

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

<u>AGENCY:</u>	Emergency Medical Services Board
<u>SUBJECT:</u>	Emergency Medical Services Equipment and Supplies
<u>STATUTORY AUTHORITY:</u>	Tennessee Code Annotated, Sections 68-140-304 and 68-140-307.
<u>EFFECTIVE DATES:</u>	March 2, 2015 through June 30, 2015
<u>FISCAL IMPACT:</u>	Minimal
<u>STAFF RULE ABSTRACT:</u>	<p>The rules replace the current list of specific equipment and supplies that must be carried on ambulances with a list of the general list of the types of equipment and supplies that must be carried on ambulances. The rules provide that future lists of specific equipment and supplies will be published on the Board's web site. The Board states that this change is necessary because new rules cannot be implemented quickly enough to keep up with the development of new supplies and equipment.</p> <p>The rules also change the terms "essential" to "critical" and "minimal" to "non-critical," and have been edited for clarity.</p>

### **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.

No comments were received from the public.

### **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

**(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 and local governmental rules.

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

The proposed rules are clear, concise and lacking in ambiguity.

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

The compliance requirements contained in the proposed rules re the same for large or small businesses and are as flexible as possible while still allowing the Board to achieve its mandated mission of protecting the health, safety and welfare of Tennessee residents,

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

The proposed rules do not contain any schedules or deadlines for compliance.

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

The compliance or reporting requirements contained in the proposed rules have been consolidated and simplified as much as possible while still allowing the Board to achieve its mandated mission of protecting the health, safety and welfare of Tennessee residents.

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

The proposed rules do not establish performance, design or operational standards.

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

These proposed rules do not create unnecessary barriers to entry into business nor do they stifle entrepreneurial activity, curb innovation, or increase costs,

Statement of Impact to Small Businesses

Name of Board, Committee or Council: Emergency Medical Services Board

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

Licensed ambulance services, of which there are approximately 210 (188 ground, 10 air, 12 invalid) in the state of Tennessee, are the small business that would be affected by the proposed rules. It is anticipated that such services will neither bear any costs nor directly benefit from the proposed rules.

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

The proposed rules would not require any reporting, recordkeeping and other administrative costs in order to comply with them,

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

The proposed rules should have no effect on small businesses. Consumers, or patients, will benefit by having a higher standard of care.

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

The proposed rules are not burdensome, intrusive, or costly. To the extent that potentially burdensome or costly equipment or supplies may be required by the ambulance equipment, supplies and medications specifications adopted by reference under proposed Rule 1200-12-01-.03, such equipment, supplies and medications have historically been required as of a date years in the future, thereby allowing the affected small businesses time to budget for an acquire the new equipment or supplies.

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

The proposed rules have no specific federal or state counterparts.

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

If small businesses were exempted from the proposed rules, the proposed rules would be pointless, as most ambulance services are small businesses.

### **Impact on Local Governments**

Pursuant to T.C.A. § 4-5-228(a), "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 financial impact on local governments."

The proposed rules will not have an impact on local governments.

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Sequence Number: 12-06-14  
 Rule ID(s): 5843  
 File Date: 12/2/14  
 Effective Date: 3/2/15

# Rulemaking Hearing Rule(s) Filing Form

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

<b>Agency/Board/Commission:</b>	Department of Health
<b>Division:</b>	Emergency Medical Services
<b>Contact Person:</b>	Keith D. Hodges
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**Revision Type (check all that apply):**

- Amendment  
 New  
 Repeal

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

Chapter Number	Chapter Title
1200-12-01	General Rules
Rule Number	Rule Title
1200-12-01-.03	Emergency Medical Services Equipment and Supplies

(Rule 1200-12-01-.02, continued)

- (d) Vehicles added to an existing fleet, requiring evidence of additional supplies and equipment to extend service, shall not be operated under temporary authorizations, but may be operated under a letter of approval filed by the Division's authorized representative following payment of fees to the Division's principal office, and evidence of satisfactory inspection by the authorized representative, pending the issuance of a permit.
- (e) A letter of approval from a Division representative shall not be substituted for a vehicle permit for any period exceeding ninety (90) days.
- (6) Upon inspection, any vehicle deemed unacceptable and failing an inspection shall be immediately removed from service until approved for return to service by the Division's authorized representative.

**Authority:** T.C.A. §§68-140-504, 68-140-506, 68-140-507, and 68-140-526. **Administrative History:** Original rule filed March 20, 1974; effective April 19, 1974. Amendment filed February 8, 1983; effective May 16, 1983. Amendment filed November 30, 1984; effective February 12, 1985. Amendment filed April 8, 1987; effective May 23, 1987. Amendment filed May 27, 1988; effective July 11, 1988. Amendment filed March 7, 1989; effective April 21, 1989. Amendment filed November 27, 1990; effective January 11, 1991. Amendment filed August 11, 1993; effective October 25, 1993. Amendment filed June 1, 2007; effective August 15, 2007. Amendment 1200-12-01-.02(1)(o) filed August 7, 2009; withdrawn November 2, 2009. Amendment filed August 7, 2009; effective November 5, 2009. Amendment filed May 26, 2010; effective August 24, 2010.

~~1200-12-01-.03—EMERGENCY MEDICAL SERVICES EQUIPMENT AND SUPPLIES.—Each provider shall maintain the required equipment for the level of service to provide appropriate emergency care and where applicable, patient care during transport, on each vehicle permitted.~~

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- (1) ~~Definitions—~~as used in this rule, the following terms and abbreviations shall have these meanings:
  - (a) ~~(E)—~~"Essential device" shall mean any item critical for lifesaving patient care and which by its absence would jeopardize patient care.
  - (b) ~~(M)—~~"Minimal equipment or devices" shall mean such equipment and supplies provided in sufficient amounts for patient care, but when missing may not result in serious harm to a patient.
  - (c) ~~(O)—~~"Optional equipment or devices" shall mean any item of elective use, which shall be operational and sanitary.
  - (d) ~~(S)—~~"Specifications" shall refer to the federal standards and performance requirements for equipment and devices recognized within the emergency medical services industry and adopted by the board, which include the following:
    1. ~~Federal Specification for Ambulances, KKK-A-1822E, dated June 1, 2002, or its successor.~~
    2. ~~Standard Specification for Minimum Performance Requirements for EMS Ground Vehicles, F-1230-89, American Society of Testing and Materials, November, 1989, or its successor.~~
    3. ~~Federal Motor Vehicles Safety Standards cited under 49 CFR Part 571.~~

(Rule 1200-12-01-.03, continued)

(2) ~~Safety devices shall be provided to include:~~

(a) ~~Fire extinguishers (E) — Two (2) ABC dry-chemical, multipurpose 5-lb. unit, in restraint brackets. One mounted in the driver/cab compartment or in a body compartment reachable from outside the vehicle. On ambulances an extinguisher shall be located in the patient compartment or in a cabinet within the patient compartment.~~

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(b) ~~Three (3) bi-directional reflective triangles (E) — approved per FMVSS 125, for any transport vehicle.~~

(e) ~~Flashlights (M) — 4.5-volt or better, three-cell or lantern type for scene use, one accessible to the driver and one provided for technician use. At least one flashlight shall be provided for a first responder unit.~~

(3) ~~Oxygen inhalation, ventilation, and airway management devices shall be supplied providing:~~

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(a) ~~Resuscitation and airway devices including:~~

1. ~~Adjuncts for ventilation: (If disposable or single-use devices are furnished, a spare unit shall be supplied on all ambulances.)~~

(i) ~~bag-valve device (E) — with a bag volume of at least 1600 milliliters with oxygen reservoir for adult use.~~

(ii) ~~bag-valve device (E) — with a bag volume of 450 milliliters with oxygen reservoir for pediatric use.~~

(iii) ~~bag-valve device (E) — infant size with oxygen reservoir.~~

(iv) ~~resuscitation masks (E) — in adult, pediatric (child) and infant sizes.~~

(v) ~~oropharyngeal airways (M) — in at least five different sizes.~~

(vi) ~~nasopharyngeal airways (M) — in at least five different sizes.~~

(vii) ~~dual-lumen airway device (such as the Combitube or Pharyngeal-Tracheal Lumen Airway) that has been approved by the EMS Board. (M).~~

(viii) ~~end-tidal carbon dioxide (CO<sub>2</sub>) detectors, for adult and pediatric use. (E).~~

2. ~~Oxygen delivery devices:~~

(i) ~~An installed oxygen supply (E) — with a capacity of at least 2,000 liters of oxygen shall be supplied on all ambulances.~~

(I) ~~Cylinders shall be restrained in an approved manner.~~

(II) ~~Pressure regulator and flow meters shall comply with 3.12.1.1, Federal Specifications for Ambulances and automatically supply a line pressure of 50 psi.~~

(III) ~~At least two distribution outlets and flow meters shall be operable in the compartment.~~

(Rule 1200-12-01-.03, continued)

- (ii) ~~Portable oxygen (E) shall be provided with at least 300-liter, or "D" size cylinders.~~
  - (I) ~~The oxygen unit and spare cylinders shall be restrained in an approved manner.~~
  - (II) ~~Pressure regulator and flow meter shall comply with 3.12.2, Federal Specifications for Ambulances.~~
  - (III) ~~A full spare cylinder (M) shall be provided except on first responder units.~~
- (iii) ~~Administration devices shall include at least two of each item: (E) for items, (M) for amounts.~~
  - (I) ~~Oxygen supply tubing of at least 48 inches length.~~
  - (II) ~~Oxygen Masks including, adult non-rebreathing high concentration, pediatric non-rebreathing high concentration, and an infant medium concentration.~~
  - (III) ~~Adult nasal cannula.~~
  - (IV) ~~Humidifiers shall be optional, but when supplied shall be single patient use.~~
- 3. ~~Endotracheal intubation devices shall be supplied on advanced life support units, to include: (E) for items, (M) for amounts.~~
  - (i) ~~Laryngoscope handles with operable batteries in adult and pediatric sizes, appropriate for use with (ii).~~
  - (ii) ~~Laryngoscope blades in sizes:~~
    - (I) ~~0, straight;~~
    - (II) ~~1, straight;~~
    - (III) ~~2, straight;~~
    - (IV) ~~2, curved;~~
    - (V) ~~3, straight;~~
    - (VI) ~~3, curved;~~
    - (VII) ~~4, straight;~~
    - (VIII) ~~4, curved.~~
  - (iii) ~~Endotracheal tubes, individually packaged in a sanitary sealed envelope or plastic package in:~~
    - (I) ~~Uncuffed sizes in the pediatric range, one of each size 2.5 to 6.0mm. (2.5, 3.0, 3.5, 4.0, 4.5, 5.0, 5.5, 6.0 mm)~~

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(Rule 1200-12-01-.03, continued)

- (ii) ~~Cuffed sizes in the adult range, one of each size 6.5 to 8.5 millimeters. (6.5, 7.0, 7.5, 8.0, and 8.5 mm)~~
  - (iv) ~~Six packets of sterile surgical lubricant or equivalent.~~
  - (v) ~~Stylets, adult and pediatric.~~
  - (vi) ~~Syringe for cuff inflation, 10cc, with plain Luer tip.~~
  - (vii) ~~Magill forceps in adult and pediatric sizes.~~
  - (viii) ~~Esophageal detection device~~
- (b) ~~Suction devices and supplies shall include the following items:~~
- 1. ~~Installed suction (E) with vacuum gauge, a control, and collection bottle as specified in 3.12.3, Federal Specifications for Ambulances.~~
    - (i) ~~At least two sets of suction tubing, six feet in length shall be supplied. (E) for item, (M) for amount.~~
    - (ii) ~~Suction tubing and adapters (E) shall be provided for endotracheal aspiration of meconium allowing direct connection of suction to the endotracheal tube. (E)~~
  - 2. ~~A portable suction aspirator (E) shall be supplied as specified in 3.12.4, Federal Specifications for Ambulances.~~
    - (i) ~~A collection bottle (disposable preferred) of at 500 milliliters shall be provided.~~
    - (ii) ~~At least two sets of suction tubing, two feet or more in length shall be provided. (E) for items, (M) for amount.~~
  - 3. ~~Suction supplies (M) shall include rigid and flexible tips.~~
    - (i) ~~At least two rigid, Yankauer style tips shall be provided.~~
    - (ii) ~~Two sets of suction catheters shall be provided by BLS transport and ALS units; each set to consist of size 6, 8, 10, 14 and 16 French catheters.~~
- (4) ~~Diagnostic and assessment devices shall include:~~
- (a) ~~Sphygmomanometer with inflation bulb and gauge with: (E)~~
    - 1. ~~Adult blood pressure cuff (E) on all units.~~
    - 2. ~~Pediatric blood pressure cuff (E) except on first responder units.~~
    - 3. ~~Adult large or thigh blood pressure cuff (E) except on first responder units.~~
  - (b) ~~Stethoscope (E)~~
  - (c) ~~Bandage shears (M)~~

(Rule 1200-12-01-.03, continued)

~~(d) Items (b) and (c) may be carried as personally assigned equipment, provided the service has a posted policy regarding supply of these devices.~~

~~(e) Pulse oximeter with sensors for use with adult and pediatric patients.~~

(5) Bandages and dressing material shall include:

(a) Two (2) rolls of surgical adhesive tape (M), at least one inch in width.

(b) Six (6) rolls of conforming gauze roller bandage (M), at least three inches in width.

(c) Six (6) triangular bandages (M) with a minimum base at least forty-two (42) inches.

(d) Twenty-five (25) sterile 4" by 4" dressings (M).

(e) Eight (8) composite pad sterile compresses, abdominal (ABD)/combine dressings (M).

(f) Two sterile occlusive dressings of white petrolatum-coated gauze or plastic membrane film at least 3" by 3" (M).

(g) Two burn sheets (M) separately packaged, sterile or clean, at least 60 by 60 inches.

(h) Saline solution or sterile water for irrigation (M), in plastic containers sufficient to supply 2000 milliliters on each transport vehicle.

(6) Immobilization devices provided on all units except first responder units:

(a) Two long spinal immobilization devices or backboards (E) — whole body splints, or approved devices capable of immobilizing a patient with suspected spinal injuries.

1. Straps or restraints which immobilize the patient at or about the chest, pelvis, and knees shall be provided.

2. Wooden devices shall be sealed with finishes to prevent splintering and aid decontamination.

(b) One short spinal immobilization device consisting of a clam-shell, wrap-around type vest. (E)

1. Device shall provide spinal immobilization for the seated patient.

2. Device shall include affixed restraint straps, head straps and integral padding.

3. Device with straps and accessories shall be maintained in a separate case or carrier bag.

(c) Two cervical spinal immobilization devices or head immobilizers designed to prevent lateral head movement of the restrained patient. (M)

1. Four disposable or plastic covered foam blocks with tape or restraint straps may be provided to fulfill this requirement.

2. Commercial devices shall include accompanying straps or restraint materials.

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(Rule 1200-12-01-.03, continued)

3. ~~Sand bags shall not fulfill this requirement due to the potential for weight shifts of the fill material.~~
  - (d) ~~Two sets of cervical collars (E) shall be provided in the following sizes (Combinations of adjustable type collars are acceptable to provide at least two adult collars and at least one pediatric):~~
    1. ~~Pediatric~~
    2. ~~Small adult~~
    3. ~~Medium adult~~
    4. ~~Large adult~~
  - (e) ~~Upper extremity splints (E) shall include at least two devices or sets of fabricated splints for immobilization of arm injuries. Devices must be suitable to immobilize fractures in pediatric patients.~~
    1. ~~Board splints, when provided, shall be padded and at least fifteen inches length.~~
    2. ~~Inflatable splints shall not fulfill this requirement.~~
  - (f) ~~Lower extremity splints (E) shall include at least two devices or sets of fabricated splints for immobilization of leg injuries. Devices must be suitable to immobilize fractures of both lower extremities in pediatric patients.~~
    1. ~~Board splints, when provided, shall be padded and at least thirty six inches length.~~
    2. ~~Inflatable splints shall not fulfill this requirement.~~
  - (g) ~~Lower extremity traction splints (E) shall be provided with necessary attachments to achieve immobilization of femoral fractures involving both lower extremities in an adult. A traction splint shall also be provided to immobilize a femoral fracture in a pediatric patient.~~
- (7) ~~Immobilization devices on first responder units shall include one set of cervical collars, as identified in (6)(d) and at least one set of upper and lower extremity splints as identified in (6)(e) and (6)(f).~~
- (8) ~~Patient care supplies shall include:~~
- (a) ~~Containers for human waste and emesis with a bedpan, urinal, and emesis basin or suitable substitute on all patient transport vehicles. (M)~~
    1. ~~Tissues shall be provided for secretions and toilet use.~~
    2. ~~At least two emesis containers shall be provided.~~
  - (b) ~~Blankets or protective patient covers with thermal insulating capabilities.~~
    1. ~~Two blankets for adults (M)~~

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(Rule 1200-12-01-.03, continued)

2. ~~One baby blanket and head covering (Cloth or non-woven fabric) (E)~~
- (c) ~~Four sheets (M) of linen or disposable material for cot and patient covers.~~
- (d) ~~An obstetrical emergencies pack or O.B. kit (E) shall provide the following items, but shall not be required on first responder units:~~
  1. ~~Drape towel or underpad,~~
  2. ~~Gauze dressings,~~
  3. ~~Sterile gloves,~~
  4. ~~Bulb syringe or aspirator,~~
  5. ~~Cord clamps and/or umbilical ties,~~
  6. ~~Plastic bags and ties for placental tissues,~~
  7. ~~Infant receiving blanket or swaddling materials, and~~
  8. ~~A head covering shall be provided.~~
- (9) ~~Infection control supplies shall include:~~
  - (a) ~~Appropriate personal protective equipment (M) conforming to Occupational Safety and Health Administration rules including, but not limited to, the following:~~
    1. ~~Disposable gloves sized for the crew,~~
    2. ~~Fluid proof gowns or lab coats,~~
    3. ~~Two face masks (NIOSH approved to at least N-95 standards)~~
    4. ~~Eye shields or protective face shields, and~~
    5. ~~Protective footwear or shoe covers.~~
  - (b) ~~Materials for decontamination and disposal of potentially infected waste (M) to include:~~
    1. ~~Red plastic bags or trash bags labeled for biohazard, with at least two bags 24" by 30".~~
    2. ~~A puncture resistant container shall be supplied for sharps disposal in a locking style bracket or in a locked compartment within the ambulance. Sheath style or single use containers shall be disposed of in larger approved containers.~~
    3. ~~Antiseptic hand cleaner and an Environmental Protection Administration approved hospital grade disinfectant for equipment application.~~
- (10) ~~Intravenous therapy supplies shall be required on all ambulances as follows: (E) for items, (M) for amounts.~~

(Rule 1200-12-01-.03, continued)

- (a) ~~Fluid administration sets;~~
    - 1. ~~Macro drip, ten to twenty drops per milliliter, three (3) each.~~
    - 2. ~~Micro drip, sixty drops per milliliter, three (3) each~~
  - (b) ~~Antiseptic wipes twelve (12) each.~~
  - (c) ~~Catheters, over the needle type, four (4) sets in each gauge size 14, 16, 18, 20, 22 and 24.~~
  - (d) ~~Three liters of intravenous solutions, two of which will be crystalloid fluids.~~
  - (e) ~~Disposable (non-latex) venous tourniquets, sufficient for adult and pediatric use.~~
  - (f) ~~Intraosseous infusion needles, a minimum of an 18 gauge size shall be required on ALS units.~~
- (11) ~~Cardiac defibrillators and monitors shall be provided for use by appropriately trained personnel as follows:~~
- (a) ~~Advanced life support units shall be equipped with a cardiac monitor, electrocardiographic recorder, and defibrillator. (E)~~
    - 1. ~~Cardiac monitoring leads (E) shall be provided:~~
      - (i) ~~Six electrodes for adults.~~
      - (ii) ~~Six electrodes for pediatrics.~~
    - 2. ~~A biphasic waveform shall be required on any cardiac monitor/defibrillator purchased for ambulances after the effective date of this rule, and the defibrillator shall provide a minimum setting of ten (10) joules.~~
  - (b) ~~An automated external defibrillator shall be provided on each staffed ambulance, except those otherwise staffed and equipped to provide advanced life support as identified in paragraph (a).~~
  - (c) ~~Automated external defibrillators shall be an optional device for first responder units.~~
- (12) ~~Medications and required drugs for all ambulance and advanced life support providers shall include: (E) for items, (M) for amounts. Medications must be packaged and stored in accordance with pharmacologic guidelines for sterility, cleanliness, dosage, and expiration.~~
- (a) ~~Medications for use by basic emergency medical services on all ambulances shall include:~~
    - 1. ~~An anaphylaxis kit of Epinephrine 1:1,000 in a preloaded syringe of 0.3ml per dose, or a Tuberculin syringe with a minimum 5/8 inch, 25 gauge needle, with a sufficient quantity of Epinephrine 1:1,000 to administer two (2) doses to two patients.~~
    - 2. ~~Aspirin or therapeutic equivalent for administration to suspected cardiac patients.~~

(Rule 1200-12-01-.03, continued)

3. ~~Beta-adrenergic agonist (albuterol, etc.) or therapeutic equivalent with appropriate administration devices for acute pulmonary distress.~~
  4. ~~Nitroglycerine, 1/150 grain (0.4 mg) bottle of thirty (30) tablets or sublingual spray, or therapeutic equivalent.~~
- (b) ~~Medications for use in definitive and cardiac care shall be provided on advanced life support units. Medications used on advanced level ambulances shall be compatible with current standards as indicated by the American Heart Association's Emergency Cardiovascular Care Committee to include:~~
1. ~~Cardiovascular medications~~
    - (i) ~~Adenosine, 6 mg/2ml, sufficient to administer successive doses up to 18 milligrams, or therapeutic equivalent.~~
    - (ii) ~~Atropine sulfate, at least four (4) prefilled syringes of 1.0mg/10ml, or therapeutic equivalent.~~
    - (iii) ~~Antiarrhythmic agents to include sufficient amounts for two successive doses of either lidocaine for cardiac arrhythmia (at least four (4) prefilled syringes of 100 mg in 5 milliliters), or Amiodarone (in ampules of 150 to 300 mg to total at least 450 mg), or therapeutic equivalent. Admixtures or premixed solutions shall be provided for a maintenance drip.~~
    - (iv) ~~Magnesium sulfate, 1 gm sufficient to administer 2 gm in successive doses with dilution, or therapeutic equivalent.~~
    - (v) ~~Sodium chloride for injection and dilution of medications.~~
  2. ~~Analgesics, such as morphine, meperidine hydrochloride, nalbuphine (Nubain), butophanol (Stadol), Nitrous oxide, or therapeutic equivalent.~~
  3. ~~Benzodiazepine anticonvulsant, diazepam (at least two (2) vials or prefilled syringes of ten (10) milligrams/2ml or other benzodiazepine in equivalent amounts sufficient to administer two successive maximum doses, or therapeutic equivalent.~~
  4. ~~Vasopressor agents, such as Epinephrine 1:10,000, at least four (4) prefilled syringes of 1.0 mg/ml or therapeutic equivalent.~~
  5. ~~Hypoglycemic countermeasures~~
    - (i) ~~Glucose testing devices for semi-quantitative blood glucose determinations, with media, calibration strips, and lancets.~~
    - (ii) ~~Dextrose 50% in water, at least two (2) prefilled syringes of 25 grams in 50 milliliters, or therapeutic equivalent.~~
    - (iii) ~~Dextrose 25% in water, at least two (2) prefilled syringes of 12.5 grams in 50 milliliters, or therapeutic equivalent.~~
  6. ~~Narcotic antagonist, Narcan (naloxone). At least two (2) ampules or prefilled syringes of 1mg/ml, or therapeutic equivalent.~~

(Rule 1200-12-01-.03, continued)

- 7. ~~Alkalinizing agents, sodium bicarbonate, at least two (2) syringes of 50 mEq in 50 milliliters, or therapeutic equivalent.~~
  - 8. ~~Systemic diuretics, furosemide, 10 mg/ml, ampules, vials, or prefilled syringes to total 80 milligrams, or therapeutic equivalent.~~
  - 9. ~~Antinauseant, such as promethazine, 25mg/ml, or therapeutic equivalent.~~
  - 10. ~~Antihistamine, diphenhydramine, 50 mg, or therapeutic equivalent.~~
  - (c) ~~Syringes for drug administration shall be supplied in at least 1 cc, 3 cc, and 10 cc sizes with needles.~~
  - (d) ~~A length-based drug dosage tape for pediatric resuscitation shall be supplied. (2002 Broselow™ or successor edition.)~~
- (13) ~~Air ambulances shall provide equipment as required in Rule 1200-12-01-.05.~~
- (14) ~~Equipment requirements as detailed in (3) to (12) shall not apply to vehicles used solely for neonatal critical care transport. Neonatal transport equipment and supplies shall conform to the standards adopted in the Tennessee Perinatal Care System Guidelines for Transportation, Tennessee Department of Health, Maternal and Child Health Section, September, 2004, or the successor publication.~~
- (15) ~~Inspections of equipment and supplies reflecting deficiencies in essential (E) items or multiple deficiencies of minimum (M) items shall be grounds for failure of inspection. Five or fewer deficiencies or shortage of supplies termed minimal (M) shall receive a warning. Conditional acceptance during inspection may be recognized by the Division's representative when good faith efforts are demonstrated by the provider to acquire or repair minimal equipment, subject to a recheck of any conditional device within forty-five (45) days of the initial inspection.~~
- (16) ~~Equipment cited for Emergency Medical First Responder vehicles shall be in addition to minimal supplies cited in Rule 1200-12-01-.16.~~

1200-12-01-.03 Emergency Medical Services Equipment, Medications and Supplies. Each provider shall maintain the required equipment, medications and supplies for the level of service to provide appropriate emergency care and, where applicable, patient care during transport, on each permitted vehicle. It is anticipated that changes in equipment, medications and supplies may be necessary from time to time. This rule hereby adopts the Ambulance Equipment, Medications and Supplies Specifications posted on the Division's web page at <http://health.state.tn.us/ems/index.htm>, or at any successor web address, and incorporates those specifications into this rule as if they were fully set out and stated herein.

(1) Definitions – as used in this rule, the following terms and abbreviations shall have the following meanings:

- (a) "Critical" (C) means any equipment, medications or supplies critical for lifesaving patient care and which by its absence would jeopardize patient care.
- (b) "Non-Critical" (N) means such equipment, medications or supplies provided in sufficient amounts for patient care, but when missing may not result in serious harm to a patient.

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GENERAL RULES

CHAPTER 1200-12-1

(Rule 1200-12-1-.03, continued)

(c) "Optional" (O) means any equipment, medications or supplies of elective use, which shall be operational and sanitary.

(d) "Specifications" refers to the federal standards and performance requirements for equipment, medications and supplies recognized within the emergency medical services industry and adopted by the board. The current "Ambulance Equipment, Medications and Supplies Specifications" can be found at <http://health.state.tn.us/ems/index.htm>.

- (2) A written or electronic copy of protocols must be available for inspection on each ambulance.
- (3) Safety equipment is required on each ambulance in accordance with the Ambulance Equipment, Medications and Supplies Specifications.
- (4) Oxygen, inhalation, ventilation, and airway management devices are required on each ambulance in accordance with the Ambulance Equipment, Medications and Supplies Specifications.
- (5) Diagnostic and assessment devices are required on each ambulance in accordance with the Ambulance Equipment, Medications and Supplies Specifications.
- (6) Bandages and dressing material are required on each ambulance in accordance with the Ambulance Equipment, Medications and Supplies Specifications.
- (7) Immobilization devices are required on each ambulance in accordance with the Ambulance Equipment, Medications and Supplies Specifications.
- (8) Patient care supplies are required on each ambulance in accordance with the Ambulance Equipment, Medications and Supplies Specifications.
- (9) Infection control supplies are required on each ambulance in accordance with the Ambulance Equipment, Medications and Supplies Specifications.
- (10) Intravenous therapy supplies are required on each ambulance in accordance with the Ambulance Equipment, Medications and Supplies Specifications.
- (11) Cardiac defibrillators and monitors are required on each ambulance in accordance with the Ambulance Equipment, Medications and Supplies Specifications.
- (12) Medications and required drugs are required on each ambulance in accordance with the Ambulance Equipment, Medications and Supplies Specifications. Medications must be packaged and stored in accordance with pharmacological guidelines for sterility, cleanliness, dosage, and expiration.
- (13) A triage system that can be used in mass casualty situations/incidents is required on each ambulance in accordance with the Ambulance Equipment, Medications and Supplies Specifications.
- (14) Air ambulances are required to have the equipment, medications and supplies specified under Rule 1200-12-01-.05.
- (15) Equipment, medications and supplies requirements as detailed in paragraphs (3) to (12) shall not apply to vehicles used solely for neonatal critical care transport.
- (16) Neonatal transport equipment and supplies shall conform to the standards adopted in the Tennessee Perinatal Care System Guidelines for Transportation, Tennessee Department of Health, Maternal and Child Health Section, Sixth Edition, 2014, or successor publication.

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(Rule 1200-12-1-.03, continued)

(17) Ambulances found to be lacking any critical (C) equipment, medications or supplies, or lacking six or more non-critical (N) equipment, medications or supplies, will fail their inspection. Ambulances found to be lacking five or fewer non-critical (N) equipment, medications or supplies will receive a warning. Conditional acceptance during inspection may be granted by the Division's representative when good faith efforts to acquire or repair non-critical equipment are made by the provider, subject to recheck of any deficiencies within forty-five (45) days of the initial inspection.

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**Authority:** T.C.A. §§4-5-202, 4-5-204, 68-140-504, 68-140-505, 68-140-506, and 68-140-507.

**Administrative History:** Original rule filed March 20, 1974; effective April 19, 1974. Amendment filed February 8, 1983; effective May 16, 1983. Amendment filed November 30, 1984; effective February 12, 1985. Amendment filed August 22, 1985; effective September 21, 1985. Amendment filed April 8, 1987; effective May 23, 1987. Amendment filed March 7, 1989; effective April 21, 1989. Repeal and new rule filed January 7, 1997; effective March 23, 1997. Repeal and new rule filed November 16, 2005; effective January 30, 2006. Amendment filed December 16, 2005; effective March 1, 2006. Amendment filed August 7, 2009; effective November 5, 2009. Amendments filed May 26, 2010; effective August 24, 2010.

**1200-12-01-.04 EMERGENCY MEDICAL TECHNICIAN (EMT).** All persons desiring licensure as an Emergency Medical Technician pursuant to T.C.A. Title 68, Chapter 140 must comply with the following requirements and standards.

- (1) Emergency Medical Technician Licensure Requirements
  - (a) Must be at least eighteen (18) years of age.
  - (b) Be able to read, write, and speak the English language.
  - (c) Must possess an academic high school diploma or a general equivalency diploma (G.E.D).
  - (d) Must have no history within the past three years of habitual intoxication or personal misuse of any drugs or the use of intoxicating liquors, narcotics, controlled substances, or other drugs or stimulants in such manner as to adversely affect the person's ability to practice as an emergency medical technician.
  - (e) Must present evidence to the Division of Emergency Medical Services of a medical examination certifying physical health sufficient to conduct activities associated with patient care, including, but not limited to, visual acuity, speech and hearing, use of all extremities, absence of musculoskeletal deformities, absence of communicable diseases, and suitable emotional fitness to provide for the care and lifting of the ill or injured. This information shall be provided on a form approved by the Board and shall be consistent with the provisions of the Americans with Disabilities Act and the requirements of National Registry of Emergency Medical Technicians.
  - (f) Must successfully complete an approved basic Emergency Medical Technician course including all license examinations.
    1. Written Examination
      - (i) Achieve a passing score on a Board approved written examination with a minimum score as established by the Board.
      - (ii) Applicants who fail to pass the examination shall be eligible to reapply for examination.
    2. Practical Examination

\* 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)
Timothy Bell	X				
Dr. Christopher Brooks	X				
Jeffery L. Davis	X				
Richard Holiday	X				
Larry Hutsell	X				
Kevin Mitchell	X				
Dennis W. Parker	X				
James E. Ross	X				
Sullivan K. Smith	X				
Stephen Sutton	X				
Robert W. Thurman Jr.		X			
Robert A. Webb	X				
Tyler White	X				

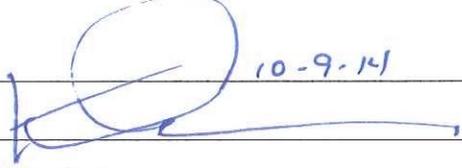
I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the Emergency Medical Services Board (board/commission/ other authority) on 06/26/2013 (mm/dd/yyyy), and is in compliance with the provisions of T.C.A. § 4-5-222.

I further certify the following:

Notice of Rulemaking Hearing filed with the Department of State on: 05/06/13 (mm/dd/yy)

Rulemaking Hearing(s) Conducted on: (add more dates). 06/26/13 (mm/dd/yy)

Date: 10-9-14

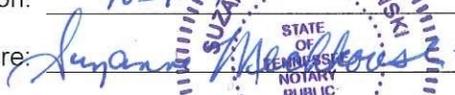
Signature: 

Name of Officer: Keith D. Hodges

Assistant General Counsel

Title of Officer: Department of Health

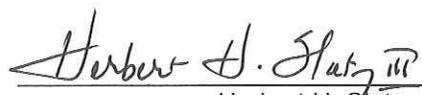
Subscribed and sworn to before me on: 10-9-14

Notary Public Signature: 

My commission expires on: APRIL 10, 2015



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



Herbert H. Slatery III  
Attorney General and Reporter

11/25/2014

Date

Department of State Use Only

Filed with the Department of State on:

12/2/14

Effective on:

3/2/15

*Tre Hargett*

Tre Hargett  
Secretary of State

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OFFICE OF  
SECRETARY OF STATE

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

DEPARTMENT: Environment and Conservation

DIVISION: Water Resources

SUBJECT: General Water Quality Criteria

STATUTORY AUTHORITY: Tennessee Code Annotated, Section 69-3-101 et seq. and 4-5-201 et seq.

EFFECTIVE DATES: April 6, 2015, to June 30, 2016

FISCAL IMPACT: None

STAFF RULE ABSTRACT: This rule updates the table of contents for Chapter 0400-40-03 General Water Quality Criteria and add clarifying notes to the definitions of “de Minimis degradation” and “measurable degradation.”

## 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 Setters 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.

(Note: In October, 2014, the previously adopted water quality standards were again put on public notice and an additional review period was undertaken in order to consider the addition of two footnotes clarifying the definitions of *de minimis* and measurable degradation, respectively. Following is a summary of public comments and the department's responses.

**Comment 1:** *The de minimis provision should be eliminated. The goal of the Clean Water Act is to eliminate discharges. The de minimis provision allows new discharges without an antidegradation review.*

**Response:** The *de minimis* provision allows very small amounts of degradation to be authorized without an economic and social necessity determination in some, but not all situations. For habitat alterations, an impact can only get to *de minimis* status by a combination of avoidance, minimization, and in-system mitigation (within the same 12 digit HUC if at all possible).

The regulation prohibits new or expanded domestic wastewater dischargers from being considered *de minimis*. For other types of discharges and water withdrawals, alterations can only be considered *de minimis* if they consume less than 5 percent of the assimilative capacity or 7Q10 flow, respectively. In waters with unavailable parameters, even a *de minimis* amount of degradation by that same parameter is prohibited, if due to a new or expanded discharge or withdrawal.

New or expanded discharges, or water withdrawals, are prohibited in Outstanding National Resource Waters (ONRWs) unless the effect is unmeasurable. A *de minimis* amount of degradation due to these activities would be measurable and therefore prohibited.

Additionally, there is a cumulative cap on the amount of degradation that can be allowed under the *de minimis* provision.

This approach to regulating very small amounts of degradation has been endorsed by EPA and previously approved. Additionally, the concept has been upheld in court cases.

Finally, the commenter may not be aware what a powerful tool the *de minimis* provision is in convincing applicants to minimize the amount of degradation they request. If they had to go through the economic and social necessity determination process for any amount of degradation, there would be no incentive for them to request and strive for a smaller amount.

**Comment 2:** *Both footnotes refer to a section of the Water Quality Control Act [TCA § 69-3-108] dealing with permitting, not the antidegradation policy. Why?*

**Response:** While Tennessee Code Annotated § 69-3-108 does not specifically reference "de minimis degradation" or "measurable degradation" it is particularly relevant to these notes. The specific portion of T.C.A. § 69-3-108 that we had in mind states:

(g) The commissioner may grant permits authorizing the discharges or activities described in subsection (b), including, but not limited to, land application of wastewater, but in granting such permits shall impose such conditions, including effluent standards and conditions and terms of periodic review, as are necessary to accomplish the purposes of this part, and as are not inconsistent with the regulations promulgated by the board. **Under no circumstances shall the commissioner issue a permit for an activity that would cause a condition of pollution either by itself or in combination with others. In addition the permits shall include: (1) The most stringent effluent limitations and schedules of compliance, either promulgated by the**

**board, required to implement any applicable water quality standards, necessary to comply with an areawide waste treatment plan, or necessary to comply with other state or federal laws or regulations; (emphasis added)**

**Comment 3:** *Why is it necessary to give special consideration for bioaccumulative materials? Aren't their very low criteria established to provide the appropriate protection level? In fact, the Department made this exact point in previous responses to comments.*

**Response:** The commenter is correct that the agency previously took the position that the potential harm of bioaccumulative substances was reflected in their criteria. But after our rules were promulgated in May 2013, a judge in a case in Idaho, *Greater Yellowstone Coalition v. EPA*, ruled that EPA should not approve state *de minimis* regulations if they automatically authorize degradation without the possibility of additional consideration of the effects of bioaccumulative substances. Since our definition of *de minimis* was similar to Idaho's in that regard, EPA informed us that they could not approve our provision and be consistent with the judge's ruling.

Since we agree in principle that a bioaccumulative substance may pose a risk and have an effect that is not *de minimis*, even if the amount of degradation is less than 5 percent of the assimilative capacity, we have proposed the footnote to establish this additional review process.

**Comment 4:** *What parameters are considered bioaccumulative by the Department?*

**Response:** Bioaccumulative parameters are indicated with the letter b in the numeric criteria tables for protection of fish and aquatic life, and recreation. (Rule 0400-40-03-.03(3)(g) and Rule 0400-40-03-.03(4)(j), respectively.)

Our identification of bioaccumulative parameters is consistent with EPA's "Parameters of Bioaccumulative Concern" established during the Great Lakes Initiative.

**Comment 5:** *What does the Department mean by "special consideration?"*

**Response:** For discharges and water withdrawals, for every parameter except those formally identified as bioaccumulative, *de minimis* status is automatic if the degradation represents less than 5 percent of the assimilative capacity or 7Q10 flow. However, in the case of bioaccumulative substances, staff will do an additional review of both the parameter and nature of the receiving water to insure that the impact of that parameter is truly *de minimis* in effect, even if technically less than 5 percent of the assimilative capacity.

For example, if an applicant proposes to discharge a very small amount of a bioaccumulative substance to a stream, we would check fish tissue or sediment data to insure that there is no evidence that even a small amount of additional discharge might trigger an unforeseen problem.

**Comment 6:** *The footnote regarding bioaccumulative substances might unfairly restrict an applicant from discharging very small amounts of such parameters.*

**Response:** The purpose of the footnote is to clarify how an alteration that is *de minimis* will be identified. If a bioaccumulative parameter in an application is judged to not be *de minimis* in effect, it could still be authorized under the social and economic necessity determination procedures.

As stated previously, to not make this change in light of the Idaho case would invite EPA disapproval of our *de minimis* provision in its entirety.

**Comment 7:** *Neither the current definition of de minimis nor the footnote provide any additional protections where waters have species with federal protection status or designation as Scenic Rivers.*

**Response:**

The presence of listed species or a Scenic River designation automatically makes a waterbody an Exceptional Tennessee Water. Water quality impacts to listed species would be considered impairment, which according to the Act, we cannot authorize in any situation. As we stated in a previous response, we cannot think of a better way to protect water resources and listed species than by providing a strong incentive for applicants to minimize the amount of degradation they wish to have authorized.

Waterbodies with special status can be proposed for promulgation by the Board as Outstanding National Resource Waters (ONRWs). Once designated as an ONRW, new or expanded discharges are prohibited unless the effect is neither “measurable” nor “discernible.”<sup>11</sup>

**Comment 8:** *TDEC automatically issues any permit that is de minimis.*

**Response:** That is not correct. As stated previously, new or expanded dischargers - even if the effect is *de minimis* - are prohibited in ONRWs, or waters with unavailable parameters (if the alteration is the same parameter). Also, if the cumulative cap has been exceeded, no additional significant amounts of degradation can be allowed without an economic and social necessity determination.

**Comment 9:** *The de minimis provision allows the department to avoid public participation.*

**Response:** The public can review, comment on, and ultimately challenge any permit, including those in which the amount of degradation has been identified as *de minimis* in effect.

**Comment 10:** *There is nothing to limit a permittee to one application of the de minimis provision.*

**Response:** If the commenter means in a different or subsequent permit, the commenter is correct. If an applicant had more than one discharge point, a *de minimis* amount of degradation could be authorized at each, provided the receiving water is available for the parameters in question. Additionally, in the next permit cycle, an applicant could again request a *de minimis* amount of degradation. However, as soon as the 10 percent cumulative cap for the waterbody segment has been reached, any additional significant amounts of degradation would have to have a social and economic necessity determination.

**Comment 11:** *The de minimis footnote is silent regarding the cumulative cap of 10 percent*

**Response:** The footnote doesn't apply to the cap. In order for degradation to be *de minimis*, the discharger must consume less than 5 percent of the assimilative capacity. The cumulative cap is simply an amount of total degradation from more than one application of *de minimis* that cannot be exceeded by any additional significant degradation. Degradation above the cumulative cap must be justified as necessary for social and economic development.

**Comment 12:** *If the Board wishes to retain the de minimis provision, the proposed footnote should be withdrawn and the definition rewritten. (Suggested text provided.)*

**Response:** Our intention was to clarify the definition rather than rewrite it. For that reason, we thought that a footnote was a better approach at this time.

**Comment 13:** *Recent permits have been written which have misused the de minimis concept.*

**Response:** This is a permitting comment rather than one related to the proposed rulemaking for the addition of two footnotes. As stated previously, there is an established process for reviewing, commenting upon, and contesting individual permits.

**Comment 14:** *The concept of “measurable” degradation should be deleted from the regulation. This provision creates an expanded set of exceptions from the Antidegradation Policy.*

**Response:** That was not our intention and we do not think it is the effect. In fact, since the rule previously allowed a *de minimis* amount of degradation in all waters, no matter the antidegradation status, we believe this previous loophole has been closed by the measurable provision.

The alternative is to say that the addition of even a molecule of a pollutant requires an antidegradation review, if an effect of degradation cannot be measured with the most sensitive instruments or laboratory methods, how can it be demonstrated to exist?

**Comment 15:** *If kept, the concept of “measurable ” should also be applied to habitat alterations.*

**Response:** We think the concept of measurable degradation works with discharges and water withdrawals, but not well with habitat alterations. For example, there are numerous habitat alterations that can be done under general permit. However, while *de minimis* in effect, these alterations would be measurable. For example, minor private driveway crossings can normally be done under general permit, but each would represent a measurable alteration of the habitat in a stream.

We think that the application of the antidegradation policy in regard to habitat alteration works best with the familiar concepts of protection of resource values, avoidance and minimization of impacts, and various types of mitigation where impacts are unavoidable.

**Comment 16:** *The proposed footnote for the measurable definition currently uses the phrase “ensure that no degradation will result In establishing the goal of the provision. It should say instead “ensure that no de minimis degradation or no degradation will occur, as applicable.”*

**Response:** We understand the commenter’s point that in some situations, a *de minimis* amount of degradation can be authorized without triggering further antidegradation review. However, the definition and footnote in question identify how it will be established that an effect cannot be measured and in most cases, a *de minimis* amount for degradation can be measured.

**Comment 17:** *If the Board wishes to retain the “measurable” concept, the definition of measurable should be rewritten so that the provision applies at the “end of pipe.”*

**Response:** Water quality standards apply to streams, not discharge pipes. Rule 0400-40-03-.05 (1) states “The effect of treated sewage or waste discharge on the receiving waters shall be considered beyond the mixing zone...” (Note: not every stream or discharge has a mixing zone.)

Of course, in streams with a low flow basis of zero, the effect of this provision would apply at the end of pipe, since there would not be available flow for dilution.

**Comment 18:** *The Department should not allow mixing zones.*

**Response:** We understand that the mixing zone policy is referenced in one of the footnotes, but a comment to eliminate an EPA endorsed and authorized provision goes well beyond the proposed footnotes and was established in a previous rulemaking. The commenter should refer to our response at that time. As we said in a previous comment, not every discharge is allowed a mixing zone.

**Comment 19:** *Permitting staff do not understand the measurable provision.*

**Response:** We think the commenter has overstated this issue, but to the extent it may be true, it speaks to the need for additional training, not a change in the regulation.

**Comment 20:** *Establishing the “measurable” provision will increase the number of impaired segments in Tennessee.*

**Response:** We do not understand this comment. Establishing that the condition of pollution has been created requires that the effect be measurable. Only effects that cannot be measured fall under this provision.

**Comment 21:** *The “measurable” footnote references mathematical models and ecological indices. These should be specified in the rule so that the public could comment on them.*

**Response:** Since models and indices are dependent on the parameter in question - and there are a multitude of parameters - it would not be practical to name all of them. Additionally, naming specific models or indices in the regulation might lead to a legal argument that we are limited to the ones named.

**Comment 22:** *In establishing the amount of degradation that has or is likely to occur, the Department should not use biological indices. These scores can be affected by other background pollutants or a lack of habitat.*

**Response:** We understand this comment, but consider biological indices to provide one of our most sensitive measures to determine whether or not degradation has occurred. In fact, our criteria for both biological integrity and habitat are established on the basis of condition indices.

An antidegradation process that disregards biological data would insure federal disapproval.

**Comment 23:** *The Department should go back to the old definition of “unavailable.”*

**Response:** This comment is unrelated to the proposed footnotes and goes back to a previous rulemaking. The commenter should refer to our response at that time.

**Comment 24:** *Habitat alterations should not be able to achieve de minimis status by mitigation.*

**Response:** This comment is unrelated to the proposed footnotes and goes back to a previous rulemaking. The commenter should refer to our response at that time.

**Comment 25:** *The parameter by parameter approach used by the Department in the application of the antidegradation policy in permitting ignores the combined effects of pollutants.*

**Response:** This comment is unrelated to the proposed footnotes and goes back to a previous rulemaking. The commenter should refer to our response at that time.

However, the commenter should be aware that EPA adds an “uncertainty factor” to its national criteria to help account for synergistic effects. Additionally, some permits have “whole effluent toxic test” requirements that must be met.

**Comment 26:** *The narrative criteria used by the Department complicate and confound the application of the antidegradation policy.*

**Response:** It is difficult to respond to this comment without specifics. Concerns about the application of the antidegradation policy in regulatory decisions can be raised as part of the permit review process. Many of our narrative criteria have regionally-derived numeric translators and all have been approved by EPA.

### **Regulatory Flexibility Addendum**

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

The intent of this rulemaking is to correct the Table of Contents for Chapter 0400-40-03 General Water Quality Criteria and add clarifying notes to the definitions of “de Minimis degradation<sup>1</sup>” and “measurable degradation.”

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

The water quality criteria rules affect all people in the state, including all businesses. These amendments do not contain any substantive changes, but are designed bring clarity to meaning of these definitions, and, therefore, do not impact small businesses.

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

There are no additional costs associated with this rulemaking.

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

There is no impact to small businesses and consumers resulting from this rulemaking.

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

There is no impact to small businesses resulting from this rulemaking.

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

These clarifications, in the form of notes, have been added to these definitions to assure EPA and the regulated community that the department interprets and applies these terms in a manner acceptable to EPA.

- (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.

To accomplish the goal of this rulemaking an exemption of small businesses is not possible.

### **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."<sup>1</sup> (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 that this rulemaking will have an impact on local governments.

**Department of State  
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Sequence Number: 01-03-15  
Rule ID(s): 5864  
File Date: 1/6/15  
Effective Date: 4/6/15

# Rulemaking Hearing Rule(s) Filing Form

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

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

<b>Agency/Board/Commission:</b>	Environment and Conservation
<b>Division:</b>	Water Resources
<b>Contact Person:</b>	Greg Denton
<b>Address:</b>	William R. Snodgrass Tennessee Tower 312 Rosa L. Parks Avenue, 11th Floor Nashville, Tennessee
<b>Zip:</b>	37243
<b>Phone:</b>	(615) 532-0699
<b>Email:</b>	<a href="mailto:Gregory.Denton@tn.gov">Gregory.Denton@tn.gov</a>

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

- Amendment  
 New  
 Repeal

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

Chapter Number	Chapter Title
0400-40-03	General Water Quality Criteria
Rule Number	Rule Title
0400-40-03	Table of Contents
0400-40-03-.04	Definitions

(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 0400-40-03  
General Water Quality Criteria

The Table of Contents for Chapter 0400-40-03 General Water Quality Criteria is amended by deleting it in its entirety and substituting instead the following:

0400-40-03-.01 Tennessee Board of Water Quality, Oil and Gas  
0400-40-03-.02 General Considerations  
0400-40-03-.03 Criteria for Water Uses  
0400-40-03-.04 Definitions  
0400-40-03-.05 Interpretation of Criteria  
0400-40-03-.06 Antidegradation Statement  
0400-40-03-.07 Ground Water Classification  
0400-40-03-.08 ~~Ground Water~~ Criteria  
0400-40-03-.09 Site Specific Impaired Classification Application Petition Process  
0400-40-03-.10 Point of Classification Change Remediation of Ground Water or Perched Water  
0400-40-03-.11 Appeals Classified Site Specific Impaired Ground Water and Respective Criteria  
0400-40-03-.12 Reporting Requirement

Authority: T.C.A. § 69-3-101 et seq. and 4-5-201 et seq.

Part 1 of subparagraph (a) of paragraph (4) of Rule 0400-040-03-.04 Definitions is amended by adding a note immediately following so that, with the note, part 1 shall read as follows:

1. Subject to the limitation in part 3 of this subparagraph, a single discharge other than those from new domestic wastewater sources will be considered de minimis if it uses less than five percent of the available assimilative capacity for the substance being discharged.

(Note: Consistent with T.C.A. § 69-3-108, special consideration will be given to bioaccumulative substances to confirm the effect is de minimis, even if they are less than five percent (5%) of the available assimilative capacity.)

Authority: T.C.A. § 69-3-101 et seq. and 4-5-201 et seq.

Paragraph (11) of Rule 0400-040-03-.04 Definitions is amended by adding a note immediately following so that, with the note, paragraph (11) shall read as follows:

- (11) Measurable degradation, as used in the context of discharges or withdrawals – Changes in parameters of waters that are of sufficient magnitude to be detectable by the best available instrumentation or laboratory analyses.

(Note: Because analytical techniques change, the Department may consider either the most sensitive detection method needed to comply with state standards or any biological, chemical, physical, or analytical method, conducted in accordance with U.S. EPA approved methods as identified in 40 C.F.R. part 136. Consistent with T.C.A. § 69-3-108, for scenarios involving cumulative, non-measurable activities or parameters that are managed by a narrative criterion, the Department will use mathematical models and ecological indices to ensure no degradation will result from the authorization of such activities, consistent with the state's mixing zone policy.)

Authority: T.C.A. § 69-3-101 et seq. and 4-5-201 et seq.

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

Board Member	Aye	No	Abstain	Absent	Signature (if required)
<b>Dr. Gay G. Bible</b> (Oil and Gas Industry)	X				
<b>James W. Cameron III</b> (Small Generator of Water Pollution representing Automotive Interests)	X				
<b>Jill E. Davis</b> (Municipalities)				X	
<b>Mayor Kevin Davis</b> (Counties)	X				
<b>Derek Gernt</b> (Oil or Gas Property Owner)				X	
<b>C. Monty Halcomb</b> (Environmental Interests)	X				
<b>Chuck Head</b> (Commissioner's Designee, Department of Environment and Conservation)	X				
<b>Charlie R. Johnson</b> (Public-at-large)				X	
<b>Judy Manners</b> (Commissioner's Designee, Department of Health)		X			
<b>John McClurkan</b> (Commissioner's Designee, Department of Agriculture)				X	
<b>Frank McGinley</b> (Agricultural Interests)	X				
<b>D. Anthony Robinson</b> (Manufacturing Industry)				X	

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the Board of Water Quality, Oil and Gas on 12/16/2014, and is in compliance with the provisions of T.C.A. § 4-5-222.

I further certify the following:

Notice of Rulemaking Hearing filed with the Department of State on: 10/14/14

Rulemaking Hearing(s) Conducted on: (add more dates). 12/09/14



Date: December 16, 2014

Signature: James W. Cameron III

Name of Officer: James W. Cameron III

Title of Officer: Chairman

Subscribed and sworn to before me on: December 16, 2014

Notary Public Signature: Carol L. Grice

My commission expires on: June 21, 2016

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

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

12/23/2014  
Date

**Department of State Use Only**

Filed with the Department of State on: 1/6/15

Effective on: 4/6/15

Tre Hargett  
Tre Hargett  
Secretary of State

SECRETARY OF STATE  
RECEIVED

2015 JAN -6 AM 11:33

## G.O.C. STAFF RULE ABSTRACT

AGENCY: Board of Medical Examiners

DIVISION: Health Related Boards

SUBJECT: License and Examination Requirements

STATUTORY AUTHORITY: Tennessee Code Annotated, Sections 4-5-202, 4-5-204, 63-6-101, and 63-6-207

EFFECTIVE DATES: April 26, 2015 through June 30, 2016

FISCAL IMPACT: None

STAFF RULE ABSTRACT: This rule deletes the existing requirements for applicants who fail the United States Medical Licensing Examination (USMLE) or Federal Licensing Examination (FLEX) and adds new language containing amended requirements.

Rule 0880-02-.08(2)(c) adds requirements for licensees who fail the USMLE or FLEX more than three times.

Rule 0880-02-.08(3) authorizes the Board to also require certain applicants to sit for the Special Purpose Examination (SPEX) prepared by the FSMB, and deletes an existing rule reference.

**Public Hearing Comments**

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

There were no public comments, either written or oral.

### **Regulatory Flexibility Addendum**

Pursuant to T.C.A. §§ 4-5-401 through 4-5-404, prior to initiating the rule making process 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 extent to which the rule or rules may overlap, duplicate, or conflict with other federal, state, and local governmental rules.**

These rules do not overlap, duplicate, or conflict with other state or local governmental rules.

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

These rules exhibit clarity, conciseness, and lack of ambiguity.

**3. The establishment of flexible compliance and/or reporting requirements for small business.**

The compliance requirements contained in the rules are the same for large or small businesses. The rule amendments do not establish new reporting requirements.

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

These rule amendments do not contain any reporting requirements. Compliance requirements contained in the rules are the same for large or small businesses.

**5. The consolidation or simplification of compliance or reporting requirements for large or small businesses.**

Compliance requirements contained in the rules are the same for large or small businesses. The rule amendments do not create any reporting requirements.

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

These rules do not establish performance, design, or operational standards.

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

These rules do not create unnecessary barriers or stifle entrepreneurial activity or innovation.

## **STATEMENT OF ECONOMIC IMPACT TO SMALL BUSINESSES**

**Name of Board, Committee or Council:** Board of Medical Examiners

**Rulemaking hearing date:** May 19, 2014

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

These amendments will not affect small businesses, except for ensuring that only safe and competent medical practitioners are licensed in Tennessee.

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

These amendments do not implement any changes in reporting, recordkeeping or other administrative costs.

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

These amendments should have no effect on doing business in Tennessee but should have a positive impact on consumers by ensuring that only safe and competent medical practitioners are licensed in Tennessee.

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

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

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

**Federal:** None.

**State:** Most states have an absolute restriction on the number of examination attempts acceptable to be licensed (typically 3-4 attempts).

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

There are no exemptions for small businesses contained in these amendments.

**Impact on Local Governments**

Pursuant to T.C.A. § 4-5-228(a), “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 regulation may have a projected financial impact on local governments.”

The proposed rule amendments should not have a financial 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  
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**For Department of State Use Only**

Sequence Number: 01-13-15  
Rule ID(s): 5868  
File Date: 1/26/15  
Effective Date: 4/26/15

## Rulemaking Hearing Rule(s) Filing Form

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

<b>Agency/Board/Commission:</b>	Tennessee Board of Medical Examiners
<b>Division:</b>	
<b>Contact Person:</b>	Andrea Huddleston
<b>Address:</b>	665 Mainstream Drive, Nashville, Tennessee
<b>Zip:</b>	37234
<b>Phone:</b>	(615) 741-1611
<b>Email:</b>	Andrea.Huddleston@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
0880-02	General Rules and Regulations Governing the Practice of Medicine
Rule Number	Rule Title
0880-02-.08	Examination

## THE PRACTICE OF MEDICINE

(Rule 0880-02-.07, continued)

*Amendment filed September 5, 2002; effective November 19, 2002. Amendment filed May 28, 2003; effective August 11, 2003. Amendment filed December 5, 2003; effective February 18, 2004. Amendment filed August 23, 2005; effective November 6, 2005. Amendments filed March 14, 2006; effective May 28, 2006.*

**0880-02-.08 EXAMINATION.** All persons intending to apply for licensure as a physician in Tennessee must successfully complete a written examination pursuant to this rule. Such written examination must be completed prior to application for licensure. Certification of successful completion must be submitted by the examining agency directly to the Board Administrative Office as part of the application process contained in rule 0880-02-.03, 0880-02-.04 and 0880-02-.05.

- (1) The Board adopts FLEX, USMLE and the National Board of Medical Examiners (NBME) examination as its written licensure examinations. Successful completion of one of those examinations is a prerequisite to licensure according to the following:
  - (a) After December 31, 1999, with the exception of applicants applying pursuant to Rule 0880-02-.05, the only examination acceptable for licensure is the USMLE Steps 1, 2 and 3.
  - (b) The Board will accept any of the following examinations or combinations of examinations if completed prior to December 31, 1999:
    1. The NBME Parts I, II and III; or
    2. FLEX Components I and II; or
    3. Predecessor FLEX Days I, II and III; or
    4. NBME Part I or USMLE Step 1  
plus  
NBME Part II or USMLE Step 2  
plus  
NBME Part III or USMLE Step 3; or

## THE PRACTICE OF MEDICINE

(Rule 0880-02-.08, continued)

5. FLEX Component I plus USMLE Step 3; or
  6. NBME Part I or USMLE Step 1  
plus  
NBME Part II or USMLE Step 2  
plus  
FLEX Component II
  7. Combinations of the Predecessor FLEX Days I, II and III are not allowed with any other examination.
- (2) Passing Scores - The Board accepts the following scores as constituting successful completion of the licensure examinations:
- (a) The Board adopts the NBME's and the USMLE's determination of the passing scores for each Part or Step of their examinations.

~~1. Passing Score for Subsequent Attempts for Failure of any Part or Step~~

~~(i) When an applicant fails to attain the passing score on any Part or Step of either the NBME or the USMLE and subsequently retakes that Part or Step, the passing score for each retake will be the NBME's and the USMLE's recommended minimum passing two-digit score plus one (1) additional point for each time that the Part or Step is retaken due to failure of the Part or Step.~~

~~(ii) It is the intent of this rule to:~~

~~(I) Not reward persons who have become familiar with a Step or Part of a licensure examination due to multiple retakes necessitated by previous failures; and~~

~~(II) Increase the passing two-digit score cumulatively according to the number of times the applicant has had to retake the Part or Step because of a previous failure of that Part or Step. (Example—If an applicant has failed Step 2 of the USMLE on the three (3) previous attempts, the applicant as he or she attempts Step 2 for the fourth time will, in order to pass the Step, need to obtain the USMLE's~~

## THE PRACTICE OF MEDICINE

(Rule 0880-02-.08, continued)

~~recommended minimum passing two-digit score for Step 2 plus one additional point for each of the previous three (3) failures.)~~

~~(iii) This cumulatively increasing passing score requirement of this rule shall not apply in clearly exigent circumstances when its application would work a manifest injustice or when the applicant, subsequent to the failure of any Part or Step of either examination, has obtained specialty board certification.~~

(b) The passing scores adopted by the Board for the FLEX examinations are as follows:

1. FLEX I and II  
Component I = 75  
  
Component II = 75

2. Predecessor FLEX Days I, II and III - A FLEX weighted average (FWA) of 75 or greater.

(c) If an applicant fails any step of the USMLE or FLEX examinations more than three (3) times, then the Board shall require proof of board-certification by an ABMS-recognized specialty board and proof of meeting requirements for Maintenance of Certification prior to application before consideration for licensure.

~~(3) Oral examination may be required pursuant to Rule 0880-02-.07(6).~~

(3) Oral examination may be required pursuant to Rule 0880-02-.07(4). The Board may also, in its discretion, require an applicant for licensure to take and pass the SPEX examination prepared by the FSMB. The circumstances under which the Board may require the SPEX examination include, but are not limited to, applicants for licensure who have been disciplined in another state; applicants who would be subject to discipline in Tennessee based on their conduct or condition; or applicants who have not engaged in the clinical practice of medicine for more than two (2) years.

(4) Deadlines - An applicant must have achieved passing scores on the licensure examinations within the following time frames:

- (a) FLEX and Predecessor FLEX and NBME - Seven (7) years from the date on which either the Day I or Component I or Part I of the examinations was taken.

## THE PRACTICE OF MEDICINE

(Rule 0880-02-.08, continued)

- (b) USMLE - Seven (7) years from the date of whichever step of the examination was successfully completed first.
- (c) The deadlines in subparagraphs (a) and (b) apply regardless of the combination of examinations utilized to apply for licensure. Provided however, if the seven (7) year limitation set forth in subsections (a) and/or (b) are not met, the applicant will be subsequently considered for licensure once it can be documented that the applicant has retaken and successfully completed the necessary steps or parts of the examination(s) in such a manner that all steps or parts of the examination(s) have been successfully completed within a seven (7) year time period.
- (d) The seven (7) year limitation for the USMLE contained in subparagraph (4) (b) of this rule will not apply to applicants who
  1. Are or have been working towards both an M.D. and Ph.D. degree in an institution or program accredited by the Association of American Medical Colleges' Liaison Committee on Medical Education and regional university accrediting body; and
  2. Was or is a student in good standing, who was or is enrolled in the institution or program; and
  3. Ph.D. studies are in a field of biological sciences tested on Step 1 of the USMLE. (These fields include but are not limited to anatomy, biochemistry, physiology, microbiology, pharmacology, pathology, genetics, neuroscience, and molecular biology. Fields explicitly not included are business, economics, ethics, history, and other fields not directly related to biological science); and
  4. Presents a verifiable and rational explanation for the fact that he or she was unable to meet the seven (7) year limit.

~~(e) — Extensions~~

- ~~1. — The seven (7) year limitation for the USMLE contained in subparagraph (4) (b) of this rule may be extended for applicants who are licensed in good standing and who have been engaged in continuous training and practice in another jurisdiction in which the applicants have been granted an extension or waiver from the seven (7) year limitation.~~
- ~~2. — The amount of time an applicant has actively served while continuous training and practicing in the armed forces of the United States shall not be counted in calculating the seven (7) year limitation for the USMLE contained in subparagraph (4) (b) of this rule.~~
- ~~3. — No extension may be granted that operates to authorize an applicant to take longer than ten (10) years to complete all three steps of the USMLE.~~

## THE PRACTICE OF MEDICINE

(Rule 0880-02-.08, continued)

~~4. The provisions of this subparagraph (e) shall expire and no longer be valid on May 24, 2009.~~

(e) Extensions - The amount of time an applicant has actively served while in continuous training and practice in the armed forces of the United States shall not be counted in calculating the seven (7) year limitation for the USMLE contained in subparagraph (4)(b) of this rule.

- (5) All applicants for the USMLE shall submit all application inquiries, applications, fees and all necessary admission documentation, including evidence satisfactory to the USMLE administering agency of successful completion of a one (1) year post graduate medical educational training program for applicants for Step 3 of that examination, directly to the USMLE administering agency. The Board does not distribute or process applications for the USMLE.
- (6) Submission of any document or set of documents required by this rule or submission of verification of the authenticity, validity and accuracy of the content of any document or set of documents required by this rule directly from the FCVS to the Board Administrative Office shall be deemed to be submission of originals of those documents or sets of documents by the issuing institution(s).

**Authority:** T.C.A. §§4-5-202, 4-5-204, 63-6-101, and 63-6-207. **Administrative History:** Original rule filed February 26, 1991; effective April 12, 1991. Amendment filed January 10, 1992; effective February 24, 1992. Amendment filed April 14, 1994; effective June 28, 1994. Amendment filed March 29, 1996; effective June 12, 1996. Amendment filed February 3, 1998; effective April 19, 1998. Amendment filed September 4, 1998; effective November 11, 1998. Amendment filed August 25, 2000; effective November 8, 2000. Amendment filed December 5, 2003; effective February 18, 2004. Amendment filed December 28, 2004; effective March 13, 2005. Amendment filed July 27, 2006; effective October 10, 2006. Amendment filed April 17, 2007; effective July 1, 2007. Amendment filed May 27, 2008; effective August 10, 2008.

**0880-02-.09 LICENSURE RENEWAL AND REINSTATEMENT.**

- (1) All licensees must renew their licenses to be able to legally continue in practice. License renewal is governed by the following:
- (a) The due date for license renewal is its expiration date which is the last day of the month in which a license holder's birthday falls pursuant to the Division of Health Related Boards "biennial birthdate renewal system" contained in rule 1200-10-01-.10.
- (b) Methods of Renewal - Licensees may accomplish renewal by one of the following methods:

\* 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)
Michael D. Zanolli, M.D.	x				
Subhi D. Ali, M.D.	x				
Dennis Higdon, MD	x				
Michael John Baron, M.D.	x				
Jeff P. Lawrence, MD				X	
Neal Beckford, M.D.				X	
Keith Lovelady, M.D.				X	
Clinton A. Musil, Jr., MD	x				
Patricia Eller	x				
Barbara Outhier	x				
Nina Yeiser	x				
W. Reeves Johnson, Jr. MD	x				

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the Tennessee Board of Medical Examiners (board/commission/ other authority) on 05/19/2014 (mm/dd/yyyy), and is in compliance with the provisions of T.C.A. § 4-5-222.

I further certify the following:

Notice of Rulemaking Hearing filed with the Department of State on: 03/24/2014 (mm/dd/yy)

Rulemaking Hearing(s) Conducted on: (add more dates). 05/19/14 (mm/dd/yy)

Date: 6-27-14

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

Name of Officer: Andrea Huddleston

Chief Deputy General Counsel

Title of Officer: Department of Health

Subscribed and sworn to before me on: 6/27/14

Notary Public Signature: Mollie A. Gass

My commission expires on: 7/7/14



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

Herbert H. Slatery III  
Herbert H. Slatery III  
Attorney General and Reporter  
1/23/15 Date

**Department of State Use Only**

Filed with the Department of State on: 1/26/15

Effective on: 4/26/15

Tre Hargett  
Tre Hargett  
Secretary of State

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2015 JAN 26 PM 4:14

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

DEPARTMENT: Agriculture

DIVISION: Consumer and Industry Services

SUBJECT: Industrial Hemp

STATUTORY AUTHORITY: There is no federal law mandating these regulations. In fact industrial hemp is still considered a controlled substance under federal drug laws enforced by the DEA.

EFFECTIVE DATES: April 15, 2015 through June 30, 2016

FISCAL IMPACT: The enacting legislation of this program mandates that it be self-sustaining. Fees will be charged to the regulated producers to support the program so that there will be no cost to the state.

STAFF RULE ABSTRACT: This rule establishes a licensure program for industrial hemp growers in Tennessee. Industrial hemp has previously been considered marijuana. This rule legalizes industrial hemp and establishes the regulatory program, including licensing and inspection of growers to maintain the integrity of the crop so that it will not be confused or intermingled with illegal cannabis plants.

## Public Hearing Comments

The department of Agriculture held a public hearing on November 18, 2014. Both comments received during the hearing and written comments are summarized below along with the response of the department

Mr. Alan Shaffield of Hendersonville commented on the value of this program as a replacement for tobacco. He stated he intends to grow certified seed. Certified seed are now available only in Canada and Europe.

Departmental Response: The department appreciates Mr. Shaffield's support and acknowledges the requirement for certified seed. The department is committed to assist producers obtain imported seed and to work with Tennessee Crop Improvement Association to provide a permanent source for certified seed in Tennessee.

Ms. June Griffin of Rhea County encouraged the department to refrain from imposing any rules or regulations or requiring licenses or inspections on farmers who grow hemp.

Departmental Response: The department appreciates Ms. Griffin's comments, but is bound by the statutory requirements of the Industrial Hemp Act to license hemp producers and promulgate regulations for that purpose. This department always strives to impose regulations that are minimally required to carry the programs and to be as little a burden as possible.

Ms. Stacy Griffin of Rhea County expressed similar comments as Ms. June Griffin on the lack of need for regulation of any kind.

Departmental Response: The department respectfully makes the same response as made previously.

Ms. Colleen Sauv  representing the Tennessee Hemp Industries Association testified at the hearing and provided her comments in written form by email to the hearing officer. Ms. Sauv  indicated her association members include Crescive, RWM Technologies, Shauna's Application Hemp Farm and Rasmussen Farms. Her first comment pertained to the definition of "agricultural pilot program" contained in Section 7606 of the 2014 Farm Bill. She recommended including this definition in the Tennessee rules to make working with the DEA move as smoothly as possible.

Next Ms. Sauv  sought clarification on the phrase "Any information obtained by the department may be publically disclosed and provided to law enforcement agencies without further notice to the applicant or licensee." Her next concern regarded the section of the rules that require applicants to state on their application form that the applicant, any partners, directors, or members have not been convicted of any felony related to the possession, production, sale, or distribution of a controlled substance in any form in this or any other country. She suggested a time limit of ten years be placed on this requirement so that convictions over ten years old would not be reported.

Another concern was the requirement that the producer file a report seven days prior to harvest that includes documentation of an agreement to sell the crop to an in state hemp processor. She prefers we omit the words "in state" so that producers may market their products in other states such as Kentucky.

The next area addressed concerned the acceptance of test results from a certified testing entity in addition to institutes of higher education.

The inspection fee of \$35 per hour was also a concern. She suggested a cap of \$100 per inspection.

Departmental Response: The department appreciates the thoughtful and helpful comments of THIA. This program is unique in that although legal in Tennessee, industrial hemp is still illegal in the eyes of the DEA. Section 7606 of the farm bill was enacted to relieve some of the tension. Continuing efforts are being made to further resolve this conflict at the federal level and is eventually thought to be resolved at some point in the future. The department has intentionally left references to the federal situation out of these rules so that no revision to state rules will be necessary when the federal situation is resolved. The necessary requirements to comply with the DEA to import seed will be contained in the application form and memorandum of understanding that each producer will be required to sign in order to obtain seed. Mou's will limit activities to those provided in the farm bill language.

All records of the department of agriculture are subject to the Open Records Act and subject to inspection by any citizen of Tennessee. This information was included in rules as a reminder to the applicants.

Industrial hemp is still a controlled substance under federal law and is very similar in many ways to plants that produce a higher THC level are illegal in TN as well. In order to protect innocent Tennessee producers from unintentional involvement in illegal drug activity, any one formerly involved in illegal drug activity at the felony level should be barred from this program. Other states and countries have similar provisions. Most just say any felony or any criminal conviction bars participation. The department has narrowed this provision to include only felony drug convictions. The department considers this appropriate for this program.

Ms. Sauvé's comments regarding limiting producers to "in state" processors are well taken and is deleted in this final version of the rules. If exporting hemp outside the state is still a problem with the DEA or other federal agency at the time the crop is harvested the producer filing the report will be notified.

The department will not be able to accept test results from private labs unless the samples are collected by and submitted to a private laboratory selected by the department. Further review of lab certification requirements to test for THC content will be made.

The legislation requiring the promulgation of these rules also requires the program to be self-sufficient. The department has inspectors stationed in every area of the state and will not be travelling long distances to make inspections. The costs of operating this program will be closely monitored and fees can be adjusted at a later time if revenue is sufficient to operate the program. The cost of compliance should be a consideration for all applicants before they participate in this program.

Mr. Harold Jarboe testified at the hearing in support of the program. He supports a rigorous inspection and testing program because of the proximity of the level of THC in legal hemp compared marijuana. He recommends testing early and often so that a crop with a higher level of THC could be caught and destroyed before significant resources are devoted to that crop.

Departmental Response: The department is concerned as well about determining possible illegal crops as early as possible so that producers and departmental resources will not be expended on an ultimately worthless crop.

Ms. Gretta Gaines of Nashville testified at the hearing about her company, The Hempory. She supports the program and hopes to utilize Tennessee grown products in her business. She is concerned about the lack of hemp processors in Tennessee and whether high CBD hemp will be grown in Tennessee.

Departmental Response: The department is interested in helping existing companies in Tennessee take advantage of Tennessee grown products of any kind including hemp. Our statute addresses industrial hemp. Hemp with medicinal properties was not mentioned. As this program develops further action by the legislature or Congress may be needed to permit medicinal uses.

Ms. Jenn Mures of Nashville testified at the hearing about her business, Tennessee Canna Distributors and her product Canna Energy. Their product is made with Canadian hemp, but they hope to use Tennessee hemp in the future.

Departmental Response: Like other businesses the department is supportive of local companies using our state's products.

Ms. Cathy Jolley of Williamson county representing her employer Framewell. This company provides software for tracking marijuana enforcement activities in Colorado. She offered herself and her company as a resource as the program develops.

Departmental Response: The department appreciates all resources made available in the development of this program.

Mr. John Quinnan of Goodlettsville testified at the hearing. Mr. Quinnan supports the growing of hemp in the state, but wants regulation of the practice to be kept at a minimum.

Departmental Response: The department agrees that only those rules that are absolutely necessary should be adopted.

Ms. Tena Everett-Cleg horn from Wilson county questioned the omission of any reference to greenhouses in the regulations.

Departmental Response: The department supports the use of greenhouses for this crop. The identification of greenhouses growers will be accomplished in the application process.

Fred Cole and Shauna Ray Queener of Campbell County submitted joint written comments. Their comments provided valuable commentary and information about the value and importance of growing hemp in the state. They also expressed concern about the reporting of felony drug convictions more than ten years old. They also made many good points about the need for more information and research on the viability of hemp as a money crop in the state.

Departmental Response: The department appreciates the content of the comments provided, but would make the same response concerning drug convictions as made above to other testimony.

Mr. Danny Felts submitted comments by email. He objected to the \$35 per hour inspection fee contained in the rules.

Departmental Response: The statute, as stated above, requires the program to be self-sufficient Fees will be monitored and lowered if sufficient revenue is generated.

Mr. Skip Ramsaur of Highland Hemp Farms in Cookeville provided email comments in support of the comments of THIA.

Departmental Response: The response to Ms. Sauv  and THIA apply here as well.

### **Regulatory Flexibility Addendum**

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

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

Farmers who wish to grow industrial hemp and businesses who wish to process or manufacture hemp products will be affected by these rules and will bear the cost.

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

There are no reliable estimates of the number of growers who will eventually apply to be licensed to grow hemp. Approximately 50 people have expressed varying levels of interest.

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

As industrial hemp is still considered an illegal drug by the DEA significant recordkeeping by the growers as well as the department will be significant. It is estimated that each grower will have to pay to the department about \$1,200 in fees to be licensed and inspected. They will have to make reports on all product they plant and produce.

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

Hemp is used in many ways all over the world and is in great demand. If hemp is grown in sufficient quantity to attract processors or markets there will be a significant opportunity for small businesses and farms to profit.

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

Because of the highly regulated controlled substances involved less intrusive regulations are not possible.

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

A few states like Kentucky and Colorado have started industrial hemp programs and our program is modeled after them. The federal government considers industrial hemp to be marijuana.

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

The law authorizing these regulations makes no provisions for exemptions. Under the federal government supervision of this program every ounce of the product will have to be accounted for.

**Department of State**  
**Division of Publications**  
 312 Rosa L. Parks Avenue, 8th Floor Snodgrass/TN Tower  
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**For Department of State Use Only**

Sequence Number: 01-06-15  
 Rule ID(s): 5866  
 File Date: 1/15/15  
 Effective Date: 4/15/15

# Rulemaking Hearing Rule(s) Filing Form

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

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

<b>Agency/Board/Commission:</b>	Department of Agriculture
<b>Division:</b>	Division of Consumer & Industry Services
<b>Contact Person:</b>	David Waddell
<b>Address:</b>	Post Office Box 40628, Nashville, Tennessee 37204
<b>Phone:</b>	(615) 837-5331
<b>Email:</b>	david.waddell@tn.gov
<b>Agency/Board/Commission:</b>	Department of Agriculture

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

- Amendment  
 New  
 Repeal

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

Chapter Number	Chapter Title
0080-06-28	Industrial Hemp
Rule Number	Rule Title
0080-06-28-.01	Definitions
0080-06-28-.02	Licensing
0080-06-28-.03	Reports
0080-06-28-.04	Inspections
0080-06-28-.05	Violations

New Rules

Chapter 0080-06-28  
Industrial Hemp

0080-06-28-.01 Definitions

0080-06-28-.02 Licensing

0080-06-28-.03 Reports

0080-06-28-.04 Inspections

0080-06-28-.05 Violations

0080-06-28-.01 Definitions.

- (1) "Act" means Tennessee Public Acts of 2014, Chapter 916.
- (2) "Applicant" means a person that is an individual residing in Tennessee or an institution of higher education as defined in section 101 of the Higher Education Act of 1965 (20 U.S.C. § 1001), a sole proprietorship, partnership, association, corporation, limited-liability corporation, limited partnership, or any other business entity having any:
  - (a) Place of business permanently located within this state;
  - (b) Employees permanently assigned to work stations or areas located within this state; or
  - (c) Tangible assets permanently located within this state.
- (3) "Commissioner" means the Commissioner of Agriculture and any employee of the Department of Agriculture associated with the Industrial Hemp Regulatory Program.
- (4) "Sample" means parts taken as representative of the combined total number of plants in the growing area.
- (5) "Department" means the Tennessee Department of Agriculture.
- (6) "Growing Area" means the land area on which industrial hemp is grown.

Authority: T.C.A. § 43-26-103(e)

0080-06-28-.02 Licensing.

- (1) Each applicant for an industrial-hemp license shall submit a signed, complete, accurate, and legible application form provided by the Commissioner by April 1 of the year in which the applicant plans to grow industrial hemp, which includes the following:
  - (a) the applicant's name, mailing address, and phone number in Tennessee and, if applicable, their electronic-mail address;
  - (b) if the applicant is an individual or partnership, the date of birth of the individual or partners;
  - (c) if the applicant is any business entity other than an individual, partnership, or institution of higher learning, documentation that the entity is authorized to do business in Tennessee;
  - (d) the cultivated variety that will be sown;
  - (e) the source and amount of certified seed to be used;
  - (f) the number of acres to be cultivated for seed, viable grain, industrial products, or any combination thereof;
  - (g) the Global Positioning System coordinates in decimal degrees from the central most point of the growing area to be cultivated and a map showing the location of the growing area in terms of its address or legal description;

- (h) a statement that the applicant is the owner of the growing area to be used for the cultivation or a statement, signed by the owner of the growing area, indicating that he has consented to that use;
- (k) if the applicant is cultivating for certified seed, evidence of membership in the Tennessee Crop Improvement Association;
- (l) the address of the place in Tennessee where the applicant will keep the records, books, electronic data, or other documents that are required by these regulations;
- (m) the name and address of each place where the industrial hemp is to be stored, sold, or provided, indicating for each place the form of the industrial hemp; and
- (n) the applicant's acknowledgment and agreement to the following terms and conditions:
  - 1. Any information obtained by the Department may be publicly disclosed and provided to law-enforcement agencies without further notice to the applicant or licensee.
  - 2. The licensee agrees to allow any inspection and sampling that the Department deems necessary.
  - 3. The licensee agrees to pay for any sampling and analysis costs that the Department deems necessary.
  - 4. The licensee agrees to submit all required reports by the applicable due dates specified by the Commissioner.
  - 5. The applicant, any partners, directors, or members have not been convicted of any felony related to the possession, production, sale, or distribution of a controlled substance in any form in this or any other country.
- (2) An application shall be signed by the applicant or, in the case of a corporation, cooperative, or partnership, one of its officers, directors, or partners, as the case may be, and indicate that all information and documents submitted in support of the application are correct and complete to the best of his knowledge.
- (3) Any application for a license received after April 1, or that is not complete by April 1, will be denied.
- (4) In addition to the application form, each applicant for a license shall submit the fee set by the Commissioner. If the fee does not accompany the application, the application for a license will be deemed incomplete.
- (5) The annual license fee for production of industrial hemp shall be \$250 plus \$2.00/acre.
- (6) All licenses shall be valid for one year from the date of issuance.
- (7) Any licensee that wishes to alter the growing areas on which the licensee will conduct industrial-hemp cultivation shall, before altering the area, submit to the Department an updated address, Global Positioning System location, and map specifying the proposed alterations.

Authority: T.C.A. § 43-26-103(e)

0080-06-28-.03 Reports.

- (1) At least seven days prior to harvest, each industrial-hemp licensee shall file a report with the Commissioner that includes documentation that the licensee has entered into a purchase agreement with an industrial-hemp processor. If the licensee has not entered into such an agreement, the licensee shall include a statement of intended disposition of its industrial-hemp crop.
- (2) Licensees must report any subsequent changes to the purchase agreement or disposition statement to the Commissioner within ten days of the change.
- (3) Two business days prior to the movement of the industrial-hemp grain or plant material from the permitted location, the licensee shall submit to the Commissioner an application for movement permit. The application shall include the mode and location to which the product is to be transported. An

inspection of the product may occur prior to movement.

Authority: T.C.A. § 43-26-103(e)

0080-06-28-.04 Inspections.

- (1) All licensees are subject to sampling of their industrial-hemp crop to verify that the THC concentration does not exceed 0.3% on dry-mass basis.
- (2) During the inspection, the licensee or authorized representative shall be present at the growing area. The licensee or authorized representative shall provide the Department's inspector with complete and unrestricted access to all industrial-hemp plants and seeds whether growing or harvested, all land, buildings, and other structures used for the cultivation and storage of industrial hemp, and all documents and records pertaining to the licensee's industrial-hemp business.
- (3) Sampling of industrial-hemp plants will occur in the following manner:
  - (a) Samples of each variety of industrial hemp may be sampled from the growing areas at the Department's discretion.
  - (b) Quantitative laboratory determination of the THC concentration on a dry-mass basis will be performed according to protocols approved by the Commissioner.
  - (c) A sample test result greater than 0.3% THC will be considered conclusive evidence that at least one cannabis plant or part of a plant in the growing area contains a THC concentration over the limit allowed for industrial hemp and that the licensee of that growing area is therefore not in compliance with the Act. Upon receipt of such a test result, the Commissioner may summarily suspend and revoke the registration of an industrial-hemp licensee in accordance with T.C.A. § 4-5-320. The Commissioner shall furnish to the licensee a portion of the violative sample if the licensee requests it within thirty days of notification.
  - (d) Test results from an institution of higher education may, at the Commissioner's discretion, be accepted in lieu of Department sampling.
- (4) Fees
  - (a) Licensees shall pay a charge of \$35 dollars per hour per inspector for actual drive time, mileage, inspection, and sampling time.
  - (b) Licensees shall reimburse the Department for all laboratory-analysis costs incurred.

Authority: T.C.A. § 43-26-103(e)

0080-06-28-.05 Violations.

In addition to any other violations of T.C.A. § 43-26-103 or this Chapter, the following acts and omissions by any licensee or authorized representative thereof constitute violations for which civil penalties up to \$500 and disciplinary sanctions, including revocation of a registration, may be imposed by the Commissioner in accordance with T.C.A. §§ 4-3-204 and 4-5-320:

- (1) Refusal or failure by a licensee or authorized representative to fully cooperate and assist the Department with the inspection process.
- (2) Failure to provide any information required or requested by the Commissioner for purposes of T.C.A. § 43-26-103 or this Chapter.
- (3) Providing false, misleading, or incorrect information pertaining to the licensee's cultivation of industrial hemp to the Commissioner by any means, including but not limited to information provided in any application form, report, record or inspection required or maintained for purposes of T.C.A. § 43-26-103 or this Chapter.
- (4) Failure to submit any required report in accordance with Tenn. Comp. R. & Regs. 0080-06-28-.03.
- (5) Growing industrial hemp that when tested is shown to have a THC concentration greater than 0.3% on a

dry-mass basis.

(6) Failure to pay fees assessed by the Commissioner for inspection or laboratory-analysis costs.

Authority: T.C.A. § 43-26-103(e)

(6) Failure to pay fees assessed by the Commissioner for inspection or laboratory-analysis costs.

Authority: T.C.A. § 43-26-103(e)

I certify the following:

Notice of Rulemaking Hearing filed with the Department of State on: 09/18/14

Rulemaking Hearing(s) Conducted on: (add more dates). (11/18/14)

Date: January 5, 2015

Signature: Julius Johnson

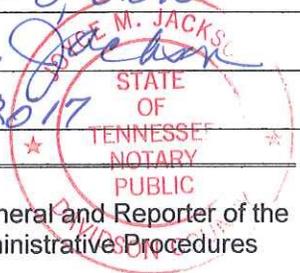
Name of Officer: Julius Johnson

Title of Officer: Commissioner

Subscribed and sworn to before me on: January 5, 2015

Notary Public Signature: Jeffrey M. Jackson

My commission expires on: 09/11/2017



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

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

1/12/2015 Date

**Department of State Use Only**

SECRETARY OF STATE  
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Filed with the Department of State on: 1/15/15

Effective on: 4/15/15

Tre Hargett  
Tre Hargett  
Secretary of State

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

**DEPARTMENT:** State Board of Education

**DIVISION:**

**SUBJECT:** Charter School Appeals

**STATUTORY AUTHORITY:** Public Chapter 850 (2014), Tennessee Code Annotated Sections 49-13-302, 49-13-106, 49-13-107, 49-13-108, and 49-13-126

**EFFECTIVE DATES:** April 12, 2015 through June 30, 2016

**FISCAL IMPACT:** Minimal

**STAFF RULE ABSTRACT:** Pursuant to Public Chapter 850 (2014), the State Board of Education has become an appellate authorizer for charter schools who make application in an LEA that contains a priority school. This item changes State Board rules and policy regarding charter school appeals to reflect the changes in the law.

**Regulatory Flexibility Addendum**

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

Not applicable.

### **Impact on Local Governments**

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

This rule will have no impact on local governments.

Appeals.  
0520-14-01-.02

(1) \_\_\_ Appeals.

The ~~sponsor-charter applicant~~ may appeal a decision by the chartering authority to deny an amended application for a newly created public school to the ~~Sstate Bboard of Eeducation~~ within ten (10) days. The ~~sponsor-charter applicant~~ shall forward the amended application to the ~~Eexecutive Ddirector~~ of the ~~Sstate Bboard of Eeducation~~. The ~~Sstate Bboard of Eeducation~~ may request additional documentation from the ~~sponsor-charter applicant~~ and the chartering authority.

Any corrections to the application, as permitted by T.C.A. § 49-13-108(a)(3)(C), must be made and submitted upon appeal to the State Board of Education.

(2) In reviewing the amended application, the ~~Sstate Bboard of Eeducation~~ shall use the sample scoring criteria provided by the ~~Ceommissioner of Eeducation~~ to the local boards of education. In reviewing the amended application, the ~~Sstate Bboard of Eeducation~~ shall review the decision of the local board of education.

~~(3) Within sixty (60) days after receipt of the notice of appeal or the making of a motion to review by the state board and after reasonable public notice, the state board of education shall hold a public hearing, attended by the board or its designated representative, in the school district in which the proposed charter school has applied for a charter. Subsequently, but within the sixty (60) days, the state board of education shall review the decision of the local board and shall forward its findings to the local board of education. If the Local Education Agency's (LEA) denial is based on substantial negative fiscal impact, the State Board of Education shall consider the financial impact of the charter on the LEA.~~

~~(4) If the state board finds that the local board's decision was contrary to the best interests of the students, school district, or community, the state board shall remand such decision to the local board of education with written instructions for approval of the charter. Within sixty (60) days after receipt of the notice of appeal or the making of a motion to review by the State Board and after reasonable public notice, the State Board of Education shall hold a public hearing, attended by the Board or its designated representative, in the school district in which the proposed charter school has applied for a charter. Subsequently, but within the sixty (60) days, the State Board of Education shall review the decision of the local board and shall forward its findings to the local board of education.~~

~~(5) The State Board of Education shall conduct a de novo on the record review of the proposed charter school's application.~~

~~(a) If the application is for a charter school in an LEA that does not contain a priority school, and if the State Board finds that the local board's decision was contrary to the best interests of the students, school district, or community, the State Board of Education shall remand such decision to the local board of education with written instructions for approval of the charter.~~

~~(b) If the application is for a charter school in an LEA that contains at least one (1) priority school on the current or last preceding priority school list, and if the State Board finds that the local board's decision was contrary to the best interests of the students, school district, or community, the State Board of Education may approve the application for the charter school and become the charter school's authorizer.~~

~~(6) The State Board shall maintain annual membership in the National Association of Charter School Authorizers (NACSA) and adopt national authorizing standards.~~

**Department of State**  
**Division of Publications**  
 312 Rosa L. Parks Avenue, 8th Floor Snodgrass/TN Tower  
 Nashville, TN 37243  
 Phone: 615-741-2650  
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**For Department of State Use Only**

Sequence Number: 01-05-15  
 Rule ID(s): 5865  
 File Date: 1-12-15  
 Effective Date: 4-12-15

## Proposed Rule(s) Filing Form

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

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

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

- Amendment  
 New  
 Repeal

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

Chapter Number	Chapter Title
0520-14-01	Charter Schools
Rule Number	Rule Title
0520-14-01-.02	Appeals

Chapter Number	Chapter Title
Rule Number	Rule Title

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

Board Member	Aye	No	Abstain	Absent	Signature (if required)
Chancey	X				
Edwards	X				
Hartgrove	X				
Johnson	X				
Pearre	X				
Roberts	X				
Rolston	X				
Sloyan	X				
Tucker	X				
Student Member	X				

I certify that this is an accurate and complete copy of proposed rules, lawfully promulgated and adopted by the Tennessee State Board of Education on 07/25/2014, and is in compliance with the provisions of T.C.A. § 4-5-222. The Secretary of State is hereby instructed that, in the absence of a petition for proposed rules being filed under the conditions set out herein and in the locations described, he is to treat the proposed rules as being placed on file in his office as rules at the expiration of sixty (60) days of the first day of the month subsequent to the filing of the proposed rule with the Secretary of State.

Date: 11-19-14

Signature: *Gary Nixon*

Name of Officer: Dr. Gary L. Nixon

Title of Officer: Executive Director



MY COMMISSION EXPIRES:  
January 9, 2016

Subscribed and sworn to before me on: 11/19/14

Notary Public Signature: *Phyllis E. Childress*

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

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

*Herbert H. Stately III*  
Herbert H. Stately III  
Attorney General and Reporter  
12/22/2014  
Date

Department of State Use Only

Filed with the Department of State on: 1-12-15

Effective on: 4-12-15



Tre Hargett  
Secretary of State

REC'D  
2015 JAN 12 AM 10:26  
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SECRETARY OF STATE