prevent the vehicle from starting and constitutes a failure for retests.
- (3) All installed devices must cause the vehicle's horn to blow and the lights to flash upon a violation of a rolling retest, and stopping only upon the ignition being turned off or a passed retest.
- (4) A violation will be recorded for any of the following reasons:
 - (a) The engine is started without passing a breath test or while in a lockout state;
 - (b) The user fails or refuses to take a rolling retest;
 - (c) The user delivers a breath sample at or above the violation level of .02; and
 - (d) The user tampers with the device.
- (5) Once five (5) violations have occurred, the user must return for service within seventy-two (72) hours or the device will lock out and prevent the vehicle from starting.

Authority: T.C.A. §§ 4-3-2009 and 55-10-412.

1340-03-06-.06 Ignition Interlock Provider Installer – Owner/Personnel Requirements.

- (1) Owner(s) of an Approved Ignition Interlock Device Provider Installer business shall not be an employee of the Department, shall have no conviction for a felony or any crime involving violence, dishonesty, deceit, fraud or indecency, shall have and maintain a valid driver license and shall comply with all administrative rules and regulations that the Department may promulgate concerning the Ignition Interlock Program.
- (2) Personnel who work for an Approved Ignition Interlock Device Provider Installer business shall not be an employee of the Department, shall have no conviction for a felony or any crime involving violence, dishonesty, deceit, fraud or indecency, shall have and maintain a valid driver license, and shall comply

with all administrative rules and regulations that the Department may promulgate concerning the Ignition Interlock Program. The applicant must not have been convicted of the offense of driving under the influence of an intoxicant in this or any other state two or more times within ten (10) years from the date of the application, and that none of such convictions must have occurred within five years from the date of application or renewal.

- (3) Falsification of any applications submitted by an Installer or Provider shall be sufficient grounds for denial of the application and suspension of all Ignition Interlock Device Installer certificates issued to the same Ignition Interlock Device Installer company.

Authority: T.C.A. §§ 4-3-2009 and 55-10-412.

1340-03-06-.07 Ignition Interlock Installation Requirements.

- (1) An ignition interlock device shall be installed, serviced and ~~uninstalled~~ removed in all makes and models of motor vehicles only by personnel who have been certified by the manufacturer of the ignition interlock device in the installation, ~~uninstallation~~ servicing and removal and ~~servicing~~ of such device. The Ignition Interlock Device Provider shall train all personnel in a timely manner to ensure the proper installation, servicing and removal of the device. The certified personnel shall only install, service or ~~uninstall~~ remove the approved ignition interlock devices at fixed facilities ~~fixed or mobile~~, that have been inspected and approved by the Department.
- (2) Under no circumstances will the Ignition Interlock Program Participant be allowed to watch the installation of the ignition interlock device. Adequate security measures shall be taken to ensure that areas where installations of ignition interlock devices occur shall not be visible to participants. Participants shall be confined to enclosed areas within the facility.
- (3) A reference and problem-solving guide, developed by the Approved Ignition Interlock Device Provider, shall be given to the Ignition Interlock Program Participant at the time of the installation. This guide shall include information on the correct operation of the ignition interlock device, location of service centers, service and procedures, emergency procedures, and how the ignition interlock device can detect non-compliance with the Ignition Interlock Program Participant's court order and device requirements.
- (4) Adequate security measures shall be taken to ensure that unauthorized personnel cannot gain access to materials such as tamper seals, installation instructions, and files of other Ignition Interlock Program Participants.
- (5) The Approved Ignition Interlock Device Provider Installer shall follow all written instructions from the manufacturer of the ignition interlock device for device installation and ~~uninstallation~~ removal.
- (6) The Approved Ignition Interlock Device Provider Installer will furnish hours of operation and a twenty-four (24) hour phone number to all Ignition Interlock Program Participants for use in the event of emergencies with the ignition interlock device.
- (7) The Approved Ignition Interlock Device Provider Installer is required to inspect all vehicles prior to installation and determine if the vehicle is in acceptable mechanical and electrical condition. For reasons of safety, no ignition interlock device will be installed until and unless the vehicle is capable of supporting such installation. The Approved Interlock Ignition Device Installer and Provider shall maintain a log of such inspections and use the vehicle's inspection in the ~~uninstallation~~ removal process.
- (8) Installations shall be executed in a professional manner, according to accepted trade standards and the manufacturer's instructions.
- (9) ~~Uninstallation~~ Removal of ignition interlock devices shall be carried out so that the ignition may be operated, reasonable wear and tear excepted, in the same manner as before installation of the ignition interlock device. All severed wires will be permanently soldered and insulated with heat-shrink-wrap or its equivalent.

Authority: T.C.A. §§ 4-3-2009 and 55-10-412.

1340-03-06-.08 Provider Orientation of Program Participant.

- (1) The Approved Ignition Interlock Device Provider Installer shall conduct an orientation on the correct use of the ignition interlock device for the Ignition Interlock Program Participant and for any family member or

friend who may drive the vehicle. Ignition Interlock Program Participants will be informed of the need to ensure that all vehicle users are adequately trained which may require a subsequent visit.

Authority: T.C.A. §§ 4-3-2009 and 55-10-412.

1340-03-06-.09 Proof of Installation of Ignition Interlock Devices.

- (1) Within two (2) working days of installation of the ignition interlock device, the Approved Ignition Interlock Device Provider shall complete the appropriate form as designated by the Department, and submit it to the Department as proof of installation by mail, electronic transmission or facsimile. This notice shall include:
 - (a) Name, address and telephone number of the Ignition Interlock Program Participant;
 - (b) Owner, make, model, year, Vehicle Identification Number (VIN), license plate number, and insurance information of the vehicle to which the interlock ignition device is installed;
 - (c) Serial number of the ignition interlock device installed; and
 - (d) Length of ignition interlock device term, date of monitoring checks, and payment schedule.
- (2) When an Ignition Interlock Program Participant arrives at the installation location after having been ordered to install an ignition interlock device on their vehicle, the installer or provider shall inspect the restricted license order and ascertain the reason that the device is required. This information MUST be included on the installation report that is sent to the Department.
- (3) If the restricted license order does not contain this information, the customer shall be refused service by the installer and told to return to the court of jurisdiction to have the form completed properly. This shall ensure that the data can be properly acquired.

Authority: T.C.A. §§ 4-3-2009 and 55-10-412.

1340-03-06-.10 Monitoring Requirements.

- (1) Servicing, inspection, and monitoring of each ignition interlock device shall occur thirty (30) days after the initial installation and at least every ~~sixty (60)~~ thirty (30) days thereafter. The Approved Ignition Interlock Provider shall maintain records on every Ignition Interlock Program Participant, including the results of every monitoring check. Violations or evidence of non-compliance and the reasons for such will be reported to the Department by mail, electronic transmission or facsimile within forty-eight (48) hours of detection.
- (2) Within two (2) working days of performing a monitoring check, the Approved Ignition Interlock Device Provider shall send to the Department by mail, electronic transmission or facsimile, the following:
 - (a) Name of Ignition Interlock Program Participant whose device was monitored;
 - (b) Number of miles driven during the monitoring period;
 - (c) Charges for monitoring visit;
 - (d) Date of next scheduled monitoring visit;
 - (e) Any type of repair work performed on the ignition interlock device and probable cause for its need; and
 - (f) Any areas of discussion with the Ignition Interlock Program Participant concerning problems or questions with the device or the status of the Participant.
- (3) Within two (2) working days of performing a monitoring check, the Approved Ignition Interlock Device Provider shall report to the Department by mail, electronic transmission or facsimile any evidence of:
 - (a) Altering, tampering with, bypassing, or removal of the ignition interlock device;
 - (b) Failure to abide by the terms and conditions of the court order or lease agreement, including

failure to appear for a monitoring visit;

- (c) Lockouts or violations and reasons for such;
- (d) Indications of non-compliance, such as failure to take a random or time test; and/or
- (e) Data indicating that the Ignition Interlock Program Participant has attempted to start the vehicle while under the influence of alcohol.

Authority: T.C.A. §§ 4-3-2009 and 55-10-412.

1340-03-06-.11 Repair or Replacement of Ignition Interlock Device.

- (1) The Approved Ignition Interlock Installer or Provider shall respond to all service inquiries by phone within ~~forty-five (45) minutes~~ one (1) hour of initial contact, during normal business hours. Repair or replacement of an ignition interlock device shall be conducted within forty-eight (48) hours of initial contact. The Approved Ignition Interlock Device Provider shall notify the Department of any changes in the ignition interlock device (i.e., Serial #, Type, etc.) by facsimile or electronic transmission within forty-eight (48) hours.
- (2) The Approved Ignition Interlock Device Installer or Provider shall be available to answer questions and to troubleshoot any mechanical problems relating to the ignition interlock device in the vehicle, or to repair/replace an inoperable or malfunctioning ignition interlock device during normal business hours.

Authority: T.C.A. §§ 4-3-2009 and 55-10-412.

1340-03-06-.12 Program Status Report.

- (1) At the half-way point at which the ignition interlock device is installed in the Ignition Interlock Program Participant's vehicle, the Approved Ignition Interlock Device Provider shall submit a status report to the Department's Planning & Research, Planning, and Development Section by mail, electronic transmission or facsimile, which summarizes all problems related to the monitoring and servicing of the ignition interlock device, as well as any written complaints received concerning the ignition interlock device or the Ignition Interlock Device Provider. The reports shall include the following categories:
 - (a) Ignition Interlock Program Participant error in operation and reasons for such;
 - (b) Faulty automotive equipment;
 - (c) Apparent misuse or attempts to circumvent the ignition interlock device, which did or did not cause damage, and the reasons for such; and
 - (d) Ignition interlock device failure due to material defect, design defect, and/or workmanship errors in construction, installation, or calibration.

Authority: T.C.A. §§ 4-3-2009 and 55-10-412.

1340-03-06-.13 Fees.

- (1) The fees for leasing or buying, monitoring, servicing, installation and ~~uninstallation~~ removal of the ignition interlock device shall be at a reasonable rate. ~~The court may establish a payment schedule pursuant to T.C.A. § 55-10-412.~~
- (2) The fee for installation of ignition interlock devices shall not exceed \$150.00.
- (3) Approved Ignition Interlock Installers shall charge reasonable and customary fees, not to exceed a total of \$100 per month for leasing, monitoring, and maintaining devices.
- (4) Approved Ignition Interlock Installers shall charge reasonable and customary fees, not to exceed a total of \$75 for the removal of devices.
- (5) The above fee rates shall be posted in a conspicuous place at the Approved Ignition Interlock Installer's office. The Approved Installer shall file a copy of the installation company's current fee schedule with the Department.

Authority: T.C.A. §§ 4-3-2009, 55-10-412 and 55-10-423.

1340-03-06-.14 Financial Responsibility Requirements

- (1) The Approved Ignition Interlock Device Provider shall maintain comprehensive general liability insurance in the amount of at least \$1,000,000.00 per occurrence with a \$3,000,000.00 aggregate total liability that shall cover defects or problems in or with product design and materials, workmanship during manufacture, calibration, installation and ~~uninstallation~~ removal, and use thereof. Such policies shall provide the Department with a forty-five (45) day prior written notice of cancellation, material change, or intent to lapse.

Authority: T.C.A. §§ 4-3-2009 and 55-10-412.

1340-03-06-.15 Liability.

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

Authority: T.C.A. §§ 4-3-2009 and 55-10-412.

1340-03-06-.16 Audits and Inspections.

- (1) Approved Ignition Interlock Device Providers Installers shall be subject to unannounced audits reviews and inspections of all records and subject to suspension or revocation if sufficient cause exists as determined by the Department that the Approved Ignition Interlock Device Provider Installer does not meet the requirements of any applicable law or these rules.

Authority: T.C.A. §§ 4-3-2009 and 55-10-412.

1340-03-06-.17 Suspension, Revocation or Denial of Certification

- (1) Failure to comply with any requirements set forth in the law or these rules may result in the denial, suspension or revocation of the Ignition Interlock Device Provider Installer Certification. Other reasons for denial, suspension or revocation may include, but are not limited to the following:
 - (a) Non-compliance with any of the minimum requirements stated in this rule;
 - (b) Providing false or inaccurate information to the Department;
 - (c) Assisting in or providing information that will enable the Ignition Interlock Program Participant to circumvent or tamper with the ignition interlock device; or
 - (d) Voluntarily request that such action be taken.
 - (e) Installing devices other than those supplied by the Provider referenced on the approved application.

Authority: T.C.A. §§ 4-3-2009 and 55-10-412.

1340-01-14-.18 Administrative Hearings

- (1) An Approved Ignition Interlock Device Installer or Provider may request in writing an administrative hearing within ten (10) days of written notification of any proposed denial, suspension or revocation. Such hearing shall be held in accordance with the Uniform Administrative Procedures Act.

Authority: T.C.A. §§ 4-3-2009 and 55-10-412.

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

Board Member	Aye	No	Abstain	Absent	Signature (if required)

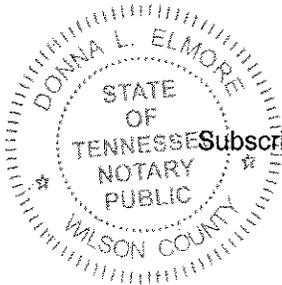
I certify that this is an accurate and complete copy of proposed rules, lawfully promulgated and adopted by the Tennessee Department of Safety on 10/29/2012, and is in compliance with the provisions of T.C.A. § 4-5-222. The Secretary of State is hereby instructed that, in the absence of a petition for 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: 10-29-2012

Signature: *Darrell Miller*

Name of Officer: Darrell Miller

Title of Officer: Captain, Tennessee Highway Patrol



Subscribed and sworn to before me on: 10-29-12

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
12-9-12
 Date

Department of State Use Only

Filed with the Department of State on: 12-17-12

Effective on: 5-31-13

Tre Hargett
 Secretary of State

RECEIVED
 2012 DEC 17 AM 11:13
 SECRETARY OF STATE
 REGISTRATIONS

G.O.C. STAFF RULE ABSTRACT

DEPARTMENT: Board of Architectural and Engineering Examiners

DIVISION: Regulatory Boards

SUBJECT: Examinations; Renewal of Registration; Misconduct; Seals; Enforcement Actions; Continuing Education

STATUTORY AUTHORITY: Tennessee Code Annotated, Section 62-2-203

EFFECTIVE DATES: March 11, 2013 through June 30, 2013

FISCAL IMPACT: Minimal

STAFF RULE ABSTRACT:

Rules 0120-01-08 Applications — Landscape Architect and 0120-01-23 Reexamination — Landscape Architect are amended to delete references to the Board collecting examination fees. The landscape architecture exam will be fully computerized after the June 2012 administration, and fees will be paid directly to the test administrator.

Rule 0120-01-13 Examinations — General is amended by adding a new paragraph outlining the conditions under which the Board may invalidate an applicant's examination results or prohibit the applicant from taking an examination for a period of time determined by the Board.

Rule 0120-01-25 Renewal of Registration is amended to specify that registrants holding a retired certificate may continue to refer to themselves as an architect, engineer, or landscape architect, provided that the word 'retired' is used in conjunction with the title.

Rule 0120-02-02 Proper Conduct of Practice is amended by adding a new paragraph prohibiting registrants from competitively bidding professional services on local public works projects.

Rules 0120-02-07 Misconduct and 0120-04-10 Professional Conduct are amended to require registrants to report felony convictions and disciplinary actions resulting in revocation, suspension or voluntary surrender to the Board within sixty (60) days of the action and to require registrants to respond to Board requests and investigations within thirty (30) days of the mailing of communications, unless an earlier response is specified. Language is also added stating that a registrant may be deemed by the Board to be guilty of misconduct in his professional practice if he fails to comply with a lawful order of the Board.

Rule 0120-02-08 Seals is amended to clarify the requirements for revising plans prepared by another registrant and to specifically prohibit owners/clients, contractors, subcontractors, other design professionals, or any of their agents, employees or assigns, from making changes to final plans, specifications, drawings, reports or other documents after final revision and sealing by a registrant. The language regarding electronic seals, signatures, and dates of signature is also amended to more closely mirror the language in the National Council of Examiners for Engineering and Surveying (NCEES) *Model Rules*.

Rule 0120-04-08 Renewal of Registration is amended by adding a new paragraph allowing retired registered interior designers to continue use of the title “registered interior designer,” provided that the word “retired” is used in conjunction with the title, and to renew such registration without cost.

New rules are created (0120-02-. 10 Other Enforcement Actions and 0120-04-. 12 Other Enforcement Actions) giving authority to the Board to require passage of a law and rules exam, additional continuing education hours, or probation with peer review of technical work in disciplinary cases.

Rules 0120-05-06 Types of Acceptable Continuing Education and 0120-05-07 Credits are amended to allow registrants to claim a maximum of eight (8) Professional Development Hours per biennium for attendance at Board meetings and professional society legislative events, and active participation in a technical/professional society or organization, or a technical or professional public board, as an officer or committee member.

Public Hearing Comments

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

Please see attached documentation.



**STATE OF TENNESSEE
DEPARTMENT OF COMMERCE AND INSURANCE
OFFICE OF LEGAL COUNSEL
500 JAMES ROBERTSON PARKWAY
DAVY CROCKETT TOWER
NASHVILLE, TENNESSEE 37243
TELEPHONE (615) 741-3072 FACSIMILE (615) 532-4750**

September 27, 2012

VIA UNITED STATES MAIL

Mr. Trey Wheeler, President
AIA Tennessee
TWH Architects
651 E 4th St. Ste. 500
Chattanooga, Tennessee 37403

***RE: Tennessee State Board of Architectural & Engineering Examiners
Rulemaking Hearing re: Chapters 0120—01 [Registration
Requirements and Procedures], 0120—02 [Rules of Professional
Conduct], 0120—04 [Interior Designers] and 0120—05
[Continuing Education]***

Dear Mr. Wheeler:

I serve as attorney for the Tennessee State Board of Architectural and Engineering Examiners ("Board"). This letter addresses oral comments made by you relative to the Board's public rulemaking hearing held on August 15, 2012. The purpose of the rulemaking hearing was to implement amendments to various chapters of the Board's administrative rules in order to update those rules largely in anticipation of increasing use of seals in electronic media in the practice of the design trades, the process of another design professional completing or altering the work product of another and the clarification of qualification-based selection of public projects. After due consideration of all available information, the Board has decided to adopt the chapters with amendments based on public comment, feeling that the amendments best serve to protect the health, safety and welfare of Tennessee's citizens when the chapters becomes effective.

Your comments in support of the proposed amendments were well-received and the Board certainly appreciates you and your organization's involvement in the practice of architecture. In particular, you expressed AIA Tennessee's support of the proposed amendments that address qualifications-based selection of design professionals relative to public projects. The Board is pleased with your support as it implements this concept to help ensure that the most appropriate design professionals receive the opportunity to work with projects that directly impact public safety.

Again, thank you for your input and your continuing support for the Board as it regulates our professions.

Sincerely,

Robert E. Herndon
Attorney for the Board



**STATE OF TENNESSEE
DEPARTMENT OF COMMERCE AND INSURANCE
OFFICE OF LEGAL COUNSEL
500 JAMES ROBERTSON PARKWAY
DAVY CROCKETT TOWER
NASHVILLE, TENNESSEE 37243
TELEPHONE (615) 741-3072 FACSIMILE (615) 532-4750**

September 27, 2012

VIA UNITED STATES MAIL

Ms. Candy Toler, Director
Tennessee Society of Professional Engineers
American Council of Engineering Companies
800 Fort Negley Blvd.
Nashville, Tennessee 37203

***RE: Tennessee State Board of Architectural & Engineering Examiners
Rulemaking Hearing re: Chapters 0120—01 [Registration
Requirements and Procedures], 0120—02 [Rules of Professional
Conduct], 0120—04 [Interior Designers] and 0120—05
[Continuing Education]***

Dear Ms. Toler:

I serve as attorney for the Tennessee State Board of Architectural and Engineering Examiners ("Board"). This letter addresses oral comments made by you relative to the Board's public rulemaking hearing held on August 15, 2012. The purpose of the rulemaking hearing was to implement amendments to various chapters of the Board's administrative rules in order to update those rules largely in anticipation of increasing use of seals in electronic media in the practice of the design trades, the process of another design professional completing or altering the work product of another and the clarification of qualification-based selection of public projects. After due consideration of all available information, the Board has decided to adopt the chapters with amendments based on public comment, feeling that the amendments best serve to protect the health, safety and welfare of Tennessee's citizens when the chapters becomes effective.

Your comments in support of the proposed amendments were well-received and the Board certainly appreciates you and your organizations' involvement in the practice of professional engineering. Also, the Board hopes your concern over the assessment of discipline for failing to respond to the Board's inquiries was eased by the public discussion. That amendment is intended to provide registrants with a sense of importance in responding to the Board when it asks for information for which a response is required, typically relative to complaint responses and audits. On the other hand, because correspondence regarding license applications and renewals are the responsibility of the applicant/registrant and are not initiated by the Board, nor are they required for the Board to reach a decision on a disciplinary or audit matter, this amendment is not intended to be applied in those situations.

Again, thank you for your input and your continuing support for the Board as it regulates our professions.

Sincerely,

Robert E. Herndon
Attorney for the Board



**STATE OF TENNESSEE
DEPARTMENT OF COMMERCE AND INSURANCE
OFFICE OF LEGAL COUNSEL
500 JAMES ROBERTSON PARKWAY
DAVY CROCKETT TOWER
NASHVILLE, TENNESSEE 37243
TELEPHONE (615) 741-3072 FACSIMILE (615) 532-4750**

September 27, 2012

VIA UNITED STATES MAIL

Mr. Nathan Ridley, Esq.
Bradley Arant Boult Cummings
1600 Division St. Ste. 700
Nashville, Tennessee 37203

***RE: Tennessee State Board of Architectural & Engineering Examiners
Rulemaking Hearing re: Chapters 0120—01 [Registration
Requirements and Procedures], 0120—02 [Rules of Professional
Conduct], 0120—04 [Interior Designers] and 0120—05
[Continuing Education]***

Dear Mr. Ridley:

I serve as attorney for the Tennessee State Board of Architectural and Engineering Examiners ("Board"). This letter addresses oral comments made by you relative to the Board's public rulemaking hearing held on August 15, 2012. The purpose of the rulemaking hearing was to implement amendments to various chapters of the Board's administrative rules in order to update those rules largely in anticipation of increasing use of seals in electronic media in the practice of the design trades, the process of another design professional completing or altering the work product of another and the clarification of qualification-based selection of public projects. After due consideration of all available information, the Board has decided to adopt the chapters with amendments based on public comment, feeling that the amendments best serve to protect the health, safety and welfare of Tennessee's citizens when the chapters becomes effective.

Your comments in support of the proposed amendments were well-received and the Board certainly appreciates you and your organizations' involvement in the practice of landscape architecture. Also, the Board hopes your concern over the assessment of discipline for failing to respond to the Board's inquiries is eased by the public discussion. That amendment is intended to provide registrants with a sense of importance in responding to the Board when it asks for information for which a response is required, typically relative to complaint responses and audits. On the other hand, because correspondence regarding license applications and renewals are the responsibility of the applicant/registrant and are not initiated by the Board, nor are they required for the Board to reach a decision on a disciplinary or audit matter, this amendment is not intended to be applied in those situations. It is also appreciated that you voiced your organizations support of the concept of qualifications-based selection for the design professionals that are best suited to provide the services to create public structures that best protect public safety.

Again, thank you for your input and your continuing support for the Board as it regulates our professions.

Sincerely,

Robert E. Herndon
Attorney for the Board



**STATE OF TENNESSEE
DEPARTMENT OF COMMERCE AND INSURANCE
OFFICE OF LEGAL COUNSEL
500 JAMES ROBERTSON PARKWAY
DAVY CROCKETT TOWER
NASHVILLE, TENNESSEE 37243
TELEPHONE (615) 741-3072 FACSIMILE (615) 532-4750**

September 27, 2012

VIA UNITED STATES MAIL

Mr. Don Miller, Vice President
AIA Tennessee
Thomas Miller & Partners, PLLC
5210 Maryland Way, Ste. 200
Brentwood, Tennessee 37027-5008

***RE: Tennessee State Board of Architectural & Engineering Examiners
Rulemaking Hearing re: Chapters 0120—01 [Registration
Requirements and Procedures], 0120—02 [Rules of Professional
Conduct], 0120—04 [Interior Designers] and 0120—05
[Continuing Education]***

Dear Mr. Miller:

I serve as attorney for the Tennessee State Board of Architectural and Engineering Examiners ("Board"). This letter addresses oral comments made by you relative to the Board's public rulemaking hearing held on August 15, 2012. The purpose of the rulemaking hearing was to implement amendments to various chapters of the Board's administrative rules in order to update those rules largely in anticipation of increasing use of seals in electronic media in the practice of the design trades, the process of another design professional completing or altering the work product of another and the clarification of qualification-based selection of public projects. After due consideration of all available information, the Board has decided to adopt the chapters with amendments based on public comment, feeling that the amendments best serve to protect the health, safety and welfare of Tennessee's citizens when the chapters becomes effective.

Your comments in support of the proposed amendments were well-received and the Board certainly appreciates you and your organization's involvement in the practice of architecture. In particular, along with your colleague President Trey Wheeler of the AIA Tennessee, you expressed your organizations's support of the proposed amendments that address qualifications-based selection of design professionals relative to public projects. The Board is pleased with your support as it implements this concept to help ensure that the most appropriate design professionals receive the opportunity to work with projects that directly impact public safety.

Again, thank you for your input and your continuing support for the Board as it regulates our professions.

Sincerely,

Robert E. Herndon
Attorney for the Board



**STATE OF TENNESSEE
DEPARTMENT OF COMMERCE AND INSURANCE
OFFICE OF LEGAL COUNSEL
500 JAMES ROBERTSON PARKWAY
DAVY CROCKETT TOWER
NASHVILLE, TENNESSEE 37243
TELEPHONE (615) 741-3072 FACSIMILE (615) 532-4750**

September 27, 2012

VIA UNITED STATES MAIL

Mr. Brian Locke, President
AIA Chattanooga
Artech Design Group, Inc.
1410 Cowart Street
Chattanooga, Tennessee 37408

***RE: Tennessee State Board of Architectural & Engineering Examiners
Rulemaking Hearing re: Chapters 0120—01 [Registration
Requirements and Procedures], 0120—02 [Rules of Professional
Conduct], 0120—04 [Interior Designers] and 0120—05
[Continuing Education]***

Dear Mr. Locke:

I serve as attorney for the Tennessee State Board of Architectural and Engineering Examiners ("Board"). This letter addresses oral comments made by you relative to the Board's public rulemaking hearing held on August 15, 2012. The purpose of the rulemaking hearing was to implement amendments to various chapters of the Board's administrative rules in order to update those rules largely in anticipation of increasing use of seals in electronic media in the practice of the design trades, the process of another design professional completing or altering the work product of another and the clarification of qualification-based selection of public projects. After due consideration of all available information, the Board has decided to adopt the chapters with amendments based on public comment, feeling that the amendments best serve to protect the health, safety and welfare of Tennessee's citizens when the chapters becomes effective.

Your comments in support of the proposed amendments were well-received and the Board certainly appreciates you and your organization's involvement in the practice of architecture. In particular, along with your colleagues President Trey Wheeler of the AIA Tennessee and Vice President Don Miller of AIA Tennessee, you expressed AIA Chattanooga's support of the proposed amendments that address qualifications-based selection of design professionals relative to public projects. The Board is pleased with your support as it implements this concept to help ensure that the most appropriate design professionals receive the opportunity to work with projects that directly impact public safety.

Again, thank you for your input and your continuing support for the Board as it regulates our professions.

Sincerely,

Robert E. Herndon
Attorney for the Board



**STATE OF TENNESSEE
DEPARTMENT OF COMMERCE AND INSURANCE
OFFICE OF LEGAL COUNSEL
500 JAMES ROBERTSON PARKWAY
DAVY CROCKETT TOWER
NASHVILLE, TENNESSEE 37243
TELEPHONE (615) 741-3072 FACSIMILE (615) 532-4750**

September 27, 2012

VIA UNITED STATES MAIL

Mr. Kim Chamberlin, AIA
Upland Design Group, Inc.
P.O. Box 1026
Crossville, Tennessee 38557

***RE: Tennessee State Board of Architectural & Engineering Examiners
Rulemaking Hearing re: Chapters 0120-01 [Registration
Requirements and Procedures], 0120-02 [Rules of Professional
Conduct], 0120-04 [Interior Designers] and 0120-05
[Continuing Education]***

Dear Mr. Chamberlin:

I serve as attorney for the Tennessee State Board of Architectural and Engineering Examiners ("Board"). This letter addresses oral comments made by you relative to the Board's public rulemaking hearing held on August 15, 2012. The purpose of the rulemaking hearing was to implement amendments to various chapters of the Board's administrative rules in order to update those rules largely in anticipation of increasing use of seals in electronic media in the practice of the design trades, the process of another design professional completing or altering the work product of another and the clarification of qualification-based selection of public projects. After due consideration of all available information, the Board has decided to adopt the chapters with amendments based on public comment, feeling that the amendments best serve to protect the health, safety and welfare of Tennessee's citizens when the chapters becomes effective.

Your comments in support of the proposed amendments were well-received and the Board certainly appreciates you and your organization's involvement in the practice of architecture. In particular, you expressed your organization's support of the proposed amendments that address qualifications-based selection of design professionals relative to public projects. The Board is pleased with your support as it implements this concept to help ensure that the most appropriate design professionals receive the opportunity to work with projects that directly impact public safety.

Again, thank you for your input and your continuing support for the Board as it regulates our professions.

Sincerely,

Robert E. Herndon
Attorney for the Board

Impact on Local Governments

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

The Board of Architectural and Engineering Examiners licenses only individuals and foresees no financial impact on any local governments.

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. Types of small businesses directly affected:

These amendments would not impact small businesses because the Board licenses individuals, not entities.

2. Projected reporting, recordkeeping, and other administrative costs:

There are no projected administrative costs as a result of these amendments.

3. Probable effect on small businesses:

There is no expected adverse impact on small businesses as a result of these amendments.

4. Less burdensome, intrusive, or costly alternative methods:

The Board knows of no other alternative method to achieve the goals exhibited by these rules.

5. Comparison with federal and state counterparts:

There are no federal counterparts to the issues addressed by these rules.

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

For Department of State Use Only

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

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

Agency/Board/Commission:	Tennessee State Board of Architectural and Engineering Examiners
Division:	Division of Regulatory Boards, Department of Commerce and Insurance
Contact Person:	Robert Herndon, Attorney for the Board
Address:	500 James Robertson Parkway Nashville, Tennessee
Zip:	37243
Phone:	(615) 741-9461
Email:	Robert.Herndon@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
0120-01	Registration Requirements and Procedures
Rule Number	Rule Title
0120-01-.08	Applications – Landscape Architect
0120-01-.13	Examinations – General
0120-01-.23	Reexamination – Landscape Architect
0120-01-.25	Renewal of Registration

Chapter Number	Chapter Title
0120-02	Rules of Professional Conduct
Rule Number	Rule Title
0120-02-.02	Proper Conduct of Practice
0120-02-.07	Misconduct
0120-02-.08	Seals
0120-02-.10	Other Enforcement Actions

Chapter Number	Chapter Title
0120-04	Interior Designers
Rule Number	Rule Title
0120-04-.08	Renewal of Registration
0120-04-.10	Professional Conduct
0120-04-.12	Other Enforcement Actions

Chapter Number	Chapter Title
----------------	---------------

0120-05	Continuing Education
Rule Number	Rule Title
0120-05-.06	Types of Acceptable Continuing Education
0120-05-.07	Credits

Chapter 0120-01
Registration Requirements and Procedures

Amendments

Paragraph (1) of Rule 0120-01-.08 Applications – Landscape Architect is amended by deleting the text of the paragraph in its entirety and substituting instead the following language so that, as amended, the paragraph shall read:

- (1) An applicant for registration as a landscape architect shall submit with the application a nonrefundable application fee of thirty dollars (\$30.00). ~~Upon notification to the applicant of approval to take any required examination(s), the applicant shall pay to the Board the cost of the current examination(s) and scoring.~~ An applicant who has passed the required examination(s) shall also pay a biennial registration fee of one hundred forty dollars (\$140.00) and shall receive a certificate of registration.

Authority: T.C.A. §§ 62-2-203(c), 62-2-307, and 62-2-301(a).

Rule 0120-01-.13 Examinations – General is amended by adding the following language as a new paragraph (3), so that, as amended, the rule in its entirety shall read:

- (1) Failure of an applicant to turn in a paper on every section of an examination for which the applicant is scheduled will result in failure of the entire examination, unless the applicant presents evidence satisfactory to the Board justifying such incompleteness.
- (2) If an applicant passes the required examination(s) and is not approved for registration, his application will be held pending. Such applicant may request to appear before the full Board at its next scheduled meeting.
- (3) An applicant's examination results may be invalidated and an applicant may be prohibited from taking the examination for a period of time as determined by the Board for violations of examination policies, procedures, and candidate agreements, including, but not limited to:
 - (a) Communicating with another examinee during administration of the examination;
 - (b) Copying another examinee's answers or permitting another examinee to copy one's answers;
 - (c) Possessing unauthorized devices or materials during the examination;
 - (d) Impersonating an examinee or permitting an impersonator to take the examination on one's behalf;
 - (e) Removing any secured examination materials from the examination room;
 - (f) Unauthorized disclosure of examination questions or content;
 - (g) Failure to cooperate with the Board's investigation of examination irregularities;
 - (h) Disruptive or abusive behavior; or
 - (i) Other actions that would compromise the integrity or security of the examination.

Any licensure examination taken and passed in another jurisdiction by the examinee, while the examinee is barred from taking an examination in Tennessee, will not be acceptable for licensure purposes in Tennessee.

Authority: T.C.A. § 62-2-203(c) and 62-2-301(a).

Rule 0120-01-.23 Reexamination – Landscape Architect is amended by deleting paragraph (2) in its entirety so
SS-7039 (October 2011) 3 RDA 1693

that, as amended, the rule in its entirety shall read:

- (1) Policy. Reexamination of candidates for registration as a landscape architect will be permitted in accordance with the policy prescribed by the CLARB.
- ~~(2) The fees for reexamination shall be as follows:~~

~~Individual Section(s) \$75.00 plus the cost of the required section(s).~~

Authority: T.C.A. § 62-2-203(c).

Paragraph (5) of Rule 0120-01-.25 Renewal of Registration is amended by deleting the text of subparagraph (b) in its entirety and substituting instead the following language so that, as amended, the paragraph in its entirety shall read:

- (5) (a) A registered certificate holder (over age 62) may place his certificate, if in good standing, in retirement status during the biennial license renewal cycle by filing a form designated by the Board. No fee shall be required. Such registrant shall renew his certificate by so notifying the Board.
- (b) A registrant holding a retired certificate may refer to himself as an engineer, architect, or landscape architect ~~or registered interior designer~~, including on correspondence and business cards, provided that the word "retired" is used in conjunction with the title. ~~However,~~ but a holder of a retired certificate may not engage in or offer to engage in the practice of engineering, architecture or landscape architecture as defined by T.C.A. § 62-2-102. Practice or offer to practice in violation of this subparagraph shall be considered to be misconduct and may subject the registrant to disciplinary action by the Board.
- (c) A registrant holding a retired certificate may not engage in any activity constituting the practice or offer to practice of engineering, architecture or landscape architecture in the State of Tennessee without first notifying the Board, in writing, as to a change to "active" status and paying a biennial license renewal fee of one hundred forty dollars (\$140.00).

Authority: T.C.A. §§ 62-2-203(c), (d) and 62-2-307(c).

Chapter 0120-02
Rules of Professional Conduct

Amendments

Rule 0120-02-.02 Proper Conduct of Practice is amended by adding the following language as a new paragraph (6) so that, as amended, the rule in its entirety shall read:

- (1) The registrant shall at all times recognize the primary obligation to protect the safety, health and welfare of the public in the performance of the registrant's professional duties.
- (2) If the registrant becomes aware of a decision taken by an employer, client, or contractor, against the registrant's advice, which violates applicable Federal, State or Local building Laws and Regulations or which may affect adversely the safety to the public, the registrant shall:
 - (a) Report the decision to the local building inspector or other public official charged with the enforcement of the applicable Federal, State or Local building Laws and Regulations;
 - (b) Refuse to consent to the decision; and
 - (c) In circumstances where the registrant reasonably believes that other such decisions will be taken notwithstanding the registrant's objections, terminate services with reference to the project.

- (3) A registrant possessing knowledge of a violation of T.C.A. Title 62, chapter 2, or this chapter, shall report such knowledge to the Board in writing and shall cooperate with the Board in furnishing such further information or assistance as it may require.
- (4) The registrant shall maintain the continuing education records required by rule 0120-05-.10 records for a period of four (4) years and shall furnish such records to the Board for audit verification purposes within thirty (30) days of the Board's request.
- (5) A registrant possessing knowledge of an applicant's qualifications for registration shall respond in writing to the Board regarding those qualifications when requested to do so by the Board.
- ~~(6) A registrant may not enter into a contract for professional services on any basis other than direct negotiation with any governmental entity that is prohibited by T.C.A. § 12-4-106(a)(2)(A) from making a selection or awarding a contract on the basis of competitive bids, thereby precluding participation in any system requiring a comparison of compensation. Upon selection, a registrant may state compensation to a prospective client in direct negotiation where architectural, engineering, or landscape architectural services necessary to protect the public health, safety, and welfare have been defined.~~

Authority: T.C.A. § 62-2-203(c).

Paragraph (5) of Rule 0120-02-.07 Misconduct is amended by deleting the text of the paragraph in its entirety and substituting instead the following language so that, as amended, the paragraph shall read:

- (5) A registrant may be deemed by the Board to be guilty of misconduct in his professional practice if:
 - (a) He has pleaded guilty or nolo contendere to or is convicted in a court of competent jurisdiction of a felony or fails to report such action to the Board in writing within sixty (60) days of the action;
 - (b) His license or certificate of registration to practice architecture, engineering or landscape architecture in another jurisdiction is revoked, suspended or voluntarily surrendered as a result of disciplinary proceedings or he fails to report such action to the Board in writing within sixty (60) days of the action;
 - (c) He has been certified by the department of human services as not being in compliance with an order of support pursuant to T.C.A. §§ 36-5-705 – 36-5-709; ~~or~~
 - (d) He has been delinquent in the payment of the professional privilege tax pursuant to T.C.A. §§ 67-4-1702 – 67-4-1704;
 - ~~(e) He fails to respond to Board requests and investigations within thirty (30) days of the mailing of communications, unless an earlier response is specified; or~~
 - ~~(f) He fails to comply with a lawful order of the Board.~~

Authority: T.C.A. §§ 62-2-203(c) and 62-2-308.

Paragraph (5) of Rule 0120-02-.08 Seals is amended by deleting the text of the paragraph in its entirety and substituting instead the following language so that, as amended, the paragraph shall read:

- (5) (a) No registrant shall affix his seal or signature to sketches, working drawings, specifications or other documents developed by others not under his responsible charge and not subject to the authority of that registrant in critical professional judgments.
- ~~(b) In circumstances where a registrant can no longer provide services on a project (such as death, retirement, disability, contract termination, etc.), a successor registrant may perform work on a set of plans originally prepared by another registrant. If the plans are incomplete (are at a stage prior to submittal to a reviewing official), the successor registrant may not seal the set of drawings prepared by the original registrant; rather, the~~

successor registrant must take all steps necessary to ensure that the drawings were prepared under his or her responsible charge. If the plans are complete and have been submitted to a reviewing official, the successor registrant may prepare and seal addenda sheets if revisions are necessary.

Authority: T.C.A. §§ 62-2-203(c), 62-2-306, and 62-2-306(d).

Paragraph (6) of Rule 0120-02-.08 Seals is amended by deleting the text of subparagraph (b) in its entirety and substituting instead the following language so that, as amended, the paragraph in its entirety shall read:

- (6) (a) Responsible Charge. Plans, specifications, drawings, reports or other documents will be deemed to have been prepared under the responsible charge of a registrant only when:
1. The client requesting preparation of such plans, specifications, drawings, reports or other documents makes the request directly to the registrant, or to the registrant's employee at the time initial client contact is made, so long as the registrant has the right to control and direct the employee in the material details of how the work is to be performed;
 2. The registrant supervises and is involved in the preparation of the plans, specifications, drawings, reports or other documents and has input into and full knowledge of their preparation prior to their completion;
 3. The registrant reviews the final plans, specifications, drawings, reports or other documents; and
 4. The registrant has the authority to, and does, make any necessary and appropriate changes to the final plans, specifications, drawings, reports or other documents; and
 5. Contributions of information or predrawn detail items or detail units that are incidental to and intended to be integrated into a registrant's technical submissions are from trusted sources (including, but not limited to, manufacturers, installers, consultants, owners, or contractors), are subject to appropriate review, and are then coordinated and integrated into the design by the registrant.
- (b) Except as provided by rule 0120-02-.08(5) and (6), any changes made to the final plans, specifications, drawings, reports or other documents after final revision and sealing by the registrant are prohibited by any person other than the registrant, including but not limited to owners/clients, contractors, subcontractors, other design professionals, or any of their agents, employees or assigns.
- (c) Mere review of work prepared by another person, even if that person is the registrant's employee, does not constitute responsible charge unless the registrant has met the criteria set out above.
- (d) The intent of the definition of responsible charge may be met if all provisions of the definition are met using remote electronic or other communication means.

Authority: T.C.A. §§ 62-2-203(c), 62-2-306, and 62-2-306(d).

Paragraph (8) of rule 0120-02-.08 Seals is amended by deleting the text of subparagraph (b) in its entirety and substituting instead the following language so that, as amended, the paragraph in its entirety shall read:

- (8) (a) Subject to the requirements of this rule, rubber-stamp, embossed, transparent self-adhesive or electronically generated seals may be used. Such stamps or seals shall not include the registrant's signature or date of signature.
- (b) Subject to the requirements of this rule, the registrant may affix an electronically

~~generated signature and date of signature to documents; provided, however, that the registrant utilizes a secure method of affixation and provided that the registrant does not authorize any other person to so affix his signature and date. Electronic signatures and dates of signature are not required to be placed across the face and beyond the circumference of the seal, but must be placed adjacent to the seal. Documents that are signed using a digital signature must have an electronic authentication process attached to or logically associated with the electronic document. The digital signature must be:~~

- ~~i. Unique to the individual using it;~~
- ~~ii. Capable of verification;~~
- ~~iii. Under the sole control of the individual using it; and~~
- ~~iv. Linked to a document in such a manner that the digital signature is invalidated if any data in the document is changed.~~

Authority: T.C.A. §§ 62-2-203(c), 62-2-306, and 62-2-306(d).

Chapter 0120-02
Rule of Professional Conduct

New Rule

Rule 0120-02-.10 Other Enforcement Actions is added to Chapter 0120-02, and shall read as follows:

0120-02-.10 Other Enforcement Actions.

With respect to any registrant, the Board may, in addition to or in lieu of any other lawful disciplinary action, take enforcement action against any registrant who is a respondent in a disciplinary case. Other enforcement actions may include, but are not limited to, the following:

- (1) Passage of a laws and rules examination;
- (2) Completion of additional, Board-assigned continuing education hours (with appropriate documentation required); or
- (3) Assignment of a probationary period with peer review of all technical work, accompanied by reporting requirements from the reviewer.

Authority: T.C.A. § 62-2-203(c).

Chapter 0120-04
Interior Designers

Amendments

Rule 0120-04-.08 Renewal of Registration is amended by adding the following language as a new paragraph (5) so that, as amended, the rule in its entirety shall read:

- (1) All certificates of registration issued to a registered interior designer are subject to biennial renewal (every two (2) years) in accordance with the provisions of T.C.A. §56-1-302(b).
- (2) A registered interior designer may renew a current, valid registration by submitting a renewal form approved by the board, the required renewal fee, and evidence of having completed the number of professional development hours (PDH's) required by rule 0120-05-.04.
- (3) The fee for biennial renewal of certificates of registration for registered interior designers shall be in the amount of one hundred forty dollars (\$140.00).
- (4) The penalty for late renewal shall be in the amount of ten dollars (\$10.00) for each month or fraction of a month which elapses during the six (6)-month late renewal period before payment is tendered.

- (5) (a) A registered certificate holder (over age 62) may place his certificate, if in good standing, in retirement status during the biennial license renewal cycle by filing a form designated by the Board. No fee shall be required. Such registrant shall renew his certificate by so notifying the Board.
- (b) A registrant holding a retired certificate may refer to himself as a registered interior designer, including on correspondence and business cards, provided that the word "retired" is used in conjunction with the title. Use of the title in violation of this subparagraph shall be considered to be misconduct and may subject the registrant to disciplinary action by the Board.
- (c) A registrant holding a retired certificate may return to "active" status by notifying the Board, in writing, as to a change to "active" status and paying a biennial registration renewal fee of one hundred forty dollars (\$140.00).

Authority: T.C.A. §§ 62-2-203(c) and 62-2-307(f).

Paragraph (14) of Rule 0120-04-.10 Professional Conduct is amended by deleting the text of the paragraph in its entirety and substituting instead the following language so that, as amended, the paragraph shall read:

- (14) The registrant may be deemed by the board to be guilty of misconduct if:
- (a) He has pleaded guilty or nolo contendere to or is convicted in a court of competent jurisdiction of a felony or fails to report such action to the Board in writing within sixty (60) days of the action; or
- (b) His license or certificate of interior design title is revoked, suspended or voluntarily surrendered as a result of disciplinary proceedings in another jurisdiction or he fails to report such action to the Board in writing within sixty (60) days of the action;
- (c) He fails to respond to Board requests and investigations within thirty (30) days of the mailing of communications, unless an earlier response is specified; or
- (d) He fails to comply with a lawful order of the Board.

Authority: T.C.A. § 62-2-203(c).

Chapter 0120-04
Interior Designers

New Rule

0120-04-.12 Other Enforcement Actions is added to Chapter 0120-04, and shall read as follows:

0120-04-.12 Other Enforcement Actions.

With respect to any registrant, the Board may, in addition to or in lieu of any other lawful disciplinary action, take enforcement action against any registrant who is a respondent in a disciplinary case. Other enforcement actions may include, but are not limited to, the following:

- (1) Passage of a laws and rules examination; or
- (2) Completion of additional, Board-assigned continuing education hours (with appropriate documentation required).

Authority: T.C.A. § 62-2-203(c).

Chapter 0120-05
Continuing Education

Amendments

Paragraph (2) of rule 0120-05-.06 Types of Acceptable Continuing Education is amended by deleting the text of subparagraph (i) in its entirety and substituting instead the following language so that, as amended, the paragraph in its entirety shall read:

- (2) Continuing education activities for which credit may be given by the Board include, but are not limited to the following:
 - (a) Successful completion or monitoring of college or university sponsored courses;
 - (b) Successful completion of courses which are awarded continuing education units (CEU's);
 - (c) Attendance at structured seminars, tutorials, short courses, correspondence courses, televised courses, Internet courses, or videotaped courses;
 - (d) Attendance at in-house educational programs sponsored by corporations or other organizations;
 - (e) Teaching or instructing as described in (a) through (d) above, unless teaching or instructing is the registrant's regular employment;
 - (f) Authoring published papers, articles or books;
 - (g) Making presentations at technical meetings;
 - (h) Attendance at program presentations at related technical or professional meetings where program content is comprised of at least one (1) PDH;
 - (i) Attendance at Board meetings and professional society legislative events, and active participation in a technical/professional society or organization, or a technical or professional public board, as an officer or committee member;
 - (j) Active participation in educational outreach activities involving K-12 or higher education students; and,
 - (k) All such activities as described in (a) through (j) above must be relevant to the practice of architecture, engineering, landscape architecture or interior design as determined by the Board and may include technical, ethical or managerial content.

Authority: T.C.A. § 62-2-203(d).

Paragraph (1) of Rule 0120-05-.07 Credits is amended by deleting the text of subparagraph (e) in its entirety and substituting instead the following language so that, as amended, the paragraph in its entirety shall read:

- (1) Professional Development Hours of credit for qualifying courses successfully completed which offer semester hour, quarter hour, or CEU credit are as specified above. All other activities will be credited one (1) PDH for each contact hour with the following exceptions:
 - (a) Monitoring of university or college courses will be credited at one-third (1/3) the above-stated conversion table.
 - (b) Teaching or instructing qualifying courses or seminars will be credited at twice the PDH's earned by a participating student and may be claimed for credit only once.

- (c) Authorship of papers, articles or books cannot be claimed until actually published. Credit earned will equal preparation time spent not to exceed twenty-five (25) PDH's per publication.
- (d) Correspondence course PDH's may be considered acceptable to the Board, but the registrant shall submit, upon request, supporting documentation to demonstrate high quality course content.
- (e) A maximum of eight (8) PDH's per biennium may be claimed for attendance at Board meetings and professional society legislative events, and active participation in technical/professional societies or organizations, or technical or professional public boards, as an officer or committee member.
- (f) A maximum of four (4) PDH's per biennium may be claimed for active participation in educational outreach activities involving K-12 or higher education students.

Authority: T.C.A. § 62-2-203(d).

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

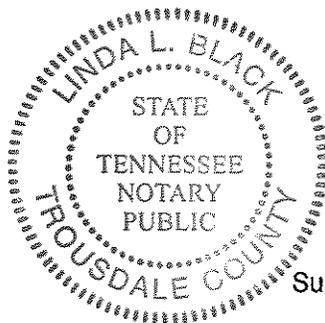
Board Member	Aye	No	Abstain	Absent	Signature (if required)
Hal Balthrop Engineer	X				
Wilson Border Public Member	X				
Robert Campbell Engineer	X				
James Hastings Architect	X				
Philip K.S. Lim Engineer, Chair	X				
William Lockwood Landscape Architect Vice Chair	X				
David Schuermann Architect	X				
Susan K. Ballard Interior Designer	X				
Richard Thompson Architect Secretary	X				

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the Tennessee State Board of Architectural and Engineering Examiners on 08/15/2012, and is in compliance with the provisions of T.C.A. § 4-5-222.

I further certify the following:

Notice of Rulemaking Hearing filed with the Department of State on: 06/21/2012

Rulemaking Hearing(s) Conducted on: 08/15/2012



Date: 11.7.2012

Signature: [Handwritten Signature]

Name of Officer: ROBERT E. HERNDON

Title of Officer: ASSISTANT GENERAL COUNSEL

Subscribed and sworn to before me on: November 7, 2012

Notary Public Signature: [Handwritten Signature]

My commission expires on: 11/7/16

G.O.C. STAFF RULE ABSTRACT

DEPARTMENT: Health

DIVISION: Health Services Administration
Maternal & Child Health/Newborn Screening

SUBJECT: Screening Tests and Examinations on Newborns

STATUTORY AUTHORITY: Tennessee Code Annotated, Section 68-5-507 and Public Chapter 556 of 2012

EFFECTIVE DATES: May 31, 2013 through June 30, 2013

FISCAL IMPACT: Minimal

STAFF RULE ABSTRACT: This rule sets forth the health conditions for which newborns must be screened. The significant change is the addition of pulse oximetry screening for critical cyanotic congenital heart disease.

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.

These rules only affect state government and no small businesses will be impacted by their promulgation.

Impact on Local Governments

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

These rule amendments only affect state government and will not have an impact on local governments.

**RULES
OF
TENNESSEE DEPARTMENT OF HEALTH
HEALTH SERVICES ADMINISTRATION
FAMILY HEALTH AND WELLNESS
MATERNAL & CHILD HEALTH/NEWBORN SCREENING**

**CHAPTER 1200-15-1
PHENYLKETONURIA, HYPOTHYROIDISM AND OTHER
METABOLIC/GENETIC DEFECTS**

Newborn Hearing Testing, Screening for Metabolic/Genetic Disorders
and Critical Congenital Heart Disease.

TABLE OF CONTENTS

1200-15-1-.01	<u>Tests</u>	1200-15-1-.05	<u>Fee for Testing</u>
1200-15-1-.02	<u>Institutions Responsible for Tests for Newborn Infants, Persons and/or Institutions Responsible for Tests for Newborn Infants</u>	1200-15-1-.06	<u>Department of Education and Department of Health Responsibilities</u>
1200-15-1-.03	<u>Metabolic/Genetic Newborn Screening Pamphlet Provided to Parents, Newborn Screening Pamphlet Provided to Parents</u>	1200-15-1-.07	<u>Repealed</u>
1200-15-1-.04	<u>Local Health Departments must Assist the Department of Health, Medical Providers and Local Health Departments Must Assist the Department of Health</u>		

~~1200-15-1-.01 TESTS. The Department of Health will designate the prescribed effective screening tests and examinations which will be performed on the blood samples submitted in accordance with 1200-15-1-.02 for the detection of metabolic/genetic disorders in newborns. Tests are to be conducted for Biotinidase Deficiency, Congenital Adrenal Hyperplasia (CAH), Congenital Hypothyroidism, Galactosemia, Hemoglobinopathies, Homocystinuria, Maple-Syrup Urine Disease (MSUD), Medium-Chain Acyl-CoA Dehydrogenase (MCAD) Deficiency, Phenylketonuria (PKU), and other metabolic/genetic tests as designated by the Department of Health. Results of the Newborn Hearing Screening, if conducted, are to be submitted in conjunction with the blood sample procedure for the detection of disorders in accordance with 1200-15-1-.02.~~

1200-15-01-01 Tests. The Department of Health will designate the prescribed effective screening tests and examinations which will be performed on newborns in accordance with Rule 1200-15-01-02 for the detection of hearing loss, critical congenital heart disease and metabolic/genetic disorders as designated by the Department of Health.

~~(1) Exemptions for religious beliefs. Nothing in this part shall be construed to require the testing of or medical treatment for the minor child of any person who shall file with the Department of Health a signed, written statement that such tests or medical treatment conflict with such person's religious tenets and practices, affirmed under penalties of perjury pursuant to T.C.A. 68-5-403. The newborn screening refusal form provided by the State should be completed and retained in the medical record for the period of time defined by the hospital or provider policy.~~

(1) Exemptions for religious beliefs. Nothing in this part shall be construed to require the testing of or medical treatment for the minor child of any person who shall file with the Department of Health a signed, written statement that such tests or medical treatment conflict with such person's religious tenets and practices, affirmed under penalties of perjury pursuant to T.C.A. § 68-5-403. The newborn screening refusal form provided by the State should be completed, filed with the Department and retained in the medical record for the period of time defined by the hospital or provider policy.

(Rule 1200-15-1-.02, continued)

- ~~(2) Failure to have a child tested for the genetic/metabolic disorders is a Class C misdemeanor. Reporting of hearing screening is not to be construed as mandatory testing, therefore, failure to have a child tested for hearing loss will not be considered a misdemeanor pursuant to T.C.A. 68-5-404.~~
- (2) Failure to have a child tested for the detection of hearing loss and metabolic/genetic disorders as designated by the Department of Health is a Class C misdemeanor pursuant to T.C.A. § 68-5-404.

Authority: *T.C.A. §§4-5-202, 68-5-401 et seq., and 68-5-501 et seq., and 68-5-901 et seq.* **Administrative History:** *Original rule certified June 7, 1974. Repeal and new rule filed September 1, 1982; effective October 1, 1982. Amendment filed September 16, 1996; effective January 28, 1997. Repeal and new rule filed December 30, 1999; effective March 14, 2000. Repeal and new rule filed September 26, 2003; effective January 28, 2004.*

~~1200-15-1-.02 INSTITUTIONS RESPONSIBLE FOR TESTS FOR NEWBORN INFANTS. The following persons or institutions shall be responsible for having tests made on newborn infants:~~

1200-15-01-.02 Persons and/or institutions responsible for tests for newborn infants. The following persons or institutions shall be responsible for hearing testing, critical congenital heart disease screening and blood specimen collection for metabolic/genetic disorders as designated by the department of health. Specimens and results shall be submitted in a manner as directed by the department of health; procedures are located on the department's web page.

- ~~(1) Every chief administrative officer of a hospital and the attending physician in each instance shall be responsible for submitting a specimen of blood to the State of Tennessee Laboratory, State Department of Health, in a manner as directed by the Department. This sample shall be collected before newborn infants are discharged from the nursery, regardless of age.~~
- (1) Every chief administrative officer of a hospital and the attending physician in each instance shall:
- (a) Submit a satisfactory specimen of blood to the State Public Health Laboratory, Department of Health. This sample shall be collected between twenty-four and forty-eight (24-48) hours of age and mailed within twenty-four (24) hours of collection. In some cases it may be necessary to collect a specimen prior to twenty-four (24) hours of age if the infant is going to be discharged, transferred or transfused.
 - 1. Recollect a specimen of blood if the infant was initially screened before twenty-four (24) hours of age. This repeat sample shall be collected between twenty-four and seventy-two (24-72) hours of age and mailed within twenty-four (24) hours of collection. If the infant has been discharged, instruct every parent, guardian, or custodian to bring the infant back to the hospital or to a physician or the nearest local health department to be re-screened
 - (b) Perform a physiologic hearing screen. The result of the hearing screen is to be reported to the Department of Health and should be done before hospital discharge or prior to one (1) month of age.
 - (c) Perform pulse oximetry tests on all newborns to screen for critical congenital heart disease between twenty-four and forty-eight (24-48) hours of age. The recommended protocol for screening is available online at the Department of Health's web page.
- ~~(2) Every chief administrative officer of a hospital and the attending physician shall direct every parent, guardian, or custodian to bring the infant, if the infant was initially screened before twenty-four (24) hours of age, back to the hospital or to a physician or the nearest local health department to be re-screened for Biotinidase Deficiency, Congenital Adrenal Hyperplasia (CAH), Congenital~~

(Rule 1200-15-1-.02, continued)

~~Hypothyroidism, Galactosemia, Hemoglobinopathies, Homocystinuria, Maple Syrup Urine Disease (MSUD), Medium Chain Acyl CoA Dehydrogenase (MCAD) Deficiency, Phenylketonuria (PKU), and other metabolic/genetic tests as designated by the Department of Health, within twenty-four to forty-eight (24-48) hours after birth. In the case of a premature infant, an infant on parenteral feeding or any newborn treated for an illness, who is not discharged from the nursery in a timely manner, the sample should be collected not later than the infant's seventh (7th) day of age.~~

~~(3) Any health care provider(s) of delivery services in a non-hospital setting shall be responsible for submitting a specimen of blood to the State of Tennessee Laboratory, or directing every parent, guardian, or custodian to bring the infant, between twenty-four to forty-eight (24-48) hours of age, to a hospital, physician or local health department to be screened for Biotinidase Deficiency, Congenital Adrenal Hyperplasia (CAH), Congenital Hypothyroidism, Galactosemia, Hemoglobinopathies, Homocystinuria, Maple Syrup Urine Disease (MSUD), Medium Chain Acyl CoA Dehydrogenase (MCAD) Deficiency, Phenylketonuria (PKU), and other metabolic/genetic tests as designated by the Department of Health.~~

(2) Any health care provider(s) of delivery services in a non-hospital setting shall:

(a) Submit a satisfactory specimen of blood to the State Public Health Laboratory, Department of Health, in a manner as directed by the Department. This sample shall be collected between twenty-four and forty-eight (24-48) hours of age and mailed within twenty-four (24) hours of collection. In some cases it may be necessary to collect a specimen prior to twenty-four (24) hours of age if the infant is going to be discharged, transferred or transfused.

1. Recollect a specimen of blood if the infant was initially screened before twenty-four (24) hours of age. This repeat sample shall be collected between twenty-four and seventy-two (24-72) hours of age and mailed within twenty-four (24) hours of collection. If the infant has been discharged, instruct every parent, guardian, or custodian to bring the infant back to the hospital or to a physician or the nearest local health department to be re-screened

(b) Instruct the parent, guardian or custodian to obtain a physiologic hearing screen prior to one (1) month of age. A referral may be made to the State Department of Health to assist in locating a hearing provider.

(c) Perform pulse oximetry tests on all newborns to screen for critical congenital heart disease between twenty-four and forty-eight (24-48) hours of age. The recommended protocol for screening is available online at the Department of Health's web page.

~~(4) Any parent, guardian, or custodian residing in Tennessee, of an infant born in Tennessee, outside a Tennessee health care facility and without the assistance of a health care provider, shall between twenty-four to forty-eight (24-48) hours of the birth of said infant present said infant to a physician or local health department for testing for the purpose of detecting Biotinidase Deficiency, Congenital Adrenal Hyperplasia (CAH), Congenital Hypothyroidism, Galactosemia, Hemoglobinopathies, Homocystinuria, Maple Syrup Urine Disease (MSUD), Medium Chain Acyl CoA Dehydrogenase (MCAD) Deficiency, Phenylketonuria (PKU), and other metabolic/genetic tests as designated by the Department of Health.~~

(3) Any parent, guardian, or custodian residing in Tennessee, of an infant born in Tennessee, outside a Tennessee health care facility and without the assistance of a health care provider, shall:

(a) Between twenty-four to forty-eight (24-48) hours of age present said infant to a primary care provider or local health department for blood specimen collection.

(Rule 1200-15-1-.02, continued)

- ~~(b) Obtain a physiologic hearing screen prior to one (1) month of age. A referral may be made to the State Department of Health to assist in locating a hearing provider.~~
- ~~(c) Between twenty-four and forty-eight (24-48) hours of age present said infant to a primary care provider to perform pulse oximetry tests to screen for critical congenital heart disease. The recommended protocol for screening is available online at the Department of Health's web page.~~
- ~~(5) The original blood specimen shall be collected between twenty-four and forty-eight (24-48) hours of age. Repeat blood specimens shall be collected before two (2) weeks of age.~~
- ~~(6) Every chief administrative officer of a hospital that performs physiologic newborn hearing screening shall be responsible for reporting the results of the newborn hearing screening test performed prior to discharge from the health care facility. Results of the hearing screening are to be reported to the Department of Health on the form designated for newborn screening blood spot collection or a similar form designated by the Department.~~

Authority: T.C.A. §§4-5-202, 68-5-401 et seq., and 68-5-501 et seq., and 68-5-901 et seq. **Administrative History:** Original rule certified June 7, 1974. Repeal and new rule filed September 1, 1982; effective October 1, 1982. Amendment filed September 16, 1996; effective January 28, 1997. Repeal and new rule filed December 30, 1999; effective March 14, 2000. Repeal and new rule filed September 26, 2003; effective January 28, 2004.

~~1200-15-1-.03 METABOLIC/GENETIC NEWBORN SCREENING, PAMPHLET PROVIDED TO PARENTS.~~

~~The chief administrative officer of each hospital shall order the distribution of a pamphlet on Biotinidase Deficiency, Congenital Adrenal Hyperplasia (CAH), Congenital Hypothyroidism, Galactosemia, Hemoglobinopathies, Homocystinuria, Maple Syrup Urine Disease (MSUD), Medium Chain Acyl CoA Dehydrogenase (MCAD) Deficiency, Phenylketonuria (PKU), and other metabolic/genetic tests as designated by the Department of Health, to every parent, guardian or custodian of an infant screened for these conditions. The pamphlet, distributed by the Department of Health, educates and prepares the family for newborn testing on their infant. If an infant's screen was collected earlier than twenty-four (24) hours after birth and the patient is discharged home, the health care facility must review the information on the back of the pamphlet with the family, which requires them to present the infant to the hospital, physician or health department within 24-48 hours for a repeat screen. The pamphlet will have a perforated page that may be signed by the parent and placed in the medical record as documentation that the pamphlet was provided.~~

1200-15-01-.03 Newborn Screening Pamphlet Provided to Parents. The chief administrative officer of each birthing facility shall order the distribution of a pamphlet to every parent, guardian or custodian of an infant screened. The pamphlet, distributed by the Department of Health, educates and prepares the family for newborn testing on their infant. If an infant's blood specimen was collected earlier than twenty-four (24) hours after birth and the patient is discharged home, the birthing facility must review the information on the back of the pamphlet with the family prior to discharge; the information requires the family to present the infant to the hospital, physician or health department within 24-72 hours for a repeat blood specimen. The pamphlet will have a perforated page that may be signed by the parent and placed in the medical record as documentation that the pamphlet was provided.

Authority: T.C.A. §§4-5-202, 68-5-401 et seq., and 68-5-501 et seq., and 68-5-901 et seq. **Administrative History:** Original rule certified June 7, 1974. Repeal and new rule filed September 1, 1982; effective October 1, 1982. Amendment filed September 16, 1996; effective January 28, 1997. Repeal and new rule filed December 30, 1999; effective March 14, 2000. Repeal and new rule filed September 26, 2003; effective January 28, 2004.

(Rule 1200-15-1-.03, continued)

~~1200-15-1-.04 LOCAL HEALTH DEPARTMENTS MUST ASSIST THE DEPARTMENT OF HEALTH.~~

~~Each local health department shall assist the Department of Health in contacting all cases suspected of having Biotinidase Deficiency, Congenital Adrenal Hyperplasia (CAH), Congenital Hypothyroidism, Galactosemia, Hemoglobinopathies, Homocystinuria, Maple Syrup Urine Disease (MSUD), Medium Chain Acyl CoA Dehydrogenase (MCAD) Deficiency, Phenylketonuria (PKU), and other metabolic/genetic tests as designated by the Department of Health to confirm or disprove the presumptive screening results based on the prescribed effective tests and examinations designed to detect genetic disorders as determined by the Department of Health.~~

1200-15-01-.04 Medical Providers and Local Health Departments Must Assist the Department of Health

- (1) The primary care provider's responsibility is to:
 - (a) Ensure that all newborn screening tests were conducted and provide necessary follow up, if needed, as instructed by the Newborn Screening Program.
 - (b) Recollect a blood specimen before two (2) weeks of age, as instructed by the program or tertiary center staff, or send the infant to the local Health Department for recollection.
 - (c) Assist the Department of Health in contacting families, submitting follow up information, making appropriate referrals and/or notifying the Department immediately if they are not the provider. The Newborn Screening Program outlines the providers' responsibilities in the practitioner guide which is available online at the Department of Health's web page.
 - (d) Obtain further hearing tests prior to three (3) months of age if the infant did not pass the hearing screen. A referral may be made to the State Department of Health to assist in locating a hearing provider.
 - (e) Submit the critical congenital heart disease follow-up form on infants who did not pass the pulse oximetry screen.
- (2) Audiologists shall submit the hearing follow-up form on infants referred to them for further testing through the newborn screening process.
- (3) Cardiologists shall submit the critical congenital heart disease follow-up form on infants referred to them through the newborn screening process.
- (4) Each local health department shall assist the Department of Health in contacting all parents or guardians of infants who are in need of further testing to confirm or disprove the presumptive screening results based on the prescribed effective tests and examinations designed to detect genetic disorders as determined by the Department of Health.

Authority: T.C.A. §§4-5-202, 68-5-401 et seq., and 68-5-501 et seq., and 68-5-901 et seq. **Administrative History:** Original rule certified June 7, 1974. Repeal and new rule filed September 1, 1982; effective October 1, 1982. Amendment filed September 16, 1996; effective January 28, 1997. Repeal and new rule filed December 30, 1999; effective March 14, 2000. Repeal and new rule filed September 26, 2003; effective January 28, 2004.

1200-15-1-.05 FEE FOR TESTING.

- ~~(1) Fee. A fee of seventy-five dollars and zero cents (\$75.00) shall be due and payable to the Department of Health for conducting any one or all of the following tests on a patient blood sample submitted to the Department for such testing: Biotinidase Deficiency, Congenital Adrenal Hyperplasia (CAH), Congenital Hypothyroidism, Galactosemia, Hemoglobinopathies, Homocystinuria, Maple Syrup Urine Disease (MSUD), Medium Chain Acyl CoA Dehydrogenase (MCAD) Deficiency, Phenylketonuria (PKU), and other metabolic/genetic tests as designated by the Department of Health.~~

(Rule 1200-15-1-.03, continued)

- ~~(2) Procedure. The health care facility collecting the blood sample for the purpose of receiving any or all of the tests set forth in paragraph (1) shall be billed by the Department of Health State Laboratory.~~
- ~~(3) Waiver. The fee shall be waived for patients who are unable to pay, based on information obtained at the time of admission to the health care facility, as determined by the health care provider.~~
- (1) Fee. A fee shall be due and payable to the Department of Health for conducting any one or all tests on a patient blood sample submitted to the Department for metabolic/genetic tests as designated by the Department of Health.

The Commissioner shall re-evaluate, update, and post the fee at least annually and from time to time as appropriate. The Commissioner shall post the annual update on or before November 15th of each year, and this new fee shall become effective starting January 1st of the following year. If the Commissioner posts an updated fee more frequently than on an annual basis, then the updated fee will become effective on the date stated in the fee notice. The fee shall be available online at the Department of Health's web page and in print.

- (2) Procedure. The health care facility collecting the blood sample for the purpose of receiving any or all of the tests set forth in paragraph (1) shall be billed by the State Public Health Laboratory, Department of Health.
- (3) Waiver. The fee shall be waived for patients who are unable to pay, based on information obtained at the time of admission to the health care facility, as determined by the health care provider.

Authority: *T.C.A. §§4-5-202, 68-5-401 et. seq., and 68-5-501 et. seq. Administrative History: Original rule certified June 7, 1974. Repeal and new rule filed September 1, 1982; effective October 1, 1982. Repeal and new rule filed December 30, 1999; effective March 14, 2000. Repeal and new rule filed September 26, 2003; effective January 28, 2004. Amendment filed August 9, 2007; effective December 28, 2007.*

1200-15-1-.06 DEPARTMENT OF EDUCATION AND DEPARTMENT OF HEALTH RESPONSIBILITIES.

- ~~(1) In compliance with the Individuals with Disabilities Education Act (IDEA) Child Find, the Tennessee Department of Health Newborn Hearing Screening program shall notify the Department of Education, IDEA Part C, Tennessee Early Intervention System (TEIS) of all newborns identified by hearing screening to be in need of further hearing testing.~~
- (1) In compliance with T.C.A. §§ 68-5-901 et seq. and the Individuals with Disabilities Education Act (IDEA) Child Find, the Tennessee Department of Health Newborn Hearing Screening program shall notify the Department of Education, IDEA Part C, Tennessee Early Intervention System (TEIS) of newborns identified to be in need of further hearing testing or who have been diagnosed with hearing loss.
- ~~(2) The Department of Education, IDEA Part C, Tennessee Early Intervention System (TEIS), shall contact the health care provider and/or family of the newborn to determine if further hearing testing has been completed or if the family is in need of assistance to obtain further testing to determine if there is a hearing loss.~~
- (2) The Department of Education, IDEA Part C, Tennessee Early Intervention System (TEIS), shall contact the health care provider, hearing provider, and/or family of the newborn to determine if further hearing testing has been completed or if the family is in need of assistance to obtain further testing to determine if there is a hearing loss.

(Rule 1200-15-1-.06, continued)

~~(3) The Department of Education, IDEA Part C, Tennessee Early Intervention System (TEIS) program shall report the results of follow-up to the Department of Health Newborn Hearing Screening program.~~

(3) The Department of Education, IDEA Part C, Tennessee Early Intervention System (TEIS) program shall report the results of follow-up to the Department of Health Newborn Hearing Screening program as outlined in policy developed in cooperation between the programs.

~~(4) Reporting shall be coordinated with the Tennessee Early Intervention System (TEIS), Newborn Hearing Screening, and Children's Information Tennessee data systems. Tennessee Early Intervention System (TEIS) will submit follow-up data as outlined in policy developed in cooperation between the programs.~~

(4) The Tennessee Early Intervention System (TEIS) will assist the Newborn Hearing Screening Program in tracking children identified with risk indicators for hearing loss until three (3) years of age as outlined in policy developed in cooperation between the programs.

Authority: T.C.A. §§4-5-202, 68-5-401 et. seq., ~~and 68-5-501 et. seq., and 68-5-901 et. seq.~~ **Administrative History:** Original rule certified June 7, 1974. Repeal and new rule filed September 1, 1982; effective October 1, 1982. Repeal filed December 30, 1999; effective March 14, 2000. New rule filed September 26, 2003; effective January 28, 2004.

1200-15-1-.07 REPEALED.

Authority: T.C.A. §§4-5-202, 53-626, 68-5-401 et. seq., and 68-5-501 et. seq.. **Administrative History:** Original rule certified June 7, 1974. Repeal and new rule filed September 1, 1982; effective October 1, 1982. Repeal filed December 30, 1999; effective March 14, 2000.

G.O.C. STAFF RULE ABSTRACT

DEPARTMENT: Health

DIVISION: Board of Examiners for Nursing Home Administrators

SUBJECT: Licensure and Continuing Education

STATUTORY AUTHORITY: Tennessee Code Annotated, Sections 63-16-101 et seq.

EFFECTIVE DATES: March 13, 2013 June 30, 2013

FISCAL IMPACT: Minimal

STAFF RULE ABSTRACT:

Rule 1020-O1-.06(2)(a)3. Preceptors, Administrators-In-Training and Administrators-In-Training Programs is amended to limit the number of continuing education hours required to maintain certification as a preceptor at 54 hours. Currently, there is not a limit on the number of continuing education hours required when an individual wants to reinstate an expired or retired nursing home administrator's license and also continue certification as a preceptor.

Rule 1020-O1-.07(6), Licensure by education and experience combined with an Administrator-In-Training (A.I.T.) program, is amended by increasing the years of "acceptable management experience" required when an individual has an associate degree from three (3) years to five (5) years.

Rule 1020-O1-.07(7), Licensure by experience combined with continuing education and an Administrator-In- Training (A.I.T.) program, is amended by deleting this pathway entirely because the pathway is no longer being used by applicants due to the lack of available continuing education courses to meet the pathway's requirements.

Rule 1020-O1-.07(B), Licensure by reciprocity, is amended to clarify that for individuals applying for reciprocity the Board will consider for licensure an individual working for a minimum of five (5) of the last seven (7) years as a licensed nursing home administrator in another state in lieu of a degree and in lieu of an A.I.T. (Administrator-In-Training) program.

There are amendments to Rule 1020-01-07 and Rule 1020-01-08 generally that reflect the deletion of paragraph (7) of Rule 1020-01-07.

Rule 1020-01-11(4) Reinstatement of an Expired License is amended to limit the number of continuing education hours required to reinstate an expired license and to limit the amount of fees assessed to reinstate an expired license.

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.

Board of Examiners for Nursing Home Administrators

Rulemaking Hearing – June 4, 2012

A verbal comment was received from Christopher Puri, Esq. representing Tennessee Health Care Association (THCA) relative to “pathway 6” for obtaining licensure. THCA would like to keep the years of experience needed at 3 as in the current rule instead of raising the needed experience to 5 years.

The Board made no change to the rule amendment.

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.

Regulatory Flexibility Analysis

- (1) The proposed rule amendments do not overlap, duplicate, or conflict with other federal, state, or local government rules.
- (2) The proposed rule amendments are clear, concise, and lack ambiguity.
- (3) The proposed rule amendments affect applicants seeking to become licensed nursing home administrators in Tennessee through initial licensure or through reciprocity; licensed nursing home administrators seeking to serve as a preceptor for an administrator-in-training; individuals seeking to reinstate an expired license; and family-run and/or small nursing homes. The amendments are not written with special consideration for the flexible compliance and/or reporting by small businesses because the Board of Examiners for Nursing Home Administrators has as its primary mission the protection of the health, safety, and welfare of the citizens of Tennessee.
- (4) The proposed rule amendments affect applicants seeking to become licensed nursing home administrators in Tennessee through initial licensure or through reciprocity; licensed nursing home administrators seeking to serve as a preceptor for an administrator-in-training; individuals seeking to reinstate an expired license; and family-run and/or small nursing homes. The compliance and/or reporting requirements of the amendments are as “user-friendly” as possible while still allowing the Board of Examiners for Nursing Home Administrators to achieve its mandated mission. There is sufficient notice between the rulemaking hearing and the final promulgation of the proposed rule amendments to allow all effected persons and/or entities to come into compliance with the rules.
- (5) The proposed rule amendments affect applicants seeking to become licensed nursing home administrators in Tennessee through initial licensure or through reciprocity; licensed nursing home administrators seeking to serve as a preceptor for an administrator-in-training; individuals seeking to reinstate an expired license; and family-run and/or small nursing homes. The amendments are not written with special consideration for the consolidation or simplification of compliance and/or reporting requirements for small businesses because the Board of Examiners for Nursing Home Administrators has as its primary mission the protection of the health, safety, and welfare of the citizens of Tennessee.
- (6) The proposed rule amendments affect applicants seeking to become licensed nursing home administrators in Tennessee through initial licensure or through reciprocity; licensed nursing home administrators seeking to serve as a preceptor for an administrator-in-training; individuals seeking to reinstate an expired license; and family-run and/or small nursing homes. The standards required in the amendments do not necessitate the establishment of performance, design, or operational standards.
- (7) The proposed rule amendments do not create unnecessary entry barriers or other effects that stifle entrepreneurial activity.

Statement of Economic Impact

Types of small businesses that will be directly affected by the proposed rules:

The proposed rule amendments affect applicants seeking to become licensed nursing home administrators in Tennessee through initial licensure or through reciprocity; licensed nursing home administrators seeking to serve as a preceptor for an administrator-in-training; individuals seeking to reinstate an expired license; and family-run and/or small nursing homes.

Types of small businesses that will bear the cost of the proposed rules:

Applicants seeking to become licensed nursing home administrators in Tennessee through initial licensure or through reciprocity; licensed nursing home administrators seeking to serve as a preceptor for an administrator-in-training; individuals seeking to reinstate an expired license and family-run and/or small nursing homes will bear any minimal costs that may be associated with the proposed rules.

Types of small businesses that will directly benefit from the proposed rules:

Applicants seeking to become licensed nursing home administrators in Tennessee through initial licensure or through reciprocity; licensed nursing home administrators seeking to serve as a preceptor for an administrator-in-training; individuals seeking to reinstate an expired license and family-run and/or small nursing homes will receive any benefits associated with the proposed rules.

Description of how small business will be adversely impacted by the proposed rules:

The proposed rule amendments affect applicants seeking to become licensed nursing home administrators in Tennessee through initial licensure or through reciprocity; licensed nursing home administrators seeking to serve as a preceptor for an administrator-in-training; individuals seeking to reinstate an expired license; and family-run and/or small nursing homes. The rules are needed to protect the health, safety, and welfare of the citizens of Tennessee. Any adverse impact experienced by the above-named groups should be minimal.

Alternatives to the proposed rule that will accomplish the same objectives but are less burdensome, and why they are not being proposed:

The Board of Examiners for Nursing Home Administrators does not believe there are less burdensome alternatives to the proposed rule amendments.

Comparison of the proposed rule with federal or state counterparts:

Federal: The Board of Examiners for Nursing Home Administrators is not aware of any federal counterparts.

State: The proposed rule amendments appear to be generally consistent with Kentucky, Virginia, North Carolina, Georgia, Alabama, Mississippi, Arkansas, and Missouri.

Impact on Local Governments

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

These rule amendments are not expected to have an impact on local governments.

1020-01-.05 TEMPORARY LICENSES. The Board may issue temporary licenses under limited circumstances pursuant to T.C.A. § 63-16-104(b).

Authority: T.C.A. §§4-5-202, 4-5-204, 63-16-103, and 63-16-104. **Administrative History:** Original rule certified June 7, 1974. Amendment by Public Chapter 969; effective July 1, 1984. Repeal and new rule filed December 17, 1991; effective January 31, 1992. Repeal and new rule filed December 14, 1999; effective February 27, 2000. Amendment filed July 31, 2000; effective October 14, 2000. Amendment filed January 23, 2002; effective April 8, 2002. Amendment filed February 20, 2002; effective May 6, 2002. Repeal and new rule filed September 4, 2003; effective November 18, 2003.

1020-01-.06 PRECEPTORS, ADMINISTRATORS-IN-TRAINING AND ADMINISTRATORS-IN-TRAINING PROGRAMS. A person who intends to qualify for admission to the licensure examination by use of an A.I.T. program must first receive approval to begin the program by complying with rules 1020-01-.07 and 1020-01-.08, and successfully complete the program in a Board approved facility under the coordination, supervision and teaching of a Preceptor who has obtained certification from the Board pursuant to, and continues to meet the qualifications of this rule.

- (1) Preceptor - Qualifications for Certification.
 - (a) The following licensees may apply to receive certification as a Preceptor:
 1. Any administrator; or
 2. Any assistant administrator; or
 3. A multifacility regional administrator. However, the A.I.T. program may be conducted only in facilities over which he or she is the regional administrator.
 - (b) An applicant must obtain from, complete and submit to the Board Administrative Office an application form along with satisfactory documentation of all the following:
 1. Current licensure as a nursing home administrator in Tennessee.
 2. One of the following:
 - (i) Valid licensure and full-time practice as a nursing home administrator for three (3) of the five (5) years immediately preceding application, the final year of practice must have been in Tennessee; or
 - (ii) Valid licensure as a nursing home administrator and employment as an assistant administrator with at least six (6) years of full-time experience in licensed nursing homes in the ten (10) years immediately preceding application.
 3. Successful completion of seventy-two (72) semester hours or its equivalent of college credit. Each one (1) year of full-time experience obtained beyond the three (3) or six (6) year qualifying time period may be substituted for twenty-four (24) semester hours of college credit.
 4. Successful completion of a twelve (12) hour Board approved Preceptor Training and Orientation Course. The course must have been completed within the twelve (12) months immediately preceding certification. These hours may be applied to the annual C.E. requirement.

(Rule 1020-01-.06, continued)

5. Have no formal disciplinary actions taken against the applicant's license within the ten (10) years immediately preceding application which the Board deems to be of such a nature as to prevent the applicant from providing services as a Preceptor.
- (c) An applicant must attend an interview conducted by the Board or a Board member for discussion of basic concepts of the Preceptor Program. A major purpose of the interview will be to evaluate the training effectiveness of the preceptor. The Board may require that the interviews be electronically recorded and transcribed so that there will be no misunderstandings when the Board Member makes a presentation to the entire Board.
 - (d) A preceptor may not supervise more than two (2) A.I.T.'s at one (1) time except by written permission of the Board.
- (2) Preceptor - Continued Certification.
 - (a) To remain certified as a preceptor a licensee must:
 1. on or before December 31st of every year after initial certification, successfully complete nine (9) clock hours of Board approved continuing education within the calendar year in addition to the continuing education hours required for licensure renewal pursuant to rule 1020-01-.12. Credit for six (6) hours of continuing education per year shall be given to a preceptor upon the successful completion of an A.I.T. program; and
 2. hold an active, current and unrestricted license in Tennessee as a Nursing Home Administrator; or
 - ~~3. hold an active, current and unrestricted license in another state as a Nursing Home Administrator and submit proof of successful completion of twenty-seven (27) clock hours of NAB-approved continuing education for every year the licensee practiced in another state while his/her Tennessee license was expired or retired.~~
 3. hold an active, current and unrestricted license in another state as a Nursing Home Administrator and submit proof of successful completion of twenty-seven (27) clock hours of NAB-approved continuing education for every year the licensee practiced in another state while his/her Tennessee license was expired or retired. However, the continuing education hours required shall not exceed fifty-four (54) hours.
 - (b) Failure to provide an A.I.T. an opportunity for adequate training under proper supervision in the administrative and operating activities and functions of a facility shall be grounds for discipline of a Preceptor's certification pursuant to T.C.A. § 63-16-108(a)(1) and rule 1020-01-.15.
 - (c) Preceptor certification is subject to disciplinary action in the same manner and for the same causes as that for licensees.
 - (d) When an A.I.T. fails the written licensure examination twice, the preceptor for the A.I.T. may, in the Board's discretion, be required to furnish a written assessment of the reasons for the failure or be required to appear before the Board to make an oral assessment. Failure of a preceptor to provide the written or oral assessment may be grounds for decertification.

(Rule 1020-01-.06, continued)

(3) Administrator-In-Training Program.

- (a) Facilities - Primary training and supervision of an A.I.T. must occur in one primary facility which is approved by the Board. If the Preceptor and the A.I.T. feel it would be beneficial to have certain areas of the training in a facility other than the primary one, the Preceptor shall notify the Board of the areas to be covered, the time to be spent in the secondary facility and the reasons. All facilities to be used must be approved in advance and in writing. The facility must obtain from, complete and submit to the Board Administrative Office an application form and documentation sufficient to show the following:
1. An organizational structure with clearly defined and staffed departments, each with a designated department head. Those departments must include:
 - (i) Administration;
 - (ii) Nursing;
 - (iii) Dietary;
 - (iv) Social services and activities;
 - (v) Medical records; and
 - (vi) Housekeeping, maintenance and laundry.
 2. That the administrator serves as the department head of only the administration department of the facility.
 3. The absence of outstanding operational deficiencies.
 4. The most recent facility licensure survey and the plan of correction in response thereto.
- (b) A.I.T. Program - Structure and Content. The A.I.T. programs must be conducted in Board approved facilities. The Preceptor must be either the administrator, assistant administrator or regional administrator of the primary facility. The program must comply with the following:
1. Prior to commencement of the A.I.T. program, a form must be obtained from, completed and submitted to the Board Administrative Office which contains all the following:
 - (i) Approval of the preceptor by the A.I.T. as evidenced by signature of both the Preceptor and A.I.T.;
 - (ii) The beginning date of the program;
 - (iii) The dates on which required reports are to be filed; and
 - (iv) The anticipated date of the A.I.T.'s completion of the program.
 2. The A.I.T. program shall cover a period of at least six (6) months during which period the A.I.T. shall devote full time and effort toward completion of the program. Should the A.I.T. spend less than full time, thus requiring more than six

(Rule 1020-01-.06, continued)

(6) months to complete, there must be prior written approval of the Board. The reasons for the delay shall be explained in writing by the Preceptor. Under no circumstances shall the program extend beyond one (1) year.

3. The preceptor and the A.I.T. shall spend a minimum of four (4) hours per week in orientation, direct instruction, planning and evaluation. The minimum four (4) hours per week of training must occur in person in the facility or facilities approved by the Board for that individual's A.I.T. program.
4. It shall be the responsibility of the preceptor to continually evaluate the development and experience of the A.I.T. to determine specific areas needed for concentration.
5. A preceptor shall use the Board approved workbook as the basic guide. There shall be a pre-training assessment. If deemed advisable, additional material may be added to the basic guide to individually meet the needs of the A.I.T. While the basic guide may be expanded, no areas of the basic guide may be omitted.
6. The preceptor and the A.I.T. shall submit reports on Board provided forms according to the following schedule:
 - (i) Every two (2) months after its commencement; and
 - (ii) A final report shall be submitted which contains a recommendation on licensure from the preceptor.

(c) General Rules for A.I.T. Programs.

1. Change of Preceptor.
 - (i) If the approved preceptor is unable, for any reason, to fulfill the approved program of an A.I.T., a new preceptor shall be obtained as soon as possible, but no more than sixty (60) days from the date the A.I.T. first obtained knowledge that the training under the previous preceptor would be discontinued. In special circumstances the Board, upon application, may authorize additional time in which a new preceptor may be secured.
 - (ii) In the event an A.I.T. desires to secure a preceptor different from the one approved by the Board, the new preceptor and the A.I.T. shall notify the Board stating the reasons. New agreement forms shall be completed, signed by the new preceptor and the A.I.T., and be submitted to the Board Administrative Office for approval prior to continuing training.
2. It shall be the duty of both the preceptor and the A.I.T. to notify the Board if the A.I.T. drops out of the program.

Authority: T.C.A. §§4-5-202, 4-5-204, 63-16-103, 63-16-104, 63-16-106 and 63-16-109. **Administrative History:** Original rule certified June 7, 1974. Amendment filed November 12, 1982; effective December 13, 1982. Amendment filed February 3, 1983; effective March 7, 1983. Amendment filed April 19, 1984; effective May 19, 1984. Amendment filed February 23, 1987; effective April 9, 1987. Amendment filed October 22, 1987; effective December 6, 1987. Amendment filed January 4, 1989; effective February 18, 1989. Amendment filed August 14, 1989; effective September 28, 1989. Amendment filed September 8, 1989; effective October 23, 1989. Amendment filed February 21, 1991; effective April 7, 1991. Repeal and new rule filed December 17, 1991; effective January 31, 1992. Repeal and new rule filed December 14, 1999; effective February 27, 2000. Amendment filed January 19, 2001; effective April 5, 2001.

(Rule 1020-01-.06, continued)

Amendment filed September 4, 2003; effective November 18, 2003. Amendment filed December 9, 2005; effective February 22, 2006. Amendment filed July 27, 2006; effective October 10, 2006.

~~1020-01-.07 QUALIFICATIONS FOR LICENSURE. To practice as a nursing home administrator in Tennessee, a person must possess a lawfully issued license from the Board. Paragraphs (2) through (8) of this rule describe the seven (7) ways/categories to obtain licensure as a nursing home administrator. Combining requirements from different categories is not permitted, and will not constitute completion of licensure requirements. In addition to the requirements of this rule all applicants, regardless of which category is used, must successfully complete the examinations required in rule 1020-01-.10 Examinations.~~

1020-01-.07 Qualifications for Licensure. To practice as a nursing home administrator in Tennessee, a person must possess a license lawfully issued by the Board. Paragraphs (2) through (7) of this rule describe the six (6) categories to obtain licensure as a nursing home administrator. Combining requirements from different categories is not permitted, and will not constitute completion of licensure requirements. In addition to the requirements of this rule, all applicants, regardless of which category is used, must successfully complete the examinations required in Rule 1020-01-.10 Examinations.

~~(1) "Acceptable Management Experience," as used in this rule, means the actual practice of health care facility administration in an inpatient health care facility with guidance and sharing of responsibility from the administrator and not related to the role of an administrative clerk. "Acceptable management experience" contemplates experience in all departments or areas of the facility, provided however, that this term is not to be construed to require that the applicant have spent the entire number of years of "acceptable management experience" referred to in paragraphs (6) and (7) of this rule in the capacity of an assistant administrator. Responsible supervisory experience in various departments within the facility may be applied to meet the requirements of paragraphs (6) and (7) of this rule, and the time spent in a board approved Administrator-In-Training (A.I.T.) program may also be counted toward these requirements. However, no more than two-thirds (2/3) of the required "acceptable management experience" can be obtained in any one area of the facility, e.g., in dietary, nursing, financial, etc.~~

(1) "Acceptable Management Experience," as used in this rule, means the actual practice of health care facility administration in an inpatient health care facility with guidance and sharing of responsibility from the administrator and not related to the role of an administrative clerk. "Acceptable management experience" contemplates experience in all departments or areas of the facility, provided, however, the applicant is not required to have spent the entire five (5) years in the capacity of an assistant administrator. Responsible supervisory experience in various departments within the facility may be applied to meet the requirements of paragraph (6) of this rule, and the time spent in a board approved Administrator-In-Training (A.I.T.) program may also be counted toward these requirements. However, no more than two-thirds (2/3) of the required "acceptable management experience" can be obtained in any one area of the facility, e.g., in dietary, nursing, financial, etc.

(2) Licensure by examination - A baccalaureate, masters, or doctorate degree in the area of Health Care Administration from an accredited college or university is required. The curriculum shall include a four hundred (400) hour internship taken for credit and served in a licensed long term care nursing facility.

(3) Licensure by experience and education as a hospital administrator combined with a Limited Administrator-in-Training (A.I.T.) program - A baccalaureate, masters or doctorate degree from an accredited college and a four hundred (400) hour Board-approved A.I.T. program to be completed in no less than three (3) months and no more than six (6) months combined with a minimum of five (5) of the last seven (7) years as the chief executive officer of a licensed hospital is required. This individual is appointed by the governing authority and is re-

(Rule 1020-01-.07, continued)

sponsible to it for the executive management of the organization according to the mission, goals and objectives that have been adopted.

- (a) The administrator must develop an organizational structure to provide the patient care services that are offered by the facility which is consistent with the mission and meets all applicable legal, licensure and accreditation requirements; assure that appropriate mechanisms are in place for an organized medical staff and (if applicable) a volunteer organization; also oversee long range planning and possibly even joint ventures. The individual must work with community, county and state governmental agencies on a wide variety of topics.
 - (b) In a multi-hospital organization, the chief executive officer may be directly responsible to a corporate official and may have a local advisory board or other consultative group.
- (4) Licensure by experience and education as an assistant/associate hospital administrator combined with a Limited Administrator-in-Training (A.I.T.) program – A baccalaureate, masters or doctorate degree from an accredited college and a four hundred (400) hour Board-approved A.I.T. program to be completed in no less than three (3) months and no more than six (6) months combined with a minimum of five (5) of the last seven (7) years as the chief operating officer of a licensed hospital is required. This individual is appointed by the chief executive officer, usually with the concurrence of the governing authority.
- (a) The assistant/associate administrator is directly responsible for the operation of several hospital departments and assists the administrator, as assigned, in other executive management functions. The individual must work with community, county and state governments on a wide variety of topics.
 - (b) The assistant/associate administrator is “in charge” of the facility during the absence of the administrator and must follow its mission, goals and objectives that have been adopted.
- (5) Licensure by education combined with an Administrator-In-Training (A.I.T.) program - A baccalaureate, masters or doctorate degree from an accredited college combined with a Board approved A.I.T. program of at least six (6) months is required.
- ~~(6) Licensure by education and experience combined with an Administrator-In-Training (A.I.T.) program – An associate degree and three (3) years of acceptable management experience in a licensed long term care facility combined with a Board approved A.I.T. program of at least six (6) months is required.~~
- (6) Licensure by education and experience combined with an Administrator-In-Training (A.I.T.) program – An associate degree and five (5) years of acceptable management experience in a licensed long term care facility combined with a Board approved A.I.T. program of at least six (6) months is required.
- ~~(7) Licensure by experience combined with continuing education and an Administrator-In-Training (A.I.T.) program – Five (5) years of acceptable management experience and a four hundred (400) hour Board approved A.I.T. program to be completed in no less than three (3) months and no more than six (6) months combined with fifty (50) clock hours of Board approved continuing education in nursing home administration is required.~~
- ~~(a) The fifty (50) clock hours of continuing education shall be a prerequisite to the A.I.T. program.~~

(Rule 1020-01-.07, continued)

- ~~(b) The fifty (50) clock hours of continuing education must have been presented in the traditional "lecture / classroom" format. Courses that use any of the presentation methods in part (3) (c) 1. of Rule 1020-01-.12 shall not be allowed.~~
- ~~(c) The fifty (50) clock hours of continuing education must have begun within twenty-four (24) months immediately prior to approval of the A.I.T. Program.~~
- ~~(8) Licensure by reciprocity – An active license as a nursing home administrator in another state is required.~~
- ~~(a) This individual must demonstrate to the Board's satisfaction that he/she has successfully completed requirements which are substantially equivalent to or exceed the requirements of paragraphs (2), (3), (4), (5), (6), or (7) of this rule; or~~
- ~~(b) This individual must demonstrate to the Board's satisfaction that he/she has successfully completed requirements which are substantially equivalent to or exceed the requirements for certification by the American College for Health Care Administrators.~~
- (7) Licensure by reciprocity – An active license as a nursing home administrator in another state is required.
- (a) An applicant must demonstrate to the Board's satisfaction a successful completion of requirements that are substantially equivalent to or exceed the requirements of paragraphs (2), (3), (4), (5), or (6) of this rule; or
- (b) An applicant must demonstrate to the Board's satisfaction a successful completion of requirements that are substantially equivalent to or exceed the requirements for certification by the American College of Health Care Administrators.
- (c) For those individuals applying for reciprocity, the Board may consider for licensure an individual working for a minimum of five (5) of the last seven (7) years as a licensed nursing home administrator in another state in lieu of a degree and/or in lieu of an A.I.T. program.
- ~~(98) An applicant who chooses to qualify for licensure by meeting the requirements of paragraphs (5), (6), or (7) of this rule must obtain Board approval to begin the A.I.T. program.~~
- (8) An applicant who chooses to qualify for licensure by meeting the requirements of paragraphs (5) or (6) of this rule must obtain Board approval to begin the A.I.T. program.
- ~~(a) Successful completion of the A.I.T. program as governed by rule 1020-01-.06 is a prerequisite to approval to take the licensure examination.~~
- (a) Successful completion of the A.I.T. program as governed by Rule 1020-01-.06 is a prerequisite to approval to take the licensure examination.
- ~~(b) The time an applicant spends in the A.I.T. program may be credited toward the last six (6) months needed to meet the "acceptable management experience" requirement for admission to the examination.~~
- ~~(c) The Board shall concurrently determine eligibility for both admission to the examination and commencement of the A.I.T. program upon review of both applications.~~

(Rule 1020-01-.07, continued)

Authority: T.C.A. §§4-5-202, 4-5-204, 63-16-103, 63-16-104, 63-16-105, 63-16-106, and 63-16-109.
Administrative History: Original rule certified June 7, 1974. Amendment filed May 22, 1979; effective July 6, 1979. Amendment filed November 12, 1982; effective December 13, 1982. Amendment filed October 22, 1987; effective December 6, 1987. Amendment filed August 14, 1989; effective September 28, 1989. Repeal and new rule filed December 17, 1991; effective January 31, 1992. Repeal and new rule filed December 14, 1999; effective February 27, 2000. Repeal and new rule filed September 4, 2003; effective November 18, 2003. Amendment filed July 23, 2010; effective October 21, 2010.

1020-01-.08 PROCEDURES FOR LICENSURE.

- (1) An applicant shall obtain an examination or an A.I.T. program application from the Board Administrative Office or from the Board's Internet website (tennessee.gov), and respond truthfully and completely to every question. The applicant is responsible for obtaining and submitting the required documentation, or causing it to be submitted, to the Board Administrative Office.
- (2) An applicant must submit the application along with the non-refundable application, jurisprudence examination and state regulatory fees as provided in rule 1020-01-.02.
- (3) Unless the applicant is applying for licensure as provided in paragraphs (2), (5) or (6) of Rule 1020-01-.07, an applicant must submit proof of graduation from high school or its equivalent.
- (4) An applicant shall submit with his application a "passport" style photograph taken within the preceding twelve (12) months and attach it to the appropriate page of the application. Photocopies are not accepted.
- (5) An applicant must submit two (2) original reference letters attesting to the applicant's good moral character on the signator's professional letterhead. Photocopies are not accepted.
- (6) An applicant shall submit proof of United States citizenship or evidence of being legally entitled to live in the United States. Such evidence may include a notarized copy of a birth certificate, or naturalization papers, or current visa status.
- (7) If the applicant is applying for licensure as provided in paragraphs (2), (5) or (6) of Rule 1020-01-.07, the applicant shall cause a transcript to be sent directly to the Board Administrative Office from the educational institution that awarded the degree. Transcripts that state "issued to student" will not be accepted.
- ~~(8) If the applicant is applying for licensure as provided in paragraphs (3), (4) (6) or (7) of Rule 1020-01-.07, a resume must be submitted with the application. The resume must state the dates of employment, name of facility, job title and job duties.~~
- (8) If the applicant is applying for licensure as provided in paragraphs (3), (4), or (6) of Rule 1020-01-.07, a resume must be submitted with the application. The resume must state the dates of employment, the name of the facility, the job title, and the job duties.
- ~~(9) If the applicant is applying for licensure by reciprocity, as provided in paragraph (8) of rule 1020-01-.07, he/she must submit directly to the Board Administrative Office from each state licensing board from which licensure has ever been issued documentation which indicates the applicant either holds a current active license and whether it is in good standing, or held a license which is currently inactive and whether it was in good standing at the time it became inactive. An active license as a nursing home administrator in another state is required for licensure by reciprocity.~~
- (9) If the applicant is applying for licensure by reciprocity, as provided in paragraph (7) of Rule 1020-01-.07, he/she must submit directly to the Board Administrative Office from each state

(Rule 1020-01-.08, continued)

licensing board from which licensure has ever been issued documentation which indicates the applicant either holds a current active license and whether it is in good standing, or held a license which is currently inactive and whether it was in good standing at the time it became inactive. An active license as a nursing home administrator in another state is required for licensure by reciprocity.

- (10) An applicant shall disclose the circumstances surrounding any of the following:
- (a) Conviction of any criminal law violation of any country, state, or municipality, except minor traffic violations.
 - (b) The denial of licensure application by any other state or the discipline of licensure in any other state.
 - (c) Failure of any licensure examination.
- (11) An applicant shall cause to be submitted to the Board's administrative office directly from the vendor identified in the Board's licensure application materials, the result of a criminal background check.

Authority: T.C.A. §§4-5-202, 4-5-204, 63-16-103, 63-16-104, 63-16-106 and 63-16-109. **Administrative History:** Original rule certified June 7, 1974. Amendment filed May 22, 1979; effective July 6, 1979. Amendment filed November 12, 1982; effective December 13, 1982. Amendment filed February 21, 1986; effective May 13, 1986. Amendment filed January 4, 1989; effective February 18, 1989. Repeal and new rule filed December 17, 1991; effective January 31, 1992. Repeal and new rule filed December 14, 1999; effective February 27, 2000. Repeal and new rule filed September 4, 2003; effective November 18, 2003. Amendment filed March 17, 2006; effective May 31, 2006. Amendment filed July 27, 2006; effective October 10, 2006.

1020-01-.09 APPLICATION REVIEW, APPROVAL, DENIAL, AND INTERVIEWS. Review and decisions on applications shall be governed by the following:

- (1) Upon receipt of an incomplete application, the Board Administrative Office shall notify the applicant of the information required. The applicant shall submit the requested information to the Board Administrative Office on or before the forty-fifth (45th) day after the notification is sent. If the requested information is not received by the Board Administrator within the forty-five (45) days, the application file shall be closed and the applicant notified that the Board will not take further action regarding the application. In order to resume the application process, a new application must be received, including another payment of all fees.
- (2) Completed applications received in the Board Administrative Office may be submitted to a Board member or a Board designee for review. An initial determination to allow practice to commence may be made prior to the next Board meeting after the application is received. Each member of the Board and the Board's designee is vested with the authority to make these initial determinations.
- (3) If the full Board denies licensure, the action shall become final and the following shall occur:
 - (a) Notification of the denial shall be sent by the Board Administrative Office by certified mail, return receipt requested, containing all the specific statutory or rule authorities for the denial.
 - (b) The notification, when appropriate, shall also contain a statement of the applicant's right to request a contested case hearing under the Tennessee Administrative Procedures Act, T.C.A. § 4-5-301, et seq.

(Rule 1020-01-.10, continued)

- (i) Complete an additional A.I.T. program which emphasizes training in the deficient areas and is at least three (3) months in length; or
 - (ii) Submit to the Board for approval an education and training program as an alternative to the additional A.I.T. program. Any alternative education and training program must be approved by the Board prior to the applicant beginning such program, and must be successfully completed before retaking the examination.
5. Applicants who fail twice to successfully complete the examination may, in the Board's discretion, be required to furnish a written opinion of his/her reasons for the failure or may be required to appear before the Board to deliver an oral opinion. Failure of an applicant to provide the written or oral opinion shall cause the licensure application to be closed.
- (2) Jurisprudence Examination. All applicants for licensure must successfully complete the Board's jurisprudence examination as a prerequisite to licensure.
- (a) When an applicant has become eligible for licensure and has submitted the Jurisprudence Examination Fee as provided in rule 1020-01-.02 (1) (g), the Board shall send notification of such eligibility and the jurisprudence examination to the applicant.
 - (b) The examination must be completed and returned to the Board Administrative Office before the expiration of ninety (90) days from the date of notification of eligibility, or the applicant shall forfeit such eligibility and must begin the licensure process over.
 - (c) The scope, format, and content of the examination shall be determined by the Board but limited to statutes and rules governing practices and facilities.
 - (d) Correctly answering ninety percent (90%) of the examination questions shall constitute a passing score and successful completion of the jurisprudence exam. Applicants who fail to achieve a passing score on the examination may apply to retake it by written request to the Board Administrative Office and payment of the Jurisprudence Examination Fee as provided in rule 1020-01-.02 (1) (g).

Authority: T.C.A. §§ 4-5-202, 4-5-204, 63-16-103, 63-16-104, 63-16-105, and 63-16-106. **Administrative History:** Original rule certified June 7, 1974. Amendment filed May 22, 1979; effective July 6, 1979. New rule filed December 30, 1983; effective January 29, 1984. Amendment filed October 22, 1987; effective December 6, 1987. Amendment filed January 4, 1989; effective February 18, 1989. Repeal and new rule filed December 17, 1991; effective January 31, 1992. Repeal and new rule filed December 14, 1999; effective February 27, 2000. Amendment filed July 31, 2000; effective October 14, 2000. Amendment filed February 20, 2002; effective May 6, 2002. Amendment filed September 4, 2003; effective November 18, 2003. Amendment filed March 22, 2007; effective June 6, 2007. Amendment filed July 23, 2010; effective October 21, 2010.

1020-01-.11 LICENSURE RENEWAL. All persons licensed by the Board must renew their licenses to be allowed to lawfully continue in practice. The due date for renewal is the last day of the month in which a licensee's birthdate falls, pursuant to the Division's biennial birthdate renewal system, shown as the expiration date on renewal certificates.

(1) Methods of Renewal

- (a) Internet Renewals - Individuals may apply for renewal and pay the necessary fees via the Internet. The application to renew can be accessed at:

www.tennesseeanytime.org

(Rule 1020-01-.11, continued)

- (b) Paper Renewals - For individuals who have not renewed their license online via the Internet, a renewal application form will be mailed to each individual licensed by the Board to the last address provided to the Board. Failure to receive such notification does not relieve the licensee from the responsibility of meeting all requirements for renewal.
- (2) To be eligible for licensure renewal, a licensee must submit to the Board Administrative Office on or before the due date for renewal all the following:
- (a) A completed Board licensure renewal form.
 - (b) The Renewal Fee as provided in rule 1020-01-.02(1)(b).
 - (c) The State Regulatory Fee as provided in rule 1020-01-.02(1)(c).
- (3) Licensees who fail to comply with the renewal rules or notification received by them concerning failure to timely renew shall have their licenses processed pursuant to rule 1200-10-1-.10.
- ~~(4) Reinstatement of an Expired License. Reinstatement of a license that has expired may be accomplished upon meeting the following conditions:~~
- (4) Reinstatement of an Expired License. Reinstatement of a license that has expired may be accomplished upon meeting the following conditions:
- ~~(a) At the discretion of the Board, either appear before it or submit a notarized statement setting forth the cause for failure to renew; and~~
 - (a) At the discretion of the Board, either appear before it or submit a notarized statement setting forth the cause for failure to renew;
 - ~~(b) Payment of all past due Renewal Fees and State Regulatory Fees; and~~
 - (b) Payment of all past due Renewal Fees and State Regulatory Fees. This amount shall not exceed the equivalent of the renewal fee at the time the reinstatement application is submitted plus the state regulatory fee times two (2);
 - ~~(c) Payment of the Late Renewal Fee provided in rule 1020-01-.02 (1) (d); and~~
 - (c) Payment of the Late Renewal Fee provided in Rule 1020-01-.02(1)(d);
 - ~~(d) Compliance with the continuing education requirements of rule 1020-01-.12; and~~
 - (d) Compliance with the continuing education requirements of Rule 1020-01-.12. The total number of hours of continuing education shall not exceed thirty-six (36) hours. However, for those individuals certified as a preceptor at the time the license expired, the total number of hours of continuing education required shall not exceed fifty-four (54) hours; and
 - ~~(e) If expiration was a result of failure to comply with T.C.A. § 63-16-107(e) and rule 1020-01-.14, submit documentation of successful completion of the conditions imposed by the Board as a result of any disciplinary action or settlement pursuant to rule 1020-01-.14 or rule 1020-01-.15.~~
 - (e) If expiration was a result of failure to comply with T.C.A. § 63-16-107(e) and Rule 1020-01-.14, submit documentation of successful completion of the conditions imposed by

(Rule 1020-01-.11, continued)

the Board as a result of any disciplinary action or settlement pursuant to Rule 1020-01-.14 or Rule 1020-01-.15.

- (5) Any licensee who fails to renew licensure prior to the expiration of the second (2nd) year after which renewal is due must, in addition to completing the requirements of paragraph (4) of this rule, reapply for, take and pass the nursing home administration examinations pursuant to rule 1020-01-.10. If continuously and actively practicing in another state as a licensed nursing home administrator, reinstatement may be accomplished upon meeting the following conditions:
 - (a) Compliance with paragraph (2) of rule 1020-01-.08; and
 - (b) Compliance with paragraph (4) of this rule.
- (6) Renewal issuance decisions pursuant to this rule may be made administratively or upon review by any Board member.

Authority: T.C.A. §§4-5-202, 4-5-204, 63-1-107, 63-16-103, 63-16-104, 63-16-107, 63-16-108, and 63-16-109. **Administrative History:** Original rule certified June 7, 1974. Repeal and new rule filed December 17, 1991; effective January 31, 1992. Amendment filed June 19, 1995; effective September 2, 1995. Repeal and new rule filed December 14, 1999; effective February 27, 2000. Amendment filed January 19, 2001; effective April 5, 2001. Amendment filed August 6, 2002; effective October 20, 2002. Amendment filed September 4, 2003; effective November 18, 2003.

1020-01-.12 CONTINUING EDUCATION. Although licensure renewal is required on a biennial basis, all licensees must attend and complete the continuing education requirements of this rule annually, on a calendar year basis, as a prerequisite to licensure renewal.

- (1) Hours Required.
 - (a) All licensees must attend and complete eighteen (18) clock hours of Board approved continuing education within every calendar year.
 - (b) For new licensees, submitting proof of successful completion of the NAB licensure examination shall be considered proof of sufficient preparatory education to constitute continuing education clock hour credit for the length of time already transpired in the calendar year in which the applicant is approved.
 1. For purposes of the requirement set out in subparagraph (1) (a) of this rule, credit for the length of time already transpired shall be calculated at the rate of four and a half (4½) clock hours per quarter-calendar year.
 2. The provisions of this subparagraph shall apply to all new licensees, including new licensees who have been approved pursuant to rule 1020-01-.08.
 - (c) The Board approves courses for only the number of hours contained in the course. The approved hours of any individual course will not be counted more than once in a calendar year toward the required annual hours regardless of the number of times the course is attended or completed by any individual licensee.
 - (d) Waiver or Extension of Continuing Education Requirements.
 1. The Board may grant a waiver of the need to attend and complete the required clock hours of continuing education or the Board may grant an extension of the deadline to complete the required clock hours of continuing education if it can be

G.O.C. STAFF RULE ABSTRACT

DEPARTMENT: Health

DIVISION: Tennessee Board of Nursing

SUBJECT: Advance Practice Nurses

STATUTORY AUTHORITY: Tennessee Code Annotated, Section 63-7-114

EFFECTIVE DATES: March 20, 2013 through June 30, 2013

FISCAL IMPACT: Minimal

STAFF RULE ABSTRACT: This rule requires advance practice nurses with a certificate of fitness to prescribe to obtain and maintain national certification appropriate to the individual nurse's specialty area. Advance practice nurses are also required to take biennially one continuing education hour in the area of controlled substance prescribing.

Public Hearing Comments

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

Public Hearing Comments Board of Nursing Rulemaking

August 22, 2012

Leslie Higgins from Belmont University spoke in support of the rule. She questioned how the process for board approval of courses would be carried out and whether the course must be a different course every two years.

Sharon Adkins representing from the Tennessee Nurses Association spoke in support of the rule and believes registered nurses and advance practice nurses should be "up to speed" in prescribing practices and must be knowledgeable about their rules and regulations.

Clare Smith of Vanderbilt University spoke in support of the rule and further requested that the Board establish a mandatory standard content by rule for continuing education.

Elizabeth Lund, Board of Nursing Executive Director commented in reference to Ms. Higgins' question that there is a continuing competency attestation on the renewal forms which are randomly audited for compliance. She stated it would be difficult for board staff to monitor specific courses. The attestation is an "honor system" as there are over 5000 renewals each month and there is no way courses could be checked if submitted for review/approval. Ms. Lund further commented there could be a problem if the Board has to approve every course and suggested amending the rule language to be similar to the Medical Board rule whereby courses accepted by certain clinical organizations be acceptable and that this might address Ms. Smith's comment regarding a standard content for continuing education.

The Board commented there are common state level courses on prescriptive practice which address this requirement. After discussion among Board members regarding which courses would satisfy the continuing education requirement and how the verification would be accomplished without over burdening the board office, it was decided to change the draft language of 1000-04-.05(2) to delete the the words "board approved" and add "and offered through a continuing education provider approved by any certifying board of an advanced practice nurse, as defined in T.C.A. § 63-7-126(a)."

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.

(If applicable, insert Regulatory Flexibility Addendum here)

REGULATORY FLEXIBILITY ANALYSIS

Tennessee Board of Nursing; Rule No. 1000-04

Pursuant to the Regulatory Flexibility Act of 2007, T.C.A. §§ 4-5-401, *et seq.*, the Department of Health submits the following regulatory flexibility analysis:

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

The proposed rules do not overlap, duplicate, or conflict with other federal, state, or local government rules.

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

The proposed rules exhibit clarity, conciseness, and lack of ambiguity.

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

The proposed rules are not written with special consideration for the flexible compliance and/or reporting requirements because the licensing boards have, as their primary mission, the protection of the health, safety and welfare of Tennesseans. However, the proposed rules are written with a goal of avoiding unduly onerous regulations.

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

The compliance requirements throughout the proposed rules are as "user-friendly" as possible while still allowing the Division to achieve its mandated mission in licensing nurses.

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

Compliance requirements are not consolidated or simplified for small businesses in the proposed rules for the protection of the health, safety and welfare of Tennesseans.

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

When the health-related licensing boards' rules contain standards, there are always statements included which specify what constitutes compliance with such standards.

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

There are no unnecessary entry barriers or other effects in the proposed rules that would stifle entrepreneurial activity or curb innovation.

STATEMENT OF ECONOMIC IMPACT TO SMALL BUSINESSES

1. **Name of Board, Committee or Council:** Board of Nursing
2. **Rulemaking hearing date:** August 22, 2012
3. **Types of small businesses that will be directly affected by the proposed rules:**
 - (a) Advanced practice nurses who practice as sole proprietors, or as members of a partnership or limited liability company, or as members of a professional corporation; and
 - (b) Medical practices that employ advanced practice nurses or who hire advanced practice nurses as independent contractors; and
 - (c) Continuing education course providers; and
 - (d) Independently owned pharmacies.
4. **Types of small businesses that will bear the cost of the proposed rules:**
 - (a) Short term
 - I. Advanced practice nurses who practice as sole proprietors, or as members of a partnership or limited liability company, or as members of a professional corporation; and
 - II. Medical practices that pay for the continuing education of the advanced practice nurses whom they employ; and
 - III. Independently owned pharmacies.
 - (b) Long term

The Board anticipates the proposed rule amendment will reduce, rather than increase, small business expenses for:

 - I. Advanced practice nurses who practice as sole proprietors, or as members of a partnership or limited liability company, or as members of a professional corporation; and
 - II. Medical practices that employ advanced practice nurses.
 - (c) Continuing education course providers will have routine course development and presentations costs but will also have routine revenue coming from course registration fees.
5. **Types of small businesses that will directly benefit from the proposed rules:**
 - (a) Short term

Continuing education course providers whose course registration revenues exceed their course development and presentation expenses.
 - (b) Long term
 - I. Advanced practice nurses and medical practices that employ advanced practice nurses will realize the benefits of improved patient care as a result of having obtained knowledge of current prescribing practices, including possible efficiency improvements, reduced insurance costs, a lower probability of licensure or peer review discipline and a reduction in malpractice awards, judgments and settlements; and

- II. Continuing education course providers whose course registration revenues exceed their course development and presentation expenses.

6. Description of how small business will be adversely impacted by the proposed rules:

Amendments regarding advanced practice nurse demonstrations of competence:

- (a) Advanced practice nurses and medical practices that pay for the continuing education of the advanced practice nurses whom they employ may have to pay higher registration fees to find a course that will meet the proposed rule's requirements.
- (b) Continuing education course providers whose course registration revenues are less than their course development and presentation expenses will realize a loss from the course.
- (c) Independently owned pharmacies may see a reduction in business if fewer prescriptions are filled as a result of improved prescribing practices.

7. Alternatives to the proposed rule that will accomplish the same objectives but are less burdensome, and why they are not being proposed:

It would be less burdensome to not promulgate these amendments, but the Board is concerned with Tennessee's history of excessive drug prescribing and drug consumption, and therefore does not believe there are less burdensome alternatives. Continuing education will not guarantee that a licensee learns or retains knowledge but the Board is not aware of any less burdensome alternative that holds similar promise and potential.

8. Comparison of the proposed rule with federal or state counterparts:

Federal: The Board is not aware of any federal counterparts. Nurses are not licensed by the federal government

State: In general, the proposed rule amendment is similar to various continuing education category requirements for fifteen (15) of the health-related licensing boards, committees, and councils. More specifically, all of the other health-related licensing boards which regulate prescribing professions have adopted similar rule amendments.

Impact on Local Governments

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

This rule amendment is not expected to have an impact on local governments.

(Rule 1000-04-.04, continued)

- (a) A current, unencumbered license as a registered nurse under T.C.A. Title 63, Chapter 7;
 - (b) Preparation in specialized practitioner skills at the master's, post-master's, doctoral, or post-doctoral level, including, but not limited to, at least three (3) quarter hours of pharmacology instruction or its equivalent;
 - (c) A current national certification in the appropriate nursing specialty area; and
 - (d) Graduation from a program conferring a master's or doctoral degree in nursing.
- (3) Those applicants intending to prescribe, issue or administer controlled substances pursuant to T.C.A. § 63-7-123(b)(2) shall maintain their Drug Enforcement Administration Certificate to Prescribe Controlled Substances at their practice location to be inspected by the Board or its authorized representative.
- (4) A nurse who has been issued a certificate of fitness shall file a notice with the Board of Nursing containing:
- (a) The nurse's full name;
 - (b) a copy of the formulary describing the categories of legend drugs to be prescribed and/or issued by the nurse; and
 - (c) the name of the licensed physician having supervision, control and responsibility for prescriptive services rendered by the nurse.
- (5) Every nurse who has been issued a certificate of fitness shall be responsible for updating the information submitted pursuant to paragraph (4) within thirty (30) days of the change.

Authority: T.C.A. §§4-5-202, 4-5-204, 63-7-123, and 63-7-207. **Administrative History:** Original rule filed March 11, 1993; effective April 25, 1993. Amendment filed February 21, 1996; effective May 6, 1996. Repeal and new rule filed May 28, 2004; effective August 11, 2004.

~~1000-04-.05 REPEALED.~~

1000-04-.05 Renewal of Certificate and Demonstration of Competency

1000-04-.05 Renewal of Certificate and Demonstration of Competency. All advanced practice nurses who hold a Tennessee registered nurse license must biennially renew their Tennessee registered nurse license pursuant to Rule 1000-01-.03 and must demonstrate competency as a registered nurse pursuant to Rule 1000-01-.14. Additionally, to demonstrate competency to hold and/or renew an Advanced Practice Nurse Certificate, an advanced practice nurse shall:

- (1) have initially obtained or maintained, during the most recent biennial renewal period, certification from a nationally recognized certification body appropriate to the nurse's specialty area; and
- (2) if in possession of a Certificate of Fitness pursuant to Rule 1000-04-.04, have successfully completed a minimum one (1) contact hour course designed specifically to address controlled substance prescribing practices and offered through a continuing education provider approved by any certifying board of an advanced practice nurse, as the term advanced practice nurse is defined in T.C.A. § 63-7-126(a).

(Rule 1000-04-.04, continued)

Authority: T.C.A. §§4-5-202, 4-5-204, 63-7-114, 63-7-123, 63-7-126, and 63-7-207. **Administrative History:** Original rule filed October 26, 1999; effective January 9, 2000. Repeal filed March 9, 2001; effective May 23, 2001. New rule filed May 28, 2004; effective August 11, 2004. Repeal filed December 16, 2005; effective March 1, 2006.

1000-04-.06 FEES.

- | (1) Type | Amount |
|--|----------|
| (a) Application for Advanced Practice Nurse Certificate (includes fee for Certificate of Fitness to Prescribe as provided in rule 1000-01-.12 [1] [i], if applicable). If a Certificate of Fitness to Prescribe has previously been obtained by the applicant (including payment of the applicable fee), this application fee shall be waived. | \$200.00 |
| (b) Advanced Practice Nurse Certificate Renewal (biennial) [requires current national specialty certification] | \$100.00 |
| (c) Advanced Practice Nurse Certificate Reinstatement | \$100.00 |
| (d) State Regulatory Fee (biennial) | \$ 10.00 |
- (2) Fees may be paid in the following manner:
- (a) All fees paid by money order, certified, personal, or corporate check must be submitted to the Board's Administrative Office and made payable to the Tennessee Board of Nursing.
 - (b) Fees may be paid by credit cards approved by the Division of Health Related Boards or other Division-approved electronic methods.

Authority: T.C.A. §§4-3-1011, 4-5-202, 4-5-204, 63-7-114, 63-7-123, 63-7-126, and 63-7-207. **Administrative History:** Original rule filed May 28, 2004; effective August 11, 2004. Amendment filed November 4, 2006; effective January 18, 2006. Amendment filed December 16, 2005; effective March 1, 2006.

1000-04-.07 PROCESSING OF APPLICATIONS. A nurse seeking to practice, pursuant to T.C.A. § 63-7-126 and this Chapter, as an advanced practice nurse with or without privileges to write and sign prescriptions and/or issue legend drugs, shall request an application from the Tennessee Board of Nursing or shall download an application from the Internet, and subsequently submit the application to the Board along with the documentation required by Rule .03 and the applicable fee(s) as required by Rule .06. After review, the Board shall notify the applicant, in writing, sent to the address furnished in the application, the following information, as applicable:

- (1) That the application is incomplete or more information is required.
- (2) That the application is denied (including the reasons for denial).
- (3) That the application is approved and a certificate of fitness with an identifying number has been forwarded to the Director of the Division of Health Related Boards to be filed and recorded.

G.O.C. STAFF RULE ABSTRACT

DEPARTMENT: Environment and Conservation

DIVISION: Natural Areas

SUBJECT: Ginseng Harvest

STATUTORY AUTHORITY: Tennessee Code Annotated, Sections 62-28-1101 et seq. and 70-8-201 et seq.

EFFECTIVE DATES: March 13 2013 through June 30, 2013

FISCAL IMPACT: Minimal

STAFF RULE ABSTRACT:

The ginseng harvest law changed in 2012. Effective July 1, 2012, Tennessee Code Annotated, § 70-8-203 was amended to limit the harvest season for wild ginseng from September 1 through December 31, inclusive, of each year. Also, on July 1, 2012, Tennessee Code Annotated, § 62-28-1 02 was amended to require each registered ginseng dealer submit monthly purchase records for the period of September 1 through March 31 of each year and an annual report of purchases and sales of ginseng.

The previous harvest date was based on the time of the year that the fruit (berries) ripens. The dealer is required by law to replant the fruits when the plant (root) is harvested for long-term sustainability.

Over the years it has been proven that August 15 is too early for the fruits to be fully ripened and that this may be detrimental to the survival of the ginseng species. Therefore, the U.S. Fish and Wildlife Service, Division of Management Authority, is requesting that all 19 states that are approved to export wild American ginseng change the harvest season to September 1st at the earliest. The Department has received a letter from the U.S. Fish and Wildlife Service dated September 3, 2010, "strongly encouraging" revision of Tennessee's harvest season date. The Division received a second letter from U.S. Fish and Wildlife Service dated April 1, 2011, supporting these proposed changes and "encouraging" the revisions prior to the 2011 Harvest Season, "if possible."

This rulemaking is primarily intended to update the regulations to reflect the statutory changes in ginseng harvest dates from August 15th to September 1.

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.

Comments: A commenter was of the opinion that the change in the harvest season will make the root quality better for the size, weight and value.

Response: The Department concurs with this comment.

Comments: A commenter agreed that it is a good law to move our season back two weeks. It's good for the Ginseng and probably should have been done a long time ago. We need to enforce the law, we're making new laws, that's great but we need to get the laws enforced.

Response: TWRA has been active is giving citations to persons digging outside the harvest season and on state lands where harvesting is not allowed. Several state park rangers have given citations to people for illegal digging on state lands. Local city and county governments have the authority to enforce the laws if they have direct proof that someone is illegally buying, selling or harvesting. Most of the illegal activity occurs on private land in rural areas of the state where the laws are more difficult to enforce. This rule change does not address digging permits.

Comments: A commenter identified the need to find a way to enforce these laws about Ginseng as far as hunting is concerned and understands that it just takes a lot more money to enforce laws. Any time you try to enforce, it requires more money. In Illinois you have to purchase a digging permit, which is great and that is a good place to start.

Response: TWRA has been active is giving citations to persons digging outside the harvest season and on state lands where harvesting is not allowed. Several state park rangers have given citations to people for illegal digging on state lands. Local city and county governments have the authority to enforce the laws if they have direct proof that someone is illegally buying, selling or harvesting. Most of the illegal activity occurs on private land in rural areas of the state where the laws are more difficult to enforce. This rule change does not address digging permits.

Comments: A commenter suggested that the date for buying dry ginseng to be September 7. Most ginseng can be dried in one week after harvest. A person can dry green ginseng in a dehydrator in 2 days. If the September 15 date passes then one should not be able to buy any dry ginseng, including ginseng harvested during the previous year, until September 15.

Response: The Department's intention with the law changes is too match the harvest season and buying season with the laws of surrounding states. These changes were requested by the U.S. Fish and Wildlife Service for the purpose of protecting the viability and sustainability of the species.

Comments: A commenter suggested that the date for buying or selling ginseng to be one week ahead (September 7), two weeks is too long.

Response: The Department's intention with the law changes is too match the harvest season and buying season with the laws of surrounding states. These changes were requested by the U.S. Fish and Wildlife Service for the purpose of protecting the viability and sustainability of the species.

Comments: A commenter pointed out that the dealers buying time is two weeks less. These are the two weeks, August 15- August 31 that a dealer is able to buy the most ginseng available. The diggers are losing two weeks of hard worked income for themselves. I wish the Feds would enforce the laws.

Response: It is not the Department's intent for diggers or dealers to lose income. Diggers can still sell the green ginseng roots starting September 1. Theoretically a later harvest should aid in the

harvesting of higher quality roots which should also confer a higher value. These changes were requested by the U.S. Fish and Wildlife Service for the purpose of protecting the viability and sustainability of the species.

Regulatory Flexibility Addendum

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

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

This rule applies to ginseng diggers and dealers. There are likely hundreds of diggers and approximately 50 dealers in Tennessee. Only a few dealers operate as ginseng exporters.

- (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.

No change in report preparation or record keeping is anticipated.

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

No significant impacts are anticipated.

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

No alternatives were recommended by the U.S. Fish and Wildlife Service.

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

Most other states that export ginseng have gone through the legislative process to change the harvest season so that surrounding states have the same harvest dates. The U.S. Fish and Wildlife Service requested the changes for the purpose of protecting the viability and sustainability of the species.

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

Exempting small businesses from these amendments was not possible. T.C.A § 70-8-203 was amended, effective July 1, 2012, to change the harvest season dates and these amendments are consistent with that statutory change. Additionally, T.C.A. § 62-28-102 was amended to require all ginseng dealers to file records for purchases of ginseng made between September 1st and March 31st and to file an annual report of all purchases and sales of ginseng.

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.

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

For Department of State Use Only

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

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

Agency/Board/Commission:	Environment and Conservation
Division:	Division of Natural Areas
Contact Person:	David Lincicome
Address:	7 th Floor, L & C Annex 401 Church Street Nashville, Tennessee
Zip:	37243-0447
Phone:	(615) 532-0431
Email:	David.Lincicome@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
0400-06-01	Ginseng Dealer Registration
Rule Number	Rule Title
0400-06-01-.01	Purpose
0400-06-01-.02	Authority
0400-06-01-.03	Definition
0400-06-01-.04	Registration, Permit and Fee
0400-06-01-.05	Reporting
0400-06-01-.06	Record Keeping
0400-06-01-.07	Inspection and Export Certification
0400-06-01-.08	Inspection at End of Buying Season Receipt and Weight
0400-06-01-.09	Registration and Reporting Form and Content
0400-06-01-.10	Violation

(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>)

Amendment

Chapter 0400-06-01 Ginseng Dealer Registration

Chapter 0400-06-01 Ginseng Dealer Registration is amended by deleting it in its entirety and replacing it the following so that as amended chapter 0400-06-01 shall read as follows:

Chapter 0400-06-01 Ginseng Dealer Registration

Table of Contents

0400-06-01-.01 Purpose
0400-06-01-.02 Authority
0400-06-01-.03 Definitions
0400-06-01-.04 Registration, Permit and Fee
0400-06-01-.05 Reporting
0400-06-01-.06 Record Keeping
0400-06-01-.07 Inspection and Export Certificate
0400-06-01-.08 Inspection at End of Buying Season Receipt and Weight
0400-06-01-.09 Registration and Reporting Form and Content
0400-06-01-.10 Violation

0400-06-01-.01 Purpose

The purpose of these regulations is to provide for the implementation of the ginseng dealers act requiring the registration of ginseng dealers and to permit the same, the submitting of an annual report and to require certain inspections of shipments of ginseng and further requiring the payment of a registration fee all of which is relative to the purchase, sale and/or export of wild or cultivated ginseng.

Authority: T.C.A. §§ 62-28-101 et seq., 70-8-201 et seq. and 4-5-201 et seq.

0400-06-01-.02 Authority

The regulations are issued under the authority granted to the Commissioner of the Tennessee Department of Environment and Conservation under the ginseng dealer act, Chapter 445, Public Acts of 1983 by T.C.A. § 62-28-104.

Authority: T.C.A. §§ 62-28-101 et seq., 70-8-201 et seq. and 4-5-201 et seq.

0400-06-01-.03 ~~Definitions~~ Definitions

As used in these regulations, the term:

- (1) "Buying Season" shall mean that period from ~~August 15th~~ September 1st for green roots and September 15th for dry roots through March 31st when it is legal for ginseng dealers to purchase ginseng from ginseng collectors.
- (2) "Cultivated" shall mean grown under natural or artificial shade and according to varying standards of cultivation procedures.
- (3) "Department" shall mean the Tennessee Department of Environment and Conservation.
- (4) "Export" shall mean to transport, ship, carry, haul, take or otherwise move wild or cultivated ginseng (said ginseng being previously collected or cultivated inside the State of Tennessee) to destination(s) outside the State of Tennessee and/or the United States.

- (5) "Ginseng" shall mean the plant or any part of the plant, *Panax quinquefolius* L., of the Araliaceae family cultivated and/or collected within the State of Tennessee.
- (6) "Ginseng collector" shall mean any person who collects, digs, picks, pulls up, cuts, uproots, harvests or otherwise removes any part of the ginseng plant, either wild or cultivated, from its habitat for any purpose.
- (7) "Ginseng dealer" shall mean any person who purchases ginseng for the purpose of resale or any person who exports ginseng to a destination outside the State of Tennessee. ~~The above~~ This definition specifically excludes retail businesses that sell ginseng to the general public for consumption within the United States.
- (8) "Permit" shall mean the ginseng dealer permit as issued by the Tennessee Department of Environment and Conservation under the authority of ~~the Ginseng Dealer Act, Chapter 445, Public Acts of 1983~~ T.C.A. § 62-28-101.
- (9) "Person" shall mean any individual, partnership, firm, organization, corporation, association, club or other entity.
- (10) "Purchase" shall mean to acquire, obtain, or receive or attempt to acquire, obtain or receive by exchange of money or other valuable consideration and shall specifically include barter or exchange.
- (11) "Sell", "Sale", or "Sold" shall mean to dispose of, transfer or convey or to attempt to dispose of, transfer or convey by exchange of money or other valuable consideration and shall specifically include barter or exchange.
- (12) "State" shall mean the State of Tennessee.
- (13) "Wild" shall mean grown under natural conditions without the use of any cultivation procedures.

Authority: T.C.A. §§ 62-28-101 et seq., 70-8-201 et seq. and 4-5-201 et seq.

0400-06-01-.04 Registration, Permit and Fee

- (1) No person shall be a ginseng dealer without first registering and obtaining a ginseng dealer permit as issued by the Department.
- (2) The permit shall be issued and become effective on ~~August 15th~~ September 1st of each year and will be good and valid through August ~~44th~~ 31st of the next year.
- (3) Completed applications for registering and obtaining the permit shall be submitted to the ~~d~~Department prior to ~~August 15th~~ September 1st of each year along with a registration fee; the fee amount for registration shall be two hundred and fifty (~~\$250.00~~) dollars per year. Registration shall not be deemed complete and a permit shall not be issued until the registration fee has been paid in full to the Department. Blank application forms shall be provided by the Department upon request.
- (4) Upon registration and issuance of a permit, the ginseng dealer is authorized to sell, purchase, and/or export wild and/or cultivated ginseng pursuant to the following conditions:
 - (a) wild and/or cultivated ginseng that has been inspected and issued an export certificate pursuant to ~~rule 1400-6-1-.07~~ below Rule 0400-06-01-.07 may be exported throughout the entire permit period, and
 - (b) ginseng may only be purchased from ginseng collectors during the period from ~~August 15th~~ September 1st for green roots and September 15th for dry roots through March 31st of each permit period, and
 - (c) wild ginseng may be sold to other registered and permitted ginseng dealers throughout the entire permit period if the ginseng was purchased from ginseng collectors during the period from ~~August~~

15th September 1st for green roots and September 15th for dry roots through March 31st of each permit period.

- (5) The permit does not renew automatically and a new permit must be obtained annually pursuant to ~~rule 0400-6-1-.04~~ paragraphs (2) and (3) above of this rule.
- (6) If a permit application is received on or after ~~August 15th~~ September 1st, the permit issued pursuant to such application shall be effective only from the date of issuance.

Authority: T.C.A. §§ 62-28-101 et seq., 70-8-201 et seq. and 4-5-201 et seq.

0400-06-01-.05 Reporting

- (1) All ginseng dealers shall file with the department during the period from ~~August 15th~~ September 1st through March 31st monthly reports (purchase records) of all purchases of ginseng. The reports shall be ~~submitted~~ submitted on forms which are provided by the Department. The reports shall include but shall not be limited to, the amount of ginseng purchased, whether it was wild or cultivated, whether it was green (fresh) or dry, the county or counties from which the ginseng was collected, and the dates on which it was collected and purchased. Reports will cover from the ~~15th of the previous month to the 14th of the current month~~ 1st day of the previous month to the last day of the previous month for the entire period from August 15th September 1st through March 31st. ~~The reports shall be due no later than the last day of the month in which the report period ends, except in the case of the report for the period from March 15th through March 31st, which shall be due no later than April 30th. The reports shall be due no later than the last day of the month following the report period, the first report being due October 31st.~~
- (2) All ginseng dealers shall file with the Department an annual report on or before April 30th of each year, and it shall be submitted on forms provided by the Department. The annual report shall include, but shall not be limited to the amount, by weight, of all ginseng purchased and sold from April 1st of the previous year through March 31st of the current year, the county or counties from which the ginseng was collected, whether the ginseng was wild or cultivated, and the average price per pound paid for the ginseng.

Authority: T.C.A. §§ 62-28-101 et seq., 70-8-201 et seq. and 4-5-201 et seq.

0400-06-01-.06 Record Keeping

- (1) All ginseng dealers shall keep records of all purchases and/or sales of ginseng. These records shall include but shall not be limited to the purchase or sale date, date of collection, county of collection or cultivation and the weight of the ginseng purchased or sold.
- (2) All ginseng dealers shall retain the ~~above~~ records required by paragraph (1) of this rule for a period of ~~three~~ (3) years from the date of the purchase or sale of ginseng.
- (3) Upon reasonable notice to the ginseng dealer, all records required ~~under~~ by this section rule shall be made available to the Department at the dealer's place of business and during normal dealer working hours.

Authority: T.C.A. §§ 62-28-101 et seq., 70-8-201 et seq. and 4-5-201 et seq.

0400-06-01-.07 Inspection and Export Certification

- (1) All ginseng dealers who export ginseng to destination(s) outside the state: ~~(a) must~~ shall have each sale (hereinafter referred to as shipment) of ginseng inspected by and obtain an export certificate from a designated representative of the Department before any such shipment of ginseng is exported from this state.
~~(b)(2)~~ The export certificate shall identify:
 - ~~(1)(a)~~ the weight of the shipment of ginseng,
 - ~~(2)(b)~~ whether the ginseng is wild or cultivated,

- ~~(3)~~(c) the year the ginseng was collected,
- ~~(4)~~(d) the ginseng dealer permit number,
- ~~(5)~~(e) a shipment number, and
- ~~(6)~~(f) date of shipment of ginseng.

~~(3)~~ The export certificate ~~must~~ shall be verified and signed by the inspecting representative of the Department.

~~(c)~~(4) A copy of the export certificate ~~must~~ shall be enclosed or attached to the shipment of the subject ginseng. A copy of the certificate shall be retained for a minimum of ~~three~~ ~~(3)~~ years by the ginseng dealer and the export certificate original shall be retained by the ginseng dealer and submitted to the department in accordance with internal procedures of the Department within a reasonable time after the export of the said ginseng. These internal procedures are subject to change from time to time.

Authority: T.C.A. §§ 62-28-101 et seq., 70-8-201 et seq. and 4-5-201 et seq.

0400-06-01-.08 Inspection at End of Buying Season and Weight Receipt

~~(1)~~ Any ginseng dealer possessing ginseng roots at the end of the buying season (i.e. after March 31st) shall obtain a receipt for that ginseng from a designated representative of the Department.

~~(2)~~ The receipt shall identify:

- ~~(1)~~(a) the weight of the ginseng,
- ~~(2)~~(b) whether the ginseng is wild or cultivated,
- ~~(3)~~(c) the year the ginseng was collected, and
- ~~(4)~~(d) the ginseng dealer's name and permit number.

~~(3)~~ Upon verifying the weight of the ginseng, the designated representative of the Department ~~will~~ shall sign and issue a receipt.

~~(4)~~ The receipt shall be retained by the dealer and presented at the time of and in exchange for any future certification of the ginseng for export.

Authority: T.C.A. §§ 62-28-101 et seq., 70-8-201 et seq. and 4-5-201 et seq.

0400-06-01-.09 Registration and Reporting Form and Content

The Department is authorized to prescribe the form and content of the ginseng dealer permit, inspection certificate, sale and purchase records, monthly report form, and annual report form required by the regulations. The form and content of the ~~above~~ forms are subject to change from time to time as deemed necessary by the Department.

Authority: T.C.A. §§ 62-28-101 et seq., 70-8-201 et seq. and 4-5-201 et seq.

0400-06-01-.10 Violation

(1) Any person violating the provisions of these regulations shall be guilty of a misdemeanor and punishable under the general laws relating to misdemeanors.

(2) The Commissioner of the Tennessee Department of Environment and Conservation may suspend, revoke and/or deny the issuance of a permit to any ginseng dealer who violates the act or these regulations. The ginseng dealer shall have the right to contest and appeal any suspension, revocation and/or denial of

his/her permit and the provisions of the Uniform Administrative Procedures Act, compiled in Chapter 5 of Title 4 of the T.C.A., and the Rules of the Secretary of State, Chapter 1360-01-07, shall apply to any such contest and appeal.

Authority: T.C.A. §§ 62-28-101 et seq., 70-8-201 et seq. and 4-5-201 et seq.

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

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the Commissioner on 11/05/2012, and is in compliance with the provisions of T.C.A. § 4-5-222.

I further certify the following:

Notice of Rulemaking Hearing filed with the Department of State on: 06/25/12

Rulemaking Hearing(s) Conducted on: (add more dates). 08/28/12 and 08/30/12

Date: November 5, 2012

Signature: _____

Name of Officer: Robert J. Martineau, Jr.

Title of Officer: Commissioner

Subscribed and sworn to before me on: _____

Notary Public Signature: _____

My commission expires on: _____

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.
Attorney General and Reporter

Date

Department of State Use Only

Filed with the Department of State on: _____

Effective on: _____

Tre Hargett
Secretary of State

G.O.C. STAFF RULE ABSTRACT

DEPARTMENT: Environment and Conservation

DIVISION: Solid Waste Management

SUBJECT: Local Approval of Landfills

STATUTORY AUTHORITY: Tennessee Code Annotated, Sections 68-211-101 et seq.

EFFECTIVE DATES: March 18, 2013 through June 30, 2013

FISCAL IMPACT: Minimal

STAFF RULE ABSTRACT: These rule amendments are to make clear to TDEC staff, applicants, local governments, and concerned citizens the various provisions in statute for local approval of landfills or processing facilities and applicable site restrictions. These amendments also make clear how local approval processes mesh with TDEC's permitting process.

Public Hearing Comments

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

Comment: A commenter submitted comments about the current rules and not the amendments. Under the Rules 0400-11-01-.02(1)(b)3(ii), (vi) and (vii), the commenter is concerned that the State does not regulate: (ii) junkyards, (vi) construction/demolition wastes..... and (vii) burning of solid wastes.....under a permit.

Under (ii), hazardous materials and chemicals are present within equipment that is sent to junkyards. This material is left outside where years of weatherization breaks the various components down and allows for them to contaminate the ground and possibly surface waters during run-off events. Without a permit to hold the owner to some kind of accountability, how does the state intend to protect the environment and water sources? Are junkyards somehow managed under another program? They are likely to become mini remedial sites if not controlled from the outset.

Under (vi), the allowance of construction or demolition debris to be buried without a permit will result in ground subsidence issues for future owners and potentially contaminated sources to migrate into water systems. Without a permit how does the state intend to protect the public from hazardous materials like paints, lead, debris, asbestos materials (not known by the contractor), oils, and garbage in general that could leach into wells or other water systems?

Under (vii), without a permit for burning of solid wastes (which may include hazardous chemicals [plastics, metals..]) for energy recovery, how does the state intend to control hazardous emissions into the atmosphere? Seems like a permit would at least make known the owners responsibility for controlling hazardous emissions.

Response: These amendments are intended to bring clarity to all parties, including the local boards, as to how the various statutes applicable to local approvals are being interpreted and administered. However, regarding these issues:

The current regulations at Rule 0400-11-01-.02(1)(b)3(ii) exempts junkyard permitting. Junkyards and Automobile Graveyards are regulated by the Department of Transportation at T.C.A. §§ 54-20-101 through 205.

The current regulations at Rule 0400-11-01-.02(1)(b)3(vi) exempt from a permit construction/demolition wastes at facilities which are on/site of generation and have a fill area of less than one acre in areal extent when completed. "Construction/demolitions wastes" means wastes, other than special wastes, resulting from construction, remodeling, repair, and demolition of structures and from road building. Such wastes include but are not limited to bricks, concrete, and other masonry materials, soil, rock and lumber, road spoils, rebar, paving materials. Hazardous materials, such as lead based paint and debris, friable asbestos waste, and oils are considered special wastes and must be reported to the Department prior to disposal.

The current regulations at Rule 0400-11-01-.02(1)(b)3(vii) exempts from a permit the burning of solid wastes for energy recovery or processing of solid wastes to produce a fuel or processing of solid wastes for materials recovery, provided such burning or processing occurs on the site of generation or at a site owned or operated by the same corporation or subsidiaries of such corporation. This exemption does not exempt the burning or process from Air Pollution Control regulations which are applicable.

- Comment: A commenter asked if this rule change changes to the powers of the Local Boards, allowing TDEC staff to reject them if they are determined to be "arbitrary and capricious". The commenter believes that it would be wrong for the TDEC staff to make these decisions and if the decision is made by the TDEC staff or a board that the decision made by the Regional Board is arbitrary and capricious then the application should be returned to the Regional Board.
- Response: These amendments are intended to bring clarity to all parties as to how the various statutes applicable to local approvals are being interpreted and administered. These amendments are not adding or diminishing the authority of any party currently granted by statute nor is it intended to add new procedures.
- Comment: The commenter asked if the law states that a local government must "opt in" to the Jackson Law, does that mean that it must do so for each application submitted or can a government "opt in" in general, choosing to send in an approval or disapproval for only those applications they are interested in.
- Response: If a local government 'opts in', or adopts, the Jackson law, all new landfill or lateral expansion permits must have local approval as prescribed by the law before TDEC can continue the permit process. It is the responsibility of the local government to act on each application within the time restraints under the law.
- Comment: The commenter wanted to know how local governments "opt in" and asked if the Department could provide detailed instructions and/or links to the paperwork for opting in.
- Response: T.C.A. § 68-211-707 states the provisions of the Jackson Law "only apply in any county or municipality in which [the Jackson Law] is approved by a two-thirds vote of the appropriate legislative body." Once the local legislative body adopts the Jackson Law, the local government must notify the department in writing that it has done so and include a copy of the ordinance or resolution.
- Comment: From proposed Rule 0400-11-01-.02(1)(c)2(iii): "...that local government was aware of the approved...", the commenter believes that the rule seems to say that if an application was filed after 1989 then the person/company filing the application for the landfill need only show that the "...local government was aware of and approved (the project)..". However, the required documents listed under this point only indicated that the local government was aware of the application, these documents in no way indicate that they approved it.
- Response: The applicant must provide the local government adopting the Jackson law with the information required by proposed subparagraph (1)(c) of Rule 0400-11-01-.02 and then submit evidence to the Department of the application's or notification's (in case of permit by rule processing facilities) approval, denial, or local government's failure to act.
- Comment: A commenter was of the opinion that ninety days is not enough time for local governments to assess the application and turn in a decision under the Jackson Law. Assessment takes quite a long time and money. In most cases, it takes quite a long time to muster political support to convince local officials to side with ordinary citizens and not wealthy applicants, especially where kick backs are common place. Would your department consider 180 days?
- Response: Ninety days are required by T.C.A. §§ 68-211-814(b)(2) for municipal solid waste regions to make a decision after receiving a complete application to determine if the proposed landfill or incinerator is consistent with the region's solid waste plan. The Jackson Law addresses county legislative bodies and municipal governing bodies and not municipal solid waste regions. T.C.A. subsection 68-211-704(a) requires the county legislative body, the municipal governing body or both such entities to approve or disapprove the proposed new construction for solid waste disposal by landfilling or solid waste processing by landfilling within 30 days after notice and an opportunity for a public hearing has been provided in accordance with T.C.A. § 68-211-703. The Department does not believe it has the authority to extend this timeline.
- Comment: A commenter was concerned about a specific application (Roberta Landfill in Scott Co, TN) that was approved by the Division of Solid Waste Management, but was not yet approved by the

Division regulating the water ways (because this extension to the landfill will be built over a stream that empties into the Big South Fork and is a source for drinking water in KY). What are our rights now under the Jackson Law? Has the time run out?

Response: Scott County's initial adoption (July 17, 1989) of the Jackson Law provisions has expired. A January 21, 2003 letter from the Division of Solid Waste Management to Scott County requested a copy of resolution re-adopting the Jackson Law. Presently the requested documentation has not been received. When an application for a municipal solid waste disposal facility or a solid waste processing by landfilling facility is received by the Division, it is the practice of the Division to check for the applicability of the Jackson Law, and, if needed, the local government will be requested to consider the adoption or re-adoption of the Jackson Law provisions or provide documentation that it has done so.

Comment: A commenter was concerned about the following language: "for purposes of this part [(c)1] only, "complete application" means an application that is deemed complete by the solid waste region for its purposes of determining whether a proposed landfill or incinerator is consistent with the region's solid waste plan."

Most plans do not currently have such a definition, and it would lead to inconsistent application. I believe the rules should be consistent with current practice of a Part 1 and a map of the location. In addition, the definition should not be the "technical completeness" definition of a Part II.

Response: The Department agrees with the commenter and the definition of "complete application" has been revised to clarify the level of information needed for landfill and incinerator proposals to be considered complete for the purposes of obtaining regional approval in accordance with T.C.A. 68-211-814(b)(2).

Comment: Two commenters were concerned about proposed Rule 0400-11-01-.02(1)(c)2(ii) and recommended the rule be amended to provide the county with ninety days to notify the Department as opposed to sixty days as many county commissions only meet quarterly; provide direct written notice be sent to the county mayor and chair of the county legislative body by the Department at the time of the preliminary public notice to ensure that the county promptly receives actual notice; and clarify that even if the county does not provide notice within the ninety day window, the county is still authorized to approve or disapprove the landfill or facility pursuant to the Jackson Law.

When making decisions members of county legislative bodies and mayors often take into consideration, along with the research they do themselves, the information and concerns they receive from their constituents. By nature, the process of receiving information and concerns from constituents takes time. We feel as though the above suggested language strikes a proper balance between representatives' desires to value the concerns of their constituents and the need for an efficient permitting process.

Response: The Department agrees that a ninety day notification period is reasonable to meet the needs of county commissioners that meet on a quarterly basis and has revised the proposed language.

In addition, the Department agrees that direct written notice be sent to the appropriate local authorities and the regulations have been amended accordingly.

However, the Department disagrees with the commenters that the county legislative body or municipal governing body should be able to render a decision on the proposal after missing the decision deadline. There must be fairness in establishing a point beyond which, for a given application, the Jackson Law may not be adopted.

Comment: A commenter questioned the rule numbering used in the notice and asked if the statutory cites used in Rules 0400-11-01-.02(1)(c)2(v) and (vi) were correct.

Response: On October 4, 2011, the Solid Waste Disposal Control Board adopted the number change for these rules from Chapter 1200-01-07 to Chapter 0400-11-01. The rule number change will be effective before this rulemaking is completed. The Department agrees with commenter regarding

the proper statutory citation used in proposed Rules 0400-11-01-.02(1)(c)2(v) and (vi) and has revised the amendments to correct all citations used.

Comment: Paragraph (2) of Rule 0400-11-01-.04 has been amended by adding a new subparagraph (y) to specifically identify protective requirements for Class II Scenic Rivers that have been designated by the General Assembly in T.C.A. § 11-13-104 including Blackburn Fork, Buffalo River, Collins River, Duck River, Harpeth River, Roaring River, and Spring Creek. A commenter was concerned that there was no mention of Wild and Scenic Rivers or a National River in these regulatory amendments. Due to the significance of the Big South Fork National River and the Obed Wild and Scenic River for protecting biological communities, water quality and recreational opportunities the commenter suggested that these two streams be added to the new subparagraph.

Response: These amendments are intended to bring clarity to all parties, including the local boards, as to how the various statutes applicable to local approvals are being interpreted and administered and are not intended to expand regulatory authority by adding additional streams to the list contained in the proposed Rule 0400-11-01-.04(2)(y). Under the Scenic Rivers Act, only the General Assembly can designate scenic rivers. This change would require a law to be passed.

Comment: A commenter suggested that special protection should be specified the new proposed Rule 0400-11-01-.04(2)(y) for the Obed River and the Big South Fork of the Cumberland River, Clear Creek, Daddy's Creek, Clear Fork River, and New River which are the core of National Park System Units. This protection should specify that landfills cannot be placed within two miles of these streams and not less than a mile from tributaries of these streams. These rivers are so important for recreation, and as job producers for Morgan, Scott, Fentress and Cumberland Counties, that it seems ridiculous to allow landfills near them. Any simple economic impact study would show that landfills would have a negative impact on the communities depending on these streams for drinking water and recreation.

Response: These amendments are intended to bring clarity to all parties as to how the various statutes applicable to local approvals are being interpreted and administered and are not intended to expand regulatory authority by adding additional streams to the list contained in the proposed Rule 0400-11-01-.04(2)(y). Under the Scenic Rivers Act, only the General Assembly can designate scenic rivers. This change would require a law to be passed.

Comment: A commenter is of the opinion that the solid waste regulatory process will never be a comprehensive, and hence credible, state-controlled process until all of the state regulatory agencies responsible for water quality, are involved. Also the state should perform an unbiased economic impact statement on a landfill before they issue an approval. The commenter is also of the opinion that the state of Tennessee should not allow out-of-state waste to be deposited in Tennessee. The reason this is happening is that Tennessee does not restrict landfill operators from accepting out-of-state waste. Landfills are profitable and the more waste the more profit. Most of the out-of-state waste comes from states that have far more comprehensive regulations than Tennessee has. It's just basic economics: it costs less to deposit your waste in Tennessee than to build your own landfill. The other states are happy, the Tennessee landfill owners are happy and the citizens of Tennessee are left with an expensive clean up in case of a leaking landfill.

Response: These issues go beyond the scope of this rulemaking, which is intended to bring clarity to all parties as to how the various statutes applicable to local approvals are being interpreted and administered. These issues and concerns can be addressed through a future rulemaking action, to the extent allowed by decisions of the U.S. Supreme Court on interstate commerce.

Comment: A commenter believes that the Department should strike the proposed amendments dealing with local approvals under the Jackson Law and replace it with the following:

"TDEC staff will develop a package of procedures and responsibilities of Regional board members and interested parties including citizens. These training materials and guidelines shall be on-going with training available at suitable meetings and for any

Region facing a vote. TDEC shall research any city or citizens to determine past compliance with the Jackson Law.”

Response: The Department does not agree with the commenter that the proposed amendments addressing the applicability of the Jackson Law should be replaced with the suggested language. The suggestion of the commenter goes beyond the scope of this rulemaking, which is intended to bring clarity to all parties as to how the various statutes applicable to local approvals are being interpreted and administered.

Comment: A commenter is of the opinion that:

- (a) the Division of Solid Waste Management has not developed a productive and successful regulatory method for solid waste. Regulations are not based on the content of solid waste. Regulations and reports should be based on the type of waste and how it is composted or recycled;
- (b) the state needs rules and regulations which apply throughout the state – fast food, schools, universities, and business;
- (c) the state does not need local mandates – composting and recycling construction waste is market driven;
- (d) TDEC is developing solid waste regulations in discrete packages. This is a risky practice which could be interpreted to eliminate public input;
- (e) written comments should be posted; and
- (f) the Department has failed to write adequate regulations that are based on the content and source of the waste.

Response: These comments are beyond the scope of this rulemaking. The Department believes that the current regulations are consistent with the intent of the legislature and that there is not an attempt to eliminate any public input into these regulations.

Comment: The commenter asked if the US EPA or some other party pressing the Department for these rules.

Response: With these amendments the Department intends to bring clarity to all parties as to how the various statutes applicable to local approvals are being interpreted and administered. This rulemaking was initiated by the Department.

Comment: The commenter is of the opinion that the General Assembly did not intend the Jackson Law to apply to the siting of new solid waste processing facilities which are not located on land where there is disposal of solid waste by filling and covering. There are many solid waste processing facilities that are freestanding facilities located nowhere near a landfill. At these processing facilities, there is no “disposal of solid waste by filling and covering.” Since that is the definition of “landfill” or “landfilling” in the Jackson Law and since T.C.A. § 68-211-701 and subsection 68-211-704(a) apply only to “solid waste processing by landfilling,” it is clear that the Jackson Law was not intended to apply to freestanding solid waste processing facilities not operated on the site of a landfill where there is “disposal of solid waste by filling and covering.”

Response: The Department agrees and is adding language accordingly.

Comment: A commenter pointed out that subparts (1)(c)2(v) and (viii) of Rule 0400-11-01-.02 as revised would not clearly recognize the court’s approval as a means to proceed with the permitting process in accordance with T.C.A. subsection 68-211-704(c).

Response: The Department agrees and amended the regulatory language accordingly.

Issues Raised by the Attorney General's Office

After these rule amendments were adopted by the Solid Waste Disposal Control Board, we received advice from the Attorney General's Office that they would not approve the rules because of issues summarized below regarding certain of the provisions addressing Tenn. Code Ann. Sections 68-211-701 to -707 (the Jackson Law). The rules were revised accordingly and then the board adopted the revised rules.

- The Board does not have the authority to limit the Jackson Law so that it applies only to processing facilities located at landfills. The Court of Appeals ruled in *Profill Development, Inc. v. Dills*, 960 S.W. 2d 17, 26-27 that it applied to all solid waste processing facilities.
- The adopted rules required that local governments have adopted the Jackson Law within 90 days of receiving either a preliminary public notice for a landfill permit application or a permit by rule notification for a processing facility. The Jackson Law requires that this option be available to the local government until the time the Department issues a public notice tentatively approving the issuance of a solid waste permit.
- The adopted rule authorizes the Department to review an application if the "local government(s) fails to act." In contrast to the provision in Part 8 on approval by a solid waste region, the Jackson Law places no time limit on local governments to provide the public notice which in turn starts the thirty day time limit running to approve or disapprove a permit or permit by rule.
- The adopted rule provided that local approval under the Jackson Law would be necessary when there was a proposed change in the waste received at a landfill that would require a change in landfill classification. This was based on the provision in the Jackson Law that stated that "type of waste to be disposed at the landfill" was a factor to be considered. Although this rationale was not sufficient, a similar provision would be within the authority of the board if defines a 'new solid waste landfill' as that term is used in §68-211-105(h).
- It was recommended to delete the reference to classification in the provision addressing Chapter 210 of the Private Acts of 1990.

The Attorney's General's Office also recommended a change in the certification statement that is required on applications and reports while the other changes were being made.

Regulatory Flexibility Addendum

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

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

These amendments apply to future landfills and facilities that process solid waste by landfilling. Currently, these types of facilities are owned by local governments or large businesses. It is very difficult for the Department to estimate the number of small businesses that will be impacted by these amendments since small businesses have shown little to no interest in pursuing permits to operate new landfills or facilities that process solid waste by landfilling. Furthermore, this rule only clarifies existing statutory requirements, it does not impose new costs.

Types or types of small businesses: Operators of solid waste disposal and processing facilities and businesses that are subject to T.C.A. §§ 68-211-101 et seq. or the rules promulgated thereunder.

Estimate of the number of small businesses: There are currently 148 operating landfills, 89 processing facilities, 3 coal ash facilities, and 1 compost facility affected by these rule amendments. Currently, there are also 55 local governments which have adopted the "Jackson Law" provisions and would be affected by the amendments.

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

There are no new recordkeeping or reporting requirements or administrative costs contained in the amendments.

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

The rule amendment is proposed to help clarify the different provisions in different laws for local approval of landfills, processing facilities and local applicable site restrictions. It also seeks to clarify how the local approval process fits into TDEC's current permitting process.

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

The "Jackson Law" is already effective by statute. By incorporating the amendments into the regulations, small businesses and consumers should be more aware of the current local approval process and make it more efficient in the Department permitting process.

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

The federal rules at 40 CFR 258 for municipal solid waste disposal do not address local approval issues.

States bordering Tennessee – Kentucky, North Carolina, Georgia, Alabama, and Arkansas have local approval regulatory language in varying degrees of complexity reflecting that state's statutory language. In each state, local approval is a vital part of the beginning of the permit application process.

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

Exemption from regulatory requirements would not be possible under the under current state and local statutory language.

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 amendments proposed will have no impact beyond the current statutory language that is currently in effect for local governments.

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

For Department of State Use Only

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

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

Agency/Board/Commission:	Environment and Conservation
Division:	Solid Waste Management
Contact Person:	Greg Luke
Address:	5 th Floor, L & C Tower 401 Church Street Nashville, Tennessee
Zip:	37243-1535
Phone:	(615) 532-0874
Email:	greg.luke@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
0400-11-01	Solid Waste Processing and Disposal
Rule Number	Rule Title
0400-11-01-.02	Permitting of Solid Waste Storage, Processing, and Disposal Facilities
0400-11-01-.04	Specific Requirements for Class I, II, III, and IV Disposal Facilities
0400-11-01-.10	Convenience Centers / County Public Collection Receptacles
0400-11-01-.11	Requirements for Compost and Composting Facilities
0400-11-01-.13	Requirements for Land Application Facilities

(Place substance of rules and other info here. 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>)

Amendment

Chapter 0400-11-01
Solid Waste Processing and Disposal

Rule 0400-11-01-.02 Permitting of Solid Waste Storage, Processing, and Disposal Facilities is amended by deleting it in its entirety and replacing it with the following:

0400-11-01-.02 Permitting of Solid Waste Storage, Processing, and Disposal Facilities.

(1) General

(a) Purpose - The purpose of this rule is to establish the procedures, documentation, and other requirements which must be met in order for a person to be permitted to operate a solid waste storage, processing or disposal facility in Tennessee.

(b) Scope/Applicability

1. The requirements of this rule apply as specified to operators of facilities in Tennessee. Except as otherwise provided in this rule, no facility can lawfully store, process, or dispose of solid waste unless the operator has a permit.
2. Each classification of disposal, processing, or transfer facility on a site must have a separate permit. However, a processing facility may have more than one unit.
3. The following facilities or practices are not subject to the requirement to have a permit:
 - (i) Disposal of septic tank pumpings;
 - (ii) Junkyards;
 - (iii) Reclamation of surface mines;
 - (iv) Disposal of farming wastes at facilities which are on the site of generation and with a fill area of less than one acre in areal extent when completed;
 - (v) Disposal of landscaping and land clearing wastes at facilities which are on the site of generation and with a fill area of less than one acre in areal extent when completed;
 - (vi) Disposal of construction/demolition wastes at facilities which are on-site of generation and with a fill area of less than one acre in areal extent when completed;
 - (vii) Burning solid wastes for energy recovery or processing solid wastes to produce a fuel or processing solid waste for materials recovery, provided such burning or processing occurs on the site of generation or at a site owned or operated by the same corporation or subsidiaries of such corporation;
 - (viii) Processing or disposal of solid wastes at hazardous waste management facilities authorized by permit or interim status under Rule 0400-12-01-.07;
 - (ix) Baling, shredding, and mechanical or other processing of solid waste on the site of generation or at a site owned or operated by the same corporation or subsidiaries of such corporation;

- (x) Processing of industrial wastewaters in on-site facilities subject to regulation under T.C.A. § 69-3-101 et seq.;
- (xi) Processing or disposal of the following materials:
 - (I) Domestic sewage and any mixture of domestic sewage and other wastes that passes through a sewer system to a publicly-owned wastewater treatment works for treatment;
 - (II) Industrial wastewater discharges that are point source discharges subject to permits under T.C.A. § 69-3-101 et seq.;
 - (III) Irrigation return flows;
 - (IV) Source, special nuclear, or by-product material as defined by the Atomic Energy Act of 1954, as amended (42 U.S.C. 2011 et seq.);
 - (V) Materials subjected to in-situ mining techniques which are not removed from the ground as part of the extraction process;
 - (VI) Farming wastes which are returned to the soil as fertilizers; and
 - (VII) Mining overburden returned to the mine site;
- (xii) Processing or disposal of solid wastes by deep underground injection which are permitted under the Water Quality Act pursuant to the Underground Injection Control Regulations Chapter 1200-04-06.
- (xiii) The use of solely natural rock, dirt, stumps, pavement, concrete and rebar, and/or brick rubble as fill material.
- (xiv) The use and/or disposal of Petroleum contaminated soil and rock generated from the clean-up of leaking Underground Storage Tank sites regulated under Chapter 0400-18-01, provided such materials are treated and the benzene level is below 5 ppm and the total petroleum hydrocarbon level is below 100 ppm and provided that the method of treatment was reviewed and approved by the Division of Underground Storage Tanks.
- (xv) The processing of waste tires at facilities that are permitted or otherwise authorized by this Chapter to store and/or dispose of waste tires.
- (xvi) The storage of solid waste that is incidental to its recycling, reuse, reclamation or salvage provided that upon request of the Commissioner, the operator demonstrates to the satisfaction of the Commissioner that there is a viable market for all stored waste and provided that all waste is stored in a manner that minimizes the potential for harm to the public and the environment. Material may not be stored for more than one (1) year without written approval from the Division.
- (xvii) The storage of solid waste incidental to its collection. (The storage of solid waste at permitted facilities and permit-by-rule facilities and storage in a manner constituting disposal are not exempt from permitting requirements).
- (xviii) The collection of "used oil" and/or the processing of used oil filters, provided that the used oil and/or filters are received directly from "do-it-yourselfers" as the terms are defined at T.C.A. § 68-211-1002.
- (xix) The processing of landscaping or land clearing wastes or unpainted, unstained, and untreated wood into mulch.

- (xx) The land application of both publicly-owned treatment works water sludges and publicly-owned treatment waste water sludges from facilities that are subject to regulatory standards of the Department's Division of Water Supply and Division of Water Pollution Control.
 - (xxi) The burning of natural and untreated wood, landscaping wastes, landclearing wastes in either an air curtain destructor or by open burning.
 - (xxii) The beneficial use of waste, which does not constitute disposal, provided that upon request of the Commissioner, the generator demonstrates to the satisfaction of the Commissioner that such use is not detrimental to public health, safety, or the environment.
4. The Commissioner may issue or deny a permit for one or more units at a facility without simultaneously issuing or denying a permit to all of the units at the facility.
 5. No permit or other authorization shall be issued or renewed by the Division of Solid Waste Management pursuant to this Chapter until all fees and/or penalties owed by the applicant to the Division are paid in full, unless a time schedule for payments has been approved and all payments are current or contested fees or penalties are under appeal.

(c) Coordinating Local Approval with Review of Permits and Permits by Rule

1. Regional Approval under T.C.A. Title 68, Chapter 211, Part 8.

(i) T.C.A. subdivision 68-211-814(b)(2) provides that an applicant for a permit for construction or expansion of a municipal solid waste landfill or incinerator must submit a copy of the application to the municipal solid waste region at or before the time the application is submitted to the department. It also requires the region to render a decision within 90 days of receipt of a complete application. Finally, it states that if the region rejects the application, the department shall not issue the permit unless it finds that the region's decision was arbitrary and capricious and unsupported in the record developed before the region.

(ii) A person applying to the department for a permit for construction or expansion of a municipal solid waste landfill or incinerator must submit documentation to the department within 120 days of its submittal of a complete application to the region that shall include:

(I) evidence of the date on which it submitted its application to the region;

(II) a copy of a notice that the application was determined to be complete by the region, if one was issued; and

(III) a copy of the decision of the region or a notarized statement that the region failed to act within the 90 days after receipt of a complete application as provided by T.C.A. subsection 68-211-814(b).

(iii) Only for purposes of subparts (i) and (ii) of this part, "application" or "complete application" shall mean:

(I) I. For an incinerator, a copy of the notification required by part (2)(b)2 of this rule that contains the information required by subparts (i) through (v) of that part; and

II. For a landfill, a copy of the Part 1 application required by subpart (3)(c)1(i) of this rule; and

- (II) Other information which the region may reasonably require for its purposes of determining whether a proposed landfill or incinerator is consistent with the region's solid waste plan.

2. Local Approval under T.C.A. Title 68, Chapter 211, Part 7

- (I) T.C.A. Title 68, Chapter 211, Part 7, known as the "Jackson Law," authorizes counties and municipalities to opt-into its provisions in accordance with T.C.A. § 68-211-707. If a local government does so, it may then approve or disapprove the proposed new construction for solid waste disposal by landfilling (including coal ash fills) and solid waste processing facilities in accordance with T.C.A. § 68-211-704. For purposes of T.C.A. §68-211-105(h), a "new landfill for solid waste disposal" or a "new solid waste landfill" means any of the following:
 - (I) A solid waste landfill that received a tentative decision from the department to issue a permit after June 2, 1989 (the date the Jackson Law went into effect);
 - (II) A lateral expansion (a modification that expands the previously permitted footprint) of a solid waste landfill described in item (I) of this part; and
 - (III) A solid waste landfill described in item (I) of this part whose owner or operator proposes to accept waste that would require a change of the landfill's classification under this chapter to a classification with higher standards (i.e., from a Class III/IV landfill to a Class I or II landfill, or from a Class II to a Class I).
- (ii) The Jackson Law does not apply to facilities that existed on June 2, 1989 (the date the Jackson Law went into effect) and it does not apply to an expansion of those facilities. Facilities that existed on June 2, 1989 include those that had received from the department a tentative decision to issue the facility a permit.
- (iii) The Jackson Law does not apply to any private landfill that accepts solid waste solely generated by its owner if the waste is solely generated within the county where the landfill is located and if the private landfill does not accept county or municipal solid waste or ordinary household garbage.
- (iv) If a local government(s) has not adopted the Jackson Law prior to the date the department issues public notice of a tentative decision to issue a permit, then the Jackson Law does not apply to that permitting process. Public Acts 1989, Chapter 515, Section 13 provides that the Jackson Law shall only be applicable to any permit application for which a tentative approval/determination has not been public noticed.

(Note: A current list of local governments that have adopted the Jackson Law can be found on the department's website.)
- (v) The department shall not review or approve a notification for a solid waste processing facility or an application for a new solid waste landfill that is proposed to be located within jurisdictions that have adopted the Jackson Law until the application or notification for a processing facility permit by rule is approved pursuant to T.C.A. § 68-211-704.
- (vi) Within jurisdictions in which the Jackson Law is applicable, any person seeking department review and approval of an application for a new solid waste landfill permit, shall provide:
 - (I) Documentation to the department that the applicant submitted plans for the new solid waste landfill to the local government(s) in compliance with

T.C.A. § 68-211-701 and that those plans included information about the following (T.C.A. subsection 68-211-704(b));

- I. The type of waste to be disposed of at the landfill;
 - II. The method of disposal to be used at the landfill (including a drawing, map, or aerial photograph showing the location and maximum dimensions of the proposed landfill or landfill expansion);
 - III. The projected impact on surrounding areas from noise and odor created by the proposed landfill;
 - IV. The projected impact on property values on surrounding areas created by the proposed landfill;
 - V. The adequacy of existing roads and bridges to carry the increased traffic projected to result from the proposed landfill;
 - VI. The economic impact on the county, city or both;
 - VII. The compatibility with existing development or zoning plans; and
 - VIII. Any other factor which may affect the public health, safety or welfare.
- (II) A copy of the public notice issued by the local government(s) required by T.C.A. subsection 68-211-703(a);
- (III) Evidence that the signs required by T.C.A. subsection 68-211-703(h) were erected;
- (IV) The date of any public hearing held; and
- (V) Evidence of approval by the local government(s).
- (vii) For solid waste processing facilities that are proposed to be located within jurisdictions in which the Jackson Law is applicable, any person seeking a permit by rule authorization for a new solid waste processing facility or a lateral expansion of a facility (a modification that expands the previously permitted footprint) shall provide:
- (I) Documentation to the department that the applicant submitted a copy of the notification required by part (2)(b)2 of this rule that contains the information required by subparts (i) through (v) of that part for the proposed new solid waste processing facility or lateral expansion of a solid waste processing facility to the local government(s) in compliance with T.C.A. § 68-211-701 and that the notification included information about the following:
 - I. The type of waste to be processed;
 - II. The method of processing;
 - III. The projected impact on surrounding areas from noise and odor;
 - IV. The projected impact on property values on surrounding areas;
 - V. The adequacy of existing roads and bridges to carry the increased traffic projected to result from the proposed facility;

VI. The economic impact on the county, city or both;

VII. The compatibility with existing development or zoning plans; and

VIII. Any other factor which may affect the public health, safety or welfare.

(II) Evidence of approval by the local government(s).

3. Local Approval under Tennessee Private Acts, 1990, Chapter 210

(i) Section 1 of Chapter 210 of the Private Acts of 1990 provides that no permit may be issued for a new solid waste landfill or processing facility in Lewis County if the application was submitted by a county or municipality outside Lewis County, unless the legislative body of Lewis County approves it.

(ii) Any county or municipality outside of Lewis County that applies to the department for a permit for a new landfill in Lewis County shall include with the application documentation that the legislative body of Lewis County was aware of and approved the landfill and the location and maximum dimensions of the proposed landfill or landfill expansion.

(iii) Any county or municipality outside of Lewis County that applies to the department for a permit for a new processing facility, or a notification for a permit by rule for a new processing facility shall include with the application or notification documentation that the legislative body of Lewis County was aware of and approved the processing facility.

4. Public Notice of Drilling in Certain Counties, including Bledsoe, Lawrence, and Lewis

(i) T.C.A. subsection 68-211-106(g) requires that, in the counties named or described in subpart (ii) of this part, any person applying for a permit for a solid waste processing or disposal facility for which core drilling is required must notify the department 45 days before the drilling and shall give public notice 30 days before the drilling. It also requires the applicant to include a copy of the public notice in the permit application to the department and mandates that the application be denied if any of these provisions is not met.

(Note: This chapter does not require core drilling for any processing facilities.)

(ii) The requirements of subpart (i) of this part apply in any county whose population is not less than 9,650 and not more than 9,750 and not less than 34,075 and not more than 34,175 in the 1980 federal census or any subsequent federal census. In 1980, these population brackets applied to Lewis and Lawrence Counties. In 1990 Bledsoe County was in the smaller bracket so this law now applies in Bledsoe County. It would also apply to any other county whose population is within those brackets in any future federal census.

(iii) In Bledsoe, Lawrence, and Lewis Counties, and any other county with a population in a future federal census that falls within the brackets stated in subpart (ii) of this part, the applicant for any permit for a solid waste disposal facility that requires core drilling shall include with the application a copy of the public notice that was given that shows the date it was published.

(e)(2) Permits by Rule

4.(a) All permit by rule facilities shall keep any records that are required by these rules and a copy of its permit by rule authorization at the facility or at another location approved by the Department. Notwithstanding any other provision of this rule, except for subparagraph (1)(c) of this rule, and

provided they are not excluded pursuant to part (1)(b)23 of this paragraph rule, the following classes of activities shall be deemed to have a permit by rule if the conditions listed are met:

~~(i)~~1. A processing facility, if:

- ~~(i)~~(i) The operator complies with the notification requirement of ~~part 2 of this subparagraph (b) of this paragraph~~;
- ~~(ii)~~(ii) The facility is constructed, operated, maintained, and closed in such a manner as to minimize:
 - ~~i-~~(i) The propagation, harborage, or attraction of flies, rodents, or other disease vectors;
 - ~~ii-~~(ii) The potential for explosions or uncontrolled fires;
 - ~~iii-~~(iii) The potential for releases of solid wastes or solid waste constituents to the environment except in a manner authorized by state and local air pollution control, water pollution control, and/or waste management agencies; and
 - ~~iv-~~(iv) The potential for harm to the public through unauthorized or uncontrolled access;
- ~~(iii)~~(iii) The facility has an artificial or natural barrier which completely surrounds the facility and a means to control entry, at all times, through the gate or other entrances to the facility;
- ~~(iv)~~(iv) The facility, if open to the public, has clearly visible and legible signs at the points of public access which indicate the hours of operation, the general types of waste materials that either will or will not be accepted, emergency telephone numbers, schedule of charges (if applicable), and other necessary information;
- ~~(v)~~(v) Trained personnel are always present during operating hours to operate the facility;
- ~~(vi)~~(vi) The facility has adequate sanitary facilities, emergency communications (e.g., telephone), and shelter available for personnel;
- ~~(vii)~~(vii) The facility's access road(s) and parking area(s) are constructed so as to be accessible in all weather conditions;
- ~~(viii)~~(viii) Except for composting facilities utilizing landscaping and land clearing wastes only, all waste handling (including loading and unloading) at the facility is conducted on paved surfaces;
- ~~(ix)~~(ix) There is no storage of solid wastes at the facility except in the containers, bins, lined pits or on paved surfaces, designated for such storage;
- ~~(x)~~(x) Except for incinerators or energy recovery units, there is no burning of solid wastes at the facility;
- ~~(xi)~~(xi) There is no scavenging of solid wastes at the facility and any salvaging is conducted at safe, designated areas and times;
- ~~(xii)~~(xii) Wind dispersal of solid wastes at or from the facility is adequately controlled, including the daily collection and proper disposal of windblown litter and other loose, unconfined solid wastes;

~~(XIII)~~(xiii) All liquids which either drain from solid wastes or are created by washdown of equipment at the facility go to either:

I.(I) A wastewater treatment facility permitted to receive such wastewaters under T.C.A. §§ 69-3-101 et seq. (Tennessee Water Quality Control Act, or

II.(II) Other methods approved by the Commissioner.

~~(XIV)~~(xiv) The facility receives no special wastes unless:

I.(I) Such receipt has been specifically approved in writing by the Department, and

II.(II) Special procedures and/or equipment are utilized to adequately confine and segregate the special wastes;

~~(XV)~~(xv) The operator can demonstrate, at the request of the Commissioner, that alternative arrangements (e.g., contracts with other facilities) for the proper processing or disposal of the solid wastes his facility handles are available in the event his facility can not operate;

~~(XVI)~~(xvi) The facility has properly maintained and located fire suppression equipment (e.g., fire extinguishers, water hoses) continuously available in sufficient quantities to control accidental fires that may occur;

~~(XVII)~~(xvii) All waste residues resulting from processing activities at the facility are managed in accordance with this Chapter or Chapter 0400-12-01 (Hazardous Waste Management), whichever is applicable, and/or with any other applicable state or federal regulations governing waste management;

~~(XVIII)~~(xviii) The facility is finally closed by removal of all solid wastes and solid waste residues for proper disposal. The operator must notify the Division Director in writing of his completion of closure of the facility. Such notification must include a certification by the operator that the facility has been closed by removal of all the solid waste and residues. Within 21 days of the receipt of such notice the Division Director shall inspect the facility to verify that closure has been completed. Within 10 days of such verification, the Commissioner shall approve the closure in writing to the operator. Closure shall not be considered final and complete until such approval has been made.

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

~~(XX)~~(xx) The facility must not be located in a 100-year floodplain unless it is demonstrated to the satisfaction of the Commissioner that:

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

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

~~(XXI)~~(xxi) The facility does not:

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

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

~~(XXII)~~(XXII) The owner/operator may not store solid waste until the processing equipment has been installed on-site and is ready for use.

~~(XXIII)~~(XXIII) The owner/operator of a solid waste processing facility which has a solid waste storage capacity of 1000 cubic yards or greater shall file with the Commissioner a performance bond or equivalent cash or securities, payable to the State of Tennessee. Such financial assurance is intended to ensure that adequate financial resources are available to the Commissioner to insure the proper operation, closure, and post closure care of the facility. The types of financial assurance instruments that are acceptable are those specified in subparagraph (3)(d) of Rule 0400-11-01-.03. Such financial assurance shall meet the criteria set forth in T.C.A. § 68-211-116(a) and at subparagraph (3)(b) of Rule 0400-11-01-.03.

~~(XXIV)~~(XXIV) The owners or operators proposing a new solid waste processing facility that handles putrescible wastes located within 10,000 feet (3,048 meters) of any airport runway end used by turbojet aircraft or within 5,000 feet (1,524 meters) of any airport runway end used only by piston-type aircraft must include in the permit-by-rule notification a demonstration that the facility does not pose a bird hazard to aircraft. The owners or operators proposing a new solid waste processing facility that handles putrescible wastes located within a five-mile radius of any airport runway end used by turbojet or piston-type aircraft must notify the affected airport and the appropriate Federal Aviation Administration (FAA) office.

~~(ii)~~2. A coal ash fill area, if:

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

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

~~(iii)~~(iii) Disposal is limited to:

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

~~(ii)~~(ii) Such other similar uses as the Commissioner may approve in writing. Financial assurance may be required by the Commissioner if deemed appropriate for these case-by-case projects.

~~(iv)~~(iv) The operator complies with the notification requirement of ~~part 2 of this~~ subparagraph (b) of this paragraph;

~~(v)~~(v) The fill area is constructed, operated, maintained, and closed in such a manner as to minimize:

~~(i)~~(i) The potential for harmful release of solid wastes or solid waste constituents to the environment; and

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

~~(vi)~~(vi) The fill area, until development is complete, must have an artificial or natural barrier to control access of unauthorized entry.

~~(VII)~~(vii) There must be equipment available that is capable of spreading and compacting the coal ash, and capable of handling the earthwork required during the periods that coal ash is received at the fill area.

~~(VIII)~~(viii) The coal-ash fill project is designed with:

I.(I) A geologic buffer of at least three feet with a maximum saturated conductivity of 1×10^{-6} centimeters per second between the base of the fill and the seasonal high water table of the uppermost unconfined aquifer or the top of the formation of a confined aquifer, or such other protection as approved by the Commissioner taking into account site specific coal ash and soil characteristics, ambient groundwater quality, and projected flows in and around the site; and

II.(II) A ground water monitoring program approved by the department that reports sampling results to the department at least once each year. If sampling results indicate that the fill area has caused the ground water protection standards to be exceeded, the owner or operator of the facility shall commence an assessment monitoring program in accordance with regulations adopted by the board and carry-out all corrective measures specified by the Commissioner.

~~(IX)~~(ix) At the completion of the coal-ash fill project, and no later than 90 days after operations have ceased, the final cover must meet the requirement of at least 24 inches of compacted soil on the coal-ash project area, except for those areas covered by structures, asphalt, concrete (including concrete containing coal ash), or other similar barriers to water infiltration. The upper six inches of this cover shall be able to support the growth of suitable vegetation.

~~(X)~~(x) The final surface of the coal-ash fill area is graded and/or provided with drainage facilities in a manner that:

I.(I) Minimizes erosion of cover material (e.g., no steep slopes);

II.(II) Promotes drainage of precipitation falling on the area (e.g., prevents pooling);

III.(III) Provides a surface drainage system which is consistent with the surrounding area and in no way significantly adversely affects proper drainage from these adjacent lands; and

IV.(IV) The operator must take other erosion control measures (e.g., temporary mulching or seeding, silt barriers) as necessary to control erosion of the site.

~~(XI)~~(xi) Dust Control - The operator must take dust control measures as necessary to prevent dust from creating a nuisance or safety hazard to adjacent landowners or to persons engaged in supervising, operating, and using the site. The use of any oils or other chemicals (other than water) for dust suppression must be approved in writing beforehand by the Department.

~~(XII)~~(xii) Prior to excavation, all bore holes drilled or dug during subsurface investigation of the site, piezometers, and abandoned wells which are either in or within 100 feet of the areas to be filled must be backfilled with a bentonite slurry or other sealant approved by the Commissioner to an elevation at least ten feet greater than the elevation of the lowest point of the fill base (including any liner), or to the ground surface if the site will be excavated less than ten feet below grade.

~~(XIII)~~(xiii) The fill area must not be located in a 100-year floodplain unless it is demonstrated to the satisfaction of the Commissioner that:

~~I~~(I) Location in the floodplain will not restrict the flow of the 100-year flood, nor reduce the temporary water storage capacity of the floodplain.

~~II~~(II) The fill area is designed, constructed, operated, and maintained to prevent washout of any solid waste.

~~(XIV)~~(xiv) There must be installed on-site a permanent benchmark (e.g., a concrete marker) of known elevation.

~~(XV)~~(xv) New coal ash fill areas and lateral expansions shall not be located in wetlands, unless the owner or operator makes the applicable demonstrations to the Commissioner as referenced at subparagraph (2)(p) of Rule 0400-11-01-.04.

~~(XVI)~~(xvi) A fill area must not be located in highly developed karst terrain (i.e., sink holes and caves).

~~(XVII)~~(xvii) The coal-ash fill project does not:

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

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

~~(XVIII)~~(xviii) Notice in Deed to Property - Except for coal ash fills on federal, state or local government owned right-of-ways, the operator must ensure that, within 90 days of meeting final cover requirements and prior to the sale or lease of the coal ash fill area property, there is recorded, a notation on the deed to the property or on some other instrument which is normally examined during a title search that will in perpetuity notify any person conducting a title search that coal ash has been placed on the property.

~~(III)~~3. A tire storage facility, if:

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

~~(II)~~(ii) The facility is constructed, operated, maintained and closed in a manner consistent with items (2)(k)3(i)(I) and (II) of Rule 0400-11-01-.04 and items ~~(1)(e)1(i)(III), (IV), (V), (VI), (VII), (X), (XI), (XIII), (XIV), (XVI), (XVII), (XVIII), (XIX), (XX) and (XXI)~~ of this rule subparts 1(iii), (iv), (v), (vi), (vii), (x), (xi), (xiii), (xiv), (xvi), (xvii), (xviii), (xix), (xx) and (xxi) of this subparagraph.

~~(III)~~(iii) Contracts for disposal or recycling of the shredded tires have been established.

~~(IV)~~4. A convenience center, if:

~~(I)~~(i) The operator complies with the notification requirements of Part 2 of this subparagraph;

~~(II)~~(ii) The operator attaches to his notification all attachments required at part (2)(b)1 of Rule 0400-11-01-.10; and

~~(III)~~(iii) The facility is designed and operated in compliance with Rule 0400-11-01-.10.

~~(V)~~5. A transfer station, if:

~~(i)~~(i) The operator complies with the notification requirements of Part 2 of this subparagraph; and

~~(ii)~~(ii) The facility is constructed, operated, maintained, and closed in a manner consistent with ~~items (1)(c)1(ii)(ii), (iii), (iv), (v), (vi), (vii), (viii), (ix), (x), (xi), (xii), (xiii), (xiv), (xv), (xvi), (xvii), (xviii), (xix), (xx), (xxi), and (xxiv) of this rule subparts 1(ii), (iii), (iv), (v), (vi), (vii), (viii), (ix), (x), (xi), (xii), (xiii), (xiv), (xv), (xvi), (xvii), (xix), (xx), (xxi) and (xxiv) of this subparagraph.~~

~~(vi)~~6. A land application facility, if:

~~(i)~~(i) The operator complies with the notification requirements of ~~Part 2 of this subparagraph (b) of this paragraph;~~

~~(ii)~~(ii) The operator attaches to his notification all attachments required at subparagraph (1)(c) of Rule 0400-11-01-.13; and

~~(iii)~~(iii) The facility is designed and operated in compliance with Rule 0400-11-01-.13.

~~2.~~(b) The operator of a facility deemed to have a permit by rule must notify the Department in accordance with the requirements of this ~~part~~ subparagraph.

~~(i)~~1. No person shall begin operation on a new facility without having submitted notification and received written approval from the Commissioner.

~~(ii)~~2. Notification must be submitted on forms provided by the Department and completed as per the accompanying instructions. It must include, but shall not necessarily be limited to, the following information:

~~(i)~~(i) The processing and disposal activities conducted and the types of solid wastes handled;

~~(ii)~~(ii) The name, mailing address, and location of the facility;

~~(iii)~~(iii) The name, mailing address, and telephone number of the applicant and, if the applicant is a government agency, corporation, company, or partnership, that of the process agent or other contact person;

~~(iv)~~(iv) If different from the operator, the name, mailing address, and telephone number of the landowner, along with a signed letter from such owner to the Department allowing access to the property for purposes of inspection;

~~(v)~~(v) A map (e.g., U.S.G.S. 7.5 minute topographic map) which clearly indicates the location of the facility;

~~(vi)~~(vi) A written narrative must be submitted that describes how the facility/operation will comply with all applicable standards listed in part 1 of this subparagraph and any other information deemed necessary by the Commissioner; and

~~(vii)~~(vii) A design plan attached indicating boundaries of the site and all on-site appurtenances.

~~(iii)~~3. The notification under ~~subpart (ii) of this part~~ part 2 of this subparagraph shall be revised within 30 days of a change in facility ownership with new information as necessary but at a minimum to include changes to ~~items (ii)(iii) and (iv) of this part~~ subparts 2(iii) and (iv) of this subparagraph along with payment of the fee specified at part (2)(b)6 of Rule 0400-11-01-.07.

- ~~3-~~(c) Duty to Comply - The permittee must comply with all conditions of this permit-by-rule, unless otherwise authorized by the Department in writing. Any permit-by-rule noncompliance constitutes a violation of the Act and is grounds for the assessment of civil penalties by the Commissioner.

~~(2)~~(3) Application for a Permit

(a) General

1. Any person who is required to have a permit shall complete, sign, and submit an application to the Commissioner as described in this paragraph.
2. If the property on which a facility is located is owned by a person(s) different from the operator, then that owner(s) must also sign the permit application.
3. The Commissioner shall not issue a permit before receiving a complete application for a permit. An application for a permit is complete when the Commissioner receives an application form and any supplemental information which is completed to his satisfaction.
4. Operators shall keep records of all data and supplemental information used to complete permit applications until the end of the post-closure care period.
5. Five copies of the required permit application must be submitted to the Commissioner.
6. All reports, plans, specifications, and manuals must be prepared in proper technical format, typewritten, and bound (e.g., 3 ring loose-leaf binders).
7. All permit applications will be signed as follows:
 - (i) For a corporation: by a responsible corporate officer. For the purpose of this part, a responsible corporate officer means (I) a president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy - or decision making functions for the corporation, or (II) the manager of one or more manufacturing, production, or operation facilities employing more than 250 persons or having gross annual sales or expenditures exceeding 25 million dollars (in second quarter 1980 dollars), if authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures.
 - (ii) For a partnership or sole proprietorship: by a general partner or the proprietor, respectively.
 - (iii) For a municipality, state, federal, or other public agency: by either a principal executive officer or ranking elected official. For purposes of this part, a principal executive officer of a federal agency includes (I) the chief executive officer of the agency, or (II) a senior executive officer having responsibility for the overall operations of a principal geographic unit of the agency (e.g., Regional Administrators of EPA) or for overall compliance with environmental regulatory requirements of the agency.
8. All reports required by permits and other information requested by the Commissioner shall be signed by a person described in part 7 of this subparagraph, or by a duly authorized representative of that person. A person is a duly authorized representative only if:
 - (i) The authorization is made in writing by a person described in part 7 of this subparagraph;
 - (ii) The authorization specifies either an individual or a position having responsibility for the overall operation of the regulated facility or activity, such as the position of plant manager, superintendent, or person of equivalent responsibility. (A duly

authorized representative may thus be either a named individual or any individual occupying a named position); and

(iii) The written authorization is submitted to the Commissioner.

9. If an authorization under part 8 of this subparagraph is no longer accurate because a different individual or position has responsibility for the overall operation of the facility, a new authorization satisfying the requirements of part 8 of this subparagraph must be submitted to the Commissioner prior to or together with any reports or information to be signed by an authorized representative.

10. Any person signing a document under parts 7 or 8 of this subparagraph shall make the following certification:

~~"I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gathered and evaluated the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information As specified in T.C.A. § 39-16-702(a)(4), this declaration is made under penalty of perjury."~~

(b) Permitted Facilities - Permitted facilities shall not be subjected to public notice and public hearings when making permit modifications that are necessary to comply with rules passed subsequent to the issuance of the facility's original permit.

(c) Contents of the Permit Application

1. Contents of the Disposal Permit Application -- A complete permit application shall consist of a Part I with the applicant's disclosure statement and a Part II as described in this subparagraph.

(i) The Part I disposal permit application must be submitted on forms provided by the Department with appropriate attachments which includes a disclosure statement as required by T.C.A. 68-211-106(h). All forms must be completed as per the accompanying instructions. The Part I application must include, but shall not necessarily be limited to, the following information:

(I) The activities conducted or to be conducted by the applicant which require him to obtain a permit under this rule and the general types of wastes handled or to be handled;

(II) The name, mailing address, and location of the facility for which the application is submitted;

(III) The name, mailing address, and telephone number of the applicant and, if the applicant is a government agency, corporation, company, or partnership, that of the process agent or other person who will serve as the primary contact with the Department;

(IV) If different from the applicant, the name, mailing address, and telephone number of the land owner, along with a signed letter from such owner to the Department allowing access to the property for such investigations as may be necessary to determine its suitability as a disposal facility;

(V) The name, mailing address, and telephone number of the zoning authority of jurisdiction (if any), and the current zoning status of the property; and

- (VI) A United States Geological Survey (U.S.G.S.) 7.5 minute topographic map extending one-half mile beyond the property boundaries of the facility which clearly depict:
 - I. The property boundaries;
 - II. The facility and each of its solid waste processing or disposal units and any hazardous waste treatment, storage, or disposal units (to include past waste disposal units); and
 - III. Those wells, springs, other surface water bodies, and drinking water wells listed in public records or otherwise known to the applicant within 1/4 mile of the facility property boundary.
 - (ii) The Part II disposal permit application shall consist of those reports, plans and specifications, or other documentation necessary to provide the information specified in paragraph (9) of Rule 0400-11-01-.04.
2. Contents of the Compost Facility Permit Application -- A complete permit application shall consist of a Part I with the applicant's disclosure statement and a Part II as described in this subparagraph.
- (i) The Part I compost facility permit application must be submitted on forms provided by the Department with appropriate attachments which includes a disclosure statement as required by T.C.A. 68-211-106(h). All forms must be completed as per the accompanying instructions. The Part I application must include, but shall not necessarily be limited to, the following information:
 - (I) The activities conducted or to be conducted by the applicant which require him to obtain a permit under this rule and the general types of wastes handled or to be handled;
 - (II) The name, mailing address, and location of the facility for which the application is submitted;
 - (III) The name, mailing address, and telephone number of the applicant and, if the applicant is a government agency, corporation, company, or partnership, that of the process agent or other person who will serve as the primary contact with the Department;
 - (IV) If different from the applicant, the name, mailing address, and telephone number of the land owner, along with a signed letter from such owner to the Department allowing access to the property for such investigations as may be necessary to determine its suitability as a composting facility;
 - (V) The name, mailing address, and telephone number of the zoning authority of jurisdiction (if any), and the current zoning status of the property; and
 - (VI) A United States Geological Survey (U.S.G.S.) 7.5 minute topographic map which clearly indicates the location of the facility.
 - (ii) The Part II compost facility permit application shall consist of those reports, plans and specifications, or other documentation necessary to provide the information specified in paragraph (5) of Rule 0400-11-01-.11. The master plan, design plan, and narrative description of the facility and operation are components of the Part II application and each must be prepared by a registered engineer. Any registered engineer herein required shall be governed by the terms of T.C.A. Title 62, Chapter 2.

- (d) Recertification by Disposal Facility Permittees for Facilities Whose Initial Operation is Delayed
1. If the facility does not initiate construction and/or operation within one year of the date a permit (issued pursuant to paragraph ~~(3)~~ (4) of this rule) becomes effective, the permittee must submit a letter to the Commissioner 180 days prior to construction which either:
 - (i) Certifies that the information submitted in the permit application is still accurate and complete; or
 - (ii) Identifies those changes that have occurred in the information submitted in the permit application.
 2. Such letter must be signed as set forth in part (a)8 of this paragraph.
 3. Upon his receipt of such letter or other information that indicates that a change has occurred in the information submitted in the permit application, the Commissioner shall:
 - (i) Determine if cause exists under paragraph ~~(5)~~ (6) of this rule to modify, to revoke and reissue, or to terminate the permit; and
 - (ii) Take such action as he deems appropriate pursuant to paragraph ~~(5)~~ (6) of this rule.
 4. The permittee may not initiate construction and/or operation unless and until authorized by the Commissioner in writing.

~~(3)~~(4) Processing the Permit

- (a) Preliminary Notices - Within 30 days after the date of receipt, the Commissioner shall issue a preliminary public notice under subparagraph (e) of this paragraph for each Part I permit application received.
- (b) Review of the Permit Application
 1. The Commissioner shall review every permit application for completeness. Upon completing the review, the Commissioner shall notify the applicant in writing whether the application is complete. If the application is incomplete, the Commissioner shall list the information necessary to make the application complete. The Commissioner shall notify the applicant that the application is complete upon receiving the required information. After the application is completed, the Commissioner may request additional information from an applicant but only when necessary to clarify, modify, or supplement previously submitted material. Requests for such additional information will not render an application incomplete.
 2. When the Commissioner decides that a site visit is necessary for any reason in conjunction with the processing of an application, he shall notify the applicant and a date shall be scheduled.
- (c) Draft Permits
 1. Once an application is complete, the Commissioner shall tentatively decide whether the permit should be issued or denied.
 2. If the Commissioner tentatively decides the permit should be denied, he shall prepare a notice to deny. A notice of intent to deny the permit shall be sent to the applicant. The applicant may wish to appeal the Commissioner's decision to the Board by filing a written petition as provided at T.C.A. 68-211-113(b).
 3. If the Commissioner tentatively decides the permit should be issued, he shall prepare a draft permit as set forth in part 4 of this subparagraph.

4. A draft permit shall contain (either expressly or by reference) all applicable terms and conditions from paragraph ~~(4)~~ (5) of this rule.
5. All draft permits shall be subject to the procedures of subparagraphs (d) through (i) of this paragraph, unless otherwise specified in those subparagraphs.

(d) Fact Sheets

1. A fact sheet shall be prepared for every draft permit (or notice to deny the permit).
2. The fact sheet shall briefly set forth the principal facts and the significant factual, legal, methodological and policy questions considered in preparing the draft permit to include, when applicable:
 - (i) A brief description of the type of facility or activity which is the subject of the draft permit;
 - (ii) The type and quantity of wastes which are proposed to be or are being disposed of;
 - (iii) A brief summary of the basis for the draft permit conditions including references to applicable statutory or regulatory provisions and appropriate supporting references to the permit application;
 - (iv) Reasons why any requested waivers or alternatives to required standards do or do not appear justified.
 - (v) A description of the procedures for reaching a final decision on the draft permit, including:
 - (I) The beginning and ending dates of the comment period under subparagraph (e) of this paragraph and the address where comments will be received;
 - (II) Procedures for requesting a public hearing; and
 - (III) Any other procedures by which the public may participate in the final decision; and
 - (vi) Name and telephone number of a person to contact for additional information.
3. The Commissioner shall send this fact sheet to the applicant and, upon request, to any other person.

(e) Public Notices and Public Comments

1. Scope
 - (i) An applicant shall give public notice, as prepared and directed by the Commissioner that the following actions have occurred:
 - (I) A permit application as described in subparagraph (a) of this paragraph has been received;
 - (II) A draft permit has been prepared under part (c)3 of this paragraph or a new draft permit prepared under subparagraph ~~(5)(6)~~(a) or ~~(5)(6)~~(b) of this rule;

- (III) A public hearing has been scheduled under subparagraph (g) of this paragraph; or
- (IV) A change of ownership.
- (ii) No public notice is required when a request for a permit modification, revocation and reissuance, or termination is denied under paragraph ~~(5)~~ (6) of this rule. Written notice of that denial shall be given to the permittee.
- (iii) Public notices may describe more than one permit or permit action.
- (iv) An applicant shall provide proof of the completion of all notices required to be given by the Commissioner within 10 days following conclusion of the public notice procedures.
- (v) The Commissioner shall give a public notice that a notice of intent to deny an original permit has been prepared under part (c)2 of this paragraph.

2. Timing

- (i) Public notice of the preparation of a draft permit or a notice of intent to deny an original permit shall allow at least 45 days for public comment.
- (ii) Public notice of a public hearing shall be given at least 15 days before the hearing. (Public notice of the hearing may be given at the same time as public notice of the draft permit and the two notices may be combined.)

3. Methods - Public notice of activities described in subpart 1(i) of this subparagraph shall be given by all of the following:

- (i) By posting in a public place (e.g., post office, library, health department, etc) of the municipalities nearest the site under consideration; and
- (ii) By publication of a notice in a daily or weekly local newspaper of general circulation as designated by the Commissioner; and
- ~~(iii)~~ By delivery to the county legislative body in which a proposed landfill is located and by delivery to the governing body of any municipality in which the proposed landfill is located or which is within one mile of such proposed landfill; and
- ~~(iii)~~(iv) By any other method deemed necessary or appropriate by the Commissioner to give actual notice of the action in question to the persons potentially affected by it, including press releases or any other forum or medium to elicit public participation. Such additional notices shall be the financial responsibility of the Commissioner. The Commissioner is financially responsible for newspaper notices in excess of one in each county where coverage is deemed necessary.

4. Contents

- (i) General Public Notices - Except for the preliminary public notices described in subparagraph (a) of this paragraph, all public notices issued under this part shall contain the following minimum information:
 - (I) Name, address and phone number of the office processing the permit action for which notice is being given;
 - (II) Name and address of the permittee or permit applicant and, if different, of the facility or activity regulated by the permit;

- (III) A brief description of the business conducted at the facility or activity described in the permit application including the size and directions from a state highway or interstate, and/or a map (e.g., a sketched or copied street map if the location is remote or not easily accessible) to the facility and type of waste accepted;
 - (IV) A brief description of the comment procedures required by subparagraphs (f) and (g) of this paragraph, including a statement of procedures to request a public hearing (unless a hearing has already been scheduled), and other procedures by which the public may participate in the final permit decision;
 - (V) Name, address, and telephone number of a person from whom interested persons may obtain further information, including copies of draft permits and fact sheets;
 - (VI) A description of the time frame and procedure for making a final determination on this facility application approval or disapproval;
 - (VII) If the notice is announcing a public hearing it will state the time and location of the hearing and make reference to any prior public notice issued for each site.
 - (VIII) Any additional information considered necessary or proper.
- (ii) Public Notices for Public Hearing - In addition to the general public notice described in subpart (i) of this part, the public notice of a public hearing shall contain the following information:
 - (I) Reference to the dates of previous public notices relating to the permit action;
 - (II) Date, time, and place of the public hearing; and
 - (III) A brief description of the nature and purpose of the public hearing, including the applicable rules and procedures.
 - (IV) A concise statement of the issues raised by the persons requesting the hearing.
 - (iii) Preliminary Notices - The preliminary public notice described in subparagraph (a) of this paragraph shall contain the following information:
 - (I) The information from items (i)(I), (II), (III), (V), (VI), and (VII) of this part; and
 - (II) A brief description of the permitting procedures that will be followed, focusing especially upon the opportunities for public participation in the process.
- (f) Public Comments and Requests for Public Hearings - During the public comment period provided, any interested person may submit written comments on the draft permit and may request a public hearing, if no hearing has already been scheduled. A request for a public hearing shall be in writing and shall state the nature of the issues proposed to be raised in the hearing. All comments shall be considered in making the final decision and shall be answered as provided in subparagraph (j) of this paragraph.
 - (g) Public Hearings

1.
 - (i) The Commissioner shall hold a public hearing whenever he finds, on the basis of requests, a significant degree of public interest in a draft permit(s).
 - (ii) The Commissioner may also hold a public hearing at his discretion whenever, for instance, such a hearing might clarify one or more issues involved in the permit decision.
 - (iii) The Commissioner shall hold a public hearing whenever he receives written notice of significant public concern or opposition to a draft permit and a request for a hearing, within 45 days of public notice under subpart (e)2(i) of this paragraph.
 - (iv) Public hearing held pursuant to this rule shall be at a location convenient to the nearest population center to the subject facility.
 - (v) Public notice of the hearing shall be given as specified in subparagraph (e) of this paragraph.
 2. Any person may submit oral or written statements and data concerning the draft permit. Reasonable limits may be set upon the time allowed for oral statements, and the submission of statements in writing may be required. The public comment period under subparagraph (e) of this paragraph shall automatically be extended to the close of any public hearing under this subparagraph. The hearing officer may also extend the comment period by so stating at the hearing.
 3. A tape recording or written transcript of the hearing shall be made available to the public.
- (h) Reopening of the Public Comment Period
1. If any data, information, or arguments submitted during the public comment period appear to raise substantial new questions concerning a permit action, the Commissioner may (at his discretion or as directed by the Board) take one or more of the following actions:
 - (i) Prepare a new draft permit, appropriately modified, under subparagraph (c) of this paragraph;
 - (ii) Prepare a fact sheet or revised fact sheet under subparagraph (d) of this paragraph and reopen the comment period under subparagraph (e) of this paragraph; or
 - (iii) Reopen or extend the comment period under subparagraph (e) of this paragraph to give interested persons an opportunity to comment on the information or arguments submitted.
 2. Comments filed during the reopened comment period shall be limited to the substantial new questions that caused its reopening. The public notice under subparagraph (e) of this paragraph shall define the scope of the reopening.
 3. Public notice of any of the actions of part 1 of this subparagraph shall be issued under subparagraph (e) of this paragraph.
- (i) Final Permit Decision
1. After the close of the public comment period under subparagraph (e) of this paragraph on a draft permit (including a notice of intent to deny a permit), the Commissioner shall issue a final permit decision. The Commissioner shall notify the applicant and each person who has submitted a written request for notice of the final permit decision. For the purposes of this subparagraph, a final permit decision means a final decision to issue, deny, modify, revoke and reissue, or terminate a permit.

2. A final permit decision shall become effective upon the date of the service of notice of the decision unless a later date is specified in the decision.

(j) Response to Comments

1. At the time that a final permit decision is issued under subparagraph (i) of this paragraph, the Commissioner shall issue a response to comments. This response shall:
 - (i) Specify which provisions, if any, of the draft permit have been changed in the final permit decision, and the reasons for the change; and
 - (ii) Briefly describe and respond to all significant comments on the draft permit raised during the public comment period, or during any public hearing.
2. The response to comments shall be made available to the public.

- (k) Appeals - If, in his final permit decision under subparagraph (i) of this paragraph, the Commissioner denied the permit or issued it subject to conditions with which the permit applicant disagrees, the applicant may appeal the decision to the Board as set forth in T.C.A. § 68-211-113. If the Commissioner fails to take any action on a permit application within 45 days after it was submitted to him, the permit applicant may appeal to the Board as set forth in T.C.A. § 68-211-113.

~~(4)(5)~~ Terms of the Permit

- (a) Conditions Applicable to all Permits - The following conditions apply to all permits, and shall be incorporated into the permits either expressly or by reference. If incorporated by reference, a specific citation to this subparagraph must be included in the permit.
1. Duty to Comply - The permittee must comply with all conditions of this permit, unless otherwise authorized by the Department in writing. Any permit noncompliance constitutes a violation of the Act and is grounds for termination, revocation and/or reissuance, or modification of the permit and/or the assessment of civil penalties by the Commissioner.
 2. Need to Halt or Reduce Activity Not a Defense - It shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of this permit.
 3. Duty to Mitigate - In the event of noncompliance with the permit, the permittee shall take all reasonable steps to minimize releases to the environment, and shall carry out such measures as are reasonable to prevent adverse impacts on human health or the environment.
 4. Proper Operation and Maintenance - The permittee shall at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) which are installed or used by the permittee to achieve compliance with the conditions of this permit. Proper operation and maintenance includes effective performance, adequate funding, adequate operator staffing and training, and adequate laboratory and process controls, including appropriate quality assurance procedures. This provision requires the operation of back-up or auxiliary facilities or similar systems only when necessary to achieve compliance with the conditions of the permit.
 5. Permit Actions - This permit may be modified, revoked and reissued, or terminated for cause. The filing of a request by the permittee for a permit modification, revocation and reissuance, or termination, or a notification of planned changes or anticipated noncompliance, does not stay any existing permit condition.

6. Property Rights - This permit does not convey any property rights of any sort, or any exclusive privilege.
7. Duty to Provide Information - The permittee must furnish to the Commissioner, within a reasonable time, any information which the Commissioner may request to determine whether cause exists for modifying, revoking and reissuing, or terminating this permit, or to determine compliance with this permit. The permittee must also furnish to the Commissioner, upon request, copies of records required to be kept by this permit. All records, including a copy of the permit and the approved Part I and Part II application, must be maintained at the facility or other locations as approved by the Commissioner.
8. Inspection and Entry - The permittee shall allow the Commissioner, or an authorized representative, to:
 - (i) Enter at any reasonable time the permittee's premises where a regulated facility or activity is located or conducted, or where records must be kept under the conditions of this permit;
 - (ii) Have access to and copy, at reasonable times, any records that must be kept under the conditions of this permit;
 - (iii) Inspect at any reasonable time any facilities, equipment (including monitoring and control equipment), practices or operations regulated or required under this permit (Note: If requested by the permittee at the time of sampling, the Commissioner shall split with the permittee any samples taken.);
 - (iv) Sample or monitor at reasonable times, for the purposes of assuring permit compliance or as otherwise authorized by the Act, any substances or parameters at any location; and
 - (v) Make photographs for the purpose of documenting items of compliance or noncompliance at waste management units, or where appropriate to protect legitimate proprietary interests, require the permittee to make such photos for the Commissioner.
9. Monitoring and Records
 - (i) Samples and measurements taken for the purpose of monitoring shall be representative of the monitored activity.
 - (ii) The permittee shall retain records of all required monitoring information. The permittee shall maintain records from all ground-water monitoring wells and associated ground-water surface elevations, for the active life of the facility, and for the post-closure care period as well. This period may be extended by request of the Commissioner at any time.
 - (iii) Records of monitoring information shall include:
 - (I) The date, exact place, and time of sampling or measurements;
 - (II) The individual(s) who performed the sampling or measurements;
 - (III) The date(s) analyses were performed;
 - (IV) The individual(s) who performed the analyses;
 - (V) The analytical techniques or methods used (including equipment used); and
 - (VI) The results of such analyses.

10. Reporting Requirements

- (i) The permittee shall give notice to the Commissioner as soon as possible of any planned physical alterations or additions to the permitted facility.
- (ii) Monitoring results shall be reported at the intervals specified in the permit.
- (iii) The permittee shall report orally within 24 hours from the time the permittee becomes aware of the circumstances of any release, discharge, fire, or explosion from the permitted solid waste facility which could threaten the environment or human health outside the facility. Such report shall be made to the Tennessee Emergency Management Agency, using 24-hour toll-free number ,1/800/262-3300.
- (iv) Where the permittee becomes aware that it failed to submit any relevant facts in a permit application, or submitted incorrect information in a permit application or in any report to the Commissioner, it shall promptly submit such facts or information.

11. Periodic Survey of Disposal Facility

- (i) Within 60 days of his receipt of the written request of the Commissioner to do so, the permittee shall cause to be conducted a survey of active and/or closed portions of his facility in order to determine if operations (e.g., cut and fill boundaries, grades) are being conducted in accordance with the approved design and operational plans. The permittee must report the results of such survey to the Commissioner within 90 days of his receipt of the Commissioner's request.
- (ii) The Commissioner may request such a survey:
 - (I) If he has reason to believe that operations are being conducted in a manner that significantly deviates from the approved plans; and/or
 - (II) As a periodic verification (but no more than annually) that operations are being conducted in accordance with the approved plans.
- (iii) Any survey performed pursuant to this part must be performed by a qualified land surveyor duly authorized under Tennessee law to conduct such activities.

(b) Facility - Specific Permit Conditions

- 1. In addition to the conditions required in all permits (subparagraph (a) of this paragraph), the Commissioner shall, as required on a case-by-case basis, establish conditions in permits pursuant to this subparagraph.
- 2. Each permit shall include such terms and conditions as the Commissioner determines are:
 - (i) Necessary to achieve compliance with the Act and regulations, including each of the applicable requirements specified in this Chapter, (Note: In satisfying this provision, the Commissioner may incorporate applicable requirements of these rules directly into the permit or establish other permit conditions that are based on these rules.); and
 - (ii) Otherwise necessary to protect human health and the environment.
- 3. An applicable requirement is a state statutory or regulatory requirement which takes effect prior to final administrative disposition of a permit. Subparagraph ~~(3)~~(4)(h) of this

rule provides a means for reopening permit proceedings at the discretion of the Commissioner when applicable new requirements become effective during the permitting process and are of sufficient magnitude to make additional proceedings desirable. An applicable requirement is also any requirement which takes effect prior to the modification or revocation and reissuance of a permit, to the extent allowed in paragraph ~~(5)~~ (6) of this rule.

4. All permit conditions shall be incorporated either expressly or by reference. If incorporated by reference, a specific citation to the applicable regulations or requirements must be given in the permit.

(c) Duration of Permits - Permits shall be effective for the operating life of the facilities.

(d) Effect of a Permit

1. A permit may be modified, revoked and reissued, or terminated during its term for cause as set forth in paragraph ~~(5)~~ (6) of this rule.
2. The issuance of a permit does not convey any property rights of any sort, or any exclusive privilege.
3. The issuance of a permit does not authorize the permittee to injure persons or property or to invade other private rights, or to violate any local law or regulations.

~~(5)~~(6) Transfer, Modification, Revocation and Reissuance, and Termination of Permits

(a) Transfer of Permits

1. A permit may be transferred by the permittee to a new operator only if the permit has been modified or revoked and reissued (under subparagraph (b) of this paragraph) to identify the new permittee and incorporate such other requirements (e.g., financial requirements) as may be necessary under the Act or this rule. A permit transfer may be performed as a minor modification, but does require the preparation and issuance of a public notice.
2. (i) For the purpose of this Chapter, the "owner or operator" of a processing, storage or disposal facility has the ultimate responsibility for the operation of the facility, including the final authority to make or control operational decisions and legal responsibility for the business management. A "change of ownership" occurs whenever this ultimate authority to control the activities and the policies of the facility is transferred to another individual, group, or legal entity.
(ii) A "change of ownership" also occurs whenever there is a change in the legal form under which the controlling entity is organized.
(iii) Transactions constituting a change of ownership include, but are not limited to, the following:
 - (I) Sale or donation of the facility's legal title;
 - (II) Lease of the entire facility's real and personal property;
 - (III) A sole proprietor becomes a member of a partnership or corporation, succeeding him as the new operator;
 - (IV) A partnership dissolves;
 - (V) One partnership is replaced by another through the removal, addition or substitution of a partner;

- (VI) A general partnership becomes a limited partnership, or limited partnership becomes general;
 - (VII) Two (2) or more corporations merge and the originally-permitted corporation does not survive;
 - (VIII) Corporations consolidate;
 - (IX) A non-profit corporation becomes a general corporation, or a for-profit corporation becomes non-profit.
 - (X) Transfers between levels of government; and
 - (XI) Corporate stock transfers or sales, when the controlling interest is transferred.
- (iv) Transactions which do not constitute a change of ownership include, but are not limited to, the following:
- (I) Changes in the membership of a corporate board of directors or board of trustees;
 - (II) Two (2) or more corporations merge and the originally-permitted corporation survives;
 - (III) Changes in the membership of a non-profit corporation; and
 - (IV) Transfer between departments of the same level of government.

3. Changes in the ownership or operational control of a facility may be made as a modification with prior written approval of the Commissioner in accordance with part (b)2 of this paragraph. The new owner or operator must submit a transfer of ownership form no later than 90 days prior to the scheduled change. A written agreement containing a specific date for transfer of permit responsibility between the current and new permittees must also be submitted to the Commissioner. When a transfer of ownership or operational control occurs, the old owner or operator of the disposal facility shall comply with the financial assurance requirements of paragraph (3) of Rule 0400-11-01-.03 and likewise, the owner or operator of a composting facility shall comply with the financial assurance requirements of subparagraph (2)(p) of Rule 0400-11-01-.11 until the new owner or operator has demonstrated that he or she is complying with the requirements of that rule. The new owner or operator must demonstrate compliance with the referenced financial requirements within six months of the date of the change of ownership or operational control of the facility. Upon demonstration to the Commissioner by the new owner or operator of compliance with the referenced financial requirements, the Commissioner shall notify the old owner or operator that he or she no longer needs to comply with the referenced financial requirements as of the date of demonstration.

(b) Modification or Revocation and Reissuance of Permits

- 1. General - Except as otherwise provided in these rules, permits may only be modified or revoked and reissued for the reasons shown in parts 3, 4, or 5 of this subparagraph and only according to the procedures set forth in part 2 of this subparagraph. This process may be initiated either by the Commissioner or at the request of the permittee. All such requests from the permittee shall be in writing and shall contain the reasons for the request.
- 2. Procedures
 - (i) When the Commissioner receives a request from the permittee or other information (e.g., complaints, inspection findings, monitoring data, and required

reports) indicating that modification or revocation and reissuance of the permit may be in order, he may determine whether or not one or more of the causes listed in parts 3, 4, or 5 of this subparagraph exist.

- (ii) If the Commissioner determines cause exists, he may proceed to modify or revoke and reissue the permit accordingly, subject to the limitations of part 6 of this subparagraph. If a permit modification satisfies the criteria in part 5 of this subparagraph for "minor modifications", the permit may be modified without following further the procedures of this part, except for subpart (vi) of this part.
 - (iii) If the Commissioner determines cause does not exist under parts 3, 4, or 5 of this subparagraph, he shall not modify or revoke and reissue the permit. If the modification or revocation and reissuance was requested by the permittee, the Commissioner shall give to the permittee such notice as is required by T.C.A. § 4-5-320.
 - (iv) If the Commissioner tentatively decides to cause a major modification or revoke and reissue a permit, he shall prepare a draft permit under subparagraph ~~(3)~~ (4)(c) of this rule incorporating the proposed changes. This draft permit shall be processed as set forth in paragraph ~~(3)~~ (4) of this rule. The Commissioner may request additional information and, in the case of a modified permit, may require the submission of an updated permit application. In the case of revoked and reissued permits, the Commissioner shall require the submission of a new application.
 - (v) In a permit modification under this part, only those conditions to be modified shall be reopened when a new draft permit is prepared. All other aspects of the existing permit shall remain in effect for the duration of the unmodified permit. When a permit is revoked and reissued under this part, the entire permit is reopened just as if the permit had expired and was being reissued. During any revocation and reissuance proceeding, the permittee shall comply with all conditions of the existing permit until a new final permit is reissued.
 - (vi) No minor modification to a permit shall be made under subpart (ii) of this part, and no draft permit shall be prepared under subpart (iv) of this part, until the permittee has been given such notice as is required by T.C.A. § 4-5-320.
3. Causes for Modification - The following are causes for modification but not revocation and reissuance of permits. However, the following may be causes for revocation and reissuance as well as modification when the permittee requests or agrees:
- (i) There are changes to the permitted facility which occurred after permit issuance which justify the application of permit conditions that are different or absent in the existing permit.
 - (ii) The Commissioner has received information which was not available at the time of permit issuance (other than revised regulations, guidance, or test methods) and would have justified the application of different permit conditions at the time of issuance.
 - (iii) The standards or regulations on which the permit was based have been substantially changed by legislation or promulgation of amended standards or regulations or by judicial decision after the permit was issued.
 - (iv) A major modification of a closure plan or post-closure plan is required.
 - (v) To include conditions applicable to units at a facility that were not previously included in the facility's permit.

- (vi) When a land treatment unit is not achieving adequate treatment under its current permit conditions.
4. Causes for Modification or Revocation and Reissuance - The following are causes to modify or, alternatively, revoke and reissue a permit:
 - (i) Cause exists for termination under subparagraph (c) of this paragraph and the Commissioner determines that modification or revocation and reissuance is appropriate.
 - (ii) The Commissioner has received notification of a proposed transfer of the permit.
 5. Minor Modification of Permits - Upon the consent of the permittee, the Commissioner may modify a permit to make the corrections or allowances for those changes in the permitted activity deemed by the Commissioner to be a minor modification without following the procedures of paragraph ~~(3)~~ (4) of this rule. A minor modification is a change in the plans for a facility which will not alter the expected impact of the facility on the public, public health, or the environment. Major modifications shall include at least changes in final contour elevations, increase in capacities, changes in direction of site drainage, and other changes deemed major by the Commissioner.
 6. Facility Siting - Suitability of the facility location will not be reconsidered at the time of permit modification or revocation and reissuance unless new information or standards indicate that a threat to human health or the environment exists which was unknown at the time of the permit issuance.
- (c) Termination of Permits
1. General - Permits may be terminated only for the reasons shown in part 3 of this subparagraph and only according to the procedures set forth in part 2 of this subparagraph. This process may be initiated either by the Commissioner or at the request of the permittee. All such requests from the permittee shall be in writing and shall contain the reasons for the request.
 2. Procedures
 - (i) When the Commissioner receives a request from the permittee or other information (e.g., complaints, inspection findings, monitoring data, reports) indicating that termination of the permit may be in order, he may determine whether or not one or more of the causes listed in part 3 of this subparagraph exist.
 - (ii) If the Commissioner determines cause exists, he may proceed to terminate the permit.
 - (iii) If the Commissioner tentatively decides to terminate a permit, he shall issue a notice of intent to terminate. A notice of intent to terminate is a type of draft permit which follows the same procedures as any draft permit prepared and processed under paragraph ~~(3)~~ (4) of this rule.
 - (iv) No notice of intent to terminate shall be issued under subpart (iii) of this part until the permittee has been given such notice as is required by T.C.A. § 4-5-320.
 3. Causes for Termination - The following are causes for terminating a permit during its term, or for denying a permit renewal application:
 - (i) Noncompliance by the permittee with any condition of the permit which the Commissioner deems to be significant noncompliance, repeated noncompliance, and/or failure to comply with the Division's compliance schedule relative to permit conditions;

- (ii) The permittee's failure in the application or during the permit issuance process to disclose fully all relevant facts, or the permittee's misrepresentation of any relevant facts at any time;
- (iii) A determination that the permitted activity endangers human health or the environment and can only be regulated to acceptable levels by permit termination; or
- (iv) The request of the permittee, providing he has complied with all closure and post-closure requirements in the permit conditions.
- (v) The permittee's failure to file and maintain financial assurance in the amount required by Rule 0400-11-01-.03 and subparagraph (2)(p) of Rule 0400-11-01-.11.
- (vi) Non-payment of any fees owed to the Department.

Authority: T.C.A. §§ 68-211-101 et seq., 68-211-701 et seq., 68-211-801 et seq., Chapter 210 of the Private Acts of 1990, and 4-5-201 et seq.

Paragraph (2) of Rule 0400-11-01-.04 Specific Requirements for Class I, II, III, and IV Disposal Facilities is amended by adding a new subparagraph (y) to read as follows:

(y) Scenic Rivers, Buffalo River

1. The facility shall not be located within two miles of the center of a Class II scenic river, nor within two miles of the center of such a river in an adjacent upstream county, notwithstanding the fact that the river is not designated as a scenic river in the upstream county, if the river is designated as a Class II scenic river in the adjacent downstream county; and provided further that the facility shall not be located within five miles of the center of the Buffalo River in Lewis County.
2. The river segments that are Class II scenic rivers are those that have been designated by the General Assembly in Tenn. Code Ann. §11-13-104. At this time those are:
 - (i) Blackburn Fork -- That segment downstream from a point one and one-half (1 ½) miles downstream from the county road at Cummings Mill to its confluence with Roaring River.
 - (ii) Buffalo River -- The entire river, except that portion which lies within Wayne, Perry, Humphreys and Lewis counties.
 - (iii) Collins River -- That segment which lies within the Savage Gulf natural-scientific area.
 - (iv) Duck River -- That segment of the Duck River beginning at Iron Bridge Road at river mile 136.4 extending continuously to a point upstream to the boundary of Marshall County at river mile 173.7.
 - (v) Harpeth River -- The entire river except that segment lying north of Highway 100 and south of Interstate 40 in Davidson County; and except those segments located in Cheatham, Dickson and Williamson counties.
 - (vi) Roaring River -- That segment downstream from a point two (2) miles downstream from State Route 136, to its confluence with the Cordell Hull Lake.
 - (vii) Spring Creek -- That segment between State Highway 136 and Waterloo Mill, and that segment downstream from the Overton-Jackson county line to its confluence with Roaring River.

Authority: T.C.A. §§ 68-211-101 et seq., §11-13-111, Chapter 169 of the Private Acts of 1990, and 4-5-201 et seq.

Part 4 of subparagraph (a) of paragraph (5) of Rule 0400-11-01-.04 Specific Requirements for Class I, II, III, and IV Disposal Facilities is amended by deleting it in its entirety and replacing it with a new part to read as follows:

4. The minimum frequency of monitoring shall be quarterly and the operator shall keep records to comply with the monitoring and records requirements at part ~~(4)~~ (5)(a)9 of Rule 0400-11-01-.02; and monitoring shall include at least the following locations:
 - (i) Underneath or in the low area of each on-site building;
 - (ii) At locations along the boundary as shown in the permit;
 - (iii) At any potential gas problem areas, as revealed by dead vegetation or other indicators; and
 - (iv) At any other points required by the permit.

Authority: T.C.A. §§ 68-211-101 et seq., 68-211-701 et seq. and 4-5-201 et seq.

Part 1 of subparagraph (b) of paragraph (2) of Rule 0400-11-01-.10 Convenience Centers / County Public Collection Receptacles is amended by deleting it in its entirety and replacing it with a new part to read as follows:

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

Authority: T.C.A. §§ 68-211-101 et seq., 68-211-701 et seq. and 4-5-201 et seq.

Paragraph (1) of Rule 0400-11-01-.11 Requirements for Compost and Composting Facilities is amended by deleting it in its entirety and replacing it with a new paragraph to read as follows:

- (1) General
 - (a) Purpose - The purpose of this rule is to establish procedures, documentation, and other requirements which must be met in order for a person to operate a composting facility or offer for sale compost in Tennessee.
 - (b) Scope/Applicability
 1. The requirements of this rule apply as specified to operators of composting facilities in Tennessee. Except as specifically provided elsewhere in these rules, no facility may compost solid waste without a permit as provided in paragraph ~~(2)~~ (3) of Rule 0400-11-01-.02. Composting facilities, subject to a full permit on the effective date of this rule, must submit a part I and part II permit application to describe how it will comply with this rule. The application must be filed within 180 days of the effective date of this rule and implemented upon approval. The Division will not charge an application fee, nor require public notice of the application for facilities which already have permit-by-rule for composting.

2. Compost produced from the solid waste classification criteria outside the State of Tennessee, which is used or sold for use within the state, shall comply with subparagraphs (4)(a), (b) and (c) of this rule.
3. Composting facilities that process domestic sludge as a feedstock shall also comply with all other applicable federal or state laws regarding sludge management.
4. The following facilities or activities are not subject to the requirement to have a permit.
 - (i) Backyard composting and the resulting compost;
 - (ii) Normal farming operations. For the purpose of this rule, composting of only landscaping/land clearing waste, hereafter referred to as landscaping waste, or manure by persons on their own property for their own use on that property as part of agronomic or horticultural operations will be considered normal farming operations;
5. A composting facility processing up to 10,000 cubic yards per year of only landscaping waste and manure may receive a permit pursuant to ~~subparagraph (1)(e)~~ paragraph (2) of Rule 0400-11-01-.02 Permits by Rule, for Solid Waste Processing.
6. A composting facility processing only landscaping waste may receive a permit pursuant to ~~subparagraph (1)(e)~~ paragraph (2) of Rule 0400-11-01-.02 Permits by Rule, for Solid Waste Processing.
7. A processing facility composting sewage sludge that is one acre or less in size may apply for a permit by rule pursuant to ~~subparagraph (1)(e)~~ paragraph (2) of Rule 0400-11-01-.02.

Authority: T.C.A. §§ 68-211-101 et seq., 68-211-701 et seq. and 4-5-201 et seq.

Paragraph (2) of Rule 0400-11-01-.11 Requirements for Compost and Composting Facilities is amended by deleting it in its entirety and replacing it with a new paragraph to read as follows:

- (2) General Facility Standards - Unless specifically noted otherwise, the standards of this paragraph shall apply to all compost facilities subject to a permit as provided at paragraph ~~(2)~~ (3) of Rule 0400-11-01-.02.
 - (a) Performance Standards - The facility must be located, designed, constructed, and maintained, and closed in such a manner as to minimize to the extent practicable:
 1. The propagation, harborage, or attraction of birds, flies, rodents, or other vectors;
 2. The potential for releases of solid waste, solid waste constituents, or other potentially harmful material to the environment except in a manner authorized by state law;
 3. The exposure of the public to potential health and safety hazards through uncontrolled or unauthorized public access;
 4. The presence of odors that constitute a nuisance.
 - (b) Control of Access and Use
 1. The facility shall have a natural or an artificial barrier which completely surrounds the active portion of the facility and must have a means to control entry, at all times, through the gate or other entrances to the active portion of the facility.
 2. If open to the public, the facility shall have clearly visible and legible signs at the points of public access which indicate the hours of operation, the types of waste materials that either will or will not be accepted, emergency telephone numbers, schedules of charges (if applicable), and any other necessary information.

3. The facility shall have paved (paved includes compacted stone) access roads and parking areas. Traffic control signs shall be provided as necessary.
4. The facility shall have trained personnel present and on duty during operating hours to assure compliance with operational requirements and to prevent entry of unauthorized wastes.
5. There shall be no scavenging.
6. Scales for weighing all waste received at the facility shall be provided, unless the Commissioner approves an alternative method of measurement.

(c) Leachate Collection

1. The facility shall have a leachate collection and removal system that is designed, constructed, and maintained such that all leachate from the waste receiving, storage, processing, and curing areas is collected. All washdown, stormwater or other water coming into contact with solid waste or compost must be collected and properly managed.
2. Leachate shall be reused in the process or otherwise properly managed as per all applicable laws and rules.

(d) Waste Management

1. The type [defined at part (4)(a)1 of this rule] and source of solid waste to be received shall be determined and categorized for review. This listing shall be updated as appropriate.
2. The type and source of any additives to be used in the production of compost shall be specified.
3. The facility's waste inspection procedures shall be established to prevent the receipt of unauthorized or unacceptable waste. Inspection of all loads received is required.
4. Contingency operations shall identify proper management of all waste in the event of equipment failure, facility disaster, or receipt of unauthorized material such as oil, hazardous waste, etc.
5. The surfaces for all waste receiving areas, storage areas, and processing and curing areas shall be paved to minimize release of any contaminants to the groundwater. The paved areas shall be capable of withstanding wear and tear during normal operations. The standards for surfaces for facilities shall be as follows:
 - (i) Facilities receiving waste types categorized as solid waste or landscaping waste and manure shall utilize a surface of asphalt or concrete or other surface approved by the Commissioner.
 - (ii) Facilities receiving only the landscape waste type may utilize a surface of compacted gravel or the surfaces authorized in subpart (i) of this part.
6. Landscaping waste shall be stored separately from other solid waste at the facility. Solid waste shall be stored in a manner to prevent vectors. Unusable material must be identified and removed within 48 hours.
7. Recovered materials removed from the solid waste stream shall be stored in a manner that prevents vector problems and shall be sent to a vendor or processor at least every thirty (30) days.

- (e) Fire Safety
 - 1. No open burning is allowed.
 - 2. The facility shall have, on-site and continuously available, properly maintained fire suppression equipment capable of controlling accidental fires. If available, local fire fighting service shall be acquired.
- (f) Litter Control - Fencing and/or other control shall be provided to confine loose waste to the area designated for storage or processing: Accidental dispersal from the designated areas shall be recovered daily.
- (g) Personnel Facilities - There shall be provided:
 - 1. A building or other shelter which is accessible to facility personnel which has adequate heating and light.
 - 2. Potable water for washing and drinking.
 - 3. Toilet facilities.
- (h) Communication - The facility shall have available during operating hours equipment capable of summoning emergency assistance as needed.
- (i) Operating Equipment - The facility shall have on-site operational and monitoring equipment capable of maintaining the waste processing as designed.
- (j) Dust Control - The operator must take dust control measures as necessary to prevent dust from creating a nuisance or safety hazard to adjacent landowners or to persons engaged in supervising, operating, and using the site. The use of any dust suppressants (other than water) must be approved in writing beforehand by the Department.
- (k) Run-on/Run-off Control
 - 1. The operator shall design, construct, and maintain a run-on control system capable of preventing the 25 year, 24 hour storm from flowing onto all operational and storage areas.
 - 2. The operator shall design, construct, and maintain a run-off management system capable of minimizing impact to adjoining properties during the 25 year, 24 hour storm.
 - 3. Run-off shall be managed separately from leachate unless otherwise approved by the Commissioner.
- (l) Endangered Species - Facilities shall be located, designed, constructed, operated, maintained, closed, and cared for during the post-closure care period in a manner that does not:
 - 1. Cause or contribute to the taking of any endangered or threatened species of plants, fish, or wildlife; or
 - 2. Result in the destruction or adverse modification of the critical habitat of endangered or threatened species.
- (m) Location in Floodplains- Facilities shall not be located in a 100-year floodplain, unless the demonstration is made to the Commissioner as required at subparagraph (2)(n) of Rule 0400-11-01-.04.
- (n) Wetlands - The facility shall not be located in a wetland unless the demonstration is made to the Commissioner as required at subparagraph (2)(p) of Rule 0400-11-01-.04.

- (o) Closure - The facility must meet closure requirements described herein. The facility is finally closed by removal of all solid wastes and solid waste residues for proper disposal. The operator must notify the Commissioner in writing of his completion of closure of the facility. Such notification must include a certification by the operator that the facility has been closed by removal of all the solid waste and residues. Within 21 days of the receipt of such notice the Commissioner shall inspect the facility to verify that closure has been completed. Within 10 days of such verification, the Commissioner shall approve the closure in writing to the operator. Closure shall not be considered final and complete until such approval has been made.
- (p) The owner/operator of a compost facility permitted pursuant to paragraph ~~(2)~~ (3) of Rule 0400-11-01-.02 shall file with the Commissioner a performance bond or equivalent cash or securities, payable to the State of Tennessee. Such financial assurance is intended to ensure that adequate financial resources are available to the Commissioner to insure 30 days operation and proper closure of the facility. The types of financial assurance instruments that are acceptable are those which are specified in subparagraph (3)(d) of Rule 0400-11-01-.03. Such financial assurance shall meet the criteria set forth in T.C.A. § 68-211-116 and at subparagraph (3)(b) of Rule 0400-11-01-.03.
- (q) Compost from facilities subject to a full permit in this rule must meet the appropriate criteria for "compost disinfection" as defined in definitions at Rule 0400-11-01-.01.

Authority: T.C.A. §§ 68-211-101 et seq., 68-211-701 et seq. and 4-5-201 et seq.

Paragraph (1) of Rule 0400-11-01-.13 Requirements for Land Application Facilities is amended by deleting it in its entirety and replacing it with a new paragraph to read as follows:

(1) General

- (a) Purpose – The purpose of this rule is to establish procedures, documentation, and other requirements which must be met in order for a person to design, construct and operate a land application facility in Tennessee.
- (b) Scope/Applicability
 1. The requirements of this rule apply to land application facilities in Tennessee. Except as specifically provided elsewhere in these rules, no person may land apply solid waste without a permit as provided in part (1)(b)1 of Rule 0400-11-01-.02.
 2. The land application of landscaping and landclearing wastes and farming wastes are exempt from the permit requirements of this rule.
 3. The land application of solid wastes from food processing facilities are subject to the requirements to have a permit-by-rule.
 4. Land application of all other solid wastes will be subject to subpart (1)(b)3(xxii) of Rule 0400-11-01-.02.
- (c) Notification Requirements – The operator must comply with the notification requirements of ~~subpart (1)(c)1(vi)~~ (2)(a)4 of Rule 0400-11-01-.02. The operator must make attachments to the notification as follows:
 1. The operator attaches a written narrative to his notification describing the specific manner in which the facility complies with paragraph (2) of this rule.
 2. The operator attaches any sampling, monitoring, or other plans required by these rules or by the Commissioner.
 3. The operator of an existing permit-by-rule land application facility must modify the notification if:

- (i) Adding a waste stream from a new generator, or a waste stream from an existing generator which has not been previously approved for land application at that site; or
- (ii) Adding new acreage to the land application operations.

Authority: T.C.A. §§ 68-211-101 et seq., 68-211-701 et seq. and 4-5-201 et seq.

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

Board Member	Aye	No	Abstain	Absent	Signature (if required)
Dr. Warren Anderson				X	
Marty Calloway	X				
Stacy Cothran	X				
Kenneth L. Donaldson	X				
Dr. George Hyfantis, Jr.	X				
Bhag Kanwar	X				
Jared L. Lynn	X				
David Martin	X				
Beverly Philpot	X				
DeAnne Redman				X	
Mayor Franklin Smith, III	X				
Mark Williams	X				

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the Underground Storage Tank and Solid Waste Disposal Control Board on 12/04/2012, 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: 12/07/11

Rulemaking Hearing(s) Conducted on: (add more dates). 02/16/12

Date: December 4, 2012

Signature: _____

Name of Officer: Kenneth L. Donaldson

Title of Officer: Chairman

Subscribed and sworn to before me on: _____

Notary Public Signature: _____

My commission expires on: _____

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.
Attorney General and Reporter

Date